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PUBLIC HEARING

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THE TASK FORCE ON THE

4

FUTURE OF PROBATION

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THE ASSOCIATION OF THE BAR

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CITY OF NEW YORK

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42 WEST 44TH STREET

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NEW YORK, NEW YORK

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JOHN DUNNE: Good morning and welcome to this first in a series of public hearings, which Chief Judge Judith Kaye's Task Force on the Future of Probation in New York State, will be conducting across New York State to consider the relationship of probation services in New York with regard to the family Courts of New York State.

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This is the second phase of the work which

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the Chief Judge has asked this Task Force to perform. The first phase related to our work relating to the criminal courts and our findings and recommendations were embodied in a report which was issued to the Chief Judge in January of this year.

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The purpose of this hearing is to find out from the people who are deeply involved on a daily basis with regard to the needs of the court, how they operate and how they can recommend a more effective service by probation forces throughout the State to help them in their work.

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I'm John Dunne, I'm Chairman of the Task Force and I would ask that the members who have joined us here would individually introduce themselves. Starting with Seymour James to my left.

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HON. SEYMOUR W. JAMES, JR.: My name is

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Seymour James, Criminal Defense Division, New York City

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Legal Aid Society.

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KATHLEEN DECATALDO: Kathleen Decataldo,

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Executive Director in New York State.

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RUBIN AUSTRIA: Ruben Austria.

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HON. MICHAEL CORRIERO: Michael Corriero,

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Justice Supreme Court, New York City Courts.

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HON. JANET M. DIFIORE: Janet Di fi ore,

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District Attorney, Westchester County.

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11 ROCCO A. POZZI: Rocco Pozzi, Commissioner
12 of Probation, Westchester County.
13 JACK CARTER: Jack Carter, the Law Guardian
14 Program for Appellate Division in the Third Judicial
15 District that is quartered in Albany.
16 HON. CARNELL FOSKEY: Carnell Foskey, the
17 Supervising Judge of the Nassau Family Court.
18
19 ROBERT M. MACCARONE, ESQ: Good morning, I'm
20 Robert Maccarone, I am the State Director of Probation.
21 ROBERT CHASE: Robert Chace, Assistant
22 Commissioner, Westchester County Probation.
23 JOSEPH RINALDI: Joseph Rinaldi, New York
24 State Probation Officers Association.
25 JOHN DUNNE: I thank you.
26 As other members of the task force come, we

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2 will introduce them.
3 I have a couple of housekeeping matters. The
4 usual, if you have any cell phones, who doesn't have
5 one. Cell phones, electronic phones, I ask that you
6 turn them off during the hearing.
7 Second, if anybody has come with a prepared
8 written testimony, I would ask that you provide our
9 court reporters here with a copy of those materials.
10 I hope we will be joined by the New York
11 State Commissioner of Probation, Martin Horn, who
12 advised me when we started their examination of
13 probation's relationship with the Family Court, keep
14 your eye on the ball. What he meant by that from his
15 rich experience, while we look at the Family Court we
16 will see many avenues, down which we could go with
17 regard to both investigate and examination, with making
18 recommendation our charge in the Chief Judge is clear,
19 how can probation provide better services to the
20 community and to those in the court and we are not out
21 to change the world.
22 Not to denigrate my fellow panelists, we have
23 to see how this whole important facet of the Justice
24 System referred to by some as the work horse of the
25 Juvenile Justice System, how it can be more effective.
26 So I welcome you as witnesses and as spectators.

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1 Mark Washington
2 Our first witness today is Mr. Mark
3 Washington. He is the community coordinator of
4 community services, JDAI Network for Youth.
5 MR. WASHINGTON: Good morning.
6 JOHN DUNNE: Good morning, sir.
7 Why don't you speak up right into the mike.
8 MR. WASHINGTON: First of all, good morning.
9 My name is Mark Washington, I will speaking
10 before this esteemed panel. Thank you for having the
11 panel and having us come in and to having and exchange
12 of ideas with us.
13 First of all, I represent JDAI Network Youth
14 and what that is, is a network of agency networks to
15 help young people who are involved in the Criminal
16 Justice System on any given level. The front end, back
17 end of the system, helping them to receive services and
18 to stay out of the system.
19 First of all, for me, as I work in the
20 community, it is often very challenging to think about
21 ways in which our community needs help, our help, that
22 we do not have "law enforcement agency" attached it to.

23 I find it very difficult to believe that my community
24 that we serve, that I come from, that you give services
25 and the services that we do receive have the law
26 enforcement insignia attached to them. It's really

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1 Mark Washington
2 hard for us to basically get help, and to get the help
3 you that you're knowing about, from going to jail. I
4 think there is another way to help the community with
5 the services.

6 Next, I would like to know -- what I would
7 like to know, what is Probation's plan for addressing
8 these issues in the Probation system, from beginning to
9 the end, from detention, the Family Court process,
10 Probation violations, and what is Probation's agenda in
11 regard to adjustments.

12 Working with these young people who are
13 constantly placed routinely, people of color, are
14 constantly placed in probation. We have sixty percent
15 of the black community and thirty percent of the Latino
16 community placed in it. You know, when I was growing
17 up it was just a lower level of street kids kind of
18 thing. Now, we see a steam roller of young people in
19 the law enforcement system being placed into Probation.
20 That's one of the most important things that we really
21 can't stress. We would like to know what this
22 Probation Task Force plans to do, to shore up, to fix
23 up the relationships barrier that we see today.

24 Next we would like to also see a clear
25 presentation of data showing how young people are moved
26 through the system of probation, and we would like this

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1 Mark Washington
2 to be done in public and we would like this to be done
3 with five characteristics.

4 The first characteristic is very important
5 for probation to produce reports very, very
6 periodically whether that's weekly or monthly. We want
7 to see how the young people here coming into this
8 probation are moving through probation.

9 The first characteristic we are looking for
10 is race.

11 The second characteristic we are looking for
12 is ethnicity.

13 The third characteristic is gender.

14 The fourth characteristic we would like is
15 geography and events and how often. We really would
16 like to see the numbers there.

17 Say if throughout the whole process of being
18 in probation in each key decision making point, the
19 probation system has to justify what move they make,
20 what move is being made and why they are being made.
21 And the role with that information being broken down
22 along those five key characteristics, which I think
23 that would be important for the court in helping
24 probation provide better service.

25 JOHN DUNNE: Mr. Washington, you mentioned
26 geography, can you describe the community that you

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1 Mark Washington
2 serve, is it part of a county or just what is it?

3 MR. WASHINGTON: The community I serve, we
4 serve a bunch of communities. I grew up in South
5 Jamaica Queens, not far from here. I used to be
6 affiliated with, we would do more direct services, we

7 help young people throughout the five Boroughs, so we
8 basically are talking about the five Boroughs.
9 We think that it's important that Probation
10 is serious about providing better services, that
11 Probation be accountable. I know that transparency and
12 accountability in this day and earlier are like curse
13 words for people. But you, as someone representing the
14 community, we feel who are in charge with people, who
15 we think should be accountable and take care of the
16 people that you are supposed to be working for. So if
17 you are going to provide better service, let the
18 numbers reflect what we are doing. Let's have
19 systematic reports monthly, weekly in whatever
20 capacity, Probation can produce them with these
21 reports, with this information so it is shared with the
22 community. So the people who are doing this work can
23 look at this information and have meaningful
24 discussions with people that know about what the next
25 steps should be. Right now the people doing this work,
26 at JDAI, to see what probation is doing for the

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1 Mark Washington
2 services, we really don't know. We have the hardest
3 time in getting these numbers, so the numbers can be
4 produced on a consistent basis.

5 Thank you.
6 JOHN DUNNE: Don't go away, we have
7 questions for you first. I said, we were so pleased
8 that people who are out there in the trenches help us
9 here.

10 Tell me how information submitted by
11 probation would facilitate or help you in the work you
12 are doing in the community. What kind of information?

13 It seems to me if you tell us there is
14 60 percent African American, 30 percent Latino, would
15 that really, what are you looking for so we can pass
16 that word along?

17 MR. WASHINGTON: For the most part, we are
18 looking for the information, the data, the data
19 analysis which would prompt the next meeting going
20 forward. If young people -- I think to answer your
21 question. Once we get the data, then we have that
22 conversation going from there. The question of the
23 funds with young people needing the money. We have to
24 figure out what probation is doing. And to answer that
25 question, we have to get that information to better
26 know where we go from here.

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1 Mark Washington
2 I think it's obvious, we all know that it's
3 disproportionate in the Criminal Justice System in
4 doing this work. When you know it's very hard to
5 change the system. And, what we really are having and
6 we reached a lot of resistance, in having the numbers
7 being produced. We really can't have this conversation
8 if all the information is out of the table.

9 So the question is, to me, the larger
10 question is, what kind of society do we want to live
11 in?

12 Where are our resources being effective?
13 In order to have that, you have to know this,
14 you have to have that cooperation, so we would have
15 that in tact.

16 JOHN DUNNE: In the first part of your
17 testimony, you said that many services in the community

18 are law enforcement oriented. I have heard that
19 before. Can you give us an example how that works and
20 why it apparently it interferes with your real
21 objective?

22 MR. WASHINGTON: For an example, if a parent
23 is having a problem raising their child, right, it is
24 the law enforcement capacity of probation or Family
25 Court, the law enforcement component is that the best
26 place to handle that?

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1 Mark Washington

2 If I have a problem raising my child, if
3 there is difficulty raising my child, we have the law
4 enforcement component that is put into the system of
5 raising my child.

6 Shouldn't there be other community resources
7 out there that a person can go to without it being a
8 law enforcement thing?

9 Now, whatever problems I had in the home
10 there, like probation is probably not going to help
11 solve every problem. The problem is, that you come in
12 there, and it is another problem in the household. So
13 Probation is really not going to solve the issues.

14 The issue is, that we are dealing with
15 families and communities that need resources and help.
16 And in my humble opinion, is it probation or parents?
17 The families are given to Family Court and Probation is
18 not the answer.

19 JOHN DUNNE: I think there are other members
20 of the Task Force with more familiarity than I.

21 MR. POZZI: I would like to ask, as to the
22 disproportionality of minority contact. I can tell you
23 that this Task Force has had a lot of discussion about
24 that. And I can tell you that New York State is
25 looking at that, so is the Federal Government actually
26 looking at that phenomenon. We are studying that right

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1 Mark Washington

2 now. It's not an easy question to answer, it's fairly
3 complicated. But I know a lot of jurisdictions, a lot
4 of counties are actively trying to figure that out, get
5 the data. Sometimes the data is very difficult for us
6 to get a hold of too. A lot of times it's stored, it
7 is stored at police agencies and municipalities. It
8 actually needs to be collected in a central location so
9 that you can take a look at that.

10 MR. WASHINGTON: As a person who has gone
11 through the system, I can say, this is one of my
12 frustrations with this, because as a person going
13 through the system, these pieces of information can be
14 gotten.

15 MR. POZZI: It affects almost every step of
16 the way, that information is there. It's not that it
17 is not there, this is a regular complaint, that the
18 information is there and can be presented.

19 I am really perplexed as to why it is so
20 difficult to locate and disseminate this information.
21 The information is available. In my opinion, it might
22 not be totally aggregated the way we want it, but this
23 information is there. And for me to speak frankly, I
24 think this is about political will, to publish this
25 information. And I really, you know, think it an
26 important thing. We can build new jails, beds, we can

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1 Mark Washington

2 write that check in an instant. So the people have to
3 come out and fight that. But what we can't get is the
4 funds to get these numbers reported to the community.

5 What you want to look at is the decision
6 point. Why certain decisions were made. To compare
7 one group with another group and why the decisions
8 maybe dissimilar. That's what you want to do is have
9 the aggregate numbers. I agree with you that
10 information is routinely gotten, it really is. But
11 what you really got to look at, what I'm saying is
12 looking at the decision point and why certain decisions
13 are made on certain cases and different decisions are
14 made on other cases as to race, gender, ethnicity,
15 there is a bit more involved.

16 We are not looking at it, not only this Task
17 Force, but other people.

18 MR. WASHINGTON: And we can help if you make
19 that information available.

20 JUDGE CORRIERO: They reflect there is
21 indeed a disproportional number of individuals from the
22 community that have been placed on probation. What
23 suggestions would you have to improve that situation
24 dealing with that, addressing that?

25 MR. WASHINGTON: Well, first and foremost we
26 have to figure out, we can address the

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1 Mark Washington
2 disproportional ity of people on probation.

3 We have to go to the statistics, for the
4 people to be placed on probation. We have a second
5 sight. We keep spinning that. We all want to stop and
6 look at where we are. I think the numbers of the
7 information will bear itself out. I would like to
8 wholeheartedly see a reduction in law enforcement
9 moneys that are sent to the community and money just
10 being sent to the community for schools and out of
11 school programs for housing, things that the people in
12 the community need and that are not meant for law
13 enforcement funding.

14 I grew up in South Jamaica Queens. There was
15 not one after school program in my community, and yet
16 adults had. This society expects you to grow up and to
17 be a perfect teenager and that's a misnomer, there is a
18 misnomer. It's unfair that the exspection in the
19 culture that we created for these young people, when we
20 tell them that they are expected to stay out of
21 trouble, that we put no resources in place to see that
22 they stay out of trouble and they are getting locked up
23 for riding bikes on the sidewalk and stuff like that.
24 I mean, we have to look at our policies and what are
25 our direct policies. I think that Probation really has
26 a high rate of minorities with in quote, unquote

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1 Mark Washington
2 "mi nori ties" wi thi n probati on. You have poli cies of
3 thi s countr y of incarcerated people.

4 MR. MACCARONE: Thank you for being here
5 today. I have a couple of things.

6 There is a program wi thi n the New York State
7 Divi sion of Criminal Justice Service, and there is a
8 Dr. Thomas Harring who heads up the state's DMC, the
9 di sproporti onal mi nori ty program, he is putting
10 togeth er that data for each of major the juri sdicti ons
11 i n the ci ty. I encourage you to contact Dr. Harring
12 for that data. And some of data and statistics that he

13 is implementing and trying to reduce the disproportion
14 minority contact. I agree with the Commissioner's
15 policy, that the decision points do guide a
16 disproportional minority contact. One of those
17 decision points is the decision to detain. There are
18 20 detention facilities in New York State. Our agency
19 has recently distributed a uniform risk and need
20 assessment detention screening tool that assists judges
21 in making decisions about detention and release, purely
22 based on risk, to try to get at that issue of reducing
23 disproportional minority contact. So I suggest that
24 they need to work, take a look at that, because the
25 tension is an important indicator of subsequent out of
26 home placements and incarceration. Certainly so that's

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1 Mark Washington
2 an important decision point that I would suggest that
3 the network would want to take a look at.
4 Thirdly, I want to ask you a question. That
5 is, recently the criminal justice agency in New York
6 City put out an interesting report on juvenile
7 offenders in New York. It concluded within forty
8 months of sentence, three quarters of those youth would
9 receive a new offense, 75 percent at the State level.
10 With regard to youth placed in the office of Family
11 services detention facilities, nearly 80, 85 percent of
12 the youths are returned to placement such high
13 recidivism rates show that we are failing to address
14 the needs of the human family in trying to ensure that
15 they are not rearrested.

16 What other services, what essential services
17 do you suggest are needed in the communities to address
18 the needs of family and children?

19 MR. WASHINGTON: Most people in the
20 neighborhood that I lived in, and we are talking about
21 serving, using the term "criminal" is an illogical
22 response to poverty. Most people who engage in street
23 culture, street crime, they are attempting to gain
24 finances for their home. They are picking the wrong
25 tool for the job basically. So, first and foremost, we
26 to have come to the community and get a greater

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1 Mark Washington
2 economic opportunity for the poor, the young people and
3 for the adults in there.

4 For one, when I was growing up, the summer
5 youth program was a mainstay in our community. The
6 funding for that was sliced. The next thing to be cut
7 was the after school program. There are no places for
8 young people to go. I think it's horrendous for adults
9 in this society, can look these young people in the
10 face, with a straight face, and not give them a place
11 to go.

12 The third thing is mental health. Right now
13 there are so many young people who are acting out on
14 the basis of their mental health needs and it's sad if
15 you don't have medical insurance in your home. Then,
16 you know, one of the ways you can get it is to get in
17 trouble, there is a back doorway of getting medical
18 insurance.

19 Lastly, I think that the police, having some
20 kind of community -- some kind of community
21 collaboration in the schools, would decrease the
22 recidivism rate a lot, if arrests are occurring around
23 the school, the neighborhood, the street and after

24 school around the school neighborhood. If we can find
25 ways for the community to help. That in relation to
26 the schools, I think that would help in regard to how

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1 Mark Washington
2 many people are arrested and having some place to go
3 after school.

4 I personally would like to see all the
5 schools in New York City be open to nine o'clock at
6 night. Minimum, hands down, period. It makes no
7 sense. To be honest, it angers me, for me to live in
8 my community and to drive by these high schools that
9 are pretty much closed about 5, 6 o'clock and the young
10 people who are outside doing nothing, waiting for the
11 police to just come and say "tag, you are it". I
12 think, that what is necessary is we have to start
13 thinking out of the law enforcement box for the
14 community and start thinking about some holistic
15 resources that the people in the community should
16 develop.

17 JOHN DUNNE: We have since been joined by
18 retired Judge Phyllis Bamberger and also Nancy Ginsburg
19 from the Legal Aid Society.

20 Judge Corriero.

21 JUDGE CORRIERO: I would like to indicate
22 for the record, that what he is referencing to is a
23 report from the Criminal Justice Agency in the City
24 which followed an example of juveniles, when you use
25 the term "juvenile offenders" here, he is talking about
26 14, 15, 16 year olds who are placed on adult probation

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1 Mark Washington
2 as juvenile offenders, 75 percent or thereabouts, are
3 really there for a short time placed.

4 MS. GINSBURG: Do you have contacts with kids
5 that are actually being served by probation, who are on
6 probation?

7 MR. WASHINGTON: Yes.

8 MS. GINSBURG: What are you hearing from
9 those kids? What are your suggestions about actually
10 improving probation services?

11 MR. WASHINGTON: It's a tricky question.

12 JOHN DUNNE: May the record show that
13 Mr. Washington smiled.

14 MR. WASHINGTON: In this field, I joke about
15 it a lot, but we say that we are doing the work to not
16 have jobs any more. I think -- I'm not saying that a
17 piece of probation would not be necessary. But I don't
18 think the services that the society is trying to give
19 to these young people, I don't think probation is the
20 place for it. So to improve probation, I think that
21 maybe if probation came up with one example, if
22 probation came up with a youth leadership component
23 where probation trained young people, these very same
24 young people who were identified as felons and people
25 who engaged in misdemeanors and stuff like that. If
26 probation gave them the skills and the resources and

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1 Mark Washington
2 maybe even paid them to go up and talk to other young
3 people about it, this could be a better place to start.

4 Basically, probation has to start, from the
5 resources and services for the young people to have
6 tangible things, trips, after school programs, college
7 trips.

8 One of the things, and I don't think that
9 probation is the complete bad guy in this situation.
10 Probation, you guys, just are caught cleaning up the
11 mess in society. To be frank, part of the problem is
12 that we are not addressing our young people and in a
13 complete holistic educational way.

14 Aside from working with JDAI, I worked in a
15 high school in New York City. There are more young
16 people in the schools that I have worked at, who cannot
17 even read and write. So if we really are sincere about
18 helping these young people, then we have got to start
19 and demand vocation training, a training high school in
20 New York City, that's one of the things. That's where
21 a lot of young people got in trouble. They are not
22 functioning well in school. They are not functioning
23 well in society and they are trying to find ways to
24 provide for themselves and their family and they chose
25 what is most available and what appears to be the
26 easiest form to make money, which is in the street.

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1 Mark Washington
2 Basically, probation, I think that probation
3 will see a drastic drop in young people who are
4 getting in trouble and in the services that you are
5 receiving or giving to the people on probation. You
6 have to find a way to make some kind of vocational
7 training collaboration. That's one of the main things
8 in the society. You have programs in probation,
9 just -- there was a probation where he came up with at
10 the JJI Conference in Dallas, when probation was in
11 Chicago and he indicated from the school how the young
12 people, they were basically having a co-op test
13 program, the people were having a week in school, a
14 week at a training program. Some sort of resourcing
15 that was in collaboration with probation. The part of
16 the problem with that, you're taking these young people
17 who are probably on probation, because they are not
18 functioning, they don't read and write that well. To
19 go to school constantly and to feel inadequate, is the
20 wrong approach. If you want to have a better
21 probation, we have to open the way probation does
22 business. It can't just be high school track, so to
23 speak, in my opinion.

24 JOHN DUNNE: Any other questions of
25 Mr. Washington.

26 I thank you very much, sir.

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1 Mark Washington
2 Thank you. We have also been joined by
3 Kathleen Decataldo.
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2 SENATOR DUNNE: Our next witness is Mr. Jim
3 Cannon, Probation Officer from Westchester County.

4 Mr. Cannon.

5 SENATOR DUNNE: Good morning, sir.

6 MR. CANNON: Good morning.

7 Good morning, Senator Dunne, and members of
8 the Task Force. My name is James Cannon. I am a
9 Supervising Probation Officer with the Westchester
10 County Department of Probation. My current assignment
11 is supervision of the White Plains Family Court
12 Investigation Supervision Unit, which handles all the
13 PINS and JD cases for the White Plains Family Court,
14 which encompasses an area and community such as
15 Peekskill, White Plains and Rye, a fairly broad,
16 diverse population. It also includes 30 schools,
17 school districts, and 40 municipalities of villages and
18 towns. So, we have relationships with 40 different
19 police departments, 30 different schools as part of our
20 overall process in trying to develop dispositional
21 plans for these juveniles. These are the cases that we
22 deal with, the formal cases that have failed a
23 diversion or were unable to be adjusted, or the nature
24 or the conduct of the offense required in the immediate
25 attention of the court. I have been asked today to
26 speak as a front line practitioner of Probation's roles

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1 in juvenile justice system.

2 Several years ago in Westchester County under
3 the leadership of Commissioner Robert Pozzi and
4 Assistant Commissioner Robert Chace and the gentle, and
5 sometimes not so gentle, nudging of Administrative
6 Judge Joan Cooney and Acting Family Court Judge Janet
7 DiFiore, we began an attempt to enhance the quality of
8 the services that probation provided to the courts, to
9 the respondents and to the families and to the
10 communities that we serve, so that we could attempt to
11 come up with dispositional alternatives and services
12 that will offer the best possibility to rehabilitate
13 and remediate behaviors of the respondents who come
14 before us.

15 I am going to attempt to walk you through our
16 process, and hopefully we will touch on several of your
17 listed topics.

18 When I get a referral from the court for an
19 investigation, we do not just view it as a referral for
20 an investigation, we start the supervision process at
21 that time. The probation officers just do
22 investigations. They do not separate cases that are
23 probation supervision. We do a predispositional
24 investigation, not a predispositional report. They
25 supervise those people from the time they get the case,
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1 whether the child is in detention, or the child is in
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3 the community. This is the linchpin to what we do,
4 this investigation process.

5 The officers who work for me and do my
6 investigations are in contact with victims, the
7 schools, the families, the respondents themselves, the
8 police, the counselors and, if the children are in
9 detention, either secure or not secure, we are in
10 contact with them at the facilities.

11 In attempting to up come up with a
12 dispositional alternative for the best possible
13 dispositional alternative with these respondents
14 consistent with community safety, this process
15 sometimes take four weeks, and we are doing supervision
16 of these children at the same time.

17 We have several things that we actually do.
18 We do clinicals. We do clinicals, psychological and
19 psychiatric, not on all the cases, but on cases where
20 we think there is an issue that needs to be addressed,
21 and we need further information about why that child is
22 in front of the court. The other reason we get
23 clinicals is that potentially if the child is a
24 potential candidate for placement outside the home, we
25 need those clinicals as part of our package that we
26 send out for referrals.

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2 We do get involved in detention decision
3 because when children are in detention as we are doing
4 our supervision of the child we are making
5 determination because several times the child in
6 detention is going back before the court every 10 days,
7 and, when we bring a child back, the judges look to
8 make a determination about whether that child is able
9 to go home at that point, or whether the child needs to
10 remain in detention. We do make recommendations at
11 that point on both PINS and JD cases about whether the
12 child, in our opinion, should remain home, or still
13 needs to remain in detention as case plans are being
14 worked out. Sometimes that is in conjunction with what
15 the county attorneys on a JD case may be asking for,
16 and sometimes it will be an opposition to what they are
17 looking for depending. We are making our best
18 judgment. Our judgment is to serve the court and to
19 set up a plan for this respondent to become successful
20 if he is to return home.

21 We make a recommendation. A recommendation we
22 could make to the court is we could recommend an ACD,
23 we could recommend probation, probation supervision or
24 recommendation sometimes is also for placement outside
25 of the home.

26 When we go before the court, the most

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2 important thing that my officers have is they need
3 credibility. They need to be able to go to the court
4 and the court has to have confidence in what they are
5 saying, what they are presenting.

6 One of the more difficult things if you are a
7 probation officer, to understand the job, the thing
8 that chases people out of probation in family court
9 work that is actually the court work. That is the
10 thing they least like to do because on a PINS case you
11 walk into the court, there is no county attorney, there
12 is a lawyer and judge, a probation officer trying to
13 make a case against a trained professional, trying to

14 argue a case for their client, and you need the
15 credibility for the court to be able to decide which
16 helps them make a decision and a determination in which
17 direction they are looking to go.

18 But, the credibility of those officers, as I
19 say to people when they do the reports, if you cannot
20 make the case to me here as I sign it, you are not
21 going to be able to make the case in court. They need
22 to be confident in what they are doing, and that is why
23 we do an investigation, not just a report. We do not
24 rely on self-reporting. We do verification of the
25 information that comes to us because as we learned
26 through the course of time respondents are not always

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1 truthful, families are not always truthful, sometimes
2 the schools are not always truthful, so we need to be
3 able to address those situations.

4
5 When our recommendation is placement, and last
6 year I think Westchester County has the lowest
7 placement rate in the State for both their JDs and
8 PINS, the number is somewhere around 90 JDs or PINS
9 replaced last years out of Westchester County, and half
10 of those actually were placed on initial disposition,
11 the other half are placed upon violations probably
12 after probation supervision was commenced.

13 There are times when we have case we may not
14 even be sure this child is going to be able to succeed
15 in the community because of the issues that he faces.
16 Our basic premise is to send him home. Hopefully, with
17 enough supervision and enough services that he is going
18 to be able to succeed. It does not always happen, and
19 there are a lot of reasons for that failure, but our
20 attempt is to send the child home when and if possible.

21 One of the things that happen in there, while
22 Westchester has one of the lowest placement rates, our
23 average days for detention are actually higher, if you
24 ask the State on their days are higher, because one of
25 this things, if you send the child home without
26 services in place, his likelihood to fail increases,

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1 and sometimes services just do not happen. You need to
2 be able to broker services and set services up so the
3 child, when it gets home, both he and the family have
4 the opportunity for them to succeed.

5
6 When a case comes back to me for probation
7 supervision, if that has been the recommendation of the
8 disposition of the court, I make a determination in
9 consultation with my investigative officers and with my
10 supervisory officers about where the case should be
11 assigned.

12 I have help of a grant we brokered several
13 years ago. I have an intense supervision program. I
14 have caseloads of about 15 apiece, 2 officers. It's
15 sort of a joint case load of about 25 to 30
16 individuals.

17 When we first started, because there was a
18 federal grant, it was out of juvenile justice money, we
19 could only do JDs, and it was really high risk JDs,
20 rapes, robberies, weapons charges, serious assaults.
21 We have come to actually broaden that category to some
22 PINS cases actually because we have PINS cases that
23 come before us where there is domestic violence, an FO
24 where it has been converted to a PINS, an FO docket

25 where the child has come in and seriously assaulted the
26 parent, the chance is you send that child home, the

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2 chance of something occurring again have been pretty
3 high. We have taken those cases.

4 We have taken cases of fire setters in the
5 PINS, where a kid sets fires in the house and there is
6 no arrest is made, but again the behavior is serious
7 enough to warrant this kind of intensive supervision.

8 We also take in some sex offender cases in
9 where no arrest has been made, but the allegations in
10 the petition may contain some kind of sexual acting out
11 against somebody in the family, but no arrest was made,
12 but it is in part of the allegation of the petition.
13 So, we have taken those cases in because again, when I
14 look at a case, when I assign it for investigation of
15 supervision, it is not about whether the kid is a JD,
16 it is not about whether the kid is a PINS, it is about
17 the kid. What is it that brought the kid in front of
18 us, why is he here, and how are we going to keep him
19 out of the court in the future.

20 Our supervision program that we developed is
21 field, home and school based. My officers make night
22 visits. They make school visits. They make visits to
23 the home to see the families. We do other things such
24 as therapeutic and cognitive life skill groups. We
25 have an outward bound exponential program. We take
26 kids to do teamwork, team building, we try to get them

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2 get an understanding that there are positive things
3 that could be done to change their behavior. That is
4 what we are looking to do, change underlying behavior
5 and not reward negative behavior. The underlying
6 premise of all this is accountability.

7 And immediacy, we attempt to address
8 violations immediately, or we attempt to address
9 transgressions immediately even if they do not rise to
10 the level of violations because it has been our
11 experience that the sooner you address the situation,
12 it is like having a kid, a child, the sooner you
13 address the situation with your child, the easier it is
14 to deal with.

15 Our premise is not to do violations. Our
16 premise is to do graduated sanctions if we can,
17 administer conferences, more reporting requirements,
18 sometimes enhanced community service. Sometimes, if it
19 is a drug and alcohol issue, enhanced drug testing.

20 We also have a sex offender program. One of
21 things that has come up in Westchester County, back
22 around 1995 Westchester County had no specific program
23 for sex offenders for juveniles. Eighty-five percent
24 of the juveniles convicted of a sex offense in
25 Westchester County back in 1995 was sent to placement.

26 MR. POZZI: What percentage was that?

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2 MR. CANNON: Eighty to 85 percent of the
3 children in 1995 who were in court on a JD for a sex
4 offense were sent away for placement because there was
5 no services in the community able to address at that
6 point the issues that led to his actions. A lot of
7 times those placements were really out-of-state. We
8 sent the kids out-of-state at a large cost to the

9 county.
10 Today, in 2007 the number is reversed.
11 Fifteen percent, if that high, are actually placed out
12 of the community; the other 85 percent are actually
13 treated in the community. We have a collaborative
14 program with Westchester Jewish Community Services,
15 where they do sex offender treatment of juveniles, they
16 do risk assessments of the juveniles. We make
17 recommendations that we keep those kids in the
18 community, and we made that particular premise as we
19 have gone over the last 12 years.

20 Because you have services in the community,
21 they are able, and why it works is because the judges
22 have confidence in the service, the county attorney has
23 confidence in the service, the Probation Department has
24 confidence in the service, the law guardians have
25 confidence in the service, and the family develops
26 confidence in the service, and the police have

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1 developed confidence in the service. We try to use
2 that as a basic model of how we approach the whole
3 situation, not just on sex offenders, but on juveniles
4 delinquents and PINS that come before us.
5
6 We do night visits, and we do ride-alongs with
7 the police. We go to people's houses. We talk to
8 them. We talk to the families. The problem with
9 supervising juveniles is that to a large degree they
10 are supposed to be in school from 8:00 and 2:00 or 3:00
11 in the afternoon, so your window is for seeing them
12 4:00 or 5:00 in the afternoon, unless you go out and
13 see them all in the school. But, seeing the parent and
14 the child at the same time is sometimes difficult.
15 That is why the night visits work. We are able to have
16 a conversation with the parents. Sometimes, the
17 conversations, we try and gather information, how's he
18 doing, just in general, see if the kid is home. There
19 are spot visits, they are not necessarily announced,
20 but all the kids know that we are coming around to see
21 them at some point.

22 The ride-alongs with the Police Department.
23 We were doing ride-alongs with school resource
24 officers. We talk to them. Even if a situation
25 occurred in the school that did not arise to a level of
26 arrest or a PINS petition or anything else, but

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1 something was going on in the school, the school
2 resource officers say, Listen, let's stop by this
3 house. We would have PINS brochures with us. We have
4 a conversation and a hand-out to the family if there
5 was a situation the kid was not going to school or
6 whatever. I think that helped to build the situation
7 of trust between us and the school resource officers as
8 we have gone about this program, a difficult thing to
9 do if you know anything about the law enforcement
10 continuum and where probation sits on that a lot of
11 times. It took a lot of time for us to build their
12 confidence in what we were trying to and to get them
13 understand how we can actually fit into the whole
14 continuum and law enforcement in the law and service to
15 the community.

16
17 We have an educational advocate who helps us
18 because most of the kids we have are not doing well in
19 school either, and probably have not been doing well in

20 school for a long period of time, may not even be in
21 the appropriate educational setting, but either because
22 the school has not moved in the direction to address
23 that, or the family has not moved in the direction to
24 address that. As we have done our clinical evaluation
25 and done our investigation, we learned that the kid is
26 in wrong place potentially. So, we have an educational

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1 advocate that has been funded recently that tries to
2 deal with the school to get them to understand what the
3 child's rights and responsibilities are, what their
4 responsibilities are to the child, so we could
5 effectively get them into the proper educational
6 setting. That is an ongoing process.

7 One of the things that we have learned in
8 this, and I am not sure how true this is throughout the
9 State, is that homebound instruction has become a sort
10 of an epidemic for the children. This we see in
11 probation. The kids have been expelled from, suspended
12 from their school for a period of time for behaviors
13 that may have happened in the school that may have
14 something to do with why they are in front of us, but
15 may not. They have homebound instruction. They go to
16 the local library two hours in the morning between 9 to
17 11, and then they are free to go off and do whatever
18 they want to. The State education department does not
19 even keep track. They keep track of probably seven
20 hundred thousand different things. One thing they do
21 not track is homebound instruction numbers. It is a
22 big problem, and something that we need to look at, but
23 we have seen that firsthand. It is a big thing we see
24 in terms of how we move forward in terms of our
25 supervision of these juveniles.

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1 We have used electronic home monitoring. What
2 has happened is that we have decided that really we
3 found it difficult to work for juveniles for a couple
4 of reasons. First of all, the juveniles. If anybody
5 has had a teenager and you tell him, Your curfew is
6 9:00, and they roll in at 10 after 9, you have an issue
7 to deal with, but that is part of what we do. We have
8 juveniles five minutes late, ten minutes late. The
9 people running our home monitoring devices were
10 throwing out so fast because in criminal court if you
11 are late on your home monitoring, a violation is filed.
12 But with juveniles, you would be in court in every two
13 minutes, and that is one of the things we noticed.
14 That it did not really work. It became sort of a
15 curfew indicator, but it was very difficult, and it
16 really was not effective for us.

17 We do use curfews, and we do check them. The
18 home monitoring device we use very infrequently because
19 we felt that just because of the problem again, if you
20 do not address the fact that that he is 10 minutes
21 late, the next time he is 20 minutes late, and we start
22 down a slippery slope.

23 We are not trying to put the kids in the
24 position to fail, that is the other part of the deal
25 also. We had one kid who was actually in the project
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1 at one point looking down at kids playing basketball
2 and decided, The hell with it, I'm going to play
3

4 basketball. And he realized what the risk was, but he
5 said, I was going to play basketball.

6 We do not want to put kids in that situation
7 where they are going to fail. That is why we try not
8 to use home monitoring, unless absolutely necessary.

9 We do violations as a last resort. One of
10 things that we have learned here in doing family court
11 work, it is really different doing criminal court for
12 probation in that you need a certain amount of risk
13 tolerance, you have to be willing to take some risks,
14 because the difference in criminal court, if you do a
15 violation, a large part of the time your recommendation
16 is going to jail, jail time. Probation did not work,
17 and that is the condition for going to jail.

18 As anybody involved in the family court system
19 would to tell, once your placement numbers start going
20 up, the county executive starts complaining, DSS starts
21 complaining because money is going out the window. How
22 come your numbers are up? So, we have tried to use
23 violations. Even when we do violations, we look for
24 extensions if at all possible. We use detention as
25 part of a violation to address behavior, and placement
26 only as a last resort. That is the way we approached

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1 the whole concept of that supervision process.

2 But, the risk tolerance is
3 important because you have to be willing to accept
4 certain risks. When I do the intensive supervision
5 program, all those candidates in my intensive
6 supervision program at some point are candidates for
7 placement. We are willing to take a risk that we could
8 supervise in the community with the proper supervision
9 and the proper services, but somebody has got to take a
10 risk and not be afraid that if the case blows up they
11 are going to get dragged in front of a county
12 legislators committee or in front of their commissioner
13 or the county executive to explain why they were
14 willing to take that risk. You have to have probation
15 officers willing to take the risk because the easy
16 thing to say is, I'm doing a violation. I recommend a
17 placement.

18 The hard thing to do is, I will do a violation
19 and recommend an extension, and to do that you have to
20 have some kind of ability to absorb some kind of risk,
21 be comfortable that people are going to back you in
22 terms of making that decision.

23 That is true for my investigators who make the
24 decision about that for their initial appearance, and
25 it is true for people who do supervision work. We are

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1 looking for them to be flexible. These are kids. We
2 are looking for them to be flexible, but we are looking
3 for kids to be accountable, and you need to hold them
4 accountable, and that is what we are looking to
5 accomplish. Programs have been pretty successful.

6 SENATOR DUNNE: Mr. Cannon, could I ask you to
7 kind of sum up, we are running a little bit late.

8 MR. CANNON: Okay. The primary plan, the
9 permanency plan for these respondents is to help the
10 juvenile avoid local jails and state prison. We have
11 done that. We have supervised actually concurrent
12 cases, JOs and JD cases. We supervise children who
13 have adult criminal cases, as well as JD cases because
14

15 sometimes the court was looking for the ability to make
16 a different decision in terms of which is in the best
17 interest of this respondent. We go in the criminal
18 court direction, or we go in the family court
19 direction. Westchester is trying to set up an
20 integrated youth court to try and deal with some of
21 those issues as we go forth.

22 I just hope this information has been helpful
23 to you, and I am happy to answer any questions you may
24 have.

25 SENATOR DUNNE: Thank you.
26 Yes, Joe Rinaldi.

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2 MR. RINALDI: Mr. Cannon, you said back in
3 1995 Westchester did not have services for sex
4 offenders, but now you do. How did you manage to get
5 them in?

6 Obviously, a lot of the counties around the
7 State or probation departments do not have those
8 services. How did you get them into Westchester.

9 MR. CANNON: I actually think that program was
10 set up out of county tax levy money. The commissioner
11 was Mr. Chace I think at that time. He was able to go
12 to the county executive, explained there was a problem
13 that we felt needed some addressing, and the money they
14 would save on the front end would be well worth
15 spending. I think that has proven out over the course
16 of those years to actually have been true.

17 One of the problems we had though is that most
18 of the services that probation has to broker are really
19 tax levy services. We have to actually go sometimes
20 and ask for help from Mental Health, from Department of
21 Social Services because to a large degree there is no
22 outside funding sources in the probation field.

23 MS. DeCATALDO: I thank you for very much for
24 your testimony, Mr. Cannon.

25 I notice that when you were talking about the
26 recommendations that you made to the court, at least

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2 what I heard, and I could be wrong, is that you said
3 you made recommendations that were that started as
4 essentially an adjournment in contemplation of
5 dismissal, an ACD and then probation.

6 MR. CANNON: I was explaining the range. In
7 theory, you are supposed to be looking at the least
8 restrictive, so in in theory the ACD would be least
9 restrictive.

10 MS. DeCATALDO: Then you mentioned probation.
11 I wondered if that reflected the fact that there might
12 be something in between those two steps, those two?

13 MR. CANNON: We do have ACD with supervision.

14 And, in fact, to tell you the truth, at least
15 where we are in White Plains Family Court, we do not do
16 a lot of ACDs with an investigation. If we are doing
17 an ACD, we are doing an ACD with supervision. The
18 amount of supervision is really dependent upon the
19 circumstances. Most of the ACDs that happen out of the
20 White Plains Family Court are really ACDs from the
21 bench that were agreed to by the county attorney and
22 law guardian at the time of initial disposition which
23 we are not involved with until actually an admission
24 was made.

25 MS. DeCATALDO: So, the ACD you are talking

26 about is sort of like ACD plus, but not quite

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2 probation?

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MR. CANNON: Well, it is probation supervision because again during that 6-month time we are actually supervising them the same way we would do anyone else.

7

MS. DeCATALDO: But they have not been formally placed on probation at that point?

9

MR. CANNON: No, it is really ACD with supervision.

11

SENATOR DUNNE: Yes. Catherine.

12

MS. ABATE: Thank you, Mr. Cannon for coming here to testify today.

14

I was pleased to hear that you believe that the role of the probation officer is not just to monitor activities of probationers, but also to try to change behavior.

18

So, in that capacity, what kind of tools or training do you believe the probation officers need to better relate to the probationers so that they get them the help they need so they can get on a positive track?

22

MR. CANNON: Well, that is true. Two things occur. First one is, you are correct, when you do intensive supervision, one of the things you learn, the more intensively you supervise, the more things you actually could find. And, with juveniles then it goes

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back to the risk tolerance, what you are willing to accept and how much you are willing to take it.

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Probation officer needs some experience with the concept of family court, they need an understanding of what services are in the community that could best serve this child, they have to have an understanding of the community's services that are available, what therapists are available. A lot of time, we have therapy. What drug treatment program is available.

11

To a large degree we are not doing treatment. That is not really our responsibility. Our responsibility was designed to find that if the child needs treatment, he is actually able to find treatment, and then be able to maintain and complete treatment, or services, counseling or services that he needs, and the same also with educational services. That is one of the reasons why we had actually brought the educational in it.

20

MS. ABATE: Do you think it would helpful for probation officers to have training in terms of relating to the probationers in terms of communication skills?

24

I ask that question because when I was probation commissioner many years ago I used to talk to probationers, and I said what was the turning point in

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their lives, and these are people that had gotten off probation and were leading positive lives, they said it's usually one person in their life. It could have been a teacher or social worker, and all the times it was a probation officer. It was not that the probation officer was generous. The probation officer was tough, but a connection was made.

9

And, many of the young people that come

10 through probation are a disconnected youth. They are
11 not connected to their communities, their families, or
12 any other part of the school system, et cetera. So,
13 you don't think probation officers need some training
14 in terms of communication skills to better understand
15 the youth they are working with?

16 MR. CANNON: First of all, I think probation
17 is a people business. If you are not a people person
18 maybe probation is not the business you should be in.

19 Family court with juveniles, I think you have
20 to like kids. You have to decide there is merit for
21 the kids and that kids have value. One of the things
22 that we see in the system we have today is actually
23 kids carry much more weight than sometimes they should.
24 We have situations that occur where there is an ongoing
25 neglect and abusive proceeding and ongoing PINS case.
26 Sometimes it is easier for the PINS case to resolve

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2 than the abuse and neglect. The child ends up carrying
3 the weight for that particular person. The case
4 one day is a PINS case, and the case the next day is a
5 neglect or abuse case.

6 You need communication skills. You need a
7 rapport. You need to develop a rapport to try to let
8 the kids know we are not the friend, that is not the
9 relationship, but we are not out to jam them up. We
10 are looking to make them successful, help them succeed.
11 They have to buy into it. We have to make them
12 understand they need to buy into a process. So, any
13 type of training that helps them move that particular
14 thing along, I think would be welcome.

15 I do not know whether I answered your question
16 or not.

17 MS. ABATE: Sure. Is there any other training
18 that the officers would like?

19 MR. CANNON: I do think that one of things
20 that should be done, and this is a probation question
21 really, is that we have to stop moving in the direction
22 that family court is a step child of the Probation
23 Department. But, that is just not true of probation,
24 that is true of police agencies, that is true of the
25 courts, that is true of the whole system. Youth
26 officers in the police departments are not viewed the

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2 same as the detectives are. Family court probation
3 officers are not always viewed in the same way that
4 criminal court probation officers are viewed. I would
5 dare to say that family court judges are not
6 necessarily. That is not the most desirable assignment
7 in the judicial system, so I think that they are
8 situations that we need to look at and help enhance
9 that particular process.

10 SENATOR DUNNE: Yes, Judge Bamberger.

11 MR. BAMBERGER: During our prior meetings, we
12 discussed the difficulty of probation departments
13 establishing a relationship with local boards of
14 education or the local principal or whatever the school
15 structure is in a particular locality. How do you deal
16 with schools in trying to get the kids back into the
17 regular public school, or whatever school the child
18 goes to, and how do you develop this rapport with the
19 Board of Education which seems to be actually critical?

20 MR. CANNON: It is very difficult. When kids

21 are in detention, for example, and we are trying to
22 develop, we do staffing. We staff those cases and try
23 to come up with a plan for the individuals. One of the
24 most important components would be, if the kid goes
25 home, where is he is going to school, and what kind of
26 classes is he going to be in, and what is the program

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2 going to be for. The schools rarely attend those
3 staffings.

4 To a large degree the key the people we are
5 talking about unfortunately/fortunately, I am not so
6 sure schools want those kids in the main school
7 building. They put them in alternative schools. They
8 put them on homebound instruction. Somehow these kids
9 actually get left behind, and they are more likely to
10 be left behind.

11 We try to engage the superintendents. We have
12 the educational advocate who has a conversation, and
13 that is still a developing process to talk to the
14 individual school district. The school districts are
15 really run by superintendents, boards of education and
16 their lawyers, and they make decisions based upon what
17 they think is in the best interest of the school
18 district, not necessarily based upon what is in the
19 best interest of the child. That is something that
20 needs to be looked at.

21 SENATOR DUNNE: Could n't be anymore direct
22 than that. Commissioner Horn?

23 MR. HORN: Two questions. First has two
24 parts. Could you tell me about your work load. You
25 have got ISP. You said that you staff it at 15 to 1 or
26 30 to 2, but what of the cases you supervise:

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2 What percentage are ISP, what percentage are
3 regular and what are your case load sizings in regular
4 supervision?

5 MR. CANNON: There are about 30, could be 20,
6 25 to 30, but I am saying on an average of 30 for
7 juveniles.

8 MR. HORN: One to 30?

9 MR. CANNON: One to 30.

10 MR. HORN: And is that adequate?

11 MR. CANNON: At this point, I think we were
12 able go to through that. A lot of that depends on the
13 nature of your staff and their ability. I have been
14 pretty luck that I have staff that has remained in my
15 unit a period of time and are pretty experienced. So
16 far, I do not have a complaint about that particular
17 number. The 1 to 15 number was an attempt to just do
18 more intensive supervision services.

19 My investigators do somewhere in the area of 6
20 to 8 investigations a month. One of the things we
21 found out about investigations -- and that is sometimes
22 a number that is hard to fix -- there is so much court
23 work involved that takes up a fair amount of their days
24 and their time. But every time there is a court date,
25 those people are in court making recommendations,
26 talking about the case, updating the court as to where

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2 we are in the process.

3 MR. HORN: And my second question -- 6 to 8,
4 that is what I was looking for -- you did not mention

5 adjustment. How big a part of your practice is
6 adjustment?

7 MR. CANNON: I do not do adjustment.
8 Adjustment is really done by our -- we have broken it
9 down. I do the formal cases so when the case does not
10 make adjustment. They do a fair amount of cases of
11 adjustment.

12 You want me to talk about adjustment, is that
13 what you are looking for me to do.

14 MR. HORN: Yes, it is a way to kind of short
15 circuit the whole process and keep the kid out of the
16 family court altogether.

17 MR. CANNON: Adjustment is really a process
18 we use to try to keep the case going formal, and most
19 of the times I would say that, I do not know the
20 number, Mr. Chace would know the number better than I
21 would know of how many cases we actually adjust as
22 opposed to cases that get sent formal.

23 MR. CHACE: We do a thousand JDs a year.
24 Roughly, a half have some form of adjustment; the other
25 half we forward to the county attorney.

26 MR. HORN: You have about a 50 percent

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2 adjustment rate.

3 MR. CHACE: Then the one we send to the county
4 attorney, they probably file on somewhere just south of
5 300. The other 200 get ameliorated by the county.

6 MR. HORN: So, it sounds like a 50 percent
7 adjustment rate. That is what I was looking for.

8 MR. CANNON: That might even be high. We do
9 not adjust cases when a victim says, no, they do not
10 want to go forward, and we do not adjust sex offense
11 cases. Sex offense cases are always referred to the
12 county's attorney office.

13 SENATOR DUNNE: Yes, Nancy Ginsberg.

14 MS. GINSBERG: You indicated that your
15 detention periods are relatively long. Do you know
16 what your average detention period is?

17 MR. CANNON: I do not. I know DS calls about
18 that. They fund it. I think one of the things
19 probably is, I think the OCF date is 45 days or 60
20 days. I think it is a whole thing they are willing to
21 fund. I cannot remember what the number is.

22 Sometimes we push up against that because the
23 more difficult a case is and the more difficult it is
24 to put a case plan in place to keep the kid in the
25 community or make a decision about to whether or place
26 him or not that really becomes it. What we are trying

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2 to do is get it right. So, we are trying not to be
3 artificially fast forwarding because of this detention
4 number date. I think we are proud of our placement
5 numbers, and I am not saying I am proud of my detention
6 number, but if my placements are low because my
7 detention numbers are high, I am willing to live with
8 that.

9 MS. GINSBERG: That gets into my next
10 question. I am assuming some of the services you are
11 seeking are difficult to put into place, and that is
12 why the kids are remaining in detention. So, my
13 question is what are those services that you are
14 finding difficult to make those referrals for, and what
15 are the obstacles that you are facing?

16 MR. CANNON: Sometimes it is services.
17 Sometimes it is trying to engage parents in the
18 services too because again that is part of the problem
19 we run into, especially more in PINS cases than JD
20 cases, trying to engage the parents. The parent is
21 obstinate, I have had it. That's it. I'm done.
22 Sometimes it is working on trying to get the
23 parent to accept the fact we have a plan here to bail
24 out the kid that may allow the kid to go home, and we
25 are trying to address that concern too. That sometimes
26 takes some doing. We do the staffing to bring them in

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2 and make them feel like they are part of the process.
3 Again I do not have money, we do not buy
4 services. The only service we really buy are sex
5 offender services we have. Other than that, we are
6 really trying to broker services, and that is one of
7 the problems probation has. We do not have funding to
8 go ahead and buy services.
9 Probation, as you are probably well aware, is
10 a very labor intensive business in terms of budgets and
11 everything else. Most of the money is actually given
12 to line officers and stuff like that. Very little
13 money is given to services. That is why we talked to
14 Mental Health about services they could provide
15 services, to DSS for services they could broker and
16 stuff like that.

17 MS. GINSBERG: My question is what services do
18 you find you need the most, and what services do you
19 find having the most problems obtaining?

20 MR. CANNON: Counseling is always a tough
21 issue because most kids do not think they need
22 counseling, so that is a difficult thing. It is not
23 that the services are not there, it is the ability to
24 keep the kid committed to the process and to keep the
25 family committed to the process. I am not so sure.

26 Westchester has a fair amount of services.

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2 Each community is a little different. We do have
3 transportation issues sometimes. It is a pretty broad
4 community. We do sometimes have transportation
5 problems, and that becomes an issue, but we generally
6 could find services for most of our kids. The question
7 of whether it is the right service, whether we could
8 buy everybody into the plan, and that is part of the
9 process we try and deal with as we go forward.

10 MS. GINSBERG: Do you have any problem with
11 waiting list for services?

12 MR. CANNON: We do have waiting lists.

13 MS. GINSBERG: And what services do you find
14 the longest waiting list?

15 MR. CANNON: We actually use MST sometimes.
16 We have an FFT programs. There tends to be waiting
17 lists for those programs.

18 And then if we have a child, we have to move
19 forward without that, and try and find to make some
20 different direction. That is part of the plan as you
21 go forward with your dispositional plan. There is a
22 waiting list, do we want to wait on that bed, slot to
23 open, or we going to send the kid home and hope this
24 other plan works.

25 That again goes back to risk tolerance also.

26 SENATOR DUNNE: Thank you, Mr. Cannon.

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Yes, Judge.

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JUDGE CORRIERO: Deputy Commissioner?

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MR. CANNON: No.

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JUDGE CORRIERO: Not yet.

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MR. CANNON: God, no.

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JUDGE CORRIERO: I am kidding around. I said that pointedly. I did not say that idly because I must say, unfortunately, I was called away at a point during your presentation, but up to that point I heard described what I considered to be a phenomenal model of dealing with adolescents and juveniles, and I was wondering if you could tell me what the numbers are, the number of kids that you deal with?

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MR. CANNON: I supervise currently about 120 kids on probation itself. I have probably another 30 cases.

18

JUDGE CORRIERO: You say you supervise?

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MR. CANNON: I am talking about my officers.

20

In theory, because I am the supervisor, they are not my cases, other officers are actually seeing those cases for me.

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And I have 30 cases under investigation currently at this point.

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JUDGE CORRIERO: Now, of course, New York City probation numbers would be dramatically, dramatically

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different. Do you think that the model that you use would be applicable even if the numbers were dramatically different?

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MR. CANNON: Well, if the resources are

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there. The question really is -- I have been lucky to be able to have the resources to be able to go forward and put this model in place.

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You know Westchester also has Mount Vernon, and Yonkers. It is a little more difficult in Mount Vernon and Yonkers than it is where we said before in White Plains, and there is a variety of reasons for that. There is a variety of factors in play with that. I think we try to move in that direction, sometimes haltingly, sometimes successfully, so two steps forward one step backwards sometimes.

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Do I think the model works? I think the model works. You have to have people committed to the concept.

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JUDGE CORRIERO: And do you supervise juvenile offenders 14 and 15 years old being prosecuted?

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MR. CANNON: In theory, those cases are adult cases. Historically, they have gone to the criminal court division. One of the things we are learning is that the criminal court probation officers are not always equipped to deal with some of the issues 14 and

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15 year olds bring to them.

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We have established the PINS 18 Unit, and one of the things we used to get in the beginning was phone calls from criminal court probation officers saying, Listen, the mother is calling me up complaining he is not coming home at night, or he is late coming home, he is not going to school, all PINS type of issues because he is 16 or 17, and the question is did they have the knowledge and experience to be able to deal with that

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11 issue at that particular time. That is one of the
12 reasons I think they are trying to set up this new
13 integrated youth court, to try to blend these cases
14 together.

15 On the other hand, we have supervised JDO
16 cases when the judge -- if two cases are currently
17 together, if there is a JO and JD, we have accepted
18 those cases.

19 I know when the District Attorney was both an
20 acting family court judge and criminal court judge and
21 she had the same case that sometimes she would prefer
22 we actually do the supervision because we had the
23 expertise and knowledge to deal with those kids.

24 JUDGE CORRIERO: Do you perceive any
25 significant differences in the way in which you deal
26 with juvenile offenders as opposed to juvenile

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1 delinquents?

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3 MR. CANNON: Again, it goes back to my point
4 before, I do not really differentiate between PINS
5 cases and JDs cases. It is really about the kid and
6 how you deal with the case. Obviously, a JO case is a
7 case that is --

8 JUDGE CORRIERO: More serious.

9 MR. CANNON: (Continuing) -- more serious.
10 But, I have many cases that were originally charged as
11 JOs and were removed to the family court and eventually
12 made into admission of JD charge. So, the initial
13 charge is the same, and why that happens is, you know,
14 above my pay grade.

15 JUDGE CORRIERO: Thank you.

16 MR. POZZI: I just want to follow-up. I know
17 we got to move on. I just want to follow-up on
18 something that Jim said about developing a level of
19 expertise in being able to deal with family court
20 cases, and I think that has been one of the
21 shortcomings of probation over the years that we placed
22 people in the family court units, they start
23 establishing some expertise in dealing with the kids
24 and families and learning all the services, and then
25 the mind set, at least, when I first started in
26 Westchester close to 20 years ago, was that you did

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1 your time in family court and then you got upgraded to
2 go into the criminal court.

3 And, you know, that is not the way we do
4 business any longer in Westchester, and that is not the
5 way we should do business in New York State or in the
6 United States.

7
8 Family court is a very difficult assignment,
9 we all know that, because not only are you dealing with
10 the kid, but you are dealing with the family and you
11 are dealing with the community.

12 And I think all of us who have any level of
13 understanding of what is going on in family court could
14 sit at an intake where we have the family there and the
15 kid and you could listen to the conversation for about
16 five minutes, and you will understand the level of
17 dysfunctionality and what the needs are and how you
18 have to have some expertise in order to deal with those
19 issues.

20 I think we have to make a conscientious effort
21 to allow probation officers to stay in family court. A

22 lot of them are dedicated, a lot of them want to stay
23 there for their entire careers, but I think we need a
24 commitment to develop the same level of expertise to
25 support our family court judges as we do for our
26 criminal court judges.

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2 And, I think, Jim, I also want to follow-up on
3 something that you said. The family court is, perhaps,
4 the most important court that we have because we have
5 always said if we have any opportunity to change
6 behavior it is with the kids, and I am also not only
7 talking about our 14, 15 and 16 year olds, but now our
8 17 and 18 year olds, that we have made a conscientious
9 decision in Westchester to treat those kids, even
10 though they are coming through the criminal court as
11 juveniles, because they really are, and we are trying
12 to do everything we can to provide the same level of
13 service to those kids.

14 So, I think that there was some good points,
15 and I think that has something that probation and this
16 task force has got to address in our report to the
17 Chief Justice that family court is an extremely
18 important court, and the probation officers that work
19 in that court need to develop the expertise, and, even
20 more importantly, we need to have those community
21 resources available for us.

22 JUDGE CORRIERO: Thank you.

23 SENATOR DUNNE: Thank you, Mr. Cannon.

24 MR. CANNON: Thank you.

25 SENATOR DUNNE: Did you have a question Ruben?

26 MR. AUSTRIA: I did have a question.

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2 I really appreciate you talking here about the
3 risk tolerance and probation officers risking to
4 recommend the violation with extension. I imagine that
5 that takes some sort of cultural shift or attitudinal
6 shift overtime. I am wondering, as supervisor, what do
7 you see as effective in getting your officers to that
8 point, what makes the department shift in that regard?

9 MR. CANNON: Well, the law says least
10 restrictive environment consistent with public safety.
11 And if it is grey -- in the cases we talk about,
12 80 percent of them are grey, 20 percent are pretty
13 clear-cut about what going to happen. A lot of them
14 are grey cases. Sometimes there are grey cases between
15 ACD and probation; sometimes there are grey cases
16 between probation and placement. If you are on the
17 bubble, maybe you should lean towards the least
18 restrictive. That is the premise we take with them, if
19 you are on the bubble, but you got to be comfortable
20 with that. You need to be comfortable with that when
21 you make that recommendation because if you are not
22 comfortable with it, the judge is not going to be
23 comfortable with it, the supervisor is not going to be
24 comfortable.

25 As I said before, we put kids on probation who
26 when I do the conference and the case comes back to me,

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2 I am going to say to someone, I give it to a
3 supervising officer, Keep an eye on this early because
4 this kid may not make it. He is on probation.

5 We will giving him a chance to make it at

6 home, but there is a high likelihood this is a high
7 risk case, and he may not make it, but we are taking
8 that chance.

9 If he does something in the meantime, he burns
10 down an apartment building, that is a problem, but that
11 is the risk that you have to decide to take.

12 That is why sex offenders in the sex offender
13 program is a big issue. As we are all aware, it is a
14 hotbed topic, but if you talk about sex offenders, you
15 are willing to keep the kid in the community, what you
16 do not want to see, and most of those kids who have
17 been on sex offenders programs who have not been placed
18 because of a re-offense, they have been placed for
19 other behaviors. They stop going to school and do all
20 those other PINS behavior necessarily. So, again, you
21 have to decide what you are comfortable with doing, and
22 you have to have confidence in the supervision people
23 that you are actually transferring the case over to,
24 they have the ability to do the job.

25 I do not know if that answers your questions
26 or not.

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2 MR. AUSTRIA: Are there specific trainings
3 that you have had, or is there more just a
4 person-to-person interaction? Because, I would imagine
5 new staff coming in would probably want to have a more
6 conservative cover there.

7 MR. CANNON: CYA.

8 MR. AUSTRIA: Yes.

9 MR. CANNON: It is true, you are trying to
10 move them along in a particular direction. Why are you
11 looking to make this recommendation, what are we
12 looking to do, can we do an extension. We give them
13 more orders of conditions. Could we give them curfews.
14 Graduated sanctions is a more appropriate approach. We
15 start from here, and, as we talk it up, we give more
16 sanctions, more community service, curfew, more drug
17 testing, more visits, more contacts, and those are
18 things we try and do before, so we become more
19 intrusive to some degree. Sometimes intrusion is
20 actually a benefit.

21 MS. DeCATALDO: I am sorry. You mentioned
22 something that is of interest to me. I am sorry to
23 take your time.

24 More community service, what does that involve
25 in your jurisdiction, how does that work?

26 MR. CANNON: Our community service is an

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2 attempt to give back to a community for issues that
3 happen. There are all kinds of community service. The
4 police departments run sometimes their own community
5 services program as a pre-adjudication situation.

6 Our community service, we actually have, for a
7 long time we have had a formal community service
8 situation where somebody is assigned to community
9 service.

10 On juvenile level, they go to the county
11 parks, county facilities and they do clean up, they do
12 painting, they do stuff in general county facilities,
13 parks, clean up, and those type of things. There were
14 some liability issues about dealing with private
15 agencies, and we decided not to do that with our
16 juveniles.

17 We actually started now recently an
18 adjustment, an informal community service so that we
19 could do something about kids who are not going
20 formally to court, but we could address that situation.
21 We also use community service sometimes on a
22 restitution issue. The law of restitution is \$1,500 at
23 most to the juvenile. Sometimes there could be damage
24 much more than that. We try to use community service
25 as an additional sanction for a child who may have had
26 more monetary damages, but we try to use that as an

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2 additional sanction, and sometimes we use it as a
3 violation sanction. This is what you are doing as you
4 are going forward.
5 SENATOR DUNNE: Yes, Bob Chace.
6 MR. CHACE: Yes, Senator.
7 I want to reemphasize a point Mr. Cannon made
8 about risk tolerance. We do not do that by osmosis.
9 We talk about detention. We use it robustly. The kids
10 in detention in Westchester, they get a psychiatric,
11 psychological, educational assessment in the school.
12 The probation officer sees them on a weekly basis.
13 They are engaging a family here. They are totally
14 feeling reluctant about that kid and family, so when we
15 get to court and take that reasonable risk, and it is a
16 reasonable risk we take, we are recommending probation,
17 you really have unearthed what some of the issues are
18 that we have to be aggressive in addressing with
19 intensive supervision, and that is an important point
20 to reemphasize in building that case point.

21 MR. CANNON: Two things about services. I
22 got a before question about services. It just occurred
23 to me services that we find difficult finding is fire
24 setting services, treatment of juveniles for fire
25 setting. That comes up a lot of times now. We started
26 asking the question a lot of times, Are there any fire

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2 setting behaviors? Once you ask the question, you get
3 a yes to that, you have to figure out how you are going
4 to respond to that. Fire setting is one of the areas
5 we have.

6 There is another issue we have seen
7 particularly with girls, and sometimes its surface to
8 deal with it, but the situation is with girls who cut
9 themselves because that is an immediate danger to
10 themselves and how they do that, and we see,
11 unfortunately, with a lot of our PINS girls issues of
12 cutting. It is an issue, again, where we do not have a
13 lot of training, we do not do a lot of areas with it,
14 but again it is a situation where people put themselves
15 at risks, and we need to be able to deal with those
16 situations.

17 SENATOR DUNNE: Well, you could see we are
18 very glad you were here.

19 MR. CANNON: Thank you.

20 SENATOR DUNNE: Thank you, Mr. Cannon.

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1 Karen Yazmajian
2 JOHN DUNNE: Our next witness is Karen
3 Yazmajian, Supervising Attorney for the New York City
4 Legal Aid Society. She is accompanied by Martin
5 Feinman, Deputy Attorney in Charge of the Brooklyn
6 Office and Jacqueline Deane, Supervisor in Charge of
7 Delinquency Practice and Training.
8 MS. YAZMAJIAN: Good morning, we do have
9 copies for everybody.
10 We wanted to thank the chairman and the
11 entire task force.
12 My name is Karen Yzamajian, I am here to be
13 heard regarding this important matter. As you
14 indicated I'm the supervising attorney in the Brooklyn
15 office, for the Legal Aid Society's Juvenile Rights
16 Practice.
17 The Juvenile Rights Practice represented last
18 year 4000 juveniles between the age of seven and
19 fifteen, who were charged with juvenile delinquency in
20 the Family Court.
21 As Mr. Washington stated earlier, these are
22 from low income families, and because we have the vast
23 majority of them are children of color unfortunately,
24 these children are not afforded the same opportunity as
25 upper middle class children have in the same instances
26 such as minor school conflicts, talking back to police

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1 Karen Yazmajian
2 officers, to have these issues dealt with in a manner
3 of counseling, mediation, and with the panel, but
4 instead the children are arrested, brought to Family
5 Court, criminalized and sometimes placed away from home
6 in a jail like setting.
7 Probation is in a unique position to prevent
8 this unnecessary and unfair criminalization,
9 incarceration of these children.
10 Probation works with children and family at
11 the stages of adjustments, which was discussed earlier
12 prior to the petition being filed.
13 At this stage of this position, when a child
14 has already had a finding against him or her and the
15 child is placed on probation, while they are on
16 probation. In New York City, the adjustment rate for
17 probation is approximately 22 percent, which is an
18 increase of what we previously had been. We
19 acknowledge that and recognize that. However, the key
20 question is, what can we do to be more successful.
21 We would like to see, to achieve, that state
22 of adjustment, given the facts that incarceration for
23 juvenile delinquency, where are often the case, as I
24 mentioned, there is a is fight incident between
25 students and we would like to see probation working,
26 work with the New York Police Department, with the

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1 Karen Yazmajian
2 Board of Education, and particularly with school
3 safety, with the police officers that are in place
4 within the school system.
5 We often see cases where the school safety
6 officers are the person, the one that charges the
7 children, placing them under arrest for obstructing
8 governmental administration. There is often a trial
9 that results from these. Sometimes the case is
10 dismissed, sometimes there is a finding. But, we
11 believe, that they should be dealt with on a more

12 systematic basis, from a more systematic approach, on a
13 more systematic level.

14 In a county wide effort to try to adjust
15 these cases, rather than dealing with individuals who
16 are school safety agents. This is the area where there
17 is definitely room for improvement in adjustment.

18 We would also like to see in the adjustment
19 process, for there to be more efforts at mediation. As
20 I stated, many of the cases that we see involve
21 students, who after arrest has been made, remain in the
22 same school with each other, sometimes in the same
23 class, sometimes seeing each other in the same hallways
24 and mediation is a much more effective way of dealing
25 with these issues, rather than bringing everybody
26 through the court system and then criminalizing them

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1 Karen Yazmajian

2 for what is often teenage misbehavior, pervasive in all
3 phases of the cases that we see.

4 So a better way, is at least to have a better
5 understanding of the school issues. This is touched
6 upon earlier. But we would like to elaborate.
7 Truthfully, it's an enormous problem for many of our
8 children and many of the children who are in Family
9 Court.

10 Often to reject a child for adjustment effort
11 and often it's the only basis for a violation of
12 probation, for a petition to be filed.

13 You have to better understand why these
14 children are not going to school. When you first speak
15 to a child not going to school, they will shrug their
16 shoulders and say, I will do better. I just don't feel
17 like it. But often, there is a much more serious
18 underlying problem. They may not know how to read.
19 They may not be able to talk better, they may be
20 embarrassed being there and they may be significantly
21 older than everyone else in their class. It's not
22 uncommon to see 14, 15 years who are still in the same
23 grade for the second and third time. They are
24 embarrassed to go. These issues need to be addressed.

25 You're telling a child you need to go to
26 school. You clearly make a contract with the child

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1 Karen Yazmajian

2 that they are going to be going to school. And they
3 are not going to school. The problem is there had been
4 a violation. There will be another violation. And
5 more than likely, ultimately this child will be placed
6 away from home, but yet the reasons why they failed to
7 go to the school, were never addressed.

8 The children who are in the school schedule
9 of the Department of Juvenile Justice, with an average
10 age of 15, reading at a fourth grade level, this is
11 unacceptable. As I stated, it's the issue that needs
12 to be addressed and to understand why and Probation
13 will play a critical role in trying to hear these
14 issues. They need to be developed. Their expertise
15 with dealing with The Board of Education to help
16 parents understand the system of getting evaluations
17 for special education, getting children enrolled in
18 school. Getting children back in to school and
19 sometimes preventing going to school, because they
20 don't have an identification card. The school
21 identification card for even those resourceful parents
22 not getting involved with the Department of Education

23 can be overwhelming. They need help from Probation, to
24 be active and aggressive advocates on their behalf.
25 Another area, another area in which we feel
26 expertise by the Department of Probation is to be

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1 Karen Yazmajian
2 developed in the area of mental health. Identifying
3 the needs of our children and the children and also
4 identifying the resources that are out there in the
5 community. Probation does make areas for counseling.
6 We see an abundance of children that need more than
7 just counseling at the Local Community Counseling
8 Center. Services may not be accessible for the office
9 of Mental Health. The State Office of Mental Health to
10 get an application to them, have very stringent
11 requirements. And the Department of Probation needs to
12 be trained in how to get through this process. How to
13 get families through this process.

14 What is required? Because many children have
15 mental health needs that are very significant, they may
16 require a residential stay. They may require services
17 through the office of Mental Health. And we urge the
18 Probation Department to not just deal with it within
19 their department, but with Mental Health counselor at
20 that time and that should be provided, so they can do
21 that. Otherwise children's behavior gets labeled as
22 being beyond supervision, defined behavior,
23 oppositional behavior. Why these children are
24 acting in the way they are.

25 Many of our clients have suffered past trauma
26 and they are manifesting that in different ways. They

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1 Karen Yazmajian
2 may have medication that may have been prescribed, but
3 unless this is done with Probation, as I said is in a
4 very meaningful position to be working with the family
5 to forge a relationship and to be developing
6 relationships with the community providers and with the
7 other state agencies, so that services can be provided
8 otherwise the violations will occur causing the
9 children to be placed when the children could be in the
10 community, but for lack of understanding of what their
11 needs are and what could have been done. I think that
12 has to start at the beginning when Probation starts
13 working with families. For instance, when we see
14 investigation reports, we see probation violations.
15 It's very serious, anything with the academic level
16 that the child is going through, that's something that
17 is critical, that would be a red flag to identify the
18 circumstances and what maybe needed. There is very
19 little analysis as to why a child is not doing
20 something. As to why the child may not be watched and
21 what really needs to be developed. So that the
22 services requested can be developed so that everybody
23 in the court process can become aware of what is
24 happening and in order to prevent these children from
25 being placed on probation.

26 Thank you.

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1 Karen Yazmajian
2 JOHN DUNNE: I thank you.
3 Any questions?
4 JUDGE BAMBERGER: When you talk about what
5 probation has to do in order to help the children, who
6 are your clients?

7 Are you saying that this is a broad based
8 responsibility of the Probation Department to be at the
9 schools, even though there is no case pending or are
10 you talking about an actual case pending and probation
11 ought to do the job that it should do with a case
12 pending?

13 That's where I'm really confused.

14 MS. YAZMAJIAN: When a case comes to
15 probation, it can be addressed at a level of
16 adjustments prior to. When an arrest comes in, pardon
17 me, it could be addressed at a level of adjustments
18 prior to a petition being filed. Or it can be
19 addressed at the level, at the point of disposition,
20 prior to. Probation has to assess whether or not its
21 appropriate for adjustments, before the petition is
22 filed.

23 JUDGE BAMBERGER: Is there some official
24 action, with respect to this child, that would under
25 the law as we presently have it, would trigger the
26 entry of probation into the case process, is that your
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1 Karen Yazmajian
2 assumption?

3 MS. YAZMAJIAN: Yes.

4 JUDGE BAMBERGER: Your assumption from this
5 then is that there are things that the Probation
6 Department should be doing when their entry is
7 triggered that they are not currently doing?

8 MS. YAZMAJIAN: Yes.

9 JUDGE BAMBERGER: You gave us a list of
10 those, now I understand that.

11 Now, my second question is: If you have
12 records that show that minority impoverished children
13 are being treated in a manner which is disparate from
14 the children who are not minority or not impoverished
15 and give us solid statistics, why hasn't someone
16 brought a class action?

17 You have a civil classification unit, the
18 school system that was challenged in equitable
19 allocation of funds. It is truthfully, it took five
20 years to get them to enforce the money judgment, but
21 the legislature works slowly. Now they are doing it at
22 least part of the way. But that seems right for
23 litigation. Why should we be talking when it should be
24 ligated?

25 JACQUELINE DEAN: The issues of the minority
26 representation in the system are very wide spread and
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1 Karen Yazmajian
2 complicated and certainly an issue that we have located
3 at or started with, and Legal Aid will continue to look
4 at. And that we address the issues that come in
5 literally at every stage of the system and this is
6 something, it has been found nationally. These issues
7 have been looked at. I think what we are talking about
8 is when we look at the young people coming into Family
9 Court, the young people we are dealing with are
10 overwhelmingly children of color from the lower
11 economic part of the community. From that vantage
12 point we need to look at how we can address some of the
13 factors that may have brought them in there. I think
14 the adjustments stated that we were speaking about is
15 one of the stages that we feel there needs to be a
16 significant improvement. How those young people are
17 handled in the system. I think today that other

18 counties are more successful in dealing with that. I
19 again, I think going back to the school issue in New
20 York City, there is also a place that we are very
21 actively involved in some coalition, to address the
22 issue of how young people in the schools that our
23 children come from, which again is the poorest
24 communities of the city and the communities that are
25 more predominant children of color, which are being
26 blamed as a normal behavior and turning it into

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1 Karen Yazmajian
2 something. That's the result of arrest and prosecution
3 in Family Court.

4 JUDGE BAMBERGER: Do you have evidence that
5 can be used in a litigation that shows that children
6 who are not a minority and not economically deprived,
7 are being dealt with differently from children who are?
8 It's all numbers and you go to court with the numbers
9 and you can make a case. But without it -- you
10 represented that there are such numbers. It's not
11 possible to go in with a litigation and say, there is a
12 hundred percent minority impoverished children and
13 without having comparison data. Do you have the
14 comparison data?

15 MS. YAZMAJIAN: I would say we don't.
16 Presently our data comes from our clients. As to our
17 clients, they are the young people who do get arrested.

18 JUDGE BAMBERGER: If you never see or almost
19 never see children who are not minority and not
20 impoverished, where are they? Are they not arrested?

21 MS. YAZMAJIAN: Again, that's where I think
22 it happens in every stage. I think it happens in
23 schools that are predominantly white, and upper middle
24 class schools. I think many people have these
25 experiences personally who are involved in the system.
26 We all know how those incidents are dealt with, that

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1 Karen Yazmajian
2 parents are called in and there is a relationship with
3 the student.

4 JUDGE BAMBERGER: I didn't want to
5 interrupt, but who makes these determinations in the
6 schools that clients, not minority schools you say, the
7 School Safety Officer is the person. The School Safety
8 officer, is that part of the Police Department?

9 Don't you have an issue on rights there?
10 It's the same Police Department. I assume the school
11 safety officers are from the Police Department, at
12 least that's what I understand. Doesn't the Police
13 Department have data on matters that are handled in the
14 school as opposed to matters that are, as opposed to an
15 arrest?

16 MS. YAZMAJIAN: I'm sure they have data, but
17 that's not the data they share with us.

18 Again, I would say it goes back to the New
19 York City schools. There is certainly safety officers
20 that are coming from the NYPD. I think it would be
21 interesting to look at the number of police officers in
22 the schools that are in very different precincts.
23 There is something that is not universal in New York
24 City High Schools, and, we have metal detectors which
25 show up periodically. Again, the principal control, we
26 have so many schools where some of our clients come

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1 Karen Yazmajian

2 from, where principals want to intervene. The way
3 things are handled in fact last week, the day the City
4 Counsel was holding a hearing where a principal
5 attempted to intervene with an honor student who
6 arrived at the school early and was told she could not
7 meet with her teacher before school started. She was
8 then arrested based on a confrontation. She had school
9 safety officers when the principal tried to intervene,
10 they asked that she not be taken out the front door to
11 be embarrassed in front of all her classmates, who were
12 coming in, but to go out through the side door. The
13 school safety officers refused to do that. When the
14 principal attempted to further discuss this matter with
15 the officer, the principal was arrested. I don't think
16 that happens in schools in the city where students are
17 predominantly white and upper middle class. If a
18 principal requests that the incident be handled the
19 same way.

20 JUDGE BAMBERGER: It certainly is something
21 we need find out about.

22 Thank you, very much.

23 HON. MARTIN HORN: One of the points that
24 you made with respect to adjustment and also relative
25 to the point that Ms. Deane was making had to do with
26 the fact that the knowledge of these cases originate in

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1 Karen Yazmajian
2 schools. So in many of the cases the complainant was
3 the School Safety Officer. As you know in order for a
4 case to be adjusted, it requires the consent of the
5 complaining witness, correct?

6 MS. YAZMAJIAN: Yes.

7 HON. MARTIN HORN: So do you know whether or
8 not the Police Department of the City of New York has a
9 policy with respect to consenting to adjustments and to
10 extend that if the complaining witness does not consent
11 to adjustments? What is it that you think the
12 probation isn't doing?

13 JACQUELINE DEAN: I will speak to that
14 initially. I have more to add. I know this is an
15 issue that the probation department has been working
16 with, with NYPD on. It's a challenge in terms of that
17 control of the complainant, it's not just the school
18 incidents, there are a lot of incidents or arrests
19 where the NYPD is the arresting officer with --

20 HON. MARTIN HORN: Graffiti.

21 JACQUELINE DEAN: -- obviously graffiti,
22 Transit offenses and various other types of offenses.
23 There is an issue that relates to coming from the NYPD
24 in booking of the adjustment and someone who the
25 Officer can communicate with to obtain that permission.
26 I know that is something that has been a challenge. I

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1 Karen Yazmajian
2 would hope that that is something the task force could
3 perhaps assist with in having the New York City Police
4 Department engage with Probation in a manner that we
5 can have amended for adjustment of a significantly
6 large number of cases, they are right for adjustment.

7 Many of them are misdemeanor offenses and
8 often first offenses and because of the lack of
9 cooperation and communication, they come into court.

10 HON. MARTIN HORN: Do you know for a fact
11 whether or not New York City Probation has any
12 conversation with the NYPD about this matter?

13 JACQUELINE DEAN: Do I know for a fact? I
14 wasn't personally at any of them --
15 HON. MARTIN HORN: You heard?
16 JACQUELINE DEAN: -- I understood from
17 conversations with Pat Brennan an issue that has been
18 discussed. I don't know what level and I don't know
19 where it stands and perhaps you can tell us that.
20 HON. MARTIN HORN: We have had many
21 conversations, in 23 percent of that and hopefully the
22 arc will continue upward.
23 Another question, you talked about truancy.
24 In what percentage of the cases that go to disposition
25 where the disposition was to place a child on
26 probation, is that the result of a negotiated plea as

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1 Karen Yazmajian
2 opposed to a contested hearing? What percent of the
3 cases are disposed of by plea agreement?
4 JACQUELINE DEAN: Not very often -- on part
5 of the plea, if that's a disposition.
6 HON. MARTIN HORN: Let me first ask the
7 question, what percent of the cases are a result of the
8 plea?
9 MS. YAZMAJIAN: Dispositions are how many?
10 HON. MARTIN HORN: There is an adjudication
11 that there has been an active delinquency and the
12 disposition will be probation.
13 MS. YAZMAJIAN: I don't have any figures.
14 HON. MARTIN HORN: Most?
15 MS. YAZMAJIAN: Well, I'm not sure what
16 you're asking. Are you asking what part of the plea,
17 that either be probation or are you saying that after a
18 plea the case results from whatever reason probation.
19 HON. MARTIN HORN: I will explain how it
20 works.
21 MARTIN FEINMAN: I heard the question, I
22 will answer the question. First of all, what is an
23 adjudication, a plea, a finding. I can't give you an
24 exact number. I would say there is a significant
25 number of cases are resolved by a plea. I think the
26 point that Ms. Yazmajian, in the first instance by your

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1 Karen Yazmajian
2 question was that it's not the practice, unlike the
3 adult system, very often it's not the practice for a
4 plea agreement to contemplate the ultimate disposition.
5 HON. MARTIN HORN: All right.
6 MARTIN FEINMAN: Very often it listed the
7 lesser charge, but the matter of disposition being left
8 open to the court upon the judicial process.
9 HON. MARTIN HORN: When you agree to a plea
10 you really don't know what the ultimate disposition
11 will be.
12 MARTIN FEINMAN: More often than not.
13 HON. MARTIN HORN: There is no promise that
14 placements will not be the result.
15 MARTIN FEINMAN: That's correct.
16 HON. MARTIN HORN: That's fine.
17 MS. YAZMAJIAN: Because obviously it will
18 depend on what the items will reflect.
19 HON. MARTIN HORN: Right. Judges impose
20 conditions of probation. Can you say how frequently or
21 do you know how frequently judges impose as a condition
22 of probation that the child must attend school
23 regularly?

24 MS. YAZMAJIAN: Routinely?
25 HON. MARTIN HORN: Routinely, therefore
26 truthfully, you see a violation of those conditions,
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1 Karen Yazmajian
2 correct?

3 MS. YAZMAJIAN: Without it being addressed
4 and correct, it could be a violation. But the key is
5 to address it so that it doesn't continue.

6 HON. MARTIN HORN: Does Legal Aid have
7 social workers on its staff to work with juveniles?

8 MS. YAZMAJIAN: Yes.

9 HON. MARTIN HORN: How successful are your
10 social worker staff in working with education
11 compliance issues?

12 MS. YAZMAJIAN: We have social workers that
13 deal with educational issues and when issues arise
14 sometimes they are quite successful, but they've not
15 trained specifically to do that and it's not their job.

16 HON. MARTIN HORN: Would you say that
17 dealing with these educational issues is a very
18 difficult task?

19 MS. YAZMAJIAN: That's a good question.
20 That's why it is important to have probation officers
21 who are trained specifically about these issues and
22 they know how to navigate the system. And we, we need
23 workers that are specifically dedicated to do this.

24 HON. MARTIN HORN: You mentioned the need
25 for Special Ed evaluations. In your experience are
26 there children with Special Ed needs that have not been
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1 Karen Yazmajian
2 identified?

3 MS. YAZMAJIAN: Yes.

4 HON. MARTIN HORN: You also mentioned the
5 need to access service from the State Office of Mental
6 Health. You talked about the need for residential
7 treatment facility beds.

8 Would you say that there is, what percentage
9 of kids would you say present with mental health
10 issues?

11 MS. YAZMAJIAN: A very high percent. I
12 can't give you a specific number, but a very high
13 percentage have a range of mental health needs, some
14 kids more than others.

15 HON. MARTIN HORN: You also talked about the
16 criteria that OMH has for access of services, can you
17 say more about that.

18 MS. YAZMAJIAN: Sure. OMH has a variety of
19 services that they can provide. Some are County based,
20 some are residential, for residential treatment
21 facilities. I can't tell you off the top of my head
22 all the requirements, but they have very stringent
23 requirements as far as providing a lot of
24 documentation, psychiatric, psychological as well as
25 medical evaluations. They have to be done, they have
26 to be very recent, some within as much as 90 days. So
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1 Karen Yazmajian
2 it's important to know exactly what the requirements
3 are so that when the issue is presented, with the
4 social workers and the Probation Officer know, all
5 right, this is the check list. This is what I need.
6 There is, how I can get the applications in as quickly
7 as possible, if there is a residential treatment

8 facility to treat the patient once a month.
9 HON. MARTIN HORN: Do you think that's
10 frankly enough?
11 MS. YAZMAJIAN: I don't know. I wish it
12 would be more often, but I would like to change how
13 often is it. But there is a cutoff date, it's very
14 time intensive, it involves a lot of concerted effort,
15 so with review -- but if people are not familiar with
16 the system, they don't know what is required. The cut
17 off will be in a week, so going to go back and have an
18 evaluation, so that's why we think it's very important
19 for people to be skilled in this area.
20 HON. MARTIN HORN: Thank you. Do you know
21 how many RTF beds there are in the State of New York?
22 MS. YAZMAJIAN: Not off the top of my head.
23 HON. MARTIN HORN: You talked about the need
24 for medication. Do all of the children who need
25 medication have insurance?
26 MS. YAZMAJIAN: No, that's also a problem.

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1 Karen Yazmajian
2 We have any kind of public benefit with
3 housing is an issue. We get Medicaid or another type
4 of health insurance is an issue that Probation Officers
5 should be able to access promptly and in a quick
6 manner, so they can get the medication, so there is no
7 lapses in medication.
8 HON. MARTIN HORN: Is immigration status an
9 impediment in obtaining benefits?
10 MS. YAZMAJIAN: When there are immigration
11 issues, they are referred to our Immigration, so I
12 can't speak thoroughly about that.
13 HON. MARTIN HORN: Is it you're experience
14 that families are afraid to apply for benefits because
15 of their status, as an illegal status?
16 MS. YAZMAJIAN: Yes.
17 HON. MARTIN HORN: You talked about final
18 steps to be taken, one final question.
19 Do you know how frequently a young person was
20 placed on probation in New York City, is subject to a
21 violation of probation, how frequently it occurs, what
22 percentage of time?
23 MS. YAZMAJIAN: I'm not sure right now.
24 HON. MARTIN HORN: Does it happen a lot?
25 MS. YAZMAJIAN: It appears to often,
26 unfortunatel y.

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1 Karen Yazmajian
2 HON. MARTIN HORN: Ten percent of the time?
3 MS. YAZMAJIAN: I don't know.
4 JACK CARTER: Thank you so much for your
5 presentati on.
6 Is it your experience that there are people
7 who are on probation, that do not need to be?
8 MS. YAZMAJIAN: Yes.
9 JACK CARTER: How often does that happen in
10 terms of numbers? But does it happen a lot? Does it
11 happen occasi onally?
12 MS. YAZMAJIAN: With regard to legal
13 argument or disposi ti on?
14 JACK CARTER: I know you're talking in terms
15 of your advocacy, but just stepping back from the
16 problem or the issue, does it happen a lot?
17 Are kids placed on probation really who need
18 to be place on probation?

19 MARTIN FEINMAN: I want to jump in for one
20 second. One of the dispositional alternatives have
21 been discussed, an adjournment in contemplation of
22 dismissal. An adjournment in contemplation of
23 dismissal can be dealt with supervision, probation
24 supervision. I'm getting that from people, one being
25 placed on probation. So, to answer to your question, I
26 would say absolutely, there are significant, I can't

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1 Karen Yazmajian
2 quote you numbers, there are significant numbers of
3 kids that are on probation that indeed need not to be
4 on probation within an ACD. If any supervision
5 happens -- I said, when probation supervision would be
6 more sufficient to address the needs of that child at
7 the same time give that child the benefit of the doubt
8 so they successfully complete that time with ACD, that
9 their record is sealed. They are never on probation.
10 If you give an ACD, it is you're not technically on
11 probation, the period of time for supervision is for a
12 lesser period of time. I think that's a dispositional
13 alternative, that is not made -- sufficient use of, I
14 think, that the Probation Department, the Probation
15 Officer don't often recommend it and the court doesn't
16 often approve it. I think it's a dispositional
17 alternative, but it's not used much as it could be and
18 it would take some of the burden off Probation.

19 JACK CARTER: It's my experience years ago,
20 when I did that, judge's would place kids on probation
21 not necessarily because they thought that the child
22 specifically needed what probation provided, there
23 needed to be some response to the behavior that was,
24 that judge was confronted with. But nothing else short
25 of probation was really available to do that. It was
26 sort of a probation issue, because there needed to be

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1 Karen Yazmajian
2 some response. It is that your experience as well.

3 MARTIN FEINMAN: I'm sure at times that's a
4 motivating factor. I certainly know it's a motivating
5 factor on the Department of Probation's Office, but it
6 is still for that same reason I think there are
7 alternatives that I was just describing. With
8 probation supervision, that still let's the child know
9 there is going to be a response to whatever the
10 behavior is that they engaged in. That goes in keeping
11 with the principle, it's much less a restrictive
12 environment.

13 JACK CARTER: Thank you.

14 HON. MARTIN HORN: In an adult system in
15 criminal court law, it provides for an interim
16 supervision. To your knowledge, does the Family Court
17 Act provide for an interim supervision for juveniles
18 and if not, should it?

19 MARTIN FEINMAN: As to the first part of
20 your question, not explicitly. I don't think it --

21 HON. MARTIN HORN: It doesn't? Do you think
22 that would be a good thing?

23 MARTIN FEINMAN: As to whether or not it
24 should?

25 HON. MARTIN HORN: Would that be another
26 alternative?

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1 Karen Yazmajian

2 MARTIN FEINMAN: It's a possibility. I

3 couldn't answer that question.
4 There are a range of possibilities for one to
5 consider that are rather extreme for -- what I mean by
6 range, the duration of time.
7 HON. MARTIN HORN: In an adult system its
8 limited to one year.
9 MARTIN FEINMAN: It is something that could
10 be contemplated? Certainly.
11 JACK CARTER: Also a follow up.
12 The conditional discharge is on the books.
13 But I think sometimes that's felt like a pass, because
14 there is no mechanism to really monitor the conditions
15 that I'm aware of, and you know better about that. But
16 perhaps if there were some way to actually not have an
17 intervention that did not amount to probation, but
18 still amounted to monitoring the conditions of the
19 conditional discharge, to give that more potency, more
20 umph, without involving the close supervision of risks
21 that are attendant to that.
22 MS. YAZMAJIAN: I don't think the court
23 provides the mechanisms right now -- that we don't need
24 the additional interim probation. I think that the
25 supervising ACD is not something that's available in
26 the adult system. As I said, we do have a conditional

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1 Karen Yazmajian
2 discharge. What some areas have, will be to monitor
3 and conditional discharge for a court date of a case's
4 position. To see that, to not to wait, given the time
5 you were referring to. What I would say also, I think
6 really what gets us to the very broader issue. There
7 needs to be an issue on the trend of the young person
8 who is before Family Court. And, that again, that
9 needs to happen on the part of every agency and every
10 level. So, I think that's a part of many young people,
11 who are placed on probation, that don't need to be, is
12 because there isn't sufficient information about the
13 strengths, the numbers that the family has, that their
14 support system has, that would make a judge feel
15 comfortable in opting for one of the lesser
16 alternatives for a disposition.
17 It's much harder to require or to get more
18 work in the field, more contact with the young person
19 and the family. More knowledge in the community in
20 order to improve that information for the supervision
21 and the report. I think that's the kind of information
22 that's currently lacking. What walks into court very
23 probably is the young person's deficit. They come in
24 the system with the charges, they come in, in terms of
25 the truancy, which the court monitors regularly, they
26 come in terms of supervision issues. But, I think we

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1 Karen Yazmajian
2 all, at every level of the system and in particular in
3 the Probation and employment of the investigation
4 report, needs to entertain more information about the
5 strengths that we know every one of our clients has.

6 JOHN DUNNE: I will note, we are about an
7 hour behind.
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2 SENATOR DUNNE: Is Mr. Joseph B. here? Are
3 you of a mind to testify?
4 MR. B.: Yes.
5 SENATOR DUNNE: Welcome.
6 Mr. Joseph B. is identified as a probationer.
7 MR. B.: Good morning.
8 THE COURT: Good morning, sir.
9 MR. B.: I'm 16 from Crown Heights Brooklyn.
10 I was placed on probation because of a misdemeanor
11 charge of possession of marijuana. I was caught with a
12 with a bag of weed. I was about 13 at the time, and I
13 was placed on probation when I was 14, and during that
14 time I was supposed to do 15 months on probation, and I
15 completed 13 months of probation before I was violated.
16 And, at the time, I think that being on
17 probation like, I was, I was really having a lot of
18 problems like going to school, so I was placed on
19 probation based on that. Mostly, that was my first
20 offense and all.
21 So, at home I was having a lot of problems
22 also, which was with my family, like my sisters, my
23 siblings in general, and now I mean, like, how could I
24 say this, like, yes, besides that, but having problems
25 with my family is because like I had a lot of people
26 living in my house. It's a one bedroom apartment that

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2 we made into 2, and there's about 14 people living with
3 me. Well, that was at the time then.
4 And, I was having a lot of problems with my
5 mother and my sisters, and they would call the
6 probation officer. And I was having problems with
7 going to school because the first, the first school, I
8 was put on probation during like my ninth grade, during
9 the -- beginning of my tenth, my tenth grade year, my
10 sophomore year in high school. My ninth grade in high
11 school I said I wasn't going to school at all, and,
12 during that time, within that time, I ended up getting
13 violated because my mother felt that she didn't want me
14 home, and it was more based on family issues than me
15 getting arrested again or violating probation rules. I
16 had a curfew and stuff, and sometimes I'd come home
17 late, but I never really got in trouble for anything
18 that I did that led to me being violated.
19 Right. Now, when I got violated, instead
20 of -- I got offered 2 more years of probation and
21 counseling. While I was on probation, I completed a
22 6-month drug program that included counseling, and it
23 was kind of crazy how I was offered 2 more years of
24 probation and another program called Esperanza and more

25 counseling, and I thought that it really wasn't going
26 to help in no shape or form.

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2 My probation officer, she used to try and see
3 if she could do certain things like the rent. My
4 mother had problems paying rent, and she was like, she
5 could try to help and pay certain bills, and my mother
6 would bring in the gas bill, for an example, and she
7 was like, yes, she could help that get paid, which
8 never happened.

9 But, now I'm Westchester County in Lincoln
10 Hall finishing a 12-month sentence. I did 9 months up
11 there, and most of the kids that's up there is like the
12 same situation I've had, like violating probation
13 because of their parents violating them and because
14 it's more like issue at home more than it is an issue
15 of being paroled.

16 SENATOR DUNNE: Tell us, if you would, your
17 experience in Esperanza, did you say?

18 MR. B.: I did not take Esperanza; I took the
19 12 months instead.

20 SENATOR DUNNE: Excuse me?

21 MR. B.: I took the 12 months instead, instead
22 of going to Esperanza.

23 And I think that Probation, like the thing
24 that Probation could have did to really help me was,
25 was probably most important to me, was not violating me
26 for having issues at home, which I really didn't have

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2 any control over being so young at the time, like I was
3 about 15 by then when I got violated, and I couldn't
4 really do anything I mean to really help the situation
5 because it was, it was like an ongoing situation from
6 since before I was placed on probation.

7 So, it was like when I got on probation it
8 made it worse because like my family started looking at
9 me in a whole different -- like I already had problems
10 with going outside and not going to school, and then
11 being placed on probation was like extra pressure on
12 top of the situations I already had, and it didn't help
13 me, not one way.

14 If anything, I think it really worsened the
15 situation to where I'm at now, and I'm trying to do
16 something to better myself while I'm up there at
17 Lincoln Hall.

18 I think probation could have did something
19 completely different instead of violating me because
20 like, I think, I went to school more being on probation
21 than I ever did in my whole entire life, and I thought
22 that like probation pressured me like, I don't think I
23 feel that probation pressured me and expected so much
24 different things from me that that I don't think would
25 have been expected if I was old enough and I went
26 through the criminal justice system. I think that

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2 having a possession of marijuana I'd have been given
3 community service or something instead of being placed
4 on probation. I mean I think it was kind of drastic.
5 I don't know what word to use for it, but I guess
6 that's the best word to use for it, drastic, for me to
7 be placed on probation, possession of marijuana, which
8 is a misdemeanor, and it was my first offense, and

9 that's basically it.
10 SENATOR DUNNE: Yes, yes, Judge.
11 MS. BAMBERGER: Did you ever explain to the
12 probation officer the circumstances in your home with
13 so many people living in that apartment?
14 MR. B.: Yes, it came to a point where my
15 probation officer would try to say that she could help
16 me get a dresser, a bed because I slept on the floor in
17 my living at the time because there was so many people
18 in my house, and the situation was known. I mean my
19 mother, she had surgery and stuff, so she wasn't really
20 working like that, and like the money, the money I
21 wasn't really having enough like school supplies and
22 stuff like that to really even go to school. My school
23 was like an hour and a half away, so it was like, you
24 know, more of a problem.
25 MS. BAMBERGER: And so, the probation officer
26 was aware of all these problems?

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2 MR. B.: She was aware of that. She would go
3 to my school every month to get my attendance for the
4 month.
5 MS. BAMBERGER: And my second question is you
6 said you were now at Lincoln Hall. You've been there
7 for several months?
8 MR. B.: Nine months.
9 MS. BAMBERGER: Nine months.
10 And how is that working?
11 MR. B.: I guess it's better than being home,
12 but that was more of a choice I took upon myself
13 instead of going back home and going back to probation
14 and doing another drug program or counseling.
15 MS. BAMBERGER: And do you have school there
16 at Lincoln Hall?
17 MR. B.: Yes.
18 MS. BAMBERGER: Is that a good school?
19 MR. B.: Right now, I'm trying to work on
20 getting a scholarship, go to college, something I never
21 thought about doing before I was put on probation.
22 MS. BAMBERGER: Thank you very much.
23 SENATOR DUNNE: Judge Corriero.
24 JUDGE CORRIERO: Young man, were you
25 represented by an institutional attorney?
26 MR. B.: Yes, Amy.

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2 MS. ALBERT: That would be me.
3 JUDGE CORRIERO: And are you with the Legal
4 Aid Society?
5 MS. ALBERT: Yes.
6 JUDGE CORRIERO: And, are you saying, so I
7 understand you correctly, that the basis of your
8 violation was the truancy?
9 MR. B.: Partially, but mostly because of like
10 family issues like, my mother she called them, the
11 probation officer, and violated me because being me and
12 my sisters was arguing and I have problems within the
13 household.
14 JUDGE CORRIERO: So, it wasn't simply truancy.
15 There was other aspects of the violation?
16 MR. B.: Yes.
17 JUDGE CORRIERO: And the judge that you went
18 before who originally placed you on probation, what was
19 the response of the judge to you? How did you

20 understand the judge was reacting to you when you
21 appeared before the judge on this violation?
22 MR. B.: Well, I honestly thought like the
23 judge didn't want to put -- he told me himself that he
24 didn't want to put me on probation, but, I mean, it was
25 I guess that was the only alternative like probation.
26 JUDGE CORRIERO: Now, when you violated, what

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1 was the response of the judge?
2 MR. B.: To tell you the truth, I don't even
3 remember.
4 JUDGE CORRIERO: When you say you rejected
5 Esperanza --
6 MR. B.: Yes.
7 JUDGE CORRIERO: (Continuing) -- how was that
8 explained to you, and who explained to you what that
9 program was about?

10 MR. B.: I have friends from my area that was
11 on Esperanza that was doing the probation while I was
12 on probation, and I was paroled too. I understand they
13 come to your house the same way. I was doing my drug
14 program. They come to your house. I mean it was just
15 counseling and speak to you speak, to your family, see
16 if they could try to get work things out and stuff.

17 JUDGE CORRIERO: And you didn't think that
18 would be helpful?
19 MR. B.: Yes, because things were already down
20 the drain.

21 JUDGE CORRIERO: So what made you choose to be
22 placed in a residential facility, what was your
23 thinking about why you chose that over dealing with
24 Esperanza?

25 MR. B.: Because I was like, I already tried

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1 to do it while I'm living at home and tried to see if I
2 could finish probation, and, while I was home, it
3 really wasn't working.

4 I thought like if I was to be away from home,
5 then I could be more focussed on school and other
6 things and just a lot of drama in my household. That
7 was basically why I chose it.

8 JUDGE CORRIERO: I could understand that
9 choice then, and it may very well be the best choice
10 that you made because if you get into college that
11 certainly is an achievement.

12 But, I'm wondering, you say that you feel you
13 didn't need probation at all?

14 MR. B.: Yes.

15 JUDGE CORRIERO: What did you need then?

16 MR. B.: Counseling before probation.

17 JUDGE CORRIERO: How did you think you were
18 going to get it?

19 MR. B.: How was I going to get counseling?

20 JUDGE CORRIERO: Yes, if you didn't do
21 probation, through the Probation Department?

22 MR. B.: Family court basically I thought I
23 was going to get counseling.

24 JUDGE CORRIERO: You mean something separate
25 from Probation Department?

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1 MR. B.: Would I need something separate or
2 what?
3

4 JUDGE CORRIERO: What did you understand your
5 choices to be when you first came into the system?
6 MR. B.: Well, actually, I didn't really know.
7 I was scared, so I just wanted to go home. So, the
8 first choice that they gave me, I just took.

9 JUDGE CORRIERO: And what was that first
10 choice?

11 THE WITNESS: Probation. They was going to
12 like evaluate me or something, like I wasn't placed
13 immediately on probation. There was like, it was like
14 pending. They was going to see for 6 months if I was
15 going to stay on probation and probably do 3 or
16 4 months, but that never happened.

17 JUDGE CORRIERO: And why not?

18 MR. B.: I'm not sure. They just gave me
19 15 months pending, and I ended up doing one out of the
20 10 months.

21 MR. HORN: If I may, were you truant at all
22 during that period?

23 MR. B.: No.

24 MR. HORN: Did you have problems with your
25 sisters?

26 MR. B.: Yes.

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1 MR. HORN: Were there fights?

2 MR. B.: Yes, but none that led to me getting
3 arrested again.

4 MR. HORN: But enough for your mother to
5 complain?

6 MR. B.: Yes.

7 MR. POZZI: There were no other alternatives,
8 no other relatives or any other environment you may
9 have been able to get to?

10 MR. B.: If I had a mom -- I mean, a cousin or
11 aunt, there wasn't somebody.

12 MR. POZZI: Excuse me, Michael.

13 Did the probation officer explore those type
14 of possibilities with you?

15 THE WITNESS: Yes, she did. At one point they
16 tried to make me go live with my father. I don't get
17 along with him too well either, so I didn't want to go
18 there.

19 JUDGE CORRIERO: Were you referred at any
20 point to the Administration of Child Services in
21 getting assistance or counseling?

22 MR. B.: There was something, independent
23 living or something like that, and at one point I was
24 thinking about doing that too, but I didn't. I just, I
25 just chose to go to Lincoln Hall.

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1 JUDGE CORRIERO: Was that an option presented
2 to you, that you could live in some kind of independent
3 basis?

4 MR. B.: Yes, by my lawyer, but I didn't
5 choose to take it.

6 MR. POZZI: Did the probation officer, when
7 you first got on probation, go over those conditions,
8 the expectations, you know, what was going to be
9 required of you?

10 MR. B.: Yes.

11 MR. POZZI: And I think you kind of indicated
12 that she did try to do something, some interventions,
13 not only with you, but also with the family, try to
14

15 help out with some bills and things like that?
16 MR. B.: Right.
17 MR. POZZI: But you kind of felt that it
18 wasn't enough?
19 MR. B.: I mean, like you said, she tried, but
20 it is not that she tried, is that she was going to help
21 and she didn't.
22 MR. POZZI: You don't know whether the
23 probation after saying certain things to you actually
24 followed up?
25 MR. B.: Yes, I am pretty sure when she said
26 was going to help for the gas bill one time, my mother

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2 had to go to her office, give her the bill and
3 everything, but nothing ever happened, you know.
4 MR. POZZI: But, we don't know for sure
5 whether or not there could have been an outreach, that
6 just they just couldn't?
7 MR. B.: Yes. Okay.
8 SENATOR DUNNE: Any other questions?
9 MS. ABATE: Thank you for your testimony.
10 You said that probation did not help you?
11 MR. B.: I'm not saying they didn't help me in
12 general because they helped me go to school, obviously.
13 MS. ABATE: That was very good, right.
14 MR. B.: Yes.
15 MS. ABATE: You talked earlier about turning
16 the corner. I don't know, turning the corner?
17 MR. B.: Turning the corner?
18 MS. ABATE: Turning the corner about feeling
19 better about yourself, more positive?
20 MR. B.: Yes.
21 MS. ABATE: Getting your life together?
22 MR. B.: Yes.
23 MS. ABATE: What do you think is causing that
24 new direction for you? Is it something that happened
25 in probation or something that happened after that?
26 MR. B.: The fact is I have no other options.

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2 It's either that, or going back to what I used to do.
3 MR. POZZI: Would you attribute it to the
4 placement that was made, the fact that you are in
5 Lincoln Hall, you are getting counseling there, you are
6 going to school, and the placement after, let's say,
7 the so called failure of probation, the fact that you
8 opted for the placement, that getting out of your
9 residence, getting into that structured environment,
10 getting the opportunity to go to school now hopefully
11 with the expectation that you might be able to advance
12 beyond high school, that that's really kind of turned
13 you around? Is that what you're saying.
14 MR. B.: Yes, yes, I could say that.
15 SENATOR DUNNE: Marty.
16 MR. HORN: When you were 13 and you first got
17 arrested for this possession of marijuana, how much was
18 it?
19 MR. B.: Bag of a weed.
20 MR. HORN: One bag of weed.
21 Do you think you if had been an adult and had
22 been in criminal court, do you think the outcome would
23 have been different?
24 MR. B.: I'm positive the outcome would have
25 been different.

26 MR. HORN: What do you think would have
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2 happened?
3 THE WITNESS: Most likely, if I didn't get
4 community service, it would have been thrown out.
5 MR. HORN: Do you know why the judge felt that
6 an ACD or some other disposition was not appropriate in
7 your case? Were there other factors that you think the
8 judge was paying attention to?
9 MR. B.: The judge actually told me it's
10 because my school record. I wasn't going to school.
11 MR. HORN: It was because of the truancy?
12 MR. B.: Yes.
13 MR. HORN: The judge thought by putting you on
14 probation it would get you to go to school?
15 MR. B.: Yes.
16 MR. HORN: And it did?
17 MR. B.: Yes, it did. Yes it did.
18 But, the fact of trying to scare me into doing
19 this made my kind of rebellious. I ended up still
20 cutting school and still not going to school at certain
21 times. I felt like I didn't want to go.
22 SENATOR DUNNE: Thank you very much, Mr. B.
23 Thank you.
24 MS. ALBERT: I just wanted to also say a few
25 words.
26 SENATOR DUNNE: Would you identify yourself

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2 please.
3 MS. ALBERT: I am Amy Albert. I work for
4 Legal Aid. I was Joseph's lawyer at the time of
5 disposition. It certainly is true that there was some
6 considerations about school. I also want to point out
7 those are conditions for many of the young men who come
8 before us, and that Joseph's case was not in any way
9 exceptional.
10 MR. HORN: If I may follow that up. I think
11 it is an important point. It is your experience. You
12 practice in the family court?
13 MS. ALBERT: I do.
14 MR. HORN: Is your experience that often the
15 decision as to disposition or even as to detention
16 dispositionally is based on factors other than the
17 criminality, but based on a perception about home
18 conditions or other social conditions?
19 MS. ALBERT: Yes, that's my experience. Yes.
20 MR. J. CARTER: One question. Aside from
21 probation and the folks that were involved with you,
22 were involved with you after your initial arrest, were
23 there any other Social Services agencies or City
24 agencies involved with you and your family at any
25 point?
26 MR. B.: No. I told you I did a 6-month drug

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2 program while I was on probation, but I completed it,
3 and that was about it.
4 MR. J. CARTER: Thank you.
5 MS. ALBERT: Let's be clear, ACS was never
6 involved in the situation.
7 MR. J. CARTER: Never involved in the
8 situation.
9 MS. ALBERT: And the program we are talking

10 about is Adolescent Portable Therapy, which is a
11 program run by the Vera Institute, and it was done
12 prior to disposition and then through the dispositional
13 phase of Joseph's case.

14 MR. J. CARTER: Thank you.

15 SENATOR DUNNE: Mr. Austria.

16 MR. AUSTRIA: It sounds, in this case again,
17 the initial event that brought Joseph before the court
18 was something that was dealt with, but by him being put
19 on probation, it put a whole bunch of other things
20 under the microscope that led to a violation. Would
21 you say that's a common occurrence in family court?

22 MS. ALBERT: I would say that's a very common
23 occurrence in family court.

24 Additionally, I do want to point out that
25 Joseph's initial offense was a marijuana offense. He
26 was tested by probation throughout the time period, and

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2 he never tested positive.

3 JUDGE CORRIERO: Could I ask you a question?

4 In general, based on your experience and practice in
5 family court, kids who -- you had no prior record,
6 right, Joseph?

7 MR. B.: No.

8 JUDGE CORRIERO: Kids who have no prior
9 record, who are walking around with a joint or bag of
10 marijuana are being actually processed in criminal
11 court?

12 MS. ALBERT: Yes.

13 JUDGE CORRIERO: There's no up front way
14 trying to resolve that?

15 MS. ALBERT: I think that probation does do
16 adjustment. In Joseph's case, I can't tell you why his
17 was not adjusted. I certainly asked for that, but
18 because the Police Department has a great deal of sway
19 with regard to whether or not the cases are adjusted,
20 that is an issue.

21 JUDGE CORRIERO: Are there marijuana
22 possession cases that are adjusted?

23 MS. ALBERT: It is my understanding there are
24 some. I cannot give you statistics. I certainly
25 represent a number of young people like Joseph -- and
26 that is why I asked Joseph to come and talk to us

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2 today -- who have cases that are from MetroCard
3 swiping, meaning that they illegally entered the
4 turnstiles, that are for graffiti, that are for
5 marijuana, and it is those single offenses, and it is
6 my understanding that 32 percent of all kids who enter
7 the family court system are placed on probation, and
8 many of those children are children like Joseph who
9 have more home issues than they really do criminal
10 issues.

11 JUDGE CORRIERO: Thank you.

12 SENATOR DUNNE: Bob Maccarone.

13 MR. MACCARONE: I know we are running late,
14 but it occurs to me you found a home in Lincoln Hall?

15 MR. B.: Yes.

16 MR. MACCARONE: And that is why you did not
17 take Esperanza as an option in the community. You
18 needed some home, an environment, where you could go to
19 school, is that correct?

20 MR. B.: Yes.

21 MR. MACCARONE: My question is 14 people
22 living in one room that was divided into two, and I
23 think what we are seeing, and Commissioner Horn pointed
24 out, is that the reason for this disposition and your
25 attorney has represented that, in fact, the case for
26 many dispositions is particularly around detention and

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1 placement is not necessarily around the offense itself,
2 but getting the services that young men like yourselves
3 need.
4

5 My question is where is ACS on this issue when
6 14 people are living in a two -- in a one room
7 community who are -- were these family members living
8 in your family unit?

9 MR. B.: They were family members.

10 MR. MACCARONE: It was all family members.

11 So, it seemed to me like your family was in
12 need of family and Social Services. Did they receive
13 any?

14 MR. B.: Nope.

15 MS. ALBERT: And to be clear also, Ms. B.,
16 Joseph's mother, had attempted to access a number of
17 services. She asked for the support from -- I know
18 that we spoke afterwards about the fact that she had
19 been trying to get Section 8 for about 5 years.

20 SENATOR DUNNE: Judge Bamberger.

21 MS. BAMBERGER: Is there a different treatment
22 in cases where the complainant is a police officer as
23 opposed to some other person who is the complainant?

24 MS. ALBERT: Different in terms of?

25 MS. BAMBERGER: Adjustment.

26 MS. ALBERT: Of adjustment.

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2 My understanding that in all cases the
3 complainant is asked whether they are willing to adjust
4 the case, and Commissioner Horn could certainly speak
5 to this as well, and that there are times when the
6 police officers refuse adjustment, and I believe that
7 at this point that is the way it is dealt with.

8 A number of our judges, and I have certainly
9 asked for there to be a more powerful policy about
10 adjustment in cases like Joseph's case, and how the
11 police are dealing with that, and it is a big concern
12 for me, and certainly something I would ask the court
13 to do.

14 I would ask this Commission to consider how we
15 could support probation and having the Police
16 Department agree to adjustments in more cases.

17 MS. BAMBERGER: Would they tend to agree on
18 fewer occasions than other complainants?

19 MS. ALBERT: That is my experience.

20 MR. POZZI: Would you suggest that probation
21 be given the authority to adjust cases independent of
22 victim input?

23 MS. ALBERT: Yes. Absolutely.

24 JUDGE CORRIERO: Could the judge have granted
25 an adjournment in contemplation of a dismissal on
26 condition he cooperated with that drug program?

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2 MS. ALBERT: The judge could have done that.
3 I think in a lot of cases we certainly argued
4 for it, and I believe I argued it for in Joseph's case.

5 SENATOR DUNNE: The ACD.
6 MS. ALBERT: I certainly did.
7 And the issue is, of course, that judges are
8 concerned about -- I think the judge was concerned
9 about how Joseph was living, about what was going on in
10 his life, and I was concerned about that as well, and
11 because he felt it was beyond the control of his
12 family, he decided to go with a more serious sentence.

13 I think Joseph put it most eloquently. I do
14 not know why he did not get that lesser sentence.

15 MR. HORN: Excuse me. Is there any mechanism
16 in a situation like that to crosswalk the matter, or to
17 bring preventive services into play, or to convert it
18 to an PINS matter? Is there a mechanism to do that?

19 MS. ALBERT: Yes. In fact, I have sought to
20 convert many cases to PINS in situations like this, and
21 I am often refused by the judges on the grounds that
22 the offense itself is not a family offense, but that
23 does not mean that the circumstances are not
24 essentially family circumstances.

25 MR. HORN: So, would a statutory change that
26 made it easier to do that conversion help?

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1 MS. ALBERT: Yes.

2 MR. J. CARTER: Let me ask you, do judges need
3 more authority to be able to direct the provision of
4 preventive services outside the context of probation?

5 MS. ALBERT: I'm not sure that they need more
6 authority necessarily. I think that judges can
7 certainly seek at any time to report cases to ACS and,
8 I have had judges do that in cases during my time at
9 Legal Aid.

10 I think the issue is that they often feel that
11 ACS services are subpar, and that the family is going
12 to get the services, that they would get from probation
13 are, at least, the probation officers are going to be
14 in the home.

15 What that fails to understand is that there is
16 a more complex issue about the interrelation between
17 various of the agencies in the City, meaning that what
18 this family would have needed, I think, is for Section
19 8 to be advocated for, for their to be advocacy around,
20 you know, the Medicaid issues that were underlying
21 Joseph going to treatment, to advocate for food stamps,
22 all of these different pieces, and those are pieces
23 that need very intensive work.

24 It is my understanding, I am not saying a
25 probation officer could not do it, I think a probation
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1 officer could do it, but it would require a coordinated
2 service that I do not think is currently available.

3 MR. J. CARTER: And that's what your client
4 needed, was somebody to be able to do those things to
5 broker those services?

6 MS. ALBERT: Yes. Basically Joseph was
7 promised things, like help with the electric bill.

8 And, Joseph, that didn't happen?

9 MR. B.: Never.

10 MS. ALBERT: And the concern is not
11 necessarily that the probation officer promised that or
12 even really that she was not able to deliver because
13 that stuff happens, but more that there needs to be
14 more coordinated efforts if we are dealing with the
15

16 complex problems of poverty that are envisioned here
17 than what we are getting, and I think Joseph's
18 situation clearly demonstrates that.

19 Joseph is not a kid who needs to be spending
20 12 months in Lincoln Hall if his family environment is
21 in a better spot.

22 JUDGE CORRIERO: When you say a coordinated
23 effort, would it not be logical to say that the person
24 directing that coordinated effort should be the judge
25 once Joseph's case was brought to the judge's attention
26 as well as the fact of the circumstances surrounding

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2 his family life, and would not a coordinated part that
3 had the capacity to bring in Administration of Children
4 Services or other counseling to ACD the case, and also
5 create an PINS petition, if necessary, in order to
6 achieve those services would have been of value?

7 MS. ALBERT: Our judges hear both PINS
8 proceedings and delinquency proceedings, and they do
9 that monitoring.

10 The problem is that the kind of coordinated
11 effort I am talking about involves Section 8, which is
12 a federal agency, which is federally provided, excuse
13 me. It involves food stamps, which has that joint
14 state/federal/city collaboration. So, what it would
15 require is someone who actually could do the footwork.

16 The judge, unfortunately, cannot do the
17 footwork of screaming at Section 8 about the 5 years
18 that Joseph and his family were waiting for Section 8
19 to approve a bigger apartment.

20 MR. HORN: So, it sounds like this family
21 needed comprehensive case management.

22 MS. ALBERT: Yes.

23 MR. HORN: Based on your experience, how long
24 have you been practicing in family court?

25 MS. ALBERT: I have been practicing in family
26 court for three years and for Aetna Insurance for five.

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2 MR. HORN: Would you say probation is a blunt
3 instrument to coordinate all of those things?

4 That is asking probation to do a lot.

5 MS. ALBERT: I would certainly say that is
6 asking probation to do a lot, but I am not sure that
7 that means there are not things that could have been
8 done, including making referral to a coordinated case
9 management agency.

10 You know, I think one of the things that is
11 most difficult I imagine about being in a spot of being
12 probation is that you have a lot of access to the
13 family and not that much power.

14 MR. HORN: No power.

15 Would you concede that Esperanza may well be a
16 comprehensive management agent?

17 MS. ALBERT: I would.

18 MR. HORN: It was offered, wasn't it?

19 MS. ALBERT: We never actually got to that
20 point.

21 To be clear, Joseph and I talked about the
22 possibility of Esperanza. Esperanza never accepted
23 Joseph. Further, he had the Adolescent Portable
24 Therapy Program, which is the most systemic program,
25 very similar to Esperanza, and he had that for
26 6 months. The first 6 months I think Joseph would

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2 agree that things were going better, and that towards
3 the end of counseling there was a crisis in Joseph's
4 family.

5

6 The issue is that there was a period during
7 his probation when he was getting that case management
8 of his services, the first 6 months, and, then after
9 that, there was another unfortunately 8 months when he
10 was receiving monitoring so his life was under a
11 microscope, but there was not the case management
12 services.

12

13 MR. HORN: But, that is sort of my point about
14 probation, to ask it to be this sort of care
15 comprehensive case manager advocate on behalf of the
16 child, on behalf of the family, and at the same time to
17 have the child under a microscope to be answerable to
18 the judge for the conditions that the judge has
19 imposed, presumably if the judge found that Joseph
20 violated, there were specific conditions that he was
21 found to have violated.

21

22 MS. ALBERT: Yes, curfew and attendance at
23 school.

23

24 MR. HORN: Curfew and attendance.

24

25 And apparently there were complaints from the
26 mother about the fights with the sisters?

25

26 MS. ALBERT: And to be clear, those were not

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2 physical altercations, they were verbal. So, they
3 certainly I do not think that they would be situations.

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5 MR. HORN: My point is probation is on the
6 horns of dilemma.

6

7 MS. ALBERT: Absolutely.

7

8 And, sir, my suggestion is not that probation
9 take on that in its entirety. My suggestion is that
10 probation needs to be the crisis intervenor.

10

11 That I as an attorney see Joseph when he is in
12 court, but I do not see the home situation. It is not
13 my position to do that. In fact, it could be dangerous
14 for me to do so for various reasons. But, if a
15 probation officer is going into the home on a fairly
16 regular basis and sees the kind of crisis that Joseph
17 was living in, I think that the situation is to be able
18 to have the resources at your fingertips to refer to a
19 case management service, to refer to ACS.

18

19 MS. BAMBERGER: Are there groups called case
20 management services that provide this?

19

21 MS. ALBERT: There are certainly case
22 management providers.

20

23 MS. BAMBERGER: Are they contracted with the
24 City, is that how it works?

20

25 MS. ALBERT: I know that there are a number of
26 case management services, first of all preventive

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2 services, which are services through ACS which are
3 voluntary and before a case gets to the level of a
4 neglect proceeding, and those are contracted through
5 the Administration for Children Services in the City.

6

7 There are also a number of cases management
8 services that are through private agencies, some of
9 whom are now contracting with the City on
10 predi position detenti on programs, and those programs
do provide generalized case management.

10

11 MS. BAMBERGER: Thank you.
12 SENATOR DUNNE: Thank you very much, Mr. B. .
13 JUDGE CORRIERO: Thank you.
14 MR. J. CARTER: Thank you.
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4 JOHN DUNNE: We have Asadullah Muhammad, of
5 the Prison Advocacy Agency Correctional Association.
6 After Mr. Muhammad, we will take a brief
7 lunch much break. Sir.
8 ASADULLAH MUHAMMAD: I would like to do a
9 brief introduction of myself.
10 Good afternoon. I want to thank the Task
11 Force Committee for the hearing.
12 My name is Asadullah Muhammad, I'm the
13 coordinator, of the organization called Each One, Teach
14 One which is brought by the Correctional Association
15 under the Juvenile, Justice Project. The Juvenile
16 Justice Project also houses the juvenile justice Teach
17 One, Teach One which is where we train young people who
18 work on juvenile justice issues. We work on them for
19 15 weeks. Upon 15 weeks Teach One Each, Teach One
20 organizes, has workshops all over the city of various
21 topics such as knowing your rights when and if you get
22 stopped by the police. If you're doing workshop it
23 provides an overview of how our justice system works
24 today.
25 James O. and Dakota C. are going to give
26 testimony to their experience of probation.

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1 Asadullah Muhammad
2 So I am going to hand it over to them now.
3 I thank you.
4 JOHN DUNNE: Who is first?
5 ASADULLAH MUHAMMAD: James O. will be going
6 first.
7 JAMES O: My name is James O, I'm 16, from
8 Brooklyn, I was on probation from April 2007 until
9 August 2007.
10 I have been to the Juvenile Justice
11 Institution, I'm going to probation. They took my
12 sneakers at school. They said, if I don't do that, I
13 don't get my sneakers back.
14 For weeks I wanted a pair of sneakers back,
15 if I can get the school and I have to go to my house.
16 I don't see how it's going to help me, any way they
17 take my sneakers. How is that going to help me in my
18 environment, and do better in school? That's not
19 helping at all. I don't know. I feel like my clothing
20 wise and sneaker wise that I would do better in my
21 environment.
22 When I came out, I was in sports, I was there

23 for two and a half months. They kick me out of my old
24 school, my sophomore year. They kicked me out because
25 I had assault charges and when I came home and I
26 started this was in April. I came home and I started

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1 Asadullah Muhammad
2 going back to school and late June I went back to
3 school. The last two weeks before summer started and I
4 got a notice --

5 JUDGE BAMBERGER: What school?

6 JAMES O: The last week of school I attended
7 Franklin K. Leonard.

8 JUDGE BAMBERGER: During the summer there
9 was no school?

10 JAMES O: There was summer school, but they
11 put into summer school, it was appropriate for me to
12 return being I was late.

13 JUDGE BAMBERGER: Did anybody tell you to do
14 anything else during those summer months or were you
15 just on your own?

16 JAMES O: I was on my own. I was doing
17 community service, but it took until a couple of weeks
18 ago when I started doing community service, I didn't
19 start yet.

20 JUDGE BAMBERGER: So you have to do the
21 community service starting about now?

22 JAMES O: Right about now my day ends in
23 August. I have to do 25 hours and I have only done one
24 hour.

25 JUDGE BAMBERGER: During those months did
26 you have to report to the Probation Officer or the

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1 Asadullah Muhammad
2 Court?

3 JAMES O: Yes, I had to go to Probation
4 twice a week and then it was once every two weeks.

5 JUDGE BAMBERGER: Now, are you back in
6 school?

7 THE PLAINTIFF: Yes, I'm back in school and
8 it isn't helping.

9 JUDGE BAMBERGER: School isn't helping?

10 JAMES O: No, to go to school and do my work
11 and I want to be in a big environment class like they
12 have special Ed classes that's not helping me at all.
13 I'm trying to tell them that you put me in a bigger
14 classroom with more students that I can do better, I
15 think I can't do it in a small environment.

16 JUDGE BAMBERGER: You don't like a small
17 environment?

18 JAMES O: No, I don't.

19 JUDGE BAMBERGER: When did the sneaker issue
20 start?

21 JAMES O: Just last week they said we are
22 taking away your shoes. They want to take my clothes,
23 he was going to leave me with one pair of shoes to last
24 me the whole school year. But they was saying, if I do
25 good, I can get one pair of shoes back every week.

26 JUDGE BAMBERGER: That's the school that you

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1 Asadullah Muhammad
2 are attending right now?

3 THE PLAINTIFF: I'm attending right now
4 doing my classes.

5 JUDGE BAMBERGER: Thank you very much, sir.

6 JACK CARTER: When they took this action

7 with your clothing and your shoes, did they explain
8 why?
9 JAMES O: It was for my classes and my
10 mother.
11 MARTIN HORN: This wasn't a Probation
12 Officer?
13 JAMES O: JJI.
14 MARTIN HORN: JJI isn't a place, is it a
15 service provider?
16 JAMES O: No, the JJI it's a therapist that
17 comes to my house.
18 MARTIN HORN: I see.
19 JAMES O: My mom got the decision, they take
20 my sneakers away and my clothes.
21 JUDGE BAMBERGER: Did she say why she was
22 doing that?
23 JAMES O: She said they felt it would make
24 me do better, that it wouldn't cause any detention, it
25 would keep me in my classes because I like to dress up
26 a lot.

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1 Asadullah Muhammad
2 JUDGE BAMBERGER: How did all this start?
3 What was the first thing that you were
4 accused of having done?
5 MARTIN HORN: What did you get arrested for?
6 JAMES O: Assault in the second degree.
7 JACK CARTER: Where did that happen?
8 THE PLAINTIFF: Maxwell High School.
9 JOHN DUNNE: Any other questions?
10 All right, thank you Mr. O.
11 Now, we have another witness.
12 DAKOTA C: First off let me say, good
13 morning.
14 JOHN DUNNE: Good morning.
15 DAKOTA C: My name is Dakota C. I have been
16 in the Justice Project. I will start by saying, I will
17 start off by saying, at a young age, I like the school
18 to be in school in general. I want to teach other kids
19 that was -- it took me a long time to be with kids. I
20 had a hard time like learning the work so that was a
21 factor and I tried to improve that. But at the age of
22 17, where around November of 2004, I was arrested
23 for -- because I it was a stolen vehicle. And the
24 judge felt that, felt that to put me in jail, I should
25 be on probation. And at 17 years old and being on
26 probation is like, it was like a shock to me. Like I

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1 Asadullah Muhammad
2 didn't think it would ever happen to me. But when it
3 did, it was an experience I would never forget, because
4 it was like probation, it was, it was more like you had
5 to do exactly what the Probation said or they would
6 violate you.
7 Like I was already struggling in school, they
8 want to raise my grades. I keep telling them like the
9 work I need a summer setting. And they didn't want to
10 really hear, because I tried hard. I tried to give
11 them all that and on one occasion I actually violated
12 probation. And when I violated probation they felt
13 like I should, I should do jail time or do time. I
14 wanted to go to a residential, a residential. They
15 call it like an adult school modification program.
16 That's a program. I'm not sure what it means, but at
17 the age of 19, because at the age of 17 I already went

18 through one whole year of probation without no
19 violations trying to work hard and trying to get off
20 probation. When I turned 19, I was at the end. I got
21 violated. They thought like I want to be on some jail
22 time or did I want to do a program or modification for
23 my behavior. At the time I didn't think there was
24 anything wrong with my behavior. I thought my behavior
25 was modified. But being 19 and me being I was born
26 and raised in New York City, I lived here all my life.

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1 Asadullah Muhammad

2 When you take a kid from the City and you throw them
3 into a slow moving place, like this definitely is
4 Westchester County.

5 MARTIN HORN: A fate worse than death?

6 DAKOTA C: The Westchester treatment program
7 they stuck me on a top of a mountain. I wasn't able,
8 it was like an old monastery, like an old church. Like
9 the program itself is a good program, but it's just
10 that at the age of 19 and me being told that if I don't
11 do this program I'm going to jail for a few years. It
12 didn't leave me, for a young 19 year old kid being
13 told, they told me if I don't do this, you go to jail
14 and at the time it scared me. But I was in a program.

15 A lot of times I thought about just leaving
16 it because I just thought I will take my probation,
17 because probation didn't know much about me like at the
18 time when I was in a program. I would have mostly
19 depression. My psychiatrist in the program diagnosed
20 me with depression. I was sent to a mental institution
21 for two weeks and at the time I had to see my probation
22 officer. They seen my Probation Officer that I had
23 depression. She didn't know how to, like how to. They
24 didn't know exactly what to do at the time. She didn't
25 know exactly what would come at me from, with the whole
26 depression thing. It was a lot of, it was a lot of

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2 times where I felt down and I just wanted to go home,
3 but then it was times when I wanted to see my Probation
4 Officer. She said, you can't go home because if you do
5 we have to put you in jail. I said, there is no other
6 alternative to me? One, I have never been away from my
7 family in all these days of my life. I have always
8 been around immediate family in the city and I hadn't
9 seen my family for a year or two is like, it's not -- I
10 didn't feel, I didn't feel right.

11 The whole probation like even though I was in
12 a residential program, they were still every time I
13 come see my Probation Officer she would still protest
14 me. I would tell her, you don't use no drugs up there.
15 There is nobody to be drug tested or for cigarettes.

16 They stuck us, there was no immediate
17 contact in cities. We were like on a mountain, no
18 houses. It just scared you to know probation, I can't
19 talk to my Probation Officer, that would be the only
20 person on my side. Me telling her like my feelings and
21 telling her like, maybe I'm upset, I didn't like being
22 away from my family, it's not helping me. I had to go
23 through that and Probation was all like, like the whole
24 thing was just, it was an experience for me. I can,
25 for me, myself, I would never forget. I just wanted to
26 say that Probation is not that I felt like it was no

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2 need for me to be on probation for as long as I was,
3 but the charge I thought, the charge was that serious
4 and what I went through again, I was on probation. I
5 feel like I was so out of it, I felt so violated,
6 because I started out when --
7 JUDGE BAMBERGER: Mr. C. you said you had
8 never been away from your family before. Did you live
9 in New York City?
10 DAKOTA C: Yes, I lived in New York for 19
11 years.
12 JUDGE BAMBERGER: That was where? What
13 borough was that?
14 DAKOTA C: Brooklyn.
15 JUDGE BAMBERGER: Brooklyn. When you had to
16 go to this school, it was in Westchester County?
17 DAKOTA C: Yes.
18 JUDGE BAMBERGER: Were you allowed visits
19 with your family while you were there?
20 THE PLAINTIFF: Yes, but that whenever the
21 counselor at the school felt like it was okay for me to
22 have a visit, I would have to wait around six, seven
23 months for me to just see me family.
24 JUDGE BAMBERGER: Tell me who these family
25 members were, siblings?
26 DAKOTA C: One was my sibling, my little

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2 brother, one of my uncles and my nephew.
3 JUDGE BAMBERGER: What were the courses that
4 you had to take at the school?
5 DAKOTA C: Regular, going to school courses
6 like math, reading, history. It was the school was
7 great actually, it was a great school and I fully
8 concentrated more, but the simple fact that me being
9 away from the city and being away from my family, I
10 have not seen my family for a half a year. It made me
11 just want to go home. I just wanted to leave and come
12 back to the City, but I couldn't do that under the
13 guidance of my probation. If I would have left the
14 program, if I went back to the city, which at the time
15 I wanted to go to the City, I would have seen my
16 Probation Officer or principal. If I didn't see my
17 probation officer, I would have a warrant out for my
18 arrest.
19 All I wanted to do is just see family members
20 and make sure, tell them how I'm doing and we got phone
21 calls, but it wasn't a phone call, it was like ten, 15
22 minute phonecalls. It wasn't much like, holiday., it
23 was inappropriate. I'm in a program around May, June
24 and the holidays and Christmas, they couldn't come up.
25 I couldn't see my family. There was nobody to talk to,
26 nobody coming for me.

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1 Asadullah Muhammad
2 JUDGE BAMBERGER: Did you find those classes
3 were helpful to you after you finished with them in
4 what you're doing now?
5 DAKOTA C: Yes.
6 JUDGE BAMBERGER: It was good even though
7 you were unhappy about not seeing your family?
8 DAKOTA C: Yes.
9 ROCCO POZZI: Is that program Phoenix house?
10 Where did you begin the program, in the City?
11 DAKOTA C: High school.
12 NANCY GINSBURG: Did your Probation Officer

13 ever talk to anybody at the school while you were
14 having problems learning there, in the need of special
15 education?

16 DAKOTA C: No.

17 ROCCO POZZI: Did you bring to the schools
18 attention that you need help?

19 THE PLAINTIFF: Yes.

20 ROCCO POZZI: What was the response?

21 DAKOTA C: I had taken night school classes,
22 but they saw it as, they felt my classes and me not
23 paying attention, I wasn't paying attention, I just
24 didn't understand it. I wasn't far behind from my
25 other classmates. All my other classmates were where
26 they were supposed to be and learning and I was again

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2 about half behind the learning process.

3 MARTIN HORN: When you were 17 that
4 originally got you into the Family Court and that was
5 an arrest for being in a stolen vehicle?

6 DAKOTA C: Yes.

7 MARTIN HORN: Were you behind the wheel?

8 DAKOTA C: No.

9 MARTIN HORN: If you, in your case, if you
10 had been an adult and the case went to Criminal Court,
11 do you have any idea of what would have happened?

12 DAKOTA C: Ultimately, I took some criminal
13 courses. They was telling me that the severity of my
14 charge would have been, I would have had to do at least
15 ten years in jail.

16 NANCY GINSBURG: When you were first
17 arrested you went to Criminal Court?

18 THE PLAINTIFF: Yes.

19 NANCY GINSBURG: When you went to Probation,
20 you saw a Probation Officer in the Adult Criminal Court
21 Division, right?

22 DAKOTA C: Yes.

23 NANCY GINSBURG: You never went to Family
24 Court in this case?

25 DAKOTA C: No.

26 JOHN DUNNE: No other questions?

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3 JACK CARTER: Phoenix House, you said, there
4 was a regular school program there. I'm sorry I have
5 heard the program, I don't know the specifics of it.
6 You said there was an educational program there.

7 DAKOTA C: Yes.

8 JACK CARTER: You participated, who was it
9 positive from the one that you had found in your
10 regular schools?

11 DAKOTA C: I found that being at so far away
12 it took away all the things like no TV, no radio, all
13 you have is you and your friends and classmates, so it
14 was like once you take away all the TV, all the
15 advertisement factors and you really get down to how
16 the teacher up there are with the school, they have a
17 class like 15, 16 kids. But the teacher is like a
18 friend, the teachers stay after school, even if it's
19 not in the job description to do. They stay after
20 school. They be for the exams and SETs my old school,
21 three o'clock they go home. Either you see them
22 tomorrow or early when you come in your just going to
23 sit there and fail the respect of the year.

24 ROCCO POZZI: The fact they were there, they
25 had given you what you asked for in the school
26 sometime, which was some extra attention, some extra

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2 home that wasn't forth coming when you went to Phoenix
3 House that was there, that really helped you get
4 through.

5 DAKOTA C: Yes.

6 ROCCO POZZI: I'm in Westchester, we do have
7 television and radio.

8 JOHN DUNNE: Thank you, very much.

9 Thank you for having brought them here today.

10 We will now take a break for lunch and we
11 will have witnesses, we will start at approximately a
12 quarter of two.

13 Thank you.

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AFTERNOON SESSION.

2 SENATOR DUNNE: We will resume our hearing.

3 I am pleased to welcome our dear friend,
4 advisor and participant, Mr. Larry Busching, who is
5 Division Chief of the Family Court for the New York
6 City Corporation Counsel Office.

7 MR. BUSCHING: Thank you, Senator.

8 It is nice to see you all again.

9 I want to thank you all for the opportunity to
10 address you today to talk about some of the critical
11 issues facing the juvenile justice system.

12 Having served a number of years in both the
13 adult criminal justice system and juvenile justice
14 systems, I have seen many constraints that permeate the
15 system, and I also see many of the opportunities that
16 have arisen over the last several years, and I have
17 seen how probation can play a role in advancing
18 community safety and rehabilitation. I see also the
19 restraints that have been put in place to limit their
20 ability to do so over the years.

21 I am happy to share my perspective based on my
22 experience here in New York City. I read your February
23 report with great interest, and I am particularly
24 interested in focussing on some of the areas you
25 identified as areas that required further attention,

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2 including the role of police in the diversion process,
3 the significance of intake and diversion, reduction in
4 numbers of youths placed with the Office of Children
5 and Family Services, effective service provision and
6 programming for adolescents, resource allocation, use
7 of assessment tools, coordination among agencies and

8 service providers, and the need for strength-based
9 evaluations of youth.

10 As you point out in your report, probation
11 plays a crucial role in maintaining the safety of the
12 community and fostering the rehabilitation of
13 offenders. In the juvenile justice system, this role
14 is even more pivotal than it is in the adult system.
15 The offenders are younger, their crimes are frequently
16 less serious than the adult system, and, due to the
17 young people's age, the prospect for rehabilitation
18 seems greater. The great majority of offenders who
19 come through our system, the juvenile justice system,
20 in fact, end up under probation supervision.

21 As your report correctly points out, however,
22 due to years of neglect and underfunding "the current
23 status of probation in New York is a bleak one." As a
24 result of the serious and disturbing crimes that
25 occurred in the late 1980s and 1990s, the confidence in
26 the probation system was eroded significantly. The

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1 public tended to focus predominantly on confinement as
2 a means for controlling crime, as a means of addressing
3 offenders, and, as a result, probation primarily was
4 seen, as Commissioner Horn pointed out in the report,
5 default mechanism for those cases that were not that
6 serious or had difficulties with proof. And when there
7 was a city environment in which there was over 2,000
8 murders a year that attitude was rather understandable.
9 In that environment, probation was expected to do
10 little more than monitor and report recidivism.

11 In the family court system particularly, this
12 resulted in over-reliance on out-of-community placement
13 to achieve community safety and to presumably achieve
14 rehabilitative goals. During that time, that I
15 described to you, the vast majority of cases coming
16 before the family court were felonies, many of them
17 serious and violent, including predominantly felony
18 charges of robbery and assault. Often juveniles appear
19 with multiple violent cases. Community safety was seen
20 by many throughout the system as requiring these young
21 people's removal from the community, especially since
22 there was little confidence in the Department of
23 Probation to supervise these youths in the community.
24 For those youths who did not present as high a risk,
25 they were often presented as high need.

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1 The link between child medical treatment and
2 neglect is well established both nationally and
3 particularly in New York City as we have seen through
4 some of data presented by the Juvenile Justice
5 Initiative and other sources.

6 This lack of confidence in child welfare to
7 address the issues that led to the juvenile delinquency
8 was compounded in many ways by the lack of confidence
9 in the school system. Many of the youth that presented
10 to the family court system were also suffering from
11 poor performance in school and often had great issues
12 with regard to truancy. Overwhelmed child welfare and
13 education authorities were all too willing to allow the
14 juvenile justice system to now take responsibility for
15 the youth that were coming before it, and, as a
16 consequence of that, where youth was high risk or high
17 need, the answer was very often the same, and that was
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19 in out-of-community placement.
20 Up until recently, the courts when they made
21 the balancing they are required to do under the Family
22 Court Act of the needs and best interest of the
23 respondent and community safety, often regardless of
24 which end of the scale weighed more heavily, the answer
25 typically led towards placement. And that was a pretty
26 stunning statement about the level of confidence in

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2 probation and community based alternatives during that
3 time.

4 When you think about all the things that
5 militate against doing something favoring an
6 out-of-community based system, first of all, judges are
7 required to impose the least restrictive alternative
8 concerning the out-of-community placement could be seen
9 as one of the most restrictive basis. Probation itself
10 ironically often was recommending placement even in
11 cases where community safety was not at risk.

12 Secondly, in spite of an additional factors
13 which we suggest they would not be placing as many kids
14 was the high cost of placement. You would think that a
15 rich environment of community based alternatives and
16 supervision might have developed, and it has not until
17 very recently.

18 And finally, the thing that made that
19 particularly surprising was that the data coming from
20 the out-of-community placements was not good,
21 particularly the 1999 DCJS study demonstrating a
22 recidivism rate that is quite high, in the range of
23 80 percent, would also suggest that was not the wisest
24 course.

25 Thankfully, with record declines in crime and
26 now we had murders instead of being over 2,000 a year

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2 for the City, now we are under 600. Particularly here
3 in Manhattan, there was 600, now under 100, and
4 concomitant decreases in other levels of crime. We
5 have seen a change in the environment. Now for
6 juvenile arrests where it used to be almost very, very
7 heavily weighted towards felonies, it is now generally
8 about even between felonies and misdemeanor. And while
9 serious cases remain and have to be treated as such,
10 there are large numbers of cases that do not implicate
11 public safety concerns. In those cases, then,
12 particularly the system I think at this time has an
13 excellent opportunity and begun availing itself of the
14 opportunity to make changes that will both assist young
15 people in reintegrating them in the community and
16 succeeding in the community and fostering community
17 safety.

18 Some of the things that have been done in this
19 regard include Probation significantly increasing the
20 number of adjustments that have occurred. Ten years
21 ago the number of cases that were adjusted was
22 relatively small. In fiscal year 2007, that number was
23 up to about 26 percent. We have worked with them as
24 well to send cases back. Some of the cases have gotten
25 through probation and come to us, so we thought we
26 might be able to have some effect. With regard to

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2 adjusting, we have been able to send some of those

3 cases back to probation and have it adjusted.

4 So, we are continuing to look for ways to make
5 that happen, and that has several advantages. First of
6 all, it provides immediate sanctions and immediate
7 reparations to offenders and to victims on those cases.
8 It also avoids victims having to come back to court
9 time and time again, for potentially an outcome of very
10 little significance.

11 Also, for some of those high need cases, some
12 of those kids that came into the system that were
13 primarily with us because of child welfare issues or
14 educational issues, there is not a need to kind of link
15 services to a criminal justice or a juvenile justice
16 outcome that could be provided or not provided, but; a;
17 low level offense does not yield the juvenile justice
18 involvement as a response to truancy or poor
19 performance in school.

20 And, most significantly, I think from my
21 perspective as a manager, is I could now have my folks
22 focus and I think judges and law guardians and
23 everybody can now focus on more serious and more
24 complex cases, rather than spending enormous amounts of
25 time on low level cases.

26 Another positive development is probation has

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1 developed a risk assessment tool called the PAT, which
2 they used to help formulate their recommendations.
3 And, I am not a complete 100 percent fan of the PAT, as
4 I have told Commissioner Horn, but I think it is a good
5 thing that there is standardization, and there is an
6 inventory collected on each case, and that we know what
7 to expect with respect to each case.

8 I would recommend in the future that in
9 developing and going forward that we use this to get
10 more input from the other stakeholders in the system,
11 and that we try to get more buy-in with regard to that
12 going forward, but I think generally speaking on
13 balance it is a useful development.

14 And, I think the third really major
15 development that has occurred in recent years has been
16 the use of multi-disciplinary approaches and
17 organizational links that have really benefited the
18 system and the people that come through it. We now
19 have a much broader array of community-based treatment
20 and supervision options that have been developed and
21 implemented here in New York City than has existed in
22 the past. In the past, it was kind of an all or
23 nothing out-of-community placement or very little
24 supervision in the community. We have changed that.
25 As a result of that, we could now allow probation to

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1 focus on their key responsibilities while also bringing
2 in mental health professionals and other professionals
3 from other disciplines into the court system and into
4 the juvenile justice system to work with probation to
5 increase community and family supports and encourage
6 youths involvement in positive activities.

7 Just as a quick example, for some kids they
8 are just bored. They just need something to do. So,
9 involving them in something like the Police Athletic
10 League could make all the difference in the world. For
11 other youth, their needs are much more complex and much
12 more difficult, and they need much more intensive
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14 interventions, and there is much more availability and
15 options with regard to that, the Esperanza program and
16 Adolescent Portable Therapy developed through proper
17 placement and the Vera Institute have drawn on some of
18 the evidence-based models out there. In the Bronx, the
19 Juvenile Accountability Court links youth with mental
20 health providers, and I think most significantly the
21 Juvenile Justice Initiatives, put together by ACS, took
22 some of the \$80 million that was spent on sending kids
23 to private placement and devoted \$11 million of that
24 money to providing evidence-based treatment in the
25 community that really addressed the many multiple
26 issues that were presenting on the cases that we saw,

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1 and oftentimes particularly in those high need kids
2 yielding out-of-community placement. That was a
3 substantial turnaround by the child welfare authorities
4 from a system where there was very little involvement
5 to what was going on in the delinquency end to a very
6 intensive involvement in that.

7
8 These efforts have, in fact, fueled additional
9 efforts, including the City Partners, Juvenile Justice,
10 ACS, Probation, our agency, the Criminal Justice
11 Coordinator have all worked together to put together an
12 alternative to detention, continuum and a risk
13 assessment instrument associated with that is being
14 implemented now.

15 Now, while all this is good, it is important I
16 think to remember that there could be a time when all
17 these gains get called into question, and we have seen
18 backsliding in many of the other cities that have seen
19 substantial reductions in crime, and I think we have to
20 be prepared too. Everybody is in favor of
21 rehabilitative community-based options when crime is
22 low, but we need to establish the constituency there to
23 develop these things and to continue our efforts if
24 crime should rebound, and in some cities that has
25 happened.

26 So, in order to solidify the gains of recent

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1 years, to build on the successes, to learn from the
2 failures and to demonstrate the wisdom of continuing
3 down this path, I would like to humbly make to you the
4 following recommendations:

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6 First of all, the system has to demonstrate
7 its ability to effectively address the most serious
8 cases and the most serious offenders. While I have
9 noted previously that the balance of the cases now has
10 tilted more towards misdemeanor than it ever has in the
11 past, many serious cases do remain, including among
12 these are murders, rape, serious robberies, serious
13 assaults and cases involving firearms. Some of these
14 respondents that are appearing before us even have
15 multiple cases involving these types of charges. In
16 each instance, the system must show that it will take
17 appropriate measures to protect the community by
18 removing serious threats from the community.

19 While in the past it was always said about the
20 system, "the system focuses more on the kid than the
21 crime," in justifying placement with regard to low
22 level cases, we also make a big mistake if we follow
23 that adage with regard to discounting the significance
24 of the more serious and more violent cases. While no

25 foolproof method measuring the likelihood of violent
26 recidivism exists, I think it is important for us to

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2 look at that, and how we are going to be able to gauge
3 what the likelihood is.

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5 We put together our own guidelines in my
6 office on disposition, and one of the things that I was
7 particularly interested in finding out was what are the
8 predictors of violent recidivism, and I did not find a
9 lot of research out there, but what I did find all
10 suggested that the best predictive of violent
11 recidivism was, in fact, the level of offense that was
12 committed that brought the young persons to court
13 currently.

14 It is in this area that I have an issue with
15 many of the risk assessment instruments currently in
16 use. They tend to treat all recidivism equally.
17 Plainly, if this occurs and somebody comes in under a
18 very serious case and then re-offends, and we treat
19 that likelihood of a violent re-offense the same as we
20 treat the likelihood of a nonviolent re-offense, I
21 think we very much run the risk of undermining
22 confidence in the juvenile justice system. So, I would
23 suggest and strongly recommend for the members of the
24 Task Force that we look at ways of identifying risks
25 particularly with regard to violence and particularly
26 with regard to what are the predictors of violent
27 recidivism as a means of making sure that we establish

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2 our credibility to handle those types of cases. If we
3 do not, what we run the risk of happening is that those
4 cases, as happened in the past, time and again will be
5 taken and sent to the criminal justice system in the
6 form of juvenile offender laws.

7 The second recommendation that I would address
8 to the Task Force is that there be developed a set of
9 performance measures to gauge system performance and to
10 inspire community confidence. I have reviewed a lot of
11 literature from the National District Attorney's
12 Association and the National Council of Family and
13 Juvenile Court Judges and the Juvenile Community
14 Justice Initiative, and they encouraged communities to
15 set up a set of performance measures as a means of
16 demonstrating effectiveness of probation and of their
17 juvenile justice system as a means of insuring
18 community support, so when things do not go as well as
19 you hoped they might go, the community will understand
20 why you made the decisions, what you did, and continue
21 to support those efforts.

22 The measures that they support are designed to
23 gauge achievement in the three main goals they identify
24 for a balance and restorative justice system:

25 Offender accountability, community safety, and
26 competency development, specifically with regard to

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2 that offender rehabilitation.

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4 Some of the measures suggested as gauges in
5 these areas include increases or declines in the
6 juvenile crime rate, recidivism by individual
7 offenders, both while in-program or under supervision,
8 and afterwards, the establishment of offender
9 reconnection to the community and to their schools,

9 offender skill development, restitution ordered,
10 restitution paid, community service ordered and
11 performed and victim satisfaction. Measuring
12 performance will allow all the players to collaborate
13 and to focus on achieving similar goals, all the
14 staples, all the agencies, all the programs, the
15 defense attorneys, the judges to all work together to
16 achieving the same goals, and to measuring whether
17 progress exists or not.

18 I would encourage you to look for the
19 performance measure of literature. It is available
20 through the American Prosecutors Research Institute on
21 their website under the heading, What Really Matters in
22 Juvenile Justice.

23 I would also add and also suggest as more
24 dispositional options are developed that we develop
25 means of gauging their effectiveness, both overall
26 effectiveness and effectiveness with particular

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2 populations, and I would strongly suggest in that
3 regard that those assessments be done by an independent
4 agency or independent folks taking a look at what is
5 going on so we could compare. So often what happens
6 now is decisions are made on whether a judge or an
7 attorney likes a particular program or does not like a
8 particular program. What we should be looking for is
9 effectiveness, does this program work and for whom does
10 this program work.

11 The third recommendation I would make is that
12 adjustment and diversion option should be broadened and
13 expanded. It brings significant benefits to the system
14 as I mentioned earlier, but they cannot really be seen
15 by communities and police officers as just an excusal
16 of misconduct. We really have to have them aware and
17 involved in what is going on with regard to adjustment.
18 There should be a rich array of services available
19 through some of the folks that I think we could get
20 involved in this effort, police precincts, especially
21 those that have "Explorer" groups, community-based
22 organizations, church groups. We had some church
23 groups approach us, very interested in working with
24 this population, and others. There are so many service
25 groups in this city. They are innumerable. But, the
26 benefit of this would be to bring them into the

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2 process, to help them mentor youth, to help provide
3 positive outlets for the youth, to help them kind of
4 burn off some of the energy that they often need to,
5 and to create linkages between the youth and the
6 community going forward that I think would have
7 significant and I think the evidence shows a
8 significant role in reducing recidivism. If we could
9 connect youth to positive reinforcement and positive
10 opportunity at the earliest opportunity, that is the
11 best way I think to address recidivism and to nip
12 juvenile crime in the bud.

13 Just, for example, the Center for Court
14 Innovation, which is providing services as an
15 alternative to detention in Queens, has set up an after
16 school program, and we have had kids come to that
17 program, and the parents and the kids love the program.
18 It is fantastic. Kids have a place to go. They have
19 things to do. It is very instructive. They get help

20 with homework. They get athletic activities. The only
21 problem, the maximum a kid could be in that program is
22 60 days. What ends up happening is when that program
23 ends, the kids do not want to leave. So, it is pretty
24 telling about what is available in our communities, and
25 what the linkage is between our communities and the
26 youth that come between us that that's occurring. If

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2 we could make those linkages before we get to the
3 mid-level, grassroots we are talking about as part of
4 adjustment, think of the cost savings and think of the
5 human lives that would be impacted by that.

6 Additionally, there is also a supervision
7 component to that because now the kids are involved in
8 these community groups and people around the community
9 know them and keep an eye on them.

10 I coach basketball in Washington Heights in
11 the PAL. I know when I am walking around the streets
12 up there, I know which kids are in the program, I know
13 who their parents are, the cops know them, the parents
14 of the other kids know the kids on my team. It is the
15 best supervision option you could possibly have, and no
16 city agency is ever going to be able to compete with
17 that.

18 The fourth recommendation I have is to expand
19 and enhance provision of services to victims by
20 probation departments. I noted that in your report and
21 I thought that was a great point, and I really am
22 grateful for you including them in there. Having
23 handled domestic violence and child abuse cases for
24 many years prior to coming to the Law Department, I saw
25 the services that are available to victims on those
26 cases, and the services, how they developed over the

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2 years.

3 I have to say that when I came to family court
4 and saw what we did for the victims on our cases, I was
5 frankly quite appalled. Something has to be done about
6 it. Among the many inconveniences and indignities they
7 suffer are lack of information about the system,
8 additional requirements to appear in court, long waits
9 for court, inadequate waiting areas, little separation
10 from offenders, often they wait in the same areas,
11 almost no safety planning whatsoever, uneven provision
12 of orders of protection, little access to services,
13 unavailable or poor translation services, infrequent
14 ordering restitution, and little information about case
15 outcome. These conditions are even more appalling when
16 you realize that the majority of victims on juvenile
17 delinquency cases are themselves children. When you
18 look at some of the other victims, they include elderly
19 persons, small business owners, delivery people, and
20 people who do not speak English. All of these
21 individuals suffer greatly by having to come to court
22 and having to wait and having to go through the
23 process.

24 By no means do I mean to suggest these
25 conditions are a result of probation or is probation's
26 doing, but in my own office there were a lot of

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2 problems in this regard, and we tried to rectify some
3 of them. As a system, we need to address that, and I

4 think some of the things probation could do in this
5 regard is to identify and have available fully
6 qualified interpreters; fully and completely explain
7 the adjustment process; display concern and compassion
8 for victims, and to take time to fully develop detailed
9 victim impact statements; gather complete information
10 about loss and restitution, including medical expenses;
11 inform victims and offenders about orders of protection
12 and take affirmative steps to make sure they are
13 obeyed; bring prompt and complete violation proceedings
14 when victim safety is again placed at risk; and,
15 perhaps, most importantly, link victims through
16 services through providers like Safe Horizons.

17 My final recommendation would be to increase
18 information sharing between and among the adult and
19 juvenile justice system. As one of the few agencies
20 that spans both systems, I think probation is in a
21 unique place in making sure communications go back and
22 forth. Frequently, I hear, and I know Nancy Ginsberg
23 may differ with me on this, but I frequently hear from
24 my colleagues in the adult system that they did not
25 know about a juvenile's history, and they did not know
26 how to access information, and there is often a lack of

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2 information in that regard. This presents a number of
3 problems.

4 First of all, serious risks can go unaddressed
5 and not recognized by the adult system, and, on the
6 flip side of that, the other side of that is often
7 times we have conflicting resolutions, conflicting
8 orders, and there have been services put in place on
9 one case that are undermined by services put in place
10 on the other case. There is much more that I could
11 discuss, but I recognize that I probably have gone over
12 my time limit with you.

13 I really appreciate being able to speak to you
14 a today. I appreciate to be able to serve as a member
15 of the ad hoc committee advising you on these issues,
16 and I particularly appreciate you taking the time to
17 look at these juvenile justice system issues in
18 particular because I think they are incredibly
19 important, and I think it shows your recognition that
20 if we could rehabilitate as part of the juvenile
21 justice system that is probably the best type of
22 rehabilitation there is.

23 Thank you.

24 SENATOR DUNNE: You have been a great help to
25 us, Mr. Busching.

26 Judge Corriero.

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2 JUDGE CORRIERO: How are you, Mr. Busching?

3 MR. BUSCHING: Very good, Judge. How are
4 you?

5 JUDGE CORRIERO: Very well.

6 We had some discussion this morning about
7 police policies with respect to adjustment cases that
8 first come into the system. Does the Corporation
9 Counsel have a policy which would restrict the ability
10 of police officers or complainants to agree to
11 adjustment?

12 MR. BUSCHING: Just to give you a little bit
13 of the law on this, the way the cases flow is they go
14 first to the Department of Probation, who will explore

15 the possibility of adjustment. If the case is
16 adjusted, we do not see it. So, we only get it on the
17 back end when it is referred to us for prosecution.
18 Now, sometimes what we will do is, for
19 example, some of the witnesses might not return calls
20 from the Department of Probation, police officers
21 sometimes will be hard to reach, so if we reach that
22 person, or sometimes if you explain what going to be
23 involved in coming to court and all that they are going
24 to have to go through, they often will consent to
25 adjustment under those circumstances, and then we could
26 send those cases back to probation, but we are not kind

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2 of a front line on that end. Sometimes we could play
3 some role in sending a case back. We will discuss it,
4 but generally we will look at the case. We do not make
5 particular recommendations to police officers, but we
6 will go through the facts of the case and so forth with
7 them. And with regard to any particular restrictions
8 on whether police officer's consent is necessary or not
9 necessary, I think probation is probably in a better
10 position to address that because they are the one
11 making the decision.

12 JUDGE CORRIERO: My inquiry was somewhat
13 different in terms of position and posture on the part
14 of the City encouraging, in an appropriate case,
15 consent on the part of the police, for example, with
16 respect to certain kind of cases, and wouldn't that be
17 something that might be worth considering in terms of
18 the City's posture, working its way up through the
19 Mayor's office, or criminal justice coordinator to kind
20 of convey a message that adjustment in the appropriate
21 case is the preferred way of dealing with a case?

22 MR. BUSCHING: Well, historically what existed
23 was, I think there was kind of disfavor and
24 particularly even I would say in my office before I got
25 there, and before I really looked at the issue I think
26 it was not seen as a particularly good thing.

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2 What I tried to reinforce with my staff is
3 that kind of that adjustment is a good thing for all
4 the reasons that we talked about, but, as you suggest,
5 on the appropriate cases, the low level cases, the
6 cases where minimal or no prior contact, where the
7 sentence is likely to be or the case is likely to end
8 up with an adjournment in contemplation of a dismissal,
9 or where a kid really presents with very little or no
10 need for supervision treatment or confinement. I think
11 they have gotten that message, and I think they convey
12 that back.

13 Of course, as I talked about it, I think there
14 is an opportunity here, and the more we could expand
15 the range of services offered, and right now I am not
16 sure that everybody knows exactly what services are
17 offered there, so the more we could expand the range
18 and make people aware of those services, the more I
19 think we could broaden the range of cases that are
20 eligible.

21 JUDGE CORRIERO: Thank you.

22 SENATOR DUNNE: Bob.

23 MR. MACCARONE: Thank you for your testimony.

24 I just will say it is really impressive in
25 terms of your research and the extent of reading you do

26 and background. I found it very informative.

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2 I have both a question and comment. First,
3 the question. You spoke about the alternatives to
4 detention continuum, yet we heard earlier testimony
5 this morning about some of the procedures in place that
6 limit options for alternatives to detention,
7 particularly when those arrests were made by police and
8 over the weekends, et cetera. So, I would like to hear
9 more, if you would, more information about those
10 alternatives on that continuum that are available.

11 MR. BUSCHING: Sure. For a long time there
12 was one alternative to detention, it is called the
13 Alternatives to Detention. It was run by the Probation
14 Department. It was a school based model. It had very
15 good attendance, but it was not particularly -- it was
16 not service rich, you know.

17 MR. MACCARONE: Wasn't that a widening though?
18 I think the Commissioner did his research on that and
19 determined there was to a large extent net widening at
20 a great cost going on, and so in terms of all role
21 effectiveness in serving -- Marty, I think I am
22 informed on that -- as a true alternative to detention
23 that was limited? So given that as the existence and
24 going forward with the population we have, what are the
25 programs in place?

26 MR. BUSCHING: I did not mean to imply that

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2 it was successful, but people went. That is about --
3 that is the best part I could say about it, I think.
4 So, when when that was --

5 MR. HORN: Closed.

6 THE WITNESS: (Continuing) -- closed, the City
7 undertook an examination of kind of what would be the
8 best approach to put in its place, and it was reformed
9 by going to other locations, and the Vera Institute was
10 helpful in providing technical assistance. The first
11 aspect of that was to develop a risk assessment
12 instrument that would help to inform decisions about
13 remand or parole, at the first, at the initial
14 appearance.

15 MR. MACCARONE: What's the name of that
16 instrument at that point that is used in detention?

17 THE WITNESS: We call it the Risk Assessment
18 Instrument.

19 MR. HORN: RAI, Risk Assessment Instrument.

20 MR. BUSCHING: And actually, what happened
21 was we took a sampling or Vera took a sampling of
22 children that pass through the system, went and looked
23 at who either recidivated or did not appear in court,
24 and then took the set of characteristics and
25 information that was compiled on each kid, and then
26 found which were the correlates, which things most

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2 strongly associated with those two factors, which are
3 the factors that the family court is required to look
4 at under the Family Court Act, recidivism and failure
5 to appear.

6 Based on that, we developed this instrument
7 that will group incoming youth in 1 of 3 categories:
8 High, mid and low risk. Based on that, I guess the
9 presumptive or the it is meant to kind of help the

10 judges make decisions. So, once the judge sees that
11 the kid is in a particular risk group, obviously,
12 higher risk kids you could suspect are more likely to
13 go to detention, mid-risk kids we try to supervise, and
14 low risk kids would be released without restrictions.

15 So, for the mid-risk kids, that is where we
16 focused and tried to develop a continuum of alternative
17 detention based on the Chicago model in large part,
18 including after-school supervision, the program I
19 described in Queens, including community monitoring
20 where basically curfew checks, school attendance,
21 et cetera are conducted. There is intensive community
22 monitoring which is conducted by the Department of
23 Probation, which is essentially you have one foot in
24 detention, you better live a very clean life, and we
25 are going to keep it a very close eye on you.

26 And then, of course, the either end, the high
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2 end is detention, NSD and then secure, and on the low
3 end there is no problem.

4 Part of that though is that the problem you
5 identify as kids being arrested on Friday and not
6 getting to court until Monday is an ongoing problem,
7 and it is a serious one. One of the responses that is
8 being developed to deal with that is the Department of
9 Juvenile Justice, Juvenile Detention has the ability to
10 to release kids under certain restrictions, and give
11 them family court appearances for the next day. They
12 have been working at that and implementing that. It is
13 a little complicated, but I think they are likely to
14 come out with something fairly soon that will allow
15 them to do that. It does not address everybody, but it
16 addresses some of the lowest level cases.

17 MR. MACCARONE: Does the Police Department
18 exercise the use of appearance tickets as alternatives
19 to detention, or are those solely the universe of the
20 Juvenile Justice Agency?

21 MR. BUSCHING: No. The Police Department
22 gives out -- it could either bring a kid to court if it
23 is during court hours, bring a kid to detention if it
24 is after court hours, or give them family court
25 appearance tickets. I do not know the percentages of
26 which they do that, but they do it on a fairly
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2 significant number of the cases that they give family
3 court tickets.

4 MR. MACCARONE: Thank you.

5 MR. BUSCHING: Sure.

6 MR. MACCARONE: Just a comment. It sounds
7 like you are using a series of risk instruments. I
8 heard you say you have a concern with risk instruments
9 because they all tend to demonstrate, they all seem to
10 focus on the same issues of risk, largely seem
11 undistinguished, but I want to alert you that there is
12 a risk instrument in the rest of the State. It is in
13 55 counties, and it is called the Judge Assessment
14 Screening Inventory. I will send you a copy. Maybe it
15 is coming. Again, I know you got the package for
16 Esperanza.

17 MR. HORN: And we use that for all
18 dispositional recommendations, not just Esperanza.

19 MR. MACCARONE: It is both a risk and very
20 detailed needed instrument as well.

21 MR. BUSCHING: The thing that I was really
22 trying to focus on is what are the correlates or what
23 predicts violent recidivism as opposed to general
24 recidivism. That is where I did not find that much
25 information.

26 I think I have looked at it, but I would not
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1 swear that I looked at the instrument. I am not sure
2 that they -- you could educate me more whether it
3 focuses on that issue of violence.

4 MR. MACCARONE: It does. Age of onset is a
5 powerful determinate, and offense, of course. The need
6 and the address of those needs becomes an important
7 mitigating factor.

8 MR. BUSCHING: Yes.

9 SENATOR DUNNE: Any other questions?

10 MR. AUSTRIA: I have a question. You referred
11 to a time several years back when I recall when the
12 public climate was very focussed on the fear of
13 juvenile crime. So, your office, probation offered
14 record of placement. You talked about it now being
15 different. In the transition, what happened? Because
16 I know the public climate takes some time to shift, but
17 what type of internal dynamics was going on that would
18 move people from always placing to exploring
19 alternatives?

20 THE WITNESS: Do you have an hour?

21 It is a great question. A big part of it was
22 what the cases were that were coming in. You know,
23 when you went from predominantly felonies, serious case
24 environment, to much more misdemeanor caseload, that
25 made a difference. I am not sure that people made the
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1 transitions as quickly as one might have expected.

2 I think part of it too, when we internally did
3 a very thorough examination, what we are trying to do
4 and how we are trying to do it, and what our role is
5 particularly. Because family court prosecutors are
6 unique, you know, in the adult system, I did not have
7 anywhere near as much responsibility for the welfare
8 of the offenders as I do here.

9 And then, I think the third thing that really
10 made a difference was the City in general and
11 Commissioner Horn, the CJC, the Mayor's office, I think
12 a lot of folks kind of were looking at this issue and
13 thought about better ways to do that, and the thing
14 that really made the biggest difference is having
15 options because there were so few options. Now having
16 options and when you could point to an option that has
17 evidence behind it and you could give a reason for
18 using this, I think that makes it a lot easier.

19 Of course, when you compare that to the other
20 options, the out-of-community options and the results
21 that you have seen there, it really led to the idea of
22 let's focus, let's try to separate out risk and needs.
23 And for the most significant risk, let's have, a
24 response that addresses that, and, for the kids that
25 are kind of the great middle, let's see if we could
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1 find a variety of things that could address those
2 particular concerns.

3 MS. GINSBERG: I have a question.
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5 SENATOR DUNNE: Nancy Ginsberg.
6 MS. GINSBERG: In family court, the juvenile
7 prosecutors appear as counsel on the violation of
8 probation proceedings, is that true?
9 MR. BUSCHING: It is a little unclear. Yes,
10 we sometimes --
11 MS. GINSBERG: When probation files a
12 violation, who shows up in court?
13 MR. BUSCHING: We show up in court; probation
14 shows up in court.
15 MS. GINSBERG: And many placements to OCFS are
16 occurring because of these violations of probation?
17 MR. BUSCHING: I think we are seeing, yes, I
18 think that is fair to say that many more of the
19 placements now are relatively VOPs, rather than direct.
20 I think that's fair.
21 MS. GINSBERG: I am just curious what your
22 office's position is, and what your view of what
23 services the kids are getting, and the reasons for
24 these violations of probation, and whether or not the
25 OCFS placements are actually either appropriate or the
26 most appropriate response to the violations.

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2 MR. BUSCHING: When we were putting together
3 the dispositional guidelines I talked about earlier,
4 that was an issue we really struggled with, what do you
5 do with somebody who just refuses to comply with any,
6 any intervention you put in place.
7 So, what I tried to do is refer folks back to
8 the initial analysis, is the public safety at risk
9 here. If the public safety is at risk, then that kid
10 may need to be taken out of community. If it is not,
11 then can there be, either through graduated sanctions,
12 a more intensive intervention, a means of keeping this
13 young person in the community that will address the
14 issues that we are talking about.
15 I think in many ways people thought, well,
16 that might be the cure all, well, this is the way, he
17 will learn, send him Upstate, and it did not always
18 achieve the goals that you were trying to achieve.
19 So, the idea is public safety is one thing.
20 If it is an issue where there is noncompliance, are
21 there ways we could kind of work up a graduated
22 sanctions approach or a continuum of options to go
23 towards something more intensive.
24 I think the Juvenile Justice Initiative, for
25 example, has found that they are handling a pretty high
26 percentages of VOPs, which would suggest that is

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1 something, that it was a case that made its way up that
2 continuum.
3 MS. GINSBERG: Could you talk a little about
4 about the factors that your office is finding important
5 as predictors?
6 MR. BUSCHING: Well, the first thing that I
7 think we look at it, I laid it out basically in three
8 sections. The first is what is the criminal conduct at
9 issue here, is it a homicide, is it a gun, is it a
10 serious robbery. Sex offense we kind of took out, and
11 we are trying to -- I think we are all struggling with
12 sex offenders. I notice that in your materials we are
13 all struggling to find appropriate responses to deal
14 with sex offenders. Multiple assaults, very serious
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16 assaults, things like that would in our in our view and
17 in our analysis constitute pretty significant public
18 safety risks.

19 There were two factors that came in as need
20 more information. One was gang involvement because a
21 lot of times that is thrown out there, and you do not
22 really know what it means, and you need to know (a)
23 what is kind of the nature of the gang, and (b) what
24 the nature of this kid's involvement among other
25 things.

26 And, the second is what is the family's view

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2 because sometimes you will have families come in and
3 they will have all sorts of different information about
4 what placement is and what it could achieve, and some
5 of them will have had kids that have already gone into
6 placement. So, part of the information gathering on
7 that type of case required an analysis of does the
8 family think the kid needs to be placed because he is
9 doing really dangerous, scary things in the house, or
10 is it because they are frustrated, and, perhaps, with
11 an intervention that works with the family you might
12 make a difference and help them to be able to maintain
13 the kid in the house. So, those were the two need nor
14 information issues.

15 Then there were things we classified more as
16 service needs, school issues particularly. You know, I
17 only heard the last young man that was here, but it is
18 not an unfamiliar story. One of the things we saw
19 driving a lot of the decision making, I referred to it,
20 was school issues, and so we try to address those as
21 more of a service need in the absence of if there is no
22 community safety risks. That was not a risk community
23 safety risk itself for truancy or poor performance in
24 school. Family functioning in certain circumstances
25 was also put in that category as a service need, rather
26 than a risk issue.

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2 MS. GINSBERG: Are there situations where you
3 think that an offender may be able to be kept in the
4 community at a VOP level and probation disagrees and
5 how do you approach that?

6 MR. BUSCHING: Well, just speaking generally,
7 both with regard to VOPs and with regard to direct case
8 outcomes, outcomes on the underlying case, we do not
9 always agree. There is a fairly high conversion, but
10 there is a significant time when we do disagree. I
11 think the last numbers I looked at, which are several
12 years old now, was somewhere in like the 80 percent
13 range that we are in agreement, and then that could be
14 any of the alternatives. Generally speaking, it is
15 about half where we think of something more
16 restrictive, and half where they think of something
17 more restrictive. Now, that may have changed. That
18 was about 2005. That may have changed, but that is the
19 last time I looked at that. But, certainly, there are
20 cases where probation recommended placement, and we
21 recommend something less and vice versa.

22 SENATOR DUNNE: Yes, Judge.

23 MS. BAMBERGER: In the county in which I
24 previously sat, there were hundreds of quality of life
25 crimes. How many of those go to family court? A lot
26 of them are teenagers who are arrested for opening a

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2 beer can, fixing a bike on the street, doing laundry on
3 the street, waxing car on the street, all kinds of
4 stuff like that.

5 MR. BUSCHING: The family court does not have
6 restrictions over violations which takes some of those
7 things out of our purview, but we do see the lower
8 level stuff that I was talking about, including things
9 like obstruction of governmental administration, which
10 could often occur in the subways coming to and from
11 school, sometimes in the school, resisting arrest in
12 conjunction with like a turnstile jumping, things like
13 that. So, I do not know that I could give you an exact
14 number, but we are seeing a fair amount. But,
15 primarily only if a misdemeanor charge is made out.

16 MS. BAMBERGER: And do the police adjust those
17 out, some of them out?

18 THE WITNESS: We are seeing, and I will ask
19 Pat to kind of expand on that, but we are not seeing so
20 many of those. We are seeing relatively few that are
21 getting into court. You know, if there are other
22 issues, you know, the kid is on probation already, you
23 have an issue like that, it may go to court, but no
24 prior history and no real significant issues going on
25 the vast majority of those seem to be adjusted.

26 MS. BAMBERGER: And what about the vertical

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2 search cases, those are the cases --

3 MR. BUSCHING: Trespasses.

4 MS. BAMBERGER: (Continuing) -- you get the
5 kid in the apartment lobby, do they go to family court?

6 MR. BUSCHING: They do. We have a fair
7 number of those.

8 MS. BAMBERGER: And is there a policy with
9 respect to those cases?

10 Most of those kids live in the building, but
11 they do not have ID.

12 MR. BUSCHING: There was just a Court of
13 Appeals case last week on this issue. The kid is where
14 actually they ended up suppressing the evidence in that
15 case and dismissing the case.

16 Those are tough cases. I am actually in the
17 midst of trying to educate my folks more on that. I
18 mean you are more familiar with the law than I am sure
19 in that area. It is often very difficult, and you have
20 to have really involved inquiry with the police officer
21 on that topic. If the case is eventually drawn up, if
22 we decide to draw the case up, sometimes there is not
23 sufficient evidence to draw the case up, but, if there
24 is sufficient evidence to draw the case up, we go
25 through a similar analysis, but oftentimes those cases
26 maybe adjusted as well.

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2 MS. BAMBERGER: Thank you.

3 MR. BUSCHING: Sure.

4 SENATOR DUNNE: Yes, Seymour James.

5 MR. JAMES: How receptive are the probation
6 officers and family court judges to the concept of
7 graduated sanctions?

8 MR. BUSCHING: I think the practices vary
9 widely by borough. For example, in Staten Island you
10 do not get many shots. The judge tells you to do

11 something, you are required to do it. If you do not do
12 it, you know, that is it, whereas in Brooklyn it tends
13 to be more of the opposite. There is probably more
14 work that could be done in that area, but it kind of
15 depends largely on people's viewpoints.

16 I know Pat is probably in a better position to
17 talk more about kind of the administrative hearings and
18 things that go on. Probation responds to a lot of that
19 stuff we would not see until there is an actual
20 violation. Then, of course, there is a difference
21 between a technical violation and the re-offense
22 violation.

23 SENATOR DUNNE: On that note, why don't we
24 hear from Ms. Brennan.

25 Thanks very much.

26 MR. BUSCHING: Thank you.

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2 SENATOR DUNNE: Thanks for the work you are
3 doing.

4 MR. BUSCHING: My pleasure. Thank you for
5 having me.

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THE COURT: Patricia Brennan, Deputy
Commissioner for the Juvenile Operations.

PATRICIA BRENNAN: Thank you, Senator.

The solution of adult problems tomorrow
depends in large measure upon the way our children grow
up today. There is no greater insight into the future
than recognizing that when we save our children we save
ourselves. This observation is Margaret Mead's, it
should perhaps be suggested as the inscription above
the entrances to our family courts.

When Commissioner Horn began his tenure at
DOP IN 2002, he inherited a system marked by
inconsistency, irrational decision making, an over
reliance on detention and incarceration, with extremely
high costs and very poor outcomes. He embarked on a
series of reforms for the juvenile division and put
great emphasis and resources into their work.

This reform effort was soon to be termed the
Project Zero. It had as its mission to improve public
safety while serving the best interests of the children

23 and families. Ultimate success would be measured if
24 "Zero" number of youth had to be incarcerated.
25 Project Zero established five goals:
26 (1) Number One, Demonstrates to the Juvenile

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2 Justice System stakeholders that the "incarceration
3 approach" was failing public safety and hurting
4 children.
5 (2) Number Two: Create a philosophical
6 approach to delinquency that promoted both public
7 safety and child welfare.
8 (3) Number Three: Created a consistency and
9 rationality in determining which youth should be
10 incarcerated.
11 (4) Number Four: Create a culture that
12 values community based, in home solutions to
13 delinquency and,
14 (5) Number Five: Creates a set of
15 alternatives to incarceration for judges to use in
16 adjudication.
17 Towards that end, Probation restructured its
18 juvenile intake, and investigation and supervision
19 functions, and worked with other stakeholders to
20 improve the efficacy of the system in both the case
21 processing and sentencing phases. We became data
22 driven agency and focusing on outcome and performance
23 measurements and gratefully are realizing a substantial
24 return on the technology investments made in previous
25 years.

26 Permit me to explain some of the steps we

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1 Patricia Brennan
2 took:
3 The Department of Probation enhanced the
4 intake process and provided also low risk youth with
5 non-judicial sanctions and services known as
6 "adjustments." Our enhanced intake allowed probation
7 officers to make better decisions about whether to
8 divert a youth from Family Court or refer them for
9 prosecution
10 New York City implemented an objective Risk
11 Assessment Instrument; the RAI, which identified which
12 youths are the most appropriate for detention, for
13 release without conditions and for ATD programs in the
14 community.
15 For RAI was designed to measure risk of
16 flight and reoffense and prior to the case disposition.
17 The preparation of the RAI on all cases is the
18 responsibility of Probation and it is distributed at
19 arraignment to all parties.
20 Youth being identified in the moderate risk
21 category by the RAI can now be referred to one of the
22 newly created ATD programs. In contrast to the
23 original ATD program, which disrupted education by the
24 removing of the youth from their schools, the new ATD
25 vision maintains youth in appropriate school settings,
26 while matching them to community based supervision and

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1 Patricia Brennan
2 service programs. Probation operates one of those ATD
3 programs, agency Intensive Community Monitoring
4 Programs.
5 In the area of investigations Probation
6 created a more thorough, strength based investigation

7 and commenced to produce and deliver that investigation
8 to court electronically. On time delivery and equal
9 distribution to all parties has improved dramatically
10 from the "old" days when parties routinely asked for an
11 adjournment to review the "just delivered" hard copy of
12 that investigation. This speeds up case disposition
13 times, reduced unnecessary detention and improves the
14 quality of justice.

15 Using the elements of the strength based
16 investigation, Probation also created a rational
17 decision making tool for use in tandem with the
18 investigation. The Department of Probation
19 commissioned an analysis of a large cohort of past
20 probationers to identify risk factors and assets that
21 predicted success or failure in completing probation
22 and avoiding re-arrest. This analysis was used to
23 create the Probation Assessment Tool, which assists
24 police officers in determining their sentencing
25 recommendations.

26 Additional staff has been assigned to the

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2 area of supervision, thereby allowing us to reduce the
3 average caseload of our officers from over one hundred
4 to below fifty. Probation officers are assigned to
5 specific geographical areas within their counties.
6 This enables them to manage their caseloads more
7 efficiently, especially with their fieldwork. It
8 enables them to know their communities and their
9 communities to know them. Probation also developed
10 several innovative Alternatives to Incarceration
11 Programs, options for youth.

12 Esperanza. Esperanza is a community based
13 ATI for high risk probationers who would otherwise be
14 incarcerated. Each youth and their family receive six
15 months in house, of which most are Esperanza counseling
16 that work there in a complementary fashion with the use
17 PO's. Esperanza services help the youth and their
18 family communicate to solve problems using a variety of
19 therapeutic approaches.

20 ESP, the Enhanced Supervision Program
21 provides an option for youth who are in medium risk,
22 low asset and are in need of extra attention, close
23 supervision and community services.

24 ESP Probation Officers who have caseloads
25 capped at 25 are also provided with discretionary
26 "wrap-around" funds to provide incentives and service

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2 support. This funding innovation has permitted the
3 Probation Officers to purchase professional tutoring
4 services for probationers, to pay for counseling fees
5 not covered by a parent's health policy, to pay for
6 club membership in the probationer's local YMCA and
7 even computers for probationers so they could compete
8 academically with their more affluent peers.

9 It should be noted that the Administration
10 for Children's Services, ACS has began this year to
11 offer alternative to placement services for juvenile
12 delinquents, J D Programs, with their implementation of
13 the Juvenile Justice Initiative, patterned after our
14 Esperanza model and JJI placement bound youth who in
15 lieu of incarceration will receive intensive home
16 based, family centered intensive services, while under
17 probation supervision.

18 As a result of the initiatives, I can report
19 to you that:

20 We have increased the number of juveniles who
21 were diverted from prosecution and receive community
22 and social services by 170 percent. We diverted more
23 than 2700 youth where previously that seemed stuck at
24 one thousand.

25 We decreased the number of juveniles who
26 receive an investigation recommendation for

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2 incarceration by more than fifty percent as result of
3 the use of the Probation Assessment Tool.

4 We reduced the number of juveniles
5 incarcerated annually by thirteen percent despite a
6 thirty-five percent increase in juvenile arrests over
7 the same period. Comparing the May 2004 to May 2007,
8 and the average number of youth incarcerated monthly
9 has decreased by twenty-three percent.

10 We enrolled over 1,100 juveniles into the ESP
11 a 605 into our Esperanza program.

12 Preliminary data indicates that for ESP and
13 the Esperanza youth successfully complete probation at
14 a higher rate, sixty five percent, than the youth with
15 similar risk profiles, and 74 percent of Esperanza
16 youth have remained out of incarceration, after nine
17 months of release from the program. This is not a
18 perfect outcome comparison to the 1999 study setting
19 that you heard about. But, it is something to track.

20 Since our Project Zero, New York City has
21 experienced a gross cost of savings over \$11 million
22 dollars. New York City and New York State bear an
23 equal share of the cost with each incarcerated youth.
24 New York State, might experience similar cost savings
25 if our Project Zero reforms are institutionalized and
26 the State can, with confidence, make capital plans

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2 based on this population reduction.

3 Commissioner Horn's leadership and ingenuity
4 combine in combination with a work force willing to
5 work hard and to change, have permitted New York City
6 Probation to achieve much in a very few years. To
7 sustain this success, to build on this success or to
8 replicate Project Zero elsewhere in the State, requires
9 investment, sustained investment on the workhorse of
10 the Juvenile Justice System. State reimbursement for
11 probation services remains at historic lows. Without
12 substantial State commitment as has been suggested by
13 Chief Judge Judith Kaye, the success of a Project Zero
14 would become a footnote in Probation history, a great
15 story of an administration's originality, instead of
16 the first chapter of the revitalized probation system
17 for all New York State.

18 I can envision a future Department of
19 Probation that protects, changes and saves lives with
20 even more creativity, with a fuller continuum of
21 graduated sanctions, and juvenile accountability,
22 evidence based on interventions and treatment
23 collaboration on behalf of those tens of thousands who
24 become enmeshed in the Family Court system.

25 I'm proud of the work being done by the women
26 and men of the Department of Probation. It's least

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2 appreciated among the criminal justice agencies, they
3 work creativity to protect our communities by giving
4 the youth who offend, a second chance.

5 I have a dedicated professional here with us
6 today. It would be my pleasure to introduce Probation
7 Officer Susan Williams. And after she speaks, if there
8 are questions, I would be glad to return.

9 MS. WILLIAMS: Thank you.

10 My career with the Department of Probation
11 began in 1998. During my career I worked in various
12 boroughs and units within the department. I was
13 originally assigned to the Bronx Adult Supervision
14 Branch where I provided community based supervision to
15 adults who were sentenced to do probation.

16 In 1994, I informed my supervisor at the time
17 that I wanted to transfer to the Bronx Family Court
18 where I could work and supervise juvenile probationers
19 with the intentions to serve, intervene and prevent
20 Juvenile Criminal involvement that would result in
21 juveniles receiving Adult Probation sentences, jail
22 time and possible prison sentences in their future. I
23 have spoken to the Bronx Family Court Assistant
24 Commissioner, Bronx Family Court Supervising Probation
25 Officers and the Bronx Family Court Probation Officers,
26 who all informed me that working in Family Court with

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1 Patricia Brennan
2 juveniles and their families would be more intense and
3 more stressful. This still did not deter me and there
4 after my journey in the Family Court again. I was
5 assigned to the Bronx Family Court Investigation Unit,
6 where I provided the court with investigation reports
7 to assist in making appropriate sentences or
8 dispositions on the Juvenile Delinquent Cases.

9 In 1998, I transferred to the Queens Family
10 Court, Juvenile Intensive Supervision Unit, where my
11 responsibilities included to provide assessment reports
12 to the court and providing community based supervision
13 to INS, Juvenile Offenders.

14 In 2001, I worked in the Manhattan Family
15 Court in the General Supervision Unit where I provided
16 community based supervision. Subsequently I was also
17 selected and assigned to be the Supervision Probation
18 Officer working with the Esperanza program.

19 The Esperanza program and Probation are
20 working together in making a collaborative effort in
21 providing effective community based supervision and
22 monitoring to Juvenile Delinquents involved in the
23 Family Court System, as a means of safely reducing the
24 reliance of out of home placement.

25 In 2005 I transferred to Queens Family Court
26 where I continued to supervision probation officer

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2 assigned to work with the Esperanza Program for
3 Juveniles.

4 As a Supervision Probation Officer it would
5 be imperative that I would have a relationship with my
6 Probationers and their families. At times I was the
7 mediator. I felt the need to provide family crisis
8 interventions, in order to strengthen the family
9 communication and rebuild the internal family function.
10 It is important to be compassionate and a mentor in
11 order to build character, self worth, self esteem and
12 confidence in the Probationer and provide them with the

13 skills and tools they would need to be able to utilize
14 in the present situations and the situations that they
15 would have to encounter later on.

16 As the Supervision Probation Officer, I have
17 encountered and supervised Juvenile Probationers from
18 diverse, various backgrounds here dealing with
19 difficult and profound adversities.

20 With trust and encouragement and support I
21 have witnessed them overcome these adversities with
22 strength and courage. They have achieved educational
23 and employment opportunities that before Probation
24 Supervision appeared to be unobtainable.

25 I am passionate and dedicated to uplifting
26 the lives of Juvenile Probationers and their families

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2 and assisting them in leading productive lives in the
3 community.

4 It would be beneficial if there was more
5 involvement from community organizations, agencies and
6 spokes people, if they can come to the Department of
7 Probation and provide their knowledge, expertise and
8 provide viable information and preventative services to
9 the Juvenile Probationer.

10 These services would include the Preventive
11 Substance Abuse Counseling, Board of Education and GED
12 information, the Community Sports Activity Services,
13 the Police Athletic League, the Department of
14 Corrections and the Police Department Gang Intelligence
15 Services, Planned Parenthood Services, Vocational
16 Training, College Recruitment and others.

17 I'm proud to be a Supervision Probation
18 Officer with the New York City Department of Probation,
19 whom I share a common goal and commitment with the
20 families and save lives.

21 Thank you all for allowing me to share my
22 experience.

23 JOHN DUNNE: I thank you, Ms. Williams.
24 There are questions? Yes.

25 JUDGE BAMBERGER: When you deal with the
26 young people, do you also have contact with their

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1 Patricia Brennan
2 family?

3 MS. WILLIAMS: Yes, I do.

4 JUDGE BAMBERGER: How do you do that, you go
5 to their homes?

6 MS. WILLIAMS: They come into an initial
7 interview. The way we work with family members that
8 have juvenile probation and then go to office visits,
9 there are times when we have them come into the office
10 and there are times when they will come in with the
11 family.

12 JUDGE BAMBERGER: If there is a problem with
13 the probationer, do you make contact with the family
14 about the problem?

15 MS. WILLIAMS: Yes, we do.

16 JUDGE BAMBERGER: Thank you.

17 JOHN DUNNE: Ms. Williams, almost every
18 meeting we have the name Esperanza comes up. All the
19 indications are that there is a lot of hope for it.
20 Based on your rich experience, is Esperanza meeting our
21 hopes and as it continues, why do you think it will be
22 successful?

23 MS. WILLIAMS: I think it will be successful

24 and is successful because it allows juveniles to remain
25 out of placement, it allows them to remain in the
26 communi ty.

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2 JOHN DUNNE: Beyond that?

3 MS. WILLIAMS: The problems exists and you
4 would go from the community where they return, the
5 problems are still there. So I think it's beneficial
6 if they can remain in the community, with the
7 assistance of services and probation, and the
8 assistance of the family. I believe that it's fair to
9 have them remain in the community instead of outside
10 placement.

11 JOHN DUNNE: If one doesn't have what we
12 would call a family around, whom you could build part
13 of your program, would that person not be accepted in
14 Esperanza?

15 MS. WILLIAMS: Well, I have never had a case
16 where there wasn't a family there. It may have been
17 the family where there were problems within the family,
18 and Esperanza, they provide family counseling and in
19 crises and intervention.

20 Also if the families function is not working,
21 they, what they do is work, look for outside relatives,
22 with respect to that. They will take it to another
23 level from the home base.

24 If there is a question?

25 SEYMOUR JAMES: Thank you. You say the home
26 base or would you reach out to the Probation Officers?

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2 And working with, I know, many organizations out there
3 feel like tracking any part of the City, sometime it is
4 a tough nut to crack. You don't always feel welcome
5 and invited. How does the Department have procedures,
6 how can a community based organization develop that?

7 MS. WILLIAMS: The reason clients are
8 involved is because we base that on the probation. If
9 we will feel that substance abuse or counseling is
10 required and other services. However, I feel that the
11 community should become involved. They should be able
12 to come into Probation and have a forum where they
13 could reach out and speak to these parties, the
14 probation and sign up for the services in the
15 communi ty.

16 SEYMOUR JAMES: Who sets this up?

17 MS. WILLIAMS: The Probation Officer is
18 there and the spokesperson is there at that time. It
19 would give Probation an opportunity to feeling out this
20 person and at subsequent substance abuse counseling,
21 and let them get administration instead of probation.
22 The probationer may hear from an ex-probation person,
23 you know, they would find it interesting. He would
24 become involved in him.

25 SEYMOUR JAMES: There is a basketball coach
26 out in the Bronx who opens up every Friday night to

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2 events, can he approach the Department of Probation,
3 who does he go to?

4 MS. WILLIAMS: You need to contact the
5 people in our department.

6 SEYMOUR JAMES: We heard the name Esperanza,
7 is there a place for a vast collaboration and/or

8 programs like Esperanza?
9 MS. WILLIAMS: I hope there is.
10 SEYMOUR JAMES: How is that allocated?
11 MS. WILLIAMS: I will leave that to my
12 superiors, to the adversary programs like Esperanza
13 programs.
14 SEYMOUR JAMES: Or Ms. Brennan?
15 MS. WILLIAMS: Yes and others. I find
16 Esperanza to be a viable solution. We no longer want
17 to separate ourselves and displace. At this point we
18 have to, as a society, I believe in our community and
19 in helping our youths, who are at risk.
20 JOHN DUNNE: Joseph Rinaldi?
21 JOSEPH RINALDI: Joseph Rinaldi.
22 We heard your testimony. The Family Court,
23 as to the intention of probation, doesn't get the
24 accolades or retention of resources, do both of you or
25 either of you agree with that, do you have any ideas
26 how we can excite the staff to be as astute as you are?

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2 MS. WILLIAMS: I believe that there are
3 ways, of course, or it's something that can be
4 expressed. And once that's done, I believe, that you
5 know we can reach the governments that we plead to, but
6 people need to hear their concerns and the outreach
7 that we feel, to take probationers, so we just put it
8 that way to work.
9 PATRICIA BRENNAN: May I answer Joe on that.
10 It's Civil Service, right, public service is
11 really what it is, right?
12 And I don't know that any of us entered into
13 it thinking we were going to get accolades. I think
14 that is really what a department's own function is
15 about, right?
16 And I hope that I do that for the staff that
17 work with me in my division. I do feel as Commissioner
18 Horn has brought such emphasis to the Juvenile
19 Division, there are resources that are available to my
20 division that were never brought for years and years,
21 right, but is it ever enough? Probably not. And I
22 think we need to always pull on other coat tails on
23 that to be certain that we reward good practice and try
24 to correct the bad practice.
25 JUDGE CORRIERO: Thank you, Commissioner
26 Brennan.

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2 JOHN DUNNE: Would you come back to the
3 mi ke.
4 MS. WILLIAMS: There poor woman.
5 JOHN DUNNE: First off, you also indicated
6 that you have case loads over 50?
7 PATRICIA BRENNAN: Yes.
8 JUDGE CORRIERO: If you could have your idea
9 of what your case load could be is?
10 PATRICIA BRENNAN: I would like to leave it
11 somewhere around 35 and 40, and along with that I think
12 there is a lot of obligation for the Probation Officer
13 that I right now we have them in the fields everyday,
14 because we believe that this is not an office bound
15 job. This is not how you find out about your
16 probationer. First there are the schools, you know,
17 but I think 35, 40, I would go for that.
18 If you traveled many years ago, when I was a

19 Probation Officer, I had more than a hundred cases, and
20 what a pitiful job I must have done. And it has only
21 been over the last several years that there has been
22 enough, sort of supervision, and we get specialist
23 areas.

24 JUDGE CORRIERO: With respect to training of
25 Probation Officers, with respect to adolescents, is
26 that any different than what Probation Officers in the

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2 adult department do?

3 PATRICIA BRENNAN: It's augmented, we go
4 through some very generic training for everybody,
5 depending where you are going to get assigned.

6 What we find is that you have to augment
7 that, and it's not all at the same time because, Judge,
8 you can imagine that they're still finding their way to
9 the branch office.

10 JUDGE CORRIERO: Are there differences in
11 the way the Probation Officers deal with a juvenile and
12 an adult?

13 PATRICIA BRENNAN: If you are asking me as
14 to a 12 or 13 year old or as to a thirty year old, I
15 think the answer is yes. If you are asking me to get a
16 little closer, I tend to think there may not be a
17 tremendous difference, all right, but clearly the
18 responsibilities and the nature of the court,
19 rehabilitation as well as public safety is a fine line,
20 a fine line.

21 JUDGE CORRIERO: Commissioner Horn indicated
22 and referred to the CJA report, the study done on
23 juvenile offenders. That the rate of recidivism is
24 quite significant. I know that we have had this
25 conversation before. What is your view of the juvenile
26 probationer, the Family Court, Probation making the

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2 distinction between the 14 and 15 year old, how do you
3 feel about that?

4 PATRICIA BRENNAN: I think if we are as
5 opposed to the juvenile, as I think if you asked that
6 of me at four o'clock in the morning, I think we should
7 have a reservoir to be much more thoughtful in that
8 process.

9 JUDGE CORRIERO: I'm not talking about the
10 law. If, for example, I sentence a 14 year old to
11 probation pursuant to the Juvenile Offender Laws, what
12 is your view? That Probation in the Family Court
13 should take jurisdiction?

14 PATRICIA BRENNAN: We have the option to
15 transfer from Family jurisdiction, from Family Court.

16 JUDGE CORRIERO: Not in every situation.

17 PATRICIA BRENNAN: We don't think there is
18 any opportunity in cases that you're seeing for
19 transfer to the Family Court.

20 JUDGE CORRIERO: I asked the question, it's
21 okay. Very important, very important, but it goes to
22 the point that I'm making in terms of probation
23 through. Let's say I started a trend of sending kids
24 back to Probation. Do you have any difficulty with
25 that idea, that just because somebody was charged as a
26 juvenile offender and convicted as a juvenile offender,

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2 would you have any problems with absorbing that

3 population in your present situation?
4 PATRICIA BRENNAN: Probably on two levels,
5 Judge. I forget if there is a philosophical problem
6 but I think to absorb that work load, all right, would
7 require as well, a sufficient staff to do a good job of
8 it. It's clearly, probably by just the conditions of
9 the jail conviction, the youth is going to score. It's
10 an assessment that wasn't calibrated for that youth,
11 but imagine for the moment they are going to score
12 probably, if that were the case. Which kind of goes to
13 the issue of them entering into one of the specialized
14 programs where it's not 50 to one, but it's probably
15 closer to 25 to one. So I think it has an implication
16 for me that I would want to be certain when we want to
17 compromise the level and quality of work in the
18 community safety.
19 JUDGE CORRIERO: Thank you, Ms. Brennan.
20 PATRICIA BRENNAN: Yes.
21 JOHN DUNNE: There has been some comment
22 with regard to the percentage of cases which are
23 adjusted.
24 PATRICIA BRENNAN: Yes, sir.
25 JOHN DUNNE: In New York city.
26 ROBERT MACCARONE: Mr. Busching told us

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2 about the rate in Westchester being from 50 percent.
3 We heard figures in New York City of 26.7 percent. Are
4 there any new trends or developments? Are those
5 figures still pretty relevant?
6 PATRICIA BRENNAN: I think there are ups and
7 downs in the economy, as in any fiscal year. It would
8 impetuous of me to say -- to see a further increase
9 over 26 percent. It may flat line a little bit later
10 in the year. But, as I said, we started out in fiscal
11 year '03, with a percentage, I think was 13 percent and
12 now we have doubled that to 26 percent. I think it was
13 not insignificant. We have been able to work with both
14 the Police Department and with the Prosecutor's Office.
15 You heard Mr. Busching, he informed about, for those
16 instances where we are not able to get in at first.
17 The first opportunity of the one to seven
18 days, we indicated on our paper work, to the
19 Prosecutor's Office that we would be willing to take
20 this case back, by our assessment. We think there is
21 still a case that could be adjusted. So we think
22 that's why our numbers have continued to increase.
23 I don't know whether Westchester County is
24 the same as mine, I don't know. It may be a factor.
25 It may not be a factor. It's part of the belief that
26 what I'm doing --

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2 ROBERT MACCARONE: Excuse me, for a few
3 minutes. I commend you, for you and the Department for
4 the outstanding work over the last five or six years.
5 The dramatic turn around with the City and lots of
6 creativity going on, the courage to choose the
7 alternate detention program explains to the policy
8 makers, that it is the right thing to do, in trying to
9 provide services with more effective services.
10 I want to ask you something about the
11 Esperanza program. We saw a young man without family
12 support. He had to go up into placement. I think the
13 Esperanza has proven to be a very, very effective model

14 in the City, largely outside. The setup, what are the
15 services that are lacking though, that would enable you
16 to get into that population?

17 Is there an additional population that they
18 will be able to reach in New York or what would the
19 service look like?

20 Is there housing concomitant to stabilize
21 that population?

22 What are the services that you would need to
23 be able to reach further?

24 PATRICIA BRENNAN: Some of it, that we have
25 now, encompass not only intensive home base services,
26 but Esperanza satisfies that certainly. But there has

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2 been other programs, developments, somewhat smaller in
3 numbers, that we have. I'm sorry to keep you using
4 macro numbers, but in Brooklyn we have in the Mental
5 Health, Juvenile Justice, this is a program that really
6 attempts to deal with the youths mental health needs to
7 avoid placement. That's Brooklyn. Did I say Bronx?

8 JOHN DUNNE: You said Brooklyn.

9 PATRICIA BRENNAN: But that's only Brooklyn.
10 There are certainly issues of mental health for many of
11 the children in New York City. You heard me say this
12 before in terms of residential care. If there is that
13 mental health issue so compelling that every one feels
14 as if the only way to go here is to find a residence, a
15 residential program, you're talking about an RTF. You
16 heard me say this before, there are 75 RTF beds for all
17 of how many million of children in New York City?

18 It doesn't seem to make much sense. I think
19 we have to do some further analysis to find out what
20 are the components of youth that are still entering
21 placement and what is the service that could be and
22 should be provided to them.

23 It is easy to grasp at mental health, but the
24 other compelling issue is education, or vocation,
25 right. You talk about pro social activity. Larry
26 talked about it. We just will have something to keep

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2 him out of trouble to some degree, that is true.
3 Because you are talking about an educationally
4 disenfranchised youth, who says "I see no reason to go
5 to school" and sooner or later there is going to be a
6 clash and, you know, I don't know whether we can wait
7 for the educational system to be reformed.

8 ROBERT MACCARONE: I think that might be
9 part of a discussion that we have at the office of
10 Children Services, that actually penetrates and gets
11 into the system of the residential facility. I think
12 if we had a temporary respite, a residential capacity.

13 PATRICIA BRENNAN: Yes. I think ACS is
14 looking into that. Because there is Esperanza using
15 their own, going down the block, who is going to take
16 the kid in for a night and a half while the family is
17 working with them? Because the crisis will blow over
18 if there was not an issue of they would hurt themselves
19 or someone else.

20 ROBERT MACCARONE: I would just comment also
21 on the adjustment rates. It's very difficult to
22 compare adjustment rates from one county to another,
23 it's decidedly different populations, different
24 populations, but different in terms of offenses and any

25 community services so it's very difficult. I think you
26 made enormous progress from raising it from 15 to 26 in

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2 a short time.

3 PATRICIA BRENNAN: One other thing.

4 I'm proud of the fact that at least

5 25 percent of all the intakes that Probation does, they
6 hold over for the full or up to the full seven days to
7 see if adjustment requests can be worked on, right. So
8 we are not making split second decisions, because there
9 is too many things going on in the system, it really
10 forces decision making so quickly on juveniles. I
11 doesn't lend itself to a ponderous moment.

12 ROCCO POZZI: You mentioned the numbers for
13 the work load out there and the case load side.

14 We always look at the numbers. One of the
15 things I want to say to that, I think we need to do is
16 look at the work load rather than case load. We really
17 have not looked at the work load very closely. We need
18 to do that. We actually need to do a study to
19 determine how much time our officers are spending right
20 now on Family Court cases, whether it's PINS cases, JD
21 cases or whatever. Not only look at what they are
22 doing, but also to talk to other officers and find out
23 things they would like to have done, that they have not
24 had time to do and take those two measures and come up
25 with a work load for that.

26 I would disagree with the fact when you're

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2 saying 35 to 40, is the optimal size, I know I would
3 like to do that. I think if you did it, it would come
4 out less than that.

5 If I could look in the crystal ball and make
6 a projection, I think our officers would like to see
7 one to 25. I think we have sought it.

8 Jim Cannon was up here this morning, talked
9 about IS Programs, talking about what we are doing as a
10 result of work with kids. If we didn't have those case
11 loads, there are absolutely going to be placed without
12 that program, that's where they are going.

13 I would think that if we do that work load
14 study, we would see that number coming down to the
15 ideal work load. It would be one to 25 in Family
16 Court.

17 I think we ought to do it in Criminal Court,
18 but I think more in Family Court. Not only do we take
19 on the kids, but we take on the siblings, the family.

20 There is a lot of work that needs to be done
21 on those cases, so I think that's what we ought to be
22 looking at.

23 For New York, I know there is all kinds of
24 work load studies out there. We differ from county to
25 county. We look at national work load studies, we can
26 look at them, but I think we need to start doing our

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2 own homework in New York and start coming up with some
3 work load studies.

4 JOHN DUNNE: Yes, Judge Corriero.

5 JUDGE CORRIERO: You indicated that there
6 are only 75 RTFs, residential treatment facility beds?

7 PATRICIA BRENNAN: Yes.

8 JUDGE CORRIERO: Where are the profiles on

9 the kids?

10 PATRICIA BRENNAN: I have been removed from
11 that. I was involved when I worked at ACS Placement,
12 but they are RTFs.

13 Let me tell you what you already know --
14 placement is just one level below a psychiatric
15 hospital. So we are talking about a child that has
16 such severe and mental health issues that they cannot
17 be maintained at home, who ever decided that. And it
18 leads probably to a structured therapeutic approach
19 that an RTF can provide. The need to have an RTF is
20 onerous, it's time consuming. The paper work has to be
21 fresh, otherwise you're back to the square one. You
22 have to renew the process all over again.

23 The thing that's a little bit hard, there is
24 probably a dozen or so agencies, placement agencies,
25 the Lincoln Palms, the Juveniles, many of them are
26 similar in RTFs. Some RTFs only take children of a

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2 particular age with particular mental health diagnosis.
3 So even though there are 75 beds, they are so limited
4 because if you're a juvenile age 15, who has arson
5 tendencies, you have to wait for that one bed to open
6 up. That means that the kid that occupies that bed
7 before that, has to age out, graduate out. There has
8 been no new beds in RTFs. I think the way the State
9 maintenance tried to do it, was in trying to process
10 those children faster through the RTFs is the profiles,
11 outside of the most generic that I have given you.

12 JUDGE CORRIERO: Is Esperanza a spin off?

13 PATRICIA BRENNAN: I don't think they spun
14 off, but they demonstrate projections.

15 JUDGE CORRIERO: How does Esperanza work
16 actually in conjunction with probation? Probation
17 officers work within the construct of Esperanza or are
18 there other social workers that take the place of?

19 PATRICIA BRENNAN: I'll get Susan up here
20 again.

21 MS. WILLIAMS: It is a team approach. And
22 there are very clear delineated roles as to Esperanza
23 workers have. Esperanza splits counselors in that
24 house three days a week, and that means if you worked
25 and have to be up three o'clock, five o'clock at night.
26 They not waiting for a family to come into them, they

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2 are going out to the family and other places.

3 JUDGE CORRIERO: Who pays for that?

4 PATRICIA BRENNAN: New York City Department
5 of Probation, thanks to your city tax dollars. So the
6 they are out there as a bare minimum number, they are
7 on call 24/7. You can see why this is a private
8 contract and not civil service.

9 I would still be working through labor
10 management to resolve these issues. So the therapist
11 is out there and establishes the guidelines of what are
12 we going to do with Mike? What does Mike want to do
13 with his life? And everything more. Every one more or
14 less agrees on this blueprint, and then through a
15 series of conversations, it's there was no curfew. If
16 there was, it was erratic, up and down. And then the
17 conversation really starts almost immediately with PO
18 Williams and here Esperanza counselors and the
19 assistance she is getting. It's true we selected

20 Esperanza. The POs we thought they had a real ability
21 and talent to work as a team. And there are times when
22 we play good cop bad cop and Esperanza is placed in a
23 role. The PO is out there and will reinforce, remind
24 her what we expect from you. And I think there are
25 other times as well when Esperanza will speak to PO
26 Williams and say, I don't know. And Susan will give

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2 them words of encouragement and say, "I see progress."
3 So it's a difficult process, but it really requires a
4 team effort to work through this for the exact reasons
5 that we are not just going through the conditions of
6 probation. We are really working with a family in
7 crisis.

8 MS. WILLIAMS: We are working with the risk
9 assessment instrument. I don't know the last meeting,
10 but probably -- I wanted to say intentionally -- but
11 you have a percent of them fill in the medium or low
12 categories or high risk categories. So this task talks
13 about Family Court, how do we move to a place where we
14 get more confidence from judge's to follow the
15 assessment.

16 PATRICIA BRENNAN: I think the question has
17 been asked how do you get some consensus from the
18 judge's, how do you feel about it.

19 You know, I think there is a great number of
20 meetings and presentations to share and I think that
21 you would -- they would be surprised if we give back to
22 them the information that we have about it on the last
23 15 cases that you did. You might be interested to know
24 if you followed the RAI instrument, 95 percent of the
25 time as opposed to what Judge Brennan did, you would
26 see this outcome. I think they are making individual

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2 decisions, sometimes with information we have from our
3 POs in court. There almost seems to be a rational, a
4 good rational, nobody gets tired. There are times when
5 it makes no sense and I think that the feedback needs
6 to travel into the judges. I don't know that you are
7 ever going to get an RAI that is working one hundred
8 percent of the time, but it's the extremes, right, the
9 highs and the lows as well as the middle where we are
10 going.

11 We have judges, you may not have seen them,
12 for who decide the case without anything, where is the
13 dissent on that issue.

14 RUBIN AUSTRIA: The possibility knowing that
15 you really have to involve the family, does it have an
16 impact on the work, that's the field work that you do?
17 Is it just by the hour?

18 PATRICIA BRENNAN: No. Regardless of
19 whether it's an Esperanza case or not, I will tell you
20 that a lot of the field staff are out there even
21 earlier before the sun rises. That's how they are able
22 to make the contacts and cover the territory we do. So
23 we have a fairly flexible approach about work hours,
24 right early in the morning, late at night, even on
25 weekends. If they had to have those contacts, they
26 have to be able to do it.

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2 JOHN DUNNE: Nancy Ginsburg.
3 NANCY GINSBURG: If this task force succeeds

4 in getting State reimbursement to the Probation
5 Department so that you could be funded the way you
6 wanted to be funded, what service would you buy or in
7 what areas would you train?
8 Where do you see yourself lacking now?
9 What are the biggest obstacles?
10 You talked a little about education and
11 mental health, but the day to day with the kids, what
12 do you see as the biggest problems and hurdles in
13 reaching the needs of the kids from the Department?
14 PATRICIA BRENNAN: Nancy, I think core
15 service has to be strengthened, right. I think we have
16 done a fairly good job on that, but it's never enough.
17 When I talk about core service, intake,
18 investigation and supervision. It seems to me often we
19 have a rearrangement of the chairs on the Titanic.
20 The good news is, I'm adjusting for the bad
21 news. I have case loads for adjustment POs so high
22 that I have to steal from investigation or from
23 supervision. So it really gets down to core service.
24 I think if you don't do those three things
25 and do them well, I don't know that I can start
26 branching out into other interested areas that I think

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2 are important and know are important, but if I'm not
3 doing the basics.
4 NANCY GINSBURG: Let's say you have it,
5 let's talk about supervision. Let me rephrase my
6 question.
7 Yes, insurance is a good issue, school is a
8 big issue. Every one has talked about it all day long.
9 What areas would you approach, if you had all,
10 everything in the world, what would improve your
11 service delivery?

12 What do you see as the biggest obstacles to
13 services delivery in the area of school and education?
14 PATRICIA BRENNAN: I guess not knowing what
15 works, all right. For kids who are disenfranchised I
16 think you have heard us say before that we use, would
17 purchase more services for them. We are hoping what it
18 does is similar to the litigation that you saw, right,
19 where a fairly affluent individual sued for public
20 school education, even though he could afford better.
21 Well, our kids can't. Yet they don't have much choices
22 to where they go to school and we are questioning what
23 is the best educational atmosphere and environment for
24 them.

25 I would love to see charter schools for kids,
26 not necessarily court involvement, but then I have an

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2 ACD monolithic ability. I think that's a mistake to
3 put those kids together and they think of themselves
4 only like that. But I would like to see a charter
5 school. That educational intervention is harder to be,
6 as smart as we are in this country, we can't figure out
7 a way to salvage kids who are five grades behind.

8 How do you interest them? How to excite them
9 about education? Give them some hope for the future?

10 NANCY GINSBURG: Do you think it would help
11 if you were to have specialized trained people in the
12 Department who can do that advocacy internally?

13 PATRICIA BRENNAN: I think the answer, would
14 I say sure? But having advocacy and no where to send

15 them is a problem, then what? And you have got to have
16 some place for them to go educationally.

17 NANCY GINSBURG: Do you feel currently the
18 probation officers have specific knowledge and
19 understanding of the educational system to navigate it?

20 PATRICIA BRENNAN: Some may, but I would say
21 most do not have. They rely on educational
22 specialists, there is a variety of areas.

23 ROBERT CHASE: I wanted to discuss about
24 getting the rates up. I believe with Bob MacCarone,
25 it's not fair to compare different counties. We have
26 different management populations, but we have a

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2 thousand cases a year.

3 PATRICIA BRENNAN: We come back to square
4 one.

5 ROBERT CHASE: Which allows us to shift
6 staff to Criminal Court and Family. We have the best
7 staff we have ever had. That's been one key to
8 success. The other is our partnering with other, other
9 county agencies and integrating services. We don't do
10 this in isolation. The kids come in the day, they come
11 in and get some immediate intervention. But, you're
12 right about the assets, it's difficult. It's not just
13 about the numbers, it's the nature of that. It's
14 meaningful, it's event specific. I would like to get
15 that, but thank you, you have done a great job.

16 JUDGE BAMBERGER: Is the advocate for the
17 children, is that the law firm that represents children
18 and their families in disputes with the board of
19 education?

20 PATRICIA BRENNAN: Yes, judge, yes. They
21 have provided this for us in every county.
22 Commissioner Horn has spoken of another opportunity
23 with advocates, for them to take more of our cases,
24 exclusively our cases.

25 JOHN DUNNE: Judge Corriero.

26 JUDGE CORRIERO: Were there any studies in

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2 the way of being able to compare the impact of these
3 new programs on the recidivism rates?

4 PATRICIA BRENNAN: Judge, we are tracking
5 ins and outs of how many youths that are being placed,
6 but the causative -- to know what went wrong, no, sir.

7 RUBIN AUSTRIA: This morning there was
8 representatives for youth, who made a case for the
9 information system, of New York City sharing data, that
10 constituted a new approach, and geography and events to
11 help track response. Does the Department track and
12 does it rely on to an importance of how probation is
13 dealing with different factors?

14 PATRICIA BRENNAN: I would say, yes. I may
15 not be correct on all those factors, but I want to say,
16 yes.

17 JOHN DUNNE: Any other questions of the
18 Commissioner?

19 Thank you.
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