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1 (2:05 p.m.)

2 JUSTICE MILLER: Good afternoon. I'm going to
3 wait till everyone has an opportunity to get a seat.
4 All right. I do want to address a question that was
5 presented to me by Mr. Dickinson at the -- just
6 before we recessed. He suggested that he wanted to
7 raise the issue of why we don't have, represented
8 among our commissioners, members of the public; and
9 he felt that it would be advantageous to have such a
10 representation on the Commission. This is not the
11 first inquiry we've had or suggestion we've had to
12 that effect, and I will explain to you why we have
13 not done that.

14 It would just be, as you've seen here during the
15 course of this proceeding, if you've been here, that
16 there are many, many concerns, different concerns
17 from different points of view from different groups
18 that are being represented here and that are being
19 presented to us. Were we to choose one or another or
20 a third or a fourth of all of these participants,
21 these groups, these issues that are different, but
22 that are legitimate and that wish to be heard -- if
23 we were to select them equally, all of them, we
24 wouldn't have room to meet as a commission and we
25 wouldn't be able to function in a way to come up with

1 a practical and realistic series of recommendations
2 in a reasonable period of time. It would just be
3 totally unworkable. So that I want to assure you
4 that we are here to listen to all of your concerns,
5 to hear all of your recommendations orally or in
6 writing; and we certainly will consider them with
7 great care and concern. So I just want you to
8 understand that we are doing the very best we can to
9 come to a recommendation that makes sense in a
10 reasonable period of time so that we can address the
11 issues that have been brought before us. Okay?

12 I think we're ready to proceed with our next
13 speaker. Oh, yes. For those of you who were not
14 here this morning, please turn off your cell phones,
15 because we will do the same.

16 This is Mr. Gerard Wallace?

17 GERARD WALLACE: Thank you very much. Thank
18 you. It's really an honor to be here in front of
19 members of the court and distinguished attorneys; and
20 I really am very appreciative of the chance to speak
21 to you.

22 As background, I'm the Director of the
23 Grandparenting Caregiver Law Center at Hunter College
24 a, small part of the Brookdale Center on Aging that
25 is dedicated to the issues of grandparents and other

1 kin who are attempting to raise grandchildren. I've
2 been working within that capacity for five years.
3 Previous to that, I did a -- the -- a fellowship at
4 Albany Law School, which I did on this issue and was
5 able to survey a number of different issues around
6 the state relating to it. I'm also the counsel for
7 the National Committee of Grandparents for Children's
8 Rights which began in -- began in Brooklyn three
9 years ago, now in every state of the union. It's
10 part of the first national conference on this and the
11 members are really doing a lot of good work.

12 Number one, what I'm going to be speaking about
13 is custody, but not custody between grandparents, but
14 between parents and a non-parent or between the state
15 and a non-parent. What they usually refer to as
16 third-third party custody proceedings. The famous
17 case on this is Bennett v. Jeffreys, 1976, Court of
18 Appeals. It's -- point out one thing that must be
19 noted right away. While grandparents conduct the
20 majority of this kind of kinship care giving, Bennett
21 v. Jeffreys was about someone who's a friend of the
22 family. They weren't even a blood kin. So -- so the
23 word grandparents is mentioned and used kind of
24 interchangeably with kin. They are folks who are
25 performing duties for folks who may be unrelated.

1 However, that being said, my center is called
2 Grandparent Caregiver Law Center for a very good
3 reason. Most of the folks who are doing this are
4 grandparents. Sixty to 70 percent were of an age of
5 55 and 75. The other 20 or so are kin. And kin can
6 be second or third degree of consanguinity, or
7 perhaps we have a functional definition. And that
8 would include the lady in *Bennett v. Jeffreys*.

9 Then, of course, there are foster parents who
10 are providing care. However, I'm here to represent
11 what I refer to as the other child welfare system. I
12 was fortunate enough on June 9th in the Washington
13 Post to have an op-ed column published, which, parts
14 of the material's available to the committee --
15 commission on the issue and response to the Pew
16 Commission's report on foster care. And I had
17 entitled that, *The Other Child Welfare System*,
18 because the numbers are staggering. The number of
19 caregivers in New York State who are non-parents
20 caring for their grand-- caring for their children is
21 easily 200,000. 200,000 care givers, according to
22 the 2000 census, which had, in the long form, three
23 questions about these care givers directly related to
24 the grandparents. They discovered in -- 143,000 plus
25 grandparents in New York State with a growth rate of

1 30 percent every ten years over the past 30 years.
2 The math is pretty simple. 143,000 five -- almost
3 five years ago. That means it's doubled by 15 --
4 it's gone up by 15 percent since then. So we're
5 talking about over 170,000. Of course, those are
6 underrepresented and the -- any census figures, those
7 numbers are larger than that.

8 I've worked at Albany Law School on this and now
9 at Hunter College and I have travelled extensively
10 around New York State. I've -- I have now on my 1998
11 Forrester 190,000 miles, mostly going from here to
12 Buffalo, from here to Corning, up to Lake George,
13 rural communities, suburban communities, inner
14 cities. The issues are the same wherever I go. Of
15 course, if you don't have money, you are more
16 concerned about money. But the judicial issues,
17 which are really not about money, are pretty much the
18 same. I'd like to give you quickly an outline of
19 this, and I'm really trying to digest it. I'm sorry.
20 I didn't have time to write up notes. I found out
21 about this last night.

22 When I'm -- I've talked to care givers, I break
23 up their needs into four areas. They need to be
24 recognized by the law, they need the authority to
25 care for children, they need the security of keeping

1 those kids, and then they need whatever resources may
2 be available. That's kind of out of the picture here
3 for a commission that's based basically on judicial
4 proceedings.

5 But on the three, is there enough recognition
6 for them in the law? First, I'd like to talk about
7 preconceptions and misconceptions. I've had Family
8 Court judges open up at luncheons with me telling me
9 that, you know, the reason they're in court in the
10 first place is they failed with their own kids. The
11 literature does not -- does not validate that
12 statement. Yet it is a popular misconception. The
13 fruit oftentimes falls far from the tree and rolls
14 very far away. I know of many instances grandparents
15 who have kids in graduate school and another child on
16 the street.

17 We just can't go forward thinking of them as the
18 intrusive kind of know-it-all, I know better than my
19 -- than the parents, individuals who's trying to butt
20 into family matters. I've had other judges tell me
21 they're in it for the money. There is no money. And
22 I've heard worse things said. However -- however,
23 there are many judges who look very favorably upon
24 this population; and, indeed, they have to start
25 looking more favorably upon them because the numbers

1 are there. We are going to see an increase in the
2 number of grandparent caregivers over the next ten
3 years. For all the social wrongs that are going on
4 and for all the reasons that parents are unwilling
5 and unable or unfit to care for children. We have to
6 start recognizing them in better ways.

7 So this is what I'm here about. I said
8 recognition. Hard to find who they are in law; but
9 if you do look, you ask what authority do they have
10 that a court can give them to care for children.

11 Well, in general, courts give them legal custody. Is
12 that the proper status for someone who's a non-parent
13 to care for a child? The answer is, it really isn't.
14 I have read pieces by more distinguished attorneys
15 than myself that back up this conclusion.

16 Legal custody, at least statutorily, does not
17 give you the authority to make medical decisions for
18 a child. Legal custody does not give you authority
19 to enroll a child in school or to be responsible for
20 their education. I can go into this further. There
21 is a definition in the Educational Law, in the Public
22 Health Law called a Person in Parental Relationship.
23 The sites are available. If you have that functional
24 definition, which is a parent, a guardian, or a
25 custodian, with a custodian, it's operational.

1 You're doing the job because the parent is absent,
2 incapacitated due to mental illness or disability,
3 incarceration. Those are the statuses that give you
4 the authority to raise a child.

5 Giving legal custody to someone who is not a
6 natural parent does not give them the statute of the
7 authority. Many family courts refuse to do guardians
8 of a person. They're used to doing custody. They
9 don't want to do it. Procedures are different and
10 guardianship is more involved, but they refuse to do
11 it. And then they -- the grandparents go out there
12 and in -- it bites them -- not -- not bites them that
13 much, because there are so many grandparents who are
14 legal custodians that the -- the de facto practice in
15 the state is to let them get by.

16 Have you ever gone into a -- you've all gone
17 with a child to a medical provider. It's his parent
18 or guardian. Doesn't say parent, guardian, or legal
19 custodian. So we have kind of a dys-- dysfunctional
20 disconnect between the law on the statutes and the
21 law in practice that is being perpetuated by the
22 judiciary because they won't perform the proper
23 procedure to enable a non- -- non-parent to care for
24 a child.

25 Many other ways in which that law can be a

1 problem. I know. I have a niece who's a nurse on
2 Long Island and she says in her work as an education
3 -- she's a nurse in the high school there -- she will
4 not listen to a non-parent who -- who is not a
5 guardian. This goes -- this is a difficult issue.

6 More importantly, the next issue is security,
7 security for keeping the children, and then, as a
8 subset, for getting the kids.

9 Backing up one second, when we were at Albany in
10 April of 2001, we had a conference -- the first and
11 only state-wide conference on this issue. Our
12 keynote speaker came in to debunk the notion that
13 grandparents were not good caregivers and he had
14 statistical evidence based on a 350,00 family
15 national health survey showing what good caregivers
16 they were. I don't have time. We don't have a
17 chance to go -- go into that, but, please, for now,
18 just assuming they can be good care givers or if
19 they're given the chance to care?

20 If they want to care for a child and they don't
21 have that child, they're either go -- going up
22 against the parent or they're going up against the
23 state. If they're going up against the parent --
24 obviously, we all have a vested interest in
25 protecting parents and parental rights. Now, you may

1 be aware of the Troxel v. Granville 2000 Supreme
2 Court decision. That was misapplied by many courts,
3 but not New York courts. At least in New York, we
4 found out the right way to look at it. Troxel said,
5 if you give special weight to a parent in any
6 proceedings regarding visitation against the
7 grandparents, that's sufficient. Grandparents were
8 actually given special recognition by the Supreme
9 Court and that they offered to the states the largess
10 to enact statutes to enable grandparents the -- to
11 seek visitation, to intervene with fit families.

12 Very few groups of individuals, including the state,
13 have the right to intervene with fit families.
14 Grandparents do have some heightened status.

15 Opportunity to seek. You will hear what -- when
16 I go out and speak to grandparents, I can do eight
17 interviews in a day. Incidentally, at this -- I've
18 interviewed over 8,000 grandparents in New York
19 State. Traversing all around. I can sit down with
20 them. First question they're going to ask me is,
21 I've got the kid. Can I keep him? Or, I don't have
22 the kid, the kid is being ruined, and I want to do
23 something. What can I do? These are layman's
24 questions, obviously, and the answer is pretty tough
25 to give them. For the most part, they don't have any

1 special interest recognized by the law to intervene
2 in these family matters. I know this for a fact,
3 because I've done briefs to the Second Department
4 trying to -- to argue that there is a common law
5 interest for families inter-- to intervene against
6 the state and be presumed to be the best -- the best
7 care givers for their own family members. There's no
8 such common law interest. There's no such interest
9 against the state and there's certainly no such
10 interest when they're up against a parent.

11 Now, when I began this, I was talking about the
12 phenomenon of care giving that we're seeing by
13 non-parents. The literature says unable -- unable,
14 unwilling, or unfit. Certainly, when parents are
15 unfit, we're up against a situation where we can
16 prove some kind of a -- we have some legal foundation
17 to -- to give the child to someone else. Unable and
18 unwilling is the tough area of the law. When a
19 grandparent understands that their son or their
20 daughter is ruining their grandson, doing drugs,
21 hanging around -- and you all know the climate that
22 goes on in Family Court, getting over, to use the
23 vernacular. They are interested in helping that
24 child and they have no opportunity, no -- no
25 increased deference within the law to help that child

1 against a parent. Some judges more than others. But
2 as far as the judicial training is concerned on this,
3 it's been bare minimum.

4 You may know that in 2000, January 5 of this
5 year, there was a law enacted that is popularly
6 called the Grandparents' Caregivers Right Act in New
7 York; and that law talked about custody and it talked
8 about getting -- giving grandparents the opportunity
9 to intervene in foster care proceedings. But I don't
10 know how improperly -- how much that law is being
11 followed. I have a judge two weeks ago tell me that
12 the grandparents are coming in now with an air of
13 invincibility. At the same mic, I was told by a
14 social worker in the same county the judges are
15 paying no attention to the grandparents. I don't see
16 one who is. I don't say the other is wrong, but
17 there is an absence of focus on this issue, I
18 believe, in the judiciary.

19 As against the state, you would think that if a
20 child goes into foster care, there would be an
21 opportunity for a family to be re-united, parental
22 unification in the family unit, which are mentioned
23 in the Adoption and Safe Families Act. They are
24 essentially synonymous. But what they mean is
25 parents get the right to get their kids back.

1 As far as non-parents getting the right to
2 intervene and get a child, I'll tell you one story --
3 and I think it's illustrative. This is a Queens
4 grandmother who's daughter was raped. Because of the
5 rape, a child was born. She placed the child in
6 foster care. The mother was disabled. While the
7 grandmother -- the mother was passing away, she --
8 the grandmother -- the grandmother took care of her.
9 When she petitioned the Court, to become the guardian
10 of her grandson, she was resisted because the family
11 -- the family -- foster family had had that child for
12 12 or more months. Okay. Foster families -- has a
13 right to intervene after 12 months. And they
14 intervened and that child -- that grandmother lost
15 the child, her mother died, her daughter was disabled
16 by the rape, and she had -- four visits a year was
17 given to her by the court; and, on the first visit,
18 the family -- the foster family acted. She has not
19 seen her grandchild in two years. She gave money to
20 the foster family and she helped support them while
21 she could not care for her own grandchild.

22 My proposal is for the first twelve months in
23 foster care, there should be a presumption that it's
24 in the child's best interest to be placed with its
25 birth family. After twelve months, the bonding and

1 whatnot that could occur -- we could level the
2 playing field and make it a -- at least then, of
3 course, there is -- there is a preference for foster
4 families post termination.

5 You may be familiar with the work of Margaret
6 Burke, who writes out in the western part of New York
7 on family law matters, extensively works with the
8 judiciary. She's given me a long line of cases, all
9 of which families have failed to intervene
10 successfully to get their children back post
11 termination. Fair enough there. But, at least prior
12 to termination, there should be some kind of
13 preference for family keeping their family. That's
14 on the opportunity to care.

15 Lastly, on caregiving itself, I mentioned the
16 authority issue. The security issue is, I've got the
17 kid. They come in to me in droves. When am I sure I
18 can keep them? I'm extorted -- extortion is going up
19 by the parents. I had one yesterday. They're
20 getting their income tax credit. They're getting the
21 social security check. They're applying for public
22 assistance. I'm afraid to go into court. Because I
23 don't know where I stand when I go in court. I tell
24 you, a lot of what's going on outside of the metal
25 detectors is -- our judiciary, as I said, is unaware

1 -- 60 percent of the caregivers in the state do not
2 have legal custody or legal guardianship. Most of --
3 I think I said this. They're doing this because the
4 parents are unable or unwilling or are in some kind
5 of blackmailed situation with their own families.

6 JUSTICE MILLER: Mr. Wallace, can I just
7 interrupt you a minute?

8 GERARD WALLACE: Sure.

9 JUSTICE MILLER: Can you explain to us the
10 circumstances of -- especially the circumstances of
11 kinship foster care?

12 GERARD WALLACE: Kinship foster care, I thought,
13 was off the Adoption -- kinship foster care has
14 really collapsed into foster care since the Adoption
15 and Safe Families Act instead of 1997 federal law,
16 because the Adoption -- or Family Act -- Safe
17 Families Act and its regulations says, for the most
18 part, the same standards have to be given. For
19 certificates, a foster parent has to be applied for
20 kin as for non-kin. There are certain waivers. But
21 kinship foster care, which really is about -- the
22 estimates are one-eleventh to one-fifteenth. The
23 care givers are actually doing this -- does have a --
24 quite a bit of law around it, in which one of the
25 pieces of law is Family Court Act 1017 in New York,

1 which, until recently, said that there should be a
2 search for kin or suitable relatives, to use the
3 phrase of the law, when children are placed in foster
4 care.

5 The fact that we helped to get that done last
6 year changed that and added -- and you should look
7 for all the grandparents and whatever relative you
8 reach. You should inform them of their legal
9 options. Incidentally, this part of the law is now
10 part of similar changes and is a direct result --

11 JUSTICE MILLER: Hasn't that affected what
12 you're telling us?

13 GERARD WALLACE: No. What I'm talking to you --
14 the most part -- is about kin not involved with the
15 foster care system. They have the other child
16 welfare system, much larger than the formal system.
17 And even in the formal system, there are wrongs that
18 we could annunciate, some of which might be solved by
19 this law. When I got in -- in this nine years ago,
20 the first grandmother I spoke to in Troy, who is a
21 social worker, told me that she wasn't told by the
22 court -- by a CPS worker -- your child's been removed
23 from your crazy daughter's home. And come and get
24 her. She was purposely not told that she could
25 become a foster parent. I have verification from

1 this -- from a local county commissioner, who I sat
2 in his office, challenged him with this, and on a
3 speaker phone he talked to the manager of the -- of
4 the department who said, yeah, our policy is not to
5 let them know they can become foster parents so we
6 can avoid paying them.

7 Hopefully, the law has changed, because to the
8 -- the act that I alluded to, Chapter 657 of the laws
9 of 2003 -- which now mandates notification. And that
10 mandates that information be given to them. But not
11 only were they not told, but if they were told, they
12 were often dissuaded. Monroe County, where Rochester
13 is, has made the certification process for kin so
14 difficult, that they are just really dissuaded from
15 trying to become foster parents. If they do become a
16 foster parent, then no special rights to that family.
17 To their family member. The child. And they live in
18 -- or most of inner city people don't want to be
19 foster parents, even though they can get
20 substantially more money, because they're concerned
21 that they give up any claims they have to keep that
22 child and become the agents of the state and they're
23 -- there's no preference in the law for that child to
24 remaining with family.

25 And, lastly, if they do get it known and do go

1 through the foster care system because the Adoption
2 and Safe Families Act has indicated that nobody can
3 stay in foster care for more than 15 to 22 months.
4 At least in theory. They are quickly told, get out
5 of the system and go on your own. Why? Because New
6 York is one of the few states left -- well, not a
7 few. There's only -- over 30 states now have
8 something called kinship guardianship, which is an
9 alternative placement for kin who have been foster
10 parents so they don't have to adopt and don't have to
11 go on public assistance.

12 In New Jersey, they have a very robust Navigator
13 program. They cover kinship, guardianship, not only
14 to foster care -- typically, foster parents -- they
15 offer to anybody who can be adjudicated to be caring
16 for a child with the -- for the same -- but for which
17 the same child would be in foster care. Settling the
18 wrong to this community really can be summed up in
19 that they have rules. Be taken for granted. And
20 that was okay when families -- when grandparents
21 didn't live beyond 60. When they would be considered
22 as caregivers.

23 We now have added, as I mentioned in the
24 Washington Post column, in the past century 30 years
25 to our life expectancy, in general. We have another

1 generation that can care for children. We have an
2 epidemic of abuse and neglect and activities short of
3 abuse and neglect for which children are being placed
4 with their family, yet we have no law really to -- no
5 law to deal with this emerging class of families. I
6 could go on, but I appreciate much the time you've
7 given me. Thank you very much.

8 JUSTICE MILLER: Thank you very much.

9 GERARD WALLACE: Okay.

10 JUSTICE MILLER: Priscilla Rota.

11 PRISCILLA ROTA: Good afternoon. My name is
12 Priscilla Rota. I'm from Huletts Landing, New York.
13 I am 62 years old. I was in a domestic violent
14 relationship for 33 years. He was an ex-police
15 officer and chairman of Washington County. I knew
16 that when I took the walk to freedom that there would
17 be consequences for my walk. I didn't realize how
18 bad it was going to be. I feel the courts have let
19 me down. I feel the lawyers have let me down. I
20 looked to Saratoga Domestic Violence -- because I
21 still tried to keep it hidden -- and they were
22 wonderful; and also Washington, Warren Counties
23 Domestic Violence out of Catholic Charities were
24 wonderful and supportive.

25 But when you feel threatened and they tell you

1 to go to a safe house, you have only one thing left
2 -- or I felt -- was my home; and I wanted to be safe
3 in that house. That's all I asked, was to be safe in
4 my own home. I went and called the police. When I
5 had been sleeping in the car -- in the garage, locked
6 the car -- the car was locked and I had begun to
7 sleep in the car because I felt safe there. And I
8 finally called the state troopers when he raised his
9 arms to me, I swore for the last time; and a
10 wonderful trooper came out named VanArtem and he
11 says, Mrs. Rota, you have to stop this. You have to
12 go get a restraining order.

13 The next day, I went for a restraining order.
14 He said to be in Washington County at 8:30. I was
15 there at eight clock. I was told by a woman Sylvia
16 that I did not have an appointment. And I said I
17 didn't know domestic violence had to have an
18 appointment. I was put in the basement with
19 criminals. And I spent a great deal of time there
20 filling out the paperwork. When I came upstairs, of
21 course, the judge knew both my husband and I, so I
22 was moved to Warren County. And, from there, I did
23 manage to get a restraining order; and the judge did
24 remove his guns from the house and I was very
25 grateful for that. I went to see a lawyer. I told

1 her that I had gotten a restraining order. This
2 lawyer was -- was from Saratoga. She proceeded to
3 take all my money. And did nothing for me. It was
4 the path of least resistance. I was -- did not have
5 the tools to know where I was going or what was there
6 for me. I thought the lawyer would defend me. She
7 said when we went into Court and we had spent three
8 hours there that I did not need the restraining
9 order; that she had gotten me custody of the house.
10 So I could drop the restraining order. I dropped the
11 restraining order, which meant he was back in the
12 house that day. Once again, threatening me. And now
13 more so than ever. The -- having custody of the
14 house meant nothing.

15 And I would like these breakdowns in our law to
16 be known to women who start this walk, especially if
17 they're married to an ex-police officer or a
18 political figure, because that makes it doubly more
19 dangerous and harder. He broke the restraining order
20 when I got another one. Twice. No one told me to go
21 before the judge and proceed with criminal charges
22 until the lawyer out of Saratoga Domestic Violence
23 told me to do so. The police came to the house --
24 Washington County Sheriff's Department -- and they
25 said that my life was not in danger. I had been

1 choked, dragged, beaten, tripped, burned, and he
2 stood there and said my life was not in danger. How
3 dare he. He wrote up the paperwork and they totally
4 ignored arresting my husband.

5 When he finally was arrested and I went before
6 Judge Feder in Washington County, who is a magistrate
7 -- and I beg you to take domestic violence out of the
8 court for magistrates and give it to real judges,
9 because he, once again, said -- the officer said,
10 your life is not in danger. How dare you come before
11 this court. He yelled and he screamed at me and he
12 said the paperwork from the police officer was not
13 correct. He said you signed it. You're in contempt
14 of court. I'm going to put you in jail. And I said,
15 he wouldn't rewrite it, so I signed it. I did not
16 know the consequences of my action. Because I was
17 very ignorant. Excuse me. So Judge Feeder finally,
18 with begging and with the District Attorney -- the
19 Assistant District Attorney gave me another Order of
20 Protection. I don't know why. Because it never
21 meant anything.

22 My husband did as he wanted to. He came on the
23 property. He went down into the boat house. And I
24 know there was a gun in the boat. I'd forgotten
25 about it, but I knew it was down there, because he

1 was never without a gun. There was always one on his
2 ankle and there was always one in his car or the
3 boat. And I was very scared.

4 At any rate, I'm going to start getting
5 forgetful now. I'm told, in fact, there are more
6 people here than there are in my town. Did I say
7 that? It continued. And the last time I was in
8 Court -- and now we are legally separated. And I did
9 have a lawyer, but I was told to sit in the room and
10 I said, I will not pay for this or I will not pay for
11 that. My mother's \$300,000.00 that she left me, I
12 tried to get it back; and they said I had co-mingled
13 funds. And I had all the receipts from the money I
14 had put into our house, and I still couldn't get a
15 penny back. He made me sign a loan. He broke down
16 the door. I went to the bank. I had tears coming
17 down my eyes. I begged them not to make me sign this
18 paper. I was ignored. Another bank loan was sent
19 home without a notary and I was forced at the dining
20 room table to sign another \$50,000.00 loan. This was
21 all out of Charter One bank. So if anyone is here
22 from Charter One bank, you have no idea what it can
23 be like for a woman who is forced to do things who
24 has no place to go, no money, et cetera. Another
25 loan for \$40,000.00. That he got from the bank on

1 our house without my signature. So it just
2 progressed.

3 We're finally separated now, but I feel that I
4 was not allowed to speak. I was told that if I fight
5 this, that the judge would just toss a coin and he
6 will make me choose what he wanted. And it will be
7 all his decision. And I just settled, because I
8 thought I couldn't fight any more. I -- once again,
9 women need to be educated. They need to be educated
10 as to what the laws are. The laws need to be obeyed.
11 If there is a restraining order and whether -- who he
12 is or what he is, if he is a politician or anyone, he
13 must be accountable for what he does. If a woman's
14 finally -- after 33 years -- willing to take the step
15 to freedom, then she needs the support. Thank you.

16 JUSTICE MILLER: Thank you very much. Irene
17 Weiser.

18 IRENE WEISER: Good afternoon. Distance. I'm
19 not sure if I needed the glasses or not. My name is
20 Irene Weiser. I'm the executive director of Stop
21 Violence Family, which is a national grass roots
22 activist organization based in New York with more
23 than 30,000 members nationwide. Roughly 2600 of my
24 -- our members reside in New York State. I'd like to
25 begin by commending Judge Kaye for convening this

1 commission. And thanking you the -- the -- the
2 members of this matrimonial commission for your
3 efforts in examining the divorce and custody process
4 in New York State.

5 New York is not unique in having a system that
6 is to say the least challenged by complex custody
7 disputes. I frequently hear from women all across
8 this country whose abusers use custody proceedings to
9 continue the abuse and of court systems that are
10 complicit with this endeavor. What is unique,
11 however, is -- is the courage and the vision in
12 establishing a commission to address these problems
13 head-on. I hope the commission's recommendations
14 continue to serve as a national model for much needed
15 reform throughout this country.

16 In this recent campaign season, we heard John
17 Edwards speak of two America's. One for people with
18 money and another for people who are poor. There can
19 be no question that the two-America system is alive
20 and well, institutionalized in the complex and
21 dysfunctional New York State court structure. I am
22 here today to speak on behalf of a victim of the New
23 York State court system who comes from what John
24 Edwards called the other America. I am here to speak
25 of the failures of due process, the denials of civil

1 liberties, and failures of basic protections. She
2 and her daughter have suffered at the hands of
3 severely misguided and a seemingly vindictive family
4 court. Failing --

5 Perhaps you wonder why she's not here to speak
6 for herself. There are no doubt many poor and
7 working women who are not able to appear before this
8 commission to tell their stories because they cannot
9 afford to take time off from work, cannot afford the
10 transportation to get here, and perhaps cannot afford
11 the child care. I raise this point with the hopes
12 that the commission recognizes the bias inherent in
13 the majority of the testimony that you'll be hearing
14 and with the hope that you -- as you consider holding
15 additional sessions, you'll make every effort to
16 insure that all voices are heard. I would urge, as a
17 first priority, that you consider making evening
18 hours to your subsequent sessions. I wish I was able
19 to say it is for these reasons that you will not hear
20 directly from the woman whose situation I'm about to
21 describe. It is not. The reason you will not hear
22 from her is because, for the past two years, she has
23 been incarcerated in Rikers Island for violation of a
24 civil court gag order issued by a family court judge.

25 In 1995, this woman served her husband -- a New

1 York State Police officer -- with papers for divorce
2 on the grounds of cruel and inhumane treatment. He
3 had been severely abusive and threatening to herself
4 and their five-year-old daughter. He had threatened
5 to kill them both. He had tortured and killed the
6 family dog. Those who are not aware, these sorts of
7 behaviours -- particularly the killing of other's
8 pets -- is an indication of a very severe mental
9 condition.

10 Two years later, when the child was undergoing a
11 routine physical examination, the -- the doctor asked
12 her, had anybody ever touched her down there; and
13 this seven-year-old child kind of innocently
14 answered, yeah, my daddy has. This -- this incident
15 was, of course, reported and ACS substantiated the
16 claims of sexual abuse by the father. Yet, despite
17 the fact that the daughter was living with the mother
18 and now had minimal contact with the father, as a
19 result of the divorce, ACS had the child removed from
20 the maternal home and placed in foster care. Finding
21 the mother in violation for failure to protect.
22 Hopefully, now with the Nicholson ruling, I believe,
23 finally adjudicated, such event will be much more
24 rare. The mother complied with ACS requirement for
25 counselling and parenting classes and, early 2002,

1 petitioned the court to terminate foster care and
2 return the child. The court instead, by a process
3 that, frankly, is not entirely clear to me, but
4 surely represents an egregious failure of due
5 process -- the court awarded custody to the sexually
6 abusive father, without providing any notice to the
7 mother, nor allowing her any opportunity to be heard.

8 In the new custody order, the mother was denied
9 all visitation. The court had now determined, after
10 appointing its own forensic sex examiners, that the
11 mother's claims of sexual abuse were false and had
12 caused the child's alienation from the father. The
13 father, by the way, was never required to take
14 parenting classes or submit to counselling.
15 Thankfully, the New York State courts have recognized
16 Richard Gardner's parental alienation sys-- syndrome
17 theory for the bias nonsense that it is. And will
18 not allow expert testimony that aims to verify its
19 existence in a particular case.

20 Just briefly, for those who are not familiar,
21 parental alienation syndrome posits that allegation
22 of sexual -- sexual abuse are frequently false and
23 are used as a means of one parent to turn the child
24 against the other parent. Among the so-called
25 symptoms of an alienating parent are that they speak

1 negatively about the other parent to the child and
2 others, that they make allegations of abuse and
3 become hostile and uncooperative. If anybody's had
4 to share custody with the other parent, the remedy,
5 according to Gardner, is to award custody to the
6 so-called friendly parent. The parent who is the --
7 again, in Gardner's term, the target of these
8 so-called alienated behaviours.

9 Of course, any mother whose child is being
10 sexually abused would indeed and understandably
11 become hostile and uncooperative if forced to send
12 their child to live with the abuser. Thankfully, as
13 I said, New York courts do not support this biased
14 and rather circular theory of parental alienation
15 syndrome. Nonetheless, the ideas of this theory and
16 the misconceptions upon which it is based still
17 persist in the minds of many judges and appointees.
18 As a result, PAS theory is still all too frequently
19 invoked in albeit more insidious ways, it being in
20 vague language, judges adjudicating that the parents
21 are alienating the child. Also indicating that the
22 -- that the mother has borderline personality
23 disorder or any number of ways that might disparage
24 the mother's competency. The woman's credibility and
25 competency is -- as a parent, is thereby doubted and,

1 most frighteningly, the courts in New York and --
2 and, actually, all around the country are placing
3 children directly into the hands of their abusers.
4 The natural response of any good mother would be to
5 fight such a custody determination any way possible
6 to save her child from harm.

7 This is precisely what the woman I speak for
8 today has done. When her child was placed in foster
9 care unjustly, she published a book characterizing
10 the state-sanctioned kidnapping of her child. And
11 after the abusive father was awarded custody, she
12 took to the airwaves. Speaking about the court's
13 continued abuses on her own public access television
14 program. The court objected to this behaviour and
15 issued an Order of Protection that prohibited her
16 from contacting the child or publicly speaking about
17 the abuser or the child.

18 Desperate to save her child, she mon-- modified
19 her behaviour in ways that she thought would stay
20 within the bounds of the court's order. While still
21 publicly speaking about the injustice that she
22 believed was occurring. The family court found her
23 in violation of its gag order, and, on October 4th,
24 2002, remanded her to Rikers Island to serve nine
25 months of a 36-month sentence. The court

1 subsequently found her in violation of a no-contact
2 order with -- when she mailed court documents to the
3 father and, hence, extended her sentence further.
4 Over the course of her ordeal, she has been appointed
5 an 18(b) attorney who has not returned calls or
6 letters, has missed filing dates and court
7 appearances. She has asked for replacement attorney
8 and the court has denied this request. On several
9 occasions, she has waited in shackles and handcuffs
10 in the courthouse cage for hours waiting for her
11 chance to speak to the court. Only to be returned to
12 her cell some eight hours later without ever being
13 given the opportunity to appear. She petitioned the
14 family court regarding claim of more than \$5,000.00
15 in child support arrears owed by the father. And the
16 Court dismissed her claim.

17 In -- in something that I think is frankly
18 almost unheard of, she appealed this decision pro se
19 and the -- the appeals court concurred and overturned
20 the lower court's ruling. On two occasions, she has
21 filed pro se a writ of habeas corpus. On both
22 occasions, she -- the family court has intervened and
23 urged that her release be denied, which indeed it
24 has. She has been cautioned, if she tries to appear
25 before the family court pro se, she will be

1 institutionalized on mental health grounds. The
2 family court has ordered confiscation of her files,
3 including tapes and photos of the abuse which has
4 occurred.

5 Thus, to this day, 25 months after being
6 sentenced for trying to protect her daughter from
7 being forced to live with the man who sexually abused
8 her, she remains incarcerated in Rikers Island, never
9 having had a trial by jury, on a civil contempt
10 charge that contains no purge clause. And arguably
11 violates her rights to free speech.

12 I began this discussion by recognizing two
13 America's that exist in the New York Family Court
14 system. Surely, one version of that consists of the
15 divide of those who have money and those who don't.
16 One would imagine that this woman would be -- one
17 woman -- if any woman -- were able to afford a
18 private attorney, she might have been able to
19 successfully mount an action against the position the
20 court has taken.

21 There is another divide that must be addressed
22 as well in New York courts; and, in courts all across
23 this country, another system of justice exists. One
24 for women and one for men. Despite the rhetoric that
25 you'll hear from fathers' rights proponents, the

1 courts remain tremendously biased against women.
2 Particularly where they're allegations of abuse. I
3 just wanted to kind of give some background to that
4 claim.

5 Studies show that roughly a half of all divorce
6 proceedings are because of abuse. We know that most
7 times custody is awarded to the mother and that most
8 times this is not disputed. In other words, in the
9 majority of situations, the father does not contest
10 custody. We also know that most times when custody
11 is disputed, there is a history of family violence.
12 We know, too, that many abusers abuse their children
13 as well. We know, too, abusers are more likely to
14 contest custody than non-abusers. And are more
15 likely to demand shared parenting or primary custody.
16 Equal parenting time is desired as a way to avoid
17 paying child support. Full custody by the abusive
18 father is desired as a way to retaliate against the
19 mother for leaving.

20 Finally, we know that when custody is disputed,
21 many men get what they want. The majority of the
22 time, mothers -- actually, it's up to 70 percent of
23 contested custody cases are awarded to the father.
24 Why? Because men have more money to hire the
25 high-powered lawyers, often more education

1 background, more experience, and professional and
2 informal interactions within the system; and, in
3 general, speak with authority and reserve. Women, on
4 the other hand --

5 JUSTICE MILLER: Can I interrupt you for a
6 moment?

7 IRENE WEISER: Yes, ma'am.

8 JUSTICE MILLER: Because that last statement, 70
9 percent of custody cares are won by the father?

10 IRENE WEISER: No. No. Seventy percent of
11 cases where custody is in dispute.

12 JUSTICE MILLER: Is in dispute. Where custody
13 is provided for the father, to the father.

14 IRENE WEISER: That's correct.

15 JUSTICE MILLER: Is that right?

16 IRENE WEISER: Yeah.

17 JUSTICE MILLER: Where is the data supporting
18 this?

19 IRENE WEISER: You know what? I will get that
20 --

21 (Applause.)

22 IRENE WEISER: I will get you the reference for
23 that. I don't have it with me. I will write up a
24 formal version of this and send it to the commission
25 that references all the statistics that I'm citing.

1 JUSTICE MILLER: Okay. Sorry to interrupt.

2 IRENE WEISER: That's okay.

3 JUSTICE MILLER: Go forward.

4 IRENE WEISER: Okay. Why? Because men have
5 more money to hire the high-powered lawyers, often
6 more educational backgrounds, more experience,
7 informal and professional interactions within the
8 systems. And, in general, speak with authority and
9 reserve.

10 Women, on the other hand, particularly abused
11 women, are scared, intimidated, and often don't have
12 competitive financial resources. They may not have
13 as much education or familiarity with professional
14 systems. They may not know, be disorganized as
15 result of the trauma that -- that this -- they've
16 endured. They may speak with tones of desperation or
17 exhibit emotions thought by the formal court to be
18 inappropriate and demonstrating incompetence.

19 Combine these differences with the gender bias
20 described as parental alienation syndrome and serious
21 harm will inevitably be done. Is it any wonder that
22 low-income women, distraught to save her daughter
23 from abuse, has been no match for a well-connected
24 law enforcement ex-husband?

25 At the risk of pushing the two America's more

1 just a bit forward, what I'd like to suggest, there
2 are two other conflicting sets of assumptions that
3 operate when family court practice meets. Domestic
4 violence --

5 JUSTICE MILLER: I'm going to ask you, please,
6 to sum up at this point. Okay? Can you do that?

7 IRENE WEISER: Yeah.

8 JUSTICE MILLER: Give us your last two points,
9 but, you know, sum up?

10 IRENE WEISER: Okay.

11 JUSTICE MILLER: Condense them.

12 IRENE WEISER: The assumption of family court
13 practice are the parental inferences and access are
14 primarily important and the parties are -- parties
15 are primarily responsible for making the court order
16 and post-separation agreement work.

17 In contrast, domestic violence law assumes that
18 safety is more critical than access, that threats of
19 harm must be taken seriously, that abuser conduct
20 will not be regulated once custody is decided.

21 Indeed, abuse is likely to intensify. Family
22 practice regards the intervening of safety by a party
23 as conflict. And looks to punish the parent who
24 makes waves.

25 In contrast, domestic violence practice

1 understands the family dynamics and the abusive power
2 and exercise of control and sees its role as a -- of
3 holding the offender accountable. I think that it's
4 clear, in the scenario I've described, that the
5 family court model is being applied where domestic
6 violence is needed. The mother is the one being
7 punished for making waves, sent to Rikers Island for
8 being uncooperative, and using alienation when it is
9 actually the father's sexually abusive behaviour
10 that's harming the child. There's an analysis of the
11 differences between the assumptions of family law and
12 -- and the needs for family violence in the Fall 2003
13 issue of the Juvenile and Family Court Journal,
14 published by the National Council of Judicial and
15 Family Court Judges. And I would urge the commission
16 to -- to please, if possible, get copies of this
17 entire issue. If not, I'd be happy to provide you
18 with the article in here that describes the competing
19 assumptions.

20 JUSTICE MILLER: Thank you. We're familiar with
21 it. We'll look at your written submissions, also.

22 IRENE WEISER: Great. Thank you.

23 JUSTICE MILLER: Thank you very much. Is Mr.
24 Rinaldo DelGallo here?

25 RINALDO DELGALLO: That's me.

1 JUSTICE MILLER: Go ahead.

2 RINALDO DELGALLO: Rinaldo DelGallo, the third.

3 I live in Massachusetts. I lost a child in a case in
4 -- in Rochester, New York. I'm a father's rights
5 advocate. I'm a family law attorney. And I
6 specialize -- I do mostly Mass practice, but I'm here
7 to talk about shared parenting, joint custody
8 generally, and my own experiences in New York.

9 I'd like to start off with some prefatory
10 comments. First, if you really think that one parent
11 doesn't alienate the child against the other parent,
12 you call that crazy talk. I think that's just simply
13 -- I think you're all grownups. I think you all
14 understand that happens all the time. So to say that
15 -- to dismiss that as -- as too far off notion, I
16 think, is a proposition that can't be taken very
17 seriously.

18 One of the greatest difficulties I found as a
19 father's rights activist is we try to educate the
20 public on the prejudice fathers face; and women's
21 groups are constantly stating that there's actually
22 -- not only is bias not against fathers, but the
23 courts are, in fact -- there's actually a bias
24 against mothers. I don't know why they get this. I
25 don't know where they come up with this. Let me tell

1 you the facts. I don't know what the statistics are
2 in New York, but generally speaking -- and these
3 things are not very readily accessible to the --
4 amenable to the scientific process, but most people
5 know that when you litigate a case, men lose. They
6 settle out of court most of the time because they
7 realize -- much of the times, because they realize if
8 they litigate the case, they're going to lose. I
9 don't have data in New York. I could give you a copy
10 of the McNabb study, but they showed that in about 98
11 percent of the time, in Mass, when you litigate a
12 case, emphasis on when you actually go to Court, you
13 lose.

14 And as my -- my practices have indicated, that's
15 what I see. My own case was tried in Rochester, New
16 York, in 2000. The judge exhibited profound bias,
17 lack of understanding the law, extreme hostility,
18 bias. The judge ruled in this -- this is incredible
19 from a judge -- that since I did not file the
20 petition asking for a custody, that I could not
21 introduce evidence that I was a fit parent.
22 Repeatedly, the guardian ad litem objected. I was
23 introducing evidence that I was a fit parent. And
24 the objection was sustained. I take care of him. I
25 comforted him. I could clean up. Objection,

1 objection. Sustained. Objection. Sustained,
2 sustained. The judge ruled, despite brief after
3 brief being filed, that I was not entitled to an
4 attorney, even though I was indigent, merely because
5 the public defender said I was not eligible due to
6 earning capacity. Repeatedly, motions and protests
7 that I did not have an attorney were rejected and, in
8 fact, I was threatened with being held in contempt if
9 I persisted in making the objections. Repeatedly
10 requesting for a hearing on indigency unlawfully were
11 repeatedly -- were denied. The judge thought, quite
12 incorrectly, when one acting in that capacity, one
13 was not entitled to counsel if they had the earning
14 potential; and despite me showing repeated documents
15 that was not the case -- to let it go.

16 The judge ruled that if -- my wife intentionally
17 filed false police reports, of which the natural
18 consequence was to make me homeless, force me to
19 leave home, and reprimanded my parenting practice.
20 As a matter of law, this is -- forget who did it --
21 as a matter of law, this had no bearing on child
22 custody. Even though it would, obviously, deprive
23 the child of both the society of the father and hopes
24 for well-being, all that evidence was not allowed in.

25 The judge screamed throughout the entirety of

1 the proceedings. Now, when I say screamed, please do
2 not be offended. The judge talked at this volume
3 throughout the proceedings. Obviously, that is a
4 totally inappropriate way for a judge to conduct
5 himself.

6 The judge demanded that I miss my own brother's
7 wedding in order to -- to attend a hearing. The --
8 despite evidence that the mother abandoned a
9 one-year-old on numerous occasions in a public
10 building, nursing home, the father co-rearing the
11 child equally, the mother let the child walk too
12 close towards a deep grave, that the mother let the
13 child drive around without a baby seat, that the
14 mother had repeatedly lied, that the mother let --
15 let -- left the place -- didn't pay her utilities,
16 that they were actually cold, that the mother was
17 constantly verbally abusive, sole custody was granted
18 to the mother.

19 Now, I actually have my closing arguments. It's
20 40 pages long. I will submit to you I obviously
21 don't think you'll all have the time to read it, but
22 if you wanted to know the details, they're there.
23 The judge had it in for me. I had a tape of my wife
24 threatening that I'll never be able to see the kid
25 and he kept this out based on the theory I had no

1 foundation when I had it on videotape -- all the
2 evidence I kept producing. Why? There's no
3 foundation. Couldn't get it in. I tried to
4 introduce evidence that my wife was warned, don't go
5 from Erie to Rochester while you're pregnant. Now,
6 any lawyer knows that warning is not hearsay. It's a
7 -- to show you were warned. Wouldn't let it in. I
8 tried to introduce evidence that a guy at the funeral
9 home said, don't let the child go near the grave.
10 It's dangerous. Wouldn't let it in.

11 I didn't get a fair trial. Now, I have an
12 information packet, CBS Evening News talks about one
13 of our -- one of the problems in the Appellate
14 Division, Fourth Department, they're actually -- at
15 the time, in 2000 -- don't know if it was -- today,
16 there's actually a preference against -- against
17 joint physical custody. Now, I have my packet -- I
18 have -- we have an associated shared parenting
19 program, Easychildhood.com, alleging the Bauserman
20 Study. I ask you it -- it all be considered. You're
21 educated on this. I'm sure you probably heard about
22 it. Get yourself a copy of the Bauserman study. It
23 indicates that children, in fact, do better off in
24 joint custody situations virtually instantly. I
25 could read it. As a matter of fact, I will. The --

1 according to divorce magazine, fatherless homes
2 account for 63 percent of suicides, 90 percent
3 homeless, runaway children, 85 percent of all
4 children with behavioural problems, 71 percent of
5 high school dropouts, 85 percent of youths in prison,
6 and 50 percent of teen mothers.

7 We also know that Dr. Bauserman said children in
8 shared custody had less behavioural or emotional
9 problems, higher self-esteem, and better
10 relationships and school performance than in sole
11 custody arrangements. He said that results in
12 custody -- the adjustment studies needs to be
13 committed -- communicated more widely to judges,
14 social workers, counsellours, and other professionals
15 involved in divorce counseling and litigation. Such
16 communication could lead to better informed policy
17 decisions in individual cases. The available
18 research is consistent that joint custody is
19 beneficial to the children.

20 He also said joint custody parents were --
21 reported less conflicts. He said that the fact that
22 joint custody couples are reporting less conflicts is
23 important because one concern that joint custody can
24 be harmful by exposing children to ongoing conflict
25 is often made. In fact, it was the sole custody

1 parent who reported higher levels of conflict. It's
2 not surprising, obviously, when you have one person
3 paying high levels of child support and they lose the
4 kids, they hate the other person.

5 If I --- the -- if I have could, probably trying
6 to tell me my time is wrapping up. I'll say one
7 thing. I put a question on the ballot and then it
8 was put on about -- Massachusetts 37 state precincts.
9 Do you favor shared parenting legislation so that the
10 -- there'll be a presumption there'd be joint
11 physical custody unless the father is unfit or unless
12 it's impractical through no fault of the parents?

13 How much do you think it won by? Let me tell you.
14 86 percent. 86 percent says the Appellate Division,
15 the Fourth Department, has got it all wrong.

16 Now, I submit that the problem that we have
17 today is that joint custody is awarded far too of--
18 too seldom. And even if -- you know, even if it's
19 Mom's house as much as Dad's, it's not the point.
20 The point is kids need a mom, kids need a dad; and at
21 -- unless there's exceptional circumstances, there
22 should be joint physical custody. But,
23 unfortunately, that almost never happens. Thank you
24 very much.

25 JUSTICE MILLER: Thank you. Lisa Hicks.

1 (3:02 p.m.)

2 LISA HICKS: Good afternoon. I'm the Executive
3 Director of the New York State Dispute Resolution
4 Association, better known as NYSDRA. I'd like to
5 first thank you for extending the invitation to be
6 here today. And for your interests surrounding cost
7 reduction, delay, and trauma to the parties involved
8 in Family and Supreme Court litigation.

9 As a professional not-for-profit organization
10 that represents the statewide membership of community
11 dispute resolutions throughout New York State and
12 private practice, practices that can mediate and
13 arbitrate for those centers, I felt that it was
14 important to address you today.

15 Most of you are aware -- and I know at least one
16 of you is aware that in 1981 the New York State
17 legislature enacted Judiciary Law Article 21(a) which
18 established the Community Disputes Program. It was
19 to be administered and supervised under the direction
20 of the Chief Administrator of the Courts to provide
21 funds for -- pursuant to Article 21(a) for the
22 establishment and continuance of dispute resolution
23 centers on the basis of need and neighborhoods.

24 At present, there is at least one community
25 dispute resolution center in each County of New York

1 State providing services ranging from mediation and
2 youth programs to lemon law arbitration. The
3 centers' services are provided and rendered by
4 trained individuals and are overseen by the New York
5 State Court systems office of ADR programs.

6 Although administered by the Chief Administrator
7 of the Courts, the CDRC structure, which we call it,
8 is actually a network of separate not-for-profit
9 organizations which serve as a community resource
10 where individuals can discuss and resolve their
11 inter-personal disputes. From the perspective of an
12 organization that administered contracts with state
13 and federal organizations and -- the mediation and
14 arbitration's services are provided through the
15 CDRC's.

16 It seems to me that they'd be an ideal starting
17 point for establishing a statewide conflict
18 management system dedicated to resolving individual
19 disputes in their entirety. And guiding those
20 individuals toward the most appropriate management
21 techniques for these disputes. CDRC's are grossly
22 under-utilized. They were organized to expeditiously
23 resolve minor disputes. In the fiscal year 2002,
24 2003, CDRC's handled some 23,536 breach of contract
25 matters, 6,691 misdemeanor and violations, and 8,716

1 child custody visitation or support cases. The vast
2 majority of these matters were referred by city
3 court, family court, police agencies, and public and
4 private agencies.

5 In looking at the figures, the referral rate of
6 the New York State Supreme Court is very low. In the
7 calendar year 2003, there were some 225,000 pending
8 actions in this court. In the same fiscal year,
9 however, only 90 referrals were made to the CDRC
10 programs which were a mere two percent of their total
11 caseload for their programs. Only 13 of the 64
12 statewide received any Supreme Court referrals. And
13 because the Supreme Court is the state's trial court
14 of general jurisdiction, it clearly constitutes an
15 untapped reservoir of appropriate methods of conflict
16 management. In addition, because CDRC's were
17 originally designed to handle minor disputes, their
18 full potential for dealing with more complex matters
19 has never been utilized. For example, in the fis--
20 the year 2002-2003, CDRC's only handled 404
21 separation matters. Get that. Comprising nine
22 percent of their total case load, and the majority of
23 these were private intakes. They were not referrals
24 from the Court. The number of matrimonial pending
25 cases in Supreme Court in 2003 were 883. 11,883.

1 Sorry. As matrimonial actions are in the exclusive
2 jurisdiction of the Supreme Court, that court's low
3 referral rate clearly has an impact on the
4 under-utilization of CDRC's mediation, has proven to
5 be at one of the most successful processes that are
6 amicably resolving divorce issues; and, yet,
7 statistically, it is all but invisible to the parties
8 already involved.

9 JUSTICE MILLER: Can I interrupt you for a
10 moment?

11 LISA HICKS: Yes.

12 JUSTICE MILLER: Do you have statistics as to
13 how much of those custody visitation support cases
14 were resolved?

15 LISA HICKS: I actually do. Unfortunately, I
16 left it out in the car. I had a whole report from
17 the ADR program. I can get the statistics.

18 JUSTICE MILLER: Provide us with that. Thank
19 you.

20 LISA HICKS: Yes. The CDRC's have a proven
21 track record and have demonstrated expertise in
22 capability in their resolution of highly emotionally-
23 charged child custody visitation and support cases.
24 The success of these cases is further evidence that
25 the CDRC's could be more heavily involved in other

1 areas such as matrimonial disputes. It has been
2 suggested to me by a colleague -- and I've discussed
3 it with other colleagues -- and I'm here to share
4 that suggestion -- that the New York State
5 legislature draft a system -- collaborate to expand
6 the regional CDRC's in scope, procedure, and resource
7 allocation.

8 Perhaps there is a way that filings such as
9 divorce filings now being made in Supreme Court could
10 be rationally assessed rather than automatically
11 relegated to litigation or position-based
12 negotiation. I propose something unprecedented and
13 unique. And that is that individuals in conflict
14 should be given the choice of bringing their dispute
15 first to a CDRC rather than later. Again, exact
16 situation, primarily through referral of the courts.
17 The adjudication proposed would still be deemed
18 appropriate for a significant number of conflicts,
19 but the choice is to be one that has been well
20 thought out.

21 Perhaps each district Supreme Court part could
22 have a collaborative part first who work with the
23 parties in divorce and pa-- system in progressing
24 through the divorce process. This would allow
25 several alternatives to the parties. The CDRC's have

1 the ability and the expertise to be one of the
2 partners and could work cooperatively with all
3 service providers and the Court. This would give
4 disputants an opportunity to fully explore the array
5 of conflict management techniques available,
6 including litigation. Other resources could be
7 expanded through the inclusion of prior practice
8 mediators in this process.

9 In summary, the thought that I would like to
10 leave you with is that thousands of lives utilize New
11 York State's system each year without fully
12 understanding the nature and consequence of their
13 choice. Many others wish -- wishing to avoid
14 litigious matters are unaware there are various forms
15 of that process that exist. I feel that public
16 awareness of the creative options available to
17 disputing parties should be -- become a priority and
18 a system of rationally-based conflict assessment
19 should be developed to guide them toward processes
20 that would be appropriate for their conflict. The
21 role that community dispute resolution centers play
22 in that culture should be seriously reconsidered.
23 The reason -- resources available to develop the
24 services they render should be expanded.
25 Consideration should also been given to utilization

1 of the expansive array of private practice
2 matrimonial mediators who could work in conjunction
3 and coordination with the CDRC programs. Greater use
4 of hybrid processes should be encouraged and
5 supported by adequate and aggressive training
6 programs. This should result in expedited case
7 processing, cost reduction, and the trauma related to
8 participation in a process that may be inappropriate
9 for the conflict at hand.

10 Thank you again for working with Judge Kaye to
11 provide better and more efficient handling of
12 matrimonial cases in Family and Supreme Court. I
13 hope that the suggestion given to you today, which is
14 not unique to me, but supported by the views of
15 others in this field, will open the dialogue among
16 you about creative solutions for handling these
17 cases. Thank you.

18 JUSTICE MILLER: Thank you very much. Delice
19 Seligman.

20 DELICE SELIGMAN: Good afternoon. Thank you for
21 allowing me to speak to you. I'm Delice Seligman and
22 I have an office -- I'm an attorney. I have an
23 office in Kingston. And I practice in -- in New York
24 City as well. Now, I'm coming here with a simple
25 solution to solve all of the problems that everyone

1 has brought here today. Fortunately, I have that
2 solution. Unfortunately, it's going to put everybody
3 out of work. So as a lawyer for more years than I
4 like to think of, I've seen how the legal system has
5 not only failed the family, but has actually helped
6 to destroy it, unfortunately.

7 Our present system encourages two former lovers
8 to end their marriage by depleting their assets in
9 order to pay a shark or a barracuda. Who will
10 trounce the other spouse. This so-called legal
11 system actually encourages criminal behaviour. We've
12 been programmed to accept the horrible state of
13 affairs without considering that there's any other
14 system that might work that could be better than the
15 one that we have.

16 What I propose is a new county agency that would
17 handle family matters. We need to take divorce out
18 of the hands of the lawyers and away from the judges.
19 Judges have too much power through the matrimonial
20 and family courts and rely on a courtroom
21 presentation where much too often the best liar, the
22 deceiver, and the cheater wins. Lawyers have to --
23 no incentive. Lawyers have no -- I have to put my
24 glasses on to see. Sorry. Okay. Now. Lawyers have
25 no incentive to end a case because it conflicts with

1 their own interests in perpetuating their fees, sorry
2 to say. Think about the large retainer some
3 attorneys take and ask yourself, who among them is
4 going to try to settle a case before the attorney --
5 the retainer is used up? And how many times have you
6 heard that a lawyer originally said it was -- it
7 would be a 10,000 or 20,000 dollar case and then it
8 turned out to be two or three times that much? We
9 need to stop this wanton dissipation of battle
10 assets. We need to change the system so that people
11 expect to cooperate with each other. We need to get
12 out of the box. We need to stop thinking about --
13 well, we need to stop serving barracudas. We need to
14 stop feeding law guardians and forensic evaluators.
15 We need to subsume the functions of all of these
16 people in a new agency. We need a panel of people --
17 a panel of experts to help resolve problems, not just
18 one person sitting in judgment.

19 The new agency would have the benefit of experts
20 to resolve finances in custody. Mothers and fathers,
21 husbands and wives. Should be able to speak for
22 themselves and not through a lawyer and certainly not
23 on a -- not as a witness on the witness stand bound
24 by the rules of evidence and treated like a criminal
25 by the other spouse's lawyer and sometimes by the

1 judge. A family agency would replace the present
2 unworkable system where one person has the discretion
3 to treat one or the other divorcing parties and
4 sometimes both -- is criminal. The present system
5 incites animosity, dirty tricks, hiding the truth.
6 If family matters are taken out of the adversarial
7 system, people would have to adapt their thinking in
8 a different direction.

9 Now, the new Nassau County, one family, one
10 judge system is a clear indication of how much needed
11 the family agency is and how much not needed is this
12 new family court. Certainly, families in crises need
13 one place to go. But that one place should not be a
14 courthouse. That place should be a family-friendly
15 agency. Families don't need judgment. They don't
16 need awards. They need resolutions. Don't get me
17 wrong. I don't propose that no court is necessary
18 and matters concerning family members. On the
19 contrary, where there is criminal behaviour and
20 violence, there should be a court for this kind of
21 behaviour. But we already have that court. That's
22 the criminal court.

23 There -- there's absolutely no need for
24 family-oriented court for criminal and violent
25 behaviour. The criminal court with its jury system

1 is a perfectly proper place to hear such matters.
2 The criminal court is where acts of domestic violence
3 should be heard. There should be no different
4 treatment of criminal behaviour in the family from
5 criminal behaviour in the general community. It is
6 wrong to have a criminal act be considered lesser of
7 a violation against the People of the State of New
8 York just because the act was against a spouse or a
9 child. Ordinary family matters like divorce,
10 support, and custody, on the other hand, shouldn't be
11 criminalized, neither should they be in a court
12 setting at all. Family matters need to be handled by
13 a new county agency where collaboration and not
14 adversary rules and where neither party is destroyed
15 financially or economically or emotionally. Thank
16 you.

17 JUSTICE MILLER: Is this new county agency going
18 to be in a position to determine the credibility of
19 those parties that come before it?

20 DELICE SELIGMAN: I'm sorry. I really didn't --

21 JUSTICE MILLER: Is the county agency that you
22 propose, this panel, are they going to be in a
23 position to determine the credibility of those
24 parties?

25 DELICE SELIGMAN: Well, I -- I assume that this

1 is -- that the agency -- the people in -- who are
2 working in the agency are going to have an
3 opportunity to be able to get to know the people as
4 they really are, not as they're sitting on a witness
5 -- sitting on the witness stand.

6 JUSTICE MILLER: You mean by talking to them.

7 DELICE SELIGMAN: They're -- they're a
8 one-to-one relationship between the -- the panel
9 that's going to help these people make decisions and
10 the people. It's not -- it's not a -- one person
11 sitting in judgment of this -- of these people. It's
12 a totally -- it's a different type of system where
13 people are given credibility to begin with and not
14 expected to be lying from the beginning, which is
15 what the situation is at the moment.

16 JUSTICE MILLER: Thank you.

17 DELICE SELIGMAN: Thank you.

18 (3:18 p.m.)

19 JUSTICE MILLER: Steven Campbell.

20 STEVEN CAMPBELL: Hi. My name is Steve
21 Campbell. I have spent 12 years in the Family Court
22 system. I've been in front of four judges, one for
23 six years, one for five years. I spent ten months
24 out of 12 just trying to get visitation. Out of
25 those ten months, I spent two to three times a month

1 in court. I have been verbally abused by a judge.
2 Through my twelve years, what I have been able to
3 come up with is your commission is about 20 years
4 away from ever reaching any kind of workable solution
5 in Family Court.

6 Family Court judges base their decisions on
7 their values, beliefs, attitudes. Twenty years ago,
8 the attitudes towards drinking and driving are very
9 different than today. Twenty years ago, the values
10 and attitudes toward smoking is very different. If I
11 were to do a marketing study of this group right
12 here, I can predict the outcomes of your decisions
13 based on your demographics, your age, where you grew
14 up, your economic and social status in the community.
15 Judges do the same every day in Family Court. The
16 problem is, they really do not realize how much their
17 values and beliefs influence their decision-making.
18 These values and attitudes need to change so that
19 dads do have value in our society.

20 At this point in time, as a dad, I have no value
21 to society. That has been proven to me by the judges
22 in Family Court, the police, DA's office, the school
23 systems, all of who choose to ignore not only a
24 judge's court order, but federal education laws. I
25 also found it as acceptable that a mom, no matter

1 what extent of well-documented child neglect and
2 previous child abuse -- to my case -- is a far better
3 mother to take care of -- as a child care provider
4 than a dad who works.

5 The only reason I received custody of my
6 daughter was because I remarried and I was, quote,
7 stable. When I separated from my wife at that time,
8 who -- who's now the mother of my daughter, because
9 my daughter needed extensive -- she needed my
10 attention a hundred percent of the time. I knew
11 before I walked out the door I would lose custody,
12 because I would not be considered stable. And that's
13 what happened. I lost custody faster than it took me
14 to get custody. I will never forget the quote. You
15 are the worst parents I have ever met. Society will
16 have to pay for your mistakes. I am so happy I will
17 never see you in my court again. With that, my
18 daughter's mom kept her out of school for 30 days,
19 which she had previously done. My daughter quit
20 school, dropped out of school. The last time I tried
21 to talk to my daughter on the phone, I was arrested
22 for aggravated harassment. When I was being
23 fingerprinted in -- and photographed by the state
24 police, I crumbled into a mass -- sobbing mess. My
25 daughter's mom finally figured out a way how to keep

1 us from seeing each other. My daughter was forced --
2 the trooper told me that my daughter was forced to
3 sign the criminal complaint.

4 This was the first time I could actually talk
5 about this without breaking down crying. Every day,
6 the trauma and the pain I face this time of year -- I
7 don't look forward to it. It's going to be another
8 Christmas Day crying in front of the Christmas tree
9 because my daughter can't see her dad or she can't
10 see me.

11 Last semester, I taught a class called managing
12 diversity in the work place on the campus of State
13 University in New York. And we examined diversity in
14 our country. The statistical information is there,
15 of what everyone has been talking about. There is a
16 huge canyon bigger than the Grand Canyon between
17 statistical decision-making data that's accurate and
18 factual and the decisions that are really being made.
19 It comes back to values, beliefs, and attitudes. I
20 called the FBI because the judge dismissed the charge
21 that I brought. My daughter's mom obtained
22 prescription medication by posing as a doctor. The
23 judge dismissed it based on its merits. The FBI told
24 me, you're a pissed-off dad trying to get back at
25 your ex. It's okay.

1 What has my daughter learned? What are we
2 teaching people in our society? We're teaching
3 people that if you go to court, lying, cheating, and
4 stealing is rewarded. I followed every single court
5 order. I did exactly what I was told to do. I no
6 longer have any beliefs or values pertaining to
7 keeping a clean nose. The only belief and value that
8 cannot be taken away from me is my belief in God. I
9 no longer believe in the legal system or the court
10 system in our country. It is more than broken. It's
11 not even working. You need to have training for the
12 judges on how their beliefs and values are affecting
13 their decisions and that's going to take about 20
14 years to effect those changes.

15 Why would a judge place custody of a child with
16 a parent -- it could be either a dad or a mother --
17 with someone who has an extensive well-documented
18 history of child neglect and child abuse? Other than
19 the judge from January -- excuse me -- July of 1999
20 moved the court case three or four times to get the
21 case closer to January of 2000, which was a month
22 away from my daughter's 16th birthday so he could
23 throw us out of court and not deal with the issues.
24 Judges can do what they want with no fear or
25 accountability of their behaviour. And, as a dad, I

1 have no value to society and it's going to be 20
2 years; and I think the only way you're gonna fix this
3 immediately, you got to call Dr. Phil. Thank you for
4 your time.

5 JUSTICE MILLER: Thank you.

6 (3:26 p.m.)

7 (Applause.)

8 JUSTICE MILLER: All right. Is Mr. Robert
9 Muncil here?

10 ROBERT MUNCIL: My name is Robert Muncil. My
11 comments will be very brief. I'm glad I got to go
12 after the gentleman who just spoke, because a lot of
13 what he said I echo. I'm not here on behalf of a
14 group. I'm not a lawyer. I'm a father. Who has
15 gone through a divorce. I have nothing left to lose.
16 As far as -- I have nothing pending in courts; and my
17 scientific study extends to about ten of my friends
18 who are on the same boat for fraternity of divorced
19 fathers who find ourselves all in the same boat.

20 The -- the one issue that I want to bring up
21 today is I consider myself very fortunate, because
22 I'm a father with three children and I have my
23 children almost half the time. I chose to live in
24 the same town as my ex-wife. We have comparable
25 incomes. And when this whole divorce process

1 started, I interviewed several lawyers; and I wanted
2 to find fairness and I paid for fairness. We were
3 two people who decided to get divorced equally after
4 years of counselling. There wasn't any bitterness.
5 We just said, you know, that that's gone long enough.
6 Let's put this down and co-parent peacefully.

7 Then -- then it all started when I interviewed
8 lawyers and I started hearing things and I wrote down
9 quotes as well. Because I couldn't believe what I
10 was hearing. The gist of the quotes were, this is
11 the child's support formula that you will pay under.
12 And yes, it's not fair. You have three children,
13 you'll pay 29 percent of gross, even though you'll
14 have your children almost half the time. So all this
15 being new to me, I started doing the math; and the
16 way the math bears out, again, I've considered myself
17 fortunate because I have my children almost 50
18 percent of the time with two incomes that are
19 similar. Changing the numbers of two parents who are
20 making the same amount of money. Under this formula,
21 if I used \$50,000.00 of income per parent, the -- the
22 non-custodial parent ends up with a net income after
23 all of \$16,500.00. The primary custodial parent ends
24 up with \$43,458.00.

25 Now, these are numbers that I ran by a lawyer to

1 make sure that they weren't skewed; and I -- I paid
2 based on somewhat different than this, but the
3 percentage is about the same. So -- so going into
4 the first year of this, I went into debt monthly. I
5 had to buy a house. You know, I'm -- and this is not
6 just any -- this is the fraternity of non-scientific
7 fathers that I hang out with. And we're all in the
8 same boat. And going back to our lawyers, going back
9 to your ex's and saying this is totally unfair, we
10 kept hearing, yes, it's unfair, it's the law in New
11 York State, and that's what we can get away with.
12 That's what we can get away with. It's the formula.
13 I don't know what the formula is. But when there's
14 -- there's that much of a disparity -- okay.

15 Again, for parents, this is -- again, I'm
16 speaking on behalf of the fathers, mostly because all
17 -- all along the way, I was told that you will not
18 win the battle of primary custodial parent. Forget
19 it. You won't win. You'll spend a lot of money
20 fighting this in court. You won't win. So here are
21 the -- the dads who go to all the -- coach their kids
22 in soccer, cook their kids dinner, are involved with
23 their children daily when they're with their
24 children, and we all live close by to our children.
25 So we see them even more than our normal time, and

1 we're penalized -- we're penalized under this system
2 for that.

3 JUSTICE MILLER: Just for clarification. Is
4 your order one for joint custody? You said you see
5 your children half the time?

6 ROBERT MUNCIL: I see my children 47 percent of
7 the time.

8 JUSTICE MILLER: Forty-seven. And what is the
9 custody order? Is it primary custody?

10 ROBERT MUNCIL: No. I'm not the primary
11 custodial parent.

12 JUSTICE MILLER: The mother is.

13 ROBERT MUNCIL: Right.

14 JUSTICE MILLER: And you have visitation.

15 ROBERT MUNCIL: I have my children at -- at my
16 house. So as I'm setting up as a new father -- and,
17 again, this is what we've all gone through. We're --
18 we're asked to go set up a house and not -- you know,
19 the model that I wanted to work under is, give my
20 children two -- two equal households for their mental
21 health, stability, everything else. Under this
22 model, mathematically, I can tell you, it's not easy;
23 and, in fact, it's impossible to provide two life
24 styles that are similar. We start hearing things
25 like, Dad, Mom's remodeling the kitchen and takes us

1 to Florida. Why does the house smell? Why is not
2 your house the same as Mom's? Because we're living
3 in two different lifestyles and two different worlds.

4 If it truly is best for children to have two
5 loving homes, the -- a co-parenting situation to the
6 best of the ability of all parties, that formula
7 needs amending. There are other points that I could
8 make, but the primary one is that for us -- again --
9 fathers, we're not looking for a windfall, we're just
10 looking for some equality in what -- how the money
11 flows and what we get to do with the income to
12 support our children. That's it. Thank you.

13 (Applause.)

14 JUSTICE MILLER: Thank you very much. Is there
15 anybody else here who has -- Ronald Vero? Is he
16 here? Peter Sokaris? Here? Amy Merklen? Yes.

17 (3:32 p.m.)

18 AMY MERKLEN: My name is Amy Merklen and -- and
19 I am a lawyer in the Albany area. I do not practice
20 family law. I do not practice matrimonial law.
21 Probably wondering, why am I here. I became a lawyer
22 because I wanted to help people. And I know that you
23 hear that a lot from a lot of attorneys, but that's
24 actually kind of true in my case. And when I became
25 involved with my now-fiancee and I saw what he was

1 involved with, to try to spend time with his own
2 daughter, it broke my heart; and, unfortunately, it
3 made me want to burn my law license.

4 I agree with several of these speakers that were
5 just in front of me that -- and I'm not going to take
6 a -- up a lot of your time either today, because I
7 think that a lot of these gentlemen who only have
8 their children part of the time really can speak from
9 their heart about this.

10 I came from this from the other side,
11 so-to-speak. I used to work in a DA's office and I
12 -- I've dealt with hundreds of harassment cases,
13 hundreds of aggravated harassment cases. Between
14 divorcing parties. And, at that point in my career,
15 boy, I was the head-strong feminist. I was out
16 there. I was fighting for women's rights and, you
17 can't do this to women; and, you know, you can't get
18 away with this. And then I saw -- and I -- you know,
19 and a lot of Orders of Protection handed out like
20 candy and they would get an adjournment or
21 Contemplation of Dismissal and they and the attorneys
22 for the men would say -- or the harassing party would
23 say, you know, why do we have to have this Order of
24 Protection? Why this six months for this Adjournment
25 in Contemplation of Dismissal? And I would say,

1 well, if he is not doing -- you know, you said he's
2 not harassing her, you said she's not harassing, then
3 the Orders of Protection shouldn't be a problem,
4 should it?

5 Well, now, on the other side of the legal
6 system, it is a problem. And the fact that Orders of
7 Protection are out there floating around being used
8 as weapons, if you will, against divorcing parties
9 and against other parents, it makes it -- makes me
10 sick. There are statistics -- and you probably heard
11 a myriad of statistics today -- that children who
12 come from single parent homes or come from situations
13 like this have increased rates of suicide, have
14 increased rates of incarceration, of drug abuse. Of
15 alcohol abuse.

16 I thought that children were our priority. I
17 thought that they were our future. Why then are we
18 making them the victims of this system? Why aren't
19 they the priority? If two adults don't get along or
20 for whatever reason can't be married any more? well,
21 then, that's fine. But don't take it out on your
22 children, and the Court system allows that to happen.
23 The very system that we look to -- to protect our
24 children and to protect our rights is -- is hurting
25 our children on a daily basis.

1 Men and women walk into court -- and we all use
2 the same terms, but you'd think that some have a much
3 higher ground than others. As a woman, if I was
4 married and walked into court and filed for divorce,
5 I am on a much better playing field than my
6 soon-to-be ex-spouse. The tendering, or the days of
7 tender years presumption, are gone. Gone are the
8 days that the mother is the primary care giver
9 consistently across the board. Men and -- and
10 spouses are -- have more flexible jobs now. They are
11 staying at home. There can be primary care givers in
12 these situations. The kids don't have to be in -- in
13 day care and they don't have to be in -- have
14 baby-sitters when they have a ready, willing,
15 productive able parent able to parent them. But just
16 because it's not their visitation day, the child gets
17 to go to day care and spend it with a stranger other
18 than a parent.

19 Our system, right now, we tell litigants when
20 they come in -- or when -- they tell divorcing
21 parties when they come in that they need to get along
22 for the children's sake, you need to get along and
23 put your child first. Well, what do we do? We
24 immerse them in an adversarial system, pitting one
25 against the other? Winner, loser? That's what it's

1 become. That's what it comes down to. And who's the
2 biggest loser? The kids. In an ideal society, if
3 parents divorce, the kids should be able to keep the
4 house. And let the parents come and go. I mean,
5 that's --

6 JUSTICE MILLER: That has been done by some
7 judges.

8 AMY MERKLEN: Well, that's a good idea.

9 JUSTICE MILLER: What is your suggestion? That
10 there should be shared parenting?

11 AMY MERKLEN: Absolutely. Absolutely. Our
12 presumption should be shared parenting, unless there
13 is something proven otherwise. I am certainly not
14 advocating that if there is abuse or neglect or a --
15 a domestic violence in a home that there be shared
16 parenting. If there is an illustration by one parent
17 or the other that the other parent is a danger to
18 this child, absolutely, throw it out the window.

19 But I think, with a more personable system, when
20 people file for divorce, they are already not getting
21 along and they are -- already can't make a decision.
22 So when you are giving them arbitration as -- or
23 mediation as a choice, they're not going to choose it
24 just because the other one wants it. Why isn't it
25 mandated? Why isn't counselling mandated? If you

1 are coming in and you are an adult person and you
2 cannot get along and put your child first, maybe
3 there's something wrong and you need to see a
4 counsellour and maybe so does your spouse. Because
5 you need to learn and -- well, I'm sorry. But you
6 need to grow up. And a lot of these people use our
7 system against each other and they've been taught
8 very well. Again, I just --

9 JUSTICE MILLER: Are you familiar with the
10 Parent Education programs that are being instituted
11 throughout the state?

12 AMY MERKLEN: Slightly. Not a lot. Like I
13 said, I don't practice this kind of law. So I'm not
14 -- I only know from my experience on being on this
15 end of it and being a spectator in the courtroom and
16 seeing what I've seen, which is unfortunate. I just
17 -- I just want people to keep in mind that children
18 are a gift; and whether you believe in God or don't
19 believe in God, but they certainly are a gift; and
20 people should not be able to just put that aside for
21 petty differences and use our legal system -- a
22 system that should be protecting our children and
23 protecting people -- as a weapon against each other
24 in a way to get back at the other. The children are
25 the ones who end up losing. Thank you.

1 JUSTICE MILLER: Is there -- George Courtney
2 here? Call a recess for ten minutes to see if our
3 missing speakers appear. So please be back in ten
4 minutes.

5 (3:40 p.m.)

6 (4:00 p.m.)

7 JUSTICE MILLER: Would everyone please be
8 seated? We have our last two speakers. Ready?
9 Thank you. Thank you very much. Is everybody ready
10 to take their seats? All right. We have Mr. Ronald
11 Vero.

12 RONALD VERO: Thank you. I thank you for the
13 opportunity to speak before you today. I commend
14 Judge Kaye and the matrimonial commission for
15 undertaking these hearings. Though I have -- I am
16 involved in a number of issues, this is the first
17 time that I've ever been to a -- appearing to speak
18 publicly about something. It's because of the way
19 divorce has affected me, my ex-wife, and our
20 children. It's something that will affect us for the
21 rest of our life. I am also a divorced mediator, a
22 volunteer divorce mediator, so I don't get any income
23 by doing divorce mediations, but I know what it does
24 to families, what it does to children.

25 I had been married for almost 30 years; and even

1 though my ex-wife and myself tried to keep it
2 together, it just didn't work, for whatever reason.
3 And it just didn't work. And it was time to end the
4 marriage. I suggested that we mediate, and that
5 didn't go over very well. My wife said, you know all
6 the tricks to the trade, you know all the mediators.
7 No, I want an attorney. I explained to her that
8 mediation didn't preclude her from having an
9 attorney, she should hire an attorney, and I
10 recommended that she do so. But that mediation --
11 that would probably be the better way to do that.
12 Well, that didn't work, either. She hired an
13 attorney. Next thing you know, I find myself in
14 court week after week after week.

15 Now, our divorce, it didn't involve any
16 parenting time, didn't involve child support, didn't
17 involve custody, didn't involve a house. Yet, it
18 still took better than three years. Three years to
19 finalize a divorce. The sad part -- it wasn't the
20 time and money involved. It's what it did to the
21 family. My daughter did not speak with me for three
22 years because of the allegations going back and
23 forth. The bitterness, the court proceedings. It's
24 only been within this past half year that my daughter
25 and I are finally speaking to each other; and there

1 is absolutely no conversation whatsoever between my
2 ex-wife and myself.

3 The attorneys -- I can remember the first time
4 -- the first hearing in the judge's chambers. When
5 both of our attorneys were present. We each -- well,
6 my wife and I didn't have them. My ex-wife and I
7 didn't have a chance to speak because you don't speak
8 when your -- your attorneys do. As we left the room,
9 the judge said, well, you -- you're both very well
10 represented; and in -- this case should -- this case
11 shouldn't take hardly any time at all. There are no
12 issues here. This should be relatively simple and
13 quick.

14 Again, as I said, it took three years. I mean,
15 my life was dragged in front of everyone, from the
16 day I graduated from high school, every amount of
17 money I earned from high school, everything I did,
18 where I lived. Why do you -- what kind of car do you
19 drive? That's a 10-year-old car. You make good
20 money. You should have a better car than a
21 10-year-old car. Why are you driving a rusted
22 10-year-old car? Questions such as this. I mean,
23 why are your children -- what -- you're claiming too
24 much. Isn't -- you have a child at -- my children
25 are in two expensive private schools that we paid

1 for. I don't think this is the business of the
2 courts or the attorneys. So to -- to make a long
3 story short, it was an extremely painful humiliating
4 process, one that has destroyed the family. It was a
5 dysfunctional family to begin with, but it -- it
6 completely ruined anything that the family --

7 JUSTICE MILLER: In your view, why did it take
8 three years?

9 RONALD VERO: Because the attorneys felt it was
10 in their best interest to negotiate for us every time
11 on every issue; and -- and if -- and if -- it's
12 almost -- and my wife -- my ex-wife, who was never
13 present after that first hearing in the judge's
14 chamber, she did not show up at all, ever. And every
15 time I went there, the two attorneys were bickering
16 over the most -- over lamps, over -- I mean, just
17 minute details that had nothing to do with the
18 settlement. It just dragged on and on and on.

19 Finally, it came to a point where I said, I just
20 don't care any more. I really don't care any more.
21 It -- the final straw -- I mean, we were arguing over
22 -- to be honest with you -- retirement; and I said --
23 I said, give her my entire -- give -- give it to her.
24 I just -- I literally, for two years, did not want to
25 go home to get my mail. I was afraid there would be

1 a letter from the attorney in the mail. I did not
2 want to answer the phone. I did not want to read
3 e-mails. It was a nightmare. It was truly a
4 nightmare, and it doesn't have to be that way.
5 Mediation may not be perfect for every -- every
6 divorce, but I know, from -- firsthand, from being a
7 divorce mediator, that the parties are in control;
8 and even if it doesn't work, it works. They're gonna
9 have a much better understanding of the process.
10 They'll understand the issues. If it can't then
11 litigate the case. And I would guess that -- I don't
12 know -- maybe less than five percent of the cases
13 actually go to trial. So I really urge you to
14 recommend and actually mandate mediation for a
15 divorce. And I thank you for your time, and I'll be
16 more than happy to answer any questions that anyone
17 may have.

18 JUSTICE MILLER: Thank you very much.

19 RONALD VERO: Thank you.

20 JUSTICE MILLER: Thank you very much.

21 (4:06 p.m.)

22 JUSTICE MILLER: Mr. Peter Sokaris.

23 PETER SOKARIS: Good afternoon. I want to thank
24 Chief Judge Judith Kaye for -- for appointing this
25 commission. I -- I thank you for the opportunity to

1 appear before you. I'm going to talk as generally as
2 possible. I'm going to try to minimize how much I
3 say about myself.

4 I'm an attorney and -- and 50 years ago, when I
5 was a teenager, you know, the only way you could get
6 a divorce is because of adultery. And things changed
7 in the 60's and we did introduce legislation which
8 enabled people to get no-fault divorce through a
9 separation agreement, filing it away for a year or
10 two, so that was a form of no-fault divorce. But,
11 also, 50 years ago, we had more mothers at home, few
12 -- fewer mothers in the workplace; and, over the past
13 50 years, there have been enormous changes in the
14 area of equality for women.

15 There have also been enormous changes throughout
16 the country in the area of collaborative divorce; or,
17 in some states, there's mandatory mediation. In
18 some, there's minimum standards of access. In other
19 states, they've eliminated the language of custody
20 and visitation, because non-custodial fathers feel
21 that they're deprived of a basic fundamental right of
22 raising their children. Nothing is more precious to
23 us than our children; and when parents divorce each
24 other, children should not become divorced from
25 either parent and parents should not become divorced

1 from their children. So other states do have shared
2 parenting legislation, do have minimum standards of
3 access rather than what we have here in New York.

4 We routinely award every other weekend and
5 Wednesday dinner to one parent and we routinely award
6 what we call custody or ownership to the other parent
7 and the -- of course, the -- the secondary caretaker,
8 as we call them, pays money to the primary caretaker.

9 So collaborative divorce, which is one of the
10 subjects of today's hearing, is very -- is extremely
11 difficult in New York State, unless you have two
12 willing participants, which is unlikely, because of
13 the tender years doctrine. Instead of having a
14 preference for shared custody, instead of having a
15 presumption of parental fitness, we have a preference
16 in this state, you know, for children being raised by
17 the parent of one gender and demoting the other
18 parent to the status of a visitor. This causes many
19 parents to have been devoted -- demoted to the status
20 of a visitor, to just walk away and abandon their
21 children. One solution to improving child support is
22 by conferring equality upon both parents.

23 My custody trial was in the 1980's when the boy
24 was three years old. His mother changed their mind
25 about living in the City of Albany and she changed

1 her mind about going to a Greek Orthodox church, and
2 she expected me to follow her to a rural area where
3 she grew up and she expected me to raise our children
4 in her Dutch Reformed church rather than in the Greek
5 Orthodox church where our marriage took place and
6 where she had agreed to -- to attend.

7 The custody trial was the longest trial in
8 Rensselaer County, probably lasted 29 days spread
9 over two or three years. In the course of this
10 trial, I was falsely accused of sexual abuse. A
11 mental health professional with a mail-order degree
12 was hired by my wife's attorney and my wife to
13 program my children -- child to say, Daddy touched my
14 personal parts; and this resulted in supervised
15 visitation for several months until the Rensselaer
16 County Family Court judge realized that -- that the
17 allegations were false.

18 But rather than punishing the perpetrator of the
19 false allegations of sexual abuse, the Rensselaer
20 County Family Court judge rewarded her by -- by
21 giving her custody. The only good thing that can be
22 said about the Rensselaer County Family Court judge
23 is that he did not change the child's religion to
24 Dutch Reformed. He permitted the child to keep the
25 religion in which he was baptized. So the child was

1 raised in the non-custodial parent's religion and I,
2 as the non-custodial parent, have attempted over the
3 last 17 -- 18 years to remain as actively involved in
4 the child's life as possible, but this is extremely
5 difficult.

6 When you're demoted to the status of a visitor
7 and you have minimum access, which, here in New York
8 State, I would estimate, is about 15 percent of the
9 child's time, about 85 percent of the child's time is
10 in what we call the custodial parent. It would be
11 better to eliminate the vocabulary of custody and
12 visitation from your vocabulary in New York State as
13 they've done elsewhere and to think of it as
14 parenting time or access. The parents and children
15 should never be divorced from each other when parents
16 divorce each other.

17 And, also, both parents should be presumed fit.
18 Demoting one of them to a status of a visitor
19 suggests unfitness or suggests inferiority. Rather
20 than equality. And what fathers are looking for here
21 in New York State is paternal integrity, being
22 reduced to the status of a visitor lacks integrity.

23 A hundred years ago, women in New York State
24 could not vote. It's less than 100 years that women
25 have been able to vote. And the push for equality

1 lasted for decades. Two hundred years ago, African
2 Americans were still slaves. This has changed, but
3 the push -- the push, you know, for the Civil War
4 that lasted for decades before African-Americans had
5 their freedom and before mother -- or women had a
6 right to vote.

7 Fathers in the United States today -- and
8 especially to -- in New York State -- because in
9 attending national meetings of Fathers' Rights
10 Association -- I see a sign behind me from the
11 coalition -- they generally regard New York State as
12 one of the most backwards states in the United
13 States. So we have a lot of catching up to do.

14 And when I ask, why are we the most backward
15 state in the United States, the answer I'm getting is
16 Governor Carey -- or our assembly and our senate
17 enacted joint custody legislation 25 years ago in the
18 early 1980's and this legislative bill was vetoed by
19 Governor Carey because of the influence of National
20 Organization for Women. And when I asked why can't
21 we get this out on the floor and why has this -- this
22 legislation for shared parenting been tied up for 20
23 years, the answer I get is NOW and Assemblywoman
24 Weinstein -- Weinman.

25 These are just reports I get. I don't know if

1 they're true or not, but I -- I only know that I've
2 -- I've been listening to horror stories for the past
3 20 years. I think I would feel very negligent if I
4 did not come here to tell you that our -- our system
5 of custody visitation is harmful to our children and
6 harmful to our parents. We should have legislation
7 for mandatory mediation. We should have legislation
8 for minimum standards of access. Should be 40-60,
9 50-50 or 30-70 rather than 10-90. And we should
10 delete the word -- there's a tactical advantage with
11 the current system because the mother -- because of
12 these, it's winner-take-all.

13 It's -- if children are the most valuable aspect
14 of a marriage, it's -- this winner-take-all system is
15 harmful to both; and, in custody disputes, 70 percent
16 of these allegations of sexual abuse turn out to be
17 false. And the temporary custody orders often turn
18 into permanent custody orders.

19 This is what happened in my case. I had custody
20 of the child. The judge decided, okay, the father
21 works, the mother stays home, father every weekend,
22 and the mother during the week; and then this -- this
23 turned into something permanent, which eventually
24 resulted in divorcing the children -- child from the
25 father because of minimum access and demotion of the

1 father; and then once the custody trial was over
2 with, the -- the mother attempted to obtain a divorce
3 by cruel and inhuman treatment. Which was also a
4 false allegation. She was never treated cruelly. Or
5 inhumanly. And the judge said, I find no evidence,
6 after hearing the case -- Judge Conway here at the
7 Albany County Supreme Court said, I find no evidence
8 of cruel and inhuman treatment. The only evidence I
9 find is abandonment. It was very clear to him that
10 my son's mother abandoned -- the mother -- for
11 reasons of religion and for reasons of location,
12 residence, and so.

13 JUSTICE MILLER: Mr. Sokaris, can I interrupt
14 for you a moment, ask you a question?

15 PETER SOKARIS: It -- is my ten minutes up?

16 JUSTICE MILLER: No.

17 PETER SOKARIS: By all means.

18 JUSTICE MILLER: Ask you a question?

19 PETER SOKARIS: Yes. By all means.

20 JUSTICE MILLER: Not telling you your time is
21 up. You told us that, in your opinion, particular
22 case, you were unfairly charged with sexually abusing
23 the child?

24 PETER SOKARIS: Yes.

25 JUSTICE MILLER: And that the Court recognized

1 eventually that this was false and that your wife was
2 not punished, but was given custody?

3 PETER SOKARIS: Correct.

4 JUSTICE MILLER: Given that circumstance, do you
5 believe that shared parenting would be an appropriate
6 order for the Court to have you share custody with a
7 party who lied about something as serious as sexually
8 abusing your child?

9 PETER SOKARIS: She lied because of her
10 shortcomings. She lied because of her deficits. All
11 of us have shortcomings and deficits. It's the
12 adversarial system that -- that promoted this and
13 enabled her to do this. It's the adversarial system.
14 It's, destroy the other parent. And it's a vicious
15 thing to do. It's -- it's a vicious thing to do, and
16 I've lived with it for -- for 18 years without ever
17 discussing it with my son, who is now 22 years old.
18 My -- but what I'd like to do is help other fathers
19 and other families and other children, because I have
20 heard horror stories in the Fathers' Rights
21 Association; and -- and I find that our legislature
22 has been apathetic in comparison.

23 Legislatures in other states that do have shared
24 parenting legislation, minimum standards of access,
25 mandatory mediation; and, today, one of our subjects

1 is collaborative divorce; and it's not possible with
2 the winner-take-all system that we presently have
3 here in New York State. Are there any questions? Do
4 I have more time? Is my --

5 JUSTICE MILLER: Is there something that you
6 wanted -- further you wanted to tell you us?

7 PETER SOKARIS: I came unprepared. I prepared a
8 few notes --

9 JUSTICE MILLER: You've done very well.

10 PETER SOKARIS: I prepared a few notes; and I
11 really didn't want to talk about myself. I just -- I
12 just want to say -- I just want to repeat what I
13 said. About 200 years ago with the slaves and 100
14 years ago with the women; and I'm saying what the
15 fathers said, the best parent is both parents. And
16 the children deserve to have an opportunity to love
17 both of their parents and to be loved by both of
18 them. And this custody visitation system of
19 winner-take-all makes that impossible. It makes it
20 impossible. And I thank you very much.

21 JUSTICE MILLER: Thank you very much.

22 (Applause.)

23 JUSTICE MILLER: I think that covers all our
24 speakers for this afternoon. I want to thank you all
25 for your careful attention and for being here today.

1 And I assure you, again, that we will take a great
2 deal of time and look very carefully at all the
3 contentions and anxieties and complaints that we've
4 heard. And suggestions. Thank you. I'll ask the
5 Commission members to stay.

6 (4:20 p.m.)

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