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3 In the Matter of :
4 THE TASK FORCE ON MATRIMONIAL LAW :
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6 PUBLIC HEARING

6 February 17, 2005
7 Pace University School of Law
8 Judicial Institute
9 78 North Broadway
10 White Plains, New York 10603

9 C O M M I T T E E M E M B E R S:
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13 HON. TANDRA DAWSON
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P R E S E N T E R S:

- SYLVIA GOLDSCHMIDT
- VALERIE SALWEN
- SUSAN POLLET
- LAWRENCE BRAUNSTEIN
- MARK KLEIMAN
- DAVID MORGAN
- KATHLEEN MCKAY
- PETER BODNAR
- KAREN CHEEKS-LOMAX
- ROBIN YEAMANS
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- NEIL S. GROSSMAN
- CHRISTOPHER NELSON
- ALLAN SIMMONS
- MARY WITHINGTON
- ROBIN CARTON
- JAMES HAYS
- JOHN H. RUBIN
- KATHLEEN DONELLI
- MARGARET MOSCHETTO
- DANIEL ROMAND
- PETER BRETT LINN

Cosimo J. Bueti,
Certified Court Reporter

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2 HON. SONDR A MILLER: Good morning,
3 everyone. Will you please take a seat,
4 because we are going to commence our meeting.

5 We know it is cold outside, but we have a
6 feeling that after we get involved in the
7 interesting and important issues we are going
8 to be concerned with today we will all be
9 warmed up.

10 I want to welcome you to this third of
11 our Matrimonial Commission Hearing. This is
12 the third public hearing that we have had.
13 The purpose of these public hearings is really
14 an outreach so that we can hear from former
15 litigants, we can hear from professionals and
16 we can learn, we on this commission can learn,
17 your concerns and your recommendations in
18 regards to making our system work better. As
19 you know, the mandate of this Matrimonial
20 Commission is to review, to evaluate and to
21 consider the way the system works and to make
22 it work better. That means to consider full
23 aspects of matrimonial practice. Everything
24 that has to do with custody, visitation,
25 divorce, modifications, enforcement, all the

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2 issues that have to do with matrimonial
3 litigation and law.

4 We have been directed by our wonderful
5 Chief Judge to take a global approach, to look
6 outside the box, to look at all of our
7 systems, the administration of the courts, the
8 personnel working in the courts, the systems
9 that are used in order to adjudicate issues
10 between families and children, to look at all
11 of this and to do whatever can be done,
12 reasonably done, to eliminate some of the
13 excessive time that we hear about, the
14 excessive expense that we hear about, and most
15 important the unfortunate traumas suffered by
16 families and children who go through a process
17 that sometimes too often does not seem to meet
18 their needs appropriately. So we are looking
19 at other states, we are looking at other
20 jurisdictions and we are learning as much as
21 we possibly can so that we can devote
22 ourselves to coming forward with a series of
23 recommendations to the Chief that she assures
24 us she will use her very best effort to
25 effectuate. And those of you who are aware of

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2 what Judge Kaye has done in the past knows
3 that when she says something like that she
4 means it, she will do whatever she can,
5 whatever we reasonable suggests to improve the
6 system.

7 So we know how important this work is,
8 and we expect to make these recommendations
9 within a reasonable period of time.

10 Fortunately, we don't have an absolute
11 deadline but we know that the problems are
12 urgent and our commission, I must tell you and
13 I'm the Chair of this Commission, these
14 Commissioners who are sitting here today have
15 devoted an enormous amount of time and energy
16 and effort from their very busy schedules to
17 devote themselves to these issues.

18 Now, to today's proceedings. To those
19 of you who have been assigned a time to speak
20 please be sure that you have all signed in at
21 the desk outside. As a courtesy to other
22 individuals scheduled to speak today please
23 remember that your remarks are limited to ten
24 minutes, and Wendy dear who is sitting to my
25 right is my timekeeper and she will kick me if

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2 I exceed the limit, so please spare me.
3 Anyone who has written material to submit to
4 the Commission's consideration should leave at
5 least two copies with the Commission's staff
6 at the desk outside. No material will be
7 handed up to the Commission during the course
8 of this hearing. Note that the Commission
9 Members may at times or I may on their behalf
10 interrupt you to ask the question or seek
11 clarification of a point. We will try to keep
12 this to a minimum as we are most interested in
13 hearing from you about your experiences and
14 your recommendations for improving the system.

15 Notices of future hearings and
16 registration forms are available at the desk
17 outside. Due to the overwhelming response
18 that we've had of today's hearing, the
19 Commission expects to hold another hearing in
20 the City of New York on May 9th at the
21 New York County Lawyer's that is on Vessey
22 Street. Anyone who requested to speak today
23 but was not scheduled will be considered as
24 having registered for that second hearing and
25 will be notified of the date. As stated on

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2 the notice that you have received of these
3 public hearings, the Commission cannot take
4 testimony from any individuals who has a case
5 currently pending in the New York State
6 courts. This is necessary to protect the
7 integrity of those pending cases and the work
8 of this Commission. However, such individuals
9 are welcome to submit their comments and their
10 suggestions in writing to the Commission at
11 any time. Any identifying details contained
12 will be redacted by Commission staff but the
13 substance of the Commission will remain
14 intact. We are most anxious to hear from as
15 many of you as possible.

16 Now we will start our proceedings. Our
17 first presenter is Sylvia Goldschmidt.

18 (Whereupon, Ms. Sylvia Goldschmidt steps
19 up to the dias to present her testimony.)

20 MS. SYLVIA GOLDSCHMIDT:

21 Good morning Justice Miller and
22 Honorable Members of the Commission:

23 I am Sylvia Goldschmidt, known possibly
24 to many of you on the panel. I have practiced
25 matrimonial law exclusively for more than

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2 twenty years, and additional information
3 regarding my background and experience in the
4 field can be found in the materials that I
5 have submitted and prepared for the
6 Commission. In order to better serve
7 litigants, the bar and the bench involved in
8 the practice of matrimonial and family law, I
9 submit that we need to implement measures and
10 procedures that have already been set forth
11 but are not always regularly enforced, as well
12 as consider revisions to our procedures and
13 look at measures that have been enacted by
14 other states. To me and my practice I have
15 found that one of the most important times
16 during a matrimonial proceeding is the
17 preliminary conference; and while we do have
18 court rules under 22 NCRR 202.16S setting
19 forth specific documentation to be exchanged
20 prior to conference, it is also been my
21 experience that this rule when enacted was
22 more often effectuated than it has been in
23 more recent years. As a result of which, in
24 too many instances there is not this financial
25 disclosure prior to the conference or even at

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2 the time of the conference. If that
3 preliminary conference is to yield any
4 positive results and to actually make an
5 impact in how the proceedings will move
6 forward, I submit that there must be
7 enforcement of the court rules as they now
8 exist and the discovery should be had at the
9 initial stage.

10 Moreover, there needs to be immediate
11 and judicial involvement in the first
12 instance. The court needs to be able to
13 clearly identify what issues there are, and
14 for them to have contact with the litigants so
15 that the litigants believe that there is a
16 connection with the court and the system and
17 that somebody cares.

18 I believe also that if sometimes greater
19 judicial intervention at the preliminary
20 stages allows for issues to be nipped in the
21 butt before they become too explosive or
22 situations arise which could have readily been
23 dealt with in the first instance. For example,
24 a statement of net worth, which is to be
25 exchanged according to the rules, in the hands

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2 of the person with knowledge of its contents
3 can be a most valuable tool and can be used at
4 the preliminary conference stage to identify
5 issues. However, again, it needs to be
6 reviewed by the court, the court needs to have
7 knowledge of the contents and the purpose of
8 that document. One can glean whether there
9 are true issues of custody, whether there is a
10 business to be evaluated, what assets there
11 are, and whether or not it is a complex case
12 which may require more time. The courts must
13 enforce timely exchanges of statements of net
14 worth and used thereof at the preliminary
15 conference. Undoubtedly, there will be
16 circumstances where the financial records that
17 are called for in the court rules, as the net
18 worth statement, cannot be exchanged for
19 various reasons beyond the control of the
20 litigants but that should be the exception not
21 the rule.

22 At the preliminary conference there is
23 another perfect opportunity for the court to
24 make serious inquiry if a custody issue really
25 exists, or whether it is really a matter of

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2 access or decision making. If there is no
3 residential custody issue but one regarding
4 access participation, et cetera, the court
5 might use that preliminary conference as an
6 opportunity to present some guidance as to how
7 a resolution may be had of those issues.
8 Where there is an issue of custody or simply
9 visitation access or decision making, a
10 uniform parenting plan of order would be
11 helpful. Such a tool could be available to
12 the courts to be utilized at the preliminary
13 conference. As it now stands a preliminary
14 conference order specifies for custody to be
15 resolved or unresolved. Litigants with or
16 without counsel may have reservations about
17 checking off resolved because what does that
18 mean? There is no meaning to that. No one
19 knows what that just means. It takes an issue
20 out of the court's process without having any
21 protection for either of the party. If there
22 is a model order which could be used at the
23 preliminary conference so that the parties
24 have a much clearer understanding as to what
25 the resolved means. The American Academy of

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2 Matrimonial Lawyers on national level is
3 working on just such a parenting plan, a model
4 plan. So that is a source that may be
5 available to this State though it might not be
6 particular to the laws of this State.

7 Staggering preliminary conferences
8 time-wise would also be more helpful and
9 alleviate some of the trauma to delusions.

10 While in some such courts staggering does take
11 place, it has been my experience that all too
12 often it is not. And while the litigants are
13 sitting out there with their attorney's in the
14 waiting area, their anxieties are being
15 elevated, their costs are being elevated, and
16 they're sitting there questioning what is
17 going on. And then sometimes there is even an
18 issue between counsel and litigants because
19 the attorney maybe talking to another attorney
20 and the client is sitting there questioning
21 why am I paying my attorney for this time.

22 Discovery order at a preliminary
23 conference could be issued in an immediate
24 performa order, which we would direct that
25 basic information, particularly if the court

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2 rulings have not been complied with, be
3 produced within specific time period. An
4 order directing the production of basic
5 financial records could be issued at the
6 preliminary conference, thereby obviating the
7 needs for such document to be produced by
8 counsel. A performance direction order could
9 be issued which could be expanded beyond the
10 provisions of the court rules to include
11 documentation regarding claimed issues that
12 are identified during the preliminary
13 conferences. For example, if someone raises
14 an issue of a premarital asset or a premarital
15 bank account, we know right then and there at
16 the preliminary conference that there need be
17 discovery and documentation related to that,
18 and an order can be issued. This is not to
19 suggest or imply that counsel should not be
20 allowed to serve supplemental demand under the
21 statutory provisions of the CPLR or to express
22 objections to the proforma order, however,
23 further demands or objections should be
24 tailored to the specific fact of a particular
25 matter. Many instances the parties' financial

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2 circumstances are not so complex or
3 complicated, and an immediate discovery should
4 be issued at the time of the preliminary
5 conference. We go far to save time, cost and
6 image.

7 With respect to pretrial discovery and
8 disclosure I submit that there should be some
9 state wide uniformity. Having practiced in
10 numerous counties throughout the State and
11 even in different departments I still to this
12 date do not understand the basis for different
13 rules regarding the scope of pretrial
14 discovery depending really on geography. We
15 are one state, we have one domestic relations
16 statute, yet, the scope of pretrial discovery
17 is dependent upon geography. If by
18 legislative act this State adopts a no fault
19 divorce then this issue may become less
20 relevant or perhaps will be re-cast as an area
21 of economic discovery should fault become a
22 delineated factor in determining support
23 and/or equitable distribution.

24 In any event, there should be some
25 uniformity as to the scope of pretrial

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2 discovery throughout the State. If this State
3 is to consider itself liberal and broad
4 pretrial discovery with respect to matrimonial
5 matters, then I see no reason why there
6 shouldn't be pretrial discover with respect to
7 custody matters. I submit that there can be a
8 little doubt that a child's welfare is the
9 only most important issue in any matrimonial
10 action, and to decline litigants and counsel
11 of the opportunity to fully prepare for a
12 custody trial as they would with finances
13 simply does not make sense.

14 When I taught last year at the American
15 Academy of Matrimonial Lawyer's and Family
16 Institute other families from other states
17 could not understand that we do not have
18 pretrial discovery of experts. An expert as
19 appointed by the court should also be held to
20 provide sufficient information in their
21 report, and the court issuing the order of
22 appointment should specify the dates of the
23 evaluation, the assets to be evaluated, and
24 requirements that the basis for the evaluation
25 be clearly and fully set forth in the report.

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2 This is also extremely germane to issues to
3 any evaluation regarding psychological
4 evaluations with respect to custody. Again,
5 the litigants and the counsel need to know the
6 specific basis upon which the conclusions have
7 been reached; and all too often I find reports
8 with he said, she said, the children said, and
9 this is the end result, without any sort of
10 tie-in annexed. Again, we don't have
11 discovery in those areas and we are left with
12 inadequate reports.

13 Thank you.

14 HON. SONDRRA MILLER: Thank you very
15 much.

16 Our next presenter is Valerie Salwen.

17 (Whereupon, Ms. Valerie Salwen steps up
18 to the dias to present her testimony.)

19 MS. VALERIE SALWEN: Thank you very much
20 for the opportunity to share my thoughts and
21 ideas with you today. I come to these
22 hearings as a school psychologist and a former
23 litigant. Based upon my personal experiences
24 in the system and as a mental health
25 professional, I can unequivocally state that

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2 significant reform of the divorce process is
3 absolutely essential.

4 There is no doubt that New York's
5 current divorce system is harmful to adults
6 and children and must be modified to address
7 basic mental health needs of the families that
8 go through the process. Splitting up a family
9 is hard enough on its members. Instead of
10 helping the family through it, our current
11 divorce system amplifies the pain and
12 suffering. We can and must do much, much
13 better.

14 At present, divorce is treated as a
15 legal process with the addition of some family
16 intervention. Instead it needs to be
17 conceived of as a mental health process with
18 judicial approval at the end to formalize the
19 proceedings. Unfortunately, a central part of
20 this effort is often the appointment of a law
21 guardian, a lawyer who has woefully little if
22 any training in family systems or child
23 development. In addition, forensic
24 evaluations might be ordered, consisting of
25 standardized and other testing conducted

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2 during formal office visits with a
3 psychologist, who is otherwise a stranger to
4 the family dynamics. A rather meager basis
5 for the heavy reliance a court may put upon
6 the findings in making a custody
7 determination.

8 Parents feel traumatized to be at the
9 mercy of individuals who are essentially
10 ignorant of the reality of their family life,
11 whose often biased opinions will become the
12 legal basis for defining their future
13 relationships with their own children. Their
14 lives can and will be turned upside down
15 because of the determination of people who
16 have only a smattering of knowledge about the
17 family, and then only what they are seeing
18 during a time of extreme pain and trauma.

19 The litigants often suffer the agony of
20 appearing in court, listening to others decide
21 the fate of their children, or perhaps just
22 waiting in the courtroom while the substantive
23 discussions are made out-of-sight in chambers.
24 Instead of a process where all the
25 participants can feel heard and understood,

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2 they are, instead, often intimidated into
3 remaining silent - pressured by a highly
4 structured litigation process that does not
5 allow for a free exchange.

6 In addition to some form of mandatory
7 mediation to resolve the intensely personal
8 issues of custody and parental
9 responsibilities away from litigation
10 instigated warfare, I can suggest some
11 specific improvement to the process.

12 Joint custody should be assigned in all
13 but the most egregious cases. Custody is not
14 just a legal term but is one that also has
15 emotional weight for parents. Parents from
16 whom custody is removed feels as if they have
17 lost their child, a feeling more than painful
18 to any parent. Domains of responsibility must
19 be carved out, such as who has physical
20 custody, who has educational responsibility,
21 medical responsibility, et cetera, and in some
22 cases it may be possible for some parents to
23 share some of these areas. Phrasing this
24 arrangement by assuring both parents that they
25 will have joint custody of their child will go

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2 a long way toward reducing the psychological
3 trauma of parents who would otherwise feel
4 they might lose their relationship with their
5 child.

6 Cases involving abuse or requiring
7 police or DSS intervention must continue to
8 receive the required level of intervention.
9 Beyond this, however, all other parties with
10 children seeking divorce should be mandated to
11 participate in an educational program that
12 will help them understand their children's
13 ages, stages, needs and how to assist them
14 through the difficulty of a family
15 dissolution. Mediation should follow and can
16 be made to work in most cases if contentious
17 litigation is actively discouraged.

18 Families should be assigned a case
19 worker, preferably a social worker or
20 psychologist, well trained in all aspects of
21 the divorce process, including family systems,
22 domestic violence, et cetera, from an
23 emotional as well as a logistical standpoint.
24 This person will shepherd them through the
25 divorce process. Such a mental health

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2 professional would meet with the family over
3 an extended period of time, and preferably in
4 a location more natural to the family than an
5 office or a court building. Over the course
6 of the divorce process, such a person would be
7 in the best position to know more of the
8 intricacies of the family, to make
9 recommendations to the parents about possible
10 workable arrangements that serve the interest
11 of all parties but especially the children.

12 The role of the law guardians must be
13 drastically reduced, if used at all in the
14 proceedings. They should be used merely to
15 review the parents' ultimate agreement and
16 raise objections only if there is a
17 substantial legal issue. The opinion of the
18 law guardian as to who would be the better
19 custodial parent should play no part.

20 Divorce should be accomplished within a
21 supportive mental health framework, rather
22 than in the contentious environment of the
23 courthouse. The well-being of our children,
24 as well as their parents, depends on it. I
25 appreciate your openness to change and welcome

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2 the opportunity to support these efforts
3 further.

4 HON. SONDRRA MILLER: We have a question
5 for you.

6 You speak of presumption of joint
7 custody, essentially, that there should be a
8 presumption of joint custody in all cases
9 except the most egregious case, but you also
10 say that there should be a domain of
11 responsibility for each of the parties. Now,
12 how would you frame that kind of an order?
13 You are saying joint custody, what does that
14 really mean? Does that mean legal custody?
15 What does it mean in terms of the other
16 issues?

17 MS. VALERIE SALWEN: It means that both
18 parents continue to play active and important
19 roles in the lives of the children. The
20 umbrella, if you will, that encompasses
21 parenting these children. Within the
22 specifics that make up the day-to-day care of
23 the children, whether it is determining the
24 medical, making educational decision, handling
25 aspects.

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2 HON. SONDR A MILLER: Residence of the
3 child will be determined in that order also,
4 but it would be different zones or areas of
5 involvement.

6 MS. VALERIE SALWEN: And I think the
7 psychological impact would be very different.
8 When I worked with families in my job as a
9 school psychologist, those who have gone
10 through the highly litigious process of the
11 court system have a much more rapid and much
12 easier recovery, the children are in much less
13 pain when the parents can work together to
14 come up with a solution. Unfortunately, the
15 system as it is set up becomes contentious
16 from the very beginning, from the moment any
17 paper is served, from the moment you walk into
18 a courtroom.

19 HON. SONDR A MILLER: Thank you very
20 much.

21 MS. VALERIE SALWEN: Thank you.

22 HON. SONDR A MILLER: Susan Pollet.

23 (Whereupon, Ms. Susan Pollet steps up to
24 the dias to present her testimony.)

25 MS. SUSAN POLLET: I want to thank the

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2 Chair for allowing us the time to speak, and
3 to everybody here on the Commission, we so
4 appreciate the time. As I look around the
5 room many of my mentors and role models
6 throughout my twenty-six years of legal
7 practice are sitting here, and I appreciate
8 the fact that you are spending so much of your
9 personal time to hear what all of us have to
10 say.

11 I have been a law guardian, I have been
12 an 18-B counsel, I have been a court attorney
13 in the Family Court for seven years, and
14 taught various aspects of family law and
15 written on the subject, but I appear before
16 you today as the Executive Director of Pace
17 Women's Justice Center, which has been in
18 existence since 1991. And I want to just tell
19 you about a few of our programs and how they
20 link into our suggestions. I do have written
21 comments so I will make my oral comments
22 brief. I realize you have a lot of people
23 here waiting to speak with you.

24 One of our wonderful programs is our
25 help-line. We have over 1400 mostly women

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2 calling every year, and they get an attorney
3 on the other end of the line to give them
4 advice, and mostly it is on matrimonial
5 issues. And what we do is we hook them up
6 with the Moderate Means Panel, which we have
7 helped to establish with the Westchester
8 Women's Bar Association. Those are wonderful
9 attorneys who have agreed to take a lesser fee
10 on these cases, typically \$100 to \$150 an hour
11 as opposed to \$200 and up in our area. And
12 so, we are able to do that with some of the
13 women that call. And, of course, if there
14 could be encouragement in the system for more
15 attorneys to serve on this panel it would best
16 serve those individual who call. But,
17 unfortunately, we do receive a significant
18 number of requests. I am telling you this
19 after speaking to our staff and all the people
20 that work daily on these issues and they tell
21 me that these women, mostly women call, with
22 matrimonial or custody issues and they don't
23 qualify for the pro-bono services of legal
24 services here in Westchester County, and they
25 cannot afford what may by some appear to be

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2 modest fees of our Moderate Means Power
3 Program. And in order to qualify for the
4 pro-bono services according to a household
5 consisting of four people have to have an
6 income of approximately \$23,563 or less, and
7 very limited exceptions, cannot be the owner
8 or co-owner of the house, condo or co-op. For
9 households of fewer people the income
10 guidelines are reduced even further. Even in
11 cases where a particular client may qualify
12 for these pro-bono services the waiting list
13 is long, and so long as to render the services
14 of no use to the client.

15 As you can well imagine a client with
16 two or three children whose husband is not
17 voluntarily paying for any expense over child
18 support, and is perhaps working and earning
19 \$25,000 to \$30,000 a year would find it almost
20 impossible to pay for an attorney for \$100 or
21 \$150 and hour on an ongoing basis and to pay a
22 retainer on top of that. In many instances
23 the woman who needs help maybe a stay-at-home
24 mother, married to someone with a very
25 comfortable living, co-owner of a large

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2 expensive marital residence with no access to
3 the husband's salary, assets or cash. These
4 women have a particularly difficult situation
5 since they do not qualify for any pro-bono
6 assistance and they often don't qualify for
7 the Moderate Means Program. That is a gap
8 that we have in services.

9 In other cases the client may be the
10 owner of an expensive marital residence, but the
11 spouse has left the residence is not
12 supporting the client, not paying any of the
13 bills, and in addition is running up enormous
14 marital debts and dissipating marital assets.
15 The client is often unable to pay the
16 mortgage, unable to sell the residence because
17 it is co-owned, and, again, the client does
18 not have cash for legal fees. We get so many
19 of these desperate calls that our staff said
20 you must take notice and that something must
21 be done with this gap. So there has to be
22 additional legal assistance to the client who
23 find themselves in these very untenable
24 situations. In order to accomplish this goal
25 there has to be additional funding to pay for

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this kind of legal assistance.

On the issue of no-fault divorce, I want to talk a little bit about some of the center's programs so that you can understand the context in which I speak. We have had a Family Court legal program that is funded by the County where we have attorneys on site in Yonkers and White Plains, they have offices right in the courthouse, and pro-bono we represent over 1500 victims of domestic violence per year obtaining temporary orders of protection, support, and then pursuant to our assisted deter programs, which are funded by the Federal Government, the VARAH Act Programs, we handle these cases from their inception until their conclusion in all of the Family Courts in Westchester, and we handle with the combined programs over 2000 victims' cases per year. So we have attorneys day in and day out that are working very closely with the victims, and the staff bar none has stated firmly that they believe, and I personally believe as well, and I know the Chief Judge -- that we join the Chief Judge in this that

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2 no-fault divorce is the way to go. It used to
3 be that women's groups, and when I
4 participated in Women's Bar Association in the
5 State of New York for many years that the
6 position had been that no-fault divorce was
7 not the way to go, and I remember all those
8 arguments back then. And I also remember the
9 arguments that are being made by some, but I
10 believe a limited number of domestic violence
11 groups that say that no-fault divorce is not
12 good for the domestic violence victim. But
13 that is not what the Pace Women's Justice
14 Center attorneys have found, and that is not
15 what many other like groups have found either,
16 although there is not consensus on this issue.

17 Anything that makes it easier and
18 cheaper for women to obtain a much needed
19 divorce, particularly in domestic violence
20 situations, is clearly of benefit to them.
21 Having to spend time and money on proving
22 grounds or on negotiating issues is often an
23 additional impediment to women who have been
24 trapped in these domestic violence situations
25 or trapped in marriages where they are not

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getting any financial support, but where marital assets may be dissipating and marital debts may be rising is not good.

As you know, the grounds for obtaining a divorce in New York are very stringent, the monetary expense and the emotional toll of having to prove fault are high, and, so, research conducted by Justin Wolfers of the Wharton School at the University of Pennsylvania concludes, and we have experienced, that in states with no-fault divorce laws there are fewer domestic violence incidents and fewer situations where woman commit suicide. No-fault divorce laws appear to assist women in situations where they need to escape abusive marriages. While the economic issues of divorce also need to be addressed, there may be better ways to accomplish this than to require that one party to a divorce allege and prove cruel and inhuman treatment, adultery or abandonment. And what we have made a great effort to do is to work on some uncontested divorce cases as we go along, and we have been seeking

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2 additional funding to do more of those cases
3 as possible, to get these women out of these
4 relationships as quickly as they possibly can
5 so that they can move on with their lives.
6 And, in truth, what is the best thing that we
7 can do for a domestic violence victim and that
8 is to get on with their lives, to get out of
9 that situation, and to get away from the
10 abuser.

11 So I thank you so much. There are so
12 many other issues that we could address today,
13 but I appreciate the time that you have given
14 us. Thank you.

15 HON. SONDRRA MILLER: Thank you.

16 Lawrence Braunstein.

17 (Whereupon, Mr. Lawrence Braunstein
18 steps up to the dias to present his
19 testimony.)

20 MR. LAWRENCE BRAUNSTEIN: Good morning.

21 I thank you for the opportunity to speak
22 today, and I thank you for taking time out of
23 your busy lives to be here today.

24 I am a matrimonial attorney, and I have
25 served as a chair and I am actually co-chair

1
2 of the Bar Association Child Custody Committee
3 and Child Sexual Abuse and Physical Abuse, and
4 I have also lectured throughout the country,
5 and have conversations as much as I possibly
6 can with participants at conferences, Judges
7 who attend conferences, other attorneys, and
8 I'm constantly being asked you do that in New
9 York? There seems to be this great surprise
10 about our approach to things.

11 What I would like to do is read one or
12 two comments from questions that were asked of
13 children. One of them was is, "How do you
14 decide who to marry?" This is a child's
15 perspective. "No person really decides before
16 they grow up who they are going to marry. God
17 decides it all before, and you find out later
18 who you will get stuck with." "How can a
19 stranger tell if two people are married?"
20 "You might have to guess based on whether they
21 seem to be yelling at the same kid."

22 There was a study done by Kyle Cruid and
23 Marsha Klein-Cruid, a psychologist and
24 psychiatrist at Yale-New Haven Child Study
25 Center. And it was children's perspectives of

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2 divorce and the legal system. And I just want
3 to read you some of quotes from some of
4 children. A four-year-old girl says, "I don't
5 know who to believe anymore. I don't know
6 that they are still friends. I'm pretty sure
7 they are not, do you know? Once they got
8 lawyers they stopped being friends just like
9 that." A little boy three and-a-half says,
10 "Divorce is when mom and dad hate each other
11 and your family is dead." A six-year-old
12 child says, "Divorce is when you pay lawyers a
13 lot of money to wreck your family."

14 We've got some problems, which we all
15 toil under, and I think we all have our
16 frustrations as to what the system is about.
17 I think the first is a recognition that the
18 unified court system isn't. I think that
19 Sylvia eluded to the fact that in the First
20 and Second Departments there is no discovery
21 in child custody case, no depositions, no
22 interrogatories - yet, in the Third and Fourth
23 Department there is.

24 Obtaining the records of the forensic
25 evaluators, the court appointed neutrals, is

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2 difficult. And there are burdens to overcome.
3 Justice Sunshine and Justice Spolzino have
4 written opinions on it. It is a constant
5 source of frustration to the practicing
6 attorneys because it's trial by ambush. And
7 when things come out in terms of the child
8 custody evaluation and presumptions that are
9 made and opinions that are rendered, putting
10 aside whether the ultimate recommendations are
11 accepted, not accepted excluded, declared off
12 limits at the time that the order is issued,
13 it is very difficult to test whether
14 conclusions flow from data. So I would
15 suggest possibly a rethinking of access to
16 information.

17 We have an opportunity to educate. The
18 Office of Court Administration in New York
19 State courts has a web-site and it is great as
20 far as it goes. It can be better. We need to
21 educate the public, and the best way we can do
22 that is not only by providing forms for
23 persons who are pro se and have uncontested
24 divorces, but we also need to explain to them
25 at that web-site what the divorce law is, what

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2 the Child Support Standards Act are, how
3 things are calculated in general whether it is
4 a question and answer format. In addition,
5 litigants need to know before they become
6 litigants what their alternatives are to
7 litigation. There is a consent struggle in
8 terms of, do we want mediation, if so, is one
9 party going to be more advantage in that
10 process, there is a concept now of
11 collaborative law, and I know you will be
12 hearing about it later on this morning so I am
13 not going to touch it. But we need to lay
14 those concepts out again in one area in a
15 web-site where people going through or
16 contemplating divorce have access to that
17 information. The Peace Program has been
18 recognized throughout this State, and I know a
19 lot of the Commissioners here were very active
20 in its formation, we've recognized it works,
21 the feedback we get from participants is
22 basically I wish I knew about this sooner.
23 Yet, it is not funded. In New York City their
24 scrambling to find funding to run the program.
25 In Westchester it is not running at all. It

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is important to educate right at the get-go.

I was cleaning off my desk the other day, something I do every couple of years, and what I found was a memo from Judge Silberman dated December of 2000, with the following suggestions in terms of changes to be made.

One was a recognition that the Third and Fourth Departments permit discovery in custody cases and the First and Second don't. Another was a suggestion that automatic orders staying the financial issues in a case at the time that a summons with notice is served should be implemented because it stops the land grab.

There was a suggestion that perhaps we should think about no-fault law. There was a suggestion that experts be allowed to be deposed in family law cases. Again, trying to get information so that there can be an attempt at resolution. It is 2005, we are having the same conversation over and over and over again.

HON. SONDRRA MILLER: Mr. Braunstein, in all of your experiences and studies, which states or state do you feel has a system which

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is most efficient?

MR. LAWRENCE BRAUNSTEIN: I think that California has an institutional recognition that family law cases are different from any other. And there is a judicial board, I think it is called the Judicial Council of California Administrative Office of the Courts, and they are basically the gate keepers. California has requirements to be met by forensic evaluators, whether it is for child custody cases, financial experts, so that if you hold yourself out to be an expert you better be and you better have the minimum qualifications. California knows what they are doing. I think it is kind of a shock to us on either coast that the people that live in the middle of America can't afford lawyers and sometimes don't have, and either one party or both are unrepresented by attorneys. New Mexico has a great, at least the Second Judicial District Court, and I can provide this information as a follow up, lays out divorce in english as opposed to legalese so that people can educate themselves as to what

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2 their options are, what they can expect, you
3 fear what you don't know.

4 We all, at least the attorneys here,
5 walking to the courthouse with a client get
6 the same question fifteen times, what is going
7 to happen, what is going to happen? The
8 problem we have as attorneys in terms of the
9 revolving door in the matrimonial parts and
10 the Judges that sit there is, the answer is I
11 don't know. Now, that is very unsettling to
12 have to say that. I don't know who the Judge,
13 it is a new Judge, a newly elected Judge, I
14 don't know what is going to happen, which
15 leads me to my next point.

16 We have dedicated matrimonial parts, and
17 that is great. I would venture to guess if
18 one did a study of how many index numbers are
19 purchased for matrimonial cases compared to
20 commercial cases, personal injury cases and
21 alike, there would be a huge number on the
22 matrimonial side. I would like to do that
23 study and then find out how much money goes to
24 those parts, the matrimonial parts as opposed
25 to the commercial parts. So we are halfway

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2 there, maybe, in terms of a recognition that
3 there should be matrimonial parts but then we
4 stop. I don't know how much money is
5 available for Judges in New York State to
6 attend conferences out of state. There is a
7 national college, I believe, of Family and
8 Juvenile Court Judges in Reno, Nevada that has
9 wonderful programs. When I go to conferences
10 and speak at conferences Judges from all
11 around the country are there except from New
12 York, because, and I could be wrong, it not so
13 easy to get time off for training. We need
14 to, I think, institutionalize the respect that
15 we want our litigants to have, that we want
16 our attorneys to have and that we want our
17 Judiciary to have. If you are assigning
18 someone to a matrimonial part educate them,
19 give them sufficient support staff, give them,
20 if we can do it, their own shrink because it
21 is that draining. We all know as matrimonial
22 practitioners how draining the practice is.
23 We have to recognize it is that draining for
24 the Judges as well. But mindful of that --

25 HON. SONDR A MILLER: Pardon me. That

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2 shrink was for the Judge?

3 MR. LAWRENCE BRAUNSTEIN: Yes. I think

4 we should all have one.

5 Being a matrimonial Judge should be a

6 career, and as such there should be training

7 and there should be a recognition that you

8 should know things like child development. We

9 are dealing with people not with numbers so we

10 need to support everyone in this process.

11 Thank you for your time.

12 HON. SONDR A MILLER: Mr. Mark Kleiman.

13 (Whereupon, Mr. Mark Kleiman steps up to

14 the dias to present his testimony.)

15 MR. MARK KLEIMAN: Good morning

16 everyone.

17 Members of the Commission: I find

18 myself both passionate about my feelings and

19 beliefs concerning how custody-visitation

20 cases are handled and concerned that the

21 vocabulary I now use and assumptions I now

22 make will not translate to this audience. It

23 is a function of how I have evolved personally

24 and professionally in the past thirty years.

25 The first eight years of my professional

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2 career were spent as a law guardian with the
3 Legal Aid Society Juvenile Rights Division in
4 New York City. My response to what I
5 witnessed was to begin a twenty-five year
6 career creating more effective ways of dealing
7 with the issues that come into the Family
8 Court. As founder of Community Mediation
9 Services, Inc., in Queens, I substituted
10 mentoring, violence prevention and youth
11 leadership programs for delinquency cases. A
12 holistic approach to case work with
13 parent-teen mediation is my preferred response
14 to PINS cases. Twenty years of divorce
15 mediation substitutes that process for people
16 who need to separate their lives. Peer
17 mediation becomes the alternative for
18 suspension in schools. This led to community
19 mediation for any and all other disputes and
20 culminated most recently with a grant to
21 develop and manage the custody-visitation
22 mediation program for the New York City Family
23 Court. This doesn't preclude the use of the
24 court, it just relegates it to a later choice.
25 It does, however, dictate how I value society

1
2 should become involved in other people's
3 conflicts.

4 I hope that my new vocabulary and
5 perspective can leap the professional divide
6 to convey these values. A key to this new
7 vocabulary is the definition and nature of
8 conflict. I see it as natural and necessary
9 in life. It is the primary vehicle for growth
10 and learning we have. Thus, the institutions
11 that are created to respond to conflict must
12 offer the best ways of learning those lessons
13 without placing anyone else in jeopardy.
14 While the court is appropriate for dealing
15 definitively and punitively with issues of
16 safety, there must be some more thoughtful and
17 responsive ways to learn the lessons of failed
18 relationships and parenting disagreements.

19 The courts operate under great
20 limitations. The legal profession, like all
21 professions, sees solutions through its own
22 prism. For my years as a law guardian the
23 adage "If all you have is a hammer then
24 everything looks like a nail" was operative.
25 In recent years there have been great strides

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2 to recognize the limitations of the legal
3 process as well as the expertise of the
4 judiciary in family matters. But adding
5 professionals with expert opinions belies some
6 basic assumptions that I would like to
7 challenge.

8 Number one, that the court should be
9 where people first take their differences.

10 Secondly, the adversarial process is
11 appropriate for family issues.

12 Three, that Judges, even with expert
13 help, are qualified to decide the fate of
14 children of divorce or separation.

15 And four, that parents need a fixed
16 enforceable formula to provide stability.

17 I am very aware that some of you would
18 agree with me that these statements may not be
19 true but you might also believe that there is
20 little recourse. I would suggest that not
21 only are these statements wrong but to not use
22 healthier alternatives is to risk further
23 damaging families. Using the adversarial
24 process with angry separated parents is like
25 adding gasoline to a fire. It is incendiary,

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2 driving people apart when their children need
3 them to begin communicating together. It has
4 the effect of multiplying the anger, fighting,
5 stress and indignities rampant in the
6 relationship. It reinforces the wrong lessons
7 in how to respond to conflict. It perpetuates
8 the pain, and most importantly places children
9 at serious risk.

10 Do we need the court when safety is an
11 issue for either the parties or the children?

12 Of course. However, I believe that using the
13 court as first choice for custody-visitation
14 cases creates a greater safety issue for the
15 children and it is the children who we must
16 protect.

17 The parties require productive options
18 to deal with their situation. They need
19 support and resources to relieve thier
20 pressures. They need a process that
21 encourages their best instincts rather than
22 one that feeds their worst. They need society
23 to provide a holistic approach that reflects
24 the complexity of interpersonal relationships.
25 This approach should be respectful and

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2 understanding of the parties and their
3 situation; provide a means of expression and
4 recognition; foster communication rather than
5 argument. Decisions should be made at their
6 own pace not bound by the calendar of an
7 institution. All the while they must be
8 empowered to make decisions thoughtfully
9 recognizing that needs and circumstances
10 change over time.

11 What I recommend is not a panacea any
12 more than anything in life can be. It is the
13 result of a career devoted to finding ways of
14 dealing with at-risk youth and families.
15 Significantly, conflicts between alienated
16 parents creat at-risk children. I suggest a
17 comprehensive approach based upon respecting
18 parties, fostering communication, promoting
19 learning and negotiation and empowering for
20 self-advocacy. This process mandates safety
21 and respects choice. It recognizes that
22 families are complex and they may need an
23 array of resources to address their needs.

24 Since 1985 my agency has overseen the
25 PINS assessment unit diverting almost 1,000

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2 youth from the Family Court each year in
3 Queens. Under a caseworker's management a
4 family assesses itself for areas of need.
5 Parent-teen medication is used as a crisis
6 intervention tool to stabilize relationships
7 and create an ongoing contract for change.
8 Specialists in substance abuse, domestic
9 violence, education and mental health are
10 available to conduct a focused assessment for
11 targeted referrals. Community resources are
12 presented to deal with vocational,
13 recreational or other special needs. Finally
14 the case is held for several months until the
15 crisis abates or it is referred to a more
16 long-term program. Cost savings resulted from
17 the reduction of court cases and the use of
18 court services, reduction in placements,
19 better utilization of community resources and
20 lower costs to the parties, all of which will
21 occur with the following model devoted to
22 custody-visitation cases.

23 Building upon this approach I received
24 funding for a model under a State grant called
25 Parents Count to work with families with

1
2 non-custodial parents. It has five
3 components: Case management, mediation to
4 create parenting plans, parent education,
5 supervised visitation if needed, and career
6 and financial counseling if desired. The
7 rationale and potential resources for this
8 configuration is based upon the importance of
9 the following:

10 Number one, an assessment to offer
11 community resources for areas of need. And
12 that could be done by intake probation on a
13 child-welfare level.

14 Educating the parties to the impact of
15 their situation on their children and some
16 approaches that could be healthier for their
17 children, such as the Peace Program, including
18 materials, bibliographies, skill building
19 workshops and groups could be utilized and
20 should be funded or paid for on a sliding fee
21 scale.

22 They need to learn skills to deal more
23 effectively with their children and the other
24 parent in these circumstances. There are a
25 lot of existing community resources for group

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process.

The availability of mediation in a safe and convenient place to help them communicate around the issues that are important to them. It should be funded and/or a sliding fee scale. Certainly the community agency system has demonstrated its viability.

The availability of supervised access to children if needed to provide a healthy and safe environment for the development of a parental relationship. This is probably most problematic to forefund but I think it is incredibly important.

The availability of financial, educational and vocational information in existing resources of the community.

The ability to respond at times dictated by the needs of the parties. That is of no course, but I say it is priceless.

The court is still involved. Its role is to provide the certainty of action should safety be an issue, as well as if there are some issues that the parties can't decide upon. Thus, it is in a position to exert its

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2 power if needed, but the parties have the
3 ability to stabilize their lives and plan
4 their future in a supported, non-adversarial
5 environment. Why is this a better way? The
6 process gives the parties the tools to take
7 their lives into their own hands. It connects
8 them with already existing community resources
9 easing other stresses. It provides a safe
10 forum to discuss the issues in respectful
11 ways, offering the most effective form of
12 learning: doing. They have the opportunity to
13 create structure over time as they are able.
14 It educates, engages and supports good
15 parenting. It gives support and supervision
16 as needed. Finally it recognizes the
17 importance of economics as a major factor in
18 the overall stress of the situation.

19 Mediation and parent education are both
20 critical options for disputants. I believe it
21 is the responsibility of society to educate
22 these parties to become effective and loving
23 parents. There is no greater teacher than the
24 act of solving your own problems. I also
25 believe that it is cost effective both for the

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2 parties and society for parenting disputes to
3 be mediated and to require parents to attend
4 parent education programs. Clearly, I believe
5 passionately that the processes we use for
6 families should be healing and not
7 destructive.

8 I often hear Judges and Referees state
9 that when the mediation does not conclude in
10 an agreement the parties are less antagonistic
11 and more comfortable when they are in court.

12 Now, you have a profound responsibility
13 and an exciting opportunity, and I ask you to
14 act based upon what is best for children and
15 families, not a system or a profession. We
16 should strive towards a comprehensive approach
17 reflective of the complexities of the issues,
18 rather than a piecemeal changes. Our
19 institutions must model our best selves rather
20 than only protect against our worst
21 inclinations. Here we can have it both ways.
22 A system that is responsive, educative and
23 empowering while still protective of those who
24 cannot protect themselves.

25 I am extremely grateful to be able to

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2 testify and thank you for the opportunity.

3 HON. SONDRRA MILLER: Thank you very
4 much.

5 Mr. David Morgan.

6 (Whereupon, Mr. David Morgan steps up to
7 the dias to present his testimony.)

8 MR. DAVID MORGAN: I would like to thank
9 the Commission for giving me an opportunity to
10 speak. I'm a former litigant so I don't have
11 a lot of legal expertise. I'm not a
12 legislator, but I do have a lot of experience
13 in this process.

14 I presently live in Charlotte, North
15 Carolina since moving there in 2002 so I'm
16 kind getting used to the cold weather again.
17 I've been a non-custodial parent since 1992
18 when my wife and I separated and subsequently
19 divorced in 1994 so I worked in the process
20 over the last ten or twelve years. I have
21 since remarried and now have part of my
22 family, additional children, but I have to two
23 children part of that family, they are twenty
24 and eighteen, they are almost emancipating
25 from the system, and as far as I am concerned

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2 I am probably not going to gain anything from
3 this but I want to share experience anyway to
4 the Commission.

5 I have two children, certainly now a
6 twenty-one year old stepson, a seven-year-old
7 daughter, and as well as an eight month old
8 grandson so just a number of things there. My
9 present spouse also works in the family
10 preservation in North Carolina. She got her
11 degree in New York University in Social Work,
12 she is a licensed social worker and she is
13 working with families, both has worked in
14 foster care and a lot of the residential
15 treatment programs, and she is presently
16 working in in-home type services to help build
17 families and bring them together.

18 I presently work as a computer system
19 architect for a major software company. I
20 have worked in the Department of Human
21 Resources in the State of Maryland and worked
22 with a lot of child support and collection
23 agencies as well as some of the temporary
24 assistance and foster care programs providing
25 statistical information that is provided back

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2 to the federal government to achieve funding
3 for these different programs and assistance.
4 I'm active in my city and county in North
5 Carolina, I volunteer at the park and rec.,
6 and on the surface I hold the background that
7 says I'm a contributing citizen and a
8 contributing member. But in the present
9 system today that I see in New York State
10 whenever I have had a dispute or whatever,
11 that background doesn't seem to matter to me
12 because I'm had a non-custodial parent, I'm
13 brought in and I feel like I have been
14 basically that background is not important
15 after twelve years of payment of child
16 support. I had a dispute last year and I felt
17 very uncomfortable in the process where that
18 didn't matter at all.

19 The present system needs desperately
20 review and reform, and I am thankful that your
21 Commission is really looking into the issues
22 and hopefully this will help relieve the
23 stress. Hopefully my statement will help
24 provide you with more insight in some of the
25 issues that are needed in order to address

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2 this problem. As I see it, the present -- I
3 did some analysis and I will come back with
4 what I think hopefully you can take from it --
5 but I don't see that the system provides an
6 equal amount of accountability between the
7 custodial and non-custodial parent. The
8 non-custodial parent is one of the main
9 reasons why a lot of non-custodial parents
10 today are requesting the State to provide an
11 avenue for shared parenting and shared
12 residency with their children. I advocate for
13 this type of arrangement that had it been a
14 preferred option in my particular situation I
15 would've had a lot more opportunity to have
16 the influence in the day-to-day decisions in
17 developing my son and daughter's values. The
18 numbers of these men and women with their
19 present spouses are growing in numbers rapidly
20 and these concerns need to be addressed.

21 Many of the changes I see undercurrent
22 from this has occurred from 1992 to the
23 present has been in the Welfare Reform Act in
24 1996 where there was a shift from the child
25 support obligations from the government

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2 welfare to child support obligations and the
3 attempt to go back and collect on these
4 non-paying fathers. Laws were written to
5 violate the Fair Credit Act and to provide
6 incentives for the state collection agencies
7 to collect from these paying fathers. I would
8 compare this, and maybe there is more there,
9 but I compare it more to the much criticized
10 Patriot Act which is strip certain civil
11 liberties from people to get due process.
12 Much of this change has occurred at the
13 federal level but there are many ways I think
14 that New York State can actually address this
15 problem and provide reporting and to provide a
16 much more healing environment rather than this
17 very adversarial environment. I feel that
18 there is lack of cooperation between the
19 Family Court and child support collections
20 systems that don't provide that. It is
21 basically is one department handing it over to
22 the other and the other providing that. The
23 non-custodial parent has to be extremely
24 accountable to the courts with their ability
25 to pay and not really what the child needs.

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2 And I had a dispute last year with my
3 ex-spouse which was more on the provability to
4 have, see the funds that are accountable and
5 that they were actually going to the
6 children's needs rather than to spend on
7 different things.

8 Like, one of the comments that I heard
9 from a friend going through divorce, their
10 attorney said if you go to Las Vegas gamble
11 all your money and no one will hold you
12 accountable. That sadly is the case here in
13 New York. It seems that there is no
14 accountability by the custodial parent, and,
15 yet there are other states involved that do
16 request that. To add insult to injury a
17 monetary order was placed outside of this
18 complaint, outside of the scope of the
19 complaint that I had, and it was placed on
20 child support collections who then started to
21 send me notices of garnishments, threats of
22 driver's license, and reporting to me to major
23 credit boroughs. And, again, all of this
24 information was coming out of a computer
25 system, which being a computer architect seems

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2 to say that there's something wrong with this
3 system and basically all inconsistent
4 information. I received one notice one day
5 saying this is my support payment and I'd get
6 another notice saying this is different, and
7 the numbers would be completely different. In
8 addition, I spoke to an investigator who added
9 a surcharge of fifty percent above the order,
10 and basically was on a repayment order above
11 of what the order was coming from the courts.
12 I spent hours of time on undoing the damaged,
13 worked out the arrangements with the manager
14 who saw what the system was doing and fixed
15 the problem for me. When I asked her why the
16 investigator went this far, she replied only
17 inadequate printing. These departments have
18 grown quickly, they have been funded by the
19 federal government, and the people themselves
20 are not trained to deal with these situations.
21 They are basically collection agents working
22 on behalf, and certainly there is value in
23 doing so.

24 Meanwhile the custodial parent usually
25 is not held accountable for their financial

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2 management of funds, the children live in an
3 impoverish state even though their mother
4 received over \$30,000 a year in support. My
5 children have been alienated from me at times,
6 and during the process they hear consistently
7 that their father did not support them.
8 Luckily my son is here and present at the
9 Commission and observing these hearings, and
10 we are building our relationship. So we are
11 moving on and hopefully this testimony to this
12 Commission can help other families.

13 My other observation is that many
14 magistrates have large case loads and back
15 loads, and there is not enough time to
16 evaluate the facts involved. In my particular
17 case I found my state amazed that so little
18 analysis of the disclosures in the manner in
19 which they have been presented. It would be
20 very simple, and, again, I am looking from a
21 computer perspective, to develop a computer
22 system to enter financial disclosures, do a
23 quick analysis, do the credit checks, do the
24 IRS checks to identify inconsistent behavior
25 and inconsistent information that is

1
2 presented. Inconstancies can be red flagged
3 and contribute to the credibility of the
4 people that are presenting their cases. I ask
5 the Commission to provide forensic evidences
6 or financial analysis to review these
7 disclosures in cases before any disputed
8 hearings. In addition, there is eleven states
9 that I have noticed as of 2000 that have this
10 accountability; states like, Delaware,
11 Colorado, Indiana, Louisiana, I won't name
12 them all, but those are the states that do
13 involve and ask for some kind of
14 accountability. It would seem that by New
15 York State law that if the custodial parent
16 has the child's best interest at heart, and
17 that is no always the case, if accountability
18 would be in place it would be a deterrent for
19 misuse as well as a tool for Magistrates and
20 Judges to use in order to render a fair
21 decisions.

22 When I look at the New York State
23 web-site for non-custodial information it is
24 really all about the money. It is not about
25 paying penalties if you don't comply. Nothing

1
2 seems to be mentioned to be a better
3 non-custodial parent and how to be more
4 involved with the children's lives and how to
5 do that. I look at the web-site and I find
6 our Governor reporting collections have
7 increased 111% since 1994, but there are no
8 figures that there are actual cases that
9 didn't have child support before it. In my
10 case I was paying direct to my ex-spouse.
11 Immediately I became part of the collection
12 system and New York State now can say they
13 collected \$34,000 a year and no child was ever
14 saved. By providing more metrics that we can
15 get an actual view of how the system works I
16 think that would give us a better ability to
17 evaluate effectiveness and improve this
18 process. My recommendation would be to
19 provide incentives to non-custodial parents
20 maybe to use the collection services, but to
21 try to eliminate the penalties involved by
22 being involved in the system. Right now many
23 non-custodial parents get caught in the trap
24 and they loose their jobs during the past
25 recession, and then all of a sudden the system

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starts working against them.

The present case loads for resolving issues for Family Court causes a large case load and opportunity for Magistrates and Judges to become hardened and uncaring. We provide more services to foster children than we do with our own children, to help foster parents to become better parents, biological parents to help control their kids and serves for children's hope. This is known a permanency plan for what should be the outcome of the children in the system, whether they are to return to their biological parents, get adopted or assisted. What I believe is that we should provide a similar type of a permanency plan by a licensed social worker to be put in place before a divorce is finalized or a separation agreement is completed, and be required to be updated every two to three years. We evaluate for increases every two years, why not evaluate the health of the family and to see if their is services needed and important.

Plans should be placed or based upon

1
2 whether the parents work together or not, or
3 whether the issue of substance abuse is
4 involved. Based upon that analysis a Judge
5 could provide a long-term benefit by getting
6 this information and making better decisions.
7 This plan would help Judges and Magistrates to
8 understand the cases better as well as a
9 assign penalties to non-cooperative parents.
10 We regulate our automobiles with inspections
11 every year, why not inspect the system between
12 our ex-spouses, between our children to help
13 protect our children better.
14 We had celebrities present before the
15 Commission. I wanted to add a comment to
16 another celebrity, Phil McGraw. In his book
17 "Family First" Dr. Phil advocates a
18 parent-family and parenting strategy that
19 would help children flourish in a divorced
20 home. I would think that items like parenting
21 classes, counseling with spouses would add a
22 value to our children's lives and preserve
23 health and safety. I believe these services
24 are needed as we move towards more shared
25 parenting legislation. If I had that offered

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2 to me in 1992 as I was being divorced that
3 would have improved my confidence as a parent
4 and would've helped my children. What we are
5 talking about is more of a collaborative
6 process as well as collaborative parenting.
7 Divorce is very emotional and support services
8 are needed for both husband and wife. None of
9 these recommendations will help my present
10 situation but it will help my brothers and
11 sisters caught in the web of legal conflict.
12 The easy part is to fix the computers, the
13 hard part it to change your mind.

14 Thank you very much.

15 HON. SONDR A MILLER: Thank you.

16 Kathleen McKay.

17 (Whereupon, Ms. Kathleen McKay steps up
18 to the dias to present her testimony.)

19 MS. KATHLEEN MCKAY: Thank you for
20 allowing me to speak.

21 I am an evaluator, a psychologist for a
22 program that is based in Westchester County
23 that services five Family Courts and three
24 Supreme Courts and at times Surrogates Courts.
25 We are funded in part through the County in

1
2 addition to fee for services. We
3 offer evaluation services on a sliding scale
4 basis initially. We have since changed to a
5 flat fee service. In this capacity and in
6 this experience I have developed over the past
7 five years an acute understanding of what the
8 limits of psychological and psychiatric
9 evaluation is within the Family Court, and
10 developed strong opinions as to the regard for
11 what it should be. At present, I am the only
12 half-time staff member of the service. We are
13 staffed with ten psychologists, we provide
14 services on a consulting basis, we also have
15 two psychiatry fellows who are board
16 certificated and we rotate on a six month
17 basis and provide evaluations in the
18 psychiatric program there. In addition, we
19 have four psychology for doctoral interns who
20 provide services.

21 The goal is to provide services at a
22 reasonable fee; and in so doing, we have
23 devised a protocol that is hopefully would be
24 used in courts in the area. At present, we
25 receive approximately twenty to twenty-five

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referrals for custody and visitation evaluations within the County. In addition, to fifteen to twenty-five referrals who attend the evaluations there are those whom are not referrals. We are overwhelmed. We have a huge waiting list. We have a need.

As part of our program we have gone from a somewhat traditional psychological or mental health evaluation, as we call because there is parity between the professionals, to one that is predominantly a risk at that point. And in so doing hopefully we provided an answer to the increasing need to avert making an opinion with regards to the ultimate decision. Our evaluations are consistent, the guidelines are set forth, and the American Psychological Association as well as the American Psychiatric Association. They are comprised of an interview, a number of psychometric tests that are used as conversion views of whatever a petitioner is trying to proclaim, as well as a time to do home visits, it really depends on what the cases need.

Rather than formulate ultimate

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2 recommendations what we generally tend to do
3 is we answer a number of psycho-legal
4 questions that are for the court. The first
5 being whether or not an individual actually
6 poses a risk, by virtue of their mental
7 illness, mind you, or by virtue of their
8 behavioral problems to the child. Therefore,
9 we are acting in the best interest of the
10 child, and that is on what they make their
11 determination. The other risk, we address
12 what the implications of that risk are for a
13 permanent capacity. In this regard the
14 evaluations become assessments of permanent
15 capacity, how does alcoholism effect permanent
16 capacity, how does bipolar disorder effect
17 permanent capacity. After that we discuss the
18 implications of what mental illness has for
19 varied visitation and such arrangements; i.e.,
20 whether it would preclude or the degree of
21 pathology would preclude over a visit or
22 whether the special needs of child would call
23 for overnight visits.

24 In my five years at WJCS we have had a
25 number of problems. Initially we were doing

1
2 the evaluations for free and we started off
3 with two consultants and have now extended to
4 ten consultants. Our current fees, which are
5 deemed pretty reasonable, are \$1,500 per adult
6 and we have a fee of \$750 for children over
7 five, and we are flexible in that. For middle
8 income families we offer a fee of \$900 per
9 adult, and then we kind of wiggle around in
10 terms of whether or not there should be a fee
11 for a child, and also we provide evaluations
12 for individual income earners.

13 In addition to the problems that we have
14 had with setting fees, determining whether the
15 quality and the content of the evaluation, we
16 struggle tremendously with a lack of
17 standardization of the process. The clients
18 who frequently come to our service are often
19 not aware that a fee is involved, they are not
20 aware as to what exactly the interview room
21 entails. Speaking in rough terms, evaluations
22 will entail approximately three to five hours
23 of interview with each adult, an hour if not
24 more with children of school age, and at least
25 an half hour to an hour of observation between

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2 parent and child. We also have them come back
3 for psychological testing at a time. Then
4 there is a scoring, the write up. In sum,
5 these evaluations take our evaluators
6 approximately thirty to forty hours. We are
7 hoping or we are making every effort to
8 produce the part of the problems of these
9 evaluations is that they are inordinate in
10 electing, difficult for Judges and non-mental
11 health professionals to review. And our goal
12 is to produce a product that is palatable and
13 understandable to everybody in making the
14 issues very, very clear.

15 Within Westchester County we are at the
16 advent of the introduction of specialty
17 courts, one of which is the in introduction of
18 our domestic violence courts. Given the
19 flexibility of that court it has enabled us to
20 do the evaluations. These parties are
21 undergoing matrimonial, family court and
22 criminal proceedings all at once they are kept
23 with one Judge for an extensive period of
24 time. It is not uncommon for a Judge to refer
25 a case for evaluation, and then ask us to

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2 follow it, whether it be six months and then
3 six months again to provide updates to see
4 what's going on. It has been a very useful
5 model, at least for us, to give us some idea
6 as to what happens down the line, as well as
7 to provide information to the court over time,
8 which is part of the problems with our
9 evaluations it is just one standard period of
10 time.

11 One of the things that we are
12 undertaking in the production requested is the
13 transcript of these proceedings with the
14 absence of any kind of formal training
15 programs for forensics. This is something
16 that is changing, interestingly enough, given
17 the increase necessity of these evaluations.
18 Beginning, I believe, in September of this
19 year John Jay has begun to offer a Ph.D.
20 program of forensic psychology; it is the
21 first one. Also, there are a number of post
22 graduate programs emerging that train
23 specifically in family court assessment - one
24 is emerging at the hospital and one is
25 emerging at St. John's. These are for

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2 individuals who have been already licensed in
3 their profession and need the formal training.
4 In our program we hear that we have a number
5 of students who are trying train so we train
6 with a psychiatrist on site.

7 One thing that I would like to hopefully
8 in part on the panel is the necessity for
9 outcome research, one of the greatest assets
10 of mental health professionals are their
11 resource skills. And one of things that we
12 hope to interact with the court in the near
13 future is to take those skills and sort of
14 utilize them with regard to sort of working
15 out some of the various decisions are on those
16 studies, to follow those families as well as
17 the outcomes of the evaluations for assisting
18 the Judges in making decisions.

19 That's pretty much all that I have.

20 HON. SONDRRA MILLER: We would like to
21 know whether you see any ethical problems or
22 issues in making recommendations to the court?
23 Do you feel that it would be unethical for you
24 to make any recommendations to the court in
25 terms of custody?

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2 MS. KATHLEEN MCKAY: I don't know that
3 -- we haven't brushed upon the ethical point
4 of view, we have approached it from the
5 utility point of view more so. In answering
6 the psycho-legal formulation to the question
7 that we are posed, i.e. is somebody a risk,
8 what is the implications of that risk, what is
9 the permanency capacity of that risk, we are
10 pretty much leading someone to a conclusion
11 because the pathology will speak to you. In
12 the contrary to our ethics, it has been
13 debated for a very long period of time and
14 there is nothing specific in the guidelines at
15 times in regard to that and the context left
16 it out in the open. We have actually been in
17 terms, despite our opting for this position,
18 that we will not give specific
19 recommendations. We are often asked by Judges
20 to give recommendations.

21 HON. SONDR A MILLER: Kathleen, did you
22 find your no risk?

23 MS. KATHLEEN MCKAY: If there is no risk
24 we say there is no risk, but the problem is
25 there may be no discipline on the part of the

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2 parent, nevertheless, the child may have
3 special needs that one parent or another can
4 adequately or more adequately address. And,
5 so, by evaluating a child in determining what
6 the needs of the child are you have a concern
7 who the better professionals are in the field.

8 HON. SONDRRA MILLER: Thank you very
9 much.

10 Mr. Peter Bodnar.

11 (Whereupon, Mr. Peter Bodnar steps up to
12 the dias to present his testimony.)

13 MR. PETER BODNAR: Good morning, Ladies
14 and Gentlemen. I appreciate being afforded
15 the opportunity to speak here today, and I
16 would start by referring to some remarks made
17 by Justice Miller several weeks ago at the
18 State Bar Association Family Law Section
19 Annual Meeting at the Marriott where she
20 confirmed with those of us who know her and
21 those of us believe that the work of this
22 Commission is extraordinarily important that
23 the welfare of children is paramount and that
24 the Judges sitting in matrimonial parts should
25 be the best and the brightest. Unfortunately,

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2 we also know that those lofty objectives have
3 not been met. But it is my hope and it is the
4 hope of many of my colleges whom I've spoken
5 to before today about what I was going to say
6 today that the work of this Commission leads
7 us in that direction. We will know that we
8 have come close to obtaining that objective or
9 obtained it when in contestant matrimonial
10 matters, in particular custody and
11 visitation-related matters, those cases are
12 seen as more important than trip and fall
13 cases, which is unfortunately very much the
14 case these days. It is more than distressing,
15 frankly, to hear from Judges that a
16 matrimonial case shouldn't take more than two
17 or three days to try, but it is perfectly
18 appropriate to calendar a trip and fall case
19 or a commercial case to four to six weeks to
20 try.

21 In August of 1996 the State Bar
22 published a report of the Task Force on Family
23 Law, and that report made a number of very
24 significant recommendations - this is eight
25 and-a-half years ago - and amongst those

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2 recommendations were the following: Quote,
3 "Judicial effectiveness can be markedly
4 improved by providing more specialized
5 continuing legal education programs for Judges
6 and support staff." And in support of that
7 recommendation the report when on to say,
8 "most attorneys who are serious about
9 matrimonial law devote many hours each year to
10 continuing legal education in this area of the
11 law." Judges and law secretaries are no less
12 in need of such ongoing education. The amount
13 of time devoted to this area of the law at
14 Annual Judicial School is relatively small in
15 comparison to the many programs presented by
16 and for the bar throughout the year. For
17 whatever reason Judges and law secretaries
18 rarely attend the CLE programs presented to
19 the Bar. So this was eight and-a-half years
20 ago, what has changed? Well, not a lot. As
21 we know the practice of matrimonial law
22 implicates numerous other aspects of the law;
23 real property, personal property, banking law,
24 tax law, a basic understanding of accounting,
25 trusts and estates, life insurance, and

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2 various others. In order to truly get up to
3 speed in the matrimonial part, particularly
4 given the plethora of case law that has been
5 decided and needs to be digested takes years
6 not days, and the training that matrimonial
7 Judges now receive although certainly better
8 than it was remains woefully inadequate. It
9 is a sad state of affairs when attorneys
10 appearing before a Judge who will rule upon
11 the rest of their client's lives and the lives
12 of their client's children have significantly
13 greater knowledge and experience, and
14 unfortunately often times sensitivity than the
15 Judges determining those issues.

16 The matrimonial part is all too often
17 been the place where Judges who are punished
18 are sent, and/or where Judges who have just
19 ascended to the bench are assigned often as we
20 all know without any matrimonial experience
21 whatsoever. Would anyone on this Commission
22 relish the thought of a family member having
23 his or her financial future determined by a
24 Judge, not to mention having that Judge pass
25 upon custody and visitation issues with which

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2 the Judge has virtually no familiarity
3 whatsoever. As we know custody litigation
4 presents its very own unique issues, and
5 necessarily entails or ought to entail much
6 more than merely rudimentary understanding of
7 developmental issues referable to children,
8 parenting issues, family dynamics, psychology
9 and sensitivity. Isn't it remarkable that
10 here in 2005 in this state Judges are assigned
11 to the matrimonial part having no experience,
12 training or understanding whatsoever in these
13 areas and then are provided with precious
14 little in the way of such training on a going
15 forward basis? If custody and visitation
16 matters do not depart the courthouse as a
17 consequence of ADR mechanisms that you will be
18 hearing about extensively, and about which
19 attorneys and clients are increasingly
20 clamoring given what they perceive to be the
21 inadequacies of the judicial process, there
22 needs to be instituted a mandatory training
23 program for matrimonial Judges which is
24 extensive, ongoing and monitored.

25 I do not by my remarks intend to cast

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2 aspersions upon the many fine Judges who labor
3 mindly in the matrimonial parts
4 notwithstanding a case load which is far
5 greater than is handleable, but the number of
6 those Judges seem to be diminishing. And if I
7 might be permitted a digression from that
8 topic, I would like to comment very briefly on
9 what seems to be the intention of certain
10 interest groups of late to bash law guardians
11 and make wild and grotesque allegations
12 regarding law guardians who have,
13 notwithstanding those claims, been
14 increasingly better trained, more experienced
15 and are frequently a much more vital
16 assistance than in the past in bringing
17 matters to a appropriate resolutions on behalf
18 of children. I don't know whether there is
19 going be to any testimony proffered today
20 regarding the accusations we have recently
21 seen in print ads, but I wish to be very clear
22 and the members of the Executive Committee of
23 the Family Law Section of the Westchester
24 County Bar Association have asked me to very
25 clear that accusing law guardians almost

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2 generically of venality, unethical and
3 dishonest conduct and alike, and suggesting
4 that appointments are valuable when the
5 attorneys for the parties often earn twice
6 what the law guardian earns per hour in those
7 cases quite frankly borders in their view, my
8 executive committee's view, on the obscene.
9 For the past five to ten years the quality of
10 law guardian services has materially
11 increased. And I can say as a rather active
12 practitioner in this County that many of us
13 are very impressed with the work of those of
14 our colleagues who devote time to representing
15 children.

16 I would like to conclude by returning to
17 Justice Miller's remark about the best and the
18 brightest Judges. We attorneys, our clients,
19 and most importantly our client's children
20 deserve nothing less.

21 Thank you.

22 HON. SONDRRA MILLER: Thank you.

23 Karen Cheeks-Lomax.

24 (Whereupon, Ms. Karen Cheeks-Lomax steps
25 up to the dias to present her testimony.)

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2 MS. KAREN CHEEKS-LOMAX: Good morning.

3 I am general counsel at My Sister's
4 Place which is a women's based agency and many
5 of you know we provide many services,
6 residential services, and we have a legal
7 center which I have responsibility over. Over
8 the past year My Sister's Place's legal center
9 has provided services to over 1,000 women who
10 have experienced some kind of violence in
11 Westchester County. We also have an
12 regulation practice where we find ourselves in
13 the SIP services known as INS.

14 I would like to thank the Commission,
15 and certainly the Commission and Judge Miller,
16 for this huge monumental task and taking this
17 on. I see all of the compelling issues that
18 you now have to decipher and respond to. For
19 me, though, the mandate that you are facing
20 really ask some very important questions about
21 how do you prioritize some of the issues that
22 are coming out of this testimony. And what I
23 see as most compelling is, and I see this
24 because we represent battered women who are
25 generally the non-money spouses in these

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2 cases, I would seriously urge the Commission
3 to consider a system of justice or the
4 creation of a system of justice that is fair
5 and provides equal access to the courts to
6 those who need it most. The reality in
7 Westchester County and throughout New York
8 State is that the working poor and middle
9 class income litigants are denied access to
10 justice in matrimonial actions simply because
11 they can't afford attorneys. I mean, it's
12 just that simple. The second bias that we see
13 often in our practice is something that really
14 the Commission should look at in an attempt to
15 change it.

16 The vast majority of woman that come to
17 My Sister's Place who are requesting relief
18 for a divorce desperately want to obtain one
19 from their batterer. There is no question
20 about that. Generally, they are unable to
21 afford the retainer fees that are being asked
22 by private attorneys. You've also heard
23 testimony here today that there are a few
24 resources and there are problems with the
25 Moderate Means Panel in terms of the

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2 affordability of a woman being able to qualify
3 for that. Without this ability to pay she has
4 very limited options to choose from to legally
5 sever ties to her abuser and create a life of
6 independence and safety for her family. Pro
7 bono services are almost nonexistent in
8 Westchester County, and usually the choice
9 range from placing her name on the scarce few
10 organizations that have long waiting lists, or
11 if she is able to she tries to file an
12 uncontested pro se divorce in the hopes that
13 it won't become contested. Needless to say,
14 if she chooses this form she can wait months
15 or even years before her name is called and
16 even then there is no guarantee that her case
17 will be taken.

18 Many women report that there are
19 financial resources, that where there are
20 financial resources in a marriage and their
21 cases are in the Supreme Court that during the
22 course of litigation they are unable to access
23 them and sometimes must wait months to get
24 financial relief from the court. Moreover,
25 for others who are able to borrow and scrape

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2 together the legal resources that they have
3 from their families or friends to pay a legal
4 retainer they cannot sustain their cases
5 because they quickly run out of money. They
6 are threatened that if they are unable to pay
7 that the attorney will drop their cases. This
8 is a huge problem that we see over and over
9 again as we talk to women. In light of this,
10 they report that they feel pressured and
11 forced to make decisions and enter into
12 settlement without full knowledge of their
13 rights and legal options. It is not difficult
14 to imagine given the scenario how
15 unrepresented women find it difficult to
16 navigate this complex system pro se without
17 giving up important rights. These women too
18 tell us that they don't really understand the
19 legal implications but make rash decisions
20 concerning marital assets because the process
21 intimidates them.

22 It's important to note, and we see this
23 quite often, that it is not unusual to see
24 these litigants in our offices trying to undue
25 much of harm that's been done to them. Often

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2 as they make these agreements they don't
3 really appreciate or realize the longstanding
4 impact that this will have on their lives and
5 certainly that of their children. Some of
6 these examples include poorly drafted
7 visitation schedules that are not carefully
8 delineated and that cause for many confusions
9 in implementation, that require often police
10 intervention and that fail to take into
11 consideration the safety of children,
12 especially in a domestic violence case. Other
13 reports that we have gotten from our attorneys
14 in our offices is that woman often barter away
15 their rights, their rights to child support
16 which they are clearly entitled to get a
17 pension or to maintain or retain custody of
18 their children.

19 In another case that our office handled
20 post divorce it took many months and numerous
21 court dates to unravel a trust fund for a
22 minor child that the non-money spouse could
23 not access for the benefit of the child. I
24 mean, it was amazing. She eventually lost her
25 job because she had to keep going back to

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2 court, and her employers became very
3 frustrated with the fact that she was unable
4 to report to work and overtime her life began
5 to unravel.

6 How do we reach the goal of insuring
7 that the rights of litigants are met? I know
8 that is the primary issue why we are here.
9 Most Judges and court personnel, attorneys and
10 litigants would agree that the best system of
11 justice in a matrimonial action should be that
12 both parties are represented by lawyers who
13 are experts in the law and who can advocate
14 forcefully and effectively for their client.
15 The availability and appointment of counsel in
16 contested custody and order of protection
17 cases in Family Court for those who cannot
18 afford counsel enable the litigants to have
19 that skilled representation. Not only
20 representation but for their interests and
21 that of their children, notwithstanding
22 increased costs that would result from this.
23 This should be the standard practice in
24 matrimonial cases.

25 Further, in cases where a woman is

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2 represented and/or assigned counsel and where
3 the Family Court is currently hearing the
4 case, hearing a custody case or visitation or
5 Order of Protection matter, unless there is a
6 compelling reason not to these cases should be
7 allowed to continue to proceed in the Family
8 Court until final disposition and should not
9 be removed to Supreme Court. We see it a lot.
10 If the court has some jurisdiction over these
11 cases there may have been a divorce and the
12 non-money spouse is in Family Court trying to
13 figure some of the underlining issues. Those
14 cases are removed. She is now unable to have
15 counsel to represent her, she can't afford
16 counsel and it becomes a difficult prospect
17 for her.

18 Those of us who work with domestic
19 violence victims can attest that abusers
20 regularly manipulate the justice system to
21 continue their abuse. That is not unusual.
22 For example, they use tactics of delay, they
23 refuse to provide financial information to the
24 court, and they at times file false financial
25 information and it is not unusual for a

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2 batterer to attempt to remove the case from
3 Family Court in an effort to forum shop to get
4 a better decision if they think that would be
5 the outcome. It's our position that Judges
6 should challenge these motions and really look
7 at why these motions are being presented. And
8 if it is appropriate to defer jurisdiction to
9 protect the interest of unrepresented and
10 domestic violence victims.

11 It has been my observation and that of
12 my colleagues that Judges hearing these cases
13 often require additional training to
14 understand the complexities of domestic
15 violence and to reject baseless notions that
16 women routinely fabricate allegations of
17 abuse. It is has been reported by attorneys
18 practicing in these courts and victims
19 attempting to prosecute Order of Protection
20 petitions against their abusers, that many
21 Judges, not all, but many Judges are unable or
22 unwilling to make the important distinction
23 between acrimony and domestic violence. In
24 light of this these same advocates and victims
25 feel that some Judges can be punitive in their

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2 decision making and in their approaches to
3 these matters. Needless to say, Judges
4 selected to sit in these parts must have the
5 judicial temperament and skill to deal with
6 people in crisis. Judicial training and
7 monitoring must give the unrepresented
8 litigants time to ask their questions and to
9 really think through the decisions that their
10 being asked to make. The court must give
11 these litigants access to simple explanation
12 materials and translate it if they are not
13 fluent.

14 Finally, I just want to urge the
15 Commission not to consider the issue whether
16 New York State should adopt some form of
17 no-fault divorce. There are a number of
18 serious issues that we need to consider in
19 amending our divorce laws. For example, one
20 is the lack of any standards in setting up
21 maintenance divorce. Attorneys have no way of
22 advising their clients on what to expect, and
23 litigation is exacerbated by the lack of an
24 understood starting point. Though lawyers
25 committed against domestic violence is

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2 drafting a matrimonial reform package, which
3 includes no-fault divorce, but only as a piece
4 of a more comprehensive bill that prioritizes
5 other new and important protections.

6 Thank you for your time.

7 HON. SONDRRA MILLER: Thank you very
8 much.

9 We are now going to take our mid-morning
10 break.

11 (Whereupon, a short recess is taken.)

12 (Matter reconvenes at 11:10 a.m.)

13 HON. SONDRRA MILLER: Will everyone
14 please be seated.

15 Our next presenter is Robin Yeamans.

16 (Whereupon, Ms. Robin Yeamans steps up
17 to the dias to present her testimony.)

18 MS. ROBIN YEAMANS: Thank you.

19 As I am an attorney from California not
20 New York, I very much appreciate the
21 opportunity to address this Commission. I am
22 a graduate of Stanford Law School and have
23 practiced law for thirty-five years and have
24 been a certified family law specialist since
25 1980. I've submitted notebooks with a

1
2 specific judicial protocol and statewide rules
3 and laws that have made a tremendous
4 difference in Family Court in California. And
5 I appreciated Mr. Braunstein saying that
6 California has some helpful rules, and, in
7 fact, I brought the specific rules to which he
8 was referring and they are in the notebooks
9 that I have submitted.

10 Since 1996 I've worked with parents in
11 Silicon Valley in the San Jose area of
12 California regarding problems in the Family
13 Court there. And as the chair of the advisory
14 board of the National Coalition of Family
15 Justice I came to know something of the
16 situation in the State of New York. I was
17 shocked to find that family law in New York is
18 about six years behind California in some
19 ways. The problems that face family courts
20 are the same throughout the country, and about
21 six years ago a raft of rules and laws were
22 passed in California that improved the
23 situation there.

24 In California we found that cases that
25 were coming back to court again and again were

1
2 not "high conflict" cases. "High conflict" is
3 almost always a complete misnomer. The
4 repeating cases were domestic violence and
5 abuse cases. This same understanding was
6 definitively adopted by the California
7 legislature which nowhere in legislation has
8 used the term "high conflict" but which since
9 1998 has adopted many laws aimed at curbing
10 domestic violence and abuse.

11 The California Judicial Council is a
12 body authorized by the California Constitution
13 and Chaired by the Chief Justice of the
14 California Supreme Court. It provides policy
15 guidelines for the courts and creates our
16 statewide rules. The rules are at it's
17 web-site at www.courtinfo.ca.gov/rules.

18 Effective January 1, 1998 the California
19 legislature for the first time required
20 training in domestic violence for all custody
21 evaluators. Then the Judicial Council, one,
22 detailed the content of this training, two,
23 set forth what every custody evaluation shall
24 contain, and three, specified enforceable
25 ethics for evaluators. Before this, the only

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2 ethics were those of professional
3 associations, and the courts would not enforce
4 those. At the same time the legislature
5 enacted, California Business and Professions
6 Code Section 2936, which made the Code of
7 Ethics of the American Psychological
8 Association binding on psychologists practicing
9 in California, and that is something that the
10 courts do enforce. This section and the
11 others laws and rules that I will refer to are
12 in the notebooks that I have provided to this
13 Commission.

14 California Rule of Court 5.230 requires
15 that every custody evaluator receive an
16 initial sixteen hours of domestic violence
17 training, which are described in detail, and
18 then four hours of updated training every
19 year. If someone does not have this training
20 they cannot give a custody recommendation to
21 the court. This rule was first enacted in
22 January 1999, and over the more than six years
23 in which it has been in effect, it has had a
24 huge effect on the consciousness of evaluators
25 - not enough effect on some, but it has been a

1
2 beginning. It reduced the reliance on the
3 pseudo-scientific victim-blaming doctrine of
4 Parental Alienation Syndrome whose use has
5 been very much reduced throughout the state,
6 but there still are evaluators who do not
7 fully understanding how battering and abuse
8 relate to parenting. Nonetheless, the rule
9 was a beginning.

10 Rule 5.225 requires training for all
11 custody evaluators - forty hours of general
12 training the first year.

13 California Rule of Court 5.220 states in
14 part quote "All evaluations must include data
15 collection and analysis that allow the
16 evaluator to observe and consider each party
17 in comparable ways" unquote. We still get
18 evaluators who talk 70% to one parent and 30%
19 to the other, but the rule permits us to
20 expose this unfairness gives litigants a basis
21 to try to compel biased evaluators to function
22 fairly.

23 This is repeated in Subsection H ethics
24 that says quote, "In performing an evaluation,
25 the child custody evaluator must, one,

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maintain objectivity, provide and gather
balanced information for both parties, and
control for bias."

I would like to continue with a word of
caution. When the problems of abused parents
were ignored by the court in San Jose
California where I practiced, eventually the
parents, fathers and mothers together,
leafleted and picketed the court for an entire
year. You would have no way of knowing this
because the media blacked it out.

In the year 1999 we had a superb
presiding judge, Jack Komar, who is now on the
Judicial Council, and he appointed a committee
to look into the problems and hold hearings
very much like you are doing now. In January
of 2000 he issued a "Protocol for Change in
Family Court", and I brought that and included
that in my notebook. From the Protocol alone
you can't, of course, discern the depth of the
problems that lead to the Protocol.

One of the problems Judge Komar
addressed was what in California we call
"Attorneys for Children" and which elsewhere

1
2 are called law guardians. The problem of law
3 guardians have gotten way out of hand with
4 favored attorneys being appointed over and
5 over and their fees crushing already
6 financially stressed parents. We would see a
7 law guardian collect \$100,000, the child's
8 college education gone. In addressing this
9 problem it is key to keep in mind attorneys
10 are trained as attorneys in contracts, law,
11 torts, not as social workers, not as
12 psychologists, not as therapists. Attorneys
13 are often described as being either combative
14 or dry as dust. In either event, they are not
15 well suited to give options on what is best
16 for children and should stay in their role as
17 attorney. But generally when they are
18 appointed as guardians for children they not
19 only act way out of role and out of their
20 training but they are encouraged to do so.
21 This is a terrible and sometime tragic
22 mistake. The results in San Jose were as bad
23 as they have been elsewhere. The best thing
24 to do is to not appoint law guardians at all.
25 We thought it would be a good idea, it didn't

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2 workout that way. The Komar Protocol called
3 for a review of attorneys for children which
4 looks like quite a mild proposal. In fact,
5 Judge Komar and his successor presiding Judge
6 virtually ended the practice of appointing law
7 guardians in our county and they monitored the
8 Judges' compliance with the Protocol by
9 getting printouts and making sure that the
10 same attorneys were not appointed to the few
11 cases in which such appointments continued to
12 be made. What had been happening was that in
13 troublesome cases Judges just appointed law
14 guardians hoping this would make the cases go
15 away. But in most such cases the attorneys
16 who wanted these appointments were poor
17 practitioners, made the cases worse, sided
18 with the abuser, and impoverished the
19 litigants. Judge Komar was very right to rein
20 in the practice. In doing so, he stopped many
21 of the repeating cases from coming back to
22 court.

23 Judge Komar in his "Protocol for Change"
24 has a long section on "Outside Custody
25 Evaluators/Assessors" who are called

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2 "forensics" in New York. The problems of
3 untrained, unethical forensics were the same
4 in California. Judge Komar called for
5 insuring that evaluators were trained and
6 ethical. His Protocol indicated that the
7 appointment of a forensic would occur only
8 following a hearing at which the party would
9 be given an opportunity to object to the
10 referral and to the identity of the forensic.
11 The intent and effectiveness was very greatly
12 to reduce the use of forensics in custody
13 cases. The litigants expenses were very much
14 reduced and the results we just as good.

15 The kind of leadership that Judge Komar
16 provided can be done by Judges. It doesn't
17 have to await legislative action. Almost
18 everything I've discussed here today was done
19 by Judges and by the Judicial Council. It is
20 the Judges who have let the law guardians,
21 forensics and expensive litigation run out of
22 control, and the Judges need to rein it in.

23 After all, Judges like Jack Komar can draw a
24 judicious line of fairness that satisfies both
25 fathers and mothers who want a fair process

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2 and what is best for their children.

3 Thank you.

4 HON. SONDRRA MILLER: Does California
5 distinguish in determining what is domestic
6 violence between physical and emotional abuse?

7 MS. ROBIN YEAMANS: California has a
8 very broad definition of domestic violence
9 which you can find if you go on-line in Family
10 Code Section 3044, which also refers to other
11 codes sections. But, basically, it starts of
12 course with a definition of physical abuse,
13 but it is an extremely broad definition of
14 domestic violence, which would include
15 emotional abuse, and it includes a number of
16 things that can be joined by statute,
17 Including, for example, disturbing the peace.

18 HON. SONDRRA MILLER: Disturbing the
19 peace.

20 MS. ROBIN YEAMANS: So you can see that
21 is a very broad term.

22 HON. SONDRRA MILLER: In California if a
23 Judge has an in-camara interview with a child,
24 is it always required that an attorney for the
25 child be present?

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2 MS. ROBIN YEAMANS: No.

3 HON. SONDR A MILLER: The Judge can see
4 the child without anyone present?

5 MS. ROBIN YEAMANS: Yes. In many cases
6 the child doesn't have an attorney. It is up
7 to the Judge and the parties to structure such
8 an interview.

9 HON. SONDR A MILLER: Is your difficulty
10 in California in finding professionals to
11 serve as evaluators as a result of the rules?

12 MS. ROBIN YEAMANS: There is no
13 difficulty --

14 HON. SONDR A MILLER: There is none?

15 MS. ROBIN YEAMANS: -- in finding
16 evaluators.

17 HON. SONDR A MILLER: You have ample
18 evaluators available to the court?

19 MS. ROBIN YEAMANS: A question would be
20 how, you know, I have difficulty often
21 agreeing that in our county that I like
22 training of the evaluators, but there are many
23 -- California is known as the mental health
24 capital of the world. Especially in
25 California there are lots of evaluators

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2 especially given managed care. They are
3 looking for the work.

4 Does that answer your question?

5 HON. SONDRRA MILLER: Yes, it does.

6 Dr. Steven Demby.

7 (Whereupon, Dr. Steven Demby steps up to
8 the dias to present his testimony.)

9 DR. STEVEN DEMBY: Good morning.

10 My name is Steven Demby, and I am a
11 clinical psychologist. I do evaluations and
12 do treatments of children and parents going
13 through divorce. I am the co-president of the
14 New York Chapter of AFCC. My colleague Lenny
15 Florescue who will be speaking to you after me
16 I believe will tell you more about the AFCC so
17 I am not going to focus on that, and I just
18 want to clarify that my remarks today are more
19 for my own perspective of representing the
20 organization.

21 I have prepared some general comments
22 about what I see as the value of a good
23 forensic evaluations, but then I heard from my
24 colleague yesterday that you were getting a
25 lot of generalities and you needed more

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2 specifics, so I thought that I would depart a
3 little bit from my prepared remarks and just
4 mention some specific ideas that I did have.
5 I wanted to start off with an impression I
6 have of many parents who come to me for
7 forensic evaluation. Again, often times
8 parents have unrealistic ideas or
9 misconceptions about what a forensic
10 evaluation is going to do, and I think that
11 maybe one source of their frequent
12 dissatisfaction at the end of the process. So
13 I had the idea that I think it would be
14 helpful for there to be sort of informing or
15 education process to kind of attempt to give a
16 more realistic perspective to parents. I
17 would want them to know that is not likely
18 that one of them is going to have a sense of
19 vindication that they maybe looking for at the
20 end of the process. The evaluator is not
21 likely to say that there is one good parent
22 and one bad parent, but is likely to find that
23 each parent has a mixture of strengths and
24 weaknesses. I would like parents to know that
25 the criteria that the evaluator is going to

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2 use in assessing parenting may be quite
3 different than the ones that they think are
4 the most important or relevant. I would like
5 parents to know that the process itself can be
6 very stressful, that they may find some of the
7 tensions that they are experiencing with the
8 person that they are divorcing from could be
9 increased during the process and sometimes
10 children feel more anxious and unsettled while
11 this is going on, and I would like them to be
12 aware of that. And, finally, I would like
13 them to know that while the recommendations
14 that we make are the evaluator's best
15 assessment of what's in the child's best
16 interest, that there are scientific basis for
17 making these recommendations is somewhat
18 limited given our current state of the art.
19 But the thing that we do have the most
20 scientific validity for is the notion that if
21 the conflict between parents continues at a
22 high level after the divorce, whatever the
23 parenting arrangement, this will have a
24 negative impact on the children.

25 Which leads me to my next really

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2 important point that I think where our focus
3 really needs to be is on ways of attempting to
4 contain and reduce parental conflict during
5 and after. And I just want to, I guess,
6 clarify mindful of the previous speaker that I
7 am speaking about cases which are not
8 involving domestic violence. I recognize that
9 those are separate and those require special
10 kinds of treatment and special ways of
11 thinking. But I do see many families where
12 there is a higher degree of conflict without
13 domestic violence. So I think that it is
14 important that there be an expansion of
15 resources toward ways of containing and
16 reducing conflict. And what I have in mind
17 are parent's education, I think that is really
18 crucial, the development of expansion of
19 access to alternate dispute resolution
20 methods, use of parent coordinators, although
21 I think there is importance that parent
22 coordinator have some sort of authority
23 otherwise I'm concerned about how effective
24 their role can be. And that, you know, a lot
25 of these conflicts combine, you know,

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2 realistic and legal issues with very
3 emotionally based issues, and for that reason
4 interdisciplinary approaches as the use of
5 some sort of interdisciplinary team to help
6 these families deal, you know, with both legal
7 and the emotional aspects of what's fueling
8 and driving the conflict would be helpful. I
9 would like to see, I think it should be
10 possible to develop some sort of screening
11 tool that could identify parents who are at
12 risk for an ongoing chronic conflict earlier
13 on in the process and to, you know, identify
14 them and then to sort of develop some special
15 resources or special ways of handling those
16 kinds of cases.

17 I am very much in favor of standards for
18 forensic evaluators. I know that AFCC has a
19 task force that is working on preparing --
20 updating the 1994 AFCC guidelines so those
21 should be coming out fairly soon. I think at
22 a minimum there should be a requirement for
23 continuing education for forensic evaluators
24 so that including topics such as domestic
25 violence, you know, a current basis for

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2 recommendations of use of psychological tests,
3 so that we know that evaluators are keeping
4 current on the literature and what is
5 happening in the field.

6 And then a final thought would be, you
7 know, if there is a concern that an evaluation
8 that has been done is bias or using an invalid
9 methodology that perhaps there can be some
10 panel of neutral evaluators that can review
11 and assess a suspect of evaluation and render
12 some opinion about it as an alternative to the
13 use of, you know, hired expert to, you know,
14 that each side is hiring to sort of critique
15 each other's evaluator. It might be a more
16 unbiased kind of source of information. So
17 those are my more specific recommendations and
18 thoughts.

19 HON. SONDRRA MILLER: Thank you very
20 much.

21 Lawrence Florescue.

22 (Whereupon, Mr. Lawrence Florescue steps
23 up to the dias to present his testimony.)

24 MR. LAWRENCE FLORESCUE: Thank you. My
25 name is Lawrence Florescue. I know a lot of

1
2 you of course, and I'd like to thank you for
3 inviting me to speak. I am hear in my
4 capacity as the co-president with Dr. Demby of
5 the New York Chapter of the Association of
6 Family and Consolation Courts, which there is
7 a good chance many of you have never heard of.

8 The AFCC is forty years old. It is
9 international. In the last several years our
10 president has included the Chief Family Judge
11 of Australia, the Chief Family Judge of
12 Canada, and many other eminent people. The
13 New York chapter has a motto which the
14 well-being of children and families is a
15 fundamental goal of our society and legal
16 system. The New York State Chapter of the
17 Association is dedicated to using the
18 experience, knowledge and resources of Judges
19 and mental health professionals, attorneys,
20 mediators, and other professionals, and I
21 might add as well as anybody else that has a
22 good idea, to prove that well-being through
23 cooperative efforts seek new and less
24 adversarial approaches with the resolution of
25 child severed custody matters.

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2 Now, we are everywhere. We have Judge Dawson
3 on your board, and you don't know it. We
4 have Justice Fullerman on our board, and there
5 are many of us. The AFCC has been there. And
6 I don't envy you at all because you can hear a
7 lot of ideas from a lot of people but there is
8 no one right idea and it is going to be hard
9 to pull it all through. But we have
10 internationally and nationally in California,
11 in Ohio, in Arizona, in Ontario and in
12 Australia we have people who have done all
13 these things. So whatever you come up with,
14 whatever ideas you want to play out with,
15 wherever you want to go, we know people who
16 have done them, we can put you in touch.
17 Justice Miller, if you want to talk to the
18 Chief Matrimonial Judge of Australia tomorrow
19 I can arrange it, and I will would be happy to
20 except for the time difference it maybe hard.
21 I invite all you or as many of you that can
22 come, although we can't afford the pay for it,
23 to come to our Seattle meeting on May 18th to
24 the 21st. If you're coming let me or Steve
25 know and we will make sure that you meet

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2 anybody that you want to meet who is there to
3 find out about how any state does it. Do you
4 want to know how Ohio did it, we will put you
5 in touch with the people from Ohio who did it.

6 Now, there is a lot of ideas that float
7 around and there a few of them that comply
8 with certain favored law, but one of them is
9 very early mental health intervention. Ruling
10 in the case, let's identify those cases that
11 create the problems and get people involved
12 who can help them. Too often I get the
13 forensic reports three weeks before the trial
14 where everyone is tired and it is too late and
15 too much to try and persuade the client --

16 HON. SONDRRA MILLER: May I interrupt?

17 MR. LAWRENCE FLORESCUE: Sure.

18 HON. SONDRRA MILLER: How do you identify
19 mental health?

20 MR. LAWRENCE FLORESCUE: You have one or
21 two. Some states have different methods. One
22 of them is a Judge, and I think that an
23 experienced Judge can smell it from the first
24 set of papers where legally you can get
25 someone involved. Other states have a social

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2 worker or someone immediately just review the
3 file, talk to the parents or get their own
4 internal feel of the issue being there. And I
5 think that any of us who are practicing
6 lawyers sort of know it when we see it and I
7 think the psychologists probably do too, and
8 then you can start doing it.

9 Some states have a special course to
10 deal with high conflict cases. The high
11 conflict cases take up an inordinate amount of
12 time. And if the people have the financial
13 wherewithal to litigate to the death there is
14 no break, B-R-E-A-K or B-R-A-K-E, in our
15 system that can possibly stop them from doing
16 it. And there has to be some way of doing it.

17 Some states have high -- Connecticut I
18 believe, has a high conflict court that
19 funnels all these cases in it and gets them on
20 a very fast track, and I might add requires
21 the financials to be on the same fast track, I
22 believe, so that the whole case is decided at
23 one time and as relatively quickly as
24 possible.

25 There are concepts of parenting

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2 coordinators. Massachusetts makes a lot of
3 use out of those. And these are people who
4 are there to help after the fact. The little
5 disputes that your client calls up and says, I
6 can't get him to switch over this weekend,
7 what can I do about it? Or why is the
8 backpack always empty when he comes to my
9 house? These people are very good at solving
10 that and can do helpful things. Getting
11 parenting plans in early, the first conference
12 or shortly thereafter, there should be some
13 indication of what the people want, and then
14 the lawyers and the other people and the
15 Judges and the law secretaries can talk about
16 it and maybe narrow the gap and find out what
17 the real issue is, and often it's not a big
18 deal.

19 I think another thing that might help is
20 that in New York right now there is a stigma,
21 not a stigma, there is a legal disadvantage to
22 being the parent that leaves the house even if
23 it reduces the amount of tension in the house,
24 which ultimately is probably good for the
25 child, if you leave or even cases in the

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2 custody that you forfeit the right to custody
3 if you leave.

4 HON. SONDRRA MILLER: Not recently.

5 MR. LAWRENCE FLORESCUE: Not recently,
6 but there are such cases. And it makes people
7 worry about it. And if you get that stigma
8 away that's another way you can do it. I
9 don't mean to sit here and tell you a lot of
10 different direct approaches because I think
11 you can hear it from a lot of things. What I
12 render is that we are here to help, the AFCC
13 has lots of ability, we are here and we ready
14 to go. Tell us what we can do for you and we
15 will do it.

16 HON. SONDRRA MILLER: Thank you very
17 much.

18 Ms. Melanie Cummings.

19 (Whereupon, Ms. Melanie Cummings steps
20 up to the dias to present her case.)

21 MS. MELANIE CUMMINGS: Good Morning. My
22 name is Melanie Cummings. I have been
23 affiliated and am a staunch supporter of
24 several National and State Children and
25 Fathers' rights groups for over ten years.

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2 Thank you for allowing me to speak in front of
3 the New York State Matrimonial Commission. I
4 am proud to stand here with all non-custodial
5 parents and share with all of you New York
6 State Family Court's disrespect for the basic
7 human rights of children, fathers, mothers and
8 hard working American taxpayer families. The
9 hard working taxpayers of America, to include
10 the hard working taxpayers of New York State,
11 are footing the bill for this injustice, fraud
12 and extortion. Not to mention paying for the
13 divorce cottage industry. Hard working
14 taxpayers federal tax incentive funds equal
15 power. New York State Judges are legislating
16 at the bench, which is not their role. Their
17 role is to interpret and uphold the written
18 laws that the New York State legislature has
19 passed. Due to time constraints I will keep
20 my focus on TANF incentive funding. Yes, the
21 funding that New York states receives from the
22 hard working taxpayers of America in order to
23 pay for social programs and entitlements via
24 child support collected. You will see that
25 this entire New York Family Court System is

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not about the best interests of the children,
it is about the state's treasury.

New York State has laws that stipulate
that both biological parents are required to
emotionally and financially support their
children and are to receive due process and
equal protection under the United States
Constitution, specifically, Amendments 1, 5,
9, and 14. The United States Constitution
guarantees both biological parents their
rights to their children without any
interference from the states and judicial
system.

I am here today to explain how New York
State Family Courts, without a compelling
state reason or interest, systematically and
arbitrarily removed one of the parents from
the children's lives. Parental contact is
crucial - and might I add, not through the
internet. To make matters worse, I am here
today to explain how non-custodial parents,
over 90% of them are fathers, are financially
driven away from their families, post-divorce
and the hard working taxpayers of America are

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being defrauded in the process.

By a decade of actions, New York State Family Court has spoken - parental equation equals mother. This is a misapplication of the law, not in the best interests of children and gender biased. Parental equation equals father plus mother. New York's Office of Court Administration yearly issues a blue book. It's called "Report of Child Support Order", and you fill out forms and this is done on the Supreme Court level and on the administrative, I think, the Magistrates. The gender-biased results are in 1993, 90.9% of custody went to mothers, and in 1994, 91.2% went to mothers. The important fact is that there were over 90,000 children that went through the system only about 3,500 kids got custody with their fathers. Are you here to tell all the fathers in the State of New York that they are unfit parents? This is really disgusting and I am appalled, personally appalled.

When a divorce occurs -- actually these are hate crimes, we can even get to that

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2 because we have all this, you know, everybody
3 is running around with their domestic violence
4 -- non-custodial parents have become the Dread
5 Scotts of the 21st Century.

6 When a divorce occurs, New York State
7 Family Court decides which parent will have
8 custody and which parent will be granted
9 parenting time which New York State still
10 calls visitation. Parents are not visitors;
11 only convicted, incarcerated criminals receive
12 visitors. The Family Court decides that the
13 visiting parent will pay the child support
14 bill. The courts rule against the fathers in
15 New York 90 to 95%, and impose on them by
16 force to pay a fictitious, artificial child
17 support obligation, which in reality is de
18 facto alimony. In today's society it takes
19 two incomes to maintain one household. Child
20 support should be based on net income. No
21 intact family spends money on children on
22 gross income. They already gave the money to
23 the Federal and State government. End the
24 double dipping. It boggles the mind that
25 based on divorce laws as an adult a whole team

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2 of state financial guru's cannot figure out
3 the transferred intact family money nor did
4 they do a study on this. Hire a Columbia
5 University economics freshman student to
6 figure it out. Currently, after four years of
7 college, three years of law school and work
8 experience we have lawyers and Judges who are
9 mathematically challenged.

10 The Chief of Staff Assembly Women once
11 told me several years ago that they cannot
12 make a mother work, well, you know what, the
13 law says you have to work, you make a father,
14 work you cannot have it both ways guys, this
15 is discrimination. These mother's choices are
16 illegal. They are defrauding us the hard
17 working taxpayers of America. Are your
18 legislators, family law attorneys and Judges
19 enabling them?

20 All right. TANF funding. The Welfare
21 Reform as you search our system of law and
22 destroyed liberty and justice for all. New
23 York State should watch out, look at what you
24 have done. New York -- I have all documents
25 -- New York State has received constantly over

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2 six years approximately 2 billion dollars from
3 the hard working taxpayers of America to use
4 for state entitlement programs to include the
5 New York State Earned Income Tax Credit. The
6 administrative costs are over 1.4 billion and
7 system costs are over 35 million. These
8 monies flow in via child support collection
9 incentive matching funds. Information is
10 available for everybody. It is on the
11 Department of Health and Human Services TANF
12 Funding web-site. So as you can see, the more
13 you collect in the system the more federal
14 funding a state receives. Do you really think
15 no one would figure this out? No wonder there
16 are no downward child support modifications,
17 not even if a father loses his job. And by
18 the way, on March 16th, 1999 it hit the press.
19 New York State had 689 million dollars of
20 unspent funding just for collecting child
21 support.

22 HON. SONDRRA MILLER: That is exactly
23 what it had?

24 MS. MELANIE CUMMINGS: Yes.

25 All right. Let's all be honest here. I

1
2 am quite sure a fare amount of what I had said
3 today has fallen on deaf ears. And let me
4 tell you why. New York State is more
5 concerned with the inflow of monies to the
6 Federal Government, as well as the inflow of
7 money into the New York State treasury, and
8 even though you may have monetarily considered
9 some of what I said to be fare and just the
10 reality is that you are more concerned about
11 revenue then you are about what is truly in
12 the interest of a child. I do not know how
13 you can look at yourself in the mirror at
14 night, and can you honestly tell me that you
15 could explain the current state of affairs to
16 your own children with a clear conscience.
17 Where is everyone's moral compass? I don't
18 even hear fathers being mentioned here. And I
19 have read all of the testimony for the last
20 three times that you had your meetings.

21 Policy objectives and child support
22 enforcement systems need to be modified to
23 reflect the fact that enforcing child support
24 includes enforcing parenting time orders. If
25 you don't do that you got -- well, first of

1
2 all, you need to jail these people. It
3 happens a few times, the custodial parent goes
4 to jail, fathers will take their kids. It
5 will be stopped. And until such modification
6 occurs, the repeated violations and
7 noncompliance with court ordered parenting
8 time rights will continue lead to increased
9 bitterness and civil disobedience. In the
10 meantime, a great disservice is done to our
11 youngest citizens as their constitutionally
12 protected parent-child relationships continue
13 to deteriorate. After four years of college,
14 three years of law school and years of work
15 experience New York State Family Court Judges
16 have received an F. Over 25 million
17 non-custodial parents across the nation will
18 receive a copy of my written testimony. I
19 have all original documentation.

20 HON. SONDRRA MILLER: Thank you very
21 much.

22 Next is Nancy Kellman. Nancy Kellman is
23 not here.

24 Is Neil Kozek here?

25 (No response.)

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2 Is Mary Withington here?

3 (No response.)

4 Is Jo Ann Cole here?

5 (No response.)

6 Is Monica Getz here?

7 MS. MONICA GETZ: I will have to go

8 after the lunch break to prepare for my

9 testimony.

10 HON. SONDR A MILLER: All right.

11 Is Judge Feilds here?

12 HON. MARJORY FEILDS: Yes.

13 HON. SONDR A MILLER: Here she is.

14 HON. MARJORY FEILDS: Good morning.

15 May it please the Commission, may name

16 is Marjory D. Feilds. For sixteen years I was

17 a Judge of the Family Court and presided also

18 in the matrimonial term in New York County

19 Supreme Court. I am counsel to Bell,

20 Godferine and Hoffman and international family

21 law in London. Prior to my sixteen years on

22 the bench I was a family law matrimonial

23 lawyer for fifteen years. I am a member of

24 the Family Court Advisory and Rules Committee

25 since 1983. There is only one member that has

1
2 been there longer, Frank Boccio, Chief Clerk
3 for the family court in Buffalo. And I am a
4 member of the OCA Family Violence Task Force.
5 I thank you for the opportunity to speak to
6 you this morning. It is going to be this
7 afternoon, but I just revised it.

8 I had submitted written testimony and I
9 am not going to read it. What I am going to
10 instead is stress an element that really was
11 not stressed in the written testimony, and
12 that is that we need, and I think that the
13 witnesses that you have heard here in New York
14 show that, we need specialized matrimonial
15 parts. This is consistent with the trend
16 towards individual domestic violence parts,
17 the Integrated Domestic Violence parts. That
18 we bring expertise to a field of law that
19 needs expertise. I am going to give you some
20 reasons and then I will explain my notion
21 about structure.

22 Matrimonial actions are unique in
23 constitutional law. Unlike other kinds of
24 private litigation, matrimonial actions have
25 implications for our First Amendment right of

1
2 free association and our liberty rights an
3 access to our children as the previous speaker
4 mentioned. The First Amendment issues in
5 matrimonial actions were recognized certainly
6 by the United States Supreme Court in Bode
7 against Connecticut in 1971, in which the
8 court held that the very high costs of service
9 of process from matrimonial actions in the
10 State of Connecticut prevented poor people to
11 having access to court, and they have a right
12 of access to court because of these
13 constitutional protected issues of liberty and
14 free association, and then access to court to
15 resolve disputes. So that was the First
16 Amendment issue.

17 In addition, we have the historical
18 cases that addressed inter-racial marriage
19 that some states had prohibited, and, of
20 course, how could we forget Loving against
21 Virginia and what a wonderful name for a case
22 dealing with marriage and the right to
23 marriage. We have also Stanley against
24 Illinois, which addresses the right of a
25 parent to maintain contact and custody of his

1
2 children, even when he is not married to their
3 mother, and that he must have due process
4 rights before we terminate or interfere with
5 that parental access and custody. And then we
6 have the cases that hold that there must be a
7 higher standard of proof and termination in
8 parental right cases where clear and
9 convincing evidence rather than preponderance
10 of the evidence prevails as it does in other
11 kinds of civil actions. And, finally, we have
12 the New York State Constitution. And the New
13 York State Constitution says you cannot get
14 divorced without a judicial proceeding. That
15 makes marriage unique among civil contracts in
16 this state that you must go to court, you
17 cannot dissolve your marriage by agreement the
18 way you can dissolve other kinds of contracts
19 and other kinds of relationships.

20 Now when we have this special liberty
21 interest, what we have done historically was
22 addressed the problem of court congestion and
23 lack of skills with specialized parts. We
24 created specialized felony parts. And there
25 was a time when we had a felony backlog in New

1
2 York, and I believe that Justice Ellerin may
3 have the been the Administrative Judge in New
4 York City at the time, we brought Judges from
5 all over the State to sit in felony trials so
6 that we could clear up that backlog. The same
7 kind of focus needs be to addressed in family
8 law because we have liberty, we have free
9 association, we have access to court, and we
10 have due process rights impacted.

11 In addition, access to court and access
12 to divorce is very important to preventing
13 domestic violence. Anthropologists have
14 examined societies around the world, and in
15 particular David Levenson and his famous book
16 "Family Violence from Cross Cultural
17 Perspective" showed that in the very few
18 societies in which there was no or very little
19 domestic violence one of the elements in
20 addition to women's economic independence was
21 free access, easy access to divorce; and that
22 was of the one of the correlations that he
23 found with little or no domestic violence. We
24 have to make the matrimonial parts, therefore,
25 high status, like the commercial division.

1
2 Everybody wants to be assigned to the
3 commercial division or a major offense felony
4 assignment, this is great status. And what do
5 we to creat status in our matrimonial parts?
6 We provide special training, we provide extra
7 staff. Every matrimonial Judge should have
8 court attorneys who are experts in child
9 custody cases and in child support matters to
10 assist them not one but two court attorneys,
11 extra court clerks. Those of you who practice
12 matrimonial law on this Commission know that
13 in matrimonial cases, and, of course, can't
14 leave out the Judges that sit in the
15 matrimonial court, know that we have more
16 papers, at least in New York, than in any
17 other part. And how do we know this? Ask any
18 clerk who sits in a matrimonial part. Not
19 only do Judges not value matrimonial
20 assignments but clerks run from them because
21 there is more work than in any other
22 assignment, so you need two clerks as well.
23 You provide resources, you provide computers,
24 you give that extra status and training, and
25 then we will make matrimonial assignment

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2 valuable. And I am sure I am hearing you
3 think, oh, in some places there are not enough
4 cases. That's okay. we can make it an
5 adjunct to an IDV part, we can make a Judge a
6 matrimonial Judge, and the rest of your time
7 if you don't have full matrimonial calendars
8 you do other Supreme Court work in your area,
9 you can do really exciting real property
10 litigation. So those are ways that we can, I
11 think, enhance the attention that we pay and
12 the quality of the work that is done in the
13 matrimonial parts.

14 I remember famously practicing, and I
15 will not say where but some of you may know
16 anyway, in front of a Judge who was assigned
17 to the matrimonial term and it was only one
18 term there, but this Judge would not sit down,
19 and the last day of that term this Judge said,
20 And make sure you tell them how much I hated
21 this assignment so that they never send me
22 here again, and the Judge went back to
23 criminal term and lived happily ever after.

24 We have a problem, that you've heard,
25 and this that in some of the custody

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2 determinations some of our Judges are ignoring
3 the statutory requirements with domestic
4 violence instances; and we need to address
5 that and that's why specialized matrimonial
6 Judges are ideal for that. We forget
7 sometimes this negative impact on children.
8 There is plenty of documentation. I have
9 given you a citation to recent study in my
10 written testimony. I remember famously being
11 struck dumb, literally, when the Judge said to
12 me after determining that there was domestic
13 violence in a case in which the medical
14 records showed, and we are going back now pre
15 1986, showed that the doctor wrote, patient
16 denies husband beat her. Now, that was a time
17 when doctors did not write things like that in
18 the medical records, my client had beaten by
19 her husband on her abdomen in the eighth month
20 of pregnancy. And this Judge had adjudicated
21 there was domestic violence. I sought
22 supervised, limited child visitation, and the
23 Judge said, just because he beats his wife
24 doesn't mean he is a bad father. Now, I don't
25 think a Judge would say that today, and, if

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2 so, I don't think the Judge would last long on
3 the bench, but it underlies our notion that in
4 every single case and under all circumstances
5 children should have unlimited access to both
6 parents. There are times when we must
7 consider limiting or denying access. And
8 Justice Ellerin's Committee on Women in the
9 court, Judicial Committee on Women in the
10 Court, suggested that be considered that
11 "Courts understand the dynamics of domestic
12 violence", and that is a quote, and the reason
13 including safety for restricting the access of
14 abusers to their children.

15 In addition, in the 2002 report of the
16 Judicial Committee of Women in the court,
17 right on page 2 in the introduction it says,
18 "We have not yet achieved the allusive goal of
19 a court system free of bias providing fare
20 trials to all." So we need to look at these
21 issues more carefully and that is why I am
22 recommending important changes in the way we
23 structure our courts.

24 One more item on that issue, and that is
25 the parent who protects the child and opposes

1
2 extensive or unsupervised contact by a violent
3 parent is deemed the unfriendly and
4 uncooperative parent, putting her interests
5 ahead of those of the child. Now I will give
6 you the adverse of it. I take you to Nichols
7 versus Cappetta. In that situation the
8 mother's refused to child neglect. Why?
9 Because they failed to separate their children
10 from the fathers. The battered women are
11 wrongdoers when they intervene to protect
12 their children, and they are wrongdoers when
13 they attempt to keep the family together and
14 make peace. And we cannot have that
15 continuing. We must consider those issues in
16 making custody decisions.

17 I have more. I can stop. The rest
18 follows my written testimony exactly, and if
19 you have any questions just let me know.

20 HON. SONDRRA MILLER: Thank you very
21 much.

22 Nancy Kellman.

23 (Whereupon, Ms. Nancy Kellman steps up
24 to the dias to present her testimony.)

25 MS. NANCY KELLMAN: I am here from New

1
2 York Association of Collaborative Law of New
3 York Westchester and Rockland counties. I am
4 here to speak to you about an organization
5 that hopefully will not have a lot to do with
6 the court system.

7 I don't know whether you have had the
8 opportunity of hearing or to present on
9 Collaborative Law, but I will be brief. To
10 let you know that it is an alternate dispute
11 resolution process. We are involve in helping
12 people who are looking to divorce. Our goal
13 is to have the parties end up with a formal
14 separation agreement that would be required as
15 any other separation would be required under
16 the DRL. The difference, I think, in this
17 process than a strict negotiation that we all
18 handle as matrimonial lawyers and perhaps as
19 Judges that you see when those fail and we are
20 before you in court, is that there is
21 initially a commitment by the parties that are
22 engaging in Collaborative Law, that they're
23 going to deal in this process both with
24 integrity and honesty. And at the very
25 beginning of the process, before it even

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2 begins, the parties sit down with their
3 attorneys who are trained collaborative
4 lawyers. What that does that mean? They have
5 training in the collaborative process, it can
6 range from a couple of days to more than that,
7 there are more advanced settings also that is
8 given, as well as mediation training. And
9 they sign something called a Participation
10 Agreement. And the Participation Agreement
11 which is provide to you in the material that I
12 have given, talks about what is required in
13 this process. And really the essence of
14 Collaborative Law is that there is a
15 commitment by the parties and their counsel
16 that they will not go to court. And if for
17 some reason the collaborative process fails
18 and the parties for whatever reason find that
19 they are forced to litigate, the attorneys who
20 are representing those parties are
21 disqualified from representing those
22 individuals in that matter in court. And the
23 reason that is done is to keep the parties at
24 the table.

25 Why am I telling you all of this? I'm

1
2 telling you this because I think Collaborative
3 Law, which started back in Minnesota, and you
4 may have heard about a gentleman by the name
5 of Stew Red who started this I would say
6 fifteen years ago when he walked into his law
7 office one morning as a matrimonial attorney
8 and said I can't do this anymore, I've had
9 enough. And he thought of this idea of
10 Collaborative Law but he realized he needed
11 somebody else to do it with, and so he began
12 this process of training other attorneys in
13 this process that we now as Collaborative Law.
14 And it is taking off in California and Texas
15 and in other states and it has come to New
16 York, it started upstate and it's making it's
17 way up here to our part of the world. We are
18 excited about this because we find that what
19 is happening in the court system is, I'm sure
20 you heard this morning and before, it takes
21 too long, it's too costly and mistakes are
22 often too high, and if there are opportunities
23 for two people to be reasonable and realize
24 that they are going to have to live together
25 for the rest of their lives as parents

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2 perhaps, that this is an alternative that we
3 are trying to encourage. You may not ever
4 have anything to do with Collaborative Law as
5 Jurists and even as attorneys but some of the
6 accountants maybe involved because they can be
7 called in to help the parties with forensic
8 matters with regard to finances, with regard
9 to custody matters, and while law guardians,
10 per se, can't be brought in the process
11 because we know that only courts can assign
12 them, they are often helpful in resolving
13 those issues. You may see Participation
14 Agreements only if, I guess, if you are an
15 attorney who has now parties coming to them
16 after the process has failed and, I think, you
17 may see the documents when you are presented
18 with a separation agreement when the Judgment
19 of Divorce is needed to be finalized.

20 I have provided to you today with a copy
21 of the participation agreement, a copy of our
22 pamphlet of our association. The cover of a
23 book by Pauline Tessler who really is the dean
24 of Collaborative Law, she is in California, as
25 well as an article she has written. We are

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2 very excited about the process. We hope that
3 it continues to grow. We see that it is
4 happening. We see that there is a great need
5 for it. And at this time I would just invite
6 anyone if they have any questions regarding
7 the process.

8 HON. SONDRRA MILLER: Thank you.

9 MS. NANCY KELLMAN: Thank you.

10 HON SONDRRA MILLER: Neil Kozek.

11 (Whereupon, Mr. Neil Kozek steps up to
12 the dias to present his testimony.)

13 MR. NEIL KOZEK: Thank you Justice
14 Miller.

15 Members of the panel just picking up
16 where Nancy left off I am a co-founder of the
17 New York Collaborative Law Group as well as
18 the Rockland/Westchester Collaborative Law
19 Group. And prior to coming to New York I
20 practiced in New Jersey for approximately nine
21 years. I served as a judicial law secretary
22 in family part, and then I was lucky enough to
23 practice in North Jersey and practiced
24 exclusively in the field of matrimonial law
25 ever since.

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Key messages of Collaborative Law. It is divorce without courts, advocacy without being adversarial, it is a process of dispute resolution where the parties and their attorneys act as settlement teams and agree to resolve all issues in the divorce without going to court. Collaborative Law allows parties to maintain control over the process without advocating to the judiciary. Collaborative Law is a transparent and open process. All participants share information freely and hold frank discussions in order to resolve issues in a straight forward manner. Collaborative Law is less time consuming in most cases, less burdensome and less costly than a traditional divorce case. Participants in Collaborative Law seek to re-configure their family in a respectful and dignified manner, while empowering clients rather than courts over their lives and decisions that are being made. Because of the comprehensive nature of divorces Collaborative Law has a privacy aspect that is not available in the court system. It is private, it is not public

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2 and it is usually something that high profile,
3 high net worth clients in many cases prefer
4 over being in court where others can hear and
5 see what is going on in there lives.
6 Collaborative Law is non-adversarial making
7 divorce by its very nature, which is
8 difficult, emotionally draining into a
9 constructive and less damaging process. By
10 addressing custody and other issues in a
11 respectful way children are less damaged and
12 there is less anxiety. Collaborative Law has
13 been recently highlighted in the New York
14 Times in an article approximately nine months
15 ago and was recently profiled on the Today
16 Show where a couple was actually interviewed
17 by the correspondence of the Today Show and
18 spoke of their experience. And in that
19 particular case the woman had been divorced in
20 New York County and had gone through a three
21 and-a-half year ordeal and was able to
22 articulate to the audience and to the
23 producers what it was like to go through that
24 process versus this process.

25 Why am I bringing this testimony to the

1
2 court today or to this Commission, I should
3 say? What can we do and how can the courts
4 assist people in benefiting from the
5 collaborative process? I presented downstairs
6 thirty copies of the handouts from the New
7 York Collaborative Law Group which gives
8 information, our web-site, key messages,
9 ground rules, the same specific things that
10 Nancy spoke of in Rockland, but I also
11 included a copy of the New York Times article
12 and a code from the Texas Family Code which is
13 their Collaborative Law Statute. It's the
14 only one to date that I know of where the
15 Judiciary and the Legislature have codified
16 Collaborative Law as part of their court
17 system.

18 With me today is another co-founder of
19 the New York Collaborative Law, Catherine
20 Miller, who will address the issue briefly on
21 the Texas Collaborative Law Statute.

22 (Whereupon, Ms. Catherine Miller steps
23 up to the dias to present her testimony.)

24 MS. CATHERINE MILLER: Thank you.

25 My name is Catherine Miller and I am a

1
2 collaborative lawyer and mediator, former
3 litigator, reformed litigator I should say.
4 And Neil and I went about almost a year ago
5 and presented the idea of Collaborative Law to
6 the Westchester matrimonial Judges and they
7 unanimously said to us, well, that sounds
8 great, what do you want us to do? And I
9 though that might be something that all of you
10 might be interested in, what could you do to
11 help Collaborative Law because it really is a
12 better way in my view. I wish that
13 Collaborative Law had been available to me
14 when I was getting divorced, and that's about
15 as personal as you can get about it.

16 In Texas the Legislature created a
17 statute to make room for people who wanted to
18 get divorced using the Collaborative Law
19 procedure. So what they allowed the court to
20 do was to allow, I guess, participants to do
21 is to file a Collaborative Law agreement with
22 the court. And the agreement needed to hit
23 some certain topics, and it had to say that
24 the parties were going to have full
25 disclosure, that they were going to decent for

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2 intervention for a period of time to allow
3 them to resolve their issues without court
4 intervention, that they would hire joint
5 mutual experts to deal with any issues that
6 needed to be dealt with in that way, that they
7 would provide that the collaborative counsel
8 would withdraw in the event that the
9 collaborative process failed and new counsel
10 would be brought into litigate the process,
11 and then they'd move for any other provisions
12 that the parties thought would be useful to
13 them. So then the parties have two years
14 during which time at certain points
15 participants need to file status reports, two
16 years to settle their case. So the first
17 status report is entered in 180 days, the next
18 status report at about the on year
19 anniversary, and then finally at two years.
20 At two years the court will have the
21 collaborative case and their docket can either
22 put it on trial calendar for a trial for
23 hearing or can dismiss the case without
24 prejudice.

25 HON. SONDR A MILLER: Can parties opt

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2 out?

3 MS. CATHERINE MILLER: Yes, they can.

4 At any time they can file a notice that the
5 collaborative process has failed, and then the
6 case would go to court. In my experience it
7 would be a wonderful opportunity for people
8 who are going through a divorce to have some
9 space, because we all know that the milestone
10 that work in a court systems to keep the cases
11 moving through may or may work for
12 participants who are actually going through
13 the process of divorce, which is, of course,
14 terribly traumatic and difficult. Sometimes
15 their simple and sometimes it takes longer and
16 just takes a little bit more time. So I was
17 really -- I wanted to come here today to
18 invite you to consider the idea of giving some
19 room similar to what the Texas legislature
20 did. In a packet we brought downstairs there
21 is a copy of all of their materials and maybe
22 create a task force to study this for New
23 York. And thank you for considering
24 Collaborative Law and hearing us today.

25 HON. SONDR A MILLER: All right. I thank

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2 you all for your attention and wonderful
3 presentations. We will see you after lunch at
4 1:30 p.m.

5 (Whereupon, a lunch recess is taken.)

6 (Whereupon, the matter reconvenes at
7 1:30 p.m.)

8 HON. SONDRRA MILLER: Everyone please be
9 seated and turn off your cell phones if you
10 have not done that already.

11 Our next presenter is Jo Anne Cole. Is
12 she here?

13 (Whereupon, Ms. Jo Anne Cole steps up to
14 the dias to present her testimony.)

15 MS. JO ANNE COLE: Ladies and Gentlemen,
16 Honorable Sondra Miller, please realize I
17 really wanted the divorce, I really wanted it.

18 If I spoke back to my husband he would
19 take it out on my children, and I was in a bad
20 spot.

21 My experience with the so-called Justice
22 System has been the worst experience of my
23 life. During a 34 year marriage we raised
24 three children and built a million dollar
25 business repairing and installing

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2 electrically-operated gymnasium doors, yet
3 after he paid off my lawyer, I was left in
4 poverty.

5 We married when I was 18, and Fred drove
6 a cab in New York City. I encouraged him to
7 become a carpenter, then do side jobs, then
8 have his own construction business. I did all
9 the billing and bookkeeping, payroll and
10 government forms. My brother, Steve, was
11 Fred's best friend at the time. Steve had the
12 knowledge about partitions, and we agreed to
13 go into business. Steve would do the fixing,
14 I would do advertising and billing, and Fred
15 said "I'll be the mouth". I did a huge amount
16 of bulk mailing to get the company off the
17 ground. Fred went along with Steve as a
18 helper to learn the business for one year.
19 When he knew enough, he fired Steve and the
20 helper Steve just trained, went on the jobs.
21 Now Fred only scheduled the jobs and collected
22 the money. I worked much longer hours doing
23 the accounting, advertising, et cetera. I got
24 no pay, no extras - I was only a wife and Fred
25 was a bully. I lived on \$50 a week.

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2 Problems started when I discovered he
3 was sexually abusing my teenage daughter since
4 she was five. I didn't want to ruin his life,
5 but I had to get him out of the house. I
6 filed for divorce; he stopped it. He still
7 came by often and we ran the business from the
8 dining room table. He wouldn't agree to a
9 divorce, even though he was living with his
10 girlfriend at the time. He wasn't giving me
11 enough money, and I couldn't see any future.
12 I got a little job as a parish secretary and
13 decided to go back to school. I got no
14 financial aid because I had to sign the joint
15 income tax returns - it was all student loans.
16 I started divorce proceedings, he stopped
17 them.

18 During this time he came to the house
19 late at night, traumatized the teenagers, and
20 raped me. This happened about thirty times.
21 Once when I saw him coming, I called the
22 police; they didn't come. They said that they
23 didn't get involved with domestic violence.
24 When I finally graduated from chiropractic
25 school in 1983, he called me everyday to see

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2 if my license came. When it finally came, he
3 was ready to serve me with papers. My lawyer
4 -- can I be honest and say names or am I going
5 to get sued for slander?

6 HON. SONDRRA MILLER: We would ask you
7 not to name names. You can describe your
8 lawyer.

9 MS. JO ANNE COLE: I am too much of a
10 lady.

11 My lawyer, Mr. GT, was recommended by a
12 friend. He seemed thorough and decent, he
13 insisted that I sign the papers first and
14 settlement would follow. He told me to do
15 whatever it took to start my practice. So I
16 got a bank loan and I signed a lease on a
17 small office. Then the small amount of money
18 that Fred was giving me stopped, and I was
19 destitute. I called Fred to convince him that
20 it took six months to make a profit. And all
21 he said was, "Well, do you want to settle?"
22 When I gave Mr. T the picture that he asked
23 for of my husband, he said, "I know your
24 husband. He came to see me one evening."
25 Soon after that he moved out of his shabby

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2 little office into a very elaborate suite full
3 of the latest computers and equipment. When
4 Fred stopped the tiny payments, Mr. T no
5 longer returned phone calls. I had scrimped
6 and saved and borrowed to get the \$3,500
7 retainer, and now my lawyer sold me out. He
8 was nervous when I told him that I was going
9 to get a new lawyer. Something was very wrong
10 here. I tried to get some help, but no one
11 would listen - not the Bar Association, not
12 other lawyers, nobody would get involved.

13 I called Marvin Michelson in California.
14 He's dead so I can say his name. He had no
15 marks on his record according to the Bar
16 Association even though there were 64 cases
17 against him. Michelson said he would see me
18 when he was in New York City if I had a
19 \$25,000 retainer. I borrowed the money and
20 met him at the Regency Hotel. I don't think I
21 was supposed to see his bare backside on our
22 first meeting. Fortunately the phone rang,
23 and I got out quickly. His associates in New
24 York City were Mr. C and Mr. D. Mr. C
25 reassured me they'd get me a car, the house

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2 repairs would be covered, I would get a chance
3 to tell my story in court. I would be
4 prepared three weeks ahead of time before the
5 court date. Lies, all lies. They stretched
6 things out. My divorce took five years. I
7 started stealing food to stay alive. I was
8 arrested. I was told not to tell the judge
9 anything about the divorce, just go to the
10 shoplifting class.

11 I sent Mr. C documents - the deed and
12 mortgage to Fred's house in his girlfriends
13 name, the deed and mortgage to the next house
14 in her name, and many more papers to help my
15 case. He insisted that I send originals, not
16 copies. I never got my papers back. Fred's
17 lawyer was saying all this time that my
18 license was worth 1.3 million. And I was told
19 by my lawyers, "Don't worry, the Judge is no
20 dummy." I was never allowed in on any of the
21 discussions. I could refute all of the lies
22 if I were there.

23 When we finally when to court, Mr. C
24 said Fred's testimony would be first, and I
25 would go next, and that there is plenty of

1
2 time to prepare you. Lies, all lies. I was
3 told that this starts at 9:00 a.m. and I
4 should be there early and bring everything. I
5 arrived at 8:30 a.m. after a cup of coffee, I
6 didn't want to be late. He didn't tell me
7 that they break for lunch. Michelson arrived
8 at 11:30 a.m. after a hearty breakfast. I was
9 told to stand in the hall while they discussed
10 inside. Mr. C, who I spoke with all along,
11 didn't show up. I had to deal with a stranger
12 that I never met. I asked his partner Mr. D
13 about the racehorse that Fred bought me on my
14 birthday and then sold and kept the money; he
15 knew nothing. I asked him about the 30 foot
16 yacht he bought me and then sold it and kept
17 the money; he knew nothing. On and on and on,
18 all the discussions that I had with Mr. C were
19 useless. They promised me a trial; there was
20 no trial. I was told that the judge wanted me
21 to settle and he was annoyed with me for
22 taking so long. I had asked Mr. C to see how
23 much social security I would get. He said,
24 "You'll be fine. Fred's a millionaire and
25 you're collecting on his." Another lie, they

1
2 didn't even looked into it. Again, I stood in
3 the hall. No coffee machines, no food, no
4 candy or anything. I told the policeman,
5 "Something nasty is going on here. Can I talk
6 to someone?" No. A man that worked in the
7 court went by, he couldn't get involved.

8 Michelson said that I was only entitled
9 to one-half of what Fred made in that divorce
10 year. I said that's not right. He was firm.
11 The judge said that I had to settlement and
12 \$100,000 was the figure. Now I was in debt
13 for \$70,000 - \$40,000 in my school loans,
14 \$25,000 that I borrowed to get Michelson, I
15 borrowed this from my little old aunt, it was
16 her life savings, and the rest were from my
17 friends just to stay alive. By 2:30 p.m. I
18 was delirious from no food and standing in
19 heels all day. If I settled for \$100,000 and
20 I paid my debts I would still have \$30,000 to
21 start off. There was just no way out. I
22 couldn't get another lawyer. Where am I going
23 to get another \$25,000? My family was tapped
24 out, I tapped out my friends and I didn't want
25 to starve for another two years. I knuckled

1
2 under. As they wrote out the checks to Mr. C
3 and Mr. D and the accountant, Mr. R, they
4 decided to pay me off in eleven years - well,
5 that spelled poverty to me. I never had a
6 chance to start my office. Today, seventeen
7 years later, I still struggle to get enough
8 together to start my office. I am now 68.
9 When am I going to start when I'm 85?

10 In the meantime Fred and his golddigger
11 live in a mansion in Huntington, they live
12 lavishly. They have a safe in their home full
13 of diamonds, just in case things get bad. He
14 gives generously to my son who has a million
15 dollar home in Great River. I never see the
16 grandchildren. He just sent our older
17 daughter \$100,000 to buy herself a new home,
18 yet the daughter who lives with me gets
19 nothing. The family is completely shattered
20 with no hope of ever coming together. All I
21 ever cared about was my home and family

22 When I finally got back my divorce
23 papers eleven months later, I saw that they
24 valued -- my own lawyers valued my license at
25 1.665 million. They never told me that. They

1
2 never gave me back any original papers. So
3 any originals I sent them that I could use to
4 maybe appeal I couldn't get. When I
5 transferred from lawyer number one to
6 Michelson, lawyer number two, they insisted I
7 sign a lien on my home because the \$9,600 fee
8 to Mr. T the first one, was not fully paid. I
9 did not get my satisfaction of lien until
10 eighteen months after the divorce was final.

11 I consulted with many lawyers after the
12 divorce. They all got their fat fee, but
13 couldn't help without \$25,000 up front.
14 Letters to everyone including the Grievance
15 Committee and to your office fell on deaf
16 ears. My Social Security payment is \$726, so
17 I'll have to work until I die.

18 You can buy anything you want in a court
19 of law. Justice is sold to the highest
20 bidder. My side of the divorce cost me
21 \$50,000. For that money they cheated me out
22 of a half a million, which I should have
23 gotten. If it was not for the FBI coming in
24 to ask me questions about Michelson, he would
25 have still been practicing. And perhaps when

1

2 I publish my book that will help you to reform
3 the New York Courts.

4 Thank you.

5 HON. SONDRRA MILLER: Monica Getz.

6 (Whereupon, Ms. Monica Getz steps up to
7 the dias to present her testimony.)

8 MS. MONICA GETZ: Judge Miller and
9 distinguished panel, I would like to show my
10 gratitude to Judge Kaye for once again showing
11 her concern about New York families by
12 convening this Commission.

13 As you may know The Coalition for Family
14 Justice was one, if not the one catalyst for
15 the Commission in the subsequent 1993 rules.
16 We had gone to Mark Greenen. He had issued
17 the course of women and justice in New York
18 and this woman could not have better specified
19 what could have happened at that time, and
20 that area of the law has gotten better thanks
21 to Judge Kaye. I think Judge Kaye is maybe
22 our Judge Komar in the sense that she cares.

23 Daniel Mibornihan once said that the
24 plural of antidote is data. And I think if
25 there is anything we have after ten thousand

1
2 cases that we have dealt with is the plural of
3 antidote. And I think that the reason that I
4 have an overhead today is because I want to
5 make sure that I cover so much that I want to
6 share with you, and I want to thank you, Judge
7 Miller, that we are able meet again on May
8 9th. I also will have to share with you that
9 when I first saw this panel in print I
10 thought, oh, my gosh, is this the foxes
11 guarding the hen house? But after listening
12 and seeing how involved you seem to be, I have
13 changed my opinion. And I think this is the
14 best shot that we have at not only catching up
15 to California but maybe being ahead of the
16 rest of the nation because after the 1993
17 rules there were many things that were copied
18 in other states because Judge Kaye promulgated
19 certain rules like lawyers couldn't sleep with
20 their clients, that now thanks to Judge Kaye
21 and I think in some measure to us is no longer
22 accepted anywhere in New York and the bar.

23 I just heard a speaker speak about a
24 crisis. A crisis is a terrible thing to
25 waste, and I think we are in a crisis in New

1
2 York. And so we see our role in the Coalition
3 as bridging the abyss between the litigants
4 and what their expectations are, unrealistic
5 or otherwise, and often formed by what they
6 see on television. Litigants expect maybe
7 some measure of Judging Amy or Law and Order,
8 and we all know that is not realistic. But I
9 also wanted to share with you how they
10 perceive the court system. And I will go very
11 quickly over what I plan to say because you
12 will have it in your packets, and I don't want
13 to go over my ten minutes because I have been
14 very impressed by what I heard this morning
15 from other people. So this is what the
16 activities of the Coalition is. And I just
17 want to stay within for a minute, to help
18 families and children and protective parents,
19 that is a very important word "protective
20 parents", women and men get their merits heard
21 in the court system - to move the system from
22 what has been perceived wrongly or not as
23 abuser-friendly and to a safe and
24 user-friendly one. I just want to state for
25 one second that when I was in Albany one of

1
2 the Members of the Commission who is not here
3 now came up to me and said, we hear the women
4 talk about their gender bias against women and
5 then hear the men talk about the gender bias
6 against men and we only have those two
7 choices, what do you want us to do? And this
8 is what I say to that. When you really listen
9 to both men and women they have many valid
10 points, and I really think that it is no
11 longer about gender bias as much, although one
12 in three women are being abused so it is a
13 little bit reflective of that in the system,
14 however, it is more about power bars. And if
15 you think about it for a minute you will
16 realize it is true because whoever has the
17 money and the good attorney has a much better
18 shot. We are so underserved when it comes to
19 affordability of good lawyers, and some of my
20 suggestions you can include that.

21 Contributing factors to eroding faith in
22 the judiciary I think I will skip it because I
23 just mentioned it the litigants expectations,
24 you can read it at your leisure. But they
25 expect at the very minimum due process, help

1
2 with the abuse and addictions economic
3 violence. They are reaching out to you for
4 help. Their perception that they have maybe
5 because standards and goals, which is a very
6 good standard, they are expected that most
7 litigants go away, settle, stipulate out and
8 don't overburden us anymore. And I just
9 wanted to say there are two different kinds of
10 litigants, and I think that you have to keep
11 it in mind it is a wonderful thing when you
12 have two decent people basically being the
13 litigants because then mediation is perfect,
14 Collaborative Law would be perfect, but then
15 you have another kind of litigant where you
16 have one abuser and one sort of accommodating
17 good protective spouse and that's where the
18 system really boggles the mind. And that's
19 the last one in that column, cast in concrete
20 the expectation that both parents must be calm
21 and anger towards any party or system itself
22 must be punished severely, and the energy and
23 the power then comes to punish the protective
24 parent.

25 The wreckage at the bottom of the abyss

1
2 is mind boggling. And I will just quickly
3 read some of it, loss of assets, jobs and
4 reputation, character assassination, zero
5 prosecution of perjury, inability to correct
6 errors, outcomes that are 180 degrees against
7 the children's welfare and safety. It boggles
8 the mind because I know many of you on an
9 individual basis and you are decent, caring
10 and hard working people.

11 Talking about decent, caring and hard
12 working, I just want to say something about
13 Harriet and Judge Cooney, this ad that was
14 mentioned earlier that I think Peter thought
15 we were responsible for, we have nothing to do
16 with it, we spent hours trying to track who
17 sponsored it. I heard that somebody found out
18 that it was paid for in California. So we
19 would never do anything so underhanded,
20 especially Judge Cooney who is one of the best
21 Judges we have and Harriet who works so hard.
22 We would never try to undermined her
23 credibility.

24 This is what we really think might be a
25 tremendous help. The American Law Institute

1
2 has now begun to talk about the Approximation
3 Rule, and that would substitute the best
4 interest of the child which sounds so good,
5 but I think it could have problems and
6 that's --

7 HON. SONDRRA MILLER: Would you focus
8 that a little more so that I can see?

9 MS. MONICA GETZ: The stability of the
10 child would trump any other consideration, and
11 down at the bottom you will see --

12 HON. SONDRRA MILLER: Thank you.

13 MS. MONICA GETZ: That the exception is
14 current documented mental illness, addiction
15 or abuse, and that's where the expert would
16 come in.

17 We need a paradigm shift. It is about
18 culture in the system. There needs to be a
19 paradigm shift regarding the legal culture in
20 family matters making the family law system
21 dedicated to the well-being of the children
22 first, instead of what I as a non-lawyer
23 perceives to be the current standard borrowed
24 from the criminal court system to protect the
25 rights of the criminal. That becomes very

1
2 confusing and very unsafe. There are no
3 safeguards in place to protect against the
4 over-zealous representation of the abusive
5 parent. There are so many good lawyers here
6 today, and their nightmare is when you get
7 these over-zealous people who defend the
8 abusers. So at the very least, the Family
9 Court should afford the same level of
10 protection to the rights of the children as
11 criminal court does to protect the rights of
12 the criminal.

13 Now comes the touchy stuff. Costly
14 levels of the court's inability to
15 self-correct causing trauma. The problems
16 begin with simple errors. And I have
17 wonderful Peg Riley here our child support
18 person who went with a man to the Bronx who
19 found out that there were thousands of dollars
20 in arithmetic errors on the child support. He
21 was a bus driver and they took his driver's
22 license and he could no longer support the
23 family. So inadvertently that protective
24 parent became a victim and the child became
25 the ultimate victim. Unintended consequences.

1
2 You all know about the Skips/Douglas case and
3 Gunna case and the Judges were wholely blamed
4 for that, I don't blame the Judges completely
5 because the inability. For instance, in the
6 Skips/Douglas case it was told that, well,
7 Ann, who I knew and was a member of the
8 Coalition came in and put something in writing
9 but she didn't articulate that she wanted the
10 husband out of the house orally. Now, this
11 kind technicality should not make a person
12 loose their lives. Appeals are unaffordable,
13 completely unaffordable to the average family.
14 So it is a fiction that everyone has \$25,000
15 now to run to the Appellate Division.
16 Collusion is something very creepy and subtle.
17 This is a subconscious one, and I hesitate to
18 use this term but I can only say it is a
19 kissing-up factor. Everyone wants the job,
20 they want to please the Judge. You are not
21 aware of the extent to which everybody sort of
22 like Cesar as Judges get removed from
23 litigants reality by people who are constantly
24 surrounding you and asking you, value us, we
25 are not lawyer bashers or Judge bashers, we

1
2 want to work with you, value us for giving you
3 feedback what is really going like this lady
4 did. Then there is the deliberate ex parte
5 communication. In our law books there is one
6 case where it was a clear sexual abuse case,
7 and he could only testify to this wonderful
8 mother, we had ACS ganging up on her, the law
9 guardian unfortunately was ganging up on her,
10 and the attorney, of course, and the husband
11 and the Judge. And she to this day does not
12 have her child. And I traveled on my own
13 expense to Ireland to verify that he had a
14 whole slue of sexual abuse history behind him,
15 but these people there were not allowed to
16 testify and they were ashamed to come to the
17 United States and they did not have the money.
18 Corruption. We all know what has been
19 happening. Outright corruption is something
20 that I did not even think happened in the
21 system, although we know it happens. I'm not
22 going to talk about that, and I am not going
23 to belabor it, and the trial is not finished.
24 However, we have a Brooklyn Chapter now where
25 the woman wore the wire. There are hundreds

1
2 of women and men too who interacted with these
3 two players, whose names I'm not going to
4 mention, these women have spent all of their
5 money trying to -- these are wonderful
6 traditional stay at woman, one with nine
7 children were plucked away from her, the only
8 one that was left in the home was the girl.
9 No more money to litigate. Children are now
10 spitting on these wonderful women, spitting at
11 them and calling them sluts, enabled by the
12 court system and also by the shows,
13 unfortunately. And the ones that can afford
14 to still stay in the system still have the
15 same experts that collated with these other
16 people. It is a huge problem. Give it some
17 thought.

18 Suggestions to this, and I will really
19 quickly over it, screening, screen out the
20 abusers early in the system. Alcoholics and
21 drug abusers you can just take a sniff and in
22 fifteen seconds establish who is the abuser.
23 Get them out of the system, mandate them into
24 treatment.

25 The approximation rules, and now comes

1
2 to the slide -- I am going to skip all of this
3 because I do want to just tell you about the
4 approximation rule -- no this qualification,
5 how to increase the confidence in the system.
6 Professionalize it.
7 Judge Judy already said we have got to have
8 Judges who can pass a test who are perfect as
9 far as history and caring about children and
10 temperament. Testing. They should be tested.
11 If they don't pass the test train them. Why
12 is child development, interview techniques,
13 impact of domestic violence, alcoholism,
14 mental illness, all of that can be trained.
15 Tracking. Emergency safety track. Internal
16 investigations where the Inspector General is
17 not tied to just go to the disciplinary
18 committee, which really do very little, and
19 instead we should have a result enforceable by
20 a rapid problem solving court. Errors, things
21 of that sort and a quality control. These are
22 the best and the brightest the Judges in New
23 York, but not necessarily on the matrimonial
24 bench because of the stigma that was mentioned
25 before. Feedback from system, data

1
2 collection, problem solving and court
3 intervention and litigant participation in all
4 aspects of the disciplinary proceedings.

5 And I'm just going to go to the
6 unbundling. You can make people afford things
7 if you untie the attorneys from a case so that
8 you can have little pieces of the case. I
9 discussed it with Judge Silverman, I spoke to
10 the bar about it, it is already in the
11 process, and it is going to be recommended to
12 Judge Kaye as a court rule.

13 And last, the Sunshine Paradigm. Open
14 up the windows. I know Judge Kaye loves this,
15 cameras in the courtroom. You can retrain all
16 the court reporters so that they can catalog
17 and supply the Appellate Division, for very
18 little money, these transcripts are enormously
19 important, expensive, often wrong, often lost,
20 often changed, you will not believe it, and I
21 would like to see open up the courtrooms to
22 this. Attorneys only will only fortify
23 suspicion, and open up all disciplinary
24 committees asking where the bar happily
25 reports the satisfaction and includes

1
2 constructive minded litigants on all
3 disciplinary committees. We are aware that
4 this requires legislation and we will be lobby
5 for it. And maybe former Supreme Court
6 Justice Louis Brandeis said it best: Sunlight
7 is the best disinfectant.

8 Thank you.

9 HON. SONDRRA MILLER: Susan
10 Titus-Glascoff.

11 (Whereupon, Ms. Susan Titus-Glascoff
12 steps up to the dias to present her
13 testimony.)

14 MS. SUSAN TITUS-GLASCOFF: Good
15 afternoon, and thank you so much for having
16 this Commission. It is certainly something
17 that is very much needed as I am sure that no
18 one disputes.

19 I am going to make a kind of a
20 presentation that is a little bit different
21 then a lot of the others. I sort of looked at
22 the big picture, the broad picture and almost
23 like a funnel and bring it down to a tiny
24 point. I know that states each have their own
25 autonomy and their own independents and their

1
2 own rules and so on, but we've certainly seen
3 - and everyone knows that I am from
4 Connecticut although I got my divorce here in
5 White Plains and heard from people in other
6 states - the issues are national, people move,
7 all kinds of things. And somehow or other you
8 can't have nationally employed laws. You
9 certainly could have some guidelines and some
10 incentives, and I know there some with regards
11 to child support and so on and so forth, but
12 they need to go a lot further. And one of the
13 issues that needs to be addressed is fraud
14 because it is so difficult prove fraud, and
15 the child custody issues are amazing. And I
16 think that there is almost nothing where one
17 size fits all. And I just finished reading
18 one of many books, one of them being Judith
19 Wallerstein's book. And she gave a rather
20 interesting scenario about children that she
21 had interviewed from, one, three, five, ten,
22 fifteen and twenty-five years after divorce,
23 and she did it just from their perspective.
24 And I understand some people are questioning
25 some of the data, I guess, we all question

1
2 everything, but she did say something - that
3 really I know from lots of experience myself,
4 I have a master in advocacy, I also have a
5 masters in math, I have been doing advocacy my
6 entire life, I was married to a high-powered
7 law attorney for twenty-three years myself,
8 and so I do come with some expertise in these
9 fields. And the children have their own ideas
10 about custody and so on. And, yes, they are
11 uninformed, and yes they need to see both
12 parents and so on and so forth, but we really
13 do need to listen to children more than we do.
14 And one of the comments that Judith
15 Wallerstein makes is that for elementary
16 school children, if the parents can cooperate,
17 and we might be able to help them cooperate
18 more than they do, then responsive
19 joint-parenting time can work reasonable well
20 as long as the parents can cooperate. But for
21 the very little ones she even finds the same
22 fact, whoever has been the primary nurturer is
23 probably the best to have the majority of the
24 custody, that's not to say not some of the
25 additions so on and so forth.

1

2 Now, as for teenagers. I don't think
3 there is anyone who knows a teenager who
4 really wants to spend a lot of time with any
5 parent whether they are married or divorced or
6 whatever. You know, they really just don't
7 want to. They want to do their own thing, and
8 they are getting ready to spread their wings
9 to go off on their own and I think we must
10 respect that some. The thing that she comes
11 across with the most in her book is that the
12 children feel like they are a commodity. You
13 know, they are passed back and forth and all
14 of the experts and everybody else who makes up
15 their mind for them and they really resent
16 that. And I know that happened with my own
17 kids and so on. And we have to look at the
18 big picture because all of the fallout from
19 this. It is very common for children of
20 divorce to have lots of different problems.

21 My mother used to teach emotionally
22 disturbed children, and I am going back four
23 years now, she would say she could tell the
24 children of divorce without being told who
25 they were. She could just pick them out. And

1
2 the younger they are it seems the harder it
3 is. My youngest is now 28, he just dropped
4 out of college for the fifth time. And that
5 is extremely common for that kind of thing to
6 happen.

7 So I would like to see that this New
8 York panel doesn't just stay here, that your
9 recommendations just don't stay here. That I
10 am very glad that you invited Robin Yeamans
11 and others, and I hope that you will get
12 together some kind of a solicitation for other
13 states to commence and create some kind of a
14 national panel, perhaps have congressional
15 hearings. That's what I would really like to
16 see, I would like to send quite a bit of this
17 information to various key senators around the
18 United States. We need to get something
19 before we do too little too late. The impact
20 is horrendous. And actually, part of the
21 impact isn't quite as bad yet as they are
22 making out, and it is in the packet that I
23 gave you. The divorce statistic is not fifty
24 percent, and it really annoys me that I see
25 this all over the place, all kinds of experts

1
2 everywhere quote this fifty percent divorce
3 rate. Well, I went to the library just
4 yesterday, I got the latest statistics. If
5 somebody is divorced the chance of their
6 getting divorced is twenty-four percent of
7 them from an original marriage will get
8 divorced, and then that varies some by state.
9 The problem is when you take a divorce rate
10 and there is 250,000 marriages in one year and
11 there is 125,000 divorces that is that is not
12 a fifty-percent divorce rate, that is where
13 the problem is coming. You have to compare it
14 to the number of people that have already been
15 married. But all of those statistics, all
16 broken down, all kinds of different categories
17 are all in the packet that I gave you. And,
18 of course, naturally you can break it up by
19 category. Teenage marriages has a much higher
20 rate of divorce. People who are, you know,
21 sort of in their mid-twenties and up getting
22 married have a much lower incident of divorce.
23 If they have children they have a lower
24 incident of divorce, thank heavens.

25 And that gets me to something that is

1
2 very dear to my heart. And I understand that
3 you are going to be speaking to Andrew
4 Shepard, I forget his first name, tomorrow on
5 some of the educational issues. I would
6 really like to see us get at some of the core
7 things, and that is that we need to have -- if
8 not -- you can't require it need to be some
9 really strong guidelines and incentives to get
10 K through 12 education like the Partners
11 Program that is now in some of the high
12 schools around the United States, like who
13 used to be the chairman of the Family Ethics
14 Committee of the ADA. It's conflict
15 resolution, good parenting and good
16 partnering, we certainly all could benefit
17 from that. I would like to see a lot more
18 programs to require or to have very great
19 incentives, to have more premarital
20 counseling, to have more marriage encounter
21 weekends. And you can say, gee, where are we
22 going to get the money for all of this? If
23 you would just do a simple cost study of what
24 it takes to take one child from K through 12
25 who goes through the system in a normal way,

1
2 and another child who has to be pulled out of
3 the class like my mother taught of emotionally
4 disturbed kids - first of all there is only
5 eleven kids in that class, there is a maximum
6 of ten there is only ten - and then a lot of
7 those children need tutoring that just double,
8 triples whatever your cost of education, and
9 then if they drop out of school or if they
10 start college and they drop out of college
11 think of all the potential that you have lost.
12 Think of all of the dollars that are lost, and
13 I don't like to just put this in dollars and
14 cents but everyone is going to say, well,
15 Judith, we can't do this, we don't have the
16 money, you do have the money, we do have the
17 money. It is our society, their our children,
18 and absolutely must consider this.

19 Now, I would like to just close with a
20 few questions I had. And, you see, I don't
21 think that we need anymore studies other than
22 perhaps a little bit of cost analysis, that
23 would not be difficult to figure that out at
24 all. There are tons of studies. There is
25 books. You've heard all kinds of people,

1
2 there are all kinds of commissions, there are
3 all kinds of things, there are presidential
4 task forces. We don't need anymore studies.
5 We have been studied to death. We need to
6 have some action before we do too little too
7 late. I would like to just go through a few
8 questions that I have. In the newspapers, I
9 read articles all the time, I try to get
10 people to interrelate, I'm always getting
11 people to interrelate to the big picture, and
12 people sort of say you are going all over the
13 map and accusing everybody. No, I'm not. I
14 only have one thought and that is to make the
15 family work better and that is better for all
16 of us. We have to figure out how. And it's
17 not just New York State, it's not just you and
18 me, it's everybody. And schools and colleges
19 have lately reported an increased need for
20 counseling. I wonder why? Divorce is
21 undoubtedly a factor. Truer Mathematics said
22 that the effects will increasingly ripple
23 throughout society. How about we all stop
24 making excuses about what cannot do and focus
25 on what can do? How about requiring a K

1
2 through 12 programs? How about incentives
3 from premarital classes and encounter
4 weekends? How about some ipso facto facts
5 speaks for themselves when you go on, like
6 this lady who just spoke a few minutes ago, I
7 don't remember her name, but there are many,
8 many, many cases where later on down the road
9 one partner is off with a new family or
10 whatever they are doing and living very well,
11 perhaps even driving a Mercedes and the other
12 is on food stamps? That's not that uncommon.
13 Something's the matter and there needs to be
14 some kind of after the fact review. Perhaps
15 there needs to be a lay review sometimes, a
16 lay review committee, I know Monica likes to
17 talk about it, an Omsgoodsman panel or
18 something where situations simply don't make
19 sense. We have one of our board members who
20 was also very instrumental in the Albany
21 conferences. It was a female Judge, the
22 female Judge ordered the father to attend
23 abuse counseling. The father didn't. The
24 female Judge asked for permission to go and
25 attend a conference and quote this case so

1
2 that she quote the abuse. Three months later
3 she awarded custody of those kids to that same
4 person. The mother just got back custody --
5 that was three years ago -- the mother just
6 got back custody of one of those because the
7 father got really mad in the middle of the
8 night and slapped the kid enough so that it
9 made it bruise, the mother was astute enough
10 to go pick him up and take him right down to
11 the police station and got a picture of it,
12 and, so, she got back unconditional custody of
13 that child. They wouldn't even entertain
14 giving back custody of the youngest one. That
15 just doesn't make sense to me. Somethings
16 simply just don't make sense. I think we have
17 to have some things that make common sense.
18 And I think most Judges and lawyers and people
19 who are in the psychology field and so on,
20 absolutely poor their hearts into this. But
21 you get -- they are human beings too, we are
22 all human beings, and sometimes if somebody
23 pointed out some of the information that is
24 given to them or it is twisted or maybe even
25 they themselves are trying to reenact some

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2 kind problem that they have, justice can't be
3 that arbitrary. If you get a situation or
4 even just a personally conflict it can happen
5 sometimes. There has got to be some other way
6 of doing it another way.

7 And I guess that is all I have to say
8 because a lot of it is in here. I gave you a
9 whole bunch of articles that I left down at
10 the office there. I did write on them a
11 little bit, but I did not write on then a lot,
12 just a little tiny bit, but I have articles
13 trying to interrelate the big picture, trying
14 to make all of us look and see what we can do.
15 This is not about men versus women, this is
16 about how we can use or complimentary
17 strengths and weaknesses and come up with some
18 joint solutions. We really, really need to do
19 that. Or I maintain that we can't go promote
20 democracy or anything any place else. We have
21 to do some house cleaning right here, right
22 now.

23 Thank you.

24 HON. SONDR A MILLER: Thank you.

25 Dr. Neil Grossman.

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(Whereupon, Dr. Neil Grossman steps up to the dias to present his testimony.)

DR. NEIL GROSSMAN: Good afternoon.

I am a family forensic psychologist who practices in Nassau and Suffolk Counties. I chair the Forensic Task Force, co-sponsored by the APA Division of Family Psychology and the Academy of Family Psychology; I am also presenting this material for the Suffolk County Psychological Association.

I am pleased and excited about the existence of this Commission and the judiciary's commitment to review and possibly modify the way divorce and custody are dealt with. This presentation will cover areas of child custody evaluations and interventions with high conflict families. Written material will be submitted.

I will start with comments on the use of two interventions with high conflict families: Parenting Coordination and Case management. A Parenting Coordination Pilot Program has been started in Nassau County in conjunction with the Supreme and Family Courts. Hopefully once

1
2 this program is fine tuned it will be adopted
3 throughout New York State. Case management is
4 another important approach to working with
5 high conflict families. It is under utilized.

6 Some comments about the existing process
7 for divorce. If we designed a system dealing
8 with divorce and custody, I doubt it would
9 look like what we have. The challenge is how
10 to move from what we have to a process that
11 would work better. We could examine the
12 process and attempt to identify its strengths
13 and weaknesses. I believe that problems can
14 be found at all levels. Some are built into
15 the system and others are caused by the way
16 individuals work with and interact with the
17 system. My focus today is on problems the
18 judiciary has control of.

19 Specific focus on child custody
20 evaluations. The purpose of a child custody
21 evaluation is to inform the court about the
22 parents and children and to suggest factors
23 that should be considered by the Judge in
24 reaching a decision about custody and
25 developing a parenting plan. There are

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2 problems with child custody evaluations. One,
3 some people doing evaluations are not
4 qualified. Two, some people who are qualified
5 do a poor job. Three, there are problems with
6 how child custody evaluations are used. The
7 forensic evaluator is often asked to make
8 custody recommendations. This is under the
9 assumption that when seeing these
10 recommendations a number of litigants will be
11 prompted to settle. This assumption does not
12 always work. There are questions we need to
13 answer about child custody evaluations:

14 One, what is the minimum qualifications
15 and training a professional should have? A
16 number of guidelines from professional
17 organizations exist. However, these do not
18 specify what training and experience is
19 sufficient. We need to establish the criteria
20 for these. Some basic guidelines are readily
21 available, but Judges don't always use them in
22 appointing a professional. For example, in
23 some instances non-licensed professionals have
24 been appointed.

25 Two, what should the scope of a child

1
2 custody evaluation be? What issues should be
3 evaluated? Child custody evaluations should
4 be used to rule out whether personality issues
5 should be a factor in determining custody. A
6 child custody evaluation can be helpful when
7 it is important to have an understanding of
8 family dynamics, parenting capacity, or the
9 extent to which, family violence is an issue.

10 How can we determine the quality of
11 child custody evaluations? There are many
12 appropriate ways to conduct a child custody
13 evaluation and the same evaluator may use a
14 different approach based upon the particular
15 family or issues addressed. However, there
16 are minimum standards that can be agreed on.

17 Why are Courts appointing evaluators who
18 don't meet the minimum standards?
19 Professionals who review child custody
20 evaluations for rebuttal find that evaluators,
21 who use inappropriate procedures and tests,
22 are appointed and continue to be appointed.
23 Judges may not know what is appropriate and
24 may need more training in relation to this.

25 Regarding rebuttals: Why do attorneys

1
2 ask the peer-review experts to interview some
3 of parties? This is not appropriate. The
4 rebuttal expert should limit the review to the
5 manner in which the evaluation was conducted
6 and the written report. Are Judges permitting
7 testimony beyond this into the courtroom?

8 Four. We need to educate Judges,
9 attorneys and custody evaluators about the
10 minimum standards and how to assess the
11 quality of an evaluation. It would be helpful
12 if feedback was given on the quality and
13 adequacy of an evaluation. It would be better
14 yet, if custody evaluations were graded. This
15 would be difficult to accomplish but perhaps
16 there could be reviews involving custody
17 evaluators, attorneys and Judges where, with
18 identifying information removed, a custody
19 evaluation was critiqued.

20 How the court uses information provided
21 by the child's therapist. This is another
22 area of concern. Problems occur when mental
23 health professionals who are not knowledgeable
24 about the dynamics of divorce provide
25 information to the court. The court needs to

1
2 know how to determine whether the child's
3 therapist has appropriate expertise regarding
4 divorce and will provide useful information.
5 Numerous times well meaning professionals who
6 are treating a child give erroneous or
7 incomplete information to the court that is
8 taken as valid, and relied on when making
9 important decisions.

10 Resources. The New York State Chapter
11 of AFCC. The New York State Psychological
12 Association is forming a forensic kind of
13 psychology division. And on a local level
14 where I practice, Suffolk County Psychological
15 Association has formed a forensics committee.

16 Recommendations. Every judicial order
17 should be considered a therapeutic
18 intervention. This is similar to the concept
19 of therapeutic jurisprudence. Two, when we
20 think of the outcome of a divorce we should
21 look at the post-divorce adjustment of the
22 family in addition to the legal divorce.
23 Three, the court should consider creating some
24 type of inactive status so that when
25 desirable, such as when a parenting

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2 coordinator is used, the case can be followed
3 by a Judge without the case being counted as
4 active. Four, Judges and the professional
5 groups representing child custody experts
6 should work together to identify what
7 qualifications are needed to conduct an
8 evaluation, what is the sufficient training
9 and experience, and what are the minimum
10 standards. Five, some child custody
11 evaluations should be subjected to blind
12 reviews as a training tool for Judges,
13 attorneys and child custody evaluators.

14 Thank you.

15 HON. SONDR A MILLER: Thank you, very
16 much.

17 Christopher Nelson.

18 (Whereupon, Mr. Christopher Nelson steps
19 up to the dias to present his testimony.)

20 MR. CHRISTOPHER NELSON: Good afternoon.

21 I am grateful for the existence of this
22 Commission and for an opportunity to address
23 you this afternoon.

24 Imagine coming home from work one day
25 and finding your home ransacked, and then

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2 coming to the slow realization that the
3 perpetrator, the defiler of your home, is not
4 some stranger but your spouse, the one person
5 in all the world whom you trusted implicitly
6 and most relied on. In stock, you go to pick
7 up your children from camp and daycare - as
8 you did every other day - only to find that
9 you're too late; they've been picked up
10 already. The mother of your children - with
11 the aid of people you would have called
12 friends and with the aid of the courts - has
13 stolen your children, your property, your
14 life.

15 This is not something I have to imagine
16 because it actually happened to me. Just
17 eleven days after the anniversary of our
18 wedding, my wife secured an ex parte order and
19 with the stroke of a Judges's pen, I went from
20 being a doting father and primary caretaker to
21 being an infrequent visitor in my daughters'
22 lives. Half-truths and bold-faced lies were
23 taken at face value - without me present to
24 defend myself - and my life and my children's
25 lives were changed forever.

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2 Through the following year, I asked
3 myself again and again, "How could this
4 happen?" I'm a good man and a good father. I
5 was present when my daughters were born and
6 cared for them from that moment on. I changed
7 diapers and wiped runny noses. I walked the
8 floor with them when they fussed at night.
9 When they were hungry I gave them a bottle or
10 brought them to their mother to nurse. As
11 they grew I cared for them, played with them,
12 and taught them. I tucked them in and read
13 them bedtime stories. I volunteered in their
14 daycare and school classrooms, I took them to
15 the doctor, I played with them, I supervised
16 homework. Quite simply, I loved them with all
17 of my heart.

18 How, indeed, could this happen? Surely
19 we live in a nation of laws and surely the law
20 cares for facts, not alarmist claptrap. I
21 remained hopeful through a year of sporadic
22 litigation that the truth would win out. I
23 retained faith in a system of government I'd
24 always believed worked. A system that
25 included a presumption of innocence and blind

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2 justice reaching fair, fact-based conclusions.

3 A system in which citizens have rights that

4 cannot be abrogated without cause and due

5 process.

6 What, then, was I to think at the end of

7 the first day of my divorce trial when the

8 Judge pronounced, "I don't know why we're

9 having this trial, I'm going to give the

10 mother the children and full CSSA support."

11 What was I to think as the Judge slept through

12 part of our proceedings? Or when every

13 credible witness stated that I had a loving

14 relationship with my children and still the

15 court concluded I would not be allowed to be

16 their parent? What was I to think when the

17 Judge's decision bore little relation to the

18 facts of the matter as presented to him and

19 had little basis in the law? I could only

20 conclude that the system I believed in no

21 longer existed or was horribly broken.

22 At trial expert and character witnesses

23 avowed my dedication and success as a father.

24 The law guardian, the plaintiff, and even the

25 trial Judge acknowledged that I am a good

1
2 father. No one presented any credible reason
3 why I should not be allowed to continue being
4 a father to my daughters. Still, both
5 physical and legal custody were wrested from
6 me and sole custody was given to their mother.

7 I had become aware of anecdotal evidence
8 that fathers were not given a fair hearing, I
9 not surprised. I had been counseled by my
10 lawyer and the law guardian that I was
11 unlikely to prevail. The bias of the court
12 for mothers is well known. But how could I
13 not give my all for my children? How could I
14 give up on them and ever look them in the eye
15 again?

16 Imagine a fundamental right protected by
17 the First, Fifth, Ninth and Fourteenth
18 Amendment regarded as far more precious than
19 property rights; a right the United States
20 Supreme Court says "undeniably warrants
21 deference, and, absent a powerful
22 countervailing interest, protection." Imagine
23 that the right cannot be denied without
24 violating those fundamental principles, which
25 lie at the base of all our civil and political

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2 institutions. This right is so fundamental
3 that there must be some compelling
4 justification for state interference.

5 Imagine that the government suspends or
6 denies this right literally tens of thousands
7 of times a year and that interference is done
8 on the basis of little or no evidence of any
9 state interest whatsoever. And in these cases
10 of suspension or denial, there is no
11 demonstration, and often no allegation, that
12 the right has been abused or that retention of
13 the right of by the individual in question
14 would be harmful to any other person.

15 Suppose, further, that even the temporary
16 suspension of this right shifted the burden of
17 proof onto the former right-holder to
18 demonstrate that the suspension should not
19 become a permanent denial. If there were such
20 a right and it were treated in such a cavalier
21 way, what would our reaction be? Outrage?
22 Indeed. Yet, there is such a right that is
23 violated every day in New York courts and in
24 courts across the country. It is the right to
25 be a parent.

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In New York State 93% of child custody cases are decided in favor of the mother. 93%. Imagine any other area of law where one class of litigants lost 93% of the time. It defies probability. It defies common sense. Yet, that is the state of affairs that exists today. Where is the outrage? If minority litigants were so discriminated against it would be considered a scandal of epic proportions. But here we are talking about only fathers - not a minority, but nearly half of our adult male population and there is no outrage. Why? Not because it is not wrong, but because, like me before the inception of my divorce, the population at large simply isn't aware of this problem. While a vocal minority like myself cry out about the injustice, there is little to support our case. By law the decisions of divorce and custody cases are sealed and not available for public scrutiny. But when the public is made aware, their reaction is unequivocal. A recent referendum in Massachusetts found overwhelming popular support for legislation

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2 prescribing a rebuttable presumption of joint
3 custody. Surely, our neighbors in
4 Massachusetts are not that different from us.

5 Imagine a preventable source of social
6 ills that contributes to child suicides,
7 behavioral disorders in children, high school
8 dropout rates, increased drug use by children,
9 earlier sexual experimentation, lower grades,
10 and increased crime, which, nonetheless, went
11 unaddressed. We don't have to imagine such a
12 source, it is the lack of a father's care and
13 guidance.

14 The Census Bureau reports that 63% of
15 children who commit suicide are from
16 fatherless homes, yet we continue to promote
17 divorce and father absence. The Center for
18 Disease Control reports that 85% of children
19 that exhibit behavioral disorders come from
20 fatherless homes, yet we fail to promote joint
21 custody. The National Principals Association
22 reported that 71% of all high school dropouts
23 are from fatherless homes, yet we don't do all
24 we can to ensure children have the guidance of
25 both parents.

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2 Imagine being able to serve the best
3 interest of children of divorce while reducing
4 court case loads and saving more than 77
5 million dollars a year. Imagine being able to
6 not only reduce divorce but, when divorce does
7 occur, to reduce post-divorce conflict and
8 re-litigation. You don't have to imagine it,
9 it's possible today. Joint custody achieves
10 these goals.

11 Alexander Hillery II noted "While some
12 psychological pain is inherent in the divorce
13 experience itself, much of the psychological
14 trauma for the child stems directly from the
15 sole custody/visitation system." And
16 Dr. Rebecca Drill found that "arrangements
17 where both parents are equally involved with
18 the child are optimal." Dr. John Guidubaldi
19 and Richard Kuhn researched factors that
20 affect divorce rate. They found that states
21 that encourage joint custody after divorce
22 have divorce rates that a decreasing four
23 times faster than in states that favor sole
24 custody. They found that the higher the
25 percentage of joint custody arrangements, the

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2 lower the divorce rate with a 10% reduction
3 fairly easy to obtain. Such a reduction could
4 save New York courts more than \$4 million a
5 year or free up that money for other important
6 uses such as assigned counsel fees.

7 In other research, Doctors Frederic and
8 Holly Ilfeld and Junior Alexander reported
9 that divorced families with joint custody
10 arrangements are only half as likely to return
11 to court as those with sole custody. A
12 corresponding reduction in Family Court case
13 loads in New York could save more than \$50
14 million a year.

15 Imagine that it is in your power to
16 effect these changes, to help children, free
17 funds for other uses, reduce crime and ensure
18 justice. Would you do it? You don't have to
19 imagine it, it is in your power today. Over
20 30 states have joint custody laws. No state
21 which has enacted such laws has moved to
22 reverse them, where there have been changes,
23 they have been to more strongly favor joint
24 custody. The New York State legislature can
25 and should pass joint custody legislation but

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2 this Commission must realize that current
3 statutes do not prevent joint custody. Only
4 the precedent established by Braiman versus
5 Braiman prevents the courts from awarding
6 joint custody and it is an antiquated
7 decision, contrary to today's best practices
8 in family law and social science.

9 The judiciary can and should take
10 action. Braiman versus Braiman should be
11 reversed on the weight of current law best
12 practices and New York courts should begin to
13 award joint custody except where there is
14 clear and convincing evidence that it is
15 harmful - not just suboptimal, but harmful to
16 the children. The United States Constitution
17 demands it, the best interests of our children
18 demand it, and the people demand it.

19 Thank you.

20 HON. SONDRRA MILLER: Thank you.

21 Allan Simmons.

22 (Whereupon, Mr. Allan Simmons steps up
23 to the dias to present his testimony.)

24 MR. ALLAN SIMMONS: Thank you for the
25 opportunity to speak.

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2 I want to bring to your attention that I
3 am a current litigant before Justice Ross in
4 Nassau County, and I brought this up to the
5 Commission's attention when I submitted my
6 application.

7 HON. SONDRRA MILLER: You are a current
8 litigant?

9 MR. ALLAN SIMMONS: Yes, I am.

10 HON. SONDRRA MILLER: Presently before
11 the court?

12 MR. ALLAN SIMMONS: Yes, before Justice
13 Ross.

14 I can have somebody speak on my behalf,
15 or I can defer to somebody else.

16 HON. SONDRRA MILLER: We can take your
17 written submission, but we cannot have you
18 testify.

19 MR. ALLAN SIMMONS: None of my written
20 testimony has anything to do with my case
21 whatsoever.

22 HON. SONDRRA MILLER: We have a rule that
23 has been established, and we have turned away
24 many, many applicants because they are not
25 qualified for that reason.

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MR. ALLAN SIMMONS: On my paper it did state that.

HON. SONDRRA MILLER: I am sorry, but we cannot have you speak.

MR. ALLAN SIMMONS: Thank you.

HON. SONDRRA MILLER: Thank you.

Mary Withington.

(Whereupon, Mary Withington steps up to the dias to present her testimony.)

MS. MARY WITHINGTON: Good afternoon, Ladies and Gentlemen.

My name is Mary Withington. I am a staff attorney with the Legal Aid Society of Northern New York, and I have been practicing in Jeritoga Springs covering Jeritoga, Warren and Washington County. I worked the civil, legal service means of Lowens and Eagle who reside in Westchester County. I was hired on September 29th, 1982, and I have watched the matrimonial world and the family law world change dramatically during the course of my being an attorney in the State of New York. I watched equitable distribution get flushed out and figured out how we are going to value

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2 licenses and do all that kind of stuff. I
3 lobbied hard for tax low income respondents
4 when the Child Support Standards Act was put
5 into place. And I'm here today also to
6 endorse, as Judge Kaye has, a move toward
7 no-fault statute here in this State. Whether
8 it be for irreconcilable differences, whether
9 it be because the parties -- the marriage is
10 irretrievably broken, or whether it be because
11 the parties have lived separate and apart for
12 six months. And I do so because I see the
13 animosity and I see the danger in having just
14 a fault system.

15 For low income people the opportunity to
16 obtain a separation agreement, which is
17 essentially our only way to get a no-fault
18 divorce here in the State of New York, it is
19 not an available option for them. These
20 people don't have the money to hire an
21 attorney to prepare those separation
22 agreements. In moving to a no fault system I
23 would hope that the court would also consider
24 moving to a more simplified pleading, a one or
25 two page document instead of the kind of

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different documents that we have to now
prepare in terms of complaints.

I would also encourage you to, in the
absence of actually moving to a no-fault
state, I would encourage that there be monies
spent for court sponsored and paid mediators
to assist litigants in reaching something to
try to move the cases through without as much
animosity as the litigation process incurs. I
would also encourage you to find funding for a
greater Bar Association and Legal Aid Society
clinic to help people do
pro se clinics, and to also prepare those
separation agreements to allow the easy
conversion divorces.

For those of us who have been in the
field in practicing as attorneys for the low
income population, it really is the adage that
rich people go Supreme Court and poor folks go
to family court is really very true. In order
for that to change we clearly need to have a
right to assigned counsel in a divorce
proceeding. Now, that costs money. And,
unfortunately, most of the remedies that I

1
2 would suggest to how you can make things more
3 even, how we can increase our access to
4 justice for low income people do involve use
5 of money.

6 In addition, not only do I worry about
7 the low income people that I see, I see an
8 awful a lot of folks come from the middle
9 class and when that paycheck walks out the
10 door they become the non-money spouse, and it
11 is almost impossible for these individuals to
12 find counsel. Very few people are willing to
13 take a matrimonial, in particular, a contested
14 matrimonial case on a whim, on a chance that a
15 motion for attorney's fees will be honored by
16 the court. So I would encourage there be a
17 greater support for motions by the non-money
18 spouse to get attorney's fees. That there be
19 that fence that non-money spouse will also
20 have that equal access to the court system.

21 There is also a clear lack of funding
22 for low income people to do the fact
23 investigation or to hire the expert witnesses
24 that are necessary sometimes in litigating
25 their claim. Obviously this is a problem that

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2 cuts not only across the board in terms of
3 Supreme Court proceedings, but it is also very
4 true for Family Court proceedings. Even the
5 simple notion of coming up with \$200 to pay
6 for the Probation Department to come and do a
7 home study is well beyond the means of
8 somebody whose sole income is welfare
9 benefits, and they may have very little
10 disposable cash available to them. So the
11 access to things like, expert witnesses,
12 access to a none psychological other than that
13 which is provided by the County Department of
14 Mental Health is something that we would
15 really encourage that there be greater funds.
16 Right now we have to tap the law guardian
17 funds, and the law guardian funds are very
18 limited. So it is very, very difficult when
19 you do have a contended -- a real fight in
20 Family Court to even the playing field between
21 those that have money and those that do not.

22 One of the issues I understand the
23 Commission is looking at is how do we reduce
24 the trauma to children who are going through
25 this process with their parents? I clearly

1
2 think that funding for parenting programs and
3 a strong mentoring component to those
4 parenting programs is necessary. I also
5 believe that we need funding for therapeutic
6 visitation. And when I mean "therapeutic
7 visitation", I'm talking about having trained
8 people who can work with the parents and the
9 children to foster better relationships. Many
10 of the folks who find themselves in Family
11 Court are there because their ability to
12 communicate with their spouse or with the
13 other parent of that child has just
14 disappeared all together; and sometimes it is
15 just a matter of figuring out what is the
16 impediment to getting a better parent out of
17 this person.

18 In addition, I think we need greater
19 funding for programs like the Banana Splits
20 program in the school districts to help the
21 kids that are going through this divorce
22 process relate to other children, and to be
23 able to much like we do at a lot of our
24 different times of ailments and illnesses out
25 there, to have others who are going through a

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2 similar situation and have the support of
3 those others and have the support of trained
4 personnel to help them make those transitions.
5 And, clearly, there needs to be greater
6 funding for mental health counseling across
7 the board. For low income people, unless you
8 are in a crisis, meaning you are actively
9 suicidal, it is very difficult for you to gain
10 any kind of mental help treatment. This is
11 particularly true as we move further and
12 further into more managed healthcare. The
13 focus, I believe, needs to be less on finding
14 fault and more on spending the time to
15 identify the impediments to good parenting,
16 and to help those people who find themselves
17 at the courthouse door get the kind of
18 services that are needed. We need to really
19 spend more time outside of the courthouse than
20 we do inside of the courthouse.

21 Our Family Court reform is needed.
22 Standards and goals certainly do move cases
23 along, but it is a double-edged sword. It
24 does mean that the parties are spending less
25 time in litigation, but it also is a rush to a

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2 settlement that may not be appropriate for
3 that particular set of people. As I mentioned
4 earlier, both parties need to have that equal
5 access to the so-called forensics that are
6 involved getting psychological evaluation,
7 finding out the drug and alcohol uses of the
8 party, figuring out what it is again that is
9 preventing these people from having the kind
10 of communication they need to raise these
11 children in their best interest. And, again,
12 funding for psychological evaluations does not
13 mean that we just do the evaluation to figure
14 out who's at fault. We need those evaluations
15 to be far more in depth so that we can
16 identify, as I mentioned earlier, the
17 impediments to good parenting.

18 And, finally, as a low income attorney,
19 I want to encourage the court system and the
20 legislators to consider the appointment of
21 counsel to individuals in support matters, in
22 establishing support matters. Often times the
23 reason why a battered woman will return to a
24 batterer is because they don't have the
25 financial support to stay outside of that

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2 system. They return because they don't have
3 an adequate support order. And they can't get
4 an adequate support order particularly where
5 the party on the other end, the respondent, is
6 either self employed, unemployed or under
7 employed. The W-2 wagger, and I love to see
8 walk through that courtroom door, because it
9 is very easy under the Child Support Standards
10 act, but when you have a petitioner who's
11 trying to establish support has no idea how to
12 do so and doesn't have the wherewithal and
13 doesn't have an attorney to direct them
14 concerning things like establishing the needs
15 of the child or establishing some kind of
16 imputed income for the respondent, it is very,
17 very difficult for these women, predominantly
18 women, to come away with an order that makes
19 any sense.

20 I would like to thank you very much, and
21 I wish you best wishes for a positive outcome
22 as a result of these hearings.

23 HON. SONDRRA MILLER: Robin Carton.

24 (Whereupon, Ms. Robin Carton steps up to
25 the dias to present her testimony.)

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MS. ROBIN CARTON: Thank you Justice Miller, and good afternoon Members of the Commission, and thank you to speakers, it was really valuable to hear everybody's story and I agree that it is all about the child.

My name is Robin Carton. I'm in a second year of my second term as President of the Law Guardian Association of Westchester County. I'm also a member of numerous committees and interdisciplinary panels that are dedicated to improving services to children and families. I know that the Commission has heard anecdotal reports that portray law guardians as either uninvolved or self involved, so I appreciate the opportunity to provide some factual information about law guardian training and the competency, and respectfully to offer suggestions.

First of all, to be eligible for recommendation for appointment to the law guardian panel an attorney must be admitted to the Bar of the State of New York, be in good standing, and have served as counsel or co-counsel in a minimum number of Family Court

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2 proceedings. Applicants to the panel are
3 assigned a mentor so that more experienced law
4 guardians can provide support and assistance
5 as the applicant training. Before an attorney
6 can be certificated as a law guardian the
7 attorney must attend mandatory training on the
8 fundamentals of law guardian adequacy. The
9 training in 2003, for example, was a seventeen
10 hour course which covered the role of a law
11 guardian, educational issues for court
12 involved youth, juvenile delinquency, persons
13 in need of supervision, the Adoption and Safe
14 Families Act, termination of parental rights
15 and child protective proceeding, family
16 offense proceedings and domestic violence,
17 adoption, and, of course, custody and
18 visitation. I was the lecturer actually for
19 the first session which was on the role of the
20 law guardian, so I know that at each session a
21 copy of the manuals were distributed to all of
22 the attendees.

23 Once you have qualified, attended the
24 pre-certification training and are appointed
25 to the law guardian panel your appointment is

1
2 for one year. You may reapply to be
3 reappointed, but to continue membership on the
4 panel you must attend mandatory additional
5 training, which is annual. It is presented
6 live right here at Pace Law School. In 2004,
7 for example, the training included a great
8 interactive presentation on evidence for the
9 family law practitioner. Under very limited
10 circumstances a law guardian may be excused
11 from attending a live presentation, but in
12 those circumstances other cutting edge formats
13 are offered, and the panel member can view the
14 presentation in a proctor setting on DVD or
15 video, and, of course, the hard copy materials
16 are provided in all of the instances.

17 In Westchester County law guardians are
18 also very well trained on the impact of
19 domestic violence on children and families.
20 Law Guardians are required, pursuant to
21 Standard 810 of the Law Guardian
22 Representation Standards, to consider whether
23 domestic violence has occurred, and, if so,
24 the impact on the child. We recognize
25 Ms. Getz's expertise and service to the

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2 community through The National Coalition for
3 Family Justice, and, in fact, I believe that
4 Judge Cooney reached out to Ms. Getz's
5 organization in arranging speakers to the law
6 guardian mandatory training. So Julie DeMarco
7 in her capacity as Executive Director of
8 My Sister's Place was a lecturer on domestic
9 violence at the 2002 mandatory training.
10 Justice Angiolillo of the Integrated Domestic
11 Violence Court also spearheaded a panel
12 presentation on domestic violence issues
13 attended by many law guardians, and I spoke on
14 the law guardian role at that panel as well.

15 Once you are on the law guardian panel,
16 you receive continued educational support.
17 You receive a law guardian representation
18 standard, and quarterly you receive the Law
19 Guardian Reporter, which is published by the
20 Appellate Division, and includes a lead
21 article on a topic relevant to law guardian
22 representation, a digest of case law,
23 legislative updates, bibliography of books and
24 articles, and information about continuing
25 legal education seminars. In Westchester

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2 County we also have a law guardian liaison
3 committee, which meets bi-monthly with
4 Judge Cooney, to provide a means of
5 communication between law guardian panel
6 members, the court and the law guardian panel.

7 The law guardian performance is also
8 continually evaluated and reviewed. The law
9 guardian advisory committee, which is
10 comprised of experienced matrimonial
11 practitioners, court personnel, judges, lay
12 persons and state coalitions, domestic
13 violence organizations meet bi-monthly to
14 discuss relevant issues, and annually the
15 committee solicits information from Family
16 Court judges and Supreme Court justices and
17 recommends for reappointment to the law
18 guardian panel only those attorneys that
19 liaisons, that the law guardian advisory
20 committee believe are performing satisfactory.

21 What is most important is, however, is
22 that all of this training and review and
23 evaluation does not qualify the law guardian
24 to make social or moral judgment, and nor does
25 the law guardian wish to have that quasi

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2 judicial function. The law guardian in that
3 regard could really use the Commission's
4 support. Our goal is clearly defined and
5 standardized in all of the departments. To my
6 knowledge the definition was promulgated by
7 the State Law Guardian Advisory Committee
8 appointed by Justice Kaye, and that law
9 guardian definition is, as I said, standard.

10 The law guardian is the attorney for the
11 child, and it is the responsibility of the law
12 guardian to diligently advocate the child's
13 position in litigation. There is no law
14 guardian recommendation, there is no law
15 guardian report. Respectfully then, my
16 suggestion to the Commission is that judges be
17 asked to assist in clarifying this role to the
18 parties and counsel. For example, while if
19 may be convenient for the court to ask the law
20 guardian to preform administrative functions,
21 like contacting experts, distributing reports,
22 assisting in scheduling, this kind of nonlegal
23 work adds significant charges to the law
24 guardian's bill, and more important it creates
25 the impression that the law guardian is an arm

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2 of the court instead of independent counsel
3 for the child. The law guardian can do his or
4 her job best if the court reinforces the fact
5 that the law guardian's role is simply that of
6 an attorney presenting a client's position.
7 It is not the law guardian's job to choose the
8 forensic evaluator, to provide contact
9 information to the evaluator, or to arrange
10 for adjournments if the report isn't ready.
11 When the court encourages any kind of ex parte
12 communication between the law guardian and the
13 forensic evaluator, even for administrative
14 functions, it creates the impression that the
15 law guardian has a relationship or even a
16 rapport with the forensic evaluator, to which
17 neither party's counsel is privied. In the
18 same way law guardians ask the Commission to
19 help the court aggressively quash attempts by
20 counsel to interfere with the lawyer
21 guardian's role, we need the court to sanction
22 parties and counsel for seeking to remove a
23 law guardian merely because the law guardian
24 has taken a position adverse to a party. We
25 need the court to be clear with counsel and

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litigants that the child has the same confidentiality afforded to all clients, and that the child's medical and psychological records are protected by privilege.

In summary Justice Miller and Members of the Commission, law guardians want you to know that they are confident that we are highly trained, our performances are assessed daily, and that we need the support of the court to reinforce our role as attorneys to the child by considering all of the attorneys positions, not just the law guardian's, and then making a judicial determination.

HON. SONDR A MILLER: If we can ask you a question?

MS. ROBIN CARTON: Certainly, Justice Miller.

HON. SONDR A MILLER: What is the role of the law guardian if the child is an infant?

MS. ROBIN CARTON: Well, in that instance, many roles are certainly different than if the law guardian's decide to represent an older child. If the child is of an age where that child cannot express the

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2 child's preferences and wishes, of course,
3 largely the work is investigatory, and the law
4 guardian would use that investigatory work to
5 promote what the law guardian who at that
6 point must present a best interest position
7 what the law guardian needs to present that
8 position.

9 HON. SONDRRA MILLER: If not the law
10 guardian, than who should contact the forensic
11 during the process?

12 MS. ROBIN CARTON: Well, I can
13 understand why the courts have asked law
14 guardians to do that in the past because their
15 staff, I'm certain, is overburdened as well.
16 And I would ask the Commission to consider
17 that, that there may need to be the need for
18 additional personnel to make that kind of
19 communication with the forensic evaluator.
20 The forensic evaluator has needs as well in
21 terms of scheduling and informing the court as
22 to whether or not the report will be ready on
23 time, or perhaps there are issues that come up
24 that require emergency attention, there needs
25 to be a liaison for that purpose in my view.

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2 HON. SONDR A MILLER: Should there be a
3 law guardian appointed in every case?

4 MS. ROBIN CARTON: You know, certainly
5 that's always within the court's discretion,
6 and the law guardian is not in a position to
7 refuse an assignment if the court believes in
8 its discretion that a law guardian should be
9 appointed. I think it is difficult for the
10 court to assess on day one whether a law
11 guardian -- I guess, it is difficult for the
12 court on day one to say that a law guardian is
13 not needed, because in these matters the
14 child's interests and wishes may be different
15 from what either or both parents may be
16 promoting in the litigation. And it is really
17 all about protecting the child and providing a
18 voice for that child. So I would say, your
19 Honor, that in most instances that law
20 guardian can play a very important role.

21 HON. SONDR A MILLER: Thank you very
22 much.

23 MS. ROBIN CARTON: Thank you.

24 HON. SONDR A MILLER: Mr. James Hays.

25 (Whereupon, Mr. James Hays steps up to

1

2 the dias to present his testimony.)

3 MR. JAMES HAYS: Good afternoon.

4 Madam Chair and distinguished panel

5 Members, good afternoon. My name is James

6 Hays, and while I am affiliated with many

7 organizations and while I draw upon my

8 background to express my interest and explain

9 my expertise in this area, the testimony here

10 today is given as an individual New York State

11 citizen. I want to thank you for allowing me

12 to present this testimony to this Commission.

13 While many before me have pointed to the areas

14 that they feel need to be addressed I felt

15 that it important that some thoughts and

16 ideas, specific ideas and action items, should

17 be given for your consideration to repair

18 those deficient areas of our courts. I would

19 like to review a bullet item list with a brief

20 explanation and then, time permitting, answer

21 questions and provide details in those areas

22 that the Commission is interested.

23 The following are items that the courts

24 can, by rule or practice, implement to

25 increase efficiency:

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2 First, take the necessary steps to
3 remove gender-based stereotypes from our
4 courts, most specifically the mother as
5 caregiver, father as financial provider
6 stereotypes and also the man as the abuser and
7 the women as abused stereotype of domestic
8 violence and domestic abuse. Base each case
9 on the individual facts of the case, not
10 prejudged biases.

11 Advise the parties in writing of the
12 standards of conduct expected from both of
13 them during litigation of the dispute, that's
14 both parties.

15 In all cases of contested custody the
16 parties should be required to submit a
17 parenting plan outlining their views on how to
18 raise their children post separation or
19 divorce. Judges should rule within these
20 parameters.

21 In all cases of contested custody the
22 courts should first consider a fifty-fifty
23 split of custodial time and work outward from
24 there based upon the needs of the individual
25 child. Unless one parent is found to be

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2 unfit, joint legal and joint physical custody
3 should be the norm.

4 In those cases where the parties have
5 increased animosity towards each other a
6 program of education, such as the Masters
7 Mediation Program, should be available to help
8 the parties work through their difference.

9 In those cases of heightened animosity
10 between the parties the courts should also
11 consider zones of decision making for the
12 parties or an alternating final decision
13 making authority transferred back and forth at
14 specific intervals.

15 The courts need to clearly define to the
16 parties, in writing, the terms such as
17 custodial, non custodial, joint legal custody,
18 joint physical custody and how that will
19 affect their ability to access school,
20 medical, legal and other records and make
21 decisions affecting their child's life such as
22 education, medical, religion, extra curricular
23 and other activities.

24 The Judges should by rule be required to
25 state clearly on the record the factors and

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2 standards used to determine why their order is
3 in the best interest of the child and not hide
4 behind the vague, best interest of the child
5 standard.

6 Recognizing a need in some instances for
7 the courts to issue ex parte orders, the
8 respondent should be given a reasonable and
9 quick time to respond, say seventy-two hours.

10 Upon a finding of the court, or a
11 withdrawal of the underlying petitions, in an
12 action resulting in a temporary order then the
13 status of the parties, especially physical
14 custody of the children, should be returned as
15 it was the day of the initial filing and
16 entering of the temporary order. You need to
17 make these parties whole.

18 Perjury is an accepted norm in your
19 courts. Punish it and stop it. It is against
20 the law, it undermines the court and their
21 authority and, speaking as a career law
22 enforcement officer, it is embarrassing to see
23 it condoned by those who are charged with
24 upholding the law that precludes it.

25 Domestic violence, when present, is

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2 reprehensible. It is also reprehensible that
3 70% of domestic violence filings are false and
4 used only to gain leverage in the court
5 action. That is a form of institutional
6 domestic violence against the innocent party.
7 False allegation in the court should be dealt
8 with as severely as domestic violence
9 perpetrators are dealt with.

10 Male victims of domestic violence,
11 regardless of the rhetoric otherwise, are real
12 and need to be treated with the same care and
13 concern that female victims of domestic
14 violence are. Services should be in place to
15 help them just as it is to help female
16 victims.

17 False allegations of child abuse,
18 domestic violence and unfounded violations of
19 orders are given the attorney wink and a nod
20 with many attorneys using veiled suggestions
21 to lead their clients down that path. You
22 need to reinforce attorney rules of conduct
23 and punish those attorneys that abuse our
24 court system to gain individual advantage.

25 You need to require Judges by rule to

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2 accept all testimony/exhibits of pro se
3 litigants and then later determine and rule on
4 those issues which should have been excluded
5 and not considered if proper procedure were
6 followed had they had legal training. Stop
7 Judges from brow beating of pro se litigants.

8 You run hostile court buildings and
9 rooms. They are locked and inaccessible.
10 Waiting areas are cramped and overcrowded with
11 the only decent area to wait reserved for
12 attorneys. Open up the Family and Supreme
13 Courts, not in name but in fact. Schedule
14 court times and stick to them, stop the cattle
15 calls, extended waits and hallway wheeling and
16 dealing, that is common in our courts.

17 You need to provide information on
18 Collaborative Law, mediation and alternative
19 dispute resolution on the court web-sites and
20 in handouts in the courts. Let people know
21 that this method of resolving disputes is
22 superior to the court system.

23 You need to mandate mediation in all
24 cases, even high conflict cases, first
25 ensuring appropriate and adequate staffing to

1
2 accomplish resolution of disputes while
3 protecting individual rights of all parties.

4 You should consider providing in court
5 pro bono attorneys on a rotating basis to
6 provide assistance to pro se and other
7 un-represented and under represented
8 litigants.

9 Corrupt courts and biased Judges have
10 undermined the court system. You need to
11 strengthen judicial accountability and the
12 judicial complaint system and hold Judges
13 accountable for their actions. Remove
14 judicial immunity in those cases where a Judge
15 exceeds their legal authority.

16 By rule, eliminate the term "visitation"
17 and replace it with the term "parenting time"
18 in all court papers.

19 By rule, eliminate the terms
20 "non-custodial" and "custodial" parent and
21 replace them with "parent", "mother",
22 "father", "grandparent" and other such
23 recognizable phrases which impart the belief
24 that both parents are still parents and their
25 families also should continue their

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involvement with their children.

 You should provide by rule, guidelines for sanctioning criminal contempt, specifically violation of access orders during a parent's residential time with their child. Penalties should be on a sliding scale increasing as the violation continues and/or increases. Only as a last resort should custody be changed from one party to the other, and then only when it is in the interest of the child.

 You need to establish written guidelines of financial support to be given to both parties stressing that each has an equal responsibility to financially support their children and child support is for the children.

 You need to establish written explanations and provide written copies to both parties for child support enforcement exemptions under FCA 240, Subdivision 1-b (f), especially where child support is so high as to interfere with or prevent parental access to children during their parenting time with

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2 their children.

3 You need to remove the focus on
4 professional child experts in determining
5 custody of children and instead return to the
6 parents their fundamental right to parent
7 their children. If more background is needed
8 on a specific case consider calling in
9 grandparents, aunts, uncles and family members
10 to develop a picture of what the child had and
11 will need in the future. Only in those cases
12 where the issue of fitness of a parent is
13 questioned is a psychological profile
14 warranted. Additionally, law guardians are
15 over booked and overworked and lack sufficient
16 resources to adequately replace the parents in
17 representing a child. Only in those cases
18 where the parents have been removed as unfit
19 should a law guardian be needed to speak for
20 the child in place of the parents.

21 Many of the fixes that are needed in the
22 court system already exist if the Judges would
23 just follow the law. Application of common
24 sense would also go a long way to curing our
25 court ills. Many of these suggestions have

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2 been put forth before from the 1986 review of
3 bias in our courts. I quoted a lot of them
4 from that. And also in material we gave in a
5 meeting with Chief Judge Silberman in 2003.
6 The fixes are there. All that is required is
7 this panel to listen to the people, and then
8 implement them.

9 Thank you.

10 HON. SONDRRA MILLER: Thank you.

11 Mr. John Rubin.

12 (Whereupon, Mr. John Rubin steps up to
13 the dias to present his testimony)

14 MR. JOHN RUBIN: Should litigants serve
15 the family law system and those who administer
16 it? Or should the family law system serve the
17 interests of the litigants who are, after all,
18 the consumers of the system?

19 Good afternoon. My name is John Rubin.
20 I have been a solo practitioner for
21 approximately twenty years. I am also a Board
22 Member and volunteer for the Coalition for
23 Family Justice, an organization dedicated to
24 promoting fairness, accountability, and
25 transparency to the family law system in order

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to better serve the interest of all litigants.

This Commission has been charged with reviewing all aspects of matrimonial litigation, and will be making recommendations to chief Judge Kaye for reforms to the system. However, if this Commission's recommendations are not comprehensive and substantial, as well as fair to the litigants, meaningful reform will not occur, the present lack of public trust in the family law system will further deteriorate, and the credibility of this Commission's findings and recommendations will be undermined. Although this Commission is made up of highly experienced and respected professionals, the concern the public has looking in on these hearings is that there is no one on the Commission who has a background of looking and advocating for the consumer/litigant's point of view.

Now, in addition to citing a few problem areas from the litigant's point of view, some of which areas may not have been addressed in the prior hearings, I will also be offering these solutions. The problem areas I hope to

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2 address today are stipulation put on the
3 record, attorneys only conferences,
4 attorney/client misconduct, and reducing post
5 judgement enforcement motions and expense to
6 the litigants. To the extent time does not
7 permit, I have submitted something in writing
8 to address what would have been the balance of
9 my testimony. At some future time I hope to
10 meet at length with Commission Members to
11 address these and other areas, reaching
12 solutions as well as finding viable ways to
13 pay for the many reforms that are needed.

14 Now, stipulations of settlement put on
15 the record. On its face, stipulations of
16 settlements put on the record serve as a
17 purpose and like written settlement agreements
18 resolve issues and help bring finality to
19 actions and proceedings. But unlike written
20 agreements, stipulations of settlement put on
21 the record do not afford the litigants with an
22 adequate opportunity to review and understand
23 matters that are going to affect their lives
24 and their children's lives for many years to
25 come. To better understand this issue from

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2 the litigant's point of view, consider the
3 following analogy: You are purchasing a home
4 or car. Let's assume that such transactions
5 do not involve contracts that have to be in
6 writing. You walk into the lawyer's or
7 salesperson's office to finalize the purchase.
8 You are verbally advised of all the detailed
9 provisions, representations, disclosures,
10 rights, responsibilities, disclaimers,
11 waivers, and indemnification clauses of the
12 contract. You are asked whether you
13 understand all of the terms and provisions of
14 the contract. You are asked whether you find
15 its terms satisfactory. You are further asked
16 whether you understand that with your verbal
17 consent there will be a valid and enforceable
18 contract. Of course, you will not be able to
19 review the written terms of this oral contract
20 to which you will be verbally signing off on
21 until some time in the future after it is
22 reduced to writing. Would anybody on this
23 Commission buy a house or a car under these
24 circumstances? Since I don't see anyone
25 nodding, I assume that you wouldn't. Yet, in

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2 the family law system, with no opportunity to
3 read and review the terms of a written
4 contract, in a hostile environment, on matters
5 much more complicated and with far more
6 reaching consequences than merely buying a
7 house or car, we expect litigants to listen
8 carefully to an orally presented detailed
9 settlement agreement, often interrupted with
10 questions, objections, points of
11 clarifications, and off the record
12 discussions. We then expect litigants to
13 understand everything they just heard about
14 many complex matters involving the valuation
15 of disposition of businesses, real estate,
16 stock options, pensions and other retirement
17 assets, enhanced earning capacity, allocation
18 of debt, child support, maintenance, parenting
19 arrangements, and other matters, not to
20 mention the ramifications of the settlement
21 upon their and their children's future. We
22 then expect litigants to agree to it all right
23 there on the spot. And let the truth also be
24 known, all of this assumes that when all of
25 this is being put on the record, nothing is

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2 left out. It also assumes that the
3 transcription of the record is accurate along
4 with other assumptions, that I won't address
5 now.

6 We as lawyers and Judges are in denial
7 if we believe that this is not a serious
8 problem for litigants who are typically under
9 great stress and anxiety at the time, often
10 caused by being unprepared for extensive
11 courthouse negotiations and a settlement, and
12 confronted with additional pressures, not only
13 from their own attorneys but also from the
14 courts, for instance, who may tell the
15 litigants to stay in court until you settle.

16 By turning our backs and accepting the
17 supposed consent of litigants to these types
18 of agreements, we ignore the facts that
19 litigants really do not understand much of
20 what they are consenting to, that litigants
21 too frequently give their consent because they
22 want to avoid appearing ignorant and are too
23 embarrassed to admit they really do not
24 understand what was just placed on the record,
25 that litigants feel that they have been

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2 pressured into submission, or they actually
3 believe that they will later have an
4 opportunity to review something in writing and
5 sign it.

6 It should also be noted that the
7 stipulation of settlement put on the record is
8 too often used by attorneys as a shield in an
9 attempt to conceal a lack of preparedness in a
10 case, or an unwillingness to proceed to trial
11 because the litigant's money has run out, when
12 attorneys pressure litigants into a settlement
13 when a settlement really isn't in the best
14 interest of the litigants. The unfortunate
15 reality is that while consumers have
16 protections in other less consequential areas,
17 once the litigant has consented to the
18 stipulation of settlement put on the record,
19 there is really no recourse.

20 The more time and attention that can be
21 devoted to settling cases, the more likely
22 there will be fewer proceedings seeking to set
23 aside agreements, as well as subsequent
24 modification, enforcement proceedings, not the
25 mention legal malpractice actions.

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2 As a solution litigants in the family
3 law system need an opportunity to review and
4 consider something not only with their
5 attorney but with other professionals long
6 before it becomes legally binding upon them and
7 certainly before the day set for trial.

8 Presently, litigation involves the pleading,
9 discovery, and trial stages. Of course,
10 anybody can settle at any time. But in the
11 family law system, being a unique area I would
12 recommend that once discovery has been
13 completed that there be a settlement stage, of
14 a reasonable time, perhaps sixty to ninety
15 days, between the time that the compliance
16 conference has occurred where discovery is
17 certified as complete and the time where there
18 will be a trial readiness conference and the
19 case put on the trial calendar. During this
20 settlement stage, if not already done, parties
21 should be required to exchange formal written
22 settlement proposals, or at least respond by
23 letter from to one that has been formally and
24 comprehensively presented. During this stage
25 also different settlement techniques could be

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2 adopted depending upon the circumstances of
3 the case. In my written submission I have
4 some other details about what would be
5 involved, but if settlements are comprehensive
6 and in writing and if litigants have enough
7 time to understand and review the agreement
8 with their attorneys and other professionals,
9 the process would serve the litigants and not
10 vise versa.

11 Attorneys only conferences with the
12 court. If one of the goals of this Commission
13 will be to make recommendations that will have
14 the effect of restoring a greater sense of
15 public trust and confidence in our legal
16 system, the system must be made more fair and
17 transparent to the litigants. One area where
18 this is not happening is when Judges request a
19 conference with attorneys only, and when
20 attorneys, not wishing to offend Judges, go
21 along with this. Having heard the first woman
22 who spoke this afternoon, we also see some of
23 consequences that occur when there is an
24 attorneys only conference. In this case this
25 woman was not allowed to say things, correct

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2 errors that were being discussed, perhaps
3 represented by her own attorney, and the Judge
4 was given a different impression about the
5 case, the other side was given a different
6 impression about the case and this woman was
7 not able to really defend herself. From the
8 litigants point of view, their financial
9 futures, safety, and issues pertaining to the
10 children, are being talked about secretly
11 behind closed doors. The litigants do not
12 understand, and lawyers and Judges do not
13 justify or explain to the litigants the
14 reasons, if any, for their exclusion from
15 these conferences. The issues due the reasons
16 for having attorneys only conferences outweigh
17 what is, in fact, the litigant's right to be
18 present in all of these conferences? After
19 all as attorneys we are required by court rule
20 to give prospective clients a Statement of
21 Client's Rights and Responsibilities which
22 provides, amount other things quote, "You have
23 the right to be present in court at the time
24 that conferences are held" end unquote. Yet,
25 everyday this right gets taken away from

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2 litigants. What message are we sending to the
3 public and to the litigants when we must tell
4 them they have certain rights, such as the
5 right to be present during all court
6 conferences, and then we take away those
7 rights away, without ever affording litigants
8 and explanation or an opportunity on the
9 record to waive their right to be present
10 during conferences? The solution is attorneys
11 only conference should not be permitted,
12 except in rare or extreme cases, and for good
13 cause shown on the record, with the client
14 present as to why the need for an attorneys
15 only conference outweighs the client's right
16 to be present.

17 Attorney or client misconduct.
18 Attorneys or clients who commit misconduct,
19 who commit perjury, fail to disclose assets,
20 or engage in other frivolous conduct, are not
21 seriously and promptly dealt with, if dealt
22 with at all. Too often, when lawyers or
23 clients knowingly commit perjury, for
24 instance, about significant facts, such
25 conduct is viewed more as a credibility issue,

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2 if at all, and not also as conduct that needs
3 to be additionally dealt with by the courts.
4 In the addendum that I have annexed to my
5 written submission I cited a few examples of
6 misconduct that have gone unchecked. I have
7 left out the names of the parties, Judges and
8 the lawyers. By not addressing such
9 misconduct, a clear message is being sent that
10 this sort of corruption is acceptable. The
11 solution is simple. Such misconduct should be
12 dealt with promptly and seriously. The tools
13 for dealing with it already exist. They just
14 need to consistently applied and used.

15 Reducing post judgment enforcement
16 function. Another reality in the family law
17 system is that for most cases, the Judgment of
18 Divorce does not end the conflict. It only
19 concludes one phase of it. Excluding
20 modification proceedings for the moment, we
21 all know that obtaining a court order or
22 judgment is not the same thing as obtaining
23 enforcement of obligations that generally will
24 be continued for many years to come after the
25 Judgment of Divorce is signed. In light of

1
2 this on-going reality, we need to recognize
3 that the responsibility of the family law
4 system to the litigants and their families
5 should not end when the Judgment of Divorce is
6 signed. There needs to be mechanisms and more
7 practical and affordable mechanism in place,
8 which not only insure that compliance with
9 final orders get addressed expeditiously, but
10 also where compliant litigants are not
11 punished, but made whole, and where
12 non-compliance litigants are not rewarded and
13 are promptly dealt with.

14 Assuming litigants have any money left,
15 not to mention, the fortitude, to pursue
16 enforcement litigation after the divorce,
17 which is not the case in most cases, too many
18 enforcement motions and proceedings are still
19 brought and cause a tremendous burden upon the
20 system, not to mention upon the personal and
21 financial lives of the litigants and their
22 children. As one step towards a solution,
23 what I would suggests is that even within the
24 Judgment of Divorce there could be a decretal
25 paragraph which states in thirty days, sixty

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2 days, ninety days, whatever, there is going to
3 be an enforcement conference, and at that time
4 and we are telling you this now, it will be
5 your obligation to, if not by that time
6 resolve, whatever, could have been complied
7 with, to at least state what you have done,
8 what needs to be done and why what hasn't been
9 done yet could not have be done sooner.

10 HON. SONDRRA MILLER: I have one question
11 for you.

12 MR. JOHN RUBIN: Yes.

13 HON. SONDRRA MILLER: Are there any
14 circumstances at all where on the record
15 stipulations would be advisable?

16 MR. JOHN RUBIN: Advisable, no, but it
17 is always better to have litigants to have the
18 opportunity to review something well in
19 advance and not under various pressures.

20 However, if after, for instance, this
21 settlement stage that I have suggested there
22 is still not a settlement and you are in trial
23 or about to start a trial and a settlement
24 should resume, again, at least at that time
25 the parties and the court will have something

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2 in writing that can be used as a basis for
3 putting something on the record which can only
4 benefit the litigants.

5 Thank you.

6 HON. SONDRRA MILLER: Thank you very
7 much.

8 We will take a short break.

9 (Whereupon, a short recess is taken.)

10 (Matter reconvenes at 3:40 p.m.)

11 HON. SONDRRA MILLER: Attention
12 everybody. Please be seated. Thank you very
13 much everybody. Please take your seats.

14 We are going to have our next presenter
15 who is going to be Mr. Allan Simmons. There
16 was some miscommunication that we had with
17 him, and he is going to be able to testify.

18 (Whereupon, Mr. Allan Simmons steps up
19 to the dias to present his testimony.)

20 MR. ALLAN SIMMONS: My name is Allan
21 Simmons. I'm a father, a non-custodial
22 parent. I want to thank this Commission for
23 the time. I want to thank Judge Ross for
24 stepping out during this testimony, even
25 though he can't hear me. I am speaking on

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2 behalf of over two and-a-half million
3 non-custodial and disenfranchised parents, to
4 which I am one also. They are families, they
5 all reside in the State of New York. I wish
6 to express deep and sincere appreciating for
7 being given this opportunity to speak before
8 you today.

9 What I see as the state of the courts.
10 Retired New York Supreme Court Judge Brian
11 Lindsay was once quoted as saying "There is no
12 system ever devised by mankind that is
13 guaranteed to rip husband and wife, or child,
14 mother and father apart so bitterly than our
15 present Family Court system", and that is the
16 court system that we have today. New York
17 State of Appeals Judge Robert Smith appointed
18 by Governor Pataki just recently in the last
19 few years, was quote in several articles that
20 Matrimonial Courts in the State of New York
21 are bias towards women. Someone has finally
22 stepped up to the plate on this. This was in
23 a January 31st article in the Daily News, and
24 in that same week 1/28 in the New York Law
25 Journal. This debate has now reached new

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2 heights, somebody within the court systems has
3 finally admitted about the bias.

4 Today the court routinely issues ex
5 parte orders, protection and temporary custody
6 orders based upon sometimes false allegations
7 of domestic violence and child abuse. They
8 issue Pendente Lite orders with no discovery,
9 no finding of fact, they make awards so
10 ambiguous that it is almost impossible to
11 maintain. They maintain such incestuous
12 relationships with forensic psychologists and
13 law guardians, using time and time again the
14 same law guardian and the same forensic
15 psychologist, and it is not uncommon that they
16 actually recommend their own services. I have
17 even seen some cases where forensic
18 psychologists and law guardians share office
19 space in New York. They intimidate, coerce
20 and threaten unsuspecting defendants to settle
21 their separations and divorces with consent
22 orders before their cases ever have a chance
23 to go to trial. For those who make it to
24 trial the game is hopelessly rigged that no
25 amount of proof, including indisputable

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2 evidence of a close and positive relationship
3 between children and their fathers is
4 sufficient to persuade the courts that more
5 equal access to both parents is in their best
6 interest.

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

13 They place a heavy burden of proof on
14 non-custodial parents seeking more time with
15 their children that even the most minor
16 modifications to such orders become virtually
17 impossible and unaffordable. They pay lip
18 service to the importance of maintaining
19 regular, frequent and meaningful contact
20 between children and their non-custodial
21 parents, but then they demonstrate complete
22 disdain for fathers as reflected in the
23 following statement, you have never seen a
24 bigger pain in the ass than a father that
25 wants to gets involve; he can be repulsive.

1
2 He wants to meet with his kids after 3 o'clock
3 after school, take him out to dinner during
4 the week, have the kid on his birthday, talk
5 to the kid on the phone every evening, go to
6 every open school night, take the kid away for
7 a week vacation so they can be alone together.
8 This type of individual involved father is
9 pathological. Anybody know who said that?
10 Chief Judge Richard Huttner, Kings County
11 Court, Family Court. By the way, he still
12 sits on the bench in Kings County.

13 It seems that in practical application
14 regular, frequent and meaningful contact is
15 interpreted to mean nothing more than a few
16 hours a week for dinner and every other
17 weekend, if the custodial parent even agrees
18 to let that happen. Judges allow custodial
19 parents to violate the terms and conditions of
20 court orders and interfere with parenting time
21 rights of non-custodial parents with impunity.
22 Judges continually refuse to hold custodial
23 parents accountable for the filing of false
24 reports of domestic violence and child abuse.
25 These are done usually as a ploy to gain

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2 custody to gain the upper hand. They impose
3 sanctions and legal fees against non-custodial
4 parents who insist on continuing to struggle
5 in court for greater access to their children.
6 They consider the actions and behavior of
7 non-custodial parents and are quick to
8 incarcerate them for the most minor
9 infractions. They allow custodial parents to
10 relocate without court permission. They don't
11 even force the custodial parent to move back
12 while the court decides on this relocation
13 issue, and it's always in the best interest of
14 the children as to why they moved.

15 High level Social Services officials
16 acknowledge a growing problem of false
17 reporting of domestic violence. The State's
18 Chief Judge Judith Kaye has stated publically
19 that the reports of domestic violence are
20 skyrocketing. The advocates for the
21 prevention of domestic violence as well
22 several Members of the New York State Assembly
23 and New York State Senate have also admitted
24 publically that these allegations and that
25 these reports are routinely used to gain

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2 tactical advantage in custody disputes. The
3 State's own data confirms that fully 70% of
4 all such reports are potentially false. Yet
5 when asked to look into such matters, neither
6 our law enforcement agencies, our District
7 Attorneys, the Departments of Social Services,
8 the New York State Office of Children and
9 Family Services, nor the courts seem to have
10 any knowledge of how they should be handled.
11 The filing of a false report of domestic
12 violence and child abuse is a criminal offense
13 under the New York State Penal Code. It
14 doesn't seem to be necessary to have to point
15 out that this fact alone might suggest a point
16 of departure to begin looking for a real and
17 possible and tangible, practical solution to
18 this problem. Consequently, whenever the
19 suggestion is made that certain steps towards
20 measures might be reasonably be warranted as
21 protection against the well known biases of
22 the system, the response from representatives
23 of the court system, as well as from elected
24 officials in the Legislature, recited almost
25 as if it were some sacred mantra, is that you

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2 don't favor presumptions of law, and the court
3 should have total discretion to make custody
4 and parenting time decisions based upon the
5 best interest of the children. To me that
6 seems somewhat reasonable.

7 In a January of 2003 meeting with the
8 State's Chief Administrative Judge for
9 Matrimonial matters in the Supreme Court,
10 Jacqueline Silverman, she stated that the term
11 common usage among the system's insiders to
12 describe the Wednesday evening, alternating
13 weekend, custody-visitation schedule that most
14 of the men-fathers have come to learn as
15 pretty much what they can expect is called the
16 standard New York order. Any order that can
17 be described as standard seems to me to have a
18 distinct ring of presumption to it.

19 When you start talking about the best
20 interest of the children a case comes to mind
21 that I looked up recently. In September of
22 2002 after a search lasting several months, a
23 seven-year-old was finally located by her
24 father. The father was living in Glens Falls,
25 New York in Washington County. The mother was

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2 found living with her boyfriend and the child
3 in Florida. The kid was locked in a closet
4 and starving. This was put in the newspapers,
5 this was all over the press. In October of
6 2002, in fact, October 1st, referring to the
7 Washington County's officials handling the
8 case, a Kent Kiesselbach, a spokesman for the
9 New York State Office of children and Family
10 Services, is quoted in the Associated Press as
11 stating that "the county did what was in the
12 best interest of the child." The kid almost
13 died, how can that be the best interest of the
14 child? I don't think so. One has to really
15 think about what if they really did have the
16 best interest of the child in their minds when
17 they did this. If they weren't thinking of
18 the best interest what would have happened at
19 that point? The best interest of the child's
20 standard is vague. When asked no Judge can
21 actually state what is the best interest of a
22 child, no lawyer can state what is the best
23 interest of the child. Judges are virtually
24 unbridled discretion to determine what factors
25 should be considered when making custody

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2 decisions. Basically, like I said, the
3 translation of that is that nobody has a clue.
4 What is the standard? Basically it is
5 whatever you want it to be at that particular
6 time.

7 When a man can be falsely accused, with
8 no recourse; when his accuser's allegations
9 are accepted, with no questions asked, no
10 burden of proof, no accountability for
11 perjury; when anyone, man or woman, can have a
12 divorce forced upon them, against their will
13 and without their control; when he can be
14 ejected from his family and evicted from his
15 own home; when his children can be abducted,
16 his income extorted, and his assets
17 confiscated; when a man can be diagnosed, as
18 political dissident as in the old Soviet Union
19 so often were used years ago, as suffering
20 from a mental disorder for expressing anger
21 over the mistreatment and abuse he may be
22 experiencing be ordered into anger management
23 classes; when he can be ordered to pay the
24 legal fees incurred by someone else committed
25 to destroying him; when he can be thrown in

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2 jail, without ever having committed a single
3 crime, this is not just troubling, as some
4 might describe it. Troubling is kind of when
5 crab grass is taking over your lawn. Neither
6 does it rise to the level of abuse, nor to a
7 violation of certain rights and protections
8 guaranteed by the US Constitution. It is
9 domestic terrorism. These are general cases,
10 they are all over the place, I could name
11 twenty or thirty people that this happened to.

12 HON. SONDR A MILLER: Can I interrupt you
13 for a minute?

14 MR. ALLAN SIMMONS: Sure you can.

15 HON. SONDR A MILLER: More than once
16 today we heard a representation that 70% of
17 domestic violence complaints have been found
18 to be false. Where is the authority for that
19 statement?

20 MR. ALLAN SIMMONS: That is --

21 AUDIENCE MEMBER: It comes off the BAWA
22 web-site.

23 HON. SONDR A MILLER: I'm sorry, what was
24 that?

25 AUDIENCE MEMBER: It comes off the

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2 B-A-W-A web-site itself.

3 MR. ALLAN SIMMONS: And in speaking to
4 several of our State Senators who at one time
5 some of them were matrimonial lawyers, they
6 said the same thing.

7 HON. SONDR A MILLER: It is shocking
8 statistic if it is a statistic. Is the
9 statement made that I those complaints were
10 found to be false or that might be false?

11 MR. ALLAN SIMMONS: They might be false.
12 Dr. Loeb is correct.

13 HON. SONDR A MILLER: Were they withdrawn
14 or what was the actual happening.

15 MR. ALLAN SIMMONS: Many of them are
16 withdrawn because once an allegation is made
17 of domestic violence it stays on the record
18 even it is withdrawn.

19 HON. SONDR A MILLER: Okay. Thank you
20 for that clarification.

21 MR. ALLAN SIMMONS: You're welcome.

22 Now we learn that the New York State Bar
23 Association is proposing that New York become
24 the last to join the ranks of the other
25 forty-nine more enlightened no-fault divorce

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2 states, and that with the recent elections now
3 behind us they are looking for someone willing
4 to sponsor the necessary legislation.

5 After almost thirty years of experience
6 with no-fault divorce it is widely recognized
7 that in effect they have given legal
8 preference to any spouse wishing to leave a
9 marriage, even if the other spouse wants to
10 preserve the marriage and has done nothing to
11 desert the deserting spouse.

12 HON. SONDRRA MILLER: You have about one
13 minute.

14 MR. ALLAN SIMMONS: Thank you. In that
15 case, I got to go to closing.

16 In closing one thing is certain, it is
17 virtually guaranteed that no attempts to
18 resolve issues laid out to you for
19 consideration of this committee will ever
20 produce satisfaction results so long as the
21 very same Judges, attorney's and self-styled
22 legal experts, social services and mental
23 health professionals and those who advocate
24 for more of the same support standards and so
25 forth and ever increasing regarding domestic

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2 violence and child abuse legislation, who are
3 themselves largely responsible for disfunction
4 that now characterizes the entire body of the
5 family and matrimonial law in the State of New
6 York and continue to let this happen. It is
7 time for the non-custodial parents to be given
8 representation, not merely just ten minutes of
9 testimony here and their.

10 Finally, I would like to leave you with
11 the following thoughts, to consider in the
12 privacy of your own hearts and minds, away
13 from all the sound and the fury, late at night
14 perhaps when you are alone, if nothing else
15 I've had to impart upon you here today has got
16 your attention you will have hear this one
17 point loud and clear. Reform must start with
18 the Pendente Lite, continuing with the change
19 of custody from a sole winner take all to a
20 joint share or share model. Something must be
21 done about the current child support system, a
22 more friendly way of modifications both upward
23 and downward, when circumstance change. The
24 gender bias penalties and penalties for false
25 allegations. You are sitting one a true

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2 time-bomb, a power keg set to explode at any
3 moment. Don't take my word for it. I invite
4 you to step out and check out some of the
5 internet web-sites about this.

6 Ladies and Gentlemen, you have a problem
7 on your hands, larger, perhaps than you might
8 have initially have imagined, you need to find
9 a way to fix it. My name is Allan Simmons and
10 I'm a non-custodial parent.

11 HON. SONDRRA MILLER: Thank you.

12 Our next presenter is Kathleen Donelli.

13 (Whereupon, Ms. Kathleen Donelli steps
14 up to the dias to present her testimony.)

15 MS. KATHLEEN DONELLI: Good afternoon
16 Judge Miller and Ms. Deer, and the other
17 esteemed Members of the Commission. My name
18 is Kathleen Donelli. I'm a partner in the law
19 firm of McCarthy and Finger in White Plains.
20 I practiced matrimonial law for about twenty
21 years, and I'm also the President of the
22 Westchester Women's Bar Association. I want
23 to thank all of you for giving me this
24 opportunity and all the others that have
25 appeared before you to give our input into how

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2 we think the areas of matrimonial and family
3 law can be improved.

4 I know the parents' organization of the
5 Westchester Women's Bar, the Women's Bar of
6 the State of New York has given its position
7 on no-fault divorce, and I am sure that you've
8 heard that position from more than one
9 speaker, but as a member of Labosi the State
10 organization, I want to just express my
11 support that the no-fault divorce legislation
12 be enacted.

13 I am not here, however, today to speak
14 on behalf of the Women's Bar Association. I'm
15 really here to speak as a matrimonial
16 practitioner and to urge the Commission to
17 look into an area that I believe is really
18 cries out for change. And the area is the
19 O'Brien Law and its progeny, as well as
20 looking at developing guidelines from
21 maintenance awards. I do not think that you
22 can -- for those of you that may not be
23 familiar with O'Brien, O'Brien was a case in
24 1985, it was a Westchester case, and
25 Mrs. O'Brien had put Dr. O'Brien through

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2 medical school, she worked a teacher while he
3 went to school and upon graduation he decided
4 that he no longer wanted to stay with
5 Mrs. O'Brain and he wanted do get divorced.

6 And I believe our former Surrogate Emanuely
7 was the Judge for Mrs. O'Brien at the time.

8 AUDIENCE MEMBER: He was the lawyer at
9 the time.

10 MS. KATHLEEN DONELLI: The lawyer, sorry
11 - I see everyone's familiar with the case -
12 was the lawyer for Mrs. O'Brien, and he
13 successfully argued that it was inequitable
14 for Mrs. O'Brien having spent most of marriage
15 putting her husband through medical school,
16 they had acquired no assets and it was
17 therefore unequitable for her not to gain some
18 economic benefit from having put her husband
19 through medical school. And I think all of us
20 would agree if we are looking at equity
21 Mrs. O'Brien certainly was entitled to an
22 economic benefit from all the hard work that
23 she had done throughout the marriage. What
24 the court did was it decided that, Stanley
25 Goodman I believe was the accountant, and he

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2 proposed to the court that you could actually
3 put a value on the enhanced earning capacity
4 that Dr. O'Brien would gain from his degree.
5 And how would we arrive at that value? Well,
6 we would compare the income Dr. O'Brien would
7 have made before he went to medical school
8 versus the income he would make after medical
9 school. We don't have the exact. We would
10 look at a chart. And then we would multiply
11 that annual life by the amount of years we
12 expect Dr. O'Brien to work as a medical
13 provider. That law since 1985 has grown, and
14 I submit that the courts have struggled very
15 hard to make logic and sense out of the
16 underlining concepts of the law. And no
17 matter how much we struggle, no matter how
18 much we try, we cannot come to a fair and just
19 interpretation of O'Brien and its progeny
20 because it fundamentally does not make sense.

21 I'll give you an almost hypothetical. I
22 went to law school, as Professor Johnson knows
23 at Pace. I graduated in 1985. When I got
24 married about ten years earlier, my husband
25 was dentists. I could have stayed home and

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2 raised our children. I decided to go to
3 school, and my husband and I have benefited
4 from the excellent education I have gotten at
5 Pace Law School and also from my practice,
6 which I enjoy very much. This is
7 hypothetical, but in a typical Westchester
8 matrimonial case that we would get, wouldn't
9 be too and unlike my situation. We have two
10 professionals, a dentist and a lawyer; they
11 have some equity, some would think substantial
12 equity in the marital residence, say \$500,000
13 equity; and then between retirement funds and
14 other assets say they have another \$500,000.
15 I want everyone to know I'm very happily
16 married and I have no intension, I couldn't
17 afford to get divorced, I have no intention of
18 getting divorced and I am very good to my
19 husband because I think I would get a lot of
20 money if I divorced him. But here is the
21 situation because my husband -- I think our
22 practices would cancel out each other, but I
23 believe my law degree if you looked at and I'm
24 making up these numbers, they are
25 hypothetical, but if you looked at what I

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2 would make as a teacher versus what I or an
3 average attorney would make, probably \$100,000
4 on an annual basis difference. And say I have
5 another fifteen years until retirement age.
6 So one of our esteem forensic accountants
7 would come up with the conclusion that the
8 valuation of my license says it is worth one
9 million dollars. The rest of our assets are
10 worth one million dollars, so now we have a
11 marital estates of two million dollars. My
12 husband comes home one day, this is why I'm
13 very good to him, he says, Kathy I've decided
14 a great dental assistant, I just don't want to
15 be married anymore. I would go to my attorney
16 and my attorney would proceed to tell me that
17 the marital estate is worth two million
18 dollars and we are dividing by two. So I
19 would be entitled to a million dollars and my
20 husband would be entitled to a million
21 dollars. His million dollars would be our
22 home, our retirement benefits and all of our
23 liquid assets. Everything that I have worked
24 very, very hard, he has worked too to have, my
25 million dollars would be the right to practice

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2 law for the next fifteen year. I would walk
3 away from marriage with zero.

4 Let's take another example. You try not
5 to personalize this stuff, but I think you can
6 relate to it more when it is personalized. I
7 went to school with a woman who is now at
8 Farrot, Stern. This woman makes four times
9 more than I do. When we both got married she
10 had an MA in teaching, I had an MA in
11 teaching. I went to Pace Law School, she went
12 to Chase Manhattan Bank. She has an enhanced
13 earning capacities of probably \$550,000 a
14 year. I have based on my example enhanced
15 earning capacity of probably \$100,000 a year.
16 If she were to get divorced because of her
17 enhanced earning capacity is not tied to a
18 license or a degree she would owe her husband
19 zero, even though she may be making \$600,000
20 and I may be making \$150,000.

21 So the ultimate, the objective of the
22 court in O'Brien and its progeny was
23 absolutely on target. Do I think that a
24 spouse such as my spouse who supported me
25 through law school deserves to be compensated,

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2 absolutely. But the underlying logic of
3 O'Brien is faulty, and you can never make it
4 right. I do not think, however, -- and we've
5 tried it, the First Department the Holey case
6 said, all right, we will look at enhanced
7 earning capacity for a banker, and in the
8 First Department we're going to say it has
9 Holey case, okay, it has some value and the
10 Second Department has rejected that. So in my
11 girlfriends case I've already told her if you
12 ever get divorced stay in Westchester,
13 whatever you don't get an apartment in the
14 city. It's going up.

15 The other big discrepancy between - and
16 we all kind of reside, at least I do, between
17 the First and Second Department - is
18 maintenance. I think the child support
19 guidelines despite the predictions that they
20 would be terrible et cetera, et cetera, I
21 think they've been extremely helpful, I think
22 they have been helpful to children, to
23 custodial spouses, and I even think they have
24 been helpful to non-custodial spouses. And
25 this is the reason, when a client comes into

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2 my office and we have an initial interview, I
3 can kind of tell them what his or her marital
4 property. I can kind of say what is going to
5 be divided and how it is going be divided. I
6 can also now, thanks to the Child Support
7 Standards Act, tell them roughly what support
8 may be. I believe, and this is just my
9 personal opinion, that in Westchester County
10 the court has discretion, and as most of you
11 know, the court does not have discretion of
12 combined parental income up to \$80,000. Most
13 of our cases are not dealing with combined
14 parental income as up to \$80,000 so the
15 question always how far up is the Judge going
16 to go? Okay, if I've got \$300,000 what am I
17 going to get? I think we've had some
18 experience in the court system, and, of
19 course, in my experience it's gone up as far
20 as \$300,000. So it is not difficult for me to
21 counsel a client on what I think the court is
22 going to award in child support. But then
23 comes the question, okay, Kathy, you've told
24 me about custody, you told me about child
25 support, you told me about equitable

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2 distribution, what about maintenance? Well,
3 indeed, what about maintenance? I tell my
4 clients that's the wild card. I have no
5 guidelines for maintenance. And I think those
6 guidelines are very important. I think they
7 are very challenging, but I think they are
8 very important. I believe that you cannot
9 address changing the law on O'Brien without
10 developing guidelines for maintenance;
11 maintenance, alimony, spousal support. I have
12 heard some people say, well, if the spouse is
13 earning over \$30,000 a year, I don't believe
14 in maintenance. How do you tell that to a
15 client who comes in and documents that their
16 monthly expenses are \$25,000 and that they are
17 the supported spouse? I could just hope that
18 when I present my case, the fact of the
19 decision maker is not going to think that way,
20 but I really have no way to tell my client
21 what I think the court may or may not do. The
22 obvious thing is you look at what they need to
23 live on and you make your arguments that way.

24 What I have done is I have submitted
25 some material to the Commission, a law review

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2 article, which is a survey of other states and
3 how they have addressed the issue of
4 guidelines to maintenance. And I would ask
5 that the Commission seriously consider
6 recommending that a task force be appointed to
7 look into how can we equitably compensate
8 someone in the O'Brien situation, and I
9 believe we cannot do that equitably without
10 having some guidelines for maintenance. I
11 thank you all very, very much.

12 HON. SONDRRA MILLER: Ms. Margaret
13 Michelle.

14 (Whereupon, Ms. Margaret Michelle steps
15 up to the dias to present her testimony.)

16 MS. MARGARET MICHELLE: Good afternoon.

17 My name is Margaret Michelle and I run a
18 support group system that is supported by the
19 Archdiocese of New York in heart-wrenching
20 tails of people that have gone through the New
21 York divorce system. In light of those
22 experiences I am here to represent.

23 Obviously there are many years of
24 service represented on this panel, but since
25 there are no litigants on the panel we feel

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2 that you need to hear how your actions effect
3 our lives. We offer you as we do at our
4 meetings both our frustrations and our
5 recommendations. When we meet I hear things
6 like a whole family gets uprooted because of
7 one person's feelings. Where is the justice?
8 My husband admits to breaking a state law
9 under oath and nothing is done about it.
10 Where is the justice? I have to pay for my
11 child's law guardian, but I cannot talk to
12 them about that experience. Where is the
13 justice? I received a divorce with financial
14 entitlements, but I have no way to enforce
15 payment without incurring more legal debt.
16 Where is the justice? United States can track
17 down a sick cow and know where it last ate,
18 but we cannot track down deadbeat parents.
19 Where is the justice?
20 Yes, we offer a safe environment where
21 members can really speak their minds, knowing
22 that others understand because they too have
23 suffered great injustices that's why we are
24 appreciative of this opportunity today to take
25 a stand against injustice. The justice I do

1
2 not let them leave the meeting without some
3 positive suggestions to try, I'm offering the
4 same to you. United States leads the world in
5 many things for which we can hold our heads up
6 high, however, the highest divorce rate in the
7 world is not one of them. My first suggestion
8 is that you take a cue you from your own
9 colleagues in the American Academy of
10 Matrimonial Lawyers established in 1962. They
11 published a book that entitled "Making
12 Marriage Last, a Guide to Preventing Divorce",
13 copies of which I submitted downstairs. Being
14 that your colleges acknowledge that it may
15 seem odd that a group of people who make a
16 living off of failed marriages would write a
17 booklet about divorce avoidance, but that is
18 what they did in an effort to decrease the
19 numbers of divorce in the United States. That
20 is my first recommendation to this panel is
21 that all lawyers distribute this booklet to
22 any perspective client seeking a divorce, and
23 ask that person to read it before retaining
24 you. It is available on the internet. This
25 booklet lists marriage and family resources.

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2 You can also supply them with a supplemental
3 sheet containing areas of other resources that
4 exist now. There is phone help lines, books,
5 seminars, meetings, weekend programs, even
6 cruises and spas, and programs such as the
7 highly successful Family Dynamics Program and
8 the Retrovalle Program which helps couples
9 rediscover their love. These are all
10 available outlets to help keep marriages
11 intact. It is so very painful to know now
12 that so much information is available and that
13 we didn't know about when we were in that
14 situation. We would have been indebted to
15 anyone who would have informed us. So please
16 do not keep others that come to you in the
17 dark about the other options that are
18 available.

19 Many Judges, lawyers and counselors and
20 couples to Retrovalle as a prerequisite to
21 counselling, as a prerequisite to filing the
22 divorce, or prior to rendering final
23 decisions. They have learned that the tools
24 of communication taught in the Retrovalle
25 Program are what the couples really needed,

1
2 more than counselling, legal advice or a
3 divorce - this information was also submitted
4 downstairs. At the very least, as
5 uncovenanted marriages, we believe some sort
6 of marital counselling should be mandatory
7 before the divorce proceedings begin. Of
8 course, some marriages should be abandoned for
9 reasons such as physical or sexual abuse or
10 other intolerable situations, but many, quote,
11 "unsalvageable", end quote, unions can be
12 saved. If the amount of time, effort, and
13 money which flows towards the destruction of
14 families through a divorce action were to be
15 used towards the reconciliation and healing of
16 a marriage we could indeed reduce the number
17 of divorces in the United States.

18 Another means ever reducing the
19 excessively high rate of divorce would be to
20 uphold all the laws of the state; in
21 particular Section 2255.17 of the Penal Code.
22 That section states, quote, "A person is
23 guilty of adultery when he engages in sexual
24 intercourse with another person at a time when
25 he has a living spouse or the other person has

1
2 a living spouse." This Class B Misdemeanor is
3 punishable by a thousand dollar fine or three
4 months in jail. Thus, our second
5 recommendation, and we cannot urge you
6 strongly enough, is to make an example of at
7 least one spouse who has admitted to having an
8 affair and to publicize his punishment well.
9 That should be a strong deterrent for others
10 considering that behavior. If it was made
11 known that there would be zero tolerance of
12 adultery, you would see an improvement in many
13 social areas. One on-line survey at
14 father.ourfamily.com, regarding adultery,
15 stated that eighty percent of the respondents
16 believed adultery is a series social problem.
17 This is an overwhelming majority who are not
18 being heard until now. Eighty-six percent
19 stated they wanted the anti-adultery laws
20 enforced. Why? Because sixty-four percent of
21 them believe that adultery was responsible for
22 the tenfold increase in the welfare
23 expenditures, as well as the increase in
24 displaced anger. Seventy-three percent
25 believed there was a direct relation between

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2 adultery and the rising juvenile crime rate,
3 while many accredited adultery with the
4 increased rate of violent crimes. Our own
5 experiences show that children suffer in so
6 many adverse ways, negatively affecting their
7 schoolwork. Adultery also contributes to the
8 housing shortage, where as so many families
9 now require two primary residences. It is our
10 belief that failure to enforce the
11 anti-adultery law shows that the court not
12 only condones but approves of adultery. It is
13 quite possible that one of you presently has a
14 case before you where one spouse has admitted
15 to adultery. You are in a position to take
16 action now and slow down this epidemic that is
17 destroying the very fabric of family life in
18 America.

19 Let not our pain be in vein when a
20 divorce does take place, and we are left with
21 a legal document dissolving our marriage. In
22 most cases we spend thousands of dollars in
23 something we find to be practically impossible
24 to enforce without returning to the courts and
25 initiating yet another process which demands

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2 more time, money and agony before the
3 delinquent party can be held in contempt.
4 Therefore, thirdly, we recommend that when one
5 spouse is required to make financial payments
6 to the other for their children, a domestic
7 relations order should be mandatory to bring
8 that about. From our experience we know it is
9 well worth the fee the amount of aggravation
10 it would eliminate.

11 We would think that anyone would like to
12 see their legal handy-work upheld and
13 respected, it would be those who have devoted
14 their lives to cause of justice. One day each
15 of us, litigants, attorneys, Judges, alike
16 will come face-to-face with the just Judge of
17 all; and whether you know him as God, Jehovah,
18 or any other name, he will question each of us
19 individually. He will ask our members how we
20 behaved in the face of adversity, and he will
21 ask you how did you use your authority on
22 earth. Did you just go through the motions on
23 the Matrimonial Commission in order to say
24 that the public was heard or did you sincerely
25 try to right some wrongs that were existing.

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In short, he will want to know from each of
you how did you behave in my courtroom?

Thank you.

HON. SONDRRA MILLER: Thank you very
much.

Daniel Romand.

(Whereupon, Mr. Daniel Romand steps up
to the dias to present his testimony.)

MR. DANIEL ROMAND: Good afternoon.

First I would like to thank the Members
of the Commission for the opportunity to speak
today. The topics I intend to discuss are
admittedly far ranging, however, they speak to
the same common problem. The fact the
matrimonial laws in the State of New York
quite simply are not working. I submitted my
original testimony downstairs, however, with
your indulgence I would like to deviate from
that testimony to address some issues that
have been addressed today. I stand before you
in several capacities. I am or have been a
custodial parent, a non-custodial parent, and
perhaps most importantly a child of divorce.
I am vice-president of the New York Civil

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2 Rights Council and host of The Family Forum, a
3 TV show dedicated to families. I also, like
4 the previous speaker, run a support group in
5 Saratoga, New York. One point I want to make
6 on her testimony is, if we are going to make
7 an example adulators it should not just be a
8 man it should also be a woman - the facts are
9 both sides are doing it.

10 As a child of divorce I grew up only
11 seeing my father for about twenty hours a
12 month, and can fully attest to the effect
13 divorce, its implication and the New York
14 State Standard Visitation Order had on me as a
15 child. As Michael Regan, son of former
16 President Regan, recently said: "To an adult
17 two weeks is two weeks, to a child it's
18 forever." I am here primarily today as an
19 advocate of non-custodial parents and for male
20 victims of domestic violence. I have spoken
21 to hundreds if not thousands of men and women
22 just this year who have been removed from
23 their children's lives. I have seen how good
24 parents who one day are a parent and the next
25 reduced to a visitor at the whim of a judicial

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2 system that refuses to recognize that children
3 need both parents. Men and women who have
4 been told through no fault of their own, you
5 no longer matter to your children, you are
6 nothing more than a visitor.

7 It must also be noted that over ninety
8 percent of the time in the State of New York
9 it is the father who is eliminated from his
10 children's lives. I would like to take the
11 opportunity to speak of a few of these
12 father's. I know of a man who ten years ago
13 came home to find that his wife had packed up
14 her belongings, taken the children and moved
15 to her parent's house. This man worked long
16 hours but also was a devoted father taking
17 care of the children every day, going to their
18 school plays, helping with their homework,
19 playing ball and just doing what a parent or
20 dad does. Yet, at the whim of his ex-wife it
21 was all taken from him but it should be noted
22 he was granted liberal visitation. This
23 so-called liberal visitation was four days a
24 month. He went from spending approximately
25 thirty to forty hours a week with is children

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2 to a grand total of about thirty-six hours a
3 month with his children. I also know of a man
4 whose ex-wife has repeatedly refused to allow
5 him to see his children. She routinely
6 refuses visitation and has, in fact, cut him
7 off from his children. The man has filed
8 thirteen violations of visitation in a
9 desperate attempt to remain in his child's
10 lives. At best, he has been given an
11 additional day or two with the children but at
12 no time has the court done anything to the
13 mother for violating the orders other than to
14 say, and I quote, "don't do that again."

15 I know of a man who was taken back to
16 court by his ex-wife for child support. She
17 has a household income more than double of
18 his, and under the law that should be taken
19 into account. However, in practice the income
20 of the custodial parent is rarely factored in.
21 All that matters it seems is what the
22 non-custodial parent earns.

23 Most importantly, I know of a man who
24 was a victim of domestic violence. On one
25 occasion as a result of yelling a neighbor had

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2 called the police. When they arrived despite
3 the fact the man was lying in a corner beaten,
4 bloody and his ex-wife was still holding the
5 golf club she had picked up and hit him with,
6 the police refused to listen to the man and
7 told him instead he would be arrested if he
8 did not leave the house immediately. When he
9 contacted various organizations for help,
10 including numerous shelters, he was refused,
11 in fact, laughed out the door, literally. The
12 man to this day carries the scars from those
13 attacks and lives his life in fear that one
14 day he will be attacked again.

15 You might ask how I know so much about
16 each of these men. Well, quite simply, in
17 every case I am the man of whom I have been
18 speaking. Since that day ten years ago when
19 my ex-wife chose to end our marriage I have
20 been forced to endure a life of pure hell.
21 Yet, my story is not the exception but rather
22 the rule. My case is no different than
23 thousands of others. I hear from dozens of
24 men and women every single day who tell me
25 their story and with very few exceptions the

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2 stories are all the same. I mention this not
3 for sympathy, not to change anything for me,
4 it's far too late for that, I mention it for
5 the tens of thousands of children who are
6 divorced from one of their parents every
7 single year in this State. The current status
8 of Family Court law in New York is to make it
9 as adversarial as possible.

10 Justice Kaye in a recent article in the
11 Albany Times Union said that she favors
12 no-fault divorce because it will alleviate the
13 acrimony that arises. While I would agree
14 that no-fault divorce might help those who are
15 childless, that have little in assets
16 probably, in fact, the minority, it will have
17 little effect for most people. The truth is
18 what causes acrimony in divorce is the custody
19 battles that ensue, battles that destroy
20 emotionally and financially. Forty-nine
21 states already have no-fault divorce and all
22 of those states have the same problems we do.
23 In fact, several states, Virginia among them,
24 are now taking a serious look at repealing
25 no-fault divorce as the panacea that will fix

1
2 the problems in Family Courts. Justice Kaye
3 and the New York Bar Association are applying
4 a band-aid to a gaping wound. The problem,
5 Ladies and Gentlemen, is the band-aid has
6 already fallen off.

7 It should also be noted that not only do
8 many men's group oppose no-fault, but many
9 women's and children's groups as well. In
10 fact, the only ones who seem to be in favor of
11 no-fault divorce are the ones that stand to
12 profit the most from it - the lawyers.

13 So what are the solutions? There are
14 many but I will speak primarily of one. We
15 must look at the gender inequality that is
16 currently taking place. Robert Doar, head of
17 the ODTA, the agency responsible for
18 collecting child support in this State in his
19 testimony before this very Commission in
20 Albany stated, and I quote, "There should
21 never be a presumptive prejudice against
22 fathers as there sometimes is." In addition
23 there have been numerous articles written
24 recently including, one by noted columnist
25 Phyllis Schefely, who stated unequivocally

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2 there is a bias against fathers in Family
3 Court.

4 Finally, there is Judge Robert Smith of
5 the Court of Appeals who recently in a New
6 York Daily News article was quoted as saying
7 "The courts aren't always gender neutral and
8 the marriage contract is often skewed in favor
9 of women." These are not the cracked
10 outbursts of those radical father's right's
11 who just don't want to pay support, these are
12 the words of brilliant men and women saying
13 what many of us have known for years. It's
14 time to pay heed to those words. To ignore
15 them would not only be unethical and immoral,
16 it would be criminal.

17 The genie is indeed out of the bottle.
18 Yet, as we all know, the laws are the laws.
19 This panel does not make the laws but it does
20 make recommendations. I for one have met with
21 dozens of legislators. In every case I have
22 been told the same thing, the laws as written
23 are gender neutral. The laws as written by
24 the legislature do not say that custody is
25 awarded to mom or dad. They say the child

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2 should go with the parent who operates in the
3 child's best interest. Yet, there is no
4 standard set for clearly defining what is in
5 the child's best interest. That being said,
6 however, overwhelmingly the judicial system
7 has decided it is the mother who gets custody.
8 There can be no denying that when over 90% of
9 the custody awards in this state are to the
10 mother. Over the past three decades mountains
11 of evidence has shown that children of single
12 mother homes are more prone to problems such
13 as alcoholism, drug use, jail, teen pregnancy,
14 single mothers have been conclusively shown to
15 commit the majority of domestic violence
16 against children, the list goes on and on.
17 Other studies have shown that the majority of
18 those in prison come from broken homes. We
19 are seeing increasingly more violent behavior
20 in adolescent and in a majority of those cases
21 these children come from broken homes. As one
22 example, the recent shooting at the mall.
23 This is said in no way to denigrate single
24 mothers. They have done their best often
25 fighting serious hardships. I witnessed my

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2 mother having to handle situations as a single
3 mother, and I feel for every single mother out
4 there.

5 HON. SONDRRA MILLER: In view of that,
6 you have said that you are a child of divorce?

7 MR. DANIEL ROMAND: Yes, I am.

8 HON. SONDRRA MILLER: What specific
9 recommendation would you make to us --

10 MR. DANIEL ROMAND: Shared parenting.

11 HON. SONDRRA MILLER: -- as to your
12 experience?

13 MR. DANIEL ROMAND: Number one, shared
14 parenting without question. You must. You
15 must.

16 Number two, and I speak again with
17 experience as a child here, child support
18 awards need to be reviewed. My father
19 struggled to make his payments and he would
20 not be what is known as the Disney Land Dad,
21 he wanted to be just a simple dad. It was
22 very difficult for him to do that. They need
23 to be reviewed, they to be adjusted to allow
24 for the time that the non-custodial parent has
25 the children.

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2 Some would argue that if dad were the
3 single parent with sole custody things would
4 be different. I strongly disagree. The
5 evidence clearly supports that children with
6 both parents actively involved in their lives
7 on an equal basis where neither is in control
8 have far less problems. Yet, this evidence is
9 disregarded time and time again.

10 This is where I'm going to deviate a
11 little bit from my testimony, I want to talk a
12 little bit about domestic violence against
13 men. I am a victim of domestic violence, as I
14 have stated previously. Numerous speakers
15 today have spoken about domestic violence,
16 noticeably in reference to violence by men
17 against women. This is to me scary. It leads
18 to the ongoing myth that there is no violence
19 against men. I run a support group, I talk to
20 hundreds of men every week. There is a
21 significant amount of violence against men
22 going on in this country and it is the darkest
23 secret this Country has right now.

24 I work closely with Karen Clay who runs
25 "Stop the Violence", a gender neutral domestic

1
2 violence hotline in Oscoshia, New York. She
3 reported recently that forty-three percent of
4 the calls she receives are from men, with no
5 advertisement to them, the advertising is only
6 geared towards the women. There are
7 absolutely no shelters in upstate New York
8 exclusively for men. She told me that there
9 were billions, billions of dollars spent via
10 VOWA for domestic violence for women. There
11 is nothing for men. Studies going back twenty
12 years have made it clear that domestic
13 violence against men needs to be addressed.
14 One study from the year 2000, states that 1.3
15 million women were victims of abuse. The same
16 study, however, also said 835,000 men were
17 victims of abuse. We never hear about those
18 men.

19 Bias has been shown in this very room.
20 Judge Fields who stood before you a short time
21 ago spoke only about domestic violence against
22 women. She is a Judge. I wonder what about
23 the men? There is not to denigrate her in any
24 way, it is simply a point of fact that needs
25 to be made. After hearing her testimony one

1
2 must wonder how can you say there isn't a bias
3 in this room?

4 Another recent study that I have become
5 aware of that is about to be released was done
6 in Oregon. This study took an actual viewing
7 of domestic violence, they didn't talk to
8 people they actually watched couples
9 interacting. This was done over a period of
10 approximately fifteen year. They reported in
11 that study, which, again, had not been
12 released, that approximately six percent of
13 the cases they viewed involved domestic
14 violence, six percent. Of those six percent
15 one percent was violence by the man against
16 the women, the remaining five percent was
17 violence by woman against the man. What has
18 happened is we have created a shield for
19 domestic violence. That shield has now turned
20 into a sword.

21 In closing, I want to thank the
22 Commission for allowing me the time to speak.
23 I also want to challenge Commission. Twenty
24 years ago a similar Commission came to the
25 conclusion there was a bias against fathers in

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2 the court. As I have stated numerous folks,
3 far more intelligent than I, have recently
4 stated that bias still exists. This
5 Commission can make the recommendation but it
6 cannot change the laws, that is up to the
7 legislature. What this Commission can do,
8 what it absolutely must do is end the bias
9 against fathers in the Family Court system. I
10 remind you the band-aid has already come off.

11 Thank you.

12 HON. SONDRRA MILLER: Thank you.

13 Our last presenter today is Brett Peter
14 Linn.

15 (Whereupon, Mr. Brett Peter Linn steps
16 up to the dias to present his testimony.)

17 MR. BRETT PETER LINN: Justice Miller,
18 Members of the Commission, thank you for the
19 opportunity to speak to you today.

20 I am a Confidential Law Clerk to
21 Honorable Joseph G. Owen, Orange County
22 Supreme Court Justice, and since June of 1997
23 have served as the local Orange County ADR
24 Coordinator. In addition, I am also
25 President-Elect of the New York State Dispute

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Resolution Association, which promotes the peaceful resolution of conflict, as well as an active committee member with the Dispute Resolution Center of Orange, Putnam, Ulster and Sullivan Counties.

In a May 1, 1996 final report to Chief Judge Judith Kaye, the ADR Resolution Project issued ten specific recommendations in the hope that they would quote "foster the development of a range of dispute resolution options within the State Court System and thereby improve the responsiveness of the State Courts to the needs of the citizens." I have been privileged to participate in this endeavor in a small way through my work in Orange County. It has been an honor for me to come to know State ADR Coordinator Dan Weitz and all the other fine people affiliated with the State ADR Office. Over the years I've acquired the utmost respect for the tremendous accomplishments of these individuals in fostering both the growth of ADR, and an understanding for its precepts.

I believe, however, that we still have a

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2 long way to go before a true range of dispute
3 resolution options within our judicial system
4 is realized. In your deliberations as a
5 Commission, I would ask you not to forget that
6 over eight years ago the court system made a
7 commitment to provide persons in conflict with
8 an array of realistic and accessible
9 non-adversarial processes from which they may
10 choose.

11 In preparing for my appearance here
12 today, I quickly reviewed some available
13 statistics relating to cases in the judicial
14 system, as well as statistics relating to
15 Community Dispute Resolution Centers and the
16 Orange County judicially-referred divorce ADR
17 Program. One set of statistics maintained by
18 OCA compares the statewide number of contested
19 matrimonials filed in the Supreme Court with
20 the number of contested matrimonials disposed.
21 One reviewing these statistics, I was somewhat
22 surprised to find that since at least 1999 the
23 Supreme Court has systematically disposed of
24 more matrimonials than have been filed. For
25 example, 1999 there were 15,677 contested

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2 matrimonial cases filed and some how we disposed of
3 20,377. In 2003 there were 15,755 contested
4 matrimonial cases filed and we disposed of 16,773.

5 Facially, we seem to be disposing of up
6 to 130% of our filed cases, which I have to
7 say humbly because I work in this system is
8 quite an impressive statistic. I believe that
9 the dispositions may reflect post-judgement
10 and other proceedings not included in the
11 initial filings, and that this may account for
12 part of the perceived discrepancy.

13 In any event, however, it would appear
14 that we have become very efficient at
15 disposing of matrimonial cases. I would
16 submit, however, that quantity of dispositions
17 does not necessarily equate to quality of
18 resolutions and that in my opinion, that is
19 the heart of the problem. The fact that we
20 dispose of thousands of contested matrimonial
21 cases a year does not necessarily mean that we
22 have truly addressed the underlying issues
23 between the parties, that we have resolved the
24 differences between them in any substantive
25 fashion, or that we have provided them with

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2 any meaningful conflict resolution skills to
3 guide them in the future.

4 In fact, these statistics would seem to
5 indicate exactly the opposite. It would
6 appear that we must continually dispose of
7 more cases than we take in, just to stay even.
8 We can't pedal fast enough. In other words,
9 matrimonial matters seem to recycle through
10 the court system in a recidivist fashion,
11 because the participants see no viable option
12 other than to repeatedly seek judicial
13 intervention. These statistics serve to
14 reinforce the realities I see in my day-to-day
15 life as a court attorney, that is, that old
16 matrimonial cases never die, they just come
17 back as post-judgement proceedings. The cases
18 may be disposed, but the minor children, the
19 hurt parent, and the pain of surviving a dead
20 marriage remain.

21 I'd like to share a few other less
22 impressive but, I believe, equally as
23 significant statistics. In Orange County,
24 since June of 1997 we have had a collaborative
25 program in which Supreme Court Justices may

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2 refer contested matrimonial cases to mediation
3 by the Community Dispute Resolution Center.
4 Our statistics indicate that in approximately
5 55% of all amenable referrals, a full
6 resolution is reached between the
7 participants, and the in another 21% at least
8 a partial resolutions is reached. Admittedly,
9 these numbers are not as impressive as a 130%
10 disposition rate, but I would ask you to
11 consider the significance of the numbers. At
12 least one out of every two couples going
13 through our program walks out with a global
14 agreement that they have created together,
15 sitting at a table with third-party neutrals,
16 and based upon the particular circumstances of
17 their own lives, based upon their beliefs,
18 based upon their values, based upon their
19 concerns, their interest and most of all their
20 hopes and anticipations for the future. I
21 would submit that these people, who have
22 contributed so much to resolving their own
23 issues are far more invested in succeeding
24 than those who reach an agreement within the
25 pressure cabins of judicial hallways. Just as

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2 importantly, they have learned to face one
3 another, to discuss and resolve difficult
4 issues together, rather than merely to file
5 court application after court application in a
6 revolving door of litigation.

7 But one final statistic disturbs me.
8 According to the 2002-2003 CDRC Program Annual
9 Report, less than 1%, less than 1%, of all
10 CDRC referrals come from the Supreme Court.
11 In discussing ways to improve our matrimonial
12 system, I would ask you to consider the
13 following question: Why are CDRCs, with their
14 proven ability to assist families in conflict,
15 statistically invisible to the only court in
16 New York State with jurisdiction to handle
17 matrimonial cases? I would also ask you to
18 further consider that the ADR Project's first
19 recommendation to Judge Kaye, in its May 1st,
20 1996 report, included a provision encouraging
21 "The enhancement of the Community Dispute
22 Resolution Centers Program.

23 Based upon the 1996 ADR Report, and the
24 above-mentioned circumstances, I would offer
25 the following suggestions:

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2 The Judicial System should continue to
3 actively collaborate, as an equal, with the
4 ADR, therapeutic, legal and other service
5 provider communities to develop an ongoing
6 program which addresses the needs of divorcing
7 parties through all stages of the process.

8 Every Supreme Court should have access to a
9 judicially-referred divorce ADR program,
10 working in collaboration with the local CDRC
11 or other appropriate ADR providers. Models
12 should be developed that assist participants
13 not only through the divorce judgment state
14 but through post-judgement periods of need.

15 In this vein, I would urge the development of
16 a pilot collaborative part, predicated upon
17 Collaborative Law principles and dedicated not
18 to the adversarial adjudication of a divorcing
19 couple's legal positions but to the principled
20 negotiation of a global statement. These
21 programs should be, and I apologize for using
22 the F word, "funded". Mediators, neutral
23 evaluators and other ADR providers in such
24 programs have proven the value of their
25 services through countless hours of volunteer

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time. They deserve to get paid.

In conjunction with this collaboration, the Uniform Rules should be amended to, a, provide for a standards and goals window period which would permit a reasonable amount of time for the ADR process to be effective; and, b, provide for the development of programs based upon a private-pay model, in which participants who can afford to do so pay for ADR services that are rendered.

Secondly, in addition to judicially-referred ADR programs, the Judicial System should continue to develop other creative and cost-effective options which are housed within the court structure itself. In analyzing the cost of adversarial matrimonial proceedings we must consider not only the salary of a Supreme Court Justice but, minimally, the salaries of a law clerk, a part clerk, a secretary, a court officer and a court stenographer. There should be an expanded use of trained referees, magistrates and ADR professionals who can act as neutrals without the need for such an extensive and

1
2 costly support structure. The expensive
3 process of litigation should be an avenue of
4 last resort, not a default process of first
5 resort. Reliance on expanded service
6 providers would address the sometimes
7 seemingly endless need for more Judges. By
8 expanding the available base of neutrals, we
9 would allow for a more efficient use of the
10 talents and abilities of Supreme Court
11 Justices.

12 Third, the Judicial System should
13 continue working with ADR organizations such
14 as the New York State Dispute Resolution
15 Association, the New York State Council of
16 Divorce Mediators and ACR to develop ongoing
17 educational programs for Judges and judicial
18 personnel, as well as for the public which the
19 court system serves. Courthouses should, in
20 part, become learning facilities for the basic
21 tenets of ADR, available not only to judicial
22 personnel but to the interested public in an
23 effort to convey realistic available options
24 to litigation.

25 Fourth, and finally, the judicial system

1
2 should actively support proposed legislation
3 which would serve to accomplish the goals
4 established in May of 1996. Far too many
5 deserving bills have been introduced in the
6 State Legislature, only to die due to the lack
7 of ostensible support. I would urge the
8 formation of a judicial committee dedicated to
9 exploring the parameters for a successful ADR
10 legislative initiative, and to developing
11 concrete action steps to assure the
12 introduction and passage of appropriate bills.

13 I want to thank you very much for your
14 time and listening to me today, and I wish you
15 the best.

16 HON. SONDRRA MILLER: Thank you very
17 much.

18 We are going to adjourn for the
19 afternoon, but let me advise you of two
20 things. First of all the hours for the
21 Buffalo public hearing which is on April 21st
22 and the New York City hearing on May 9th have
23 been extended in an effort to accommodate
24 speakers after normal working hours.

25 Also, there is a revised registration

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form that should be used by individuals
requesting an opportunity to appear either in
Buffalo or New York City.

All updated information and the first
New York City and Albany transcripts are on
the Matrimonial Commission's web-site so that
you may view them there. This transcript
should be up in two weeks or so. Thank you
very much New York for your very careful and
very patient and very courteous attention. We
have heard a great deal.

(Whereupon, the Matrimonial Commission
Hearing had ended and was adjourned.)