

In The Matter Of:
Public Hearing 9-27-18

September 27, 2018

Stefanie Johnson, Senior Court Reporter

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New York State Unified Court System Commission on Parental
Legal Representation Public Hearing

Date: September 27, 2018 10AM-1PM

Hearing Address:

Supreme Court of the State of New York
Appellate Division, First Department
27 Madison Avenue
New York, New York 10010

Presiding (Panel):

- Honorable Karen K. Peters, Chair
- Honorable Jeanette Ruiz, NYC Family Court Administrative Judge
- Honorable Gayle P. Roberts, Acting Sup. Court Judge, NY Co. & NYC Family Court Judge
- Professor Martin Guggenheim, New York University School of Law

Witness List (in order):

- Michael Miller, Esq., President of the New York State Bar Association and Susan B. Lindenauer, Esq., Chair, NYS Bar Association Committee on Families and the Law
- Parent Advocates and Social Work Panel: Jeanette Vega, Training Director, RISE; Angeline Montauban, Parent; Caitlin Becker, M.S.W., Managing Director, Social Work Practice, The Bronx Defenders
- Alan Sputz, Esq., Deputy Commissioner, New York City Administration for Children's Services
- Panel Attorneys Panel: Rhonda Weir, Esq., Association of Private Court Assigned Counsel, Appellate Division,

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Second Department; Brian Zimmerman, Esq., President, Association of Private Court Assigned Counsel, Kings County; Ronald Fisher, Esq., Bronx Family Court Bar Association

NYC Contract Provider Panel: Michelle Burrell, Esq., Neighborhood Defender Service of Harlem; Tehra Coles, Esq., Litigation Supervisor, & Hope Newton, Parent Advocate, Center for Family Representation; Lisa Schreibersdorf, Esq., Executive Director, and Lauren Shapiro, Esq., Family Defense Practice Director, Brooklyn Defender Services; Emma Ketteringham, Esq., Managing Director, Family Defense Practice, The Bronx Defenders

Domestic Violence Panel: Barbara Kryszko, Esq., Director, Brooklyn Legal Project, Family Justice Center, Sanctuary for Families; Nancy Erikson, Esq., private attorney

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JUDGE PETERS: Good morning. Welcome to the Appellate Division First Department. I'm Karen Peters, Chair of the Commission on Representation. With me today on the bench are members of the commission, the Honorable Jeanette Ruiz, Administrative Judge of New York City Family Court; the Honorable Gayle Roberts, judge of the Bronx Family Court and acting Supreme Court Judge; and Professor Marty Guggenheim of NYU School of Law.

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

This hearing, the second of four that we are holding across the state, will assist us in acquiring relevant information from government officials, institutional providers, assigned counsel programs and attorneys, clients, and other stakeholders.

Our ultimate objective is to provide a blueprint for how our state can strengthen the quality and efficiency of Family Court representation to ensure the fairness and effectiveness of our entire Family Court Justice System.

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Before we hear from the first witness, I'd like to publicly acknowledge the presence of and express my sincere and continuing appreciation for the extraordinary contributions of Ms. Janet Fink, counsel to the Commission, assisted by Ms. Shane Hegarty and our special advisor Ms. Angela Burton.

We're grateful to Justice Rolando Acosta for the opportunity to hold this hearing here at the most exquisite Appellate Division. Besides the fact that I was the presenter of the Third Department, I can tell you this is the most exquisite Appellate Division of the state. We're also most grateful to Susanna Rojas, Chief Clerk of the Court, attending to all the details for this event.

As we begin, I'd like to remind the witnesses who are testifying today that this hearing is being simultaneously videocast and that, mindful of our time constraints, testimony must be confined to the time limits we provided to you. I know they are small, but we have read all of your written testimony before we came here today. I'd appreciate it, to the extent you can, if you would summarize your testimony so as to allow us the time to dialogue with you concerning the issues you have brought to our attention through your written documents.

Now we begin.

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2 President Miller, Ms. Lindenauer, good morning.

3 MS. LINDENAUER: Good morning.

4 JUDGE PETERS: President Miller, thank you for
5 taking the time to come and testify today. I know how
6 busy you are.

7 MR. MILLER: Thank you very much, your Honor,
8 Judge Peters, and members of the commission. My name is
9 Michael Miller, I am the president of the New York State
10 Bar Association. I am joined by Susan Lindenauer, who is
11 the co-chair of the association's Committee on Families
12 and the Law.

13 On behalf of the association, I want to thank
14 you, at the top, for the opportunity to appear today on
15 this very important topic. Furthermore, I thank you for
16 recognizing the importance of ensuring the quality of
17 representation for persons eligible for assigned counsel
18 in family law matters.

19 The New York State Bar Association has long
20 been involved in addressing issues related and affecting
21 families, children, and the law. The committees in the
22 sections in the association have prepared numerous
23 reports and proposals on these important issues which
24 have been adopted as policy of the association.

25 Two key reports recently approved by the
26 association relate to parenting representation and

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2 increasing assigned counsel rates. They will likely be
3 of interest and use to the commission and have been
4 submitted for the commission's consideration.

5 First, this past April the Association's House
6 of Delegates approved a report by the Association's
7 Committee on Families and the Law in support of state
8 funding and oversight of mandated parental representation
9 provided to indigent parents. The New York State
10 constitution guarantees the right to counsel to indigent
11 parents in matters involving fundamental liberty
12 interests in the parent-child relationship. Indeed,
13 high-quality representation is essential to protect
14 fundamental familial rights and interests. With reform
15 well underway in criminal defense, similarly intense
16 attention desperately needs to be focused on approving
17 parental representation. We believe that the importance
18 of the work of this Commission cannot be overstated in
19 this regard.

20 Second, again this past June the Association's
21 House of Delegates approved a report on the need to
22 increase assigned counsel rates in New York. The report
23 states that present hourly rates for assigned counsel,
24 which haven't been increased since I was president of the
25 New York County Lawyer's Association and we successfully
26 sued to increase those rates more than 14 years ago --

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2 JUDGE PETERS: Thank you for that.

3 MR. MILLER: -- must be amended to reflect
4 appropriate compensation consistent with the increases
5 that have occurred for the judiciary, elected district
6 attorneys, and compensation for assigned counsel in
7 federal criminal cases.

8 On August 15, 2018, our Committee on Families
9 and the Law submitted its response to the seven topics
10 that the commission asked to be addressed in its notice
11 of public hearing. I commend that response to the
12 commissions review. Today, the focus of my remarks deals
13 with one aspect of the response, the structural issues.
14 If the structural issues are not addressed, many of the
15 fundamental problems that hamper effective and
16 high-quality representation are likely to continue.
17 Without addressing the structural issues, the existence
18 of standards regarding representation of parents, which
19 include numerous issues more fully discussed in my
20 written testimony, will, at best, vary from jurisdiction
21 to jurisdiction and often will be almost nonexistent.

22 Even if adequate state funding is provided, the
23 need for a mechanism to ensure independent
24 representation, enforce standards, and monitor
25 performance remains an essential component of the
26 solution, if the quality and availability of parenting

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2 representation is truly going to improve statewide.

3 A structural approach to improving the system
4 would also recognize the existence of a statewide network
5 of providers of mandated representation for parents.

6 That recognition is likely to lead to meaningful
7 interaction and exchange of ideas which would benefit all
8 providers of legal services to parents, but most
9 particularly those in rural or smaller jurisdictions.

10 Certainly, the existence of a statewide structure would
11 provide a mechanism for conveying innovative approaches
12 to representation, training, and technology. There are a
13 number of examples of statewide entities that have
14 oversight roles regarding the delivery of legal services
15 in New York State's courts. The Office of Court
16 Administration provides this role for the attorney for
17 the child. It provides much of the funding, standard
18 development and implementation and oversight throughout
19 the state for lawyers who represent children in the
20 Family Court. The New York State Office of Indigent
21 Legal Services has been tasked with the oversight,
22 development of representation standards, and distribution
23 of state funding for indigent criminal defense services.

24 The Office of Indigent Legal Services has
25 already undertaken several steps to provide some
26 oversight to parental representation. As it has

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2 developed draft standards, standards modeled in large
3 measure what the New York State Bar Association's
4 standards for parental representation that were developed
5 by our Committee on mandated representation.

6 ILS has also begun to study, on a
7 county-by-county basis, a financial eligibility for
8 appointment of counsel for parents. While the State Bar
9 is not taking an official position at this time on the
10 precise state mechanism for oversight of parental
11 representation, ILS appears to be ideally suited for that
12 role.

13 In conclusion, the New York State Bar
14 Association and its Committee on Families on the Law, the
15 Committee on Children and the Law and the Committee on
16 Mandated Representation applaud the Commission on
17 addressing these most important issues.

18 The Association and its Committees look forward
19 to a continuing dialogue with the Commission and, again,
20 thank you for the opportunity to testify today on this
21 profoundly important matter.

22 JUDGE PETERS: Thank you, Mr. Miller. Thank
23 you for coming. I have a question and then I'll open it
24 up to the other panelists for questioning.

25 You did mention that the transfer children
26 program, the Office of Court Administration provides

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2 services to children, and that ILS has done a great job
3 in ensuring that we re-create a system that provides
4 appropriate criminal defense. You also mention you don't
5 really want to take a position on where we should go from
6 there.

7 Let me just ask you, do you think a third
8 agency should be created to address the issues concerning
9 parental visitation in Family Court, or shouldn't we take
10 a look at Indigent Legal Services as the focus for that
11 opportunity in the future?

12 MR. MILLER: Well, the Association hasn't taken
13 a position at this time. It seems to us that ILS is a
14 logical agency, they understand the standards, they
15 understand the issues involved. But until it is before
16 our Executive Committee and House of Delegates, it is not
17 policy via association. Thus far, our committees that
18 have jurisdiction in this area have indicated very
19 favorably towards the idea of ILS handling this.

20 JUDGE PETERS: Thank you.

21 Questions?

22 Thank you so much for coming. We appreciate
23 your opportunity to speak with us.

24 The next panel is Ms. Vega, Ms. Montauban, and
25 Ms. Becker. And if I pronounce anyone's name
26 incorrectly, I apologize.

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2 Good morning, Ms. Vega.

3 MS. VEGA: Yes, good morning.

4 JUDGE PETERS: We're here to listen.

5 MS. VEGA: Good morning, Judge Ruiz, Peters,
6 Roberts, and Professor Guggenheim. My name is Jeanette
7 Vega and I am the training director at Rise. Rise is the
8 organization that trains parents to write and speak about
9 their experiences with the child welfare system. It's
10 essential for parents to have legal representation from
11 the beginning of the child welfare case in order for us
12 to move forward and reunite with our children.

13 The testimony you will hear today is not just
14 from Jeanette Vega, it is from over 200 parents that have
15 worked with Rise and have given us input on this
16 particular topic. The effect child welfare had on me
17 will always stay on me while I work with this system for
18 reform and to highlight the parents' voice.

19 I am still traumatized by those horrible
20 moments that I thought I would just die without my own
21 son. I catch myself crying when I hear my babies crying
22 because when my son was in care, I could not stop his
23 crying or even my own at times. When I take my
24 3-year-old to school this year and he cries, I cry, and
25 it takes me back to that same story of not being able to
26 comfort my children.

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2 We can start helping other parents before they
3 face this traumatic experience of separation by having
4 more legal representation for parents facing the child
5 welfare system so that fewer children are removed.

6 I want to tell you about the importance of
7 legal representation in all phases of a child welfare
8 case, from the investigation phase when parents currently
9 have no right to an attorney at that point to the
10 pre-filing phase when many parents are pushed to settle
11 when they believe the case against them is unjust, so the
12 hearing that followed on quality legal representation can
13 determine if children can come back home or never
14 actually do.

15 Let me start from the beginning, the
16 investigation phase. I want to talk about the reality of
17 how investigations go and how unjust it actually feels
18 for parents when there is a call made to the state
19 central registry hotline, parents never know who calls in
20 these cases and what intent they call it with. Parents
21 never get a chance to confront their accusers in any way
22 in a child welfare case. An attorney should have access
23 to that individual who made the call to see what was
24 behind that call. If the parents had legal
25 representation from this phase of the child welfare
26 involvement, parents' rights can be protected from the

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2 start. This issue has been going on far too long.

3 Once parents enter the courtroom, the main
4 thing they feel is powerlessness. Our life experiences
5 have often made us feel powerless. Our experiences with
6 courts and other authorities like school and the police
7 have also made us feel powerless. When our children are
8 removed, we feel the ultimate powerlessness.

9 The court is a mutual place for us. It's a
10 place where we feel intense shame, stigma, anger, and
11 sadness. It's a place where we feel it's biased against
12 us parents. Parents do not understand the court process
13 or what all parties involved are. Remember, these people
14 are making decisions about families, and they do not even
15 know us.

16 Too many attorneys don't get any time with
17 parents at all. Five minutes before court to have a
18 brief discussion on what the attorney will say about my
19 family's situation. Other times, there's no time to prep
20 because the attorneys have too many cases and are jumping
21 from one case to the next case.

22 The first day I went to court felt so horrible
23 for me. I walked in, I was scared and confused, but it
24 took a long time for me to learn that my anger was making
25 the agency see me as someone who would solve problems
26 with violence and that made me think that they couldn't

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2 trust me with my own son. But that is what most parents
3 facing the child welfare system feel -- anger, rage,
4 fear, defeat -- as soon as they enter that courtroom.
5 When parents' attorneys have no time for us, then parents
6 are seen as just another case, just like a substance
7 abuse parents, Oh, here goes another angry parent, when
8 what most parents feel is that a piece of their heart has
9 been taken away, their children.

10 One of the most troubling things that play out
11 in court is when attorneys push parents to settling.
12 Sometimes our lawyers evaluate our case and decide that a
13 settlement is the best choice. When parents don't have a
14 full conversation with their lawyers about the decision,
15 they don't understand what's happening, and they sign
16 anyway because their attorney who they spoke to for five
17 minutes said that was the best decision at this point.

18 Lawyers should not only do for their clients
19 but help their clients understand the system so they can
20 do for themselves. Here's how funding lawyers to have
21 smaller caseloads may be effective and beneficial.
22 Parents get to a lot of cookie-cutter services at times,
23 and attorneys don't have time to talk to us about what
24 may be best for our family's needs.

25 So how do we create a system that parents don't
26 feel alone or blind-sided by the process? Getting

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quality attorneys a part of having quality service. When parents get quality attorneys, they have the opportunity to have a voice in their own family's decisions. Give parents a fighting chance against the child welfare system demands.

New York City has invested in more parent representation than almost anyplace else in this country, and many parents get not only lawyers but social workers and parent advocates through the institutional providers. That reform in New York City hasn't reached other parts of the state.

Imagine being a parent that has never faced the child welfare system before and you're being accused of being evil, bad, and your one sense of comfort is actually gone, your child. The one thing that a parent thought could never be taken away has been ripped away from you and put into care of strangers. How intrusive and violating is that feeling for us. How scary it is to know or not know where your children are or if they're even okay. All these feelings that no one ever thinks about, and they are real feelings , feelings that stay with us even after our children come home, even after therapy for years, that trauma will never go away.

When I was 19, my son was 2 and I lost my son to the child welfare system for three whole years. The

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2 day my son was removed, I was treated as a criminal. I
3 wasn't given a chance to explain myself. I wasn't asked
4 what happened. I was just thrown behind bars. It felt
5 like I was being seen like a monster. I felt alone and
6 scared and felt like everyone was just telling me what to
7 do, and my attorney was also just going through the
8 motions of the process. How I wish I had time to tell my
9 attorney who I was before the child welfare got involved,
10 maybe then he would have also felt as if he wasn't
11 representing a monster. He could have understood me and
12 my culture, my background, how I was a great mother
13 before that one incident ruined my life for three whole
14 years.

15 I have found my voice years after my son came
16 home. I joined a parent advocacy group where I felt I
17 can speak freely and not be judged. I also joined Rise
18 and I use the writing process to reflect on my
19 experiences and become an advocate of voice for all the
20 parents facing the choppy rivers. Attorneys can be part
21 of this voice exchange. Giving parents a chance to have
22 quality representation is not only justice, but it is
23 humane.

24 There is a big highlight on the borders and the
25 families being separated there, but the same trauma
26 affects all parents that have to face a removal or even

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the threat of a removal for not complying with what the system feels that your family may need.

Rise parents asks you to give parents a fighting chance with more representation for families so they can stay together and get assistance that they need. You may have the power to help all those thousands of parents that need your help.

Thank you so much for listening to a parent's perspective today.

JUDGE PETERS: Thank you. We may have some questions, but we want the rest of the panel to speak first. Thank you very much.

Ms. Montauban.

MS. MONTAUBAN: My name is Angeline Montauban and I am pleased to have the opportunity to come here to testify.

To my experience coming in contact with ACS, New York County Family Court, 18-B attorneys and foster care agencies, I have realized the entire system is a failure. I have been in and out of New York County Family Court since the year 2013 to 2018. My son was in foster care for six years. I have been a strong advocate for me and my son amidst a climate that was unkind to parents. I have been very vocal about my experience with the foster care system and my experience in New York

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2 County Family Court.

3 Since the purpose of this hearing is to address
4 the quality of mandated parental legal representation, I
5 will say that my representation was never of quality. I
6 was represented by 18-B attorney, who I have found to be
7 highly ineffective. As a concerned parent, I made it my
8 personal business to educate myself of the process and
9 learn that the system was set up for me to fail. The
10 system was naturally set up for parents and their
11 children to fail in Family Court, and I personally found
12 that to be the truth.

13 For the last six years while my son was in
14 foster care, I found that because I was intelligent and
15 educated and questioned and challenged the status quo,
16 reasons were fabricated to keep my son in foster care.
17 Reasons and orders that were never challenged by my
18 attorney. I know that the purpose of this hearing is to
19 look at the quality and effectiveness of parental legal
20 representation. I think it is more necessary to look at
21 the statistics and to question why 90 percent of parents
22 are losing in their fact finding and TPR cases. This is
23 a larger systemic failure. It is absolutely
24 counter-effective to look at a small segment of the
25 problem without looking at the bigger picture.

26 About six years ago, I realized ACS's power in

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Family Court and realized that ACS, as a city agency, ran and controlled the show in Family Court. Family Court are appointed by the mayor and the mayor controls the Administration of Children Services. It is popular knowledge that most judges are scared of ACS and most are concerned -- not concerned about meeting the best interest of children and families.

I will state that the 18-B parental representation is a 100 percent failure. In my personal opinion, 18-B attorneys, they lack the institutional knowledge and support to assist parents in Article 10 cases.

In my six years in Family Court, I have made numerous attempts not only to recuse New York County Family Court judges on my case, but to dismiss my attorneys who mostly view themselves as employees of the court system than advocates for the parents. Most parents who are subject to Article 10 cases are dissatisfied with their legal representation.

The truth of the matter is, most of the parents affected are set up for failure. This is a system that has survived under complete exploitation of parents and their children. Due to my advocacy and criticism of the system in place, a TPR was filed against me, and my son was kept in foster care for six years. It seemed that

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2 ACS was running the show and dictated what was happening
3 and what would be happening with my case. My attorneys
4 failed to effectively and aggressively represent me and
5 to advocate on my behalf in court.

6 I have heard wonderful things about Bronx
7 Defenders and Brooklyn Defenders, but, unfortunately, I
8 was not fortunate to be represented by a network. So my
9 goal is that 18-B attorneys should not be considered for
10 Article 10 cases. I think the lack of effective parental
11 representation is one of the main reason why my son was
12 kept in foster care for over six years.

13 Since I have mostly been in contact with 18-B
14 attorneys -- I am speaking from a first-person
15 perspective -- the system in place is broken. I don't
16 speak for myself but for the thousands of parents who
17 were wronged by their public defenders. I do believe in
18 a network model consisting of social workers, parent
19 advocates who can work to a social justice lengths.

20 Due to my contact with the foster care system
21 and my interaction with foster care agencies , I have
22 lost respect for social workers who, from my point of
23 view, act as agents of the system that oppresses children
24 and their families. I think we need to start thinking
25 about social justice-minded legal representation and
26 social justice-minded social workers. They are literally

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getting paid for doing nothing. There is no accountability. There is no review of their performance. There is not a parent survey or platform for parents to address serious violations. Matter of fact, I have found that Family Court judges encourage these attorneys to go on with the natural flow of things.

My entire experience in Family Court can be summed up in one sentence: An orchestrated attempt by both the judge and my 18-B attorney to silence me.

I hope this is not another hearing set up because every ten years this committee must hold hearings to show that they are taking steps to improve parent legal representation. I hope this is not just another show.

I do want to thank the parents for their silent outcry in and out of Family Court.

We need real tangible changes and real results. The improvement should be measurable and the attorney representing families should be held accountable. If we can hold doctors and teachers accountable, we should be able to hold 18-B attorneys accountable. But most importantly, I hope the culture of fear can be addressed and dealt with because I have wondered if my attorneys have simply been afraid of challenging the status quo.

In an environment where all agents are looking

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2 out for their best interest, the interest of children and
3 their families are ignored. I think it is important for
4 parents' wishes and voices to be heard in Family Court
5 because we have been largely ignored. We cannot attempt
6 to fix parental legal representation unit without looking
7 at the entire system as a whole.

8 Thank you, again, for this opportunity.

9 In ways I think we can begin to improve the
10 system is by providing parent surveys so parents can
11 survey. That is something that does not exist. Also,
12 more supervision of 18-B attorneys.

13 JUDGE PETERS: Thank you so much. I thank you
14 for coming here today and speaking candidly to us.

15 Before I go to the next speaker, I can tell you
16 that this commission does have a parent survey and an
17 attorney survey in which all parents can complete a form
18 about how their representation has gone and concerns they
19 have. Thanks to Angela Burton over there who has created
20 it. It's online. If you want to speak with Angela and
21 find out how to access it at the end of the hearing,
22 we'll be happy to do that. Yes, we are concerned about
23 what parents are saying. This commission intends to
24 listen to them. Thank you for being one of the people
25 we've had the opportunity to listen to today.

26 (Continued on the next page.)

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2 MS. BECKER: Good morning, Judge Ruiz, Judge
3 Roberts, Judge Peters and Professor Guggenheim. My
4 name is Caitlin Becker. I'm the managing director of
5 social work at the Bronx Defenders. I oversee an
6 interdisciplinary team of parent advocates and social
7 workers working with attorneys representing parents in
8 family court. I thank the commission for this
9 important work, and I am honored to be offering
10 testimony today following the real experts, Jeannette
11 and Angeline. I have had the privilege of hearing
12 stories like theirs everyday for the past seven years.
13 The firsthand experience of parents and children whose
14 lives have been profoundly impacted by this system's
15 intervention must remain at the center of any reform
16 effort.

17 Our written testimony, and that of many
18 others makes the argument that social workers and
19 parent advocates on a defense team are critical to
20 robust parental representation. We provide examples of
21 cases where social workers and parent advocates working
22 with attorneys made the difference in keeping families
23 together or safely bringing children home. I join our
24 colleagues across the state in recommending a system
25 for all attorneys, whether institutional providers,
26 assigned panel attorneys, or contract attorneys to have

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2 seamless access to social workers and parent advocates
3 as part of their defense team from the earliest moments
4 in the case. I hope to address the question of what
5 makes social workers and parent advocates on a defense
6 team different than their social work colleagues in the
7 child protective system.

8 A question was raised in the hearing in
9 Rochester. If we lowered child protective case worker
10 caseload, or trained them differently, or required a
11 masters in social work, could they do the work that our
12 parent advocates and social workers do on behalf of
13 parents?

14 The administration for Children Services has
15 in fact made great efforts to lower case loads across
16 the system. They have a number of well-trained masters
17 level social workers working with parents and families.
18 But even if a case worker had just one case and years
19 of training, he or she could not replace a parent
20 advocate or a social worker who is part of the defense
21 team. We have a fundamentally different role. We are
22 accountable, first and foremost, to the parents that we
23 serve. Our collaboration with attorneys makes parent
24 defense stronger for the families that we represent.

25 While case workers are required to make
26 efforts that are considered reasonable under the law,

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2 parent advocates and social workers, members of a legal
3 team that owe a duty of loyalty and are accountable to
4 the parents are trained and motivated to go well beyond
5 reasonable efforts.

6 When the parent is your client and directing
7 your representation, handing over a referral, or making
8 a phone call, or leaving a voicemail is simply not
9 sufficient, especially for parents who are experiencing
10 the deep despair that I've borne witness to and that
11 Jeannette and Angeline described today, countless times
12 over the years.

13 Jeannette and Angeline spoke about the fear,
14 the anger, the rage, the defeat that parents feel as
15 they navigate the system. The expression of that fear,
16 that rage, that those feelings of despair to a case
17 worker has implications for how their case will unfold
18 and whether they will ever get their children back.
19 What parents express to case workers, however
20 well-trained and well-intentioned those case workers
21 are gets written down and becomes a part of the record
22 that is used against them in their case.

23 The case worker embodies a duality under the
24 law that makes it impossible for them to replace an
25 advocate who is part of the defense team. The case
26 worker is the witness against the parent, the one who

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2 might have taken her children away, and who gathered
3 evidence against her, and presented it to the court in
4 a petition. She is the person who documents all of the
5 parent's weaknesses, doubts, and worries in routine
6 reports to the court. That maybe her job, but it is an
7 impossible task to rebuild the trust that is broken
8 through this process.

9 Social workers and parent advocates who work
10 with attorneys can develop trust that will help a
11 parent identify the core issues that led them before
12 the court. We have the ability to help attorneys do
13 what Jeannette and Angeline mentioned is so critical,
14 to slow down, to listen, to fight for parents, even in
15 the midst of crushing caseloads and chaotic days.

16 Social workers and parent advocates, because
17 of their training and experience listen differently
18 than attorneys do. We're trained to identify the
19 trauma, spot the symptoms of depression or anxiety,
20 motivate a parent struggling with addiction to seek
21 support. That training and expertise is critical to
22 helping parents truly represent parents and families.

23 Defense social workers and parent advocates
24 also have a deep knowledge of the resources that are
25 available in the community and are trained to provide
26 individualized assessments, and identify services

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1 responsive to the needs that parents identify for
2 themselves and for their children. Jeannette talked
3 about the importance of elevating a parent's voice in
4 this process because the experience of appearing in
5 court often leaves them feeling powerless and silenced.
6

7 When advocates go where attorneys cannot go
8 to meetings convened by the child protective agency, we
9 are able to elevate a parent's voice. I've been at
10 meetings at foster care agencies with hundreds of
11 parents where there are ten or 12 or sometimes more
12 representatives from a foster care agency speaking
13 about my client and her children as though they are the
14 experts on her family. It is an intimidating space for
15 many parents to enter. The feeling of judgment that
16 Jeannette described extends well beyond the courtroom
17 and into these agencies where life-changing decisions
18 about families are made.

19 In these meetings parents often feel alone
20 and misunderstood. Social workers and parent advocates
21 can help a parent summon the courage to offer her own
22 expertise as a parent about what her children need.
23 And because we are on a legal team and aware what is
24 happening in the court, social workers and parent
25 advocates can work to advance the case, especially in
26 the permanency phase when court dates are infrequent

1 Proceedings

2 and the real work happens in the community. When
3 visits aren't happening, we can figure out why and work
4 with the agency and the parents to negotiate a
5 solution. When a parent has a challenging experience
6 with a case worker or a foster parent we can help get
7 to the bottom of that conflict and find a protective
8 way forward. When there are set backs in treatment, we
9 can identify alternative providers. When things are
10 going well, we can gather the information necessary to
11 move forward between court dates, to move from
12 supervised to unsupervised visits so that we can make
13 meaningful strides towards reunification when we are
14 back before the court. We have the opportunity to
15 re-image what parent defense looks like in New York
16 State.

17 Let's build a system where every parent has
18 access to a team of advocates with varied skill-sets
19 and life experience. A system that recognizes the deep
20 and profound loss that parents are facing when they
21 walk in the courtroom. A system that gives families
22 every opportunity to remain together and strong and
23 never walk through our doors again.

24 Thank you.

25 HON. PETERS: Thank you.

26 Questions?

1 Proceedings

2 HON. RUIZ: I want to thank all the panelist,
3 in particular Ms. Vega for your powerful testimony. I
4 have to say this is hard being a statement judge in the
5 family court to hear you talk about your experience and
6 the judges. That said, um, I did want to ask you
7 about, I think it was you, Ms. Vega, not sure
8 Ms. Montauban, made the point of the consideration that
9 you want the commission to consider appointing counsel
10 earlier in the process than the first appearance in
11 family court. I wondered if you could just tell me a
12 little more about how you think that would be
13 beneficial.

14 MS. VEGA: After I did a little focus group
15 at work and spoke to parents who had the investigation
16 phase of a child welfare case and they felt so
17 defeated. You have people coming into your home and
18 they are so intrusive, they come in, tell you what they
19 are going to do, what you are going to do with your
20 family, and unless, you know, you are privileged and
21 have money to afford a private attorney, you don't get
22 that. Well, regular parents wouldn't get that
23 opportunity to have any kind of representation at that
24 point, and that is the most critical point of a child
25 welfare case, because before it goes to court, these
26 workers are investigating and, like, talking to people

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2 and just going within your community, talking to your
3 neighbors, your children's school, their doctors. It
4 is so intrusive and as a parent you don't know what you
5 can and cannot do at this point in time of a case, and
6 it is just frustrating that we cannot go to the court,
7 and say like this is happening, child welfare is
8 intruding in my life, and you cannot get assistance,
9 like I said, unless you can afford a private attorney.
10 So I think it is so important for attorneys to be part
11 of that phase because they can speak up for parents.
12 They can, they can be such limited removals from
13 children because attorneys can say what are the
14 allegations? How can we fix this before there is
15 removal? And there can be a conversation between our
16 attorneys and whoever made the call, or the ACS
17 investigator at that point to see what can be done
18 rather than have a removal.

19 Sometimes at that phase, if ACS, child
20 welfare system feels that there is a safety concern or
21 a risk of safety which drives me a little crazy, that
22 word risk of safety, because that is in case something
23 is going to happen to my child, they have the authority
24 to remove my child without me having any representation
25 at this point, and you have no say so. It is just like
26 they remove your kids and you figure it out in court

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2 and no one explains to you why your child was really
3 removed for exact reasons. It is always a safety issue
4 or safety risk, and parents don't understand that.
5 Most parents, they get child welfare cases come from
6 low income, poverty communities, and poverty is looked
7 at as neglect in the child welfare system. That is a
8 scary thing to think of that because you are poor you
9 might lose your children, or because you are black or
10 Spanish or Hispanic, you lose your children because of
11 the community or environment that you live in and we
12 have no one to defend us or speak up at this point.
13 And that is what starts these three to six year cases.
14 So we get representation at this point, we can
15 eliminate so much. Parents can get so much services
16 that are quality services that they need, they can go
17 within their communities with their attorney or their
18 team of advocates and social workers to say we can fix
19 this. There is no need for removal unless -- trust me,
20 I understand there are parents that hurt their children
21 and removals are necessary at times, but the majority
22 of parents love their children and never intentionally
23 hurt their children. And if we understand that from
24 the investigation phase of the case, and we have that
25 representation with parents, parents will feel powerful
26 enough to say this is the situation that my family is

1 Proceedings

2 facing, how can we fix it rather than having your child
3 removed for years and years and you're traumatized. It
4 is something you never get over. I mean, 15 years
5 later, and like I said, my three year old went to
6 school last weekend. The crying, it drives me crazy.
7 I don't know how to control the crying. When my oldest
8 was in foster care, so the school is like he has to go
9 to school and I'm like, no, he's crying, I'm going to
10 take him home. It is difficult for me as a parent to
11 let go and he is crying and not be able to comfort him.

12 So I think a lot of parents need this in this
13 investigation phase because of the protection that we
14 will give a lot of families and communities that are
15 not representative to their full power.

16 HON. PETERS: Thank you.

17 HON. RUIZ: Thank you.

18 MS. MONTAUBAN: If I may add on?

19 HON. RUIZ: Yes.

20 HON. PETERS: Sorry?

21 MS. MONTAUBAN: If I may add on?

22 HON. PETERS: I was going to ask you
23 questions. Maybe you can answer my question and add
24 on?

25 MS. MONTAUBAN: Would you like me to answer
26 Ms. Ruiz' question?

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2 HON. PETERS: Yes, go right ahead.

3 MS. MONTAUBAN: Just so I can add on in terms
4 of the process, once ACS comes into your life, they
5 have like 60 days to investigate, and in my approach to
6 seeing that, they are literally prosecuting you. They
7 are coming into your life, they are finding reasons why
8 they are in your life. They are finding reasons why
9 they should keep your child in foster care basically.
10 There are -- we have to undergo, like, child safety
11 conference, and I was told during that conference, that
12 is when they are making decision whether or not they
13 are going to remove our children from a custody, so
14 they are making very pivotal decisions even before the
15 case, you know, goes into family court. They are
16 making a lot of decisions about us and I think it is
17 necessary for us to have an attorney at the beginning
18 of that process. Like I said before, they are
19 literally prosecuting us.

20 In my experience, the reason why they took my
21 child, they had a reason for taking my child into
22 foster care. It took them about two years to start the
23 fact finding process. By the fact-finding process, I
24 mean it was not even about the reason why they took my
25 child in the first place. The fact-finding process was
26 dealing with other reasons that they fabricated. So I

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2 think it is very important for us to be protected from
3 the beginning, because I felt like these people coming
4 into my life was trying to dig up dirt on me for 60
5 days basically. They were aggressively trying to find
6 reasons, one, why are we going to take her child, and
7 what reasons can we fabricate to keep her child in
8 foster care.

9 HON. PETERS: Thank you.

10 MS. MONTAUBAN: Yeah.

11 HON. PETERS: You mentioned when you
12 testified --

13 MS. MONTAUBAN: Yes.

14 HON. PETERS: -- that when you had your case
15 in court you were represented by an 18B attorney.

16 MS. MONTAUBAN: Yes.

17 HON. PETERS: Who you described to us as
18 ineffective.

19 MS. MONTAUBAN: Yes.

20 HON. PETERS: Lacking institutional
21 knowledge.

22 MS. MONTAUBAN: Yes.

23 HON. PETERS: Can you explain to me first
24 whether the attorney was available when you wanted to
25 call him or her to talk about your case?

26 MS. MONTAUBAN: Um, well, let me just say

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2 I've had not just one 18B attorney. One was dismissed,
3 so I've had multiple 18B attorneys. I'm not going to
4 go into names.

5 HON. PETERS: I'm not asking names.

6 MS. MONTAUBAN: Yeah, because one was better
7 than the other, so I want to be fair. So to -- sorry,
8 your question?

9 HON. PETERS: My question was, when you
10 wanted to communicate with the attorney concerning your
11 case, were they available either by phone or for a
12 meeting?

13 MS. MONTAUBAN: Most of the times we didn't
14 have their phone numbers. So if I needed to
15 communicate with her, it would basically be through
16 e-mails. I don't think they give the phone numbers or
17 their cellphone numbers to any of the parents. It
18 would be through e-mail, and then most of the times the
19 parents would basically talk with them before the case
20 five or ten minutes before the case.

21 HON. PETERS: So if you e-mailed your
22 attorney, did you get a response?

23 MS. MONTAUBAN: Um, many times I would get a
24 response, but maybe the response is that, not the
25 response I felt I was entitled to, yeah.

26 HON. PETERS: And you mentioned that from

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2 your prospective 18B attorneys lack institutional
3 knowledge; can you tell me what you mean by that?

4 MS. MONTAUBAN: By that I mean we have other
5 networks like Bronx Defenders, Brooklyn Defenders.
6 They have a team, like Ms. Caitlin stated, of social
7 workers, parent advocates. I mean, they've been doing
8 it for years, basically, and they understand the system
9 in and out, and I just feel, in my opinion, a lot of
10 the times the 18B's attorneys, maybe they are not going
11 through the proper professional development, the proper
12 workshops, or the proper training, and some instances I
13 felt I knew a little more about how the process should
14 work and I would myself offer suggestions to them. I
15 just feel, in my opinion, because they are not part of
16 that network they just, maybe they might just be a
17 family court attorney, but just because you are a
18 family attorney does not mean you are well-knowledged
19 about Article 10 cases which is a different kind of
20 case. They are different, you know. I could be an
21 attorney specializing on divorce, now suddenly I'm
22 assigned Article 10 case and I'm not sure how to move
23 forward with that because that is not my area of
24 specialty. And I just feel a lot of times there is
25 that going on.

26 HON. PETERS: Thank you.

1 Proceedings

2 MS. MONTAUBAN: Okay. If that makes any
3 sense.

4 HON. PETERS: It makes a lot of sense. Thank
5 you so much. Appreciate it.

6 MS. MONTAUBAN: I feel they need to have
7 specialty in dealing with Article 10 cases.

8 PROF. GUGGENHEIM: I would like to follow up,
9 also ask Ms. Vega a question, but staying with the two
10 of you, Ms. Vega, it wasn't made clear, but your lawyer
11 or lawyers were institutional providers?

12 MS. VEGA: No, I had also an 18B attorney.

13 PROF. GUGGENHEIM: Now, during the many years
14 that you were involved with the court system, did you
15 go to conferences with the agencies that were working
16 with you?

17 MS. VEGA: Yes. That is actually what I was
18 going to include in her comment, that the importance
19 and difference in 18B's versus the international
20 lawyers is that our advocates and social workers are
21 allowed to attend the family in conference, safety
22 conferences in foster care agencies.

23 PROF. GUGGENHEIM: Let me ask a couple of
24 specific questions.

25 Did you attend conferences over the course of
26 your case?

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2 MS. VEGA: Yes.

3 PROF. GUGGENHEIM: How many would you say?

4 MS. VEGA: Every six months we had a family
5 team conference, and in between we would have planning
6 conferences.7 PROF. GUGGENHEIM: How many would that be,
8 approximately?

9 MS. VEGA: In a year, I would say --

10 PROF. GUGGENHEIM: Not in a year. The entire
11 time?12 MS. VEGA: The case, about 12 to 15
13 conferences I would say I had within my three years.

14 PROF. GUGGENHEIM: Who attended them?

15 MS. VEGA: Just me. I was all alone. At
16 that point, there was no such thing as advocates.17 PROF. GUGGENHEIM: Who, if anyone, planned
18 what you would say or do at the conferences?19 MS. VEGA: No one. I usually had no voice or
20 nothing I was allowed to say. The agency would tell me
21 what I was going to do, and have me sign-off on a
22 service plan, and that is what it was, at that point.23 PROF. GUGGENHEIM: Same question to you,
24 Ms. Montauban?25 MS. MONTAUBAN: Like I said, I had an 18B
26 attorney. I didn't have a social worker.

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2 PROF. GUGGENHEIM: Advocate?

3 MS. MONTAUBAN: Yes.

4 PROF. GUGGENHEIM: How many conferences did
5 you have?

6 MS. MONTAUBAN: About twelve to 18
7 conferences.

8 PROF. GUGGENHEIM: How many times did you
9 attend with a professional working with you at your
10 side?

11 MS. MONTAUBAN: Most of the time, I would say
12 a hundred percent of the times I attended by myself.

13 PROF. GUGGENHEIM: How many times did someone
14 consult with you about what to say, what to do, what to
15 seek?

16 MS. MONTAUBAN: Never.

17 PROF. GUGGENHEIM: Ms. Becker?

18 MS. BECKER: Yes.

19 PROF. GUGGENHEIM: Do you have a reaction to
20 that?

21 MS. BECKER: As Judge Ruiz said, it is very
22 disheartening to hear about the experience Ms. Vega and
23 Ms. Montauban described about their being alone, and we
24 have a team of 19 parent advocates and social workers
25 at Bronx Defenders who attended last year almost a
26 thousand conferences with parents, what Jeannette and

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2 Angeline describe is not a typical 12 to 18 to 20
3 conferences over the years in one case.

4 We also have the opportunity to do some early
5 defense and early advocacy for parents during the
6 investigation stage, and we have found exactly what
7 Jeannette describes, that it is oftentimes during the
8 investigation stage, parents are afraid to share
9 information, are afraid to say what is really going on,
10 and when they have the benefit of an advocate with them
11 and a lawyer advising them, we're able to often clear
12 up misinformation, develop safety plans, get family and
13 friends in the community involved to wrap around and
14 support a family and allow them to remain together. It
15 makes a remarkable difference, and I hope that that is
16 what the commission will consider going forward.

17 HON. PETERS: Thank you.

18 Any questions?

19 PROF. GUGGENHEIM: Your written testimony
20 goes into more things than you do than attend
21 conferences?

22 MS. BECKER: Sure.

23 PROF. GUGGENHEIM: With your clients?

24 MS. BECKER: Yes.

25 PROF. GUGGENHEIM: Um, you've been to schools
26 to participate IEP in these meetings?

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2 MS. BECKER: Yes. We are sort of everywhere
3 with our clients and the parents that we represent at
4 school meetings, IEP meetings, home visits, meetings at
5 the agency in court because of the terror that parents
6 experience walking into the courtroom. Sometimes it is
7 about having a parent advocate or a social worker there
8 to insure a parent's voice is heard, to insure they
9 understand what is going on to have the meetings with
10 lawyers. So the work we do in the community extends
11 far beyond attending conferences. I think Jeannette
12 mentioned the cookie-cutter services that I think we
13 are all well aware of. Our approach is different and
14 we sit with parents and ask them what do they think
15 they need, what do they think their family needs, and
16 it is often advocacy with shelter, or getting a public
17 assistance case back on, or getting the children the
18 services that will really address the needs that they
19 have.

20 PROF. GUGGENHEIM: Thank you.

21 HON. PETERS: Thank you.

22 Thank you all very much.

23 As the next panel approaches, not as a panel,
24 I'm sorry, Mr. Sputz, I would like to note and express
25 my appreciation Ms. -- one of our commissioners, raise
26 your hand, for being with us today. Thank you so much.

1 Proceedings

2 And Ms. Lindau, also a commissioner, thank you so much.

3 Mr. Sputz, good morning. Did I say that
4 correctly?

5 MR. SPUTZ: Yes, good morning.

6 Good morning Chair Peters, and members of the
7 commission, parental legal representation, Judge Ruiz,
8 Judge Roberts, Professor Guggenheim. I'm Alan Sputz,
9 Deputy Commissioner of the Division of Family Court
10 Legal Services within the New York City Administration
11 for Children Services, ACS.

12 Thank you for this opportunity to be part of
13 the commission's hearing on the important topic of
14 parental/legal representation.

15 ACS is the local Department of Social
16 Services that oversees the child welfare, juvenile
17 justice and early care and education services in New
18 York City. Within ACS, Division of Family Court Legal
19 Services, (FCLS) is responsible for representing ACS in
20 child neglect and abuse cases, permanency hearings,
21 juvenile delinquency hearings and other child welfare
22 proceedings in the New York City Family Courts.

23 HON. PETERS: A little louder for me.

24 MR. SPUTZ: Sure.

25 HON. PETERS: Thank you.

26 MR. SPUTZ: FCLS attorneys work

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2 collaboratively with Child Protective Specialist, (CPS)
3 of the Division of Child Protection, (DCP) foster care
4 agency case planners, and other child welfare
5 stakeholders to further the agency's mission on behalf
6 of children, youth and families. Attorneys provide
7 legal representation and consultation to CPS and foster
8 care agency staff, and FCLS's Central units support the
9 work of the division by providing training for
10 attorneys and social work staff on Family Court
11 practice; offering administrative, technology, and
12 technical support; and collaborating with other ACS
13 divisions in external stakeholders.

14 In addition to providing strong in-court
15 advocacy, FCLS aims to work collaboratively with its
16 child welfare partners, including the attorneys who
17 represent parents in family court proceedings, to
18 achieve the larger agency goals of safety, permanency
19 and well-being for each child and family served at ACS.

20 ACS' testimony to the commission reflects our
21 deep experience working within the New York City Family
22 Court system. We have worked closely on a daily basis
23 with attorneys within the institutional providers'
24 offices, as well as members of the assigned counsel
25 panel. Overall, the expert collaboration of these
26 practitioners on individual cases expedites results

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2 that lead to quicker permanency outcomes for children.
3 In particular, institutional provider model lends
4 itself to providing broader and more significant
5 wraparound services due to the organizational
6 structure, holistic practice model, and availability of
7 case supports. ACS' written testimony, we detail
8 examples of the collaboration that serves to enhance
9 case outcomes, and note that the work is strengthened
10 when assigned counsel also have access to social
11 workers.

12 These examples include referrals for
13 services, gathering documents, and assisting parents to
14 obtain stable housing, locating resources for placement
15 and visiting, participating in permanency planning
16 conferences, obtaining documentation from service
17 providers, helping prepare parents as witnesses in
18 court, ease of communication between social workers and
19 ACS foster care agency staff, collaboration to expedite
20 productively utilized court appearances, assistance in
21 minimizing trauma, if necessary, when there are in
22 court removals with families, information sharing prior
23 to motion practice or filing of petitions.

24 Additionally, ACS routinely participates
25 inter-agency workgroups and conferences with
26 institutional providers and assigned counsel, members

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2 of the assigned counsel panel, including committees
3 that discuss issues such as mental health, substance
4 abuse, domestic violence, medical consent, legislation
5 to benefit children, and ACS policy formation regarding
6 visitation and permanency. Group discussions often
7 result in new projects or systemic initiatives that we
8 believe benefit children and families.

9 While there are many strengths within the
10 existing New York City system, ACS has a few
11 recommendations for areas of further opportunity to
12 support this work.

13 One, expansion of successful models for high
14 quality representation. ACS supports a full continuum
15 of access to counsel to make sure that parents' voices
16 are well-represented in the system, and that parents
17 receive high quality, professional representation in
18 family court matters on individual cases, as well as to
19 systemically enhance the safety of children in support
20 for families within New York City.

21 In consultation with other counties, the
22 Commission should explore expansion of the existing New
23 York City models, institutional provider models to
24 increase the availability of attorneys and related
25 wraparound supports when cases are filed in family
26 court.

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2 Two, social worker support for attorney.
3 Institutional provider models in which institutional
4 providers social workers team with the attorneys to
5 provide holistic representation for the client, works
6 to ensure highly effective assistance to the parent,
7 optimal communication with ACS social work staff, and
8 the sharing of comprehensive and complete information
9 among the parties and the Court. When assigned counsel
10 from the panel engages the support of a social worker
11 paid for by the Court under the County Law, the results
12 are similar.

13 ACS encourages the Office of Court
14 Administration to seek to expand the pool of social
15 workers who are available to be appointed by the Court
16 pursuant to the County Law to assist assigned counsel
17 in representing a parent.

18 Three, joint trainings for practitioners.

19 ACS often shares training opportunities
20 within our family court -- with our family court
21 colleagues on important topics like immigration issues,
22 permanency, medication and housing.

23 We believe enhancing the expertise of
24 attorneys across the Family Court system is beneficial
25 to the system as a whole, and we encourage all
26 stakeholders to consider additional opportunities to

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2 strengthen training and knowledge-sharing.

3 Four, timely access to counsel.

4 Early discussions among counsel produce
5 benefits such as identifying potential family
6 resources, formulating feasible visiting arrangements,
7 and enhancing productive outcomes of first court
8 appearance so that initial release or replacement
9 orders are based on full and accurate information.

10 We urge the Commission to consider whether
11 changes are needed to the confidentiality provisions of
12 the Social Services Law or Court Rules that would allow
13 the sharing of certain information about newly-filed
14 cases with appropriate institutional providers and/or
15 assigned counsel on the day of filing, so that counsel
16 that expect to be appointed to represent respondents
17 may have meaningful and productive discussions with
18 their intended clients prior to the first court
19 appearance.

20 Thank you, again for this opportunity to
21 discussing quality representation for parents in family
22 court, the availability of institutional providers, and
23 assigned counsel to represent parents in family court
24 produces measurable benefits for the children and
25 families we all serve. We appreciate the Commission's
26 review of this important topic, and we look forward to

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2 ongoing collaboration with the Commission and with our
3 partners in this work.

4 HON. PETERS: Thank you.

5 Questions, judge?

6 HON. ROBERTS: Yes. Could you expand upon
7 what you meant when you were talking about the
8 confidentiality laws and what law is it, and how would
9 you want to see it expanded?

10 MR. SPUTZ: Sure. I believe it falls within
11 the Social Services Law 422. Probably outside of the
12 Commission, I could provide further clarification
13 afterward. But essentially, ACS is limited in sharing
14 information with other individuals about the substance
15 of a case before an attorney is appointed. Once the
16 attorney is appointed by the court to represent a
17 parent, then we can share the confidential information
18 about the case. And so, my -- our experience has been
19 that intake in family court in New York City can be a
20 sort of hectic environment in trying to file the cases
21 that CPS are bringing, and parents' attorneys are ready
22 to represent parents, but we can't speak to the parents
23 until they are actually appointed by the court, the
24 attorneys until they are actually appointed by the
25 court about the cases, and so we think that if there is
26 a way to expand when ACS can provide that information

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2 on a day we know we're going to be filing the case with
3 respect to a parent, and we're in family court, that we
4 can share the information.

5 HON. PETERS: You mentioned getting counsel
6 earlier. I assume you heard the testimony of the
7 parents who spoke earlier.

8 What is your position on having counsel
9 available to individuals before the filing of petition
10 so they can be provided legal advice as to how they
11 interact with ACS?

12 MR. SPUTZ: Sure. At ACS, obviously child
13 safety is paramount to us, and our ability to make an
14 early assessment of the safety of the child, and so --
15 and to quickly put in services to ameliorate the issues
16 that potentially exist. And so, we think that it is
17 important to do that. We think resources for attorneys
18 are limited. There is approximately 59,000 calls a
19 year to the state central registry. Of that,
20 approximately 60 to 64 percent at least between July
21 2017 and July 2018 were unfounded. So 30, little over
22 30 percent or so were founded, and of that a smaller
23 portion or actually resulted in a legal intervention in
24 family court. So we wouldn't want to create a system
25 that inhibits our ability to make a quick assessment
26 that overcomplicates the system where a large portion

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2 of the protective investigations are able to be
3 resolved without legal intervention, and to avoid
4 unnecessary litigation in the family court where the
5 volume has over the years increased where there is
6 potential for ACS lawyers to be seeking, you know,
7 court orders to orders to produce a child or orders to
8 enter home.

9 HON. PETERS: I asked the question because
10 some of the written testimony we've been presented with
11 advises us that when experiments take place in which
12 parents have the opportunity to speak with an attorney
13 or social worker during an investigation by a child
14 protective agency, sometimes they begin to understand
15 what types of services are being offered and a
16 collaborative approach takes place so that services can
17 be provided to the parent without the final order
18 petition.

19 Have you seen that in your experience?

20 MR. SPUTZ: Sure. There is definitely, when
21 social workers, I think it was borne out in my
22 testimony too, that there has been advantages of social
23 workers on both sides I think from ACS and the parents
24 who can have effective engagement around the litany of
25 examples that we provided that that is beneficial.

26 HON. PETERS: Sorry for taking up time. One

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2 more quick question.

3 One of the things we've been looking at is
4 whether there should be a presumption of indigency in
5 Article 10 cases so that everyone gets an attorney when
6 a petition is filed in an Article 10 case, and then, if
7 the presumption is rebuttable and the parent has money
8 to hire an attorney that is fine, but at least the
9 process begins with an attorney available from day one.

10 How do you feel about that?

11 MR. SPUTZ: I think every parent should have
12 an attorney when ACS is filing a case. So --

13 HON. PETERS: Thank you.

14 Anything further?

15 PROF. GUGGENHEIM: So, thank you very much
16 for your remorse and your written testimony.

17 Am I correct by the time you came to work at
18 ACS there were already institutional providers in New
19 York?

20 MR. SPUTZ: Yes.

21 PROF. GUGGENHEIM: You are not familiar with
22 the system prior to that time?

23 (Transcript continues on the next page.)
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2 MR. SPUTZ: Well, I entered my work in the
3 Family Court in 1994 with the New York City Law
4 Department and their Family Court Division, and that was
5 my first job out of law school, and I remained with them
6 for almost 18 years. While I was not a party to an
7 Article 10 case, I certainly saw the progression of the
8 practice in Family Court when court parts were not, you
9 know, particularized to a type of practice. I would have
10 experienced with the system before the institutional
11 providers and post.

12 PROFESSOR GUGGENHEIM: I understand from your
13 testimony that you regard the quality of work that's
14 being done in the court system as good today.

15 MR. SPUTZ: Yes. I have experience from 1994
16 to today a strengthening of the level of practice in
17 Family Court.

18 PROFESSOR GUGGENHEIM: Beyond the improvements
19 of Family Court itself, can you say a word to us about
20 your experience with the institutional providers and
21 their influence on practice at the next level up from
22 court. Did they meet with you, did they influence, did
23 they talk about practice and what do you think of those?

24 MR. SPUTZ: Yes. We have work groups, regular
25 meetings at higher levels within the leadership of ACS
26 with institutional providers, assigned counsel, other

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2 stakeholders, practitioners within the child welfare
3 system.

4 With respect to the institutional providers,
5 it's been very beneficial to have a diversity of opinion,
6 the issues that we all face when ACS has to intersect a
7 family's life, and I think it's been very beneficial to
8 have that influence and, again, that diversity of thought
9 and opinion.

10 Out of that, Ms. Vega testified from Rise -- we
11 have incorporated within the ACS training Rise to come
12 and present to our newly hired attorneys in order to try
13 to infuse some of the views that parents experience when
14 they intersect the Family Court at a vulnerable time in
15 their life. I think a lot of those ideas come out of
16 collaboration with other practitioners and stakeholders
17 in the Family Court.

18 JUDGE PETERS: Thank you.

19 PROFESSOR GUGGENHEIM: I have one other
20 question, if I may. I don't know if you're familiar with
21 material that Brooklyn Defenders submitted as part of its
22 written testimony, but they included some charts that
23 your office produced that attempted to compare relative
24 outcomes of cases between parents represented by assigned
25 individual 18-B and the institutional providers. Do you
26 have any sense whether the institutional providers have

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2 reduced the number of days that children spend in foster
3 care compared to the other two?

4 MR. SPUTZ: I haven't reviewed what Brooklyn
5 Defenders submitted, so at this time I don't feel -- I
6 would need to review that before commenting.

7 JUDGE PETERS: Thank you.

8 JUDGE RUIZ: When you say "Rise," you mean Rise
9 to come and speak to the lawyers during their training
10 period? Do you also do that for the CPS workers?

11 MR. SPUTZ: I would have to confer with the
12 Division of Child Protection whether or not that's taking
13 place. Certainly something that we would encourage and
14 look at.

15 JUDGE RUIZ: I think it would be very, very
16 insightful for CPS workers.

17 JUDGE PETERS: Thank you. Thank you very much.

18 The next panel is Ms. Weir, Mr. Zimmerman.

19 Good morning. Thank you for being here and for
20 your provision of written testimony, as well as your
21 willingness to spend time with us this morning.

22 Is it Weir?

23 MS. WEIR: Yes.

24 JUDGE PETERS: Ms. Weir, you want to begin?

25 MS. WEIR: Certainly.

26 Good morning, Judge Ruiz, Judge Roberts, Judge

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Peters, and Professor Guggenheim. My name is Rhonda Weir. I have been practicing for 25 years, the last 17 of which as an assigned counsel 18-B attorney. I also am an attorney for children.

JUDGE PETERS: So you serve both roles?

MS. WEIR: Yes. In Kings County, the panel is administered by the Office of Attorneys For Children. You cannot be on the 18-B panel unless you are also an attorney for children.

Prior to that, I also worked as an institutional legal services, as a technology coordinator for Legal Services of New York. I worked in HIB Law Unit in Queens Legal Services where -- as a general practice on housing defenses and so on. I was an attorney for children at Rockland Legal Aid. My first employment was the housing unit at Mid Hudson Legal Services. I've been on both sides of this institutional and private practice. In the Family Court in Kings County, I've also participated in the stakeholders meetings, in the planning, in trying to keep the practice and the courthouse running more smoothly. To that end, enough about me.

In my summary of my testimony, I did mention to the panel that I did have a concern that there is no active 18-B attorney on the commission. We have a wealth

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2 of information. There are certainly disparities from
3 county to county, so I think there should be more than
4 one. Providing testimony is not equivalent to a seat at
5 the table. It just isn't. Certainly there are things
6 that happen in terms of making decisions where our input
7 would be invaluable.

8 With respect to -- my last word on that is that
9 I believe statewide we represent fully 50 percent of the
10 litigants in Family Court. We represent respondents, we
11 represent nonrespondents, we represent the interested
12 family that comes in, we represent siblings, adult
13 siblings that come in. That kind of legal service
14 provision, I think, missing from the commission is a
15 loss.

16 Funding and caseloads. There's no question,
17 I'm not going to beat this dead horse, we need a raise.
18 The raise has not happened in 14 years. We don't get
19 collar increases. Increases and the cost of doing
20 business has steadily gone up, the cost of rent, the cost
21 of our own personal expenses, housing. We have had a
22 nutrition off of the panel in Kings County. Part of it
23 is due to people retiring and the other part of it is
24 some of the younger members can't afford to stay. If
25 they have families, they have insurance to pay, they have
26 family to support, they have children to support, and it

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2 becomes untenable, unless you have a partner or
3 significant other who has health insurance that can cover
4 you, unless you have other ways in which you're getting
5 support from your family. It's at its breaking point.

6 Kings County Family Court is drowning in the
7 number of cases, the number of filings. Not just to
8 18-Bs. The judges, the court clerks, the court officers,
9 everyone. To a certain extent, the institutions are
10 protected because they are limited in the number of cases
11 they can take. They get a contract for X number of
12 cases. To the extent there are differences in our
13 practice and caseloads, they have a built-in protection.
14 We do not. We have to cover the courthouse in Kings
15 County. So that means the willfulness proceedings, the
16 custody proceedings, the violation proceedings, the
17 Article 10 proceedings, the juvenile delinquency
18 proceedings, and now that we have raised the age, those
19 as well. That is our job.

20 We're the backbone in Family Court .

21 We have, as a panel -- we're small business
22 owners, each and every one of us. In Kings County we're
23 diverse, very diverse, and we represent the people who
24 are coming in to the courthouse -- African-American,
25 Hispanic, Asian, Southeast Asian -- and we also are role
26 models for some of the people who are coming into court.

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2 Our job is to speak with our clients, to connect with our
3 clients; we do that well, and we do that every single
4 day.

5 We are also diverse in terms of our background.
6 We have district attorneys, ACS -- former ACS attorneys.
7 We have attorneys from former institutions, the
8 Children's Law Center. We have police officers, police
9 detectives. We have social workers. We have educators.
10 One of our attorneys, I know, was a former principal.
11 One of our attorneys is a former support magistrate. We
12 come with a wealth. We walk on to the panel fully grown.
13 We don't have to have a supervisor come in and supervise
14 us. We don't have to wait to consult with other people
15 about a particular strategy. We do consult with each
16 other because we do have camaraderie and we use each
17 other as sounding boards.

18 Going back for a second to the issue of
19 compensation. Now that the increases have gone in for
20 the experts, we have experienced an influx of
21 applications for social workers and psychologists and, I
22 believe, doctors as well. So that increase has helped to
23 attract new people to the expert panel. We need a
24 similar increase to the 18-B panel, which also, I think,
25 would attract more people to the panel and help to
26 relieve some of the heavy caseloads.

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2 As the Court is aware, we stay on a case from
3 beginning to end. The child support case that morphs
4 into a custody case that morphs into an Article 10 that
5 keeps going. I have clients that I have represented
6 through all proceedings in family court for a number of
7 years. We resolve one thing and then another issue pops
8 up and I resolve that, I work with the client to resolve
9 that as well.

10 I would like to say that timely access to
11 counsel is immensely critical, it's necessary. Also, the
12 ability to represent litigants in co-lateral proceedings.
13 That family asset, housing is a family asset, public
14 benefits are a family asset, medical insurance is a
15 family asset. If our clients cannot get assistance in
16 those other arenas, the loss of that asset can meld and
17 then result in other legal consequences in court in terms
18 of how long it takes for the children to be returned to
19 them, how long it takes for them to get safety.

20 With respect to access to experts, we have it.
21 I have about three social workers who are on my
22 quick-dial list. If they're not available, then I have a
23 list of social workers. Again, in Kings County we have a
24 list of experts that have already been vetted, that have
25 already been approved to be assigned pursuant to County
26 Law Section 22C. We call them, we do the order, we

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2 provide it to the judge.

3 I understand that in Upstate New York they have
4 some horrible situations. I have not experienced that in
5 Kings County, for the most part. If I walk in and say I
6 need a social worker or I need a medical expert or I need
7 a psychologist on my case, the order gets signed. I work
8 with that person collaboratively with the client.

9 In terms of whether I have a social worker on
10 every case, no. I have some clients tell me, I do not
11 want another person walking through my house. Fine, we
12 can work with that. For those clients that want that
13 person by their side, I have -- they are available to me,
14 and I get them, and we work collaboratively.

15 I did mention -- and I want to leave some time
16 for my associates here. Technology is absolutely
17 necessary to quality representation. Through it, I am
18 able to access the CLE trainings that I occasionally
19 can't make. We have lunchtime CLEs. Those are recorded,
20 they're uploaded, and I can watch them at my leisure.
21 The ability to use e-mail, text messaging, video
22 conferencing with my clients, now that it has
23 proliferated to every smart phone and every tablet, is
24 amazing. Even with some of my child clients, my older
25 teenage clients, they don't want to come into my office,
26 so I Skype with them. Similarly, with my adult clients.

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2 If they can't come in because of work obligations,
3 because they have to pick up the kids from school,
4 they've already done the court all day and they need to
5 go, so they can talk later, that's the way we get it
6 done. I think a face-to-face meeting is critical to
7 attorney-client relationship, but having these tools
8 available is absolutely necessary.

9 So I'd like to thank the panel.

10 JUDGE PETERS: Mr. Zimmerman, good morning.

11 MR. ZIMMERMAN: Good morning, your Honor. Good
12 morning, members of the commission, Justice Peters, Judge
13 Ruiz, Judge Roberts, Professor Guggenheim, and greetings
14 to everyone watching via live stream.

15 My name is Brian Zimmerman and today I
16 represent the Assigned Counsel Panel of Kings County,
17 but, as many of you know, my passion for Family Court is
18 long guided and directed my view that we should view what
19 we do, not from individual prowess from an organization,
20 but always through the lens of how we can help everyone
21 who voluntarily or involuntarily finds themselves in
22 Family Court.

23 It is why I co-wrote an article with the
24 Children's Law Center on the issue of the broken
25 adoptions that affect both parents and children. It's
26 why I am the 18-B representation in the crossover youth

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2 practice model and why I was on the advisory board of CFR
3 pre-inception. Because meaningful collaboration across
4 proverbial party lines can best serve all that find
5 themselves in need of representation. I too, like
6 Ms. Weir, worked at juvenile rights for 14 years. I
7 understand institutions from that time. One of the
8 reasons I left Legal Aid was because of the institutional
9 issues that I saw impacting representation there.

10 I start there to highlight that we in New York
11 City are fortunate to have a mixed delivery system or a
12 hybrid system to represent adults and children in Family
13 Court. Nonetheless, that system can be improved if we
14 recognize the value of what we have and make decisions,
15 and hopefully the commission will do so in their
16 recommendations, to enhance what we have. Most
17 critically, we should fully fund and resource both
18 systems in a manner that recognizes that all parents,
19 children, and families were part of nothing less than
20 that.

21 The truth is that the number of cases in all
22 areas of Family Court continue to go up, as Judge Ruiz
23 well knows, not down, and as such, more lawyers, not
24 less, are needed to properly handle the volume of cases.
25 Not a meeting goes by when I am not asked if we are
26 getting additional lawyers to staff the courts. This is

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2 particularly felt in the areas of custody and visitation
3 who, by the way, are also parents, they also deserve the
4 attention of this commission, domestic violence victims
5 also. As there are no statutory time frames on those
6 cases, we find that their cases tend to languish and
7 linger far too long. Many of those cases morph into
8 neglect cases. It is critical that we look at the system
9 as a whole.

10 To effectively ease the crisis requires the
11 panels to be able to recruit new attorneys and also to be
12 able to retain them. That is much more difficult when
13 there's only been two compensation increases in 32 years,
14 the last being in 2004. No other legal professional or
15 person in Family Court has not had a raise in that period
16 of time. Most providers have yearly increases. Some
17 defenders, say, the Federal Defenders, get yearly cost of
18 living and adjustments. This component provision, we
19 submit, is critical.

20 We should never let the courts enter into the
21 type of crisis that we are facing on a daily basis now
22 when attorneys are stretched to the limit by having to
23 cover -- and in Kings County -- 50 parts, with an ever
24 increasing number of cases because we don't have the
25 proper calibration in terms of the funding of our part of
26 the system. Why that is critical is attorneys in places

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2 like ACS, DA's office, Children's Providers, and other
3 institutions, also leave after a period of time and
4 expand their practice areas and diversify after a few
5 years. Some wish to become their own bosses, they
6 continue to work with the families. It is why most
7 assigned counsel previously worked at one of the
8 institutional offices. They want to move on, but they
9 want to stay in Family Court because that is their
10 choice, that is their passion.

11 Institutional providers also want some of their
12 attorneys to move on, as it helps with their budgets. As
13 I experienced myself at Legal Aid, they can hire from a
14 13-year attorney at Legal Aid -- for instance, they could
15 hire 1.5 to 2 attorneys to replace those new attorneys
16 when the senior attorneys move on. The original motto --
17 I don't want to say it's still true -- at Legal Aid is,
18 you left with your five-year pension and you could open
19 your own practice. It helps everyone's business motto to
20 the extent that we look at funding that way.

21 If we can have a system where people get
22 trained at institutions, which is part of a thing that
23 has not yet been addressed, is to get on the panel. It's
24 not a right to get on a panel, it's a privilege to get on
25 the panel. There's actually a fairly rigorous process
26 where you get interviewed with your knowledge of law.

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2 You could be a district attorney for five years, come in,
3 and say, I want to work in Family Court, but if you don't
4 understand Article 10, if you can't answer what a 1028
5 is, if you can't answer questions about extraordinary
6 circumstances on a custody case, guess what, you're not
7 getting on the panel because we don't want people who
8 think that being a Family Court lawyer is just a way to
9 make money. You have to be committed to what we do. So
10 there's a rigorous screening process to get on it.

11 The ideal people coming to us, and we often get
12 them, are attorneys from ACS, attorneys from the DA's
13 offices, attorneys from children's -- from Legal Aid, and
14 we would relish the institution of lawyers who -- our
15 experience is when they leave, it's not to come continue
16 representing parents there. We would want them to come,
17 and that's critical for a well-oiled system is that
18 attorneys get trained, they practice in institutions, and
19 then they expand their horizons, and we get good
20 attorneys, and that requires a proper calibration with
21 how our funding works.

22 That's why cost of living increases are
23 critical so we never find ourselves at a point where we
24 cannot say to an attorney you can afford increased rent,
25 You can afford to pay your student loans, you can afford
26 to pay your health insurance if you came to the panel.

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2 To attract attorneys to take on the responsibility if we
3 had a properly funded system.

4 Ms. Weir is correct that I believe the
5 administrative board of the courts recently increased,
6 they did increase the social worker rates, and we thank
7 the courts for that because that does help us alleviate
8 one of the issues that differentiate us.

9 We can go a step further on the issue of social
10 workers. If the commission recommends and says it's a
11 priority and says to its counties, to the city, that
12 there should be a social worker available at intake or on
13 a primary day in the Family Court, we could have someone
14 there that we don't have to go through the process of
15 getting a 7 to 22 order to sign or a Judicial Law 35G to
16 sign when we have a domestic violence victim that needs
17 immediate attention, we have a parent that needs
18 immediate referral for services. We do not have to have
19 that lag if this commission thinks about how we can
20 equalize it for a proper delivery of services.

21 I would encourage the commission to be thinking
22 about how we can make it available to everyone. Same
23 thing regarding ancillary services that we actually have
24 connections with the immigrant defense fund. We've been
25 trained by them, by Joe and Mackery of the New York State
26 Defender Association. We have access to get immigrant

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2 help on the day that we need it, if we need to. There's
3 no reason why we can't tighten those services up even
4 more by saying that whatever we need to do to be
5 practitioners, there should be no obstacles, there should
6 be no roadblocks, there should be no funding issue, no
7 requirements that we cannot have them available to us at
8 the moment we need them.

9 We are the backbone or the most critical piece
10 of delivery of services to Family Court because of every
11 kind of case we represent, from every letter A, AS, B, C,
12 D, E, F, G, L, N, NA, O, P, S, U, V, Z. Every one of
13 those cases, we are trained to handle and when there's a
14 crisis in the court. When someone conflicts off of a
15 case mid-trial, just before trial, who gets called, we
16 get called. We get called because we have 25 years of
17 experience doing every kind of case. We can cut through
18 to the heart of the case in probably five minutes or less
19 because of that experience and because of that wisdom.
20 That is a critical part of why we are the backbone of the
21 court system. Anything that can be done to enhance our
22 abilities is something that we want. CLEs, trainings --
23 I know the Bronx already has day trainings. The First
24 and Second Department. The Second Department. Not only
25 do we present our own trainings, but we sponsor trainings
26 of other organizations and we sponsor trainings that

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2 every single person is invited to go to. We don't divide
3 it by who's the institution. Children's Law Center,
4 Brooklyn Defenders, everyone is invited to a training
5 that is sponsored by the Appellate Division.

6 I think Ms. Weir touched on continuity of
7 representation, but I think I just want to put it in a
8 context. Sometimes when we're on a case -- and some
9 cases, unfortunately, take a long time to finish or they
10 have children born after and they just last a long time,
11 sometimes we are the only one -- in fact, we are almost
12 the only ones in the room that have the institutional
13 memory of the case because we do not change. There are
14 not usually change of attorneys on our cases. There's
15 changes on ACS, there's changes of attorneys of the
16 child, sometimes there's changes in the institutional
17 providers, sometimes not, but we all are almost always
18 the lasting person that knows everything about the case.
19 That is a critical piece that sometimes gets forgotten.

20 JUDGE PETERS: I want to make sure we have time
21 for all the questions we have for you. Are you finished?

22 MR. ZIMMERMAN: I will defer now.

23 JUDGE PETERS: Mr. Fisher.

24 MR. FISHER: Thank you. On behalf of the Bronx
25 Family Court Bar Association, which I am president, I bid
26 a good morning to you, Judge Peters, Judge Ruiz, Judge

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2 Roberts, and Professor Guggenheim, and those present via
3 video.

4 Aside from being assigned counsel for children
5 of parents, I'm a former assistant district attorney in
6 the Bronx, an agency attorney for the New York City
7 Police Department, a deputy director at Safe Horizons. I
8 am on the boards of three community-based organizations,
9 United Black Men of Queens, Center For Community
10 Advancement, and the Youth Defense Center. I say all
11 that to say that I'm not unlike many people who are on
12 the 18-B panels. We are active in our communities, we
13 work on boards. We are not just practicing lawyers. We
14 believe in our communities and we give back to our
15 communities, not just in our work but in our daily lives
16 and then how we reach out and reach back to the
17 community.

18 Frequently, we represent and face individuals
19 who are diagnosed or undiagnosed with disorders in the
20 diagnostic and statistical manual. You combine that with
21 people who are challenged with issues of sobriety,
22 illiteracy, immigration issues, poverty, and racism.

23 We step into their lives when they're fighting
24 for the most important things in their lives, their
25 children. We step into their lives when they're facing
26 issues not just with ACS and Family Court or with their

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2 former loved one. We step into their lives when they
3 have to juggle all kinds of problems and we have to deal
4 with them, not just in their legal issue that's before
5 the court that moment, but all those other issues. And
6 we deal with them and we talk to them and we help them
7 try to navigate through all those difficulties, and many
8 of those things, we're not compensated for since it's not
9 related to the case at hand, but we still do that. We
10 don't bill for it, but we do it. Why? Because that's
11 what our clients need.

12 Sometimes our clients don't tell us about the
13 situation, but when we learn, we question, How's the
14 housing, what's your immigration status. Hopefully, they
15 tell us, and if they do, we help them address them. Even
16 if we don't have a specialty in immigration, I have
17 colleagues who are immigration attorneys, I can call
18 them, I can ask their advice, and frequently that's what
19 we do.

20 We reach out to colleagues in different areas
21 of practice because to be on the panel in the First
22 Department, you have to be a practicing lawyer at least
23 for three years, you have to be a trial lawyer, you have
24 to be able to speak in front of people, and you have to
25 be able to relate to people. That's what our
26 administrator has told me when we talk about recruiting

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2 people and getting people onto the panel because, as we
3 stated before, we are at a crisis.

4 We're short on number of 18-B attorneys
5 throughout the city. Why? As was pointed out before:
6 compensation. Colleagues of mine have had to leave
7 because they can't afford the insurance anymore, they
8 don't have a significant other who has insurance, they
9 can't afford the rent on their rental space, because
10 we're all required to have our own rental space for our
11 clients to come meet us, and they do come meet us in our
12 offices. We also -- I'll speak for myself and many of my
13 colleagues -- will meet them at their home, especially
14 those that have many kids and can't drag them to our
15 office. We meet them at their facility. We meet them at
16 the McDonald's. We'll meet them wherever we have to meet
17 them to meet them. We don't let anything get in the way
18 of us representing our clients because they are the most
19 important things, and that's what we're here about today.

20 The life of an assigned counsel attorney is
21 unlike anybody else's that you'll hear from. On any
22 given day we can represent a parent on a child neglect
23 case, leave that courtroom, and go down the hall to deal
24 with the contested custody case. Leave that, go
25 downstairs, and go to a child support enforcement case.
26 Leave that and go up to a termination parental rights

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2 cases. Leave that and go handle a juvenile delinquency
3 case or a PINS case. Everything that can happen in a
4 courthouse in Family Court, we deal with and on a daily
5 basis.

6 We have multiple trials per day. Trials -- as
7 many of you are aware, a trial may start today and get
8 adjourned for three months, and we got to pick up where
9 we left off and keep it moving. We have to do that with
10 all the types of cases that we deal with, but 18-B
11 attorneys deal with it day in and day out.

12 What we do is what I call intellectual
13 gymnastics. We have to master every area of the Family
14 Court act. It's not like, Oh, Judge, well, I'm not
15 familiar with that. We have to be familiar with that to
16 be on the panel. If we can't get certified in it, we
17 don't handle that case. It's the goal of each
18 administrator to have each 18-B attorney certified in
19 everything.

20 I don't want to duplicate what everybody else
21 has said.

22 We are a very diverse group. We have to do all
23 that we do and have to carry heavy caseloads. I knew I
24 might be asked, so I checked in my file cabinet last
25 night, I have 101 cases that are active, that's just in
26 the file cabinet. It doesn't include cases for this week

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2 or cases I have on my desk that I'm working on, that's
3 just 101 that I have to get to. Just to give you the
4 idea of the volume we have to deal with in the Bronx.

5 We reflect a broader range of races, creeds,
6 languages spoken, colors, political and sexual
7 identities. We speak multiple languages. We have
8 multiple cultures that we come from. We are a very
9 diverse group. We reflect what our community looks like.

10 The attorneys who practice in Family Court are,
11 I'd say, the brightest attorneys in the profession
12 because we have to know so much in so many broad areas.
13 It's not like you're a commercial litigation attorney and
14 all you need to know is commercial lit and that's it. We
15 have to know everything in this and we have to know when
16 we don't know and when we can go on to others, especially
17 immigration, housing, what have you.

18 I'd be remiss not to say that the court
19 officers, the clerks, the support services in the
20 courthouse are the heartbeat of the courthouse. However,
21 the assigned counsel attorneys are the lifeblood. There
22 is no flow without us.

23 There's the 800- pound gorilla in the room that
24 my colleagues have touched upon, and that is that we're
25 grossly underpaid. It's not just impacted us, but it's
26 impacted on our clients. I'll just point out a few.

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2 One, the substandard attorney compensation narrows the
3 pool of qualified attorneys seeking inclusion into the
4 panel.

5 Two, parents will come to question systems
6 dedication to providing poor people with quality
7 representation when their lawyers are paid comparable
8 compensation as social workers. Not to degrade social
9 workers, but we had to do a whole lot more to become what
10 we are and to maintain who we are. Parents will question
11 the dedication of their attorney representing them when
12 they know their lawyer is getting paid peanuts. Parents
13 are forced to share their attorney with more people and
14 they fear the risk of getting their personal needs
15 delayed.

16 When any segment of an industry is diminished
17 in value, that diminishes everyone. Attorneys seeking to
18 leave their first Family Court employment are disinclined
19 to remain in the practice as assigned counsel or
20 otherwise.

21 Finally, in the court's opinion in Nicholson v
22 Scoppetta, 3 NY3d 357 in 2004, among other things the
23 Court recognized that parents' counsel were grossly
24 underpaid and overloaded with cases. At that time we
25 were being compensated at \$40 in court, 25 out. It was
26 then raised, although the court suggested at that time

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2 raising it to 90 or more per hour, it was raised to 75,
3 which it is now. I did some research and I saw that
4 United States -- the U.S. inflation calculator said that
5 in the 14 years the cost of living went up 33.4 percent.
6 Yet, our compensation has remained the same. That is a
7 misjustice, not only to the attorneys but to the people
8 who they represent.

9 Thank you.

10 JUDGE PETERS: Thank you.

11 Questions.

12 JUDGE ROBERTS: I have a question. From
13 reading your testimony, it is clear that compensation
14 needs to be raised. The question I also have that runs
15 through is the idea that you have these social workers
16 that are available. So the question I have for you and I
17 think you raised this, could you give me a sense of how
18 long it takes you to get a social worker? I know you
19 said you have them on speed dial, but you have to go to
20 court. I heard one of your colleagues' suggestion that
21 maybe someone should be available on an intake date. So
22 can you comment on whether or not you think an intake-day
23 social worker is necessary, and also we heard from parent
24 advocates that had these amazing stories to tell, and I
25 wonder if you see them fitting into your practice at all
26 and if so how.

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2 MS. WEIR: Absolutely. So in Kings County, on
3 our intake day we have four to five attorneys who are
4 there for the day, get paid for the day in order to do
5 intake. So we go from part to part and we get assigned.
6 If you have a social worker on the same schedule, or two,
7 in Kings County we might need two, at least, yes, that
8 would be incredibly helpful because they can assist with
9 vetting out, at the first instance, what can be done at
10 the moment with respect to social worker services and
11 whether they need to finance or continue for a period of
12 time. But absolutely. There would be no downside to
13 having a social worker available at intake.

14 JUDGE ROBERTS: In your current situation?

15 MS. WEIR: About 24 hours. The next court
16 date. I make two, three phone calls at most to find out
17 who is available and they call me back and say, Yes, I'm
18 available, or, No, I'm not. The two of the social
19 workers that I call regularly, I have the 722C order
20 already filled out, I just have to put the caption in it
21 and print it. So it's 24 hours. I have gotten nunc pro
22 tunc orders.

23 JUDGE RUIZ: My sense is, apart from the
24 increase in rate, there is perhaps thinking about having
25 supplemental. Having to sort of reenforce and really
26 supplement the legal services that you provide with, for

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example, social workers or perhaps some of the professionals, has there been any thought about how that would be structured, if these social workers, for example, report to the panel, accountability?

MR. ZIMMERMAN: I guess since I'm the one who raised it as an idea, maybe I have to address it.

I haven't thought about every aspect of it. It certainly is something that I don't know if Ms. Weinberger and Ms. Schliberger or Ms. Mathis are prepared to simply take on. There certainly needs to be -- we have to set up some guidelines about the utilization of a service such as that, because there are many, many people who come into court who are in crisis and who we need to figure out ways to prioritize which crisis is more.

Are we dealing with a person with a writ of habeas corpus?

Are we dealing with a woman who is bruised that we can send down to the Family Justice Center, but we are in court right now where we want to get things going right then and there?

Are we talking about the situation when we're negotiating with ACS to, if the parent goes into a program now -- in fact, without naming names on a case of yours because a client called me on a preexisting case, I

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2 got her into a drug treatment program that turned the
3 case around that day because she called me and we could
4 execute that. That is something we would have to work
5 out the guidelines so we're not just saying, Hand it off
6 to a social worker.

7 A lot of times the amount of time we spend
8 working on a case increases because we want to deal with
9 their problem. That's a critical part of an intake day,
10 is assessing what the issue is at that moment, and we
11 don't say, You only get five minutes because we have to
12 go somewhere else. We spend the time, that harms the
13 other judges, of course, because we're trying to do
14 proper representation. So a one-resource system allows
15 that.

16 I think we need to start with a set of
17 guidelines as to what an appropriate case at intake would
18 be. We need to probably develop an intake system that
19 would work with the administrators that could be part of
20 being on the panel that you have to agree to take some of
21 those cases. So I think it's completely doable. In my
22 opinion, it just takes the bill. Of course when the bill
23 is sent to the State or the City because some of those
24 cases, there's the division, as we know, about
25 compensation between juvenile cases, and so sometimes it
26 would be a juvenile case where we might need a social

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worker on a juvenile delinquency case. So I don't know if it's a split cost or how we could do that. So there's a lot of intricacies that I think we would have to work out.

(Continued on the next page.)

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2 HON. PETERS: You think it is doable, but the
3 technicalities need to be worked out.

4 MR. ZIMMERMAN: Yes.

5 HON. RUIZ: I have a question, because the
6 other thing that I heard consistently, and I certainly
7 appreciate in my position is the -- how many cases,
8 volume, handle cases in every single session from A
9 through Z and doing that, um, any consideration for
10 caseload when --

11 MR. ZIMMERMAN: I think I know Ms. Weir
12 mentioned it. I would join in that. I think caseload
13 caps is something I know in the Commissions' view of
14 what might need to occur, it should exist for everyone.
15 Caseload caps are critical. I've seen it in juvenile
16 rights, the kind of work they do since I left in,
17 during the crack epidemic. I had 155 cases. The
18 amount of things you can do if you only have 75 cases
19 increases. And we recognize that. So caseload caps
20 would be a significant gain for all parents, every
21 litigant in family court because, you know, as the
22 court knows, assigned counsel also can take private
23 cases. I myself don't treat a private case any
24 differently than I treat an assigned counsel case.
25 Can't speak for everyone. My view is what needs to be
26 done on that case for the next day or the next week,

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2 that is what takes priority.

3 HON. PETERS: Thank you.

4 MR. ZIMMERMAN: But --

5 PROF. GUGGENHEIM: So -- thank you very much
6 for your --7 MR. FISHER: One thing about what the social
8 worker is -- I think that has to be addressed is they
9 are mandated reporters if they are, they are at the
10 very initial stage, there is some conversations that
11 they really need not to be in unless there is going to
12 be some type of carve out or allowance that they are
13 not mandated to say what, when the client is telling
14 you what really happened, and it is not something that
15 ACS already knows about, that could be a problem.16 HON. PETERS: I think that is something you
17 have to work out in the practice.18 MR. FISHER: That maybe a bugaboo as far as
19 having them there at the very initial stage.

20 HON. PETERS: Professor.

21 PROF. GUGGENHEIM: Thank you for your
22 testimony, your passion. It never was brought to me as
23 vividly as today what it must feel like to be the only
24 professionals treated as you are who aren't given a
25 raise in a world where everybody else is, and I am
26 struggling at rates that are 14 years old that is

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1 beyond unacceptable, in my opinion.

2 Um, I have a question about each of your
3 practices.

4 How many of you have brought, sought an
5 emergency stay for an appeal in any of your cases in
6 the last year?
7

8 MS. WEIR: Um, two. Two, maybe three.

9 PROF. GUGGENHEIM: You went to the appellate
10 and saw --

11 MS. WEIR: Yeah -- no. I brought two in the
12 last year, and I was a part of another one. I have my
13 order to show cause to the Appellate Division
14 preformatted, ready to go.

15 PROF. GUGGENHEIM: Is that from a 1028
16 judgment?

17 MS. WEIR: No. That was from a custody
18 issue.

19 PROF. GUGGENHEIM: Anybody appeal on a 1028
20 decision in the last year?

21 MR. ZIMMERMAN: I have not had to.

22 PROF. GUGGENHEIM: You win them?

23 MR. ZIMMERMAN: I win them.

24 PROF. GUGGENHEIM: I want you.

25 MR. ZIMMERMAN: No, but part of that, part of
26 winning 1028's as we all know is utilizing 1028's at a

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2 time when you are going to win them. And that part of
3 client counseling, that is part of how you handle the
4 case, but I have gone, I have defended cases in the
5 Appellate Division when ACS is brought us to the
6 Appellate Division, and I've handled my own appeals, as
7 does Ms. Weir as well. On the appellate panel, that is
8 another thing, I don't think people understand about.
9 Statute requires if you prevail or you are the attorney
10 of the child you are suppose to file the case to the
11 Appellate Division. And most of us do, and many of us
12 are on both panels and many of the reporter decisions
13 are good case law is from assigned counsel panel,
14 attorneys doing those appeals.

15 PROF. GUGGENHEIM: Um, in all of your cases,
16 your clients have countless conferences, child safety
17 conferences, family team conferences.

18 In how many of them have you assured that a
19 professional working under your guidance appeared in
20 court?

21 MS. WEIR: If I have a social worker on the
22 case, social worker does in fact attend that.

23 PROF. GUGGENHEIM: How many over the last
24 year?

25 MS. WEIR: How many social workers have I had
26 assigned to Article 10 cases?

1 Proceedings

2 PROF. GUGGENHEIM: Article 10, family team
3 conferences, child safety conferences.

4 MS. WEIR: So, any time I have a social
5 worker on the case, social worker attends, or calls in
6 because I have had that situation where the social
7 worker has to be in court or somewhere else, but they
8 call in to participate on the family team conference.

9 PROF. GUGGENHEIM: And how many times?

10 MS. WEIR: How many times have -- I can't
11 give you that number, that --

12 PROF. GUGGENHEIM: Mr. Zimmerman?

13 MR. ZIMMERMAN: Likewise, I can't give you
14 that number, but the other question you asked earlier
15 in the way you are asking these questions is, do you
16 prepare a client for the child safety, for the family
17 team conference.

18 PROF. GUGGENHEIM: Indeed.

19 MR. ZIMMERMAN: Absolutely. First of all,
20 most of those cases are actually being litigated in the
21 permanency hearings, but to the extent that there are
22 issues that arise for the family treatment conferences,
23 absolutely you discuss with your client how to handle
24 those situations.

25 PROF. GUGGENHEIM: What percent of your cases
26 do you use a social worker, Ms. Weir?

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2 MS. WEIR: Of my Article 10 cases that I have
3 right now, probably about half of, social workers.

4 PROF. GUGGENHEIM: Mr. Fisher?

5 MR. FISHER: I would say less in my case. I
6 would say more like about 10, 15 percent.

7 PROF. GUGGENHEIM: Mr. Zimmerman?

8 MR. ZIMMERMAN: Probably about 15 percent, at
9 this point. But part of it is what the posture of the
10 case is and the needs of the case, because there are
11 limited resources in, and not every case even with an
12 institution has a social worker on it. So, I don't
13 know what their percentages are, but that is a part of
14 a lawyer's job is to assess what is necessary.

15 MS. WEIR: And I have had my clients, two of
16 them I have right now have said I don't want one.

17 HON. PETERS: You mentioned that earlier. I
18 have a quick question for the three of you.

19 One of the parents who testified talked about
20 the fact that they didn't have their lawyers telephone
21 number.

22 Do you provide an opportunity for your
23 clients to find you via telephone or e-mail you?

24 MS. WEIR: That is almost unheard of in Kings
25 County.

26 HON. PETERS: The answer is, yes, you do?

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2 MS. WEIR: My client has my office number
3 which rings to my cellphone, and they have my e-mail
4 and also text me.

5 MR. ZIMMERMAN: Generally, when you appear
6 you say I've given my client my business card on the
7 record, so that is not an issue, but even if when you
8 don't my business card has my cell phone number on it.
9 I sometimes use text or e-mail me because I might be
10 stuck in court. They can appreciate that.

11 HON. PETERS: Of course, I understand. I
12 want to find out if they can communicate with you?

13 MR. FISHER: My card has my address that they
14 go to my office, my phone number, fax, e-mail address.

15 HON. PETERS: Thank you. All three of you
16 talked about the need to increase, the awareness. I
17 can relate to that having begun a practice of law many
18 years ago and served in family court when I was paid
19 \$10 out of court and \$15 in court. I remember what it
20 was like to try to run a practice. A very challenging
21 thing back then, and I'm sure even more challenging
22 now. So I totally feel empathetic for the situation
23 you are confronting.

24 Do you have any suggestions as to whether we
25 should recommend an increase in the assigned counsel
26 rate across the board, or should individuals who are

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2 involved in Article 10 cases which are often the most
3 difficult and challenging of the work, do you get paid
4 more?

5 MS. WEIR: Um, across the board.

6 HON. PETERS: Across the board.

7 MR. ZIMMERMAN: No question, across the board
8 and I think anyone who represented someone on the
9 custody visitation/custody hearing might question which
10 is the most labor intensive.

11 HON. PETERS: I understand. Mr. Fisher?

12 MR. FISHER: Definitely across the board.
13 Every area has it's challenges. Some different than
14 others, but just by the nature of the beast and all the
15 challenges that we face everyday, I can't say that one
16 area isn't as challenging as the next.

17 HON. PETERS: We are going to take a five
18 minute recess, and then we will resume the testimony.

19 Thank you.

20 MS. WEIR: Thank you.

21 MR. ZIMMERMAN: Thank you.

22 (Whereupon, a short recess is taken.)

23 (Whereupon, the hearing proceedings
24 continue.)

25 HON. PETERS: Good afternoon. We'll follow
26 with the -- we will definitely accommodate each and

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2 every one of you. Ms. Burrell, Ms. Coles, Miss -- I
3 will say this wrong, Schreibersdorf.

4 MS. SHAPIRO: Schreibersdorf.

5 HON. PETERS: Thank you. Ms. Shapiro.

6 MS. SHAPIRO: That is me. This is
7 Ms. Schreibersdorf.

8 HON. PETERS: And Ms. Ketteringham.

9 MS. KETTERINGHAM: Yes.

10 HON. PETERS: Think that is it. Did I get
11 everybody? Who am I missing?

12 MS. BURRELL: Did you say Ms. Coles?

13 THE COURT: I did not. And Ms. Coles,
14 Ms. Coles and Ms. Newton.

15 MS. NEWTON: Yes.

16 HON. PETERS: A lot of names. So let's begin
17 with Ms. Burrell, if that is acceptable.

18 MS. BURRELL: We did have an order if that is
19 okay? We did have an order that we kind of came up
20 with, if that is okay?

21 Can we start with Ms. Coles?

22 HON. PETERS: We can do that. It might be a
23 little challenging for those of us that have your
24 testimony in order, but.

25 MS. BURRELL: I apologize.

26 HON. PETERS: Just give me -- let me be

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2 patient. I will be fine. Tell me how you would like
3 to do it because those of us who are here, including
4 the court reporters have a different order.

5 So if you could give it to me very slowly.

6 MS. BURRELL: We were going to start with
7 Ms. Newton.

8 HON. PETERS: Ms. Newton will be first.

9 MS. BURRELL: Then Ms. Coles.

10 HON. PETERS: Hold on. Just a moment.
11 Center for Family Representation.

12 MS. BURRELL: Correct.

13 HON. PETERS: Ms. Newton will be first.
14 Second was?

15 MS. BURRELL: Ms. Coles.

16 HON. PETERS: Litigation supervisor for the
17 same institution.

18 MS. BURRELL: Yes. Ms. Ketteringham.

19 HON. PETERS: Speak a little louder?

20 MS. BURRELL: Ms. Ketteringham.

21 HON. PETERS: Thank you. Ms. Ketteringham is
22 the managing director for the family offense practice
23 for the Bronx Defenders, correct?

24 MS. BURRELL: Yes. Then me, Michelle
25 Burrell.

26 HON. PETERS: Then Ms. Burrell, Neighborhood

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2 Defender Service of Harlem. And then?

3 MS. BURRELL: Lauren Shapiro.

4 HON. PETERS: Ms. Shapiro, family defense
5 practice. And?

6 MS. BURRELL: Lisa Schreibersdorf, I'm the
7 Executive Director.

8 HON. PETERS: Thank you.

9 Ms. Newton, good afternoon.

10 MS. NEWTON: Good afternoon, Honorable Ruiz,
11 Roberts, Peters, and Mr. Guggenheim.

12 My name is Hope Lissette Newton. I'm a
13 parent advocate with the Center for Family
14 Representation.

15 Before ACS took my children, I had a college
16 degree, a career in sports marketing and higher
17 education administration.

18 Knowledge of experience was required for my
19 job. It did not have value. Being investigated for
20 child abuse, having my children removed and reunified,
21 all the things that caused me shame and blame before I
22 came to CFR, they all had value. I am a survivor of
23 domestic violence. I am a single mother of three
24 children, two with special needs. I have experienced
25 the drama and trauma of navigating, family, housing and
26 criminal court, sometimes concurrently over a

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2 decade-long custody battle. Every court appearance,
3 every visit to the emergency room, every encounter with
4 teachers, therapists, every time I had to apply for
5 public benefits, every time I was triggered when I saw
6 a police officer in front of my home, it all had value.

7 My struggle and my pain are all valued by the
8 organization I now work with, CFR.

9 The experience I share with parents is what
10 helps me connect with them. From the first knock on
11 your door after 11 p.m. with an ACS worker
12 interrogating you in the presence of a police officer,
13 separating you from your children and question them in
14 a separate room. The surreal confusion of court and
15 the sheer terror of not knowing who I could trust as
16 you try to wrap your brain around what is happening.
17 That is what helps me connect with parents in a way
18 that lawyers, social workers, and case planners cannot.
19 But what makes me effective is not just our shared
20 experience, but the fact that I am armed with
21 information that I've learned at CFR.

22 We attend the same training as attorneys and
23 social workers, and I participate in individual and
24 group supervision. So I am equipped with information I
25 never had when my children were taken. I have
26 knowledge of the law, of ACS guidelines, of how court

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2 works. So this helps me when I am helping a parent
3 navigate or advocating for a parent. I am a unique
4 part of the team because of my personal experience, but
5 I have the same power that comes from information. It
6 is the combination of both our personal and
7 professional experience that make parent advocates
8 critical. I come on cases after a lawyer, social
9 worker have discussed the need for additional support
10 for a parent. Overwhelmed parents need support in
11 navigating multiple systems. It is not uncommon for
12 parent to engage in services, fulfill mandates to get
13 the public benefits while they have cases in more than
14 one court. I may come in a case because the parent is
15 having trouble believing they can trust the CFR team,
16 or they are having trouble following the teams advice.

17 Speaking from experience, it is very hard to
18 know who you can trust when you are going through a
19 child welfare case. Especially when the city took your
20 children.

21 Before meeting a parent, I review case notes.
22 We have a team meeting to discuss the case. I share my
23 thoughts and ask questions before I meet the client.
24 When I introduce myself to clients, I let them know
25 that I am a parent who has been where they are. I
26 inform them of my role, and I let them know they can

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2 get through this. I also ask them if they are
3 interested in working with me, a parent advocate as
4 part of their defense team. I feel it is critical to
5 let the parent decide whether to include me on the
6 team. It is rare that parents feel heard and it feels
7 like the system does not give them any choices. That
8 is certainly how I felt when it was my case, so I let
9 them decide.

10 Thank you for this opportunity.

11 HON. PETERS: Thank you. Ms. Coles.

12 MS. COLES: Yes. I'd like to thank the
13 commission for this opportunity.

14 HON. PETERS: Speak louder.

15 MS. COLES: I would like to thank the
16 Commission for this opportunity, and specifically like
17 to address the importance of parents having access to
18 counsel prior to the filing of a petition, as well as
19 social work support in that stage as well.

20 We would like to hopefully dispel what we
21 feel is a myth, that early access to counsel somehow
22 compromises child safety.

23 As I said, my name is Tehra Coles. I am
24 litigation supervisor at CFR. Been with CFR about
25 seven years representing parents in both Manhattan and
26 Queens, and prior to that I spent a year representing

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2 parents in Albany county in both child neglect, as well
3 as, custody and visitation family offense proceedings.

4 At CFR, we generally meet our clients on the
5 day the petition is filed. We meet with them as a
6 team, a social worker and an attorney. We call that
7 our intake day, and together we discuss with the parent
8 why they are there. What brought them to family court,
9 what is their understanding of the safety concerns that
10 ACS is raising. I also speak with the prosecuting
11 attorney from ACS to determine what they are going to
12 ask for, are they going to be seeking to remove our
13 client's child, are they asking for the child to stay
14 home with their client with supervision, certain
15 services in place. And my social work colleagues often
16 speaks with the ACS worker who filed the petition to
17 determine what the agency's primary safety concerns
18 are. And during so many of these conversations, at
19 some point my social work colleague and I look at each
20 other and wonder how we would've -- whether it be a few
21 days earlier, few weeks earlier, a few months earlier.

22 Recently on intake, I met a mother who was
23 there because ACS had concerns about the condition of
24 her home. They were asking to remove her children, and
25 one of the reasons that they gave for why they wanted
26 to remove the children is because she was refusing to

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2 leave the home. They had pictures of the home. It was
3 -- I could tell from looking at the home that we would
4 probably have a hard time convincing a judge to allow
5 the children to return to the home. So was eager to go
6 and speak with the client to really get her perspective
7 as to what the situation was. My social work colleague
8 and I were able to speak with her, and honestly it did
9 not take very long for her to agree to leave the home.
10 And I don't -- temporarily until it could be repaired,
11 and I don't believe it was because I told her to do
12 that. I think it was because she was given the
13 opportunity to speak to someone who wasn't working with
14 ACS, who was there to, for that purpose to listen to
15 her, to hear her story and understand why she initially
16 she didn't tell ACS that she wasn't willing to leave
17 the home.

18 We often look at cases like that which are
19 not infrequent and wonder why there can't be a system
20 put in place that allows us to have those conversations
21 with our clients at an earlier stage before they come
22 to family court.

23 We think the support would provide the parent
24 with four key things; confidentiality, service plan
25 advocacy, legal advice, and the opportunity to speak to
26 someone who is independent from CPS.

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2 First, the importance of confidentiality.
3 Our parents, the parents we represent do care. They
4 love their children. They know their children better
5 than anyone else, trying to make decisions about their
6 family or advising them about their family, but they
7 often have trouble identifying resources to keep
8 themselves and their children safe, and they don't
9 trust the case workers, and case workers have their
10 families best interest at heart.

11 Second, service plan advocacy. In our
12 experience, when social work staff can advocate for
13 individualized service plans, outcomes improve and in
14 so many cases a better service plan than originally
15 suggested by ACS works for the family. Often service
16 plans could have prevented filings, and certainly
17 removal of the children.

18 Third, legal advice. To give confidential --
19 we believe that it is in our client's best interest to
20 give confidential and confident legal advice early on.
21 We believe it would mean for so many parents that they
22 were willing to engage in services, especially where
23 they know that the attorneys that they are speaking
24 with would continue to advocate with them, should a
25 court case begin.

26 Last, independent from -- independent from

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2 CPS. To the extent to which our clients feel
3 distressed and hostility towards so many ACS workers,
4 even those that are well-intentioned cannot be
5 overstated. We work with CPS workers on a daily basis.
6 I've spoken with my social work colleague. By know
7 mean do we feel all CPS workers are hostile towards
8 their clients. Many of them have their best interests
9 at heart. Unfortunately, I think it was said earlier
10 by another panelist that that -- their role, because of
11 what they are charged with doing, it is hard for our
12 clients to ever trust them how they feel and why they
13 don't want to do a service or even that they felt
14 overwhelmed the day before because they are afraid it
15 will be used against them. In some situations, that is
16 what the case worker is there to do.

17 So we do believe that us having an
18 independent and giving them that opportunity to share
19 their feelings with someone and help them work through
20 it is to their benefit and would help them engage in
21 services, commit to them, and have the, either result
22 in the children staying home or the safe return of the
23 children to the home.

24 We're so confident about this pre-court
25 access it would prevent some neglect findings because
26 we've seen it happen.

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2 In 2004 and 2005, we participating in a pilot
3 program called Project Engage, where ACS connected
4 parents with CFR during the initial investigation
5 stages, and we wrote about the project in written
6 testimony.

7 So we found a parent was more willing to
8 engage in services because they had their own
9 independent team of advocates to support them, helping
10 them to decide or to push back on the seemingly
11 unreasonable request or to understand when a request
12 wasn't quite as unreasonable as they thought.

13 The same is true in every scenario where we
14 currently work with a parent during investigation. We
15 also represent our clients who are pregnant, that have
16 open cases to help them prevent a filing of a new baby
17 or at the very least keep that baby home with them.
18 Clients are -- parents also reach out to CFR for
19 questions when ACS contacts them as well.

20 Every CFR staff member receives training on
21 helping a client create a realistic safety plan,
22 because we know that no one benefits when a child
23 returns to an unsafe environment.

24 It is a myth that parents under investigation
25 do not care about their child, their children's safety
26 and it is a myth to think that advocates for parents

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2 don't focus on it. We know when a child is removed
3 that they are often traumatized not just by the events
4 that led to the removal, but also by the removal
5 itself.

6 When children are removed it makes it harder
7 for the parent to then engage in services and makes
8 them harder, makes it harder for them to trust the
9 system. The children often we found suffer from
10 behavioral, mental health issues, connected to that
11 trauma that they experience which makes removal --
12 excuse me, return to the home take even longer in some
13 cases.

14 So we understand that that is not in the best
15 interest of our clients, and we work with our clients
16 and with the other players in the system to make sure
17 that doesn't happen.

18 So as parents' attorneys, we see these
19 connections and also have a vested interest in child
20 safety.

21 HON. PETERS: Thank you.

22 Ms. Ketteringham.

23 MS. KETTERINGHAM: Good morning. My name is
24 Emma Ketteringham and I'm the Managing Director of
25 Family Defense Practice at the Bronx Defenders. I
26 started in the Bronx as a defense attorney in criminal

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2 court, and while I was there I learned very quickly
3 that much more important to my clients than their
4 criminal case with me was their family court case
5 pending in the building next door. When I stepped into
6 family court almost 15 years ago to represent them I
7 saw families broken. Children separated from their
8 families when it was unnecessary. Not just from
9 parents, but from brothers, sisters, and grandparents.
10 I saw children who grew up in foster care, now parents
11 themselves, and part of an intergenerational cycle
12 losing their own children. I saw children removed from
13 their homes similar please because a mere
14 misunderstanding or miscommunication during an
15 investigation had escalated. Children led away from
16 parents because a straight forward service had not been
17 put in place. Children remanded, just because of a
18 mistake of fact or lack of context. Children in foster
19 care without family to visit them because visitation
20 orders were not being followed. And children sent to
21 live with strangers, even though a willing relative sat
22 just outside the courtroom door.

23 We urge the Commission to make
24 recommendations for a model of parent representation
25 that will continue the transformation of those days. A
26 transformation that has already begun here in New York

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2 City. This should not be about which current model has
3 more virtue. It is my hope that the focus will be on
4 re-imagining parent representation, so that it is what
5 all families need to succeed, and one that those of us
6 who work in the system would require if it were our
7 families on the line.

8 To that end, I join my colleagues across the
9 state in recommending that parents be given access to
10 an attorney at the earliest possible moment in a case,
11 preferably before a case comes to court and at a bear
12 minimum at intake.

13 Our experience tells us that parents must be
14 given access not just to an attorney, but to an
15 attorney who works with a social worker or parent
16 advocate who is part of the legal team and accountable
17 to the parent. This is critical starting at intake.

18 What I hope we showed in our written
19 testimony is how interdisciplinary practice actually
20 works practically. How it makes a huge difference at
21 intake and throughout a case. I hope that we
22 illustrated that when intake is staffed with these
23 teams, unnecessary family separation can be avoided.
24 Courts have more information, not less, to make the
25 monumental decisions that they must make about
26 children's lives everyday. More cases are resolved

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2 than needlessly fought and parents are engaged,
3 empowered and supported. These teams do this in many
4 different ways. We go wherever we must go. We are --
5 our advocates are next to us in court. We don't have
6 to call them to come to come. We don't have to ask for
7 an order for them to be approved. They are there with
8 us everyday. And sometimes preventing the horrors of
9 family separation is as simple as just correcting one
10 fact. I remember one of my first cases that I had my
11 client was accused of negligent for failing to give her
12 son medication for his ADHD and severe psychological
13 problems. ACS sought to remove him after a conference
14 where she was so anxious she hardly spoke, but by the
15 time the case was called, our parent advocate had an
16 e-mail from her son's new pediatrician confirming that
17 in fact the lapse was because she had changed
18 pediatricians and that she now had the medication and
19 that it had been administered. Based on this new
20 information, we were able to go to ACS, share what we
21 had found, and they changed their application that they
22 made to the court, and a boy already fragile, stayed
23 home.

24 Much of the work that these teams do was
25 unable to be done before, and is still not done in many
26 areas of the state. It is the work done outside the

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2 courtroom door, often before a case is called. It is
3 often a lot of work, but as a result children who are
4 on the margin of placement stay home, and really,
5 really hard cases have a chance as well.

6 Take last week, we met a young woman who had
7 grown up in foster care, been diagnosed with depression
8 and discharged to homelessness. When she gave birth,
9 the agency once responsible for her well-being charged
10 her with negligent, and a removal of her six day old
11 newborn seemed inevitable. Our young client asked, why
12 did they let me see my baby if they were only going to
13 take her? We asked for a second call.

14 (Transcript continues on the next page.)
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2 MS. KETTERINGHAM: Our parent advocate used the
3 lunch hour to arrange stable housing and mental
4 healthcare for our young client. She secured a
5 mother-child program for the family. She visited the
6 program with our client to ease her anxiety. She
7 contacted our client's psychiatrist and obtained a letter
8 regarding her treatment and she scheduled her an
9 evaluation. When an advocate is accountable to the
10 parent and not just to making reasonable efforts,
11 circumstances are transformed, risk is mitigated.

12 We presented the plan to ACS who agreed that
13 the baby could remain home if this plan was implemented
14 the next day. Our parent advocate went further than
15 that. She negotiated another night in the hospital so
16 that mother and child were not separated, even just for
17 one night. That work, that work that took place in just
18 a few hours in the busy galleys of Bronx Family Court,
19 work that all of the providers do in New York City every
20 day on intake, prevented an unnecessary and unhealthy
21 removal of a newborn from her mother.

22 In the Rochester hearing, the question was
23 asked whether parent attorneys and advocates can work in
24 harmony with case planners in the best interest of
25 children. The experience in New York City is that we do
26 and that that work is not antithetical to the best

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2 interest of children. Having a social worker involved
3 who is not seen by the parent as an investigator or
4 adversary, whether that is right or not, that is their
5 perception and that is what gets in the way of true
6 collaboration. It leads to better communication, more
7 openness and better outcomes. It resolves an earlier
8 engagement, creative problem solving, faster resolution
9 of cases overall, and more court time for the legally
10 complicated cases that require litigation. It doesn't
11 make it work better. It makes it work as it is intended
12 to work. The model insurances that we are meeting our
13 legal and moral obligations, not just to parents, but
14 also to their children.

15 JUDGE PETERS: Thank you.

16 Ms. Burrell.

17 MS. BURRELL: Good afternoon to the panel and
18 thank you very much for this opportunity.

19 It is clear from the testimony of my colleagues
20 that it is integral to the quality of statewide parent
21 representation that attorneys and advocates are present,
22 both pre-filing as well as at the intake stages, but for
23 continued quality parent representation throughout the
24 duration of the case and to ensure the best outcomes for
25 families we serve across the state, access to additional
26 resources that enhance our ability to represent clients

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2 and is of the utmost importance.

3 My name is Michelle Burrell and I am the
4 managing attorney at the Neighborhood Defender Service of
5 Harlem of the family defense practice. The practice that
6 I manage represents parents in Northern Manhattan. This
7 afternoon, I want to talk a little bit about the
8 resources available to the attorneys throughout the
9 pendency in an abuse and neglect case.

10 Last week when I was about to settle into my
11 lunch, one of the attorneys on my team came into my
12 office and sat on my couch. She was a little distressed,
13 and she's a newer attorney, and wanted to strategize ways
14 to balance all of the work that she was doing. She was
15 litigating emergency hearings for the return of children.
16 She was prepping meticulously for fact finding hearings.
17 She was filing objections for trial. She was filing
18 orders to show cause to get children into kinship care as
19 well as to expand visitation. She was also having
20 regular communication with her clients. She was
21 stretching herself thin and wanted support in how to
22 balance it all.

23 Compounding this juggling act for this attorney
24 and for many of the attorneys and advocates on my team is
25 the reality of the racism and classism that is apparent
26 just walking into Family Court on any given day.

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2 As an attorney of color and a resident of the
3 Harlem community, I would be remiss not to mention the
4 collective and communal trauma that permeates the
5 advocate community when witnessing the racial
6 disproportionalities on a daily basis. It really does
7 affect everything that we do.

8 The reason I share this story is to say that
9 the ongoing practice of working on an abuse and neglect
10 case for a caseload of clients is arduous and
11 challenging. It is important to note, however, that we
12 do not file motions and ask for hearings to be defiant or
13 to be difficult. We are not seeking to clog up the court
14 system with frivolous motions and waste the time of our
15 colleagues and the court. Much to the contrary, we are
16 working to quickly restore families, advance cases where
17 children have lingered in foster care for far too long,
18 and ensure the safety of children, because we do not see
19 children in isolation, we see them as a part of a family
20 and ultimately as a part of a larger community. To push
21 back against the status quo is not easy work.

22 Now, the attorney that came into my office is
23 phenomenal and she is already working through the
24 stresses of the job and has a number of supports within
25 my office that have helped her along the way, but we can
26 always do better, and the types of supports that she has

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2 available to her are not necessarily present across the
3 state.

4 Now, we have been fortunate to receive funding
5 that allows us to employ many attorneys, attorney
6 supervisors, social workers, social work supervisors,
7 parent advocates, paralegal, and MDS, but our model can
8 still be improved.

9 If this commission is looking to improve the
10 quality of parent representation across the state,
11 additional resources for attorneys and out-of-court
12 advocates have to be a big part of the equation. Of
13 course my colleague will speak more on what reasonable
14 caseloads might look like but there are other resources
15 necessary as well.

16 Across the state there must be better access to
17 expert testimony from a variety of professional fields
18 that can keep the court up to date on all of the latest
19 scientific advances and theories, and that theory
20 includes the scientific theory around drug and alcohol
21 abuse, the use of psychotropic medications for parents
22 and for children, parenting with mental illness, domestic
23 violence, as well as non accidental trauma to children.
24 We need the judiciary to be more malleable and willing to
25 challenge commonly held beliefs so that we aren't
26 applying archaic standards of what constitutes a safe

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2 environment for children.

3 In order to ensure the quality of parent
4 representation across the state, parent attorneys need
5 more access to resources that can support thriving
6 appellate practices. While I can appreciate the pressure
7 and time constraints of the judiciary with many cases and
8 not enough time to hear them, that does not always create
9 the best atmosphere for thoughtful decision making.

10 When erroneous decisions are made, our
11 attorneys at my office are routinely seeking
12 interlocutory appeals that can change the entire
13 trajectory of the case. Nowhere was this more apparent
14 than in the case of our client who had a particularly low
15 IQ and was seen by ACS as being unable to parent by
16 virtue of that fact. Upon the application of our MDS
17 attorney working on the case and in conjunction with the
18 significant work of the social worker from our office
19 assisting our client over the course of the hearing to
20 get the mental health services, including medication
21 management and therapy, an emergency hearing commenced.
22 We presented ways and suggestions that ACS could support
23 safe reunification.

24 At the conclusion of the hearing, our
25 application was denied. We then went to the Appellate
26 Division and the appellate judge was very displeased that

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2 services for the family to mitigate the risk hadn't even
3 been tried. The appellate judge stayed the order and
4 intensive six-hour day homemaking services were put in
5 place, as well as preventive services, and my client is
6 home with her client today.

7 In New York City, additional supports to
8 continue our Appellate practice is necessary, and
9 throughout the state resources should be provided to
10 support appellate practice of attorneys, especially to
11 those in rural and remote communities. It is clear that
12 supporting attorneys and advocates throughout the
13 pendency of the case is integral to assuring quality
14 representation of parents.

15 Adding additional resources to counties across
16 the state for more social work staff, more attorneys,
17 more resources to adequately litigate the cases
18 effectively in the child courts and in the appellate
19 courts will ultimately provide the best framework for the
20 court to ensure that families are reunified, children are
21 kept safe, and that the court has the best information
22 possible to make decisions that affect our communities.

23 Thank you.

24 JUDGE PETERS: Ms. Shapiro.

25 MS. SHAPIRO: Yes. We've saved the oldest for
26 last.

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2 I've been representing parents in Family Court
3 for 25 years. And since 2007 when New York City first
4 created institutional parent providers, my office alone
5 has represented almost 11,000 parents in Kings County
6 Family Court.

7 During this very same period, the foster care
8 population in New York City has dropped dramatically from
9 almost 17,000 children to under 9,000, which we think is
10 a part due to our advocacy. That's because our offices
11 achieve the most striking results by preventing hundreds
12 of children from ever entering foster care or making
13 those stays very short by aggressively litigating
14 emergency hearings at the start of the case.

15 Just last year, for example, we litigated
16 emergency hearings involving 500 children and we won
17 two-thirds of them, reuniting those families or keeping
18 them together.

19 We also reduced the amount of time that
20 children spend in foster care by actively litigating
21 permanency and dispositional hearings and through our
22 robust motion practice.

23 We regularly file motions for unsupervised
24 visits for services needed for reunification for trial
25 discharge and for motions to end supervision over
26 families, and these motions work in speeding up

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2 reunification.

3 We also shorten the length of Article 10
4 proceedings by filing and winning motions to dismiss
5 cases where ACS has not alleged cause of action or where
6 the aid of the court is no longer required.

7 We currently represent 3,000 parents in Article
8 10 cases. Over time, our caseloads have steadily
9 increased because of how long Article 10 cases last and
10 also because of the surge in new filings over the last
11 two years. We simply cannot accomplish the results that
12 we've been able to achieve without the necessary
13 resources as well as sufficient advisory and
14 administrative support.

15 I mostly want to talk today about our request
16 OCA assist us in managing attorney caseloads. Very
17 briefly, because the issue of supervision was mentioned,
18 I just want to say that supervision is actually very
19 essential to our effectiveness in providing high-quality
20 representation to our clients.

21 First of all, we are there when our attorneys
22 are at emergency hearings and their clients are looking
23 for them. I, as the director, speak to clients every day
24 when they can't find their attorneys, and try to help
25 them get answers to their questions. We also, as
26 supervisors, step in to do hearings if the attorney is

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2 out sick so that we can make sure that the hearing isn't
3 delayed, which is really important given what's going on
4 in court these days. We also provide continuity to our
5 clients because our supervisors are very, very familiar
6 with their cases. And when an attorney leaves or goes on
7 parental leave, we can step in. In fact, I'm
8 representing somebody right now where someone is on
9 parental leave and I did the 1027 hearing in 2007.

10 Today I want to talk to talk mostly about
11 caseload. When caseloads are too high, attorneys can't
12 do the forward thinking in an aggressive motion practice,
13 which is what really results in shortening the time the
14 children spend in foster care and shortening the time to
15 resolve cases.

16 Both criminal attorneys and attorneys for
17 children in New York State have caseload caps, parent
18 attorneys do not, and we are urging OCA to set caseload
19 caps for parent attorneys and we believe that would make
20 a significant difference in assuring that adequate
21 resources are provided for this work.

22 Caseloads and Article 10 cases cannot be
23 measured in the same way that they are in other areas of
24 practice. In Article 10 cases, one client does not mean
25 one case. Each client has an Article 10 case, usually
26 involving several petitions and several children. Often,

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2 each of those children have their own unique needs.

3 Related cases are often filed in Article 10
4 petitions involving interim appeals, newborn petitions,
5 violation petitions, custody petitions, family offense
6 petitions, attorney petitions, and termination of
7 parenting rights petitions, all of which that may involve
8 different parties than an Article 10 case and would
9 require an additional amount of work. And these multiple
10 cases must be considered when determining caseload caps.

11 Caseload caps also must consider the length of
12 Article 10 cases. Unlike criminal cases which concern
13 one point in time, Article 10 cases work in realtime.
14 Changes in life circumstances for parents, for foster
15 parents, and for children, such as death, illness, loss
16 of a job or housing, or a birth of a child, all result
17 in litigation of these cases. Custody battles and
18 appeals, an ever battling process in the court, prolong
19 our cases. Despite our individual and stunning efforts
20 to expedite cases, the average length of our cases is
21 over two years and many last substantially longer.

22 Older cases often require more work than newer
23 cases. These are the most complicated and challenging
24 cases that we have. These are the cases of extreme
25 poverty, of serious mental illness or cognitive
26 disability, children with special needs, and parents who

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2 were in foster care themselves, to name a few. In these
3 cases, we appear in permanency hearings every six months.
4 These hearings can be extensive, especially when we are
5 seeking family reunification or unsupervised visits over
6 the agency's objection, or there are children with many
7 different statuses. Although the Family Court Act
8 requires permanency hearings to be completed within 30
9 days, permanency hearings are adjourned for many months
10 at a time and require multiple half hour appearances.

11 Criminal caseload standards are based on the
12 number of new cases that an attorney is assigned in a
13 year. That intake model works well where most cases are
14 resolved within a year, but Article 10 cases last much
15 longer. And with consistent intake, attorneys caseloads
16 continue to rise. Therefore, it is imperative that any
17 standard that is developed must consider the pending load
18 of the office in addition to the annual intake.

19 We firmly believe that a lawyer doing these
20 cases should have no more than 50 or 60 pending clients
21 at a time. With higher caseloads, attorneys spend all of
22 their time litigating emergency hearings, which is
23 important, dealing with client emergencies, responding to
24 motions, and spending all of their time in court while
25 dealing with emotionally wrenching cases. This type of
26 practice is just not sustainable, causing caseloads to go

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2 even further.

3 BDS is recommending that the office of Indigent
4 Legal Service be tasked with creating case law standards
5 for providing the parent representation, and we welcome
6 the opportunity to contribute our expertise and
7 experience to working with the office, as well as OCA, on
8 this very important process.

9 Thank you.

10 JUDGE PETERS: Thank you.

11 Am I correct you're available for questions or
12 did you want to testify as well?

13 MS. SCHREIBERSDORF: I just wanted to make one
14 statement. I am the executive director of Brooklyn
15 Defender Services, and we handle both criminal and family
16 cases as well as other types of matters.

17 I really wanted to just directly address the
18 history a little bit of the criminal case caps and how
19 the implementation of those case caps has been done
20 through OCA, and that is why we're recommending right now
21 that that may be the model that is recommended for
22 family.

23 I just want to start by saying the beginning of
24 the criminal case caps was the Judge Kaye commission. I
25 want to say that this commission has a lot of value in
26 this sphere. It took a very long time after the Judge

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2 Kaye commission recommended a lot of changes in
3 representation of indigent defense, but it was the
4 beginning and it was effective. I just want the
5 commission to know that we really appreciate the
6 attention, the time, and I too think this will be the
7 beginning of a solution.

8 In the beginning, there was a statute that was
9 passed that provided case caps on criminal cases and
10 tasked OCA with creating administrative order that would
11 be the specific case caps, which was done very
12 effectively and very efficiently by Judge Littman when he
13 was administrative judge. That was phased in between
14 2010 and 2014, and it was only applicable to New York
15 City. It was a very effective case cap because we were
16 already coming from a place where we were so far behind
17 that it took us a while as we phased in to be able to
18 reach those case caps. Subsequently, the office of the
19 Indigent Legal Services was formed.

20 OCA has been helping us meet those case caps
21 financially. ILS has really been instrumental in
22 creating robust and really rich standards that go beyond
23 just a number of cases. They've been really successful
24 in working on eligibility standards, which we touched on
25 earlier, which I think are integral and are very
26 important relating to who gets representation, when their

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2 representation occurs, something like a presumption.
3 Because the delays in getting the first appointment are
4 very substantial, especially around the state -- that's
5 also very important. They have also been very integral
6 in bringing defenders around the state to talk about
7 issues in ways that we can improve the quality of
8 representation that is provided, which I think a
9 conversation needs to happen beyond just adding case
10 caps.

11 You have a rich group of very experienced
12 attorneys here and parent advocates and social workers
13 that can give you an insight about what an office
14 resource can do.

15 I can tell you that we really are overburdened.
16 Our caseloads are high, even with, I think, the City's
17 attempts, really, I think, very good attempts, to try to
18 fund this properly.

19 I think ILS is a very important institution
20 right now in the state in terms of having independence
21 from the court system, in terms of -- as attorneys we
22 should have an independent group overseeing what we do
23 and we really support working with them.

24 I just want to add one more thing about the
25 resources. We, as providers, many of us, also have not
26 just social workers, we also have housing attorneys,

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2 immigration attorneys, education attorneys, and other
3 resources within our offices that work directly with
4 clients. Housing is the main thing people need in order
5 to get their kids returned. There are ways in which
6 institutional providers can provide services that may not
7 be accessible within the context of the Assigned Counsel
8 Panel.

9 But, having said that, I was in a meeting this
10 week, I'm the chief defender of the group for ILS and it
11 was a meeting about assigned counsel around the state.
12 There are jurisdictions in the state that assigned
13 counsel is the only methodology for providing defense
14 attorneys and there are ways in which ILS, with funding,
15 can provide all of these resources to assigned counsel,
16 including regional offices and other kinds of ways in
17 which they can receive training. There was talk of
18 stipends for people to go to training so they don't have
19 to lose their hourly rate and other ways in which ILS is
20 a very meaningful agency and should be the one tasked
21 with ascertaining what the proper field should be and
22 recommend the caseloads.

23 I just want to say one more thing about OCA.
24 We love working with OCA, they have been fantastic. They
25 have been great. I think with the shortages and the
26 funding within OCA, it is a little bit of a troubling

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2 dynamic to see the courts have to close at 4:30 every day
3 because they can't afford to pay overtime and also see
4 that they are funding legal services. Although I do
5 believe that we hope the efficiency of the court, I hope
6 that having the new funding coming through the governor,
7 through the executive budget, being funded through an
8 executive agency, I think probably in the long run is
9 really the best way to go about this.

10 Thank you.

11 JUDGE PETERS: Questions.

12 JUDGE RUIZ: I haven't heard any discussion
13 about services and how you deal with services in all the
14 multi-languages that are spoken in New York City. I
15 haven't heard anyone, even the witnesses, address that
16 and I'm curious to know.

17 MS. BURRELL: Well, we try to address that
18 internally by ensuring that every client has an attorney
19 that speaks the client's language. Obviously, we can't
20 do it for every single one, but we do have attorneys that
21 speak Arabic, Bengali, Urdu. We have like twelve
22 attorneys that speak Spanish. Arabic, Russian -- almost
23 everything. Creole, we have a Creole-speaking social
24 worker and attorney. We've really stressed this as being
25 critical because we've observed how difficult it is for
26 clients to get services that are not in their language.

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2 And, of course, connected to this, staff have
3 relationships with organizations in the community.
4 Mandarin as well. They connect with community-based
5 agencies that speak Mandarin. We also worked with ACS
6 around this issue.

7 Many of our clients, unfortunately, do not have
8 case workers that speak their language and we advocated
9 for a change of that. There's been -- that hasn't
10 happened. I understand that they can't provide it for
11 certain languages, but we've never been able to
12 understand why in Spanish, for example, when there's so
13 many case workers -- when there's so many people in the
14 city that speak Spanish, why they couldn't pair people
15 up. We've seen the dangers that come from having case
16 workers that don't speak your language. In fact, a lot
17 of cases result from miscommunication around languages
18 with hospitals or caseworkers.

19 JUDGE PETERS: Thank you. Thank you all very
20 much. Incredibly interesting. Really appreciate it.

21 The final panel, Ms. Kryszko and Ms. Erikson.

22 Good afternoon. Tell us how to say your name.

23 MS. KRYSZKO: Kryszko.

24 Good afternoon, Justice Peters, Judge Roberts,
25 Judge Ruiz, and Sir Guggenheim. My name is Barbara
26 Kryszko and I'm an attorney for Sanctuary For Families,

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2 the largest nonprofit organization of New York State
3 dedicated exclusively to the needs of survivors of
4 domestic violence as well as sex trafficking. We are
5 very grateful for this opportunity to testify before the
6 commission today.

7 Sanctuary Center For Battered Women Services is
8 the largest dedicated providers, they set up legal
9 services for victims of domestic violence, and our
10 attorneys advise and represent clients in family law
11 matters in the Family Court, Supreme Court, and the
12 integrated domestic violence courts in all five boroughs
13 of New York City.

14 So, first, as an agency serving domestic
15 violence survivors, one of our overarching concerns is
16 that all counsels for parents are well-trained in the
17 legal and other issues involving domestic violence. So
18 assistance by skilled and knowledgeable family law
19 attorneys is fundamental for domestic violence survivors
20 to obtain critically important legal remedies and reduce
21 domestic violence recidivism.

22 While domestic violence survivors are
23 frequently petitioners in family offense matters in
24 court, they also appear as litigants in a variety of
25 other family court proceedings, such as respondents in
26 custody cases or nonrespondents in neglect matters.

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2 Attorneys must have an understanding of the dynamics of
3 domestic violence and screen all of their clients to
4 ensure that victims are identified and that safety
5 concerns are addressed. There are instances in which
6 involvement in Family Court proceedings involve essential
7 protection for survivors and their children, while in
8 others it increases the safety risk. That's why it's
9 critical for attorneys to understand the tactics of
10 perpetrators and have the ability to make individualized
11 assessments of dangerousness and address these safety
12 issues in court.

13 It's also imperative that attorneys are
14 well-trained in the law pertinent to family law cases
15 referring to domestic violence. For instance, the
16 various forms of relief in family offense proceedings are
17 often unused. That may be the court granting a temporary
18 order of child support, if it's safe, or prohibiting
19 various forms of cyber sexual abuse, one of our latest
20 concerns that we're trying to address through an Order of
21 Protection at the time.

22 The New York State Court System can play an
23 important role, we think, in ensuring that attorneys are
24 either on the Assigned Counsel Panel or at an
25 institutional provider to receive ongoing specialized
26 training and have access to other resources and legal

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materials that are key to representing victims of domestic violence.

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2 MS. KRYSZKO: While survivors are frequently
3 petitioners in family offense matters, of course, they
4 also appear as litigants in a variety of other family
5 court proceedings, such as respondents in custody
6 cases, or non-respondents in neglect matters.

7 Attorneys must have an understanding of the
8 dynamics of domestic violence and screen all of their
9 clients to insure that victims are identified and that
10 safety concerns are addressed.

11 There are instances in which involvement in a
12 family court proceedings provides essential protection
13 for survivors and their children, while in others it
14 increases the safety risk. So that is why it is
15 critical for attorneys to understand the tactics of
16 perpetrators, and have the ability to make
17 individualized assessments of dangerousness and assist
18 survivors in being proactive in addressing safety
19 issues in court.

20 It is also imperative that attorneys are well
21 trained in the law pertinent to family law cases
22 involving domestic violence. For instance, the various
23 forms of relief available in family offense proceedings
24 are often underutilized, from the court granting
25 temporary child support to prohibiting various forms of
26 cyber sexual abuse, one of our latest concerns, in a

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2 temporary order of protection.

3 The New York State Court System can play an
4 important role in ensuring that attorneys who are
5 either on the assigned counsel panel or at an
6 institutional provider receive ongoing specialized
7 training and have access to other resources and legal
8 materials that are key to representing victims of
9 domestic violence.

10 As stakeholders holders in the court system,
11 including organizations such as Sanctuary, are a
12 resource for providing such advanced trainings for
13 other follow-up and concerns in domestic violence.

14 Next, although I know you've heard it about
15 18B assigned counsel, but we also are very much
16 advocating to insure that adequate funding and access
17 to assigned counsel is part of -- that is imperative
18 for domestic violence victims.

19 Domestic violence victims rely on assigned
20 counsel to protect their rights in many cases and
21 increase in 18B funding is essential to raise the
22 current counsel rates and also to provide ancillary
23 services, comprehensive ancillary services.

24 Also, we want to insure that eligibility
25 criteria provide -- are such that provide
26 representation to all of those who are financially

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2 unable to obtain counsel.

3 So, as the commission knows and heard, the
4 right of pay for court appointed attorneys has been
5 shockingly low and hasn't changed for years.

6 We believe that it should be significantly
7 increased and implemented with an annual cost of living
8 adjustment to attract and retain experienced and
9 qualified attorneys. Diminishing number of panel
10 attorneys has had an impact on domestic violence
11 survivors. Cases are delayed for appointment of
12 counsel for either the victim or for both parties.
13 Temporary orders can be entered or denied in the
14 absence of counsel to argue for safe and appropriate
15 relief.

16 If the rates were significant increased and
17 more 18B attorneys were available, attorneys would be
18 able to lower their caseloads and time spent in court
19 and devote more time to meeting clients and addressing
20 urgent and complex issues.

21 Increased funding is also necessary to
22 adequately fund ancillary professional services. Um,
23 for instance, court appointed attorneys should be
24 provided with access to immediate on-call language
25 interpreters to speak with clients.

26 There is a tremendous advantage in providing

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2 effective representation to domestic violence survivor
3 in the midst of emergency by communicating immediately
4 rather than trying to schedule an interpreter for a
5 later date.

6 And further, even after the recent increase
7 the rates for various professionals are still low and
8 difficult for instance to retain a social worker with
9 relevant language skills, or other expert witnesses.

10 In addition to increasing rates for assigned
11 counsel, it is also imperative that the financial
12 eligibility criteria used in family law cases include
13 all lower income parents.

14 Throughout New York City, and even within the
15 same courthouse, jurists apply inconsistent standards
16 in determining financial eligibility for court
17 appointed counsel. This not only raises concerns that
18 victims of domestic violence are not assigned
19 attorneys, but that both parties are denied counsel,
20 and thus unaware of their rights and options, and which
21 can result in the delay of proceedings or of reaching
22 an effective solution of their pending cases.

23 We find in cases of domestic violence,
24 abusers often limit the economic opportunities of their
25 victims such as by prohibiting them from working,
26 advancing their education, and having eligibility

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2 standards which account for a variety of financial
3 constraints is crucial as domestic violence survivors
4 often have modest incomes, very limited assets, or
5 significant debt.

6 For instance, victims maybe the co-owner of a
7 marital home but due to relatively low income, and a
8 spouse's financial excuse for nonpayment of the
9 mortgage, the home maybe at risk or in foreclosure
10 proceedings and thus not a financial asset to the
11 litigant and something that the court could consider.

12 Finally, there is also a critical need
13 amongst litigants in family law proceedings to have
14 legal representation in related legal and
15 administrative proceedings. For domestic violence
16 victims, obtaining legal advocacy or representation for
17 matters involving immigration, housing, and public
18 benefits is essential to insuring their safety or being
19 able to care for their children. There are tremendous
20 economic advantages also. For instance, in assisting
21 victims in maintaining their housing and avoiding
22 having to enter a domestic violence or homeless shelter
23 if that is what is safe for them. While family law
24 attorneys should not be expected to take on such
25 additional matters, assigned attorneys for example
26 could and should have a role in making referrals, and

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2 coordinating with other legal counsel to achieve the
3 best result for clients. Current referral resources
4 could be utilized for this purpose, or the New York
5 courts, New York State court system could create a
6 resource guide of legal services for low income
7 litigants.

8 In conclusion, the Family Courts of New York
9 City and State have played an important role in
10 decreasing domestic violence and helping victims and
11 their children maintain their safety, but we encourage
12 and recommend that the commission take these additional
13 steps to further provide high quality legal
14 representation for survivors of domestic violence.

15 Thank you.

16 HON. PETERS: Ms. Erikson, would you able to
17 summarize your testimony for us to insure that --

18 MS. ERIKSON: I was just going to say that I
19 intend to do that.

20 HON. PETERS: Thank you.

21 MS. ERIKSON: I do not intend to talk about
22 my qualifications and I don't intend to repeat anything
23 unnecessarily. I just want to say that it is not a big
24 surprise your Honors, there aren't enough attorneys on
25 the assigned counsel panel. What needs to be done has
26 already been said, increase hourly rates, lower case

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1
2 loads. The legislature just gonna have to bite the
3 bullet. It is just going to have to do that.

4 What is going to push the legislature to do
5 that? Well, I got a wonderful gift yesterday when I
6 found out that congress has passed House Congressional
7 Resolution 72. This was advocated for, since, well,
8 before 2017, and it was just passed September 25th.
9 What does this do? It is the concurrent resolution of
10 congress, quote, "that child safety is the first
11 priority of custody and visitation adjudications, and
12 the state courts should improve adjudications of
13 custody where family violence is alleged." I brought
14 copies for all of you, along with my testimony and I
15 think that this is going to be a big help.

16 Twenty years ago, more than 20 years ago, the
17 house passed a similar concurrent resolution which lead
18 to the passage of the law in New York that now requires
19 courts to consider domestic violence in custody cases.
20 All states now have these statutes. Ours is not the
21 greatest. It has been improved a little, but it is
22 still not the greatest. A lot of states have
23 presumption against custody to abusers. But at least
24 we did that, and we did it as a result of a similar
25 concurrent resolution of congress.

26 What I want to talk mostly about is the

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2 problem I'm skipping here. The problem of abusers
3 still getting custody and how we can deal with that.
4 The survive superior sometimes even when she has
5 counsel, let me use she because they are mostly women,
6 abusers sometimes get sole custody. He can afford an
7 attorney who can argue that the mother has alienated
8 the children from the dad, is in-meshed with the
9 children, is mentally ill. He can go on and on. He
10 can also be very good at charming custody evaluators
11 into believing that the, the father's an innocent
12 victim of false allegations and wrongful elimination.
13 One custody evaluator actually opined the father could
14 not possibly be an abuser because he was CEO of a large
15 corporation. That was prior to the 2016 presidential
16 elections.

17 Now, the mother on the other hand usually
18 having been abused for years often has PTSD,
19 depression, anxiety disorders, and looks pretty bad to
20 the judge, to the evaluator, the attorney for the
21 child. She also has no funds to hire an expert.

22 Consequently, some abusers get sole custody,
23 and the New York laws that have put barriers in the way
24 of abusers getting custody have often failed.

25 Even if all 18B attorneys were trained in
26 domestic violence as Barbara has urged, urging that the

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2 legislature authorize them to represent low income
3 litigants in at least two types of cases where they are
4 not now authorized. You know what Section 262 covers.
5 It does not cover --

6 HON. PETERS: What two sections are those?

7 MS. ERIKSON: Section 262 of the family court
8 act authorizes --

9 HON. PETERS: I know Section 262. You said
10 you want counsel to point to --

11 MS. ERIKSON: Two are child support and
12 divorce.

13 HON. PETERS: Thank you.

14 MS. ERIKSON: Child support for low welcome
15 custodial parents so parents and children won't starve
16 or be evicted. And especially crucial for custodial
17 parents who are survivors of domestic violence because
18 abusers are often quite expert in the art of hiding
19 their income and assets. This is especially
20 problematic with custodial parents who are not married
21 to the abuser because she never filed tax returns with
22 him.

23 Second, attorneys are needed to represent low
24 income divorce litigants on all divorce issues, not
25 just custody and domestic abuse. It must be all
26 issues. The financial issues are extremely important

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2 and they are all intertwined with the custody.

3 HON. PETERS: Could you complete your
4 testimony, please. I'm sorry to rush you.

5 MS. ERIKSON: Yes.

6 HON. PETERS: We've overstayed our time in
7 the courtroom. I do want to make sure the members of
8 the panel have the opportunity to ask questions.

9 MS. ERIKSON: I just wanted to give an
10 example of a divorce a few years ago in which an
11 excellent assigned counsel was court appointed for
12 custody and order of protection at the beginning of the
13 litigation. The child later, not to much later
14 revealed the father had been abusing her, but the
15 abuser manipulated child protective services into
16 believing the mother had brainwashed the child into
17 making false allegations. She was charged with
18 negligent. She lost her job which involved working
19 with children. Okay. All this financial stuff is
20 coming up. Father got custody temporarily. She got no
21 visitation even for months, and then supervised. Now,
22 after five years of litigation, mom finally got her
23 child back, but in the meantime the child had been
24 further abused by the father. The outcome of the
25 divorce was one, no spousal support after a marriage of
26 more than a decade. Two, father no longer -- mother no

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2 longer on father's health insurance and couldn't afford
3 insurance. Three, child support is minimal. Four, no
4 order of protection. And, five, and this is so
5 disgusting, although the husband was ordered to share
6 his retirement assets with the wife, he moved them
7 around into, to hide them from her, and as yet, I think
8 it is ten years later, she still doesn't have qualified
9 domestic relations order for her share of the
10 retirement benefits. Now, the child is in college.
11 Father should be spending, actually giving more in
12 child support. However, he has petitioned to end his
13 child support application because the child doesn't
14 want anything to do with him. No surprise, right?
15 Mother is not entitled to court appointed counsel for
16 this. We can and should do better for these families.
17 We may need to set up a panel for court appointed
18 attorneys for divorce because most of court appointed
19 counsel are working in the family court.

20 Fortunately, there is some movement in this
21 direction of appointing for divorce cases. There is a
22 bill in the city council that --

23 HON. PETERS: I've seen your testimony. I
24 read that.

25 MS. ERIKSON: Yes. But it is needed all over
26 the state.

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2 Thank you.

3 HON. PETERS: Thank you. Questions?

4 I have one question. You mentioned that
5 judges imply inconsistent standard in determining
6 eligibility for assigned counsel and we've seen that
7 happen, and I wonder whether you would suggest that
8 legislation be enacted with someone other than the
9 judges determine eligibility, is that something you've
10 thought about?

11 MS. KRYSZKO: I guess I haven't. I'm not
12 sure, your Honor, what you mean by others with --
13 someone else in the courthouse?

14 HON. PETERS: Someone else with eligibility
15 other than the judge assessing eligibility.

16 MS. KRYSZKO: I think perhaps my only caution
17 is that would that be an inquiry that really gets out
18 all of the information and while as an attorney myself
19 I rarely object to the other party getting an assigned
20 counsel, except if you have information from your
21 client where you think that they really are a lot,
22 significantly over the eligibility you may -- I raise
23 it to the court, the court may want to also inquire
24 because my client says they have their own business,
25 significant income, and I'm not sure if another
26 procedure would have all the information as the court

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1
2 does at that moment.

3 HON. PETERS: Thank you.

4 MS. ERIKSON: May I address that, your Honor,
5 because I work in Nassau and Suffolk, and I don't
6 remember which one or both has a system where there are
7 clerks who meet with the client and get their financial
8 information and help the judges to make that decision.

9 HON. PETERS: Thank you. Thank you both very
10 much.

11 HON. RUIZ: Thank you.

12 HON. PETERS: Thank you all for coming today.
13 We so appreciate the time you've taken, the information
14 you provided to us, and believe me we will seek to
15 consider each and everything that you've shared with
16 us.

17 Thank you.

18 (Whereupon the hearing concluded.)
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