PUBLIC HEARING HELD BY THE

NEW YORK STATE OFFICE OF COURT ADMINISTRATION

MATRIMONIAL COMMISSION

NOVEMBER 4, 2004

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CONCOURSE LEVEL - MEETING ROOM 7
ALBANY, NEW YORK

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HONORABLE SONDRA MILLER: Good morning, everyone. Good to see you here on this nice brisk day.

I would like to welcome our speakers, the attendees, the press and others to this second -- can you hear me? No. Is this better? Can you hear me in the back, everyone? Good. All right. I'll start over.

I want to welcome our speakers, our attendees, the press and others to this second public hearing conducted by the Matrimonial Commission on the tenth anniversary of our predecessor commission to examine these issues and recognizing the important strides made based on that Commission's work.

Our great Judge Judith Kaye, our Chief Judge, a tireless crusader on behalf of the families and children of this State from the very beginning of her term, acknowledges that still more can and must be done to further improve the practice of Matrimonial and Family Law in New York State. She has charged this 32 member Statewide panel with a very broad mandate.

We have been told we must take a global look at the area of Family and Matrimonial Law as it

is practiced in this State. We are to look at all stakeholders inside and outside of the system for input and guidance. We are to think globally, holistically and innovatively to address and resolve these main areas.

First. To reduce and eliminate trauma to parties and children.

Second. To avoid unreasonable expense to the parties.

Third. Reducing and eliminating delays.

Fourth, and probably most important of all, to provide the very best and the brightest judges to preside over these complex and difficult matters that come before the Matrimonial and Family Courts.

This Commission recognizes the urgency and importance of our mission and considers its mandate a great challenge and opportunity. We intend and we expect to recommend significant reforms and assure you that our Chief Judge has pledged to do all that she can to effectuate reasonable accommodations that will serve to improve the lives of those who appear before our Matrimonial and Family Courts.

To those of you who have been assigned a time to speak, please be sure that you signed in at

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the desk outside. As a courtesy to other individuals scheduled to speak today, please remember that your remarks are limited to 10 minutes.

Anyone who has written material to submit for the Commission's consideration should leave at least two copies with the Commission staff at the desk outside. No material will be handed up to the Commission during the course of this hearing.

Note that the Commission members may, I will for them, at their request, interrupt you to ask a question or seek clarification of a point. Don't be surprised if you're interrupted in the middle of your presentation because we want to find out as much as we can about the issues that you're presenting.

We will strive to keep this to a minimum as we are most interested in hearing from you about your own experiences and your recommendations to improve the system.

As stated on the Notice of the Public Hearing, the Commission cannot take testimony from any individual who has a case currently pending in the New York State Court System. This is necessary to protect the integrity of your pending cases and the work of the Commission. However, such individuals are welcome

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to submit their comments and suggestions in writing to the Commission at any time. Any identifying details contained therein will be redacted by Commission staff. However, the substance of the submission will remain intact.

Before I begin, before we begin, I want to advise all of you with cell phones to please turn them off. I just remembered to turn mine off and advise you to do the same. And I believe we are ready to begin.

Is Mr. Murnane here scheduled for 9:00?

(There was no response.)

HONORABLE SONDRA MILLER: The next person is Burns. Mr. Burns.

MR. DANIEL BURNS: Good morning. Good morning, Justice Miller, Members of the Task Force. Thank you for allowing me the opportunity to speak here this morning and also thank you for serving on the Task Force. I believe what you're doing is an important function, and I hope that we make some great strides in helping our system through your work.

It is my understanding that the Task Force was convened by Chief Judge Kaye to fix the flaws in the New York divorce process, and more

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specifically to address concerns about custody disputes in divorce cases.

It is my belief that in order to address the concerns about custody disputes and divorce, we must first address the concept that divorce is necessarily an adversarial matter.

Those of us in the legal system must start to treat couples who are considering a divorce or a separation as having a common problem and not as adversaries and provide them with means of securing a divorce or a separation that doesn't lead into litigation.

I have practiced law for about 24 years now, and most of that time, I have been a matrimonial lawyer. For the past eight years, of my own election, I have chosen not to participate in the legal system and have become a matrimonial mediator. I limit my practice now to mediation and work with couples to try to help them solve the problem of managing their lives separately. Invariably, the challenge that most of the couples face that I work with, and I suspect that those of you that are matrimonial lawyers work with, is how to live separately on the same money that was difficult to live on together. That's the challenge

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that I find most people face and that's what I try to help them resolve.

In the model that I use in my own practice, I provide the couple with legal information, that is, I tell them what the law is. I don't provide them with advice. I simply give them the information that they can secure if they were to read it in a book or if they were to go to a lecture and hear someone speak about any of those issues.

Once I do that, I work with them to try to help them secure a divorce, either by reaching a settlement or by having some of the issues that they are unable to resolve go to litigation if they can't settle with me.

What I do is simply inform them of the law, and I help them reach their own decision.

What I found is that most of the couples that I work with are afraid of the legal system, and that's what really has compelled me to be here today, because I think we should encourage people to retain lawyers, if they need to, to get legal advice, if they need to, but we shouldn't make them afraid of the system. They're afraid that if they get lawyers, they're going to wind up in a legal battle, they're

going to become enemies, they're going to become adversaries, and everything that they've worked for is going to be lost. They're either going to pay everything out to lawyers, you know, supreme fees that are sometimes necessary to complete a divorce case, and the parties themselves are going to become adversaries. If your challenge is to help people to resolve custody disputes, I think the way to start is to treat them not as adversaries but as having a common goal, because when we treat people as adversaries, they view themselves as one against the other, as a winner and a loser, and the only people that lose in that situation are the children. They get caught up in the battle between mom and dad.

I believe that one of the ways that our system, the Court System could address the fear that many couples have of the legal system is to provide mediation as a part of the process from the beginning. Right now, most of the models that I'm aware of, and one in Schenectady where I'm from, the mediators don't enter the process until after the case has been filed. Frankly, it's too late then. Most of the time, the couples have developed positions, have become adversaries and it's very difficult to undo some of

that, once they've reached that point where they've filed papers and they've already begun litigation. So I think if we could institute some type of a system that has been successful in other states that would either encourage people or require people to participate in mediation or at the very least to attempt to participate in mediation at the outset before they file their case, we would be doing them a service.

Now, we as mediators know that you can't help people that don't want to be helped, just as a marriage counselor or any counselor can't help someone that doesn't want to be helped. So forcing people into mediation isn't the answer. We're not going to help those people. But I believe that if we at least make them aware of mediation as an option by telling them that before you file a divorce in New York, you have to either attempt to resolve your issues through mediation or provide us with a statement that you've done so and you've been made aware of that option, we can help a lot of people avoid the adversarial system and resolve a lot of issues before they even get to court. Frankly, a lot of people could resolve custody issues before they file cases.

My experience in my mediation practice is once people have resolved custody, a lot of the other issues fall by the wayside. Once people have decided where the children are going to live, they decide what's going to happen with the house and who's going to live in the house.

HONORABLE SONDRA MILLER: Mr. Burns, could I interrupt you for a minute?

MR. DANIEL BURNS: Sorry. Yes, please.

HONORABLE SONDRA MILLER: Just for clarification. How would these matters come to the attention of the Court with your suggestion, would it be after the commencement of the action? I think you said that's too late. If it's after the commencement of the action, then how could this matter come to the Court before commencement of the action?

MR. DANIEL BURNS: I believe that the answer to that would be to have the parties sign an affidavit as a precondition to filing a divorce that simply said that we've been made aware of our right to have mediators help us resolve this issue and we have either attempted to do so and were unable to reach a resolution, or we chose not to. For whatever reason, we don't believe it's going to work for us. But at

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least that way, these people are aware of the concept of mediation.

Frankly, my experience is a lot of the people find me by accident. That and the radio. But those people that often are considering a divorce don't know that mediation is an option. They think we have to hire two lawyers, and that scares a lot of people.

I've had many conversations with judges throughout the Capital District that do a lot of divorces, and the problem that many of them face are the pro se divorces. They're telling me they're using 50 percent of their law clerk's resources handling pro se divorces, correcting papers and trying to get people through. The reason why we have so many pro se cases is because these people are afraid of our system, and if we could help them through the system by providing them with unbiased information, with mediation services, with assistance in preparing papers, we're going to save not only the couples a lot of problem, but the legal system a lot of the time and effort that we put forth in helping those people who are afraid of us who don't want to use lawyers and who don't want to enter the legal system.

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HONORABLE SONDRA MILLER: Mr. Burns, one of our Commissioners has asked this question. Do you screen for domestic violence when you meet with these parties seeking mediation?

MR. DANIEL BURNS: Yes, I do, yes. Anyone who has taken mediation training, and I've taken a substantial amount, is taught how to screen for domestic violence, and we do make sure that the parties are appropriate for us.

Having said that, I also want to make sure that we don't close our doors to people simply because there might be at some level some domestic violence, because domestic violence runs a very large gamut from perhaps some emotional issues right down to physical abuse, and many of the people that the speakers that I have talked to have said if you're going to close the doors to mediation to us, then you need to provide us with some other alternative, and that's the problem. If we simply say we're not going to allow you to mediate, you have to go to court, then we have to give them an option. Go to court where? Where are their lawyers going to come from? A lot of these people don't have access to attorneys or anyone else, and all that happens in that situation as you

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raise the stakes that the parties that have unequal bargaining powers to begin with now have unequal lawyers to begin with. The one with the money, the one with all the resources has the biggest, strongest most experienced lawyer and the one that doesn't winds up with Legal Aid that doesn't have any experience or ability maybe to match with the other attorneys. So we've just changed the stakes from the parties to the lawyers.

HONORABLE SONDRA MILLER: Yes. Mr. Burns, do you encourage or discourage people in mediation to consult attorneys, and do you yourself provide the parties legal advice?

MR. DANIEL BURNS: Thank you. I neither encourage or discourage the parties. I simply tell them that they have a right to have a lawyer advise them at any time at any course in the proceeding, either before the mediation, during the mediation or after the mediation and before any agreement is signed. I encourage all the parties that use my services to have an attorney review any legal documents that are prepared, especially if I prepare them, and then I encourage them to have the documents reviewed by their own separate attorneys.

With regard to legal advice, I don't provide legal advice. I provide legal information. As I said earlier, I simply tell them the information that I believe is relevant, but I don't take sides. I don't recommend a course of action that one of them should take to help his or her interest against the other. To me, the difference between information and advice is a lawyer that provides advice provides information and then tells the person what to do with that information, that legal information. I stop at the providing information phase. Does that answer your question?

HONORABLE SONDRA MILLER: But do you advise them to go to counsel themselves?

MR. DANIEL BURNS: I guess I recommend that they have separate attorneys to review any legal documents, and I also tell them that if you feel more comfortable having your own lawyer behind you during this process, you could and you should, but I have to tell you, Justice, many of the people come to me saying we don't want anything to do with lawyers, we've heard the horror story, we've heard all the bad things that happen when we go to lawyers, and we're not interested.

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When I first secured Ethics Opinion 736, the first draft stated that I had to require people to go to separate lawyers. That draft was ultimately edited and that part was removed because the fact, the simple fact is that I can't force anyone to get separate lawyers. Some of them simply don't have the means to do so and some of them don't have the inclination.

There are many people that don't have a lot. They have a couple of children, a house and some debt. There's not a whole lot to talk or fight about with those people, and they simply want to get through it and they want to get on with their lives and try to figure out a way to live separately, and that's the biggest challenge that they face.

HONORABLE SONDRA MILLER: Is it your recommendation that mediation should be mandated before commencement of an action?

MR. DANIEL BURNS: I think that mediation should be offered. I think that the parties should be made aware of the idea that mediation is available and that they are then provided with the opportunity to do that. I don't think you can mandate it simply, as I said, you can't mandate counseling. If people don't

want to be there, it's not going to be successful anyway.

HONORABLE SONDRA MILLER: What are the standards that you believe should be established for a person to act in the role of a mediator, if any?

MR. DANIEL BURNS: Yes, I certainly believe there are. I'm on the Board of Directors of the New York State Council on Divorce Mediation. My friend, Rod Wells, who is seated behind me, is also on the Board, and there is a committee of our group that is working now on the standards that we believe should be in place.

Right now, to act as a mediator, people need 25 hours of mediation training. There's some additional training to handle divorce mediation. I think most people take somewhere between 40 and 50 hours. Those of us on the Board believe that that's about a third or less of what is required. We believe that somewhere between 100 and 150 hours of training is necessary to become a competent divorce mediator, and we certainly believe there should be standards.

One of the problems that we face with instituting standards is there are a lot of divorce mediators out there that don't make a living at it,

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it's very difficult, and to tell them they have to spend three or four weeks and pay money to be trained to do something that they're going to wind up volunteering is very difficult. So unless we raise mediation to a professional level, it's almost a bootstrapping problem, because if we don't raise the level of the mediators, we're not going to be taken seriously in the legal system.

HONORABLE SONDRA MILLER: Can you give us an idea of the cost of an average mediation? Is there any such thing?

MR. DANIEL BURNS: I can say that, yes. In the Capital District where I practice, the average mediation might cost somewhere between $500 and $1,000 to help the parties reach a settlement. That's at my level as an attorney. Some of the non-attorney mediators would be a little less because they're going to charge a lower hourly rate. If the parties have me prepare their legal documents, which they often do, the additional cost might be maybe between $750 and $1,000. So the total cost to get a divorce through mediation is frequently between $1,500 and $2,000.

HONORABLE SONDRA MILLER: Well, Mr. Burns, how do you deal with litigants who want to

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mediate but who have assets which must be valued, and how do these litigants arrange for experts to value a business or real estate or to trace separate assets? What do you have those people do? How do you deal with that?

MR. DANIEL BURNS: That's a perfect way to resolve an issue through mediation. We all know that if somebody has a business to value, it comes down to a battle of experts. That each party is going to hire an expert, they're going to go to court with their hired gun and present evidence, and the judge is either going to accept one or the other or very frequently split the baby.

What I do in mediation is I suggest that the parties find a neutral evaluator that they both have confidence in and provide them with a neutral evaluation as to the value of a business, the value of a house, the value of a medical practice.

One of the things that I've discovered is I'm working with a number of doctors and a number of lawyers and other professional people that have practices that frankly don't want to spend 25 to $50,000 getting a divorce. They're very happy to hire John Johnson or someone to provide a neutral

evaluation and to tell them this is what the practice is worth, this is the sustained value, I'm not going to come in high or low, I'm not going to take sides, and neutral evaluators can provide that all the time.

HONORABLE SONDRA MILLER: Do you find you ever weigh in on the fairness or reasonableness of the respective party's position on an issue in an attempt to move them closer together?

MR. DANIEL BURNS: That's a very difficult question because what I suppose I do many times if I feel that people are doing something that is blatantly unfair, I will make sure that I point that out very clearly that this is what you're doing. I want to make sure you clearly understand that the law says that this is something that should be valued, that you are entitled to that whatever, are you sure this is what you want to do. I have even gone so far in some cases as to require the people to secure separate legal advice before I'll participate any further if I feel that what they're doing is contrary to their interest and that they're going to have some significant problems with their agreement in the future if they proceed as they're considering.

But having said that, it's not just about

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money for people. There are a lot of people that just want to get on with their lives, and they're willing to say I'm willing to trade the pension for the house without knowing what the value of either is because what I want is the house so I can raise my children, and I'm willing to walk away from a pension because that's what I believe is in my best interest.

I don't think that we in the legal system should prevent someone from doing that. If they're making informed decisions and they're aware of the fact that they have a right and they have an opportunity to get things valued, and they chose not to, they should be allowed to do that.

HONORABLE SONDRA MILLER: Yes. A couple more questions, because the issues you raise are very, very important in our consideration.

MR. DANIEL BURNS: Thank you.

HONORABLE SONDRA MILLER: How do you deal with differences in information available to the parties such as one party isn't asking or getting information that would be relevant to making a fair agreement and you need some sort of discovery? How do you do that?

MR. DANIEL BURNS: Discovery?

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HONORABLE SONDRA MILLER: Yes.

MR. DANIEL BURNS: I require discovery at the beginning of all my mediations. In my practice, I have a workbook that I provide to each of the parties where I give them the financial data that I'm going to need to work with them. I identify all of the financial data that they need to bring to the mediation. I also provide them with a short law summary that I've written, simply a few pages that they have access to the available information, and I tell them in the mediation that any agreement that they reach that is not made with full disclosure is subject to judicial review, and the easiest way they can create an agreement that's not going to be enforceable is if either one of them hides anything from the other. I recognize that full disclosure is a significant issue, but again, most of the people that I deal with, there's not an issue of full disclosure. They've been married for 20 years, one works for the State, one works for GE, they've got a house, a pension. There aren't a lot of Swiss bank accounts in my practice. There aren't a lot of hidden assets.

HONORABLE SONDRA MILLER: Lucky for you.

MR. DANIEL BURNS: I suppose. But

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frankly, you've hit on a good topic because we're talking about the vast majority of the people who use our legal system. I mean there may be a five percent number of people that this wouldn't work for because either they have a separate agenda, they're trying to hide things, they have an extraordinary amount of assets or wealth that simply is going to require a lot of deeper digging in terms of uncovering things, but most of the people that I work with and the lawyers at least in the Capital District work for, I call them paycheck people. They work for the State, they work, they get a paycheck every week or two, so there's not a lot to hide.

HONORABLE SONDRA MILLER: Very important question for you, Mr. Burns. Do you conceive of this mediation before filing papers, do you conceive of it as being conducted by an outside litigator for a fee or a court employee to do litigation, or pro bono outside litigator, and if it's an outside litigator, wouldn't we be mandating additional cost to litigate, and what fee would you recommend for rules?

MR. DANIEL BURNS: I believe that the mediators should be selected similarly as people select lawyers. That they would be from the private

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sector that provide services as a mediator. I hope at some point in the future mediation is viewed as a profession, that we do develop standards that the mediators subscribe to, and that the parties can elect to use the services of mediators at a market price whatever the market bears. I think that if we continue to require pro bono mediation or pro bono mediators, we're going to continue to draw people that aren't committed to the arena.

I'm a Town Judge where I live, and I had mediators in court last night to help me settle small claims cases. They're not paid. They come in and they dance around the issue and they help and they provide a valuable service, but ultimately, their commitment to mediation is more as a hobby than as a profession, and I think if we can raise the level of what we expect of the mediators, then the parties have a right to expect more as well.

HONORABLE SONDRA MILLER: Thank you very much, Mr. Burns.

MR. DANIEL BURNS: Thank you. Again, thank you for your work.

HONORABLE SONDRA MILLER: Next person who is available to speak I believe is Mo Hannah.

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DR. MO THERESE HANNAH: Thank you, your Honor. I'm going to read a prepared statement that I'll make available also as well to the Commission.

By profession, I am a psychologist and I am a psychology professor at Siena College just a few miles up the road here north of Albany.

My professional interests have led me to be very concerned over how the systemic malfunctioning of the courts are negatively affecting the mental health and well-being of those who are impacted by it.

As a psychologist, I am keenly aware that we know, meaning it is a well-established fact in the psychological literature, that to limit contact between a fit, loving mother who has been the primary caretaker of her child, for whatever reason, is psychologically and developmentally devastating. It is devastating regardless of whatever rationales or justifications cited by a judge or another court agent for ordering a child to be taken away from the mother, and I want to amend my statement here by saying I have nothing against fathers. I had a very good father myself. I am in a partnership with a man who has shared physical custody of his children and raised his children cooperatively with his ex-partner.

As a psychologist, I treat couples. It's my specialty area. I also treat individuals and I also work with men who themselves have been hurt within the context of the Court System. So please let me make that very clear in terms of putting my focus here on mothers, putting that in context.

This is a well-known and established psychological reality. That a mother is literally a part of, an embed within the mind of a child, and to take away a mother from that child is the equivalent of taking away not just part of that child's mind, of his or her psyche, but to take away part of that child's self. We know about the critical importance of the mother child attachment bond which if absent or broken or interrupted, especially early on in a child's life, places the child at high risk of all sorts of problems in adulthood, including sociopathy, and there are many other well-established psychological realities that are relevant here. That domestic violence and abuse are present in the majority and perhaps the vast majority of cases that wind up in front of Family Court Judges, and that abusing a mother, whether within or outside of the child's presence, is equivalent to abusing the

children.

We know that there is a 50 to 70 percent overlap between partner abuse and child abuse. That up to 75 percent of women who are being abused by the man with whom she has had children develop post traumatic stress disorder, which is less of a psychological illness than a psychological injury, and it is an injury that heals when an abusive partner is constrained from further abusing the mother. We know from many studies the adulthood outcomes of being abused as a child, that childhood abuse, that witnessing the abuse of one's mother puts a person at greater risk of developing in adulthood anxiety disorders, abusive behavior patterns and serious relationship difficulties, among others. And we also know that around 70 percent of men who batter their partner and who engage in custody battles as part of that battering pattern are successful in gaining either joint or sole custody.

Now, I am not simply keenly aware of all of this merely because I read the books and I read the studies and because I'm interested in this as an academic issue, I know this because as a practicing psychotherapist, I have treated older adolescents who

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have been ordered by the Family Court System to visit with or even live with fathers who have abused them, and I have also seen this happen with children forced to live with abusive mothers. It is far more common for the children to be ordered to live or to visit with, in an unsupervised setting, an abusive father, despite the fact that the abusive partner, the abusive parent continues to terrorize or abuse in one way or another both the children and the mother. We all know that the most dangerous time for a woman when she is separating from an abusive partner is immediately upon separation. I treat these mothers, I treat these children, and I treat the adults who have experienced this in the past, and I see the absolute psychological devastation of this kind of pattern.

I also do not cite these findings merely out of a professional interest as a practicing therapist but also because I was one of those battered mothers who went through a custody battle here in the Albany County Family Court, and as I went through the system, instead of receiving the safety and the validation that is so critical to a woman in this position, I was accused, as are so many mothers routinely accused in situations in which they are

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being abused and their children are being abused, I was accused of exaggerating, of being hysterical and of alienating the children from their father, despite the findings and the facts of the case, and I experienced all of this while at the same time knowing what I know as a psychologist about abuse, while knowing what a good story an abuser can present to others, while knowing how high the stakes were for my children should the court agent such as the law guardian, the custody evaluator, the attorneys, the Judge make the wrong decision. And I knew that what I was told about myself and my children and what the law guardian said about my case and what the evaluator said about the abuse that occurred and the decisions that came down were wrong, wrong. Wrong on all counts, wrong psychologically, wrong legally, wrong morally and wrong ethically, and I knew then and I know now that there is something terribly wrong with the Family Court System.

Now, I have heard from various local court agents that this does not happen in Albany County, that we are too enlightened to miss or dismiss domestic violence and partner abuse and child abuse in these cases. So, you know, thank God this isn't

happening in Albany County. But I will share with you something that was said to me back when I was involved in my own case, which was a number of years ago, and this was from someone very much in the know. This was a domestic violence worker at a local well-established domestic violence shelter, a paralegal who would sit day in and day out at Albany County Family Court assisting abused woman. Here's what she said, and please take this in the context of what I heard, because these are the exact words I heard, and I was a litigant at the time. She said to me, the Albany County Family Court is utterly corrupt. Imagine hearing that when you are a litigant involved in a situation like so many of these mothers are involved in. And let me share the comment of another person in the know who commented also on what goes on in the Family Court System in general. There are no rules. Yes, it is happening in Albany County, for whatever the reason, and it did happen in my case, for whatever the reason, and it is continuing to happen as we sit here in this room today.

HONORABLE SONDRA MILLER: Dr. Hannah, I'm going to interrupt you because I know you have much to tell us, but we have to cut your time back and there

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are some important questions that the panel wants to ask you, the Commission.

DR. MO THERESE HANNAH: Yes.

HONORABLE SONDRA MILLER: What empirical data are you relying upon when you indicate the importance of the mother child attachment bond? Where is the data?

DR. MO THERESE HANNAH: There are 25 years of literature established establishing this bond. We know from the research of people like John Bowlby and Margaret Mahler and other attachment theorists. There is a long line of this literature. This is a central part of developmental psychology. I teach developmental psychology. I teach child psychology. This is well-established in the literature. This is probably one of the most primary and well-rooted findings.

HONORABLE SONDRA MILLER: I understand that's your position, but is it your position that there are no circumstances under which a child should not be kept with the mother?

DR. MO THERESE HANNAH: Oh, absolutely, there are situations which a child should be taken away from a mother. When a mother is abusive and a

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mother is neglectful to the point that it rises to the level of abuse, that is extremely damaging to a child. Child abuse is devastating to the developing psyche of the earlier it takes place, the worse the effects long term, and so of course there are times, just like there are times when a child should be removed from the presence of an abusive father. This is not a male female thing. This is about abuse.

HONORABLE SONDRA MILLER: But you are not suggesting that all fathers in custody cases are abusers?

DR. MO THERESE HANNAH: I am not suggesting that at all, and I have found that there are cases, and I have again, I've said this many times, I would stand up as strongly for a man who was being unjustifiably limited from having contact with his children as I would for a mother.

The statistics and everything I have experienced, and I get calls from all over New York State. I had three calls in my voice mail yesterday from mothers in these cases desperate who get my name off a website and say, what do I do; who do I go to; they're going to take away my children, and I've done nothing but say, please protect my children. The

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father of the children is abusive. I am not talking about one case. I am not talking about a few cases. I'm talking about many, many, many cases, and that's just me. I'm just a psychologist. I'm not an attorney. And, in fact, one of the things I want to point out, your Honor, and I will cut this short. I do not want to take more time than I'm allotted. Dr. Amy Neustein is a sociolinguist, and she's probably one person in New York State that's been studying this problem for the longest period of time, since the late 1980s, and she's coming out with a book on the New York State and national problems within the Family Court System. The name of that book is called, it's with Attorney Michael Lesher, the name of the book is called From Madness To Mutiny: Why Mothers Are Running From The Family Courts And What Can Be Done About It. This is probably the first historical and definitive book that outlines the problems, but also you see outlining solutions, and women over the last several years have begun to organize together, and that's one of the reasons why I am here. I represent many, many women and I also represent professionals who have said this problem is out of control and it is affecting peoples lives.

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HONORABLE SONDRA MILLER: Thank you. We have your message. Thank you very much for coming.

DR. MO THERESE HANNAH: May I just let you know that there will be an upcoming conference this January with people who are experts in this area, attorneys, advocates and authors from all over the country at Siena College this upcoming January, the 7th through the 9th, all of you are invited, and anyone who would like to address the conference and tell us your thoughts and your ideas for reforming the system and improving the system, anybody from the Office of Court Administration or from the Court System is most welcome.

HONORABLE SONDRA MILLER: Thank you.

Our next speaker is Dr. Schockmel.

DR. ELIZABETH CRITZ SCHOCKMEL: Good morning. My name is Beth Schockmel.

For over 17 years, I have worked as a forensic psychologist completing comprehensive evaluations involving family issues, providing reports to Supreme and Family Courts throughout the Third Department. My experience includes a dozen years with for Forensic Unit funded by a county mental health center that served Albany County Family Court as well

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as over 10 years of private practice work with the focus on court ordered assessments.

I have functioned as the director of a team of forensic psychologists, have provided doctoral level training to psychology graduate students and interns, served as a faculty member of the Third Department Law Guardian program and sit on that program's curriculum committee, and for years have presented at conferences and judicial trainings on matters involving forensic issues.

There are two matters associated with the use of psychological evaluations in custody and related cases that I wish to respectfully request be given consideration by the Commission. One, the issue of the pragmatic usefulness and appropriateness of court ordered evaluations, specifically in the context of custodial matters, and two, the problem of the inequity that exists across the counties in the State of New York relevant to the availability of thorough forensic evaluations completed by competent qualified evaluators.

To the first point, the pragmatic usefulness of custody reports. Forensic psychology is a specialty discipline that falls under the rubric of

the behavior sciences. While there are topics within the field of psychology that are amenable to a stringent study, other areas such as that of child and family forensics are not as easily subjected to the process of rigorous experimental design. As a profession, forensic practitioners are unable to definitively state what custodial schedules work best for children when the children are certain ages or with parents with identifiable strengths or deficits or when various blended family configurations or geographic distances are at hand. There will never be a time when children of dissolving families will be subjected to studies in which they are randomly assigned to experimental and control groups in the name of good science. Even were that a possibility, the complex nature of family systems will never allow researchers to control for the presence of all the unique features that exist as confounding variables in families.

This is not to suggest, however, that psychologists are without skills and abilities, both as practitioners and as researchers, that are useful in a practical way when matters of custody and parental contact time are before the Court. Many

aspects of the psychologist's training, too numerous to mention here, provide a clinician with unique and useful skills when applied to the task of the comprehensive custody evaluation.

As a profession, forensic psychologists are diligently studying how to best serve the needs of the Court working to strike a balance between practical issues facing the Court and the boundaries of our professional knowledge.

As forensic practitioners work to craft a knowledge base that allows for the growth of the pragmatic movement, there is much to be gained, in my opinion, from the use of well-executed comprehensive evaluations as such exist today. In a well done evaluation, the clinician has the opportunity to spend many hours with parties in a family gathering information from the perspective of the parents, the children, relevant collateral sources, from available recorded family history, and when appropriate, psychological testing. Our forensic training builds on clinical skills that allow for the evaluator to listen to parents in a way that allows them to sift relevant from irrelevant data. Children are assessed from a developmental, academic and social perspective,

with this done in a manner that simultaneously addresses their often present wish to be heard and to feel the burden of responsibility removed from their young shoulders. In a well prepared report, a clinician is able to present data that, in my opinion, can be of considerable use both to families as parents work to come to agreement on custody matters and to the Court.

My work as a forensic psychologist in the counties of the Third Department has allowed me to hear feedback from judges, attorneys and parents on the usefulness of psychologically driven reports. I'm left with a strong opinion that a well prepared forensic evaluation can be inordinately useful when parents work to resolve matters of custody and parenting time. Avoidance of hearings that are routinely emotionally damaging, financially draining and delaying of a dissolved family's efforts to move forward in their lives is a sound and achievable goal for many families, one in which reports can play a major part.

Over the years, I have consistently heard from parents that participation in their psychological evaluation was cathartic and helped them feel that

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they had been heard. That the Court understood their concerns and their thoughts for their children in a way that otherwise might not have been possible. The limited research available on children's responses to involvement in custody evaluations has findings that are consistent with my own experience on the issue. Children tend to view their participation in an assessment in a positive light. While a poorly conducted evaluation and an inferior report can be exceedingly destructive in a Family Court proceeding or a custody case, it is my opinion that potential benefits of a well prepared report are substantial. Focus, I believe, should be on improving the quality, consistency and availability of the product, not on the elimination of a potentially important resource.

Briefly, as to the second point, in my work around the Third Department, I have directly observed the inequity of psychological forensic services available in our various counties. Given the overwhelmingly strong feedback I receive from judges in Supreme and Family Courts regarding the practical usefulness of a well prepared report as the Court makes efforts to fully address the needs of the children, it is concerning that a family's access to

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such a service is dependent upon their financial resources and/or the county in which they reside. Given my firm beliefs that one, well done forensic evaluations are relevant and useful, two, poorly prepared reports by inferior practitioners are potentially very damaging to children and families, and three, that all families in New York State should have access to the same kind and quality of forensic service, I wish to present for consideration the notion of New York State taking responsibility for custody and related evaluations. I believe thought should be given to the notion of regional child and family forensic centers where well trained and critically well supervised forensic practitioners functioning as employees or consultants of the State would serve the evaluation needs of the Court and families. Such a system would allow not only for greater consistency and reliability across evaluations, assuring that clinicians were working from the same knowledge and training base, but would also importantly put in place a system that could easily be utilized for the development of critically important outcome research on the effectiveness of both custodial evaluations and the various implemented

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custodial arrangements. Thank you.

HONORABLE SONDRA MILLER: Yes, Doctor, we have some questions for you.

First of all, is it your position that where there is a contested custody case, the Court should in every case direct, if there's availability for it, a forensic evaluation of the family?

DR. ELIZABETH CRITZ SCHOCKMEL: Not necessarily, Judge. I think that there are certain issues that are very amenable to evaluation by a psychologist. Cases where there are concerns about domestic violence, abuse, parental neglect, situations where there have been allegations raised that one parent is undermining or alienating, in geographic relocation cases, substance and alcohol abuse, issues where there are psychiatric concerns about one or both parents or one or more of the children, children with developmental issues or developmental disability. In an ideal world, for every parent who's grappling with custodial issues to be able to sit and talk with a psychologist who has knowledge about custodial matters, I think that would be wonderfully helpful to mothers and fathers but I don't see it as practicable.

HONORABLE SONDRA MILLER: Yes. Do you

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believe it would be appropriate for the Court in an order directing, appointing a forensic to indicate what area the Court is interested in having evaluated such as a substance problem or domestic violence or parental alienation, if you want to call it that? Should the Court make a specific direction for the evaluator to seek to investigate?

DR. ELIZABETH CRITZ SCHOCKMEL: I think that that would be fine if a judge wished to do that, but I don't think that it's necessary because a thorough evaluation is going to look at the breadth and depth of the whole entire family system and every issue that's relevant to that family. So if a Court has concerns, using your example, regarding substance abuse, the order could say with particular attention paid to substance abuse, but that doesn't mean that all of the other features and factors would be ignored.

HONORABLE SONDRA MILLER: What, given that, assuming you're going to have an evaluation of the entire family and the school teacher for developmental needs of the child, et cetera, what is the average cost of such a forensic evaluation in the Third Department?

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DR. ELIZABETH CRITZ SCHOCKMEL: In my private practice, I bill at $145 an hour. An evaluation can take anywhere from 18 hours to 30 plus hours. A typical custody evaluation for me seeing a mother, a father and a couple of young elementary age children is about $2600. If there are older children to be interviewed, if there are more members of the family, new stepparents, for example, partners residing in the home, if there is a complex psychiatric background that there's a lot of record review required or children with disability, then the cost increases into the three and $4,000 range.

HONORABLE SONDRA MILLER: How is this paid for?

DR. ELIZABETH CRITZ SCHOCKMEL: In my office, because, you know, for many years, I worked for the County, in which case the cost was picked up by the County. Now, in my private practice, it's shared by the mother and the father with contributions made by the New York State Law Guardian program, Third Department Law Guardian program. When a judge approves that resource being utilized, up to one/third of the cost of the evaluation. The Law Guardian program does not ever pay for an entire assessment.

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HONORABLE SONDRA MILLER: When the County paid for it, was it Family Court?

DR. ELIZABETH CRITZ SCHOCKMEL: Correct. I was an employee of Albany County Mental Health. I ran a forensic unit we used to have in Albany County, a unit at one time we had nine doctoral level psychologists doing evaluations for the Court as a free service.

HONORABLE SONDRA MILLER: In connection with your properly prepared report, are you in favor of a specific recommendation being made in regard to custody or visitation or relocation?

DR. ELIZABETH CRITZ SCHOCKMEL: Yes, I am.

HONORABLE SONDRA MILLER: You are?

DR. ELIZABETH CRITZ SCHOCKMEL: I am in favor of recommendations.

HONORABLE SONDRA MILLER: You disagree with Dr. Wittmann and Mr. Timothy Tippins?

DR. ELIZABETH CRITZ SCHOCKMEL: Yes, I do.

HONORABLE SONDRA MILLER: You take the opposite point of view?

DR. ELIZABETH CRITZ SCHOCKMEL: I take

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the opposite point of view.

HONORABLE SONDRA MILLER: You feel it is appropriate, even though the law says that that decision is really that responsibility of the judge.

DR. ELIZABETH CRITZ SCHOCKMEL: I'm not saying, Judge, when you're asking me if I think it's appropriate to make recommendations, I think it's appropriate to conclude a report that I write which is 25 to 60 pages long with a summation of possible, for example, in a custody case, possible arrangements that might work well for the children and the family that I have seen. That does not mean that I'm answering the ultimate question of best interests of the child. I see my role as one of providing the Court with data that the Court can then take into consideration on one piece of a very big puzzle. I'm supplying information about child and family system from a psychological perspective. It's one piece of data for the Court to decide how much weight to apply.

HONORABLE SONDRA MILLER: Thank you very much, Dr. Schockmel.

DR. ELIZABETH CRITZ SCHOCKMEL: Thank you.

HONORABLE SONDRA MILLER: Michael

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Friedman.

MR. MICHAEL FRIEDMAN: Good morning. Members of the Judiciary, fellow matrimonial practitioners, Mr. Johnson, Members of the Commission, I would like to thank you for giving me my 15 minutes of fame.

My name is Michael Friedman. I'm a local matrimonial practitioner in the Albany area, by way of introduction. I think that I am the guy that has ruined Matrimonial Law for a lot of matrimonial practitioners. I had the pleasure of confusing the Child Support Standards Act in the Third Department in Holmes on several occasions. I had the pleasure of working with Mr. Johnson on both sides of the aisle in a case called McSparron, and a case called Holterman which are Court of Appeals cases which have been widely criticized as well as cheered in relation to enhanced earning capacities. But I come here today as a matrimonial practitioner to speak in favor of what I guess somebody here has called the collaborative divorce, or what I would call, it's traditionally called by my clients, a no-fault divorce.

In order to understand the inequities of New York State Divorce Law and our being the lone

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soldier among the 50 states requiring fault proof of divorce, one need look no further than another case in which I confused Matrimonial Law, a case called O'Connell v Corcoran in the Court of Appeals, and in this case, because a woman did not have statutory grounds for divorce in the State of New York, she was disenfranchised of 40 years worth of the acquisition of matrimonial assets entirely in spite of the fact that she raised eight children in part and not in part from the benefit of her husband, had to seek a divorce in Vermont, and merely because in Vermont, the husband said, well, let's do this in New York, that was considered to be a res judicata, and she received absolutely nothing.

She tried her fault case in New York in the 1980s and was denied that, was denied it on appeal in the Third Department, and had ultimately many years later to try and find her way to Vermont, which she did, and lost over half a million dollars in assets merely because under New York Law, she did not have the grounds for divorce.

I am cognizant that in the past, there has been political opposition to the modernization or acquisition of no fault grounds in New York by both

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the Catholic Church and the National Organization for Women. I'm also cognizant that the Family Law Section of the New York State Bar Association has taken a contrary view. But I would like you to consider the fact that this not only significantly increases the cost of litigation to litigate these matters, but it is routinely undertaken as a matter to disenfranchise the non-titleholder spouse from the fruits of the acquisition of marital assets, because regardless of what has gone on in a marriage, 30 years, 40 years, it does not matter. If there are not grounds for divorce, the door to the acquisition of matrimonial assets, be it a huge pension, GE stock, a business does not open unless and until there are those substantial grounds for divorce demonstrated in New York State.

I make a fortune -- well, I can't say a fortune, but I make some money litigating fault every week, and it's not money that I think is necessary for my clients to spend or their spouses to spend, but it is done in 99 percent of the cases to gain an advantage financially and it's an advantage that is not necessarily fair. In one percent of the cases, perhaps, it is done as a matter of religious or moral

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scruples, but it is a rare circumstance where that is the case.

Several years ago, as a result of the Milonas Commission's recommendations and implementation of those recommendations, a lot of changes were made in matrimonial practice, and many for the better, but the one change that comes from, in my opinion, Commissions such as yours and the Milonas Commission is that it increases dramatically the cost of matrimonial litigation, and that is what has occurred over the past several years, and I think there should be some sensitivity.

Justice Miller, your questions today to some of the speakers I thought were terrific because they focused in part upon the costs of forensic evaluations and other matters, but I want you to know that if we can eliminate the issue of fault as a major issue in these litigations, we can eliminate for all time, or at least reduce the average cost of a divorce.

I would also like to say that over the past several years, I have done a lot of work on behalf of representing those people who cannot afford access to the courts. In a pro se divorce program in

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the Albany County Bar Association, we have been responsible in a program that I have been instrumental in in getting divorces for over 1,000 people, but many times, I meet people who have not lived with their spouses for 10, 15, or 20 years who have no money, who are tied to their spouses, and I must say to them, I am sorry. In New York State, you are not allowed to get a divorce because we have this thing called fault. In spite of the fact that you have the deadest marriage known to man, and in spite of the fact that you have no money, resources or assets, you are not allowed to get a divorce in New York State because of our fault grounds and our view towards fault.

I can tell you that if we put aside even the cost and the cost emotionally, the cost out of pocket for legal fees, and you think of the Maureen O'Connells of the world who do not get to the fruits of what has been acquired in a marriage or to those who have to accept less, because believe me, fault is a significant bargaining chip that I have always walked into court with if it becomes an issue, and it is an issue in many, many, many cases, and it's a bargaining chip that you don't give up until you extract what you want or require or you need with

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regard to financial issues, and I do that because that's what the law of the State of New York is. I don't do it necessarily because it is fair.

HONORABLE SONDRA MILLER: Mr. Friedman, let me interrupt.

MR. MICHAEL FRIEDMAN: Yes, Justice.

HONORABLE SONDRA MILLER: And ask you whether you feel under other circumstances it's appropriate for the non-monied spouse to use the lack of grounds on the part of the monied spouse to get a better or more favorable settlement?

MR. MICHAEL FRIEDMAN: I do it all the time. On the other hand, it is my experience that the monied spouse doesn't feel the pressure of the non-monied spouse. When I say to people all right, you have two choices in life. You can remain married to this person and with lack of social stigma associated with going on with your life, living with another person or whatever goes on socially, you can remain married to this person and keep everything you have, keep your business, keep your money, take years to plan the lowering of the value of your business, or you can give that spouse half now and give the divorce, rarely do I see the non-monied spouse being

able to extract the money. They don't have the money in their pocket, and so unless you've got a growing business where it's expanding and you want to try it a couple years down the line, it's a bargaining chip that is rarely used compared to the titleholder spouse.

HONORABLE SONDRA MILLER: What percentage of the cases you handle require a trial on grounds?

MR. MICHAEL FRIEDMAN: Very few, but very few cases I have require a trial, period. As we know, the vast majority of matrimonial cases are ultimately settled at some stage, some prior to litigation, some on the courthouse steps, some in the midst of trial. So if I go to verdict in a case, and I am a very active matrimonial practitioner, if I go to verdict in a case five times a year, it's probably rare. On the other hand, of those five cases, probably at least 20 percent of them, one in five, fault is litigated and it is litigated for these financial circumstances. How many cases do I have in which fault is used as a bargaining chip? In the divorce field, probably at least half, depending on the facts and circumstances. You don't give up that bargaining chip until you've got the finances in line, and it costs money. It

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costs my clients money and it costs their spouses money. Thank you very much.

HONORABLE SONDRA MILLER: Thank you very much, Mr. Friedman.

MR. MICHAEL FRIEDMAN: Pleasure talking to you. Enjoy your day in Albany.

HONORABLE SONDRA MILLER: Carol Stiglmeier.

MS. CAROL STIGLMEIER: That's close enough.

HONORABLE SONDRA MILLER: Carol Stiglmeier.

MS. CAROL STIGLMEIER: Good morning. My name is Carol Stiglmeier. I am an attorney who is a matrimonial attorney by trade. I am also a law guardian, and in that capacity is how I'm here today. My practice is again limited to matrimonial work.

I have been on the law guardian panel for over 10 years here in the Third Department, but I have practiced in Supreme Court in cases involving law guardians all over the State, and my experience has been very good. I did note some feedback from the other meeting you guys had that indicated there was some concern over the compensation rates of law

guardians. In my opinion, I have not seen the compensation rates here at issue. I have never been compensated other than the hourly rate that I have. I've never asked for it. I have been given one time a rate, and I thought it was warranted, an increase, but I didn't ask for it. When I agreed to be a law guardian, I agreed to the rates.

The other concern I heard was preference of the panel in certain cases, and I have not seen that either. We have a great panel here, and there are smaller counties that have a smaller group of law guardians available, but the bench has the unique opportunity to look at those lawyers, feel their strengths and use them in determining what lawyers should be the appropriate law guardian.

I do have two suggestions, and they'll be brief. I think in divorce cases, you do not in this area routinely see law guardians assigned. I think they ought to be. I think any time at the time of the preliminary conference, if a law guardian has not been assigned, I think that one should, and custody is an issue, hasn't been resolved, I think at that juncture, it should be assigned. I know that would upset me sometimes as a matrimonial lawyer, you've got a third

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lawyer now involved taking attack on a course of a case that you might not agree with, but there's a child or children there that need to be heard and need to have an advocate, so I would make that suggestion.

The other suggestion I would make in facilitating our doing our jobs, we are lawyers in the case. Routinely, I don't get copied on the correspondence, I don't get pleadings, I don't get motions, I don't hear anything about discovery, and those are issues that in part relate to my clients. I think if we are included in the scheduling order, it may sound so basic, but it doesn't happen, include the law guardian and all the lawyers have to be copied on these things and have to actively participate.

HONORABLE SONDRA MILLER: Is it your position that there should be a law guardian in every custody case regardless of the age of the child?

MS. CAROL STIGLMEIER: Well, obviously at 18, there is no custody issue.

HONORABLE SONDRA MILLER: No, let's say 18 months.

MS. CAROL STIGLMEIER: I do. At the preliminary conference when the scheduling order is set and these two parents haven't made a determination

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at that juncture, I think it's important for that particular, at that juncture, silent voice to be able to be heard and be able to be part of the litigation phase of the case, because their parents are litigating, you know, their own financial best interests. Clearly, they each think I'm sure what's in the best interests of their children, but that voice or voices needs to be heard.

HONORABLE SONDRA MILLER: Is it your belief that the role of the law guardian is to represent the best interest of the child?

MS. CAROL STIGLMEIER: The role of the law guardian is very clear, and it's set forth in the Standards. It's there to advocate for the child. Certainly to the degree they have the capacity to state their own wishes, to advocate in that capacity. But if you're talking about an 18 month old child, even a six year old child, even an 11 year old or 12 year old, depending on the circumstances, you need to advocate what is indeed in their best interests if they lack maturity to so advocate on their own behalf, and there are compelling circumstances all the time that impact directly whether or not that child has the capacity, and I think, you know, I don't like it.

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There's many times I don't like having a law guardian stick their nose in a case I'm trying to move, but that's not what I'm here today for. I'm here as the law guardian saying I think that child in that capacity, in that situation, the litigation phase needs to be heard.

The last quick recommendation I would make in furtherance of perhaps mandating some kind of form, we have the forms almost the same with the judges at least around here for scheduling orders truly to make sure that the law guardian is heard, because I have found resistance, maybe not resistance, but I have found maybe a lack of understanding at the trial level of it, a custody trial that the judge doesn't realize that the law guardian can try a case, that the law guardian has an obligation to try her case, that I have an obligation to call witnesses, and that understanding needs to be I think broad in terms of capacity. I think with those things, with the recognition and the tools of assisting the law guardian to do her job or his job, the children of divorce parents can be better served. You know, I feel overwhelmed. I feel way more than $75 an hour in my practice, and for example, I'm starting day four

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with Mr. Friedman in a custody trial on Friday, four full days, and the judge and Mr. Friedman and his adversary were kind enough to carve out custody because of the hourly rate so we could do that first. It's still four days. It's overwhelming. I have a very needy client base at my office and a lot of unused billable hours, but I wouldn't change it, and I say yes every single time I'm asked to do it. It doesn't matter.

HONORABLE SONDRA MILLER: Can you tell us in your opinion why would the law guardian be more capable than the judge in determining the best interests of the child if the child is an infant?

MS. CAROL STIGLMEIER: If that's what the message was that was received, that's not what I'm asserting. I don't think the law guardian would be better than a judge. I think the law guardian is there as an advocate for that child to assist the judge to make that determination. I don't think they would be better any more than I think the lawyer for the mother or the lawyer for the father would be.

HONORABLE SONDRA MILLER: Do you think it's appropriate for the parents to pay for the law guardian services in any circumstances?

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MS. CAROL STIGLMEIER: As I said, it happened to me once, and that was back in the days of the $25 out of court where almost all the work is done and $40 in court. I've had it happen several times, my clients have had to pay, but I thought it was appropriate. Again, that was pre $75 rate and, you know, the parents tend to rely, when they don't have to pay their lawyers, they'll call the law guardian every five minutes and, you know, you're billing $25 an hour and getting phone calls from irate parents and teachers and reading all these documents that they drop off. The $75 an hour rate, you know, unless it's extreme, I don't think so. You know, you know what you're getting into when you agree to be on the panel and you know what the compensation rate is and you can choose to say no to the assignment. If it gets out of control, perhaps, but generally, no, I don't.

HONORABLE SONDRA MILLER: Thank you very much.

MS. CAROL STIGLMEIER: Thank you.

HONORABLE SONDRA MILLER: Mr. Robert Ferrucci.

MR. ROBERT FERRUCCI: I'm sorry. I'm coming, your Honor.

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Good morning. Thank you. I'm glad I have the opportunity to speak in front of this panel today. I have been hearing a lot of good things from the attorneys behind me, and I have no education on any type of laws and everything, but only what I went through in the past seven and a half years, and I am a victim. I went through the courts through Schenectady County where I live, but apparently I'm not going to get into that because it's probably behind me now, but I would like to bring that the system is not working. As we all know, it's terrible. I'm a victim. I went through it. They murdered me for no reason in court. I'm a great father. I love my children very much. Believe me, I go to all ends for them in which I did. I'm a regular worker for Schenectady, City of Schenectady and, you know, we're just like regular people out there. There's probably thousands of me out there in the same predicament that I was in.

I would just like to say a few things. I don't want to take any more of your time. I'll do the best I can. This is off the cuff.

Number 1. I think we should look at the rights of the good fathers, because I am a good father. I did the best I can. I fought hard, and you

know what, it paid off, but you know, it still isn't there because I'm not with them 24 hours a day seven days a week. If you got boys, they need their father.

Number 2. I think you should all take in consideration, and there's a lot of lawyers here, there should be a cap on lawyer fees, because you know when I was in court, let me tell you, it dragged on for five and a half years, and it drained me. It took me broke. When I mean broke, I ain't got a penny. I live day-to-day, week to week from my paycheck. I support my boys. I do the very best I can. Again, there should be a cap because of lingering on for years, hours for no reason. You go to court, nothing happens. You sit there for three hours. You waste the attorney's time, which they can probably be doing something different. They come out, postpone. That's a bill in my pocket and nothing ever accomplished. It's the truth. Believe me. Okay.

Number 3. The custody situation. You know, really, I fought hard to get my kids, and I mean fought hard. I gave up my day job to take a night job so I can pick up my boys from school everyday because there was a certain individual wasn't granting me that time. I fought hard. I changed my hours at where I

work. Thank the good Lord, and I get to see them everyday. Not long, but it's a couple hours a day I pick them up. The Court granted me that. But I think you should let the children decide that. Ask the children. They know more, and you know what, if you both share 50 percent of the children, there shouldn't be anything with support. If you both are working, get rid of that support. Mind you, I mean it's good for someone who's not working, like the mother, but when you're both working and you both are spending time with your children, cut out that support.

And another thing I would like to bring up. You know, I paid child support. Now, I can't claim that money as loss and she can't claim it as income, so where does that money go? They tax me every year on my base salary. Think about it. So how come I can't claim that money or she can't claim it as income? Think about it. Really. Because they're taxing me on that money that I make every year, but yet I can't claim it as a loss and the other party can't claim it as income. So what do we do? There's thousands of dollars a year floating out there. So maybe we should look into that a little better in the federal government, State of New York, whatever.

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Last but not least, these law guardians. I've been hearing a lot from different people here. You know, they might have the professionalism of talking to the children, but you know what, do they have the knowledge like maybe a doctor, psychiatrist? Think about it. These law guardians, he's just a lawyer. What does he know about children, especially the father or the mother? Think about it. Really. I went through it. I lived through it seven and a half years with my law guardian. He didn't know nothing, and that's the God's honest truth. I went through three law guardians until I found someone that probably helped me out, but you know what, as I did a little research past two years, I found out that maybe we should look into the professionalism of maybe a doctor, psychiatrist or even a school teacher. Think about it. These school teachers, they got good degrees, you know. Really. Because obviously, I've been a victim for seven and a half years. I did the very best I can. Really. That's why I'm here. I don't know who else can come. I thought a few of my other friends of mine that I talked to and helped through divorce, I thought they would show up today. I did the best I can, but the system is not working,

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clearly is not working. You hear from good lawyers back behind me, and I know a few of them. They're wonderful people. They did the best they can. But you know what, it comes from the heart. It comes from the home. You know, I love my kids. I'd move mountains for my kids if I have to. Believe me. I paid very dearly. I'm seeing my boys like I should. So you guys should think about that, all of you, when you come to these decisions. I miss them everyday, and they're getting little teenagers now. You know what, they need their dad. They need their father. I'm a good father. Let's separate the bad fathers and the good fathers. Really. Think about it. These judges have no clue, you know. I went to court, and my rights were violated for seven years. I was told that. The judge didn't want to hear it, you know. Then I go back to Family Court to get the statement maybe changed, modified, they threw me out of Family Court because I didn't have an attorney. I got no money for attorneys. So what do you do in that case? You suffer, right? That's how things happen. That's how problems start, that the father starts going a little crazy because he can't get in court. I hear from individuals, human beings like every single one

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of us here. Hey, come on. Look at the people out there like myself. There's thousands of me out there that love their kids. I mean they love their kids. They would do anything, but they can't get in court because they ain't got the money.

Thank you for your time. Thank you.

HONORABLE SONDRA MILLER: Thank you, Mr. Ferrucci.

We have Commissioner Robert Doar.

COMMISSIONER ROBERT DOAR: Thank you. Justice Miller, Members of the Commission, I am Robert Doar, Commissioner of the New York State Office of Temporary and Disability Assistance. Our agency supervises New York State's public assistance and child support enforcement programs. Before assuming my present duties, I headed our agency's Division of Child Support Enforcement.

I have a firm conviction after almost 10 years experience with child support and public assistance issues that one of the best things we can do for children is to see to it that whenever possible, they have the support and nurturing of both parents, and I believe this is true whether parents are together or apart, married, separated, divorced or

never married.

We all know that divorce and custody disputes can engender severe antagonism and bitterness, but the court processes should not add to this burden. I've watched the process first hand in courtrooms in New York City and across the State. I've witnessed what appeared to me to be a sometimes bizarre scheduling system that can require parents to take an entire day off from work for the opportunity to file a petition for support or to make a brief appearance in court. There are undue delays and labyrinthine network of rules, some of them so vague that they confound litigants and lawyers alike.

The purpose of the courts in part is to resolve disputes in the best interests of the child. Too often, however, the court process only further embitters the parties. When this happens, it becomes more difficult to reach agreement and it is the children who suffer. We can alleviate some of the problems. We should be able at a minimum to reduce delays in the process of obtaining support for children. In some areas, we have made a lot of progress. Child support collections, for example, have more than doubled since 1995, thanks in large

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measure to Governor Pataki's leadership.

The Court System too has moved in very positive direction under the leadership of the Chief Judge and with the persistent efforts of the Office of Court Administration.

My agency has worked more cooperatively with the Court System than ever before with some very gratifying results, but the Chief Judge would not have created this Commission if the system had been operating at peak efficiency and effectiveness.

Allow me then to discuss with you particular areas that would benefit from reforms which we believe would enable the courts and the child support program to be more responsive to the needs of children and to parents.

It is well documented that the New York State Court System is long overdue for a major restructuring. There are specific issues related to the existing court structure that impact separated or divorcing families' efforts to obtain child support and affect the child support program's ability to assist these families.

The Family Court has exclusive original jurisdiction over proceedings for support, yet the

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Supreme Court has jurisdiction over divorces and may exercise and retain jurisdiction to hear and enforce child support matters incidental to a divorce, and so an order of child support established in the Family Court may be terminated when the Supreme Court makes an order for child support in a divorce or a separation.

The existence of two entirely different courts to address child support is burdensome and leads to confusion for the families we serve, inconsistencies in the orders established, and gaps that impede our program's ability to effectively enforce child support orders on behalf of families.

Over the years, my agency has responded to complaints by Support Collection Units of the local Departments of Social Services and by parties that new or modified child support orders entered by the Supreme Court are not entered on the computerized record. In these instances, neither the Court nor the parties to the divorce or separation proceeding notified the Support Collection Unit of the new or modified obligation amount, and, in fact, the Family Court may not have learned of the entry of the Supreme Court order. As a result, the child support program

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continues to enforce an incorrect amount resulting in neither an underpayment or overpayment of child support. A problem that could be addressed by one court serves all system or by ensuring proper communication between the Family and the Supreme Courts and the Support Collection Units.

The Support Collection Units provide a vital function in assisting families to receive child support and in ensuring families remain financially self sufficient. They do so by employing a wide variety of methods to enforce child support orders, including many highly effective automated enforcement processes. These enforcement tools are triggered when certain criteria are met in an individual's computerized child support record. It is imperative that the computer records be as accurate and up to date as possible.

While a one court system would obviously help alleviate the confusion and burdens and communication problems, an alternative more immediate fix in this instance is available.

I respectfully recommend that the Office of Court Administration issue a rule requiring the Supreme Court, prior to issuing a new or modified

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order of child support, to inquire whether there's an existing order and whether this order is being enforced by a Support Collection Unit. If it is, the Court should direct service of a copy of the order upon the Support Collection Unit.

Another issue that is impacted by New York's existing court structure regards cases in which the children are receiving public assistance. The Support Collection Units play a central role in establishing and collecting child support obligations on behalf of these children. A custodial parent who applies for or receives public assistance assigns his or her right to receive child support to the local district Department of Social Services. Sometimes, however, individual parties to child support proceedings in the Family Court or parties to a divorce in the Supreme Court are not aware of the legal implications of the receipt of public assistance. We have experienced a number of cases where the child support order on behalf of the children receiving public assistance was established or modified without notice or an opportunity to participate by the Support Collection Unit. We encourage a solution to address this issue.

We recommend the issuance of a court rule or procedure to require that the Supreme Court establishing or modifying an order of child support inquire at the commencement of the proceedings whether or not the children are in receipt of public assistance. If they are, the rule or procedure would require the moving or petitioning party to notify the Support Collection Unit and to provide it with a copy of the pleadings and an opportunity to be heard. The proceedings should then be adjourned for the appearance of the Support Collection Unit.

We also need reform in the laws governing the modification of child support orders, an area that's become so complex and factually driven it is difficult for litigants, attorneys and decision makers to identify clear rules that govern modifications.

In 1989, New York enacted the Child Support Standards Act to provide a uniform and consistent method for calculating child support orders consistent with the parents' ability to support their children. Under federal and state law, the child support obligation calculated using the Child Support Standards Act is presumed to be a just and appropriate level of child support. However, all things change as

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the parties move away from the emotional intensity of the divorce, as the children grow, as people change jobs, as earnings increase or decrease, and as the needs of children change, it becomes necessary to revisit the child support orders to ensure that they remain consistent with the Standards Act and are thus just and appropriate. Yet before the Court can calculate a party's new child support obligation under the Child Support Standards Act, the petitioning party must prove that he or she meets the appropriate threshold. If the threshold is not met, the Court may dismiss the petition without providing relief to the party. The problem with this arrangement, as you I'm sure are aware, is that there is no uniform threshold for modifying child support orders in New York.

While the Domestic Relations Law specifies the child support order may be modified following a substantial change in circumstances, the Family Court Act is silent on the issue. The courts have determined that the substantial change in circumstance test does not apply if the child support order is based on an agreement of the parties that is incorporated but not merged with the order setting child support. In these cases, the petitioning party

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must show either the needs of the children are not being met or there was an unforeseen, unanticipated change in circumstances. The application of these threshold standards is very case specific. Litigation and appeals in this area may be frequent and protracted as the parties, attorneys and courts struggle to apply these general legal phrases to the specific facts and circumstances of the parties' income and expenses. There are numerous exceptions and variance of these rules, and in some cases, the Appellate Division decisions are in conflict. As a result, parents, both custodial and non-custodial, cannot determine with any surety whether they are entitled to an increase or reduction in the child support obligation. Few, if any, attorneys can make that determination with full assurance, and so many petitions to modify child support orders are filed needlessly and litigated endlessly. The unnecessary filing of petitions resulting in litigation clogs the courts, drains the parents emotionally and financially and generates unnecessary legal expenses.

And the converse is also true. Some custodial parents, unwilling or unable to make the attempt to navigate this perplexing system, end up

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with orders that provide less than their children deserve. Likewise, obligated parents whose circumstances have changed also beleaguered by the complexity can opt not to file for modification and find themselves unable to meet their obligation building up mounting and uncollectible child support debt.

We believe that the modification laws in New York should be simplified to reduce confusion and to ensure the child support orders remain commensurate with the child support guidelines which are presumed to fix a fair and adequate level of child support. The level of support should be based on current financial circumstances and incomes of the parties and other factors set forth in guidelines. Of course, modification law amendments should incorporate currently existing protections against voluntary reductions in income intended to avoid a parent's responsibility to support his or her child. Child support orders based on current and accurate financial information will also help reduce the level of uncollectible debt accruing on orders that are no longer affordable.

Another area that would benefit from

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reform and assist parents in negotiating the child support process is the creation of a child support work sheet. The standard use of this work sheet would help parents be better informed about how orders are established and would enable them to be better prepared for court.

The Child Support Standards Act requires the Court to calculate the basic support obligation in all cases, including orders incorporating agreements by the parties that would deviate from the child support guidelines. The Court is required to state its basic support obligation amount in all orders. However, parents seeking to establish or modify child support obligations may not be aware of these requirements.

In addition, parties not represented by counsel may not be able to navigate the Child Support Standards Act requirements. If parties have a clear work sheet to use to calculate the basic presumptively correct support obligation, they may more readily reach an agreement in court on child support issues. Having the parties' calculation of the basic support obligation in writing will assist the Court in conducting a hearing in determining the correct amount

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of child support.

In addition, use of the guidelines work sheet by the Court in each case will do much to ensure consistent and thorough application of the Child Support Standards Act in all courts that hear child support matters.

We recommend the development of a guidelines work sheet with easy step by step instructions and plain language to assist parents to calculate the basic support obligation. Such a work sheet has been developed and is in use in virtually every other state. All parties should be required to complete the guidelines work sheet and present it to the Court as part of the mandatory financial disclosure provisions of the Domestic Relations Law and Family Court Act. The Court as an outcome of the proceedings should complete a final guidelines work sheet that would determine the child support award and provide it to the parties along with the Court order.

One final thought. There are a fair number of aggrieved fathers who feel that they have been neglected or treated unfairly by the system either by my agency's operations or by the courts. Certainly not all these protests have merit, but some

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of these men have legitimate complaints. Some men who could be closer to their children and want to be a more positive influence in their lives are prevented from doing so. And again, it's the child who is suffering.

We are realists here. We know there can be real safety issues in some instances. We know the possibility of abuse exists in some instances. That's why some parents are justifiably and necessarily limited in the contact they have with their children or excluded from contact at all. But we also know that children who have the support of both parents generally do better emotionally, socially, educationally and have better prospects for an independent and productive adult life.

Therefore, there cannot be a presumptive prejudice against fathers as there sometimes is. We in our agency are paying more attention in our programs to the positive roles the fathers can play. I hope the Court System can do the same.

The truth is the system has not always shown sufficient respect for the role of fathers in their children's lives. The Office of Court Administration provides excellent training to trial

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court judges to help them deal with complex issues of domestic violence, child abuse and drug abuse. I would hope the courts could, without reducing the training in these important areas, provide additional training to its judges in promoting and encouraging both parents to take an active and constructive role in the lives of their children.

I appreciate the opportunity to present these ideas. I hope we can continue to work together to create a better, more efficient Court System.

HONORABLE SONDRA MILLER: Thank you, Commissioner. I have a couple questions for you.

First of all, do you feel that Support Collection Units should handle collections for maintenance when there is no accompanying child support order?

COMMISSIONER ROBERT DOAR: No, I do not. I think that the child support, the burden on the Support Collection Units to collect child support and to focus on all families that come to them for that requirement and involving the issues concerning folks on public assistance are sufficiently serious and tense for them at this point that I would not want to see an expansion of their responsibilities.

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HONORABLE SONDRA MILLER: You don't want to expand your obligations in this case?

COMMISSIONER ROBERT DOAR: Well, it's not so much I don't want to. I don't think it necessarily would be useful.

HONORABLE SONDRA MILLER: I understand. Also, the question is doesn't your suggestion possibly permit too many applications for support modifications if one can simply allege a change of circumstances with or without an underlying agreement; just come in and say the children are older, my income is lower?

COMMISSIONER ROBERT DOAR: Well, I think whenever you -- I think that may lead to more requests for modifications, but I think there's a need for more modifications, and I think that the Court System and the Support Collection Units would have to adjust to that requirement.

Also, I think as those matters are resolved and as parties develop a sense of what is going to be successful and what's not, you may actually -- it might reduce the number of modification requests because it will be clear, it will be known this will get it, this won't.

HONORABLE SONDRA MILLER: The rules

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should be clear.

COMMISSIONER ROBERT DOAR: Yes.

HONORABLE SONDRA MILLER: Okay. Thank you very much, Commissioner.

COMMISSIONER ROBERT DOAR: Thank you.

HONORABLE SONDRA MILLER: Is Judge Dennis Duggan here? Is Judge Dennis Duggan here? Not yet.

Is Mr. Murnane here? Next, the next speaker is Randy Dickinson.

MS. DEBORAH FELLOWS: Hi, I'm not Randy. I'm Deborah Fellows and I am the next speaker behind Randy Dickinson.

I would like to ask the Commission at this time an opportunity to make just a few points and then hand over my time to Mr. Dickinson. I have read his testimony, and I agree on every single one of the points, but I am a 25 year veteran of working with children. I have worked with North Carolina State and the New York State Foster Program. I was on the Commission of Welfare Reform over twelve years ago. There are several things that I would like to make point of right now.

I heard the law guardian speak that she is a voice for an 18 month old child. A voice of an

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18 month old child is babble. We all know that. She is not a voice. She's an opinion, an opinion that is the judge's, not hers.

I also heard that child support money is not domestic welfare. It should not be handled, the maintenance, for women or men. This is not a gender specific item but it is very gender biased. The Commission sees the bias. We all see the bias. And I want to repeat what was posted nationally. 30 states across the nation were given a ballot poll whether they believed that shared parenting should be mandated, and 87 percent of the United States population believe that shared parenting should be a mandated hearing. It should be on a 50/50 equal basis. Right now in New York State, approximately 97 percent of all custodial parents are women. That's not fair. It's not fair to women, it's not fair to men, it is not fair to our children, and we need to stop looking at the men and the women here and we need to start looking at what we are doing to the children. As a worker for children, I know what it's doing. You all know what's it's doing. We see it everyday. We see it in the violence of the children. We see it in the nonconcern of every single one of you. They don't

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care because we have taken their compassion away from them.

And one last point I want to make. This is being heard across the nation. I get phone calls and I get people knocking on my door repeatedly. Not less than two months ago, I got a knock on my door. I opened it up, and there was a young man in a really nice suit standing in front of me, and I said to him, what are you here to serve me with, because that's just the nature of my life. I'm very controversial. I get served with a lot of papers. He said, are you Miss Fellows. I said yes, I am. He said hello. And he opened up his wallet and he showed me a badge. It's the Federal Bureau of Investigation. I am letting a tiger out of the bag right now. The New York State Court System is under investigation. We all know, and we can't hide it anymore, that we're messing up. We are under investigation, and I think it's time that we stop looking at our own selves, and I think the Bronx judges speak for it. We know the system is corrupt and it is time to fix it, and if you all don't fix it, well, guess what, the feds are here and they are looking at you all and it's time that we really look into it.

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At this point, I would like to hand over my time to Mr. Dickinson, and the report that he reads speaks for thousands of us. Thank you.

HONORABLE SONDRA MILLER: Mr. Dickinson.

MR. RANDY DICKINSON: Thank you, Debbie. And thanks, Justice Miller, and Ladies and Gentlemen of the Commission. My name is Randy Dickinson and I am the Vice-President of the Collision of Fathers and Families in New York. Our organization represents the 2.5 million non-custodial and disenfranchised parents and their families residing in the State of New York today.

I wish to express deep and sincere appreciation for being given this opportunity to appear here before you today on behalf of this constituency. At the same time, however, I should warn you in advance that what you are about to hear has not been sugarcoated. You will hear no glowing praise or congratulatory adulation for the job you and your courts have been performing. Indeed, some of you may actually take personal offense at much of the content of this testimony. It is in effect an indictment. We ask your indulgence, however, to hear me through to completion. You need to hear it. It's

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time.

Retired New York State Supreme Court Judge Brian Lindsay was once quoted as stating that there is no system ever devised by mankind that is guaranteed to rip husband and wife or father and mother and child apart so bitterly than our present Family Court system. That's one of your own judges.

Today the courts routinely issue ex parte orders of protection and temporary custody orders based upon false allegations of domestic violence and/or child abuse. They maintain such incestuous relationships with forensic psychologists and law guardians that it is not uncommon for them to actually recommend their own services to the courts, which, in turn, simply order the parties to comply.

They intimidate, coerce and threaten unsuspecting defendants to settle their separations and/or divorces and sign consent orders before their cases ever have a chance to go to trial, and for those who do make it to trial, the game is so hopelessly rigged that no amount of proof, including indisputable evidence of a close and positive relationship between children and their fathers, is sufficient to persuade the courts that more equal access to both of their

parents may be in their interest.

They require virtually no burden of proof whatsoever that it is in the best interest of the children to separate them from one of their parents by ordering that temporary custody orders often issued ex parte and on the basis of false allegations should be made permanent.

They place such a heavy burden of proof on non-custodial parents seeking more time with their children that even the most minor modifications to such orders become virtually impossible to obtain.

They pay lip service to the importance of maintaining regular, frequent and meaningful contact between children and their non-custodial parents, but then demonstrate a complete and total disdain for fathers as reflected in the following rather breathtaking statement.

You have never seen a bigger pain in the ass than the father who wants to get involved. He can be repulsive. He wants to meet the kids after school at 3:00, take the kids out to dinner during the week, have the kid on his birthday, talk to the kid on the phone every evening, go to every open school night, take the kid away for a whole week so they can be

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alone together. This type of involved father is pathological. This was Chief Judge Richard Huttner, Kings County Family Court and member of the New York State Commission on Child Support in 1985. Judge Huttner, by the way, still serves on the bench in Brooklyn.

It seems that in practical application, regular, frequent and meaningful contact is interpreted to mean nothing more than a couple of hours midweek for dinner and every other weekend, if that.

They allow custodial parents to violate the terms and conditions of court orders and interfere with custody and/or parenting time rights of non-custodial parents with impunity.

They refuse to hold custodial parents to account for the filing of false reports of domestic violence and/or child abuse.

At the same time, however, they impose sanctions and legal fees against non-custodial parents who insist on continuing to struggle in court for greater access to their own children.

They consider the actions and behavior of non-custodial parents and are quick to incarcerate

them for the most minor infraction.

High level Social Services officials acknowledge a growing problem with the false reporting of child abuse. The State's Chief Judge Judith Kaye has stated publicly that reports, key word reports as distinct from confirmed cases of domestic violence, are skyrocketing. Advocates for the prevention of domestic violence have also admitted publicly that the allegations contained in these reports are used routinely to gain tactical advantage in custody disputes, and the State's own data confirms that fully 70 percent of all such reports are potentially false. Yet when asked to look into such matters, neither our law enforcement agencies, nor district attorneys, the Departments of Social Services, the New York State Office of Children and Family Services, nor the Courts seem to have any knowledge of how they should be handled.

The filing of a false report of child abuse is a criminal offense under the New York State Penal Code. It doesn't seem it should be necessary to have to point out that that fact alone might suggest a point of departure to begin looking for possible real, tangible and practical solutions to this problem.

Descriptions of such cases of abuse are customarily referred to as anecdotal, a term that implies a certain illegitimacy. It carries with it the sense that the truth and/or accuracy of the story are incapable of being verified and that without the imprimatur of some official certification, it need not be taken seriously.

These stories will likely continue to retain their status as anecdotal so long as the diminished sense of urgency that seems to go along with it means the judges, the courts, our elected representatives and the New York State Legislature can continue to ignore the elephant in the room. One would think, however, that when the initial odor of pachyderm has become an overpowering stench, somebody might begin to suspect that the carcass has begun to rot.

Let me offer a possible explanation for our sense of smell having become so hopelessly impaired. One need look no further than the following quotes. Perhaps some of you may recognize them.

Your job is not to become concerned about the Constitutional rights of the man that you are violating. Throw him out on the street, give him the

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clothes on his back, and tell him see ya round. New Jersey Municipal Court Judge Richard Russell to his colleagues during a training seminar, a training seminar, in 1994.

And then gender bias against fathers as expressed in the ostensibly discredited tender years doctrine which holds that young children belong with their mother is well known.

Consistently whenever the suggestion is made that certain statutory measures might reasonably be warranted as protection against this well known bias, the response from representatives of the Court System as well as from elected representatives in the Legislature, recited almost as if it were some sacred mantra, is that you don't favor presumptions in the law and that the courts should have the discretion to make custody and parenting time decisions based upon the best interests of the child. Sounds pretty reasonable on the surface. Consider the following, however.

At a meeting in January of '03 with the State's Chief Administrative Judge for Matrimonial Matters in the Supreme Court, Jacqueline Silbermann stated that the term in common usage among the

system's insiders to describe the Wednesday evening/alternating weekend custody and visitation schedule that most men/fathers have come to learn is pretty much all they can expect is the standard New York order. The standard New York order. Any order that can be described as standard seems to me to have the distinct ring of a presumption to it.

And then we have this little gem.

Mothers are presumptively preferred as custodial parents.

But if anyone really needs a smoking gun, consider this.

In 93 percent of the 2,588 cases where the custodial arrangement for the children was included in the file, mothers were the primary caretaking parent.

This latter has bias and presumption written all over it.

Interestingly and not insignificantly, we don't seem to harbor the same sense of uneasiness with respect to the anecdotal nature of the evidence when presumptively preferring mothers as custodial parents, or presuming the obligation to pay child support, or a presumption of guilt in cases involving the allegation

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of domestic violence or child abuse, or the presumption of no fault when seeking a divorce.

In a press release opposing reform of New York State Family Law dated 7 April, 1997, the Women's Bar Association of the State of New York commented that, New York's best interests test rightfully places the child's well-being above the interest of either parent. It goes on to state that changes championed by advocates for non-custodial parents would spell disaster for children.

In a similar memo that same month, the League of Women Voters of New York State opined that it believes that current statute, case law and judicial discretion adequately allow for decisions on appropriate custody arrangements.

In September of '02, after a search lasting several months, seven year old Kaili Warrington was finally located by her father, Mr. Daniel Sims of Glens Falls, New York living in Florida with her mother and the mother's boyfriend where she was being held locked in a closet and starving.

On Tuesday, October 1st, 2002 referring to Washington County officials' handling of the case, Mr. Kent Kisselbrack, a spokesman for the New York

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Office of Children and Family Services, is quoted by the Associated Press stating, the county did what was in the best interest of the child. The best interest of the child? The child almost died. One shudders to imagine what might have occurred had they not all been so deeply concerned about the best interest of the child.

Washington County officials and the State Department of Social Services both claim that the case involving Kaili Warrington was handled properly. In deed, in fairness to the County, the State and the Court, they all do seem to have performed their duties and responsibilities in accordance with prevailing orthodoxy and therein, Ladies and Gentlemen of the Commission, lies the heart of the matter.

Here's what we find elsewhere regarding the best interest of the child.

Guided only by the vague standard of the best interest of the child, judges are given virtually unbridled discretion to determine what factors should be considered when making custody decisions. Translation. No one has a clue what the best interest of the child standard really means. It can simply mean anything anyone wants it to mean, and more

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ominously, it can be used as the unquestioned pretext to justify any action and/or decision the Court wishes to make.

And then we have this.

Some judges appear to give weight to gender based stereotypes about mothers and fathers that may have little bearing on the best interest of the child. This last has got to be the understatement of the year.

The foregoing quotations are not the ravings of some crazed sociopath on the lunatic fringe. They are not the cynical musings of some hopelessly misogynistic woman hater. They are not the complaints of some disgruntled litigant troubled about the outcome of his case, and they are not the uninformed opinion and agenda driven biases of those radical fathers' rights guys, masquerading as sound research-based fact, and who are simply seeking to have their child support reduced or eliminated altogether. They represent the State of New York's very own research findings on this subject. The sources from which they derive are the Report of the New York Task Force on Women in the Courts published in 1986 by none other than the New York State Office

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of Court Administration, Unified Court System, almost 20 years ago; and the New York State Child Support Standards Act Evaluation Project Report prepared by the Finger Lakes Law and Social Policy Center, Inc. of Ithaca, New York, and published in 1993.

Occasionally, court officials and members of the Legislature are heard to claim that they receive complaints almost as often from women as they do from men, and in fairness, it should be pointed out that the latter quote has been abridged somewhat. In its entirety, it reads as follows. Some judges appear to give weight to gender based stereotypes about mothers and fathers that may have little bearing on the best interest of the children and that discriminate against men and women.

So here's the $64,000 question for you folks. If, by your own admission, the Courts are biased against fathers and if their decisions have little bearing on the best interests of the children, and if they are discriminating equally against women, who and/or what do they serve? What do you people do to earn your keep at taxpayers expense?

When a man can be falsely accused with no recourse; when his accuser's allegations are accepted

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with no questions asked, no burden of proof and no accountability for perjury; when anyone, man or woman, can have a divorce forced upon them against their will and without their control; when he can be ejected from his family and evicted from his own home; when his children can be abducted, his income extorted and his assets confiscated; when a man can be diagnosed, as political dissidents in the old Soviet Union so often were, as suffering from a mental disorder for expressing anger over the mistreatment and abuse he may be experiencing and is ordered to attend anger management classes; when he can be ordered to pay the legal fees incurred by someone else committed to destroying him; when he can be thrown in jail without ever having committed a single crime, this is not just troubling as some might describe it. Troubling, Ladies and Gentlemen, is when the crab grass is taking over your lawn. Neither does it rise merely to the level of abuse, nor to a violation of certain rights and protections guaranteed under the U.S. Constitution. It is domestic terrorism.

This Commission's charge and the stated purpose of these series of hearings is to receive the views of interested individuals and organizations with

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regard to ways to reduce the cost, delay and trauma to the parties. According to the press/media reports, Judge Kaye indicates she is sincere in her determination to clean out the barn. We'll see. The proof will, of course, be found in the pudding.

If past experience is any indicator, however, it does not instill great confidence that much of substance is likely to come from any exercise such as the one we are engaged in here. At least not that holds much promise of having a direct positive impact on any interested parties other than those that feed lavishly at the trough of the divorce industry.

The issues listed for consideration by this Commission and these series of hearings include those involving law guardians, forensic experts and others, as well as such vogue new concepts as something called alternative dispute resolution, mediation and collaborative divorce, terms calculated to give a warm and fuzzy sense that some enlightened cutting edge solution has been discovered that will, at long last, provide the tools to put Humpty Dumpty back together again and to send everyone off to live happily ever after. In reality, such concepts are impotent and ineffective palliatives. They are

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nothing more than window dressing that gives the sense that something is being done to address the problems while at the same time doing little more than facilitating court procedures and making the jobs of those working within them easier and ensuring that complete and total control over the issues is retained and that the revenue streams of attorneys and social workers are left secure.

It is widely known that those in the judiciary and the legal community have been advocating over the past several years for increased funding necessary to hire more Court Officers and to provide higher fees for Court appointed attorneys and law guardians. We are also well aware of how the legislative lobbying processes work and how important a part public hearings and the recommendations of commissions established for that purpose play in them. We can only imagine this same Commission called just a century and a half ago to consider the question of slavery and recommending that the inherent flaws in the system could be resolved by increasing the number of plantation owners and offering higher compensation packages to the slave traders. We ask your indulgence if we appear just mildly skeptical of the intentions

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expressed by Judge Kaye and the Members of this Commission and any suspicions we may have with respect to the potential for certain ulterior motives.

Now we learn that the New York Bar Association is proposing that New York become the last to join the ranks of our other 49 more enlightened no-fault divorce states, and that with the recent elections now behind us, it will begin looking for someone willing to sponsor the necessary legislation. What are they thinking? This is sheer insanity.

After almost 30 years of experience with no-fault divorce, it is now widely recognized that in effect, they have given a legal preference to any spouse wishing to leave a marriage, even if the other spouse wants to preserve the marriage and has done nothing to give the deserting spouse grounds for a divorce. Such laws have essentially acted to empower whichever party wants out, leaving the spouse who wants to preserve the marriage powerless to prevent its dissolution and with no other recourse but acquiescence. Marriage is one of the few contracts in which the law explicitly protects the defaulting party at the expense of his or her partner.

Adding to laws that help facilitate the

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divorce process are others that drive the decision to initiate it. Research has shown that the single greatest factor in determining which party is most likely to initiate a divorce is the expectation of being awarded custody of the kids. Along with custody usually comes a whole range of other financial benefits as well, including child support, alimony, the marital residence, one-half of the remaining marital assets, to name but a few.

HONORABLE SONDRA MILLER: Mr. Dickinson, I'm going to interrupt because there are some important questions for you.

MR. RANDY DICKINSON: Okay.

HONORABLE SONDRA MILLER: I know you have probably more to tell us, but your time is really up. We're going to extend it so that you can answer at least in some summary form. What specific recommendations --

MR. RANDY DICKINSON: Shared parenting will level the playing field and it will remove children as bargaining chips in the divorce process. It's been mentioned in here earlier that the financial aspects and settlement of equitable distribution because of the fault state of the law in the State of

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New York causes one to use that as leverage over the other one, and I would submit that the custody issue is a much bigger club than the financial issues.

HONORABLE SONDRA MILLER: How do you define shared parenting?

MR. RANDY DICKINSON: Shared parenting is an arrangement where there is a presumption that in a case where there is no demonstrable showing of unfitness on either parent's part and no risk to the children, that it will be presumed that the children will have equal access to both parents. The parties would be sent out with their respective attorneys or mediators to then draw up a parenting plan, and if neither parent can agree, then the Court's first option would be to split things right down the middle. But the concept behind shared parenting would allow the parties to go out and come back with a parenting plan that comports with their own circumstances and their own schedules, and then would hold the Court's feet to the fire without the use of mediators and law guardians and attorneys and forensic psychologists to recognize that there is a close bond between children and both of their parents and that the children will have an opportunity to maintain equal access between

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both of those parents. In some states where the parents cannot agree or when one parent comes in with a totally unreasonable suggestion as far as the parenting plan, the State of Texas, for example, once the Court has made its determination and has waived the parenting plans, can make sure that at least up to as much as 40 percent of the child's time will be spent with one of the parents, usually the non-custodial parent.

There has been a misconception or a misrepresentation of shared custody that it would tie the hands of the Court and would compel it under any circumstances to order that the children stay -- maintain equal time with both parents. Again, this is a disingenuous misrepresentation on the part of people who claim to advocate for children but who are really advocating for themselves.

HONORABLE SONDRA MILLER: In other words, you're saying if a parent is unfit or if there is violence or any risk to the child, you wouldn't advocate shared parenting.

MR. RANDY DICKINSON: Well, the Court would have the discretion to make that decision. The argument is consistently made that the Court should

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maintain discretion to make these decisions, and with a presumption of shared parenting on the books at the statutory level, it would not remove the Court's discretion to make those decisions. If indeed there is domestic -- and not only that, but this again is a disingenuous argument considering that there are already laws on the books in the State of New York that prevent in cases of domestic violence or child abuse that specifically preclude the accused or the convicted parent of having custody or even in sum cases visitation time with the child. I mean this is a specious argument that we can't have shared parenting because we're, you know, ringing our hands and our stomachs are all in such a knot over domestic violence, and we seem to be seeing the whole world through the filter of domestic violence and child support. This is wrong. This is obscene. Thousands and thousands and thousands of non-custodial parents in the State of New York, 93 percent of them fathers, are being separated from their children everyday, everyday. I live 411 yards from my daughter, and I'm allowed to see her. I'm allowed by your Courts to see her only a few hours midweek and every other weekend. This is obscene and it's stupid.

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I would respectfully request that I be allowed to complete my testimony.

HONORABLE SONDRA MILLER: Yes, I will give you one minute, Mr. Dickinson.

MR. RANDY DICKINSON: After almost -- well, I've read that part.

The elimination of any need to establish grounds for divorce -- well, I'll tell you what. I'll skip that because I'm going to be submitting this anyway.

Let me make some comments about shared parenting. Notably and regrettably, joint physical custody or shared parenting, as it has come to be known, and/or alternating custody arrangements, such as those being considered and tried by the judiciary in other states, Tennessee comes to mind, one of those backward southern states, is conspicuously missing from the menu of issues up for consideration by this Commission. Ignoring the overwhelming body of research on this subject and the conclusive evidence of the overall positive effect of such arrangements on children, the Courts of the State of New York and New York State Legislature continue to resist any reasoned and/or substantive consideration of these concepts of

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having merit. Shame on you. Shame on you. You'll simply have to forgive us if we remain unconvinced that questions relating to custody and visitation and trauma to the parties is really a high priority to this Commission.

The mantra most often heard recited whenever the issue of shared parenting comes up for discussion is that it is an unworkable arrangement whenever there is conflict between the parents. This argument seems to imply that the current sole custody model somehow avoids this fatal flaw. Curiously, no one seems inclined to want to discuss the question of what qualifies as conflict, how much conflict may be necessary in order to justify separating a child or children from one of its parents, usually their father, or perhaps most importantly, what may be the single greatest causal factor contributing so such conflict. It ought hardly come as an epiphany to anyone that imposing a divorce on someone against his or her will and without their control, taking their children away from them, giving complete and total control over them to another party, and then putting at that party's disposal all the processes and resources necessary to completely destroy the other

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party might be a fairly good place to begin looking for a likely candidate.

Shared parenting or alternating custody are two of only a very limited range of options that hold any reasonable promise of eliminating children as bargaining chips and that would level the playing field for all parties to a separation and/or divorce. Without it, such touchy-feely concepts as alternative dispute resolution, mediation and/or collaborative divorce are doomed to failure from the outset. What would compel anyone who already holds the advantage to put any of it at risk by negotiating with another party, who may have little or nothing to offer, when they have more to gain by simply holding out and letting the Courts settle the matter for them and mostly in their favor?

One thing is certain. It is virtually guaranteed that no attempt to resolve the issues laid out here for consideration by this Commission will ever produce satisfactory results so long as it is the very same judges, attorneys and self-styled legal experts, social services and mental health professionals and those who advocate for more confiscatory and punitive child support standards and

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ever increasingly more Draconian domestic violence and child abuse legislation, who are themselves largely responsible for the dysfunction that now characterizes the entire body of Family and Matrimonial Law and the New York State Court System, continue to presume that they and they alone are the only ones qualified now to fix it.

HONORABLE SONDRA MILLER: Mr. Dickinson, thank you so much. I assure you we will read your paper.

MR. RANDY DICKINSON: I hope so.

(Applause.)

HONORABLE SONDRA MILLER: Thank you.

We're going to have a recess at this point and back here at 11:30. Thank you.

(Whereupon a recess was taken.)

(Whereupon the proceedings resumed following the recess.)

HONORABLE SONDRA MILLER: We are ready to resume. Is Mr. Murnane here?

(There was no response.)

HONORABLE SONDRA MILLER: He has not come. Okay. Karen Connelly.

MS. KAREN CONNELLY: Hello. I'm Karen

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Connelly. When I read about this hearing in the Albany Times Union, I felt absolutely compelled to come and appear before this Commission.

I can't state emphatically enough that no-fault divorce must be enacted in the State of New York, contrary to the person who appeared before me. We have very different opinions.

I hope that as a result of what you hear today and the work that you do, no woman ever has to endure what I did in ending my marriage.

I can't help but feel a little alarmed when I see the phrase collaborative divorce because collaboration requires cooperation from everyone involved, and I know from traumatic experience that if one party chooses not to cooperate, there is no divorce except on grounds, and proving fault isn't in the hands of the person seeking to be free of a miserable marriage but rather in the hands of her attorneys, the judge and the courts in general.

Giving one's life over to others and hoping that the outcome will not continue to bind you to a manipulative, controlling and emotionally abusive partner wreaks emotional havoc. In my case, I have found the trauma continues even though my marriage has

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been dissolved for more than three years now. Night after night, I dream that he is in my house, and I can't get him to leave, or that I'm trying to run away, but he keeps finding me.

As you all are well aware, filing a legal separation and then obtaining a divorce a year later, if all the conditions have been met, requires that the parties come to an agreement on all terms. This system is a setup for bullying and financial and emotional blackmail by an unreasonable spouse who wants to prevent his partner from obtaining a divorce. Note that this doesn't necessarily mean that both parties wish to remain married. It simply means that the one who least wants to be married is held hostage to the demands of the other.

How can a fair and equitable agreement be drawn up if the husband, who is healthy and perfectly capable of working, demands half of the wife's salary for spousal maintenance so he doesn't have to go out and get a job? And despite receiving advice to the contrary by one of the best attorneys in Central New York, stubbornly refuses to back down? When he thinks that offering to take only half of the take-home pay is good faith negotiation and a reasonable offer? No

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agreement, no divorce. He was in my house, and I couldn't make him leave.

Even if that ridiculous term could have been met, how does one manage to end her marriage when her husband also demands visitation with her sister's children? When he demands that a judgment he obtained against a third party be satisfied before a divorce can be entered into? When he demands payment of half the $40,000 in credit card debt he accumulated after the separation, I guess they call it married living apart, by stubbornly refusing to work for a living? When he demands the return of a pet that he had repeatedly threatened to harm? When even though he is living with another woman, he still refuses to negotiate? When even mediation doesn't work because the mediator finds it impossible to work with him and throws us out of mediation?

I'm sure this all sounds like a far-fetched, surreal, ridiculous could never happen fantasy, but I'm here to tell you that it is not. I was running for my life, and he kept finding me.

It seems incredulous to me that two people with no children, no assets and no property could be legally bound to each other indefinitely

simply because one of them is uncooperative to the point of being ludicrous. How does someone who is drawing a salary of less than $30,000 a year manage to pay half of that in alimony while also paying off $20,000 of her husband's independently acquired credit card debt and satisfy the various other financial requirements he set before her as roadblocks to independence? If she had the money, trust me, she would gladly turn it over to him, just to be free. But what happens when she doesn't have it? How does one obtain a divorce when she just can't do what her husband is demanding? I wanted him out of my house, but I just couldn't make him leave.

That is why no-fault divorce is critically necessary in our state. The most beautiful words I have ever heard were this is a no-fault state, and if Karen wants a divorce, there is nothing you can do to prevent her. I was running for my life, and finally, he wasn't going to be able to catch up with me. I can't express the relief, the absolutely overwhelming relief of finally being able to breathe again.

I was one of the lucky ones. I had the education, the job experience and the family ties to

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begin life again in another state and then file for divorce under their provision of living separately and apart, and I didn't have children to leave behind while I escaped my husband's noose.

During my life in Vermont, I found an active underground of former New Yorkers who were doing what they couldn't do in New York. Obtaining a no-fault divorce free of manipulation, harassment, threats and intimidation.

I would gladly help any woman seeking to go that route if my guidance and knowledge of Vermont's laws would help her escape a miserable existence with a controlling husband. But I would rather it not have to be that way. I would rather that people who live here in New York State be able to work within New York's system and not have to disrupt their jobs, friendships and families by moving out of state. I would rather women and men be able to divorce their unreasonable and uncooperative partners here in a legal and rational process, a process in which bullying and financial and emotional blackmail don't play a role. I would rather that if mediation, negotiation and collaborative efforts fail, due to one person's desperate attempt to maintain control over

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another, that the divorce can still move forward, and the spouse seeking to escape such a person is not deprived of her right to live free.

I implore you with every fiber of my being to change our matrimonial laws. Please make them more compassionate and end the nightmares. Please enact no-fault divorce in New York State. Thank you.

HONORABLE SONDRA MILLER: Thank you very much. Our next speaker is Ellen Anadio.

MS. ELLEN ANADIO: Hello. I'm very nervous as everyone is.

I co-founded the National Committee of Grandparents for Children's Rights. We have been to Washington D.C. and we lobbied for a bill that got passed by the Governor here in New York State, that was the caretaker bill that was passed, law, but we find that it is not really abided by most times. And there are more than 77 million Americans who are grandparents now, and they need to start, the Courts need to start listening to the grandparents because they're the kinder, gentler generation. And when we talk to CPS, law guardians, they totally disregard what we have to say, which is a sad thing, because

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we're watching these children be destroyed. Grandparents provide now over 50 percent of America's child care and more than 80 percent of them are baby boomers.

I'm not going to speak too long, but I want to tell you that I came from a divorced family. My parents were divorced, and my father could only afford to pay $25 a week to my mother for three children, but she managed to survive, and he was there for us, and they worked together, and I think that the Court System has made this an awful battleground, and our children are suffering terrible. They're angry. They're mad. They don't understand why they can't see the people that they love. You really need to reconsider and the system needs to reconsider the people that they listen to. Grandparents have nothing to gain. They love those kids, and they're watching them destroyed. And that's all I have to say. Thank you very much.

(Applause)

HONORABLE SONDRA MILLER: Thank you.

Gerard Wallace. Gerard Wallace not here?

(There was no response.)

HONORABLE SONDRA MILLER: Dr. Richard

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Hamill.

DR. RICHARD HAMILL: Good morning. Thank you for the opportunity to appear here before this Commission.

I would like to thank you for your efforts, the efforts of Judge Kaye and this Commission to examine the role of expert witness testimony in custody and visitation proceedings.

During the next 15 minutes or so, I plan to make some general comments about the use of evaluations by mental health professions. Next, I plan to speak more specifically about a model I find helpful for understanding the different types of testimony offered by my colleagues and the ethical implications of this testimony at each level. And finally, I would like to share some information about the two types of evaluations I'm often asked to perform. I hope you feel free to make inquiries at your convenience at any time.

By way of introducing myself, let me mention my three most relevant professional endeavors. At my private practice group, Forensic Mental Health Associates, here in Albany, my colleagues and I provide evaluations and treatment to approximately 160

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individuals and families regarding sexual abuse and sexual offending. Operating now for more than 20 years, our sex offender treatment program is the largest in Upstate New York.

Second. In my 22 years as consultant to St. Anne Institute, a child care agency here in Albany, I have performed many evaluations of families often interviewing children about allegations of abuse. As you might imagine, many of these allegations of abuse have arisen in the context of dissolution of a marriage or proceedings concerning custody or access.

Finally, I would like to share my pride that I am a founding member and now the Vice President of the Board of Directors of one of New York's finest child advocacy centers, the START Children's Center, which serves the families of Rensselaer County. In short, I am hoping to convey to the Commission that my experience includes clinical work with troubled parents. I do forensic work, forensic evaluations of children and maintain a systemswide perspective on the needs of families which are struggling with custody and access issues.

So in my spare time, I do a lot of home

improvements. I recently had a tree come down in my yard, and I had a few choices. First, I could have hired someone to come in and cut down and remove the rest of the tree. I decided it was my responsibility, I wanted to deal with it, so I went to the local home improvement store and knew that unless I had a new power tool, I was going to spend a lot of time in the backyard cutting up that tree with an ax. Well, I'm not very well versed in this matters, but I was looking at chainsaws, and here's what I learned.

First. You need to pick a tool that has a good safety rating.

Second. Use the tool appropriately for what it was designed.

Third. I needed to do what I could to maximize the safety of my use of the tool, that is, use eye protection and such.

Now, I'm not here to talk about home improvements. I'm passing on the wisdom concerning the tool selection process in the hope that it might help this Commission.

In my opinion, the evaluations and expert witness testimony are tools which many judges choose to use because they make their tasks be accomplished

more quickly and effectively. Of course, judges could choose not to use this tool. I chose to buy the power saw because it made my work go more quickly.

With respect to the use of evaluations and expert witness testimony in custody and visitation proceedings, my impression is that it bolsters the informational base available to judges and sometimes provides insights helpful to the Court.

I had a chance to take an informal poll of judges during a few training workshops and found that only about half had taken any psychology course above the introductory course level. Of course, one cannot know a lot about all things. I can easily understand why many judges decide to use this tool and turn to mental health professionals to assist them.

In that the Court often uses evaluations as a useful tool, let's consider the three guidelines I mentioned above.

First. Select a tool with the best safety rating. The American Psychological Association and some other professional groups have developed guidelines for these evaluations. In this, let the buyer beware marketplace, it is helpful for the Court to be familiar with these guidelines in order to

determine which evaluators and evaluations are based on these guidelines and which are not.

Second. Use the tool appropriately for what it was designed. That is, know what it cannot do. It is imperative for the Court to know what issues can be addressed reliably and validly in these evaluations. That is, the Court must be able to identify cases in which an evaluator has offered opinions which extend too far from the research into the realm of personal opinion. In a few minutes, I will describe a conceptual model which I use to understand the different types of information typically found in the reports that I read. Unfortunately, some evaluators offer the Court inferences which go beyond those which can be made validly based on the current state of research on custody and visitation matters. In my opinion, mental health evaluations are a valuable tool if used only to the extent that they can be used reliably and validly.

Third. Develop practices to ensure safe use of this tool. That is, the Matrimonial Commission might wish to develop guidelines about the matters which these evaluations can address. In my evaluations of children who allege that they have been

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abused, I am allowed to provide the Court with a statement about the degree to which a child's account is similar to the accounts given by other children who are known to have been abused. I am not allowed to address the ultimate issue. I am not allowed to offer the Court an opinion about whether this particular child has been abused. That remains solely in the purview of the Court.

In short, I am suggesting to the Matrimonial Commission my opinion that evaluations by mental health professionals are a tool which can help the Court if used wisely and judiciously. Specifically, use safe products, those evaluations conducted according to accepted practice standards and guidelines.

Second. Use them appropriately to address only those issues which can be addressed legitimately based on the current research. Know what they cannot and should not address. Be wise consumers.

Third. Develop internal practices to ensure that the evaluations are used in support of the Court retaining control of the ultimate issue. The Court must remain in control of the tools it chooses

to use. In my opinion, when this tool is used appropriately, it can enhance significantly the ability of the Court to be responsive to the needs of the children and parents.

So let me take a moment or two and mention this four level model for understanding the information offered in psychological evaluations. I'm drawing much of my material, with the author's permission, from the writings of Albany Attorney, Tim Tippins, and my professional colleague, Dr. Jeff Wittmann.

The conceptual model discussed in their presentations and written work is fairly simple, but it's useful for evaluating the information presented in these evaluations. The model describes four levels of inferences which clinicians sometimes present to the Court.

The first level is the most concrete. These are the straightforward observations by the clinicians. Evaluators describe the appearance and behavior of the clients and report what they said in response to different questions. Essentially, these are behavioral observations with minimal inferences or interpretation. In the opinion of this writer, the

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courts benefit from this information. Psychologists are taught how to make observations and describe behavior. This is the most safe information in that it is the least subjective.

At the second level, the clinician begins to interpret and combine the observations made at Level 1. That is, data from behavioral observations, test results, record review, information from collateral sources. The evaluator then makes general clinical inferences. These are opinions which the evaluator offers regarding general psychological issues presented by children, parents and families. The informational base upon which these opinions are drawn is the broad body of literature about individual and family function. These may include our current concepts of mental disorders, substance abuse, intellectual functioning, child development, attachment and interpersonal relations, criminality, and many other well researched general issues relating to psychological function. Similarly, for many of the tests used by psychologists, there is a strong consensus about the degree to which the information can be reliably and validly inferred from the test results. Psychologists can look at scores from I.Q.

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tests or measures such as the Minnesota Multiphasic Personality Inventory and offer the Court opinions which are well supported by the body of research literature.

So with respect to these Level 2 inferences, clinicians are still on firm ground and have much to offer. The only caveat with respect to Level 2 inferences regards their applicability to custody and visitation matters. This information must be used in a safe manner. Again, use the tool only for what it was designed. Clinicians and non-clinicians must be careful not to make unsupported references from these data. We may know that dad has very limited empathy skills but must me careful about what inferences we make regarding the impact of this characteristic on the ability of that dad to be a parent. The clinical research on this specific matter is so scarce and inconclusive that it does not permit one to make any strong inferences based on this observation alone. Some researchers have noted that one of the most significant gaps in our knowledge base is related to the base rates and normal distributions of various child, parent and child/parent relationship issues. For example, we do not know how capacity for

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empathy as a skill, how it is distributed in the population, nor the degree to which a certain level of impairment is likely to impact the parent/child relationship. So in summary, evaluators can provide the Court with valuable information about parent, child and family functioning. The information must be used wisely.

According to Tippins and Wittmann, the Level 3 inferences are those in which the evaluator conveys conclusions about what might be in the child's psychological best interests. Note that the American Psychological Association, in its guidelines for custody evaluations, suggests that evaluators use the concept of the fit between a child's psychological functioning and developmental needs, and the parent's functional ability to meet these needs. So here, the evaluator is asked to take the Level 2 data regarding the psychological characteristics and combine these data to make inferences about that fit between parent and child.

In my opinion, it is at Level 3 where the inferences that clinicians make start to be kind of on thin ice. The research literature often does not exist or is not adequate, which therefore limits the

degree to which one can offer an opinion to a reasonable degree of professional certainty. However, evaluators still may have important information to offer.

I would like to quote the aforementioned Tippins and Wittmann article, in that their suggestion mirrors my own opinion. They write, we believe that helpfulness to the finder of fact, as a guiding principle, suggests that child-focused, yet constricted, statements about potential risks and advantages, as long as they are grounded in case-specific facts and reliable empirical literature, represent a forensic work product that is ethical, useful to the Court, and potentially valuable to both the child in question and society at large.

I have in my written testimony a case example here that I'm not going to get into but I refer you for further reading if you would like an example of how this Level 3 data is oftentimes very helpful to court proceedings.

Moving on. Regarding data at Level 4, clinicians communicate a preference for certain plans regarding access and/or visitation. It is at this point that evaluators are basing their suggestions on

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personal opinions and values, in that there is no clear scientific strategy for combining the factors addressed in Levels 1, 2 and 3 into plans for custody and visitation. Now, over time, this may change. There is a growing body of research on the correlates between various custody plans, sole custody versus joint custody, for example, and the manner in which this affects adjustment in children. However, at this point in time, in my opinion, the scientific research does not allow one to offer these opinions to a reasonable degree of professional certainty. Unfortunately, many clinicians are not open about the degree to which their specific recommendations about custody and visitation arrangements are not based on scientific evidence, but rather, on personal belief and opinion. It can certainly be argued that these practitioners may be crossing an ethical guideline. On the other hand, Quinnell in his research in 2001 reported that 94 percent of evaluators make such specific recommendations. So if one were to use the Frye standard, this certainly passes muster as a commonly held practice, yet I suspect if this were subjected to a Daubert hearing, in my opinion, the clinicians would be hard pressed to show the empirical

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evidence that the research literature allows for specific visitation and custody strategies to be put forth to a reasonable degree of professional certainty.

So returning to the general comments about use of a tool, this writer suggests that the Court must set up guidelines regarding the use of psychological evaluations in custody and visitation proceedings. Just as I cannot offer the Court my opinion about whether a child has been abused, the Court may wish to restrict the ability of mental health practitioners to address the ultimate issue in custody and visitation proceedings.

Now, just to muddy the waters a bit, let me affirm that when I talk with evaluators like Dr. Beth Schockmel, I'm often impressed with the degree of insight they bring to bear when suggesting to me what might be an ideal visitation and custody arrangement. It is not always the case that people's opinions are incorrect just because there exists no scientific research to support them. In this field, it's very difficult to conduct the type of research which would be necessary to clarify these critical issues. We do not do a random assignment of children to various

custodial or visitation arrangements in order to see the effects on their psychological well-being. Just to conduct such research studies would be grossly insensitive to the well-being of these children and their families to the point of being unethical. Thus, the Court must answer the question of whether it would find suggestions about visitation and custody arrangements helpful, even if such testimony is not capable of rising to the level of being held to a reasonable degree of psychological certainty. I think any movement to include testimony at this level must be initiated by the Court, and that it is incumbent upon the mental health professional to provide clear statements about the degree to which any suggestions are based on personal experience and values, rather than on a body of scientific literature.

So before closing, I would like to take a few moments to inform the Commission about some new developments in the field of forensic evaluation.

First. It is noteworthy that New York State has developed and now implemented a strategy for interviewing children about allegations of abuse. The New York State Children's Justice Task Force, which is the multi-disciplinary group that annually allocates

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funding from the Federal Children's Justice Assistance Act, created a committee a few years ago to evaluate the variety of strategies used to interview children about abuse, and charged that group with developing an optimal strategy. The work product resulting from this almost three year long endeavor is a publication entitled Forensic Best Interviewing Practices. This has been reviewed and released with the approval of the Governor's office, as well as agencies such as the Office of Children and Family Services and the New York State Police.

Training programs are now occurring around the State toward the goal of assisting Social Services and law enforcement investigators in learning this new interviewing strategy. Based heavily on the Step-wise Interviewing Protocol of Dr. John Yuille, and published with his support, the Forensic Interviewing Best Practices model promises to provide the Court with higher equality, empirically based forensic interviews of children who allege that they have been abused.

A second powerful development is a similar endeavor on a national level which has clarified best practices in the evaluation and

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treatment of sex offenders. The largest national professional organization in this field, the Association for the Treatment of Sexual Abusers, has published the Practice Standards and Guidelines for Members of the Association for the Treatment of Sexual Abusers. This publication reflects the consensus of nationally and internationally renowned experts regarding the necessary components of sex offender evaluation and treatment. This model calls for the use of viewing time measures or plethysmography to obtain insights about an offender's sexual preferences, information not based on self-report. The Practice Standards and Guidelines also call for use of polygraph examinations in evaluations and treatment. In fact, a number of states, such as Texas, Washington, Oregon, Colorado and Wisconsin all require convicted or adjudicated sex offenders to submit to specialized polygraph evaluations. Without gathering data which could be used to initiate new prosecutions, that is, without requiring self-incrimination, these examinations provide treatment professionals with a much more complete nature of the sex offenses which have been committed by an offender. It is much more the norm than the

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exception that sex offenders have committed more than one type of sex offense, and more offenses than reflected in their legal histories. This information is exceptionally helpful to treatment providers who work to reduce all types of recidivism. Although this information is more germane to criminal court cases, certainly the appropriate application of this protocol can shed light in some custodial and visitation proceedings in which allegations of abuse are an important element.

In closing, let me applaud the efforts of this Commission. I believe strongly that mental health professionals can play a helpful role in custody and visitation cases. As consumers of this service, the Courts must define what constitutes an appropriate role for the mental health evaluations and set guidelines to ensure that well-meaning and/or arrogant practitioners do not overstep the request of the Court or the limits of sound practice. Both legal and scientific practices are dynamic, continually evolving. This suggests that we need to consider perhaps developing a process or mechanism by which we can revisit these issues periodically, as our respective fields give us greater understanding about

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custody, visitation and other matrimonial issues.

It is my expectation and belief that the mental health community will continue to work in an open, flexible and creative manner to assist the Courts in helping the families of New York State.

Thank you.

HONORABLE SONDRA MILLER: Thank you very much, Dr. Hamill.

Is Mr. Wallace here?

(There was no response.)

HONORABLE SONDRA MILLER: Mr. Nelson?

(There was no response.)

HONORABLE SONDRA MILLER: Mr. Kevin Mech.

MR. KEVIN MECH: Good afternoon. My name is Kevin Mech. I'm here on behalf of myself and my son Brendan who just happens to be 22 months old yesterday.

Since my son was born, I would say four months old, I've been involved in the Family Court System because I'm dealing with a very uncooperative and very demanding woman who's his mother. My son is here because we decided we wanted to start a family after a long-time relationship. She tried to take control of the relationship with the threat of my son

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in Family Court System, and that's why I'm here today, because it's so tough and so difficult to deal with the issues.

I found dealing with the Court System, as much as they tried to make every attempt to have the two of us settle our differences, I find that fails because all it takes is uncooperation from one side, and there's nothing in place that brings equality back to both mom and dad. Right now, my son lives with his mother, and the maternal grandparents have taken over the responsibilities that I should have with my son, and I'm willing and able to take care of my son and fulfill those responsibilities myself.

The threat of child support and the reality of child support makes it very difficult to continue fighting to stay my son's parent. I'm willing to support my son financially. It's something I did even before the Court's order of child support. The problems didn't come until the system got involved. Because of a clerical error and her demand to put me in Support Collections, I found myself in not only arrears, I can't think of the word right now, to the point where the laws with child support went into effect and got more aggressive against me. My

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wages were being garnished. At the time, the way the Court order read, again, because of a clerical error, the money wasn't getting to Support Collections the way it was supposed to, and all of a sudden, a second garnishment against my wages were applied to my paycheck. Then there was a seizure of my checking account and my savings account. So until the arrears were satisfied and mistakes were cleared up, I found myself having to do everything I could to work extra to make the money I needed to survive and support myself, and also at the time, to have to choose between seeing my son for visitations or working. So I really don't think child support, the system the way it is, is really in the best interest of my son when I could do it without the interference of the system. Until there's a need to put me into the system, I ask that there be some kind of decision made that leave it up to the parents to satisfy it themselves when it comes to support collections.

I also find that a lot of my difficulties are because of false accusations against me to the Family Courts which put the judge in a position where take the better safe than sorry approach to handling our case. Again, since my son was four months old,

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everything is settled in the courts. Not one decision has been made mutually between me and my ex. Since the beginning, I have been asking my ex to please give me equality, let my son know he has a father that really wants to be part of his life, but she refuses. Upon many requests through the courts and through attorneys and through mediation, everything was denied by my son's mother. Understand that in the current Family Court System, custody going to the father is unheard of if there is no reason to take custody away from the mother, which further puts me behind the eightball.

I'm sorry I didn't have enough time to prepare everything here. It's just a short time that I found out about this meeting.

I really and truly am up here today just to please ask you to all make a decision that will favor shared parenting. Shared parenting would not only make life easier for non-custodial parents like myself, mostly fathers, it would actually put balance back in the system that will force two people who mutually decided to start a family to work together on their differences whether they stay together or not.

HONORABLE SONDRA MILLER: How much time

do you have with your child?

MR. KEVIN MECH: I'm happy to say this will be the first weekend I'll have a full weekend with my son. Again, because of false accusations from my son's mother, the judge put us at a graduated schedule, which right now, I have four overnights with my son in a 14-day period. Okay. I don't think that's enough for me to be an efficient father or an effective father.

HONORABLE SONDRA MILLER: The false accusations have been resolved? The Court is satisfied that they were not true?

MR. KEVIN MECH: They have been dropped, never addressed by the courts. Just mutually, they just have been dropped because there is no penalty for her making accusations to the Court. That's basically all I have to say. Thank you.

HONORABLE SONDRA MILLER: Thank you.

(Applause.)

HONORABLE SONDRA MILLER: We're missing a couple of people who were supposed to be here. I'm going to call their names again.

Mr. Wallace?

(There was no response.)

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HONORABLE SONDRA MILLER: Mr. Murnane?

(There was no response.)

HONORABLE SONDRA MILLER: Christopher Nelson?

(There was no response.)

HONORABLE SONDRA MILLER: We're going to adjourn. Is there anybody here who is scheduled to speak? Okay. Then we'll adjourn until 2:00. Thank you.

(Whereupon a luncheon recess was taken.)

C E R T I F I C A T I O N

I, Mary Ann L. Roemer, a Certified Shorthand Reporter and Official Supreme Court Reporter in the Fourth Judicial District, do hereby certify that I stenographically recorded the proceedings at the time and place herein in the above-entitled matter, and the foregoing is a true and accurate computer-aided transcript, to the best of my knowledge and belief.

_____

Mary Ann L. Roemer, CSR

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