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SUPREME COURT OF THE STATE OF NEW YORK
--- SECOND DEPARTMENT ---

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UNIFIED COURT SYSTEM COMMISSION ON
PARENTAL LEGAL REPRESENTATION
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100 Supreme Court Drive
Mineola, New York 11501
October 23, 2018

BEFORE:

- HONORABLE KAREN K. PETERS,
Chair
- HONORABLE KATHIE E. DAVIDSON,
Administrative Judge,
Ninth Judicial District
- MICHAEL WILLIAMS,
Chief Clerk,
Suffolk County Family Court
- SUSAN B. LINDENAUER, ESQ.,
Chair, New York State Bar Association
Committee on Families and the Law

JENNIFER DEVLIN
JENNIFER SAMPUGNARO
KELLY CULEN
Official Court Reporters

1 HON. PETERS: Good morning. I am Karen Peters,
2 Chair of the Commission on Parental Representation. With
3 me today on the bench are members of the Commission: the
4 Honorable Kathie Davidson to my left, Administrative
5 Judge of the 9th Judicial District; Michael Williams,
6 Chief Clerk of the Suffolk County Family Court to my far
7 right; and Susan Lindenauer, Chair of the NYS Bar
8 Associationn Committee on Families and the Law to my near
9 right.

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

17 This hearing, the last of four we are holding
18 across the State of New York, will assist us in acquiring
19 relevant information from government officials,
20 institutional providers, assigned counsel programs and
21 attorneys, clients and other stakeholders.

22 Our ultimate objective is to provide a
23 blueprint for how New York State can strengthen the
24 quality and efficiency of our Family Court system and
25 ensure the fairness and effectiveness to everyone who

1 appears before the Court.

2 Before we hear from the first witness I would
3 like to publicly acknowledge the presence of certain
4 individuals who are not sitting on the bench today. I
5 would like to express my sincere appreciation to Ms.
6 Janet Fink, counsel to the Commission, who is sitting in
7 the jury box, assisted by Ms. Shane Hegarty who is behind
8 her, and our special advisor, Ms. Angela Burton who sits
9 next to Ms. Hegarty.

10 We are grateful to Presiding Justice Alan
11 Scheinkman for the opportunity to hold this hearing in
12 Nassau County Supreme Court. We express our appreciation
13 to Administrative Judge Thomas Adams, Dan Bagnuola, clerk
14 of this court, and Paul Lamanna, the Nassau District
15 Executive, for attending to all the details to ensure
16 that this hearing is successful and everyone has the
17 opportunity to be heard.

18 As we begin I remind the witnesses that,
19 mindful of our time constraints, testimony should be
20 confined to the time limits provided to you in advance.
21 Please summarize your testimony rather than reading it so
22 that we can have a dialogue with each and every one of
23 you after you complete your presentation. This hearing
24 is being simultaneously video cap'd. You should know
25 that ahead of time.

1 The first individual scheduled to testify today
2 is Scott Banks, Legal Aid. Mr. Banks, please come
3 forward.

4 MR. BANKS: Thank you.

5 HON. PETERS: Before you begin, I see that one
6 of the members of our commission, Dean Kusakabe, is in
7 the back. Dean, you want to come up and sit in the jury
8 box? You can hear even better. Thank you so much.
9 We're glad to have you here today.

10 Mr. Banks.

11 MR. BANKS: Thank you. Judge Peters, thank you
12 for convening this hearing on parental legal
13 representation. I welcome you, Judge Davidson, Ms.
14 Lindenauer and Mr. Williams to Nassau County Supreme
15 Court.

16 On behalf of all the panelists who you will be
17 having today, I want to thank Judge DiFiore for convening
18 this Commission and for recognizing there is a
19 significant need for the reform in the administration and
20 the quality of parental representation in New York State.
21 I address this Commission as the attorney in chief of the
22 Nassau County Legal Aid Society. We are the principal
23 provider of indigent parental representation here in
24 Nassau County.

25 While I have only lead this office for 2 years,

1 I am no stranger to parental representation. Prior to
2 rejoining the Legal Aid Society after a 30-year hiatus, I
3 was a private practitioner engaged in both criminal,
4 domestic relations law and family law practice.

5 While my comments are based in part on my
6 personal knowledge and experience, I lean heavily upon
7 the advice, knowledge and experience of two of my
8 attorneys who are here today: My Bureau Chief Lauren
9 Broderick and her Deputy Bureau Chief Julie McCloskey who
10 are two experienced Family Court practitioners.

11 Lauren and Julie supervise a staff of six
12 attorneys in my office. Aside from their
13 responsibilities of supervision and training of the six
14 lawyers, both Lauren and Julie maintain an active
15 practice in our office, handling the most complicated
16 neglect and termination cases.

17 I had the ability to watch pretty much all the
18 proceedings in the Rochester, New York City and Albany
19 hearings and was particularly impressed by the testimony
20 of the institutional providers of mandated parental
21 services both on the institutional end and on the
22 assigned counsel end.

23 HON. PETERS: I'm so glad you got to watch all
24 of them. Maybe before you end your testimony you can
25 give us your opinion on some of the unusual suggestions

1 that were made.

2 MR. BANKS: I intend to do so. Absolutely,
3 Judge.

4 And I think that each -- the testimony at each
5 of those hearings, very legitimate concerns were made
6 regarding how parental representation is delivered
7 throughout the state. Their suggestions for reform to
8 improve the system was really geared for one thing: to
9 promote fairness and equality in the system with a
10 principal mission of keeping families unified and
11 together.

12 It was also really important -- I think it was
13 -- and this Commission was very attentive to the parents
14 who testified at these proceedings. I was particularly,
15 you know, impacted by the testimony of parents who
16 testified of the years of litigating in Article 10
17 termination proceedings how they fought to be reunited
18 with their children.

19 It is important this Commission recognizes how
20 poverty, lack of appropriate housing, mental health,
21 substance abuse and domestic violence profoundly impact
22 how a parent is treated in the child welfare system.
23 Those parents who testified before this Commission, like
24 so many other parents engaged in the child welfare
25 system, unfortunately become victims of a broken system

1 which is initially designed and intended to keep families
2 and children together.

3 I echo the comments of Michael Miller, the
4 president of the New York State Bar Association, who
5 reiterated that any meaningful changes, reform in this
6 arena, requires structural changes in the administration
7 of parental representation which must be client based and
8 designed to enhance the family relationship, with a keen
9 understanding that the purpose of what we do every day in
10 the courtroom is to keep families and children together.
11 That should be our priority.

12 Of course as this Commission is aware and we
13 are all aware in this room, change doesn't come without a
14 cost. Since greater resources are clearly required to
15 make the system fair and equitable, there's no
16 one-size-fits-all solution to this, as you know that
17 because you've heard the testimony upstate where the
18 needs are different. You've heard the testimony in the
19 city where there -- some institutional providers have an
20 abundance of resources as compared to what we might have
21 here in Nassau County.

22 In some jurisdictions there is a paucity of
23 experienced 18B attorneys because they -- primarily
24 because the compensation rates have not been increased, I
25 think, since 2004. In other jurisdictions like here in

1 Nassau County, which has been the subject of -- which --
2 I'm sorry -- has been under New York State financial
3 control or oversight since approximately 2000, obtaining
4 the requisite funding for indigent legal services for my
5 office, whether on the criminal or the family law end --
6 and frankly we don't budget that way. It's a monumental
7 task each and every year when a county is struggling
8 financially. As a result our staff remains significantly
9 undercompensated compared to their colleagues in New York
10 City, despite the fact that my six attorneys and my two
11 supervisors do the same work, represent the same number
12 of clients on an annual basis, yet they don't get paid
13 the same.

14 And as a result of it what happens is that we
15 routinely lose experienced attorneys who go to other
16 institutional providers because they want to stay -- they
17 want to work in the system. They want to represent the
18 -- their clients, the people who need the most help, the
19 most vulnerable, yet they can't sustain themselves. So
20 while the 18B attorneys clearly have a concern about the
21 funding, it isn't enough to sustain their practices. Our
22 attorneys who decide to make this a career unfortunately
23 leave our offices. This is an untenable circumstance.

24 Notably Chief Judge Judith Kaye's 2006 report
25 on the future of indigent defense in New York State

1 pointed out that the system of providing mandated
2 parental representation suffers from the same systematic
3 deficiencies that exist in a criminal defense system.
4 These deficiencies, as you know, include excessive
5 caseloads, insufficient salaries, as I discussed for both
6 attorneys and support staff, the lack of suitable funding
7 for training and inadequate funding to hire social
8 workers, parent advocates and other required staff,
9 particularly in my Family Court Bureau. We don't have
10 any of that in our office.

11 It took a comprehensive settlement of a lawsuit
12 in New York State to finally infuse necessary funds into
13 the criminal defense system. Thus while state grants
14 have enabled our office to hire attorneys and support
15 staff on the criminal side of our practice, we have not
16 been able to do the same with respect to parental
17 representation.

18 As stated in my written testimony, the needs of
19 parents facing the loss of their children, I submit, is
20 as important as an indigent criminal defendant facing a
21 criminal charge since similar constitutional protections
22 are implicated. Offices like mine lack necessary funding
23 to improve the delivery of services.

24 We don't have sufficient funds to hire
25 attorneys to reduce caseloads or social workers or parent

1 advocates. And we lack the resource to provide training
2 and trial practice, which inexperienced lawyers require
3 and frankly experienced lawyers require to hone their
4 litigation skills. While Lauren and Julie do an
5 excellent job preparing our young attorneys, they have
6 their own caseloads and simply are unable to provide the
7 requisite training that our attorneys need. They do it
8 on the fly. And they do it as well as they can.

9 After listening to the testimony of my
10 colleagues at Brooklyn Defenders and New York City Legal
11 Aid, I was jealous. We were all jealous. Because I also
12 recognize the disparity. And I don't blame them. They
13 were able to secure the funding through OCA to fund their
14 staff to have the -- admittedly they have larger
15 caseloads. But the same parental advocates, the same
16 social workers can enhance our practice and improve our
17 clients chances in the Family Court system.

18 You know, while our attorneys are dedicated to
19 achieve the best results, we're handicapped by that. So
20 improved resources is really the goal here. And I would
21 urge this Commission to consider that. Providers of
22 mandated parental representation need the same reforms
23 included in the Hurrell-Harring settlement, which is
24 subsequently addressed in Governor Cuomo's 2018 budget
25 which provides for a 5-year funding plan throughout the

1 State of New York to focus on needed changes in parental
2 -- and improvements in indigent criminal defense.

3 Judge, you and Judge Whelan asked ILS director,
4 Bill Lahey, who should be responsible for implementing
5 the changes here for parental representation? While
6 understandably Mr. Lahey declined to respond to that
7 question, I will. Clearly ILS with its attentive,
8 knowledgeable and dedicated support staff is best able to
9 implement the changes we require. They're doing it
10 already. They've already engaged in implementing the
11 Hurrell-Harring reforms in the five designated counties
12 throughout the state. They're also engaged with counties
13 and providers in administration of state grants for
14 indigent criminal defendants, and pursuant to Executive
15 Law 832 are now tasked with the responsibility of state
16 implementation of improvement of criminal representation
17 throughout New York State.

18 ILS, I submit, can effectively do the same in
19 the parental representation arena. They know the
20 providers. They know who they're dealing with in the
21 counties. And since 2010 ILS has engaged and worked with
22 counties and municipalities to improve the quality of
23 public legal services. Because ILS is data driven, they
24 have the capability -- and this is really important -- of
25 targeting the representative needs of each provider, be

1 it an assigned counsel provider or an institutional
2 provider. So they can assess where the deficiencies are.
3 They do that now. And I would respectively ask that they
4 be the -- that they be considered the party to implement
5 hopefully aggressive changes to the parental
6 representation system.

7 In my written statement I indicated that there
8 should be an office of parental representation within ILS
9 or the State Defenders Association. And what would that
10 encompass? That would encompass an organization that's
11 geared for training attorneys, establishing mentoring
12 programs that are nonexistent. Bar associations here in
13 Nassau County -- I'm sure in Suffolk County -- they do
14 lecture series. And I know in Nassau County the current
15 president of the Bar Association, Elena Karabatos, has
16 now.

17 And if you're a member of the bar association
18 you get free CLEs. Those are great. And that helps.
19 But the training of how to handle cases, how to
20 cross-examine a witness, how to interview a client,
21 that's not done -- that cannot be done within the context
22 of the CLE. NYSDA, or through ILS, has a program for the
23 criminal end that focus on that. And I think the funding
24 in that area both for 18B, for institutional providers
25 and perhaps even for private practitioners be a worthy

1 consideration.

2 Additionally there should be mentoring programs
3 and a -- work should be done to teach people how to
4 engage in effective appellate advocacy. There was some
5 discussion of appellate advocacy in the other Commission
6 hearings, but I don't think enough. Cases need to be
7 moved quicker in the system because people's lives are
8 affected the longer an appeal takes place. Attorneys
9 should be instructed in how to file an interlocutory
10 appeal, or as someone had asked: How many stay
11 applications?

12 I think there was a question in New York
13 County. How many stay applications are filed? We do it,
14 but, you know, it should be probably done more often.
15 And I think attorneys maybe in the 18B level don't do it
16 because of the compensation issues or whether or not
17 there will be a mix mash of whether or not they will be
18 compensated for the work they do. So that's an important
19 consideration as well. And I know here in the Second
20 Department we do do expedited appeals for Family Court.
21 I think the case management system throughout the state
22 would be worthy.

23 In my written testimony I discussed the need
24 for prepetition representation of parents. This is
25 expressed, as you know, throughout each of the hearings.

1 It is critical, I submit, in the matters whether there is
2 a risk of a child or children to be removed from a home
3 that a parent or guardian be immediately advised verbally
4 and in writing that they have a right to counsel, and
5 that counsel should be made available to that person
6 immediately. Of course there will be circumstances
7 before a removal. Of course there are circumstances
8 where an ACS or a CPS worker has to make a quick
9 decision. And those emergent circumstances we deal with
10 even in the criminal context.

11 But attorneys who are engaged, I submit, before
12 a child is removed and before a Family Court petition is
13 filed can prevent unnecessary removals. Keeping families
14 together while simultaneously working with the client and
15 the agency to find the appropriate services, the
16 appropriate housing perhaps, the appropriate mental
17 health provider to service that client before that child
18 is removed and before that parent is brought into a
19 system where some of your witnesses described take years
20 to resolve. When we talk about cost, I submit this would
21 certainly be a cost-savings measure so we can -- the
22 courts can concentrate more on the more difficult cases
23 that are before them.

24 You know, parents who face a knock on the door
25 by an investigatory CPS or ACS worker must have similar

1 rights to those of a person who may be questioned by
2 police in a criminal setting. Immediate intervention by
3 counsel where consideration for the child's best interest
4 can be assessed administratively in a lot of cases. And
5 it could eliminate the filing of a petition. And I urge
6 this Commission to make such a recommendation regarding
7 that.

8 Also something that's kind of dear to my heart
9 -- because I engage in these proceedings -- often times
10 there should be a right to counsel for indigent
11 defendants in administrative Fair hearings. As you know,
12 ACS or CPS can make indicated or substantiated findings
13 even prior to the filing of a petition. Once -- a
14 litigant, a parent in these cases, has a right to
15 challenge that by sending a letter within 90 days asking
16 for that matter to be expunged. Uniformly there is no
17 expungement. And they send notes: You can have a
18 hearing.

19 What happens practically is the Family Court
20 case proceeds. If we are successful -- and I have been
21 successful, my staff has been successful -- in getting a
22 positive result for the parent in the Family Court, be it
23 a ACD, a dismissal, great. Except that indicator or
24 substantiated finding remains. And that remains I
25 believe on the record of the registry for years. And

1 what is the ultimate effect on that? It prevents a
2 parent from ever being a foster parent. It prevents a
3 parent from working with children in any capacity.

4 Just think about the possibilities. You have a
5 young parent who has been indicated or substantiated.
6 They don't have the funds to contest that. Yet they go
7 to Family Court with an assigned counsel or a Legal Aid
8 attorney, public defender. They get their case
9 dismissed. They have still have that finding on them,
10 yet they move on in their lives. They go to college.
11 They go to school. They get -- they get credited to work
12 in a child care facility. Yet because that -- they never
13 contested that indicated finding because they couldn't
14 afford a counsel and counsel couldn't go with them to
15 that ACS hearing to challenge those findings, that person
16 is prohibited and prevented from obtaining requisite
17 employment. What kind of fairness is that in the system?

18 HON. PETERS: I don't want to question. I just
19 want to make sure that you complete soon so we can ask
20 you questions.

21 MR. BANKS: Yes. You know what, I'm going to
22 -- I will stop. Thank you for listening to me. And once
23 again I will say that I'm happy to work with this
24 commission on working on the reforms that I discussed as
25 well.

1 Thank you.

2 HON. PETERS: I just have one quick question
3 and I will open it up to the panel. One of the questions
4 that I asked a number of witnesses across the state is
5 whether you believed there should be a presumption of
6 eligibility for parents in child welfare cases as to
7 their eligibility for assigned counsel in the first
8 instance that can be overcome by proof that they can
9 afford to hire a lawyer.

10 MR. BANKS: Absolutely. I would urge this
11 Commission to review the eligibility criteria that ILS
12 has put out I think in 2016, April of 2016 -- if possible
13 I can forward that to the Commission -- where there is a
14 presumption of eligibility. They do discuss what the
15 standards are for that determination. I -- you know, I
16 think that we should err on the side of caution in these
17 cases and err on the side of saying that if people are in
18 the system, we should concern ourselves with reuniting
19 families and keeping families together. And I think that
20 the fact that maybe someone slipped -- that may happen.
21 I think it's rare. I believe that there's rare fraud in
22 the system. I think that people who are seeking assigned
23 counsel or Legal Aid need it. And I would urge the
24 Commission to support the presumption.

25 HON. PETERS: One more question.

1 MR. BANKS: Yes.

2 HON. PETERS: Everyone who testified has
3 recommended that we come up with a method by which
4 parents can receive counsel and the advice of counsel
5 earlier than the filing of the petition, which is
6 included in your written testimony and you discussed
7 today.

8 Do you have a suggestion as to how that can be
9 implemented when in the first instance counsel is
10 assigned by the judge on the first appearance?

11 MR. BANKS: You know, in our office we have
12 walk-ins. People come in. They get contacted by the
13 police department. They don't know what to do. Or they
14 will make a phone call. I took a call yesterday. They
15 called me. How do they have my number? They walk in.
16 And we will intervene, meet with the clients. And we
17 don't make that eligibility determination. They come to
18 us -- in the private field I know that people with
19 resources are going to contact an attorney because
20 they're scared. They see it. But someone who is faced
21 with -- gets a knock on the door, doesn't know what an
22 attorney -- who the attorney is. There could be a
23 language issue. Whatever. They don't know where to
24 turn.

25 And what I suggest -- and I've heard those

1 questions posed and I think you know there -- the ACS
2 worker, except in an emergency circumstance where there
3 is a clear, you know, something needs to be done on an
4 immediate basis, that the attorney -- that the client be
5 given a letter trans -- both in Spanish and English
6 advising them to contact -- that they have a right to
7 contact especially in the investigatory stage the Legal
8 Aid Society and -- with the number. And they can make
9 that contact.

10 So unless -- so if there's not an immediate
11 need for a removal, an emergent need, then it could be
12 done very simply. And we get these calls all the time.
13 And we can intervene at that time. Often times we will
14 intervene with the police detective and convince them
15 don't proceed with charges. Or we'll contact the
16 District Attorney's office and we'll discuss maybe a
17 surrender.

18 But we engage in this all the time. So the
19 fact that, you know, it's not done, that it's not done
20 now doesn't mean we can't come up with a solution. I
21 think that's one of the solutions. Police use rights
22 cards and advise people of their rights. Well, I know
23 ACS and CPS workers are not law enforcement. But in the
24 eyes of our clients they are. They are exactly. They
25 may have the right modus, but they are, in fact, the

1 adversary in a lot of these proceedings.

2 HON. PETERS: Thank you.

3 Questions?

4 MS. LINDENAUER: I wonder. When you were
5 talking about administrative proceedings that relate to
6 the Family Court proceeding and you were talking about
7 the need for counsel, are you suggesting that the same
8 counsel who is appointed or takes on the case for the
9 purposes of Family Court also consider taking on the
10 administrative proceedings? And if so, are you
11 eliminating that proceeding to the one for -- the issue
12 of being on the registry, or would you, in fact, include
13 things such as if you know the client needs
14 representation to prevent loss of housing would you --
15 and that loss of housing is critical to the Family Court
16 proceedings, would you be suggesting that the attorney
17 who is appointed also take up that matter?

18 MR. BANKS: Well, I will address it this way.
19 I would love to have the holistic office structure of
20 Bronx Defenders and Brooklyn Defenders and the Legal Aid
21 Society where they have attorneys on staff who engage in
22 those issues, in housing issues and stuff like that. I
23 guess my -- so it would be great if we had the funding to
24 do that. So I would certainly urge that to happen. And,
25 you know, that we can -- certainly in my office, an

1 institution provider, to have those resources, I think
2 that would enable us to better represent our clients.

3 But on the context of the -- in terms of the
4 ACS, challenging those determinations, I think clearly
5 the same attorney who represented the person in the
6 Family Court should also be allowed to continue that
7 representation in administrative hearings. From our
8 point of view we don't have the staffing always to do
9 that because they have to be in the courtroom. So if we
10 had additional staffing we would be able to engage in
11 that. And there won't be that many of those cases, but
12 there will be enough. And I think when the 18B attorney
13 -- I think they should be able to do that and also be
14 able to bill with respect to those. There's different
15 funding streams that have to be decided on that
16 certainly. But I think that's where the state mandate --
17 the state funding comes into play. Because the counties,
18 especially here in Nassau County, are strapped to do
19 that.

20 HON. PETERS: Thank you.

21 Mr. Williams?

22 MR. WILLIAMS: No.

23 HON. PETERS: Judge Davidson.

24 HON. DAVIDSON: Can you talk a little more
25 about the structural changes that you were suggesting in

1 your testimony?

2 MR. BANKS: Well, I think the structural
3 changes -- one is the prepetitioning I think would --
4 judges should focus on what's -- the most important
5 cases. If we are able to resolve cases before they get
6 to court, then that makes the system work more positive,
7 more smoothly.

8 I think that the length of proceedings should
9 decrease. I think the fact that when you hear -- and we
10 have them in our office too -- you know, clients who are
11 just going through the system for years, how is that
12 possible? How do people get to -- how do people move on
13 with their lives? We -- one of the things you talk about
14 -- and I know this a little different -- people going
15 back and forth, how do they hold jobs?

16 If we want to really make the system work we
17 have to look not just at the, you know -- we have to look
18 at the individuals that we're representing and how their
19 lives are impacted and how -- the goal of this Commission
20 is to keep -- is to work for families, to keep them
21 together. And there will be some outliers for sure, but
22 I think we can do a whole lot better in making the
23 administration of child welfare more client centered as
24 oppose to just moving cases along.

25 HON. PETERS: Thank you very much.

1 MR. BANKS: Thank you very much.

2 HON. PETERS: We appreciate your testimony.

3 Mr. Jorge Rosario.

4 MR. ROSARIO: Good morning. I was hoping my
5 colleague Tom Sartain can come up. We had both
6 submitted --

7 HON. PETERS: Judge Adams --

8 JUDGE ADAMS: I just want to talk to him for 2
9 seconds.

10 HON. PETERS: I just want you to know that I
11 already thanked you, but you weren't in the room. And I
12 want to again thank you for all the opportunities to hold
13 the hearing.

14 JUDGE ADAMS: Thank you, Judge Peters. Thank
15 you.

16 See you later.

17 HON. PETERS: Good morning.

18 MR. ROSARIO: Good morning.

19 I want to thank the Commission. We appreciate
20 the opportunity to speak before you. I'm here with Tom
21 Sartain who is from the Legal Aid Society in Suffolk
22 County.

23 HON. PETERS: Can you spell your name for me,
24 sir?

25 MR. SARTAIN: Certainly. Sartain. S as in

1 Samuel, A-R, T as in Thomas, A-I-N.

2 HON. PETERS: Thank you very much.

3 MR. ROSARIO: I'm also here with -- sitting in
4 the back is Attorney in Charge Laurette Mulry, Legal Aid
5 Society.

6 HON. PETERS: She can come up and sit with you.
7 Do you mind?

8 MR. ROSARIO: I do not. And I appreciate it.

9 HON. PETERS: But in order to do that she needs
10 to spell her name for the court reporter.

11 MS. MULRY: M as in Mary, U-L-R-Y.

12 HON. PETERS: Thank you. Welcome.

13 Please proceed.

14 MR. ROSARIO: Thank you again very much.

15 I just first wanted to say that we all know the
16 saying "justice delayed is justice denied." And
17 commencing that way, one of the things that I did want to
18 hit upon and one of the topics that Mr. Banks spoke about
19 was the timely access to counsel representation and how
20 that impacts the various types of cases. And what always
21 comes to mind of course is neglect cases and the impact
22 that that has upon families and children.

23 I used to represent the adults. And now my --
24 I am the bureau chief of the Children's Law Bureau. I
25 represent children. And the reason I wanted the

1 opportunity to speak was because I know how important it
2 is for so many of these children to have their parents
3 back. And the sooner they get their parents back,
4 they're better off for it. All the statistics that we
5 all know -- and we've gone to conferences and lectures --
6 suggest that the sooner parents get back with their
7 children, the children succeed, are healthier and
8 happier. But a lot of that has to do with the kind of
9 representation that parent receives.

10 I know when I had represented parents in these
11 situations there's nothing more difficult as an attorney
12 -- and I can not imagine as a parent -- to be handed a
13 document, have to come into -- rush to come to Family
14 Court. Or there might be a warrant issued for you. You
15 appear. You don't know where you're going. You don't
16 know who you're going to talk to. That person then
17 appears before the judge in the Family Court.

18 And I say to you also that it's unfair to that
19 judge as well. Because now that judge has to first meet
20 that person for the first time, ascertain whether that
21 person has counsel, can they afford counsel, what
22 questions to ask this individual in this time of crisis.
23 That to me is already justice delayed and therefore
24 justice denied.

25 Because once that person was petitioned or

1 prepetitioned or was presented to that individual, as Mr.
2 Banks said, there may be something that can accompany
3 that document, their rights, the opportunity to seek
4 counsel, phone numbers, some information provided that
5 they can quickly contact somebody for advice. There's
6 nothing more important at that initial appearance for an
7 individual.

8 As we all know, when we make an initial
9 appearance before someone that we've never met in our
10 lives, that initial appearance is crucial. How does that
11 parent present? How are they dressed? And I submit to
12 you that it lends itself to biases, right. When somebody
13 walks into the courtroom, they have their attorney on
14 their side, and you're not sure whether they've hired
15 that attorney or not. They have an attorney. That says
16 a lot.

17 So now the bias might be that when they come in
18 they lack the information. They lack the funding. Well,
19 if it's a neglect case, possibly the case might be that
20 they're lacking something in their home, finances or
21 something. So you already have that bias. Well, they
22 obviously can't afford an attorney. What else can't they
23 afford? What else are they not supplying their family?

24 Timely access to counsel is crucial. So when
25 that CPS worker, ACS worker comes to someone's home and

1 hands them a document, that document should be
2 accompanied with all of the information necessary to
3 obtain counsel, whether it's a referral list from that
4 county bar association or the Legal Aid Society or any
5 other society that represents adults. And then they
6 should have access to it immediately.

7 Sometimes current contracts do not allow some
8 firms that represent indigenious (sic) folks to -- excuse
9 me. My apologies. For the folks to come in and seek any
10 kind of advice or representation. It just doesn't allow
11 it. They can't do it. Can't answer questions. And in
12 this day and age when many of the societies have websites
13 where phone numbers are available, people call, and you
14 can't answer their questions. We can't. Again it's
15 justice delayed. So that access to justice is crucial.

16 On other kinds of cases, moving away from some
17 of the neglect cases, on custody cases when an individual
18 goes in to file a petition, as they're handing their
19 petition or asking for a petition they should be handed
20 information on the bar association, on the entities that
21 represent folks that need representation. It doesn't
22 matter. It can be a referral list of all of the
23 attorneys that serve that county. So if that person can
24 afford counsel, they can do so at their wish. If they
25 can't, they have a number. They have the opportunity to

1 make themselves -- to have themselves available to the --
2 to get that representation.

3 When I think about some of the neglect cases,
4 as Mr. Banks spoke about, in terms of when you get an
5 ACOD or something favorable happens or even if you don't
6 you change your life around, you've become that model
7 citizen everybody spoke to you that --- about that you
8 should be.

9 I had represented a mother years ago. And I
10 ran into the father that also had a neglect case on the
11 Little League fields. And there's nothing -- people that
12 know me, there's nothing more that I enjoy doing than
13 coaching. Coach baseball, coach basketball. You name
14 it. I'll coach even if I don't know it. I just really
15 enjoy interacting and teaching young folks.

16 I saw this father on a Little League field. He
17 had the biggest smile on his face. I said, hello. We
18 didn't discuss the past. I just said, you look great.
19 How is everything going? He says, fantastic. I have my
20 son. My new wife has adopted my son. I'm working. I'm
21 here coaching. I'm doing wonderful.

22 A few weeks later as we're coaching our ball
23 teams I notice he's not on the field anymore. He's in
24 the stands. And it clicked. When they did the
25 background check, as all Little Leagues do, he couldn't

1 be on the field with children because of the neglect case
2 he had faced years ago, even though he completely changed
3 his life around.

4 At that point I get choked up because I could
5 not imagine somebody telling me I could not be on the
6 baseball field with my two boys. And this is the impact.
7 So this young boy, instead of having his dad who wants to
8 coach him, wants to be part of his life, to be a part of
9 his life, he can't. He's in the stands with the other
10 parents. But this individual had so much to offer: his
11 knowledge of the game. His love of the game. His love
12 of his son and the opportunity that he had to turn his
13 life around and to help others. That's an impact.

14 And that's something that I know I remember --
15 will always remember. My children will always remember.
16 Why should this man be denied that opportunity? Because
17 he made a mistake that he corrected? So he still is
18 paying for that.

19 We -- in terms of child support, how do we
20 provide timely access to counsel? Again we provided by
21 -- as soon as somebody is asking for child support, as
22 soon as a paternity case is handled in court and the
23 judge refers the case to the magistrate for determination
24 of child support, there should be no reason why again the
25 document should not be handed to that individual: bar

1 association number, phone numbers of attorneys, access to
2 counsel. It's crucial.

3 Several months ago I had a call from somebody I
4 knew, a friend. They asked -- they said, Jorge, can you
5 please just give me some advice? My son is facing
6 possible neglect. Him and his wife. You know, she was
7 concerned about her grandson. I said, well, the first
8 thing you're going to do is if there is any alcohol, drug
9 or other issues, have your son look into programs. Have
10 -- make sure that there's somebody that can care for that
11 child. Walk into that courtroom with a list and as many
12 people as possible that can take that child if -- just in
13 case the judge decides to remove that child from care.
14 Make sure that the Court understands all the support that
15 your grandson has with extended family and yourself as
16 the grandmother.

17 I received a call just only a few months later,
18 which I thought was very quickly, with a thank you. I
19 just want to thank you on behalf of my family for just
20 the advice that you provided. My son has his son with
21 him. Mom is getting treatment. I'm there as well to
22 help out. So now what -- some advice, some assistance
23 from an attorney, helped this family. And what did it
24 do? Child is with a parent. Another parent is getting
25 help. And that's the whole purpose.

1 HON. PETERS: So one of the things you
2 mentioned in your outline you provided to us was the
3 challenges related to geography.

4 MR. ROSARIO: Yes.

5 HON. PETERS: On the time left can you just
6 spend a little time on that subject? It's been an issue
7 across the state.

8 MR. ROSARIO: Absolutely. And Suffolk County
9 also has -- is a great geographical challenge. We do
10 have two Family Courts. Suffolk County is just
11 extensive. And the difficulties that it provides is when
12 family's cases get transferred, families have to go to
13 either Riverhead or Central Islip. In terms of attorney
14 staffing, we may have enough attorneys. And we're told
15 this often. There should be enough attorneys for the
16 amount of cases that you have without consideration that
17 the next courthouse is 45 minutes away without traffic.
18 So that poses an issue in terms of geography and making
19 sure that people have access.

20 When geographic issues also come in play
21 because of mass transportation, the ability to get north
22 and south or east or west on Long Island without a car is
23 extremely difficult. And many of our clients even by car
24 it could be 10 to 15 minutes away or take 2 hours to get
25 to the courthouse. And again that poses a difficulty and

1 also then even access to counsel.

2 I don't want to take up too much time. If you
3 have questions, I would be happy to answer. I would like
4 to provide some time to Mr. Sartain who has been a mentor
5 to me for years. I worked under him when I represented
6 adults. And I learned a great deal from him.

7 HON. PETERS: I'm sorry. I didn't know Mr.
8 Sartain was testifying.

9 Are you testifying today, sir, or just
10 answering questions?

11 MR. SARTAIN: I had not --

12 MR. ROSARIO: I had requested time for Mr.
13 Sartain. I just don't know if that was seen in my
14 e-mail.

15 MR. SARTAIN: I can be succinct, but I would
16 like to be heard.

17 HON. PETERS: Sure.

18 MR. SARTAIN: With regard to presumption of
19 eligibility in Suffolk County Family Court, most of the
20 parts refer litigants up to Legal Aid Society for a
21 screening. Although reminded all the parts that it's
22 their responsibility to determine eligibility, that we do
23 not determine eligibility. What we do is we interview
24 them. We have a financial application. We interview the
25 person. And historically we've never gone by a bright

1 red line in our assessment.

2 We look at the entire financial picture of the
3 person. That interview is limited to: Does that person
4 have the financial ability to go out and retain his own
5 attorney? And now I'm mindful of ILS and the 250 percent
6 of the poverty level and those presumptions. I think
7 that would be a good guide for judges. And we would not
8 be wed by that because we look at the, as I say, the
9 entire financial situation of the person. It would be
10 helpful if the bar association -- well, let me just back
11 up a little bit.

12 So after that interview we inform the applicant
13 that it's our assessment that that person is financially
14 unable to retain his own attorney. And we will recommend
15 to the Court that the Court consider assignment of
16 counsel pursuant to Section 262, and the Legal Aid
17 Society is prepared to accept that assignment.

18 As the bureau chief, I want my attorneys to
19 have that designation by the lawyer -- by the judge:
20 "Legal Aid is assigned" especially in Os and Vs and in
21 some F cases where there's private attorneys on the other
22 side. We do not want to be accused of assigning
23 ourselves. It's the Court's responsibility to assign
24 counsel. And once those magic words are put on the
25 record, I feel that we're covered by that: "Legal Aid

1 has been assigned."

2 If there is a challenge to that representation,
3 then our procedure is to ask that the challenge be put in
4 writing. And I will personally review that, confront the
5 applicant with that new information. And if, in fact, on
6 the rare occasion that the person is tried -- has not
7 told us the truth, we will inform that person of that and
8 give him the option of either us telling the Court that
9 upon reassessment we are changing our recommendation or
10 he -- that person can simply decide to inform the Court
11 that he's going to retain his own counsel.

12 In 2017 we took 86 percent of the applicants
13 that came to us either by our office representing them or
14 making 18B requests to the Court. And 14 percent we
15 declined to represent -- to give that representation, to
16 give that recommendation to the Court.

17 If we do tell someone that they're -- in our
18 assessment that they are capable of retaining their own
19 attorney, we advise them to contact the bar association.
20 We provide that phone number. We tell -- we instruct the
21 person to go out and speak to two or three attorneys with
22 their names and come back to the Court -- when they come
23 back to the Court and inform them of their efforts to
24 retain their own attorney and to make their requests
25 directly to the Court.

1 That has become somewhat complicated over the
2 years. In the old days there was no problem with getting
3 a case adjourned. Now with standards and goals, and
4 particularly in the child support cases these days, there
5 is this insistence that things proceed very quickly. And
6 so that has complicated the litigants getting an
7 adjournment to seek counsel.

8 We inform the Court that you don't have to do
9 an interview. You don't have to send them over to us.
10 You can simply assign them from the bench. Assign us.
11 We do ask that they -- the Court, before we are assigned,
12 to provide us with the names of the other parties.
13 Because in Suffolk County our administration administers
14 not only the Family Court Bureau but also the children's
15 law guardian attorneys for the Childrens Bureau as well
16 so -- as well as the District Court criminal matters. So
17 there's the potential for conflict. If the children are
18 being represented by the law guardian's office, then
19 obviously we cannot represent the parents.

20 At one time up until 1985 we did. There was
21 the appearance of a conflict, but we didn't even like
22 each other. And the judges knew that, that when push
23 came to shove in 90 percent of the cases we came down on
24 opposite sides because our loyalties were to our clients,
25 not to the Legal Aid Society. That has changed. And so

1 in the first instances for neglect cases the children's
2 law bureau will represent the children. And in matters
3 of conflict then we can't be assigned to represent the
4 parents.

5 So getting back to the presumption of
6 eligibility. I think it's a good thing for the courts to
7 do. If we're told to change our procedure, we will do
8 so. We're providing this as a service to the Court. And
9 we're not in the business of turning people away by any
10 means. So I think that would be a good thing.

11 The early legal representation prepetition, I
12 think that would be a great idea. Over the years clients
13 have been arrested. They're out in jail. And a CPS
14 worker goes to interview them in jail and say, well, I'm
15 not with the police. I'm with CPS. And I'm here for the
16 sake of your children. Please give us some information
17 because we want to help you.

18 And then when I read the CPS reports I see
19 there's a coordination, a communication between CPS and
20 the police. And all of a sudden the police have the
21 information that the person gave to the CPS worker
22 thinking that they were doing this to help the children.
23 And on occasion that information is misconstrued and
24 misinterpreted and put down in writing. And once it's in
25 writing it takes a life of its own.

1 So I think if they -- once CPS is first
2 involved if they could be given a piece of paper saying,
3 for Legal Aid advice contact this number prepetition,
4 that would be a good thing.

5 HON. PETERS: Mr. Sartain, if there's any
6 further information you want to bring to our attention,
7 my suggestion is you provide it to us in writing. Would
8 that be helpful?

9 MR. SARTAIN: Okay. Yes.

10 HON. PETERS: But we want to ask some questions
11 I'm sure.

12 Judge.

13 HON. DAVIDSON: No.

14 HON. PETERS: Mr. Williams, go ahead.

15 MR. WILLIAMS: Just one question with the
16 assignment of counsel. I mean, what's the difficulty
17 with availability? The assignment sometimes is fine for
18 the first appearance. But that's just an assignment.
19 Usually temporarily given an adjournment for a few weeks.
20 Waiting for either the Court or Legal Aid for a case to
21 be called, the person could be asked if they want
22 attorney representation. Sometimes that causes the
23 delay.

24 MR. ROSARIO: Yes.

25 MR. WILLIAMS: Because if they're determined

1 eligible by the Court, an attorney may not be available
2 to assign. May be a temporary order. The person may not
3 see -- even though it's assigned, the person may not see
4 the attorney until closer to the next appearance of the
5 actual assignment. Quite often some counties assign in
6 absentia.

7 MR. SARTAIN: I can address that, if I may.

8 If a person is referred over to us for
9 screening, then that person will be screened that day.
10 And within a matter of hours that interview will be
11 conducted and a recommendation will be made. The -- we
12 average 13, 14 interviews between nine o'clock and one
13 o'clock each day. But it's our goal to have an immediate
14 response to -- as best we can to notify the Court of our
15 recommendations.

16 Now, if the person is anaerobic and we require
17 -- or self-employed and in the course of the interview we
18 think that someone may have the ability to do it, we may
19 ask for some additional information, in which case we'll
20 notify the Court of -- that person is in the pending
21 application status. But again the Court can simply say,
22 fine, under the circumstances I'm assigning you. They
23 don't have to wait for our recommendations. And I
24 believe that a lot of the bench does not really
25 appreciate that.

1 So if there's a -- if the Court has a sense of
2 urgency, they can simply assign. They don't need to go
3 through the screening process. I mean, we will interview
4 that person. And within a reasonable amount of time that
5 day -- and also an attorney will go down and appear on
6 that case. We have eight attorneys -- well, we have six
7 right now. And they're all in various parts in Central
8 Islip. But they will get to that part or we will notify
9 them, yes, we are willing to accept the assignment.

10 MR. WILLIAMS: My question is basically: You
11 think with the system in place, the administrative check,
12 if someone says they want an attorney, to check in to get
13 the eligibility criteria at least preliminarily done
14 prior to the court appearance and starting the process?

15 MR. ROSARIO: I think so. That's what I was
16 mentioning earlier in terms of delay when coming into
17 court that when something is provided to that individual
18 they -- why can't there be a process where once they're
19 asking for a paperwork or submitting paperwork that
20 they're handed something to say maybe go and see if you
21 are eligible ahead of time. And -- because again I --
22 because then you get that delay. Now you got -- it may
23 take the petition 2 or 3 weeks to get through the system
24 for their first appearance.

25 Now that person is frustrated. Whatever issues

1 they're having have gotten worse. So now you've delayed
2 it 2 more weeks, so you have a month and a half. And
3 then even if counsel is provided, without counsel being
4 there you still have that delay, right? So that's one
5 way to dispense with the delay. And also it's such a
6 waste to the Court's time when the person comes in and
7 then you have a 10-, 15-minute probably conversation as
8 to, what counsel do you have, who, when and also how to
9 do it. And the Court is spending time directing people.

10 So we can save so much time. As soon as that
11 interaction of requesting a petition or somebody
12 downloads it off the internet, that also what gets
13 downloaded too is the information of obtaining counsel.
14 In that county they should be directed to the -- like in
15 our county to Mr. Sartain's bureau to be qualified pre --
16 beforehand so then when the court date comes everything
17 is already done.

18 MR. SARTAIN: I have a very pragmatic
19 suggestion. In Suffolk County litigants come in.
20 There's no central place to check in. And there's
21 generally no information given to the litigant until the
22 court officer comes out and calls the case in the court.

23 Prior to 1992 when we moved into the building
24 in Central Islip, there was a long bench like this.
25 Court officer up there with all the calendars. And

1 people came in and attorneys came in. And they were
2 checked in at the various parts. Times were noted. And
3 also the court officers or whoever manned the bench up
4 there informed the person, this is the type of case you
5 have. If you want to apply for Legal Aid, go ahead and
6 do that. So there was an earlier suggestion to the
7 litigants. If you want a lawyer, go and apply. This is
8 before the case was called.

9 Once we moved to Central Islip in '92 the court
10 officer said -- well, the head court officer said, we're
11 no longer in the business of doing that. We're only in
12 charge of security. So there is no central place to
13 check in. And as I say, the people sit there and wait.
14 So then when their case is called at 11:30 before the
15 11:45 break for lunch, then all of a sudden there's this
16 rush. Has to be done right now. And we get the 11:30
17 crunch up in our office.

18 But I think that an ability to check in and
19 have somebody refer them -- I've told the security folks.
20 It doesn't even have to be a court officer. It can be a
21 court clerk type person who checks the people in and
22 maybe hands them a sheet of paper. If you're one of
23 these 262 type cases and want to apply for a lawyer, go
24 do it now. They checked in. Court knows they're here.

25 I think that would be a good suggestion.

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HON. PETERS: All right. Thank you. Thank you
all very much.

(Proceedings continued now by Official Court
Reporter Jennifer Sampugnaro.)

1 MS. POSTER-ZIMMERMAN: Hi. Ms. Miller could not
2 be with us today, she is actually on trial.

3 Good morning Justice Peters, Justice Davidson,
4 Mr. Williams and Ms. Lindenauer.

5 Let me first state that our presentation today
6 and our written submission was a joint collaboration
7 between the Suffolk County Bar Association, the Nassau
8 County Bar Association and the Matrimonial Bar Association
9 of Suffolk County.

10 HONORABLE PETERS: Are you Lynn
11 Poster-Zimmerman? I just want our court reporter to be
12 able to know who is who.

13 MS. POSTER-ZIMMERMAN: I am Lynn
14 Poster-Zimmerman.

15 I have been in private practice for the past 35
16 years. I am on the 18B Panel as well as the Attorney for
17 Children Panel in Suffolk County for about 25 years.

18 I am President-Elect of the Suffolk County Bar
19 Association. As I said, this was a joint collaboration
20 with the Nassau County Bar Association.

21 HONORABLE PETERS: Could you speak just a little
22 louder so the people in the courtroom can hear you.

23 MS. POSTER-ZIMMERMAN: Absolutely.

24 I want to say first -- in terms of the 18B
25 Panel, I work with this panel on a daily basis. The 18B

1 attorneys in Suffolk County are amongst the finest
2 attorneys that you will find. They are called upon in a
3 moment's notice to represent a parent who is about to
4 potentially lose their children.

5 we walk into court on our assignment date, we're
6 handed a 1022 petition, we're told, go meet your client
7 outside, we're having a hearing in ten minutes. We have
8 not met with them before which does get into the issue of
9 pre-petition, which I will discuss a little bit more.

10 We have to get the information from our client,
11 what has occurred, what their defenses are and be ready to
12 go inside and have a hearing against a CPS witness who, as
13 you may know, are not bound by the rules of evidence.

14 Hearsay testimony is allowed in. Everything
15 comes in and we have to defend that person and try our
16 best to not have that person's children removed. It is a
17 tremendous responsibility and I can only speak about
18 Suffolk County, but I am sure across the state we take it
19 very seriously.

20 As I said, I work with these attorneys. We have
21 a Family Court improvement project in Suffolk County of
22 which I am the curriculum chair. I am on the 18B
23 screening committee. I am on the -- I am attorney liaison
24 for the children advisory committee.

25 In terms of training, myself with another

1 colleague, we do training for 18B attorneys twice a year
2 through the 18B grant with regard to having quality
3 representation for parents in Family Court, but also in
4 Supreme Court proceedings where we are appointed, and I
5 will speak about that a little bit too.

6 It is critical, it is absolutely critical.
7 People are coming in at the most vulnerable times in their
8 lives. Clearly the Article 10 abuse and neglect
9 proceedings are the most serious, but we have custody and
10 visitation, we have family offense proceedings, contempt
11 proceedings for child support. These people need quality
12 representation.

13 Part of the issue that I see is that we simply
14 do not have enough attorneys to cover the litigants that
15 we have in Suffolk County.

16 Suffolk County as you have heard is a large
17 county. It is actually approximately 86 miles from one
18 end to the other, one and-a-half million people. We have
19 two Family Courts on the east end and the west end. We
20 have eight Judges, six attorney court referees, six
21 support parts. It is a very, very busy county. We simply
22 don't have enough attorneys to cover all of that.

23 On any given day I or any of my colleagues could
24 have four, six, eight, ten, twelve cases that we need to
25 cover between 9:30 and 12:45.

1 I watched the hearings in Albany as well as in
2 Manhattan. I thought it was very impactful, the litigants
3 that spoke and the difficulties in dealing with their
4 attorneys. They are correct to a certain degree. When
5 you have that many cases you don't have a lot of time to
6 spend with your client outside in the hallway. The need
7 is great.

8 I work with these attorneys every day. I do
9 recruitment for 18B. Part of the problem, and I know
10 you've heard this and I've seen it in the other hearings,
11 is the rate.

12 I am also the chair of the 18B task force of the
13 Suffolk County Bar Association to raise the rate. This
14 rate of pay has not been increased in fourteen years. I
15 don't know of any other industry that does not see a rate
16 increase in that length of time. \$75 an hour for an
17 attorney performing this work for such critical work is
18 really outrageous.

19 The attorneys that do this work, many of them
20 have private practices as well. There are some that only
21 do 18B work, but many do this in combination with a
22 private practice. Because we don't have enough attorneys,
23 what ends up happening inevitably because of the nature of
24 what we do, we are in that courthouse all the time. Now
25 400 Carleton Avenue is my office. Although I do have an

1 office, most of the time I'm there.

2 we have not only emergency applications on our
3 intake day, but we could get on a moment's notice the day
4 before, a call that morning, Lynn, you have to come to
5 court there is an emergency with one of your clients.
6 Article 10 proceedings take precedence over any proceeding
7 in the court system, so we do that. We all run, drop what
8 we have to do and we are there.

9 If we have more attorneys on this panel and the
10 work was spread out more evenly and it did not become, for
11 many of us, all consuming, I think the representation --
12 the quality of the representation of the litigants would
13 substantially increase.

14 The only way to have more people on this panel
15 is by raising the rate of pay. I will tell you, many of
16 my colleagues say to me, I'd love to do this. It's
17 important work and people really generally want to give of
18 themselves, but they simply cannot afford to do it, nor
19 can they afford to sacrifice part of their private
20 practice in order to do this work.

21 The other issue I did want to address which I
22 know was addressed by some of the other presenters in the
23 other hearings is the pre-petition representation, and
24 this is critical.

25 we have clients that come in on an emergency

1 application. They have maybe several days before CPS has
2 knocked on the door, is just there to investigate, speaks
3 with the client, speaks with the children. They have no
4 idea, really and truly, what may be coming down the pike.
5 They make statements to the case worker. They don't know
6 what their rights are and inevitably those statements,
7 when I am assigned to a case on an emergency removal,
8 those statements are in that petition.

9 There is no such thing as Miranda rights for
10 Family Court litigants. They don't understand what the
11 ramifications are of the statements they make. And those
12 statements, once they're in a petition -- although they're
13 entitled to a hearing -- become very difficult to rebut.
14 Especially when on an emergency hearing you don't have the
15 case worker that took the statement, you have another case
16 worker because as I said, hearsay comes in or you have the
17 CPS liaison in the courtroom testifying based on what case
18 worker X said to case worker Y which is now in the
19 petition. And the litigant will say to me, I never said
20 that, but now it's in the petition.

21 So in terms of having that representation when
22 you get the knock on the door, that is critical. We in
23 Suffolk County have discussed that. And one of the
24 suggestions that we had discussed was having 18B counsel
25 ready and available when CPS comes to the door.

1 We work with CPS through our Family Court
2 improvement project. We work very closely with CPS. We
3 have had conversations with them about handing out a card.
4 If we had a panel of 18B attorneys that could be called
5 immediately, even when the CPS case worker is there, call
6 this phone number.

7 Of course it's an issue of funding and that
8 became the problem because there are no funds for that
9 type of program.

10 So I think it is critical to have attorneys
11 represent litigants in that pre-petition phase and also to
12 advise them these are the things that you can do to avoid
13 ending up in a neglect proceeding and potentially, you
14 know, down the road, termination of parental rights.

15 CPS does have an obligation to provide
16 preventative services and they often do, but still it is
17 not the same as legal advice.

18 These litigants think that CPS is their friend.
19 And although they are required to help a family and that
20 is our goal is to keep families together, the litigant is
21 not aware -- well they are not aware they could be a
22 litigant very often, and they're not aware what they do or
23 say could end up being used against them. So I think it
24 is absolutely critical.

25 In terms of what other people had discussed in

1 the administrative proceedings, that is also something
2 that is very important. People come to court and even
3 though they're scared, they're upset, they may lose their
4 children, these are terrible circumstances.

5 They know they have this neglect proceeding.
6 They know they have to be in the court, but they get a
7 notice that tells them that they -- there's been a finding
8 and they have 60 days or 90 days to file for a fair
9 hearing and administrative review. They don't even look
10 at those things.

11 As counsel we've discussed this. It's difficult
12 for us to even advise them because we're not appointed to
13 do that. So, those -- even if you successfully have the
14 neglect proceeding dismissed or an ACOD, that finding of
15 neglect stays on the New York State central registry for
16 ten years after the youngest child in that report turns
17 18. So if you have a baby you're looking at 28 years that
18 it remains on the registry.

19 It affects people not only in terms of adopting
20 or foster care, but someone that may work in a school, in
21 a day care as a day care provider, sometimes in a nursing
22 home.

23 It does affect people very seriously and I've
24 had cases where I've had -- I've represented -- I have a
25 case right now where I represent a teacher. The husband

1 is a pediatrician and they have a neglect case against
2 them. But these people, they have the wherewithal to be
3 able to hire private counsel so we know what to do, but
4 many of the people that come in do not.

5 I do want to comment in terms of the presumption
6 of eligibility. In Suffolk County I would say anybody
7 coming in with a neglect petition, certainly on an
8 emergency removal, gets assigned counsel. There's no
9 question about it. We don't differentiate. And
10 truthfully most of the time most of the litigants really
11 would qualify. There are some that do not. That becomes
12 more of an issue, I think, in terms of custody proceedings
13 and also in Supreme Court proceedings which I don't think
14 has been discussed much in these hearings. In Supreme
15 Court the 18B panel does represent litigants, custody and
16 visitation, as well as contempt proceedings.

17 So even there -- and I know first hand there is
18 a dearth of attorneys that are willing to do this because,
19 again, you are in there and you have a client very often
20 because part of the problem becomes -- because they are
21 getting free counsel they may be less willing to try to
22 negotiate a settlement. They want to go to trial.
23 Certainly as attorneys we are guided by our clients'
24 wishes. We have to counsel them.

25 There are very few attorneys, at least in

1 Suffolk County, maybe under five, that are willing to take
2 these cases because they are very time consuming and,
3 again, at \$75 an hour becomes really impossible to be able
4 to manage the case law.

5 HONORABLE PETERS: Are you sharing your time
6 with Ms. Rosenkrantz?

7 MS. POSTER-ZIMMERMAN: Yes, I am, so I will turn
8 that over to her.

9 MS. ROSENKRANTZ: Good morning, Justice Peters,
10 Justice Davidson, Mr. Williams and Ms. Lindenauer. Thank
11 you so much for the opportunity.

12 I am speaking today on behalf of the Nassau
13 County Bar Association. As Lynn said, our testimony and
14 our written submission was a joint collaborative effort
15 between the Suffolk County Bar Association, the Nassau
16 County Bar Association and the Suffolk County Matrimonial
17 Bar Association.

18 We do not have a separate matrimonial bar
19 association in Nassau County. We have a Matrimonial Law
20 Committee and I am currently in my second year as the
21 chair of that committee which is one of the largest
22 standing committees of the Bar Association.

23 I just wanted to address a couple of points that
24 were in our written submission that Lynn did not speak
25 about because she addressed other things.

1 Caseload management. My practice is
2 concentrated primarily in the Supreme Court, but we do
3 handle Family Court cases and I have seen 18B attorneys
4 who are coming into court with armloads of files because,
5 as Lynn said, they have six to eight to twelve cases a day
6 and that doesn't count what they may be newly assigned to
7 on that day. They are running from courtroom to courtroom
8 and trying to effectively manage each one of those cases
9 and devote the time that needs to be given to each one of
10 the litigants which is fair.

11 Every litigant is entitled to time with their
12 attorney. It's an impossible task. Time is limited,
13 resources are limited. A person's capabilities are
14 limited. It is almost impossible for someone to devote
15 the proper attention to each and every case. As Lynn
16 said, these are the most critical cases, abuse and
17 neglect, custody, contempt, or if someone is in danger of
18 going to jail for a variety of reasons.

19 There is currently, as far as I'm aware, nothing
20 in place to make sure that someone is not overwhelmed or
21 overburdened with more cases than a human being can
22 possibly handle. Part of the reason for that is there are
23 simply not enough attorneys available to handle these
24 cases.

25 why is that? Because the rate is low. It is

1 \$75 an hour and hasn't been raised in 14 years. My 16
2 year-old makes \$20 an hour baby-sitting and we are talking
3 about attorneys who have gone to law school, potentially
4 put themselves into debt, expected to survive on \$75 an
5 hour. And if they put in an eight hour day it's hardly a
6 living wage.

7 On top of that, they don't have the ability to
8 even devote the time that they need to and want to devote
9 to the cases. So some kind of system where there is some
10 overseeing of how many cases an attorney can actually take
11 on, but I think unfortunately that seg ways into how many
12 attorneys are actually available to take on the cases.

13 Without raising the rate and without addressing
14 some of these other issues, there just aren't going to be
15 enough attorneys. It's simply not possible. An attorney
16 may not have the financial ability to devote the time that
17 they might want to devote to helping indigent litigants.
18 They may not have the resources within their firm.

19 If there are sole practitioners and they are
20 expected to be in court all day long for eight hours, how
21 do they handle their private practice? Are they expected
22 to return to their office at five o'clock and start
23 returning phone calls, writing motion papers, preparing
24 for trial, handling depositions if they have that in
25 private practice. It's a catch 22. We need higher pay to

1 hire more attorneys. We need to have more attorneys to
2 handle cases better.

3 I will say, as Lynn said, the quality of the 18B
4 representation that I have seen is amazing. These are
5 smart, knowledgeable, competent people, but we need more.
6 We need more and we need to do things that we can get more
7 so parents can have the representation that they need and
8 attorneys can provide competent representation that they
9 want to.

10 The other point I wanted to address briefly was
11 eligibility criteria. I will speak from some of my own
12 experience in the Supreme Court. Litigants can be
13 assigned counsel for custody and visitation or for
14 contempt when they are in danger of potentially being
15 incarcerated.

16 The screening as far as I have observed, it is a
17 Judge from the bench asking two to three questions.
18 Generally the Judge is well aware of the circumstances of
19 the case. They have handled the matrimonial from start to
20 finish. Often times these people have had private
21 counsel. Private counsel has been relieved for failure to
22 pay or whatever reason. The Judge is strapped for time,
23 obviously overwhelmed handling their caseload, inquires a
24 few questions about income and assets, and in almost every
25 case will assign a person counsel if the person says they

1 need it.

2 I have personally objected to the assignment of
3 counsel in at least one case on the basis that the
4 litigant conceded earning over \$100,000 a year. The
5 Judge's response, and I don't blame her, was his liberty
6 is at stake so I am going to appoint counsel. I
7 understand that. The Judge wants a lawyer. The Judge
8 wants a competent lawyer. The Judge wants to protect the
9 integrity of the system and protect the record and I
10 understand that, but that's one less attorney available to
11 someone who may truly need representation because a
12 litigant in a matrimonial doesn't want to retain private
13 counsel.

14 So I feel there needs to be a little bit more
15 detail in the screening and the eligibility criteria of
16 who exactly can qualify for assigned counsel. It should
17 not be the recalcitrant litigant who simply chooses not to
18 pay for private counsel that he or she can't afford
19 because he or she knows that they are going to get, quote,
20 "free counsel" which just disincentivizes them to make any
21 good efforts to resolve the case because they think they
22 have a lawyer for the duration of the case, at least for
23 custody and contempt.

24 Those kinds of hearings can go on for a very
25 long time. A custody trial can take 25 to 30 days if it's

1 a full fledged trial. And that is a litigant who is now
2 taking away a resource from those who may truly need, and
3 an attorney who is devoting time at \$75 an hour to someone
4 who may truly not need it.

5 I think the system -- it's clear that it needs
6 some reform and revamping. It's a very difficult task. I
7 applaud you for taking it on and for letting us give our
8 suggestions about how that may be done. I thank you for
9 the time today.

10 HONORABLE PETERS: Thank you.

11 Questions?

12 HONORABLE DAVIDSON: When you spoke about at the
13 Article 10 proceedings when the caseworkers are
14 investigating and asking questions and similar in a
15 criminal case you may have Miranda, do you believe at some
16 point there may be some form of implementation where the
17 non-respondent at that point should be told they can have
18 a counsel?

19 Is there something you would suggest should be
20 inserted at that very critical stage when a lot of
21 statements that they make are the ones that actually come
22 into the petition?

23 MS. POSTER-ZIMMERMAN: I do, absolutely. Among
24 the 18B counsel in Suffolk we have discussed that to let
25 the litigant know that the statements that they make can

1 be used against them, and that they have a right to an
2 attorney. They don't know these things.

3 I absolutely think it would be a terrific idea
4 to advise them, similar to the way potential criminal
5 litigants are advised.

6 MR. WILLIAMS: Besides the issues you mentioned,
7 what would be the importance or impact to having non-legal
8 services available to members that represent parents in
9 Family Court, whether it's mental health, paralegal or
10 social work services readily available?

11 MS. POSTER-ZIMMERMAN: It's interesting, as I
12 watch the other hearings and they talked about having
13 social workers and parent advocates, we don't actually
14 have that in Suffolk County. I don't know about Nassau
15 either.

16 we do have -- on the AFC panel most of our
17 attorneys on the abuse and neglect panel are also on the
18 AFC panel. We have social workers that we can retain, but
19 there's no mechanism for us to do that representing
20 parents. And it was very interesting to me that that is
21 available in other counties and I think that would be very
22 important.

23 The parent advocates, social workers, it just
24 doesn't exist. I think that would be extremely helpful,
25 and even at the pre-petition phase because those people

1 can help the litigants and guide them through the programs
2 that they may need to take. Even when they come into
3 Family Court and there's a petition filed, the CPS
4 caseworker will hand them a list of referrals.

5 You have to understand, these are people who are
6 at the worst time of their lives. They may be suffering
7 from drug or alcohol addiction or poverty. They don't --
8 they are very confused. They don't know -- they have
9 transportation issues.

10 That is a big issue in Suffolk County. They
11 don't know how to get to the treatment center. They don't
12 know how to contact them. There are sometimes waiting
13 lists which could be a couple of months and in the
14 meantime the clock is ticking in terms of if your children
15 are removed, you have 15 out of 22 months in order to get
16 them back or the County can bring a TPR proceeding.

17 So I have seen many instances where months and
18 months and months go by where litigants simply don't know
19 what to do. So having a parent advocate that's been
20 through this process or a social worker to guide them --
21 which was the other program we tried to implement in
22 Suffolk County, having a service manager. Again, it was a
23 funding issue. I think that would be critical in helping
24 litigants get their children back more quickly and keep
25 their children.

1 MS. ROSENKRANTZ: I think as far as I am
2 concerned, the more resources the better. If the goal is
3 keeping families together, reunifying them, giving parents
4 the help they need, you may be dealing with people who are
5 not educated, they may not speak English, they're not
6 familiar with, you know, any of the resources that could
7 be made available to them. Why not give them everything
8 that you can to help them.

9 HONORABLE PETERS: I have a question concerning
10 the issue raised regarding individuals who probably
11 shouldn't be getting an assigned attorney but are given
12 one because the Judge is stressed and frustrated in
13 attempting to just resolve the case.

14 Do you think that there should be a
15 consideration for individuals who have assets that they
16 can't readily access, but have assets to pay back the cost
17 of the assigned attorney at a later time?

18 MS. ROSENKRANTZ: I do.

19 HONORABLE PETERS: I'm not talking about child
20 welfare cases.

21 MS. ROSENKRANTZ: You are talking about custody
22 contempt, the divorce cases that have issues that can
23 obtain assigned counsel. I do and I have been told by
24 judges at the end of the proceeding, if and when it's
25 determined that the person should not have qualified, the

1 County, the State, the 18B attorney can subsequently sue
2 that person for fees.

3 I have not seen that happen and, again, I
4 understand it's a lot of work, it's trouble, attorneys
5 have to devote the time to it. But I do -- I think if
6 there are assets that for whatever reason were restrained
7 or not liquid, but subsequently become liquid, then
8 absolutely that person should be reimbursing the County
9 who could certainly use the money for the advice and
10 representation that they got.

11 HONORABLE PETERS: Thank you.

12 I have one more question because of the
13 expansive geographic area in Suffolk County and we have
14 held hearings in Rochester and upstate is enormous, one of
15 the suggestions that I made and wondered whether people
16 thought it helpful is if certain types of appearances
17 could be done from a location other than the courthouse.

18 I'm not suggesting that hearings take place
19 remotely, but would it be helpful if individuals could,
20 for example, appear with regard to the success in a
21 particular visitation arrangement or whether they've been
22 able to get their evaluation completed or whether they've
23 been going to treatment remotely either from the public
24 library site or from some other site in the county. would
25 that be helpful or do you think that would create more

1 problems than it would solve?

2 MS. POSTER-ZIMMERMAN: I absolutely think that
3 would be helpful. Certainly if there is a hearing they
4 should be present, but there are so many times that
5 litigants can simply not get to the courthouse. If they
6 have a car the car is not reliable, they have to take
7 three buses. It takes them three hours to get there and
8 it's also a tremendous impact on the resources on the
9 attorneys who are waiting all day. We may have
10 nine o'clock case and they don't get there until two
11 o'clock.

12 In the meantime, even in terms of paying us, you
13 are paying us to wait. Now, very often there are other
14 cases we can handle, but still it makes it very, very
15 difficult. And then there are times they don't show up
16 because they can't get there and then there is a warrant
17 that's issued.

18 I think in terms of that, it would be very
19 helpful to have some type of video or telephonic
20 conferencing. I mean we do that with out-of-state
21 litigants very routinely and we've been doing that more
22 and more with prisoners who are incarcerated rather than
23 bringing them in. But I think there are many conferences
24 for which they don't necessarily have to be physically
25 present.

1 MS. ROSENKRANTZ: I agree. There are many
2 conferences, status conferences in the interim where it is
3 just not necessary. I have seen cases where the litigants
4 don't even speak. The attorneys conference briefly, the
5 litigants come in, one, two, three here's your next date
6 and now they've maybe missed a day of work. We want these
7 people to work and be employed. We don't want to
8 jeopardize their employment because that is an important
9 part to reunify with their family.

10 I absolutely agree, some kind of conferencing or
11 telephonic appearance would be very helpful.

12 HONORABLE PETERS: Thank you. Thank you both.
13 We are going to take a short recess. We're supposed to
14 take a ten minute recess, but we will take a five minute
15 recess.

16 (Whereupon, a recess was held.)

17 HONORABLE PETERS: The next witness is Lois
18 Schwaeber, and if I said that incorrectly I apologize.

19 MS. SCHWAEBER: You certainly didn't. Very few
20 people do that.

21 Good afternoon everyone.

22 HONORABLE PETERS: Good afternoon.

23 MS. SCHWAEBER: If you will give me just a
24 minute.

25 HONORABLE PETERS: Make sure to keep your voice

1 up, please.

2 MS. SCHWAEBER: Okay, I can do that.

3 Good afternoon, Judges. Thank you so much for
4 allowing me to speak to you today. My name is Lois
5 Schwaeber and I am Director of Legal Services for the Safe
6 Center which was formally known as the Nassau County
7 Coalition Against Domestic Violence and the Coalition
8 Against Child Abuse and Neglect.

9 We merged in 2014 to become the Safe Center. We
10 are the only provider of comprehensive domestic violence,
11 sexual assault, dating violence, child abuse, rape and
12 sexual assault, human trafficking, elder abuse and
13 stalking services in Nassau County.

14 Our court advocates provide support and
15 information to victims of domestic abuse in Family Court
16 to any walk-ins that need help and dedicated domestic
17 violence courts in New York.

18 All of our services are free. The only
19 limitation is the legal services that are funded by
20 grants. OCA, thank you very much, provides a great
21 majority of our grants, limits our services to indigent
22 and low income people that only can earn 200 percent of
23 the federal poverty guidelines.

24 We're a private none-for-profit organization and
25 most of our work, our legal services center is a very

1 small part of the agency. We have probably ten or twelve
2 people who are attorneys in the legal department wherefore
3 we have 100 employees, most of whom are social workers.

4 So we do -- most of our work is crisis
5 intervention through our hotline, legal assistance,
6 emergency shelter services and community outreach
7 education. To victims and to professionals we do a lot of
8 education and outreach of education to professionals.

9 The legal services department provides legal
10 services. We are prohibited by our grant from doing child
11 abuse and neglect cases. We cannot litigate against
12 Nassau County or the federal government.

13 So I'm going to speak about a different kind of
14 litigation or some different kinds of litigation than the
15 previous speakers did.

16 We represent victims -- we're the only people
17 that represent victims of domestic violence, rape, sexual
18 assault and in court. We do child support and spousal
19 support for petitioners which are not a statutory right.
20 So we're the only ones that do that.

21 We do child support and spousal support, family
22 offenses, paternity, matrimonials, a lot of matrimonials
23 and immigration services. We have a tremendous amount of
24 non-English speaking, undocumented people who are victims
25 not only of abuse, but are victims of crimes.

1 So we have the ability to represent them to get
2 new visas and help them through the citizenship process
3 through naturalization.

4 We also can represent -- are given the right to
5 represent victims in any other issues that arise out of
6 the abuse. Obviously we do not have the resources and the
7 staffing to do that, so we have a large pro bono outreach
8 program. We have currently probably 80 or so pro bono
9 attorneys from large firms, individual firms and solo
10 practitioners that will take cases for us, even up through
11 appeals through our outreach program.

12 All of our legal services as I said are free and
13 we have a large -- our practice is probably divided into
14 three parts, the Family Court component, the matrimonial
15 component and the immigration component.

16 Many of our matrimonial clients come to us
17 because they can't afford matrimonial fees, however, they
18 don't qualify for our services because we're limited to
19 indigent and low income people. And if they're a family
20 of three they probably can't make more than \$40,000 or
21 \$42,000, yet at that rate they cannot afford a matrimonial
22 attorney.

23 We also get lots of people coming to us who are
24 in the midst of a matrimonial, have run out of money, have
25 paid so much, between \$40,000 and \$90,000, in matrimonial

1 fees and have not completed the matrimonial and still
2 don't qualify for our services because they make -- they
3 don't have the funds to continue paying for it, but they
4 make more than the indigent limits that we have.

5 Many of our clients don't come to us until after
6 their first appearance because we -- it takes them a long
7 time to get appointments due to the amount of people
8 coming through the office. They're often sent to us by
9 friends, by counselors and often by Family Court
10 personnel, people who work there that know their victims
11 and know that they can be sent to our office to get some
12 representation.

13 The importance of giving especially victims
14 representation before the first court appearance cannot be
15 emphasized enough. Just to get a minute or two before
16 someone walks into court is insufficient. They don't get
17 an opportunity to tell their story or for the attorney to
18 understand the problems that they have. It's crucial.
19 All of the previous people that testified mentioned the
20 same issue and I cannot emphasize it enough.

21 I also believe that it is important for the
22 court appointed attorney not only to meet with the client
23 beforehand so that they can be involved in and let her
24 know what her options are and to see what her needs are,
25 but to earn her trust. And they also must have the

1 ability to meet with the client before they go into court
2 on each and every occasion. That's not happening.

3 All too often the Court appointed attorney meets
4 with them, the case is called and they say, okay I'll talk
5 to you for a minute and then they go into court. They
6 don't know whether there's been problems in the meantime.
7 They don't have the opportunity to really protect the
8 client's interest and to represent her and she feels that
9 nobody is representing her.

10 The Judge wouldn't let her talk when she has an
11 attorney and yet the attorney doesn't really know what the
12 situation is.

13 I know that that's the case where there's not
14 enough 18Bs appointed -- placed to take the cases, but
15 it's detrimental to the clients.

16 The other big problem that I know exists is
17 we're appointing attorneys to clients who don't speak
18 English and the attorney does not speak their language.
19 They're not given access to the language line.

20 I understand that the court interpreters are
21 only available to interpret in court and may have a minute
22 or two to talk with the attorney and her client, but
23 that's not their job and I understand that. However, this
24 client is not being represented. Federal law requires
25 that they have an attorney that represents them and that's

1 just not happening.

2 Language line I know is available in the court.
3 Do we have enough phones for them to do that? Probably
4 not. But that certainly is something that I think can
5 easily be repaired, fixed without too much of a financial
6 investment. I think it's a very necessary thing to do.

7 I also feel -- I have been working in this field
8 for 25 years. I've actually been working for this agency
9 for 25 years. And the issue has become my passion. But I
10 think there's a definite need to provide more training to
11 the 18Bs and Legal Aid.

12 I think they're probably not up-to-date on
13 trauma informed litigation, on the need for understanding
14 the trauma that clients and their children have gone
15 through and how it affects them and how it affects the
16 litigation, how it affects the relationship between the
17 attorney and the client. And I know the judges are
18 getting lots of trauma informed training now because it's
19 a very critical issue that we need to recognize.

20 I think they need more training on the issues of
21 domestic abuse and sexual assault and the affects on the
22 children, the impact on the children, the impact on the
23 family, the complexity of domestic abuse and the tactics
24 used by offenders, and learn to appreciate these complex
25 concepts.

1 Now, you have to understand the safety risk and
2 the safety issues to the children and to the other
3 litigant.

4 They also need to understand what issue is a
5 child's issue and what issue is a children's issue, and
6 that there are certain things adults don't discuss with
7 children, and emphasize to their clients whether they
8 represent victims or respondents. And that's usually the
9 way it is, although sometimes it's the other way, that
10 both litigants have to understand that their issues are
11 not their children's issues. Children have very special
12 needs and very special issues that need to be treated
13 differently.

14 They should be familiar with the alienating
15 behavior of fathers. We see this very often when a
16 client -- most of all I am using the word he and she.
17 Most of our clients are women. About 90 percent of the
18 people that we see that are victims of domestic abuse are
19 women. As soon as she files family offense or custody
20 petition and alleges domestic abuse, he comes in and
21 alleges that she's alienating the children against him,
22 when in reality the children don't want to go because of
23 his behavior with them or the way he has behaved, the
24 domestic -- or the domestic violence that the child has
25 witnessed.

1 Just because the child isn't eyewitnessing each
2 incident doesn't mean that the child doesn't know what is
3 going on. They hear the screaming, they see the holes in
4 the walls, they get up in the morning and they see the
5 broken chairs and they hear the dialogue. Not screaming,
6 but the dialogue between the parents that indicate that
7 one parent is being abusive, denigrating, calling names to
8 the other. So they're aware of what's going on even if
9 they're not standing in the room.

10 Too often I've heard clients tell me they've
11 been told by their attorneys or sometimes even judges,
12 yes, there was domestic violence, we understand that, move
13 on. You don't move on. You can't move on because it's a
14 continuing situation. The abuse continues even after
15 you're divorced in most cases.

16 As long as you have contact with your abuser
17 there generally continues some kind of verbal or financial
18 abuse.

19 Financial abuse is one of the most common things
20 that we see in our office, and all too often the attorneys
21 don't realize that it's not broken bones and black eyes,
22 it's terrible language against the other client -- against
23 the other parent. It's financial abuse, not giving any
24 money, trading sex for money. You want sneakers for the
25 children, well, let's have sex and you'll get sneakers for

1 the children or food for the table.

2 Those are the kinds of things that litigants,
3 victims are reluctant to necessarily talk to their
4 attorneys about unless their attorneys have under --
5 understand how to communicate with them well so that they
6 can ask those kinds of questions.

7 HONORABLE PETERS: I want to make sure we have
8 time to ask you questions. How much longer do you think
9 you'll be?

10 MS. SCHWAEBER: I'm fine. I would just like to
11 say --

12 HONORABLE PETERS: We do have your written
13 testimony of course.

14 MS. SCHWAEBER: We do need financial guidelines
15 because I think it varies from courtroom to courtroom and
16 courthouse to courthouse and case to case. So that's very
17 important that I would like. And because sometimes
18 litigants get attorneys, as Jennifer mentioned, that they
19 really aren't entitled to.

20 Feel free to ask me all the questions you want.

21 HONORABLE PETERS: One of the things you
22 mentioned in your written testimony and you mentioned
23 today is the concern you have about attorneys meeting
24 their clients as they enter the courtroom. I understand
25 that concern because you believe correctly that in order

1 to represent particularly the victim of domestic violence,
2 you need to spend some time with the client and gain their
3 trust.

4 So I'm wondering if you have any anecdotal
5 information concerning whether your clients, that is the
6 people you've spoken with who have had assigned attorneys
7 that they were unable to communicate with earlier, have
8 had difficulty reaching those attorneys by telephone or
9 making appointments to see them in their office?

10 MS. SCHWAEBER: Exceedingly so, yes. I hear
11 that time and time again.

12 HONORABLE PETERS: One of the issues that was
13 very meaningful to those of us who heard the first appeal
14 in Hurrell Haring was the inability of individuals who
15 were arrested in that case, of course, to be able to have
16 their lawyers communicate with them.

17 They wouldn't return phone calls, the machines
18 would be full and they would never get to see their
19 attorney except when they ended up in the courtroom.

20 MS. SCHWAEBER: That is the norm rather than the
21 exception in Family Court, definitely in Family Court.
22 There are no 18Bs generally in matrimonial court and
23 that's where my practice is limited to.

24 Transportation in Nassau County may not be as
25 difficult as it is in Suffolk County, but it is also

1 extremely difficult. Almost all of my clients do not have
2 cars. If they go to matrimonial court they have to take
3 the day off from work.

4 As Jennifer mentioned, they don't see a judge
5 and they're sitting outside in the waiting room with their
6 abuser. I try and put them at the other end of the
7 courthouse so at least they don't -- they're not subject
8 to abuse while they're waiting, while we're in chambers
9 and they don't know what we're doing in chambers. Half
10 the time they think we are colluding with the other
11 attorney because we come out, these are our colleagues, we
12 work with them all the time.

13 HONORABLE PETERS: I understand.

14 You mentioned also the language barrier and the
15 fact that interpreters are only available when the case is
16 in the courtroom.

17 MS. SCHWAEBER: Correct.

18 HONORABLE PETERS: Are you able to make an
19 application for a court order to retain an interpreter
20 under the county law?

21 MS. SCHWAEBER: I don't think so. We are not --
22 under Nassau County we are not one of those agencies -- we
23 are not a county agency and, therefore, we don't -- we
24 can't ask for an expert.

25 HONORABLE PETERS: So you can't make a 722-b --

1 I think it is still a 722-b application.

2 MS. SCHWAEBER: No, we cannot whether it be for
3 forensics or anything else. We have to ask the attorney
4 for the child to make the applications. We are not able
5 to do that. But my attorneys that go to Family Court
6 speak Spanish, so I don't need to do that. Three of my
7 four attorneys -- four of my five attorneys all speak
8 Spanish.

9 HONORABLE PETERS: Thank you.

10 Anything further?

11 Thank you very much for coming in. We
12 appreciate your written testimony and your oral testimony.

13 MS. SCHWAEBER: Thank you.

14 HONORABLE PETERS: Joel Serrano and Sarah
15 Tirgary.

16 MS. TIRGARY: Good afternoon.

17 HONORABLE PETERS: Am I correct, you are both
18 testifying today?

19 MS. TIRGARY: That's correct.

20 MR. SERRANO: That's correct.

21 MS. TIRGARY: Would it be okay if I begin?

22 HONORABLE PETERS: If you say your name.

23 MS. TIRGARY: Sarah Tirgary.

24 HONORABLE PETERS: Thank you so much.

25 MS. TIRGARY: Good afternoon, Justice Peters,

1 Justice Davidson, Mr. Williams and Ms. Lindenauer.

2 My name is Sarah Tirgary and I am President of
3 the Assigned Counsel Association in Queens Family Court,
4 as well as a member of the steering committee for the
5 Assigned Counsel Association for New York.

6 Prior to going into private practice in 2001 I
7 served as a supervising attorney for the Administration
8 For Children Services in both Bronx County and in Queens
9 County.

10 I currently sit on several advisory boards
11 including as well as courthouse committees such as the
12 Disproportionate Minority Representation Committee, Child
13 Protective Advisement Committee, the Raise The Age
14 Advisory Committee, Strong Starts Initiative Committee and
15 Safe Horizons Advisory Board.

16 I want to thank you for the opportunity to
17 testify today. First, allow me to speak briefly on the
18 application process necessary for joining the panel in
19 Queens County Family Court.

20 The application for Queens Family Court can
21 be -- is available by contacting the Appellate Division
22 directly or the Office for Attorney for Children. Once
23 completed the application is forwarded to the Queens
24 County Bar Association as well as to the Appellate
25 Division Office for attorney for children.

1 HONORABLE PETERS: A signed application goes
2 into the attorneys for child office?

3 MS. TIRGARY: Correct, because in Queens the
4 panel attorneys represent both the children and the
5 parents, so they can be assigned to either one.

6 Applications are reviewed by the Bar Association
7 Panel Committee which is a separate committee of the
8 Queens County Bar Association. I also sit on that
9 committee as does Mr. Serrano. Our job is to review the
10 applications to make sure that they're complete, to
11 follow-up on all recommendations that are listed, to
12 contact advisories of the applicant, to follow-up with the
13 recommendations from the jurist and speak directly to the
14 jurist.

15 Sometimes a jurist will write a recommendation
16 and make it and leave out information that they don't feel
17 comfortable including in the written recommendation, so we
18 like to reach out to the jurist as well.

19 Applicants are interviewed by the panel
20 committee. They're asked a series of fact based and
21 hypothetical questions related to family law.

22 After the completion of the vetting process the
23 applications are then forwarded to the Appellate Division
24 with recommendations for possible inclusion on the panel.
25 This recommendation may include a request that the

1 applicant does further mentoring with another attorney
2 currently on the assigned counsel -- on the 18B panel.

3 Applicants are also required to watch over 40
4 hours of CLE material available on line, on the Appellate
5 Division Second Department website.

6 once all recommendations are received, the CLEs
7 are viewed and the mentoring process is completed, the
8 applicants are then interviewed by the director for the
9 office for attorney for children, and in our department
10 that would be Ms. Harriet Weinberger.

11 Ms. Weinberger could then make recommendations
12 for further mentoring if she feels that it's necessary, at
13 which point that would have to happen, once again, by
14 assigning an 18B attorney to the applicant where that
15 applicant follows that attorney around, appears on the
16 record often times and follows a case from beginning to
17 end so that we know that they understand what that
18 particular area requires of them.

19 once the applicant is met and has been
20 interviewed by the director and has been approved, the
21 director then forwards the paperwork over to the presiding
22 justice, Justice Scheinkman, by the chair of the advisory
23 committee, together with accompanying documentation. From
24 there this procedure ensures that only the highest quality
25 attorneys are certified to the assigned counsel panel.

1 All panel attorneys are required to attend
2 mandatory continuing education legal classes which focus
3 on family law issues. In addition to mandatory CLEs, the
4 Appellate Division provides ongoing CLE material on line.
5 This past year over 50 hours of CLEs were made available
6 to our panel attorneys to watch. Each attorney must be
7 re-certified every year. Re-certification requires that
8 each attorney document their caseload and verify they've
9 met the CLE requirements.

10 Attorneys are also evaluated annually by all
11 justices in the courthouse, and that affords the Appellate
12 Division feedback on whether those attorneys have risen to
13 the level, the standard that we set for legal
14 representation and professionalism.

15 This process is intended to ensure a high degree
16 of professionalism and accountability. We're the only
17 attorneys in the courthouse that are evaluated by the
18 justices that we appear before.

19 Attorneys receive assignments from Family Court
20 by signing up on a rotational basis for intake days. So
21 once a month I am required to sign up for an intake day
22 along with four -- ideally four other colleagues, and at
23 that point we are assigned to represent qualified indigent
24 litigants.

25 Ideally we would like to have five attorneys on

1 each intake day, but unfortunately the number of attorneys
2 on the panel is insufficient to allow for this number.
3 Family Court benefits from our presence. Not only are we
4 the best deal in town, but we absorb all of our overhead
5 including rent, phones, supplies, insurance, pensions. We
6 don't have a problem of conflict of interest that confront
7 many institutional providers.

8 So here is our dilemma, and I know that the
9 commission has heard this numerous times, but I just want
10 to impress upon it.

11 HONORABLE PETERS: We have heard your testimony
12 too, but go ahead.

13 MS. TIRGARY: Many of our applicants come from
14 offices such as the District Attorney, Administration For
15 Children Services, Corporation Counsel, Legal Aid Society.
16 We have historically attracted highly qualified attorneys
17 from such institutions, but despite our sense of
18 experience, we received only two pay raises in the last 32
19 years. And, quite frankly, that is unconscionable. So
20 we've not been attracting as many qualified candidates
21 from those agencies in the past year or two.

22 So while we applaud the administrative pay raise
23 of mental health providers, we're saddened by the fact
24 that there's been no concomitant attempt to raise our
25 annual -- our hourly rate of compensation.

1 Social workers are now compensated at the same
2 rate as attorneys and this is not just an insult to the
3 panel, but it's an insult to the legal profession as a
4 whole.

5 Our panel consists of over 50 percent women,
6 33 percent minorities and is made up entirely of private
7 practice attorneys in small businesses. These attorneys
8 bring to their representation diverse background and
9 experiences. This diversity enables us to represent the
10 very diverse population that we represent, and we're able
11 to be more culturally and racially sensitive to the needs
12 of our clients.

13 In order to maintain this high quality of the
14 attorneys we currently represent, we would need to
15 continue to attract new talent which would require us to
16 offer an hourly rate that is respectful of the commence of
17 their legal experience. Despite the fact that we have
18 over 85 attorneys currently on the panel, that's not
19 sufficient. We need to be able to attract more.

20 I can tell this commission that having sat on
21 the committee that reviews applicants, currently out of
22 four applicants, only one of them rises to the level of
23 experience that the panel has historically been looking
24 for and wishes to maintain and we wish to -- the only way
25 that we can do that, to attract the quality of legal minds

1 is to be able to compensate them at a rate which is
2 respectful.

3 HONORABLE PETERS: I know there are three
4 recommendations in addition in your written testimony.
5 Could you just summarize them for us orally so we can move
6 on to your colleague?

7 MS. TIRGARY: Yes. One recommendation is
8 continuity and representation. Often times I am assigned
9 to represent a litigant in a custody or visitation or
10 family offense matter, only to find out that later on an
11 Article 10 child neglect case was filed later on. And
12 then I get a call from my client asking why I can't
13 continue to represent them. If an effort is not made to
14 continue the legal representation of that litigant, that
15 litigant then becomes at a huge disadvantage.

16 So to not at least offer a litigant the option
17 of reassigning the prior attorneys to that litigant is
18 an -- is putting that litigant at an unnecessary
19 disadvantage.

20 So, for example, I had a client who was a victim
21 of domestic violence and had both family offenses and
22 custody cases before Judge Wright in Queens Family Court.
23 It later came back as a child protective case and had I
24 not gone out of my way to seek reassignment to that
25 litigant, a lot of information would not have been made

1 known to the FCLS attorney.

2 For example, the forensic evaluation which
3 clearly showed parental alienation on the part of the
4 father which clearly showed that the children were making
5 things up and lying about the mother because the father
6 was telling them to. So had I not had that benefit, my
7 client would have been at a severe disadvantage.

8 Number two, which is continuity of justices. I
9 know this is an issue that the Court has considered in the
10 past, but the one judge when approached for Family Court
11 cases had been historically used in Family Court when I
12 was an FCLS attorney and later an 18B attorney. Judges
13 were not specialized back then. Judges had a diverse
14 caseload. Their job wasn't easy, but at least it was more
15 interesting. They didn't just hear neglects or child
16 protective work or JD work, they heard every single area
17 of law that affected the family.

18 Judges were prepared to hear diverse caseloads,
19 and subject children of Article 10 petitions that were
20 returned to court as respondents as JD had a better chance
21 of being understood by the judge.

22 HONORABLE PETERS: Can you get to the third
23 recommendation? I'm afraid we are running out of time.

24 MS. TIRGARY: So child safety conferences and
25 access to social worker parent advocates.

1 Our final recommendation that we as assigned
2 counsel would like this commission to consider has to do
3 with the scheduling of child safety conferences at a time
4 when attorneys and/or their social workers appointed by
5 the court are available to be present.

6 we don't have social workers at our immediate
7 disposal, but we certainly can have them available at a
8 time which is reasonable.

9 we frequently use the offices of Delores Andrews
10 who has a staff of social workers and they usually have
11 case social workers available to dispatch immediately, so
12 we're not aware of the qualifications of what a parental
13 advocate is.

14 I understand that a parent advocate is not a
15 mandated reporter and is not a social worker. Often times
16 a parent advocate is a person who themselves has been
17 through the legal system as a respondent in an Article 10
18 case, and as a panel attorney I would like to have access
19 to a parent advocate if it's deemed an appropriate service
20 provider.

21 currently parent advocates are not available to
22 assigned counsel attorneys because their qualifications
23 are questionable. Perhaps guidelines and qualifications
24 can be set to establish so that panel attorneys can have
25 access to them.

1 So ultimately New York City is contracting with
2 institutional providers to provide legal and non-legal
3 resources to litigants such as MetroCards, parent
4 advocates and they need to ensure that the same resources
5 are available to litigants through assigned counsel
6 attorneys.

7 Thank you very much.

8 HONORABLE PETERS: Mr. Serrano, we are going to
9 change reporters.

10 (Whereupon, proceedings continued now by
11 official Court Reporter Kelly Cullen.)

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1 HON. PETERS: Mr. Serrano, we'll ask questions
2 of both of you later. Mr. Serrano, please proceed
3 because we are running out of time.

4 MR. SERRANO: Thank you.

5 HON. PETERS: We're going to lose our
6 courtroom at some point.

7 MR. SERRANO: Good afternoon, Judge Peters and
8 members of the Commission on Parental Legal
9 Representation. My name is Joel Serrano. I am the
10 secretary of the Assigned Counsel Association of Queens
11 Family Court. I've been in private practice on the
12 18-B panel for over eight years and before that I was
13 an ACS attorney for over two years.

14 For the Commission I would say if we should
15 ensure the eligible persons have quality
16 representation, then the Commission should assignment
17 of counsel at the earliest possible stage of the
18 proceedings, and to ensure quality representation, the
19 Commission should make the recommendations necessary to
20 ensure we maintain a strong 18-B panel with experienced
21 attorneys.

22 As far as how this would work, this was a
23 question that was raised earlier today. I suggest that
24 there be a requirement that CPS provide parents with
25 whom they speak of a notice of their rights. That

1 notice can then be brought to court where attorneys are
2 already there prepared to be assigned, and a judge can
3 make a decision as to whether or not that parent is
4 assigned counsel as a judge would with any other case.

5 With regarding the assignment of counsel and
6 qualifications, I ask the Commission to look at Queens
7 as a model for how assignment is done. In Queens
8 jurists typically hear testimony. They ask questions
9 of the litigants who appear before them after informing
10 them of their rights, and based on that testimony, they
11 determine whether or not counsel's assigned. When
12 there's any doubt, jurists typically err on the side of
13 assigning counsel.

14 When we are dealing with the possibility of a
15 litigant relinquishing a fundamental right and there
16 has been no notice or preparation to what documents
17 they should bring to court, I think justice demands
18 that we err on the side of caution, and caution being
19 assignment of counsel.

20 For the litigants who are involved in a court
21 process, we should be mindful of their time and their
22 work family obligations. Typical clients are either
23 full-time students or employed in a low-wage job with
24 very few benefits. If they miss too many days of work,
25 it could mean that they lose their employment. A

1 typical client in a child protective case is also
2 expected to enroll in many services. And if drug
3 misuse is an allegation against them, there would be an
4 expectation they would drop whatever they're doing, if
5 called upon to complete a random drug screen.

6 In cases where the child is removed while
7 clients are juggling their many obligations, they also
8 have to hope that the foster parent's schedule and the
9 CPS office schedule can also work with them so that
10 their visits may take place.

11 I want to address an issue regarding
12 communication with clients and the communications that
13 takes place in court. I want to say that oftentimes
14 that issue of me having to speak with a client in the
15 waiting area of a court is because of these time
16 constraints. I am often available to meet with my
17 clients. They are not often available to meet with me,
18 and that is a reason oftentimes I have to speak with my
19 clients in the courtroom.

20 Our clients need access to competent service
21 providers that are all-inclusive. Parents need -- with
22 regards to appearing in court, they need more options
23 there also. I know New York City appears to be a place
24 that's easy to get around because of our mass transit
25 options, but it's deceptively difficult to get around.

1 And for preliminary conferences, it would be helpful if
2 they could appear electronically.

3 For cases where a child is in the parent's
4 care, if we're going to require that they appear in
5 court, then family court must offer child care
6 facilities that are consistently available. It's not
7 enough to say that we have a child care facility if the
8 parents knowing that bring their child and then are not
9 able to use the facility.

10 Parents also need more visitation options.
11 Parents who have had their children removed are often
12 only allowed supervised visitation with their children.
13 Sometimes the court allows such visits to be supervised
14 by family resource and that's great because that allows
15 for a lot of flexibility, but we want CPS to offer more
16 options. Having the option for evening or weekend
17 visits would make a world of difference. In the
18 situation where the agency is not available to schedule
19 visits at a time suitable for the client's schedule, we
20 would ask that without reservation a court offers -- a
21 court signs and appoints a social worker that is
22 available to the panel to facilitate those visits.

23 Parents and children would also benefit from
24 children being placed in foster homes closer to the
25 parent's home. I've had many cases where -- I've had

1 many cases in Queens where children are placed in
2 either the Bronx or Brooklyn or even out in Long
3 Island, and it causes a lot of problems with somebody
4 having to make a long trip for the visits to take
5 place. I understand the finding of qualified foster
6 parent is very difficult, but more needs to be done to
7 increase the pool of foster parents so that children
8 can be placed closer to the parent's home.

9 With regards to communicating with our
10 clients, there are two big issues that we face. The
11 first one, which has been brought up before, is with
12 interpreters. We, in the panel, we are a very diverse
13 group with members who speak -- with many members who
14 speak a foreign language. However, as that number of
15 attorneys shrink, it's going to be difficult to achieve
16 the goal of placing an attorney with a client that
17 speaks a non English language.

18 When we are unable to match an attorney who
19 speaks a non English language, then we do use 722-c
20 orders to have an interpreter appointed and to assist
21 us in meeting with our clients.

22 With regards to our incarcerated clients,
23 that's another difficult issue that we face. We have
24 available the video conference unit at Queens Criminal
25 Court which is not that far away, however, making that

1 technology available within the Family Court would make
2 things so much easier.

3 So to the Commission we look forward to seeing
4 the improvements in how Family Court works, and I thank
5 you for the opportunity to be heard.

6 HON. PETERS: Thank you, and thank you for
7 telling us use 722-c because I was a little worried. I
8 appreciate that. Questions?

9 HON. DAVIDSON: So both of you suggested
10 increasing the amount for assigned counsel. Do you
11 have a suggestion in terms of a number?

12 MR. SERRANO: Not to box us in --

13 HON. DAVIDSON: Of course not. But a starting
14 point at least.

15 MS. HASSBERG: We would aim high and settle
16 lower, so I would suggest we get paid \$75 an hour.

17 MR. SERRANO: I think if we doubled that at
18 this point, given how much time has gone by without a
19 raise, that would be a good start. But I also must say
20 that it's not enough to have the raise. We must also
21 have some mechanism in place to assess on a yearly
22 basis whether or not the amount that's in place is a
23 fair amount so that there can be -- so there wouldn't
24 have to be such a dramatic increase. Any number that
25 we gave as an answer is going to be a dramatic answer

1 that's because it's been so long without a raise.

2 HON. PETERS: So you raised a real concern for
3 me when you said something about a client coming to
4 court and the Children's Center not being open. Aren't
5 there specific set hours for the Children's Center in
6 your Family courts?

7 MR. SERRANO: There are but people get sick.
8 Sometimes the Children's Center is full. Sometimes
9 there are issues with -- sometimes there are issues
10 where they require that the case -- some kind of notice
11 that the case is actually being called which then leads
12 to us having to say, yes, it's being called even though
13 it's going to be called in five minutes because you
14 can't have the case being called with the parent
15 downstairs with the child. It's there, but it could be
16 better.

17 HON. PETERS: Have you attempted to sit down
18 and resolve some of those problems with the Children's
19 Center?

20 MR. SERRANO: I myself have not, no.

21 HON. PETERS: You also mentioned that you had
22 a problem with interpretations. Do you often find
23 clients that don't speak a language and you require an
24 order for an interpreter or is that --

25 MR. SERRANO: I should probably let

1 Ms. Hassberg speak to that because oftentimes I get
2 Spanish speaking clients and I speak Spanish, so, for
3 the most part, that's not a problem for me.

4 MS. HASSBERG: I also speak one more language,
5 but I do find there are oftentimes, because Queens is
6 such a diverse borough, that I --

7 HON. PETERS: That's why I asked.

8 MS. HASSBERG: Yeah -- that I have a client
9 that doesn't speak a language that I also can speak.
10 So I would say out of my, let's say, five clients, at
11 least one of them would require a 722-c order for an
12 interpreter, so that I can meet them in my office in a
13 calm location and go over the case.

14 HON. PETERS: Thank you. And you mentioned
15 that the Second Department attorneys for children
16 program also certifies that you are 18-B attorneys?

17 MS. HASSBERG: Correct.

18 HON. PETERS: Can an individual certified as
19 an 18-B and not an attorney for the child, can they
20 choose to do one and not the other?

21 MS. HASSBERG: No. In Queens in our
22 department, it must be that you serve on both, both
23 panels. Yes, you have to.

24 HON. PETERS: Is that a rule?

25 MS. HASSBERG: I don't know if it's an actual

1 rule but it is how Queens is -- Queens and I think
2 Brooklyn as well.

3 HON. PETERS: Thank you. Thank you both very
4 much.

5 MR. SERRANO: Thank you.

6 MS. HASSBERG: Thank you so much.

7 HON. PETERS: Linda Hassberg. Ms. Hassberg,
8 thank you for your patience.

9 MS. HASSBERG: You're quite welcome. Thank
10 you for inviting us.

11 My name is Linda Hassberg, and I am from the
12 Empire Justice Center. We are a statewide
13 not-for-profit law firm that does -- we represent the
14 poor, disabled and disadvantaged, but our primary aim
15 is to do assistance change work in a variety of ways.
16 So most of the litigation we do is impact litigation.
17 We also are able to lobby and work with legislative --
18 for legislative change and we do training for advocates
19 and we support advocates in technical issues. So I
20 kind of fell in to doing some individual
21 representation.

22 Family Court, it's not the bulk -- unlike
23 everyone else who spoke in here, I don't do it very
24 often. I do a lot of work with people with
25 disabilities, and this was an area that nobody was

1 doing. Not only is there no assigned counsel for the
2 great majority of child support litigants, there isn't
3 really any funding to do that. There's some narrow
4 exceptions. Nassau Suffolk Law Services has a mental
5 health project and if someone qualifies for that
6 project and has a child support matter, they can
7 represent them. There's some veteran's legal support
8 groups and they can take a few cases, but nobody that
9 specializes in this kind of work.

10 Usually when I go into the courtroom neither
11 side -- you know, I'm representing someone but the
12 other side isn't represented. There's very little
13 information to litigants about what to expect when they
14 go into a courtroom, how the judge will decide things.
15 I actually had one client -- and I never get a case at
16 the beginning either, so I always have to figure out
17 where we are. But one client came in and said, well,
18 that lady behind the desk told me that. I said, what
19 lady. It turned out to be the support magistrate.
20 They didn't even know they were before a judge.

21 So the people I represent are only people with
22 mental or cognitive disabilities who I believe both
23 have a meritorious case and cannot represent themselves
24 because of their disabilities. And there doesn't seem
25 to be any screening mechanism whatsoever in the courts

1 to determine if people really can understand what the
2 judge is asking of them, can understand what the
3 requirements are, if they're the respondent or they're
4 seeking a modification. It's usually they have the
5 burden of proof. They come in. They might have an SSI
6 determination. They don't understand why that's
7 insufficient. I don't always understand it either, to
8 be honest, but these -- and these are time-consuming
9 matters too, particularly if you have a client who has
10 limited cognitive abilities and yet you require medical
11 records and you require discussion with the
12 psychiatrist or the nurse practitioner about what is
13 going on with this person.

14 So that it's very difficult for legal services
15 even if they have some discretionary funding for this
16 to take these cases on, and when I talk to people in
17 legal services, they despair of these cases because
18 they say we have to make four or five appearances. We
19 wait for hours at a time to see a judge. And we often
20 don't get the result that we hope for because it is
21 so -- the burden of proof is so difficult.

22 I mean, I can talk more but I put it all in --
23 HON. PETERS: Do you have some recommendations
24 for us?

25 MS. HASSBERG: Well, I did mention the

1 screening, and I thought maybe you would be interested.
2 It's a little bit delicate because I think it has to be
3 voluntary, right? You can't force a person to say to
4 you I have a mental disability. However, they do have
5 to disclose that in order to be able to meet the burden
6 of proof that they can't work, and, therefore, whatever
7 income they have is all the income they need.

8 A lot of people have to -- when they start on
9 their own, they have a DIY petition or in Suffolk
10 County probation -- they can go to probation and they
11 can get help with filling out a petition. If at that
12 stage there was some information about if you have a
13 disability, you might qualify for an attorney or a
14 guardian ad litem. I think some people would avail
15 themselves of that. On the form itself, even on the
16 petition form, it says do you have a disability, are
17 you on SSI or SSD, if so, attach that. I think those
18 are things that would at least give the Court a clue,
19 look, this is someone who may need help to prosecute
20 their case.

21 MS. LINDENAUER: I have a question, and I'm
22 certain this has arisen, that in a child protective
23 proceeding there is a parent or a guardian who is
24 against whom a petition is sought who has just these
25 same problems.

1 MS. HASSBERG: I'm sure.

2 MS. LINDENAUER: And they certainly are either
3 represented by an institutional representative or an
4 18-B attorney. Do you provide training to any of these
5 groups so that they can provide appropriate
6 representation? Because in what you've been saying, it
7 doesn't sound as if you had been appearing in child
8 protective proceedings.

9 MS. HASSBERG: No. So the agencies and,
10 frankly, also the advocates that we train don't really
11 have anything to do with assigned counsel. It's almost
12 another world all together. I know that there is some
13 training available for assigned counsel, and I would
14 hope that someone else mentioned the trauma aspect, but
15 I would hope that there would be some training. I
16 don't know of it.

17 HON. PETERS: Couldn't you offer through your
18 bar association?

19 MS. HASSBERG: Again, I don't -- it's possible
20 that it's available. Whether people have to do it, I
21 really can't answer that. I will say that our
22 organization a number of years ago did a training for
23 the support magistrates around the state on what SSI
24 and SSD was, and I hope that was helpful. We certainly
25 had a lot of interest and a lot of questions.

1 MS. LINDENAUER: The Empire Justice Center, as
2 far as I can understand it, provides training for civil
3 legal services attorneys on a variety of things aside
4 from doing impact litigation. Do you do any training
5 for those civil legal services attorneys or for other
6 groups like the center for family representation with
7 regard to the particular issues that are involved in
8 representing people who have significant mental
9 disabilities?

10 MS. HASSBERG: Not specifically that I
11 remember. We have internally had some sessions about
12 that because it's an issue that cuts across all areas
13 of the law that we do.

14 I do know that there are some CLE available,
15 but I think it's a real lack that, you know, we all
16 have clients with significant mental disabilities and
17 we basically learn by experience and sometimes with bad
18 outcomes.

19 HON. PETERS: Thank you. Thank you for coming
20 in.

21 MS. HASSBERG: You're welcome.

22 HON. PETERS: Professor Liebman.

23 PROFESSOR LIEBMAN: Good afternoon.

24 HON. PETERS: Good afternoon.

25 PROFESSOR LIEBMANN: Good afternoon. Thank

1 you so much for agreeing to have me come here and speak
2 with you today. I understand I'm the last person, but
3 I'm still going to be concise and leave time for
4 questions, and I'll be slow as well.

5 So my name is Theo Liebmann. I'm a clinical
6 professor of law at Maurice A. Dean School of Law
7 Hofstra University. I teach lawyers ethics there and I
8 run a clinical program where we work on behalf of
9 children and families in the immigration system as well
10 as the Family Court system. Also of relevance here
11 today I am a cochair of the New York State Advisory
12 Council on immigration issues in Family Court, a
13 council that was formed by Judge Marks in 2015,
14 specifically to address immigration issues that arise
15 in Family Court. It's made up of administrators,
16 advocates, judges and other extras.

17 I'm here today to urge this council to -- this
18 Commission to recommend that lawyers receive mandatory
19 training, lawyers for parents receive mandatory
20 training on how immigration issues interplay with
21 Family Court matters. To be clear, I'm not asking that
22 a parent -- lawyers for parents become experts in
23 immigration law. Merely that they get sufficient
24 training so that they can recognize when an issue that
25 relates to immigration concerns arises. Either so that

1 they can address it themselves if they had sufficient
2 training or so they know to consult with someone who
3 can aid them.

4 I guess I want to break it down into three
5 categories, to summarize, the three categories where
6 this interplay can occur. The first is adverse
7 consequences to the ways that immigration issues can be
8 impacted by Family Court matters. Sometimes it's as
9 simple as a Family Court finding. An adjudication is
10 the kind of adjudication that can lead to harsh
11 immigration consequences such as deportation or
12 ineligibility for certain forms of relief. And some of
13 the findings in Family Court lead directly to that
14 ineligibility or lead directly to a basis for deporting
15 an individual. Others, it's if they're discovered by
16 immigration officials can lead to that.

17 So these are the kinds of things, for example,
18 a finding on an abuse and neglect case, in a family
19 offense case, in juvenile delinquency cases, even in
20 child support matters. The types of findings that are
21 made there can have severe adverse consequences.

22 We know in the criminal arena, thanks to
23 Padilla, but even before that, many agencies are
24 addressing this in the criminal arena saying this is
25 something that attorneys who represent individuals in

1 criminal matters need to be aware of or need to have an
2 expert who they can consult with who know about those
3 adverse consequences.

4 The other broad is categories -- or the second
5 broad category is potential benefits that can come from
6 certain adjudications and proceedings in Family Court.
7 So a few examples:

8 The Violence Against Women's Act is there to
9 assist individuals, broadly speaking, who have been
10 survivors of domestic violence, both adults and
11 children, and so findings in Family Court can assist
12 them in making that application.

13 Special immigrant juvenile status, so findings
14 in Family Court are crucial and essential to being
15 eligible for that form of immigration relief for abused
16 and neglected children.

17 The U-Vs that was mentioned earlier is a way
18 that for individuals who cooperate not just with law
19 enforcement but with child protection agencies can
20 potentially be deemed eligible for a visa that can get
21 them to be able to legalize their status in the U.S.

22 And then the last broad area of practical
23 concerns things like the Federal Parental Interest
24 Directive which -- Detained Parents is what it's called
25 now -- which essentially sets up a process so that when

1 individuals are detained by immigration, they can still
2 participate in their Family Court proceedings and don't
3 have to default, and there's a process by which that
4 can happen. Lawyers for parents should know about that
5 process and be able to comfortably know how to use it.
6 722-c of the County law which has come up now a couple
7 of times in testimony, the folks who testified are
8 aware of it, but I don't think that's true for all of
9 the lawyers who represent parents know that there's a
10 way to access interpreting skills outside of the
11 courtroom as well.

12 So those are some of the practical ways, and
13 that simply having some knowledge of immigration
14 related issues can ensure that there's better practice.

15 Again, I want to emphasize that the problem
16 really is not that there aren't lawyers out there who
17 know about these things; it's that it's inconsistent
18 both within and across jurisdictions. So for example,
19 from some of the agencies or panels that spoke today,
20 it sounds as though there's a lot of training going on.
21 That's not always the case. In some of the agencies
22 that represent parents, they have immigration
23 specialists who are right there on board. There are
24 ways to access immigration specialists even for
25 attorneys who are not part of those. There are

1 regional immigration assistance centers which are
2 located throughout the state through Indigent Legal
3 Services can provide that kind of advice, but it's not
4 always clear whether individuals -- individual
5 attorneys know about that access.

6 So, again, as both a -- for both concern for
7 the individual litigants themselves, but, also, I can't
8 resist because I'm a teacher of ethics as a
9 professional responsibility matter, the lawyers who
10 represent parents really need to be receiving training
11 so that at the very least, a light goes off when an
12 immigration issue comes up and they know to consult
13 with someone, and so we would urge this council to make
14 training on those issues.

15 HON. PETERS: Thank you. Questions?

16 Have you thought of ways in which we can
17 provide this information statewide? Because
18 immigration issues aren't just here, as you know.

19 PROFESSOR LIEBMANN: Yes, absolutely. So the
20 advisory council does statewide training. The RyeActs
21 are statewide, and I think there is now a critical mass
22 of lawyers and judges and other experts who can spread
23 around the state and provide this kind of training.

24 HON. PETERS: Sometimes judges don't want to
25 ask the question because they don't want the litigant

1 to have to make some statement that might get them into
2 trouble with someone else.

3 PROFESSOR LIEBMANN: Sure. Personally, I do
4 not see this as a responsibility for judges.

5 HON. PETERS: Good.

6 PROFESSOR LIEBMANN: This is a responsibility
7 for lawyers who represent the parents to speak with
8 them under the cloak of confidentiality to find out
9 what other issues there are related to immigration that
10 they can then either advise them about directly or
11 consult with the immigration expert in their firm or
12 someone else they consult. I completely agree with
13 what, I think, you're getting at, which is that judges
14 should not be in a position of asking about immigration
15 issues.

16 MS. LINDENAUER: There are standards that have
17 been developed both by the New York State bar
18 association committee on mandated representation and
19 also standards that have been, I think, provisionally
20 developed by the Indigent Legal Services program. And
21 I assume what you're recommending is that those
22 standards, to the extent they don't contain a
23 requirement that all attorneys who provide this type of
24 representation are trained in this area, that it
25 becomes a mandatory area?

1 PROFESSOR LIEBMANN: Yes, that's exactly the
2 recommendation.

3 HON. PETERS: So one of the concerns I have,
4 it was raised by a number of people who testified
5 across the state, and that is, often, because of the
6 overload that Legal Aid and 18-B attorneys suffer with
7 their caseload that they often only speak with their
8 clients at the courthouse, and the woman who testified
9 earlier concerned the women of domestic violence, and
10 you need to have some trust before you disclose
11 information. I would venture to guess that you need to
12 have some trust before you answer your attorney's
13 questions about your immigration status?

14 PROFESSOR LIEBMANN: Absolutely. And I think
15 that having the recommendation of having this expertise
16 only works with those other suggestions that you've
17 been hearing again and again about more attorneys are
18 better paid so that you will have a wider array of
19 attorneys who can do this so their caseloads are down
20 so they don't have to just meet before court,
21 absolutely. It all hinges on that.

22 HON. PETERS: Thank you. Thank you very much
23 for coming in and for your commitment.

24 PROFESSOR LIEBMANN: Thank you very much.

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