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NEW YORK STATE DEFENDERS ASSOCIATION AND  
THE LEAGUE OF WOMEN VOTERS OF NEW YORK STATE

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IN THE MATTER OF:

The Adequacy of Defense Services  
Available to Farm Workers in  
Genesee, Orleans and Monroe  
Counties.

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Reporting and transcribing of the above captioned  
matter held on the 31st day of July, 2003, commencing at 9:00  
a.m. at St. Joseph's School, 106 South Main Street, Albion,  
New York.

A p p e a r a n c e s :

JONATHAN E. GRADESS  
EXECUTIVE OF NYS DEFENDERS ASSOCIATION

GARY HORTON  
PUBLIC DEFENDER OF GENESEE COUNTY

EDWARD NOWAK  
PRESIDENT OF NYS DEFENDERS ASSOCIATION

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LENORE BANKS

NYS LEAGUE OF WOMEN VOTERS

MANNY VARGAS

DIRECTOR OF IMMIGRANT DEFENSE PROJECT

DARRYL KING

CLIENT ADVISORY BOARD

Maria E. Munoz, Interpreter

Reported by Sheila A. Becker

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MR. GRADESS: I would like to open this hearing, if I could. My name is Jonathan Gradess. I am Executive Director of the New York State Defenders Association.

I am joined this morning by Edward Nowak, President of the New York Defenders Association. On my left is Gary Horton, Genesee Public Defender. Gary has been helping us in getting this Farmer Workers Hearing organized.

Lenore Banks to our right is with the New York State League of Woman Voters. She is also liaison to the New York Defenders Association. She is seated by Darryl King, who is a member of our Client Advisory Board. To the far left is Manny Vargas who is Director of Indigent Migrants.

I want to, for the record, state that we have had a series of hearing since 1998 in New York City, in Syracuse, in Albany, and in Rochester. All of those hearings were held in cooperation with the League of Woman Voters. We scheduled a hearing for the family of prisoners. All of them were afraid to come forward and testify before the State Legislature. But they

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testified before us and we protected them. We held their testimony anonymous and protected their identity. Testimony for them was held on March 18th. And on the fortieth day we held a client speak-out in the camp. And in June we took a sort of a stand in New York City and held a hearing.

And for the client society this hearing is a little different, although the standards are here for presentation and the standards have been drafted by our Client Advisory Board of the expectations of our clients and representatives.

This hearing follows an invitation in 2001 to come. And there was an invitation from in part from growers in this community to come and determine the adequacy of public defense representation of farm workers.

We did some preliminary report work in 2001 and in April, May, June and July we met with people.

I would like to express our appreciation to the farm workers who have allowed us into their homes and have invited us into their camps and who have been for us a guide to this issue.

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One of the reasons that we are holding this hearing today is because we have been concerned about farm workers being afraid to come forward and talk about their experiences. So we went to them, and for the last several nights in camps and I would like the record to reflect a few of the things that we have found, because they reflect the kinds of concerns that we have come in to.

Two nights ago we were in a camp that was built for forty people, but housed eighty. And after we convened the farm workers, and we were speaking to them at some length, it was pretty clear that there was not a single person in the room who knew the right of the public defenders services. That was in Orleans County.

This hearing covers Orleans County, Monroe County and Genesee County. We had a witness last night who notified us that there had been an interrogation by the police in this community, completely conducted in English, forcing the client to sign a statement. The clients were exclusively Spanish speaking. I spoke to the defendant last night from Monroe

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County, who is in his fourth time in court and he still doesn't know what he is charged with.

We have had the occasion to discover in Genesee County a judge who arrested, took a farm worker at arraignment who had been arrested for the crime of trespass, without counsel and without an interpreter, and remanded him to jail. And the next day, from documented papers, released him to INS, indicating he plead guilty to a crime, which he did not plead guilty to.

I must say that last year growers told us, and last night farm workers in Albion told us, horrific stories about racial profiling in this community.

So we come to this hearing interested in what everyone has to say and hopefully as a result of it the people will feel that they could speak on the record so that we have a greater insight to improve public defender representation in Genesee, Orleans and Monroe County.

I would like to indicate for the record that the Public Defender for Genesee County, Gary Horton and the Monroe County Public

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Defender, Edward Nowak are here. The Orleans County Public Defender was invited by letter and per yesterday - - and he may be here later, hopefully. He is not present at this moment.

With that introduction we will call our first witness, Jesus Vallejo.

Good morning. We would like you to just talk and tell your story.

(Testimony interpreted by Maria Munoz.)

MR. JESUS VALLEJO: My brother had an incident here. The first lawyer that he had was Mr. Stefaniak. The case started very well, but then it changed to Mr. Church and Mr. Church never communicated with us. He never let us know when we would have to appear to go to court. We had no communication with him at all. We were left out.

For us this lawyer never did anything for us. And my brother felt that he did nothing for him. That he felt that the lawyer felt that he was - - he was not innocent, he was guilty.

The lawyer never believed his story and he even made him change his story for him, for the lawyer. The case took two years and then - -



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and then after the two years we felt that the lawyer had been changed to the prosecutor's side.

The interpreter my brother had, I believe, he was Cuban. They could not communicate well. The defender never gave him an opportunity to defend himself. The defender will go with my brother to court, say a few words, two or three words, and come out.

When I tried talking to him over the telephone, talk to the lawyer, the defender over the telephone, he get mad at me. Even if I went by his office.

And the last thing that I would like to say at the hearing, this town, there is no justice for the worker, the farm workers or anybody. The police are united and they're the only ones that have power. We have no say. That is all.

MR. GRADESS: Any questions?

MR. HORTON: Mr. Vallejo, I am Gary Horton. We have met before. Just so that the record is complete, could you tell us what your brother was charged with.

MR. VALLEJO: Manslaughter 2nd degree.

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MR. HORTON: Did your brother's case go to trial or did he finally enter a plea?

MR. VALLEJO: No, he did not.

MR. HORTON: It did not go to trial?

MR. VALLEJO: He did not go to trial.

MR. HORTON: Did your brother agree with the decision to enter a plea?

MR. VALLEJO: No one agreed with anything. No one was in agreement with anything. Even the defender never - - he never allowed my brother to go to trial.

MR. HORTON: Your testimony was that you said, we were unable to get information. You talked about you and your family.

MR. VALLEJO: Yes.

MR. NOWAK: I have one question. During your statement to us today you indicated that the defense attorney made your brother change his story; is that correct?

MR. VALLEJO: Yes.

MR. NOWAK: So, is it that when he changed his story he entered a guilty plea when he was not? Was that the change that the lawyer wanted him to make?

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MR. VALLEJO: Yes.

MR. NOWAK: I understand now. Thank you.

MR. KING: So he was convicted. What was he sentenced to?

MR. VALLEJO: Seven to twenty-one.

MR. KING: Has there been an appeal? Has he been assigned an appeal attorney?

MR. VALLEJO: I can't remember exactly, but I think once it was appealed. Once.

MR. KING: How old is this case?

MR. VALLEJO: It happened in 1994.

MS. BANKS: And he is still in prison? I am Lenore Banks, League of Women Voters.

MR. VALLEJO: Yes.

MS. BANKS: Is there current information? It says last weeks he was denied parole and has to serve. What was his sentence originally?

MR. VALLEJO: He is still in prison. Seven to twenty-one was the sentence.

MR. VARGAS: Manny Vargas from the Immigrant Defense Project, New York State Defenders Association. Do you know if your brother's lawyer discussed with your brother what could happened to his ability to stay in

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the United States if your brother was a noncitizen and plead guilty? That is if your brother was a noncitizen and plead guilty to this, to this crime.

MR. VALLEJO: I believe the case would have been very different because he would have had all his rights and he was not given his rights.

MR. VARGAS: So to clarify what you are saying, the lawyer did not have discussions of what might happen to your brother's ability to stay in the country?

MR. VALLEJO: No.

MR. VARGAS: And could I ask one other question. Do you know if the judge said anything about this?

MR. VALLEJO: I don't know. We never knew when he was going to court or anything. We were completely left out, so we never knew.

MR. VARGAS: Thank you.

MR. GRADESS: I have a couple of questions. Did there ever come a time when an investigator from the office of the Orleans County Public Defender spoke to you or your family?

MR. VALLEJO: Yes, there was once.

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MR. GRADESS: On one occasion. Could you tell us how long that conversation was?

MR. VALLEJO: He came to the house and there were five of us who were living together. And at that time we did not know any English and he didn't speak Spanish. So we could not communicate very well.

MR. GRADESS: Did the investigator that came to see you and your family come with an interpreter?

MR. VALLEJO: No.

MR. GRADESS: Did that investigator ever come back to see you and your family?

MR. VALLEJO: No.

MR. GRADESS: Were you ever visited by a social worker from that office?

MR. VALLEJO: No.

MR. GRADESS: Did a lawyer ever come to your home?

MR. VALLEJO: On the first time.

MR. GRADESS: Did the lawyer come with the investigator?

MR. VALLEJO: The lawyer never came. The investigator did on the first time.

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MR. GRADESS: The lawyer never came, an investigator did. You indicated, I believe when I was in conversation - - I want to be clear on this, that you went to the lawyer's office, but he would not speak with you.

MR. VALLEJO: He would just let me in for a few seconds, couple of words. That's it.

MR. GRADESS: Could you indicate what those couple of words might have been?

MR. VALLEJO: I would ask him what's going on with the case. When are we going to court. He would tell me the district attorney would let me know.

MR. GRADESS: During the two year period that this case was being prepared you were in touch with your brother frequently. Were you in touch with your brother frequently during that three or two year period?

MR. VALLEJO: By telephone.

MR. GRADESS: Did your brother seem to know what was going on?

MR. VALLEJO: No.

MR. GRADESS: Did your brother instruct you to talk to his lawyer?

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MR. VALLEJO: He wrote letters to his lawyer, but he would never return the letters or get a response from him.

MR. GRADESS: Did his lawyer accept telephone calls from him?

MR. VALLEJO: Not that I know.

MR. GRADESS: Did he visit him in jail prior to the trial?

MR. VALLEJO: Once that they - - that I was invited also, and to talk about the case and the defender called him but he - - if he was going to a trial he would - - he would be charged with twenty-five to life in prison. And that's when they offered him seven to twenty-one.

We did not really know about the case. The defender never presented anything about the case or tell us much about the case. So my brother didn't have any choice but to take that.

MR. GRADESS: During the course of when it came to discussing the plea of guilty, where did that discussion take place?

MR. VALLEJO: In jail.

MR. GRADESS: Was there an interpreter there?

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MR. VALLEJO: No.

MR. GRADESS: So the conversation took place as you understand between who and who?

MR. VALLEJO: Between my brother, my boss, the defender, and myself.

MR. GRADESS: Did the boss act as an interpreter?

MR. VALLEJO: No. But it is only other person that could understand when he speaks English.

MR. GRADESS: The defender that you referred to in that last sentence, is that Stanford Church? Are you referring to Standford Church?

MR. VALLEJO: Yes.

MR. GRADESS: Thank you very much. LeRoy Jones, good morning. Thank you for joining us. We appreciate you fitting us into your day. We will try to get you in and out of here quickly.

Tell us a little bit about yourself.

MR. JONES: There's not much, not very much to tell about me. But my story is on May 31,1996, I was arrested for 2nd degree burglary,



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2nd degree assault, and 1st degree menacing.

Now, I have no quarrel with the law. I believe in them. I did before I went to prison. I still do now.

But what my concern is the defense for people that go to jail and they don't have, I would say, representation.

Now, when I was arrested I was arraigned that night and the court date was set for that Tuesday. So I went to court and I had no lawyer at the time. So the judge appointed a lawyer, which was Thomas Church. And at this time Mr. Church notified me that the charges were quite serious and he was going to enter a plea of not guilty. And he asked for a postponement.

Now, it was about two or three weeks after this that I went back to court, which during this time was a three week period and I never saw Mr. Church nor talked with him at all.

And after I went back to court, when I got there Mr. Church was not there. Mr. Stefaniak was there. So, they said that Mr. Church had some problem or business, he could not be there. So Mr. Stefaniak was going to sit in for him.

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All right.

I talked to Mr. Stefaniak a few minutes before court and he told me that I had a good chance of beating the burglary charge because, as I said, I had at the house were my keys, because I did live in that house two weeks before this happened. So I went in the house with my keys. It was not a break in. He said I had a good chance of beating the burglary.

Now, when my case came up before the judge Mr. Stefaniak asked again for another postponement, which he did do. This time I did not see Mr. Stefaniak or Mr. Church.

After that period was up I went back to court and Mr. Church was back. But he again asked for a postponement. And when I got ready to go back to court it was Mr. Stefaniak again.

Well, anyway, I heard that Mr. Church had went to work for the district attorney's department. He was doing something for the district attorney. I don't know. I can't confirm that. That is just what I heard. That is the district attorneys office.

But anyway, during this time that I was in

1  
2 jail Mr. Stefaniak came to see me once. That  
3 was the only time I talked to a lawyer outside  
4 of the courtroom. He came to see me once. He  
5 told me that - - he says that the district  
6 attorney is offering you a three to six. And  
7 what we're going to do, we're going to wait a  
8 while. We're going to postpone this because  
9 usually if you wait a while they go down on the  
10 sentence.

11 So, about two weeks later he got in touch  
12 with me and said - - he said they're not going  
13 down. They're sticking with the three to six.  
14 So I told him okay, I'll take the three to six.

15 Now, when I got ready to go in the court to  
16 accept the - - to take the plea, there is this  
17 other lawyer. I think his name was William or  
18 something. And I think he was head guy in the  
19 Public Defenders Office. Whatever. But before  
20 this - - I got to back up, sir. He said - - he  
21 sent a message to me over at the jailhouse to  
22 call him.

23 So I called him and he was asking me over  
24 the telephone to go through my case and tell him  
25 what happened. I said over the phone, I said

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there's a lot of people in here standing around because I am in jail. I can't just really, you know, do that. He said, okay. And then he said, well, I will tell you what. He says if I were you I would be a little leery of that three to six because - - because if it was me I would offer you more time. And that was the end of the conversation.

So, and I go to court and I accept, I take the plea. And as you know, you know how the judge goes through that little thing on a plea. So, we went through all of this and after I got through then the judge asked me, do you have anything to say. And the district attorney was going through her little crime stuff or whatever. He made some statements in there that were not true. So I was telling the lawyer, I said, that's not true. He told me to shut up. He didn't say shut up. He said be quite. So, okay.

So when the district attorney got through then the judge, he went through this little, whatever. And then he said, well, I am not going to accept the sentence. He said I will

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give you five to ten or we go to trial. He said I'll give you a few minutes to go back in the back and talk to the lawyer.

So, I go back there and talk to him. And he tells me, he says your best out is to take the five to ten because if you go to trial you're going to be looking at probably, possibly seven to fifteen and regardless of whether you are guilty of the burglary or not, he says you're going to be found guilty.

So I took the five to ten. I went and I did six years plus eight years. I mean - - excuse me. Plus eight months in the county. So I did six to eight and I am out on CR.

I was released January 23rd of this year and to me that is my story.

MR. GRADESS: Any questions?

MR. HORTON: Mr. Jones, I am Gary Horton, the public defender in Genesee County. Just so that I am clear, you had a number of court appearances with Mr. Church, and you, and Mr. Stefaniak?

MR. JONES: Yes.

MR. HORTON: And you think his name was

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William.

MR. JONES: I think his name was William. I'm not sure it was William or Willis or something like that. I don't know. This has been so long ago. My memory is not so good like it use to be.

MR. HORTON: When you went to court, when you went to court to enter the plea your understanding was that it was going to be three to six?

MR. JONES: Yes.

MR. HORTON: And the judge would not accept that?

MR. JONES: Yes.

MR. HORTON: And you pled?

MR. JONES: Yes.

MR. HORTON: Did any of the attorneys that you spoke to review with you the facts of the case or what they perceived was the proof that the prosecution might have against you?

MR. JONES: Well, not really. But this was basically probably because of my doing because I was not trying to get out of it. The only thing I was trying to get out of was the burglary.

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God's truth. I was guilty of the assault and the menacing. But I did not feel I did the burglary. And this is what I was trying to get out of.

Also, I told my lawyer Mr. Stefaniak that I would take the assault. I would take the menacing. But I did not want the burglary.

MR. HORTON: There were no pretrial motions?

MR. JONES: They - - I seem to recall something about some kind of pretrial motion, but I don't exactly remember what transpired.

MR. HORTON: The number of lawyers that you had, did any of the lawyers review with you what motions they intended to file?

MR. JONES: No.

MR. HORTON: Were there any pretrial hearings?

MR. JONES: None except my court appearance.

MR. HORTON: Was your case presented to the Grand Jury?

MR. JONES: I think so.

MR. HORTON: Was there an indictment?

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MR. JONES: Yes.

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MR. HORTON: That is all I have.

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MR. NOWAK: My question would be, when you came to court and the plea promise sentence changed and you found out for the first time that the judge said, I am sorry, I am not going to give you three to six, it is going to be five to ten, you were with a brand new lawyer that you had never met before?

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MR. JONES: Yes.

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MR. NOWAK: How long of a time did you have to make a decision? Did the judge say, do you need a week or two weeks?

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MR. JONES: No. He said you have a few minutes to go in the back of the courtroom and talk to your lawyer.

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MR. NOWAK: So, you stayed in the courtroom and went to the back and you did not go to an office or to a private area?

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MR. JONES: No. I didn't leave the courtroom.

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MR. NOWAK: No interview room?

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MR. JONES: I didn't leave the courtroom.

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MR. NOWAK: You did not leave the



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courtroom.

MR. JONES: Right in the courtroom.

MR. NOWAK: And as far as the conversation, that lasted two minute? Five minutes? Ten minutes?

MR. JONES: About two, three minutes.

MR. NOWAK: About two and a half minutes?

MR. JONES: Yes.

MR. NOWAK: And you decided on your lawyer's advice that you should take that plea?

MR. JONES: Yes.

MR. NOWAK: Do you know if any appeal was ever done with regard to the sentence?

MR. JONES: Well, I did an appeal. And the first appeal, that's the first time I appealed it, they gave me a lawyer out of Syracuse and I can't think of that man's name for nothing.

MR. NOWAK: John Ciranda (phonetic)?

MR. JONES: I think so. It sounds like him. He wrote me a letter and stated in his letter saying, I don't know what you want me to do. I mean, you don't have any grounds for an appeal. So, what should I do? What do you want me to do? And I wrote him back. I said, I

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don't know. You are the lawyer. I assume the court transcript, whatever. But he never did anything. He held my case for a year and he never did anything.

So I wrote to Circuit Court again. They gave me another lawyer. And this lawyer went through - - I mean, he was - - he was corresponding with me basically twice a month. And he tried to get my sentence reduced. I said, I am not trying to beat the sentence. All I want is my three to six back. He said he went through a lot of appeals about cruel and unhuman punishment. I forget. But it was on that line. And that I was not fairly represented. But the Court of Appeals, they turned me down.

MR. NOWAK: Eventually you did get an appeal?

MR. JONES: Yes.

MR. HORTON: And your lawyer finally, whoever that was, talked about a time cut? When you were in prison you might have heard other people say trying to get a time cut. In other words, your sentence reduced to three to six.

MR. JONES: Well, not really because -- do

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you mean this is what I was trying to do?

MR. NOWAK: Right.

MR. JONES: But I asked the lawyer for this.

MR. NOWAK: Right. You are the one that had to demand that somebody do that for you.

MR. JONES: Yes.

MR. NOWAK: Did you ever review your presentence report, the report that probation took? When you were in jail after your plea, did somebody from probation come over to talk to you and they did what they call a presentence Investigation Report?

MR. JONES: Yes.

MR. NOWAK: Did your lawyer ever sit down with you and review that presentence investigation report with you?

MR. JONES: No.

MR. NOWAK: He never talked to you about it?

MR. JONES: No.

MR. NOWAK: He never asked you whether if what was in there was true or not true?

MR. JONES: No.

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MR. NOWAK: No.

MR. KING: Is there a possibility that you could find out who that lawyer was? The lawyer that did your appeal, could you find his name and communicate that back to us?

MR. JONES: Which one? The first or second?

MR. KING: The one that did the appeal for you.

MR. JONES: The first or second?

MR. NOWAK: The second one.

MR. KING: Well, the first one didn't do your appeal.

MR. JONES: Right. He kept it for a year.

MR. KING: I mean, if you could think of it we would appreciate it. I think that would be vital information between the two lawyers, the one that held your case for a year and did nothing and the one who, you know, took an interest in you and started communicating with you in trying to find out the issues.

Did they give you a copy of the brief?

MR. JONES: Yes, they did.

MR. KING: Do you still have it?

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MR. JONES: When I walked out the door - -

MR. KING: I know what you mean.

MR. JONES: I said it is over with. I trashed it.

MR. KING: If there was any way you could remember that, you could contact us.

MR. JONES: I sent some papers home. I am curious. I will make a call tonight.

MR. KING: Okay. We would definitely appreciate that. And while you were in with these - - strike that out. The new lawyer, the last lawyer in your case prior to sentencing, was he from the same firm?

MR. JONES: Yes.

MR. KING: He was out of the Public Defenders Office?

Mr. JONES: Yes.

MR. KING: Did they explain to you why they changed the lawyer?

MR. JONES: No, they never did.

MR. KING: Did they ever explain to you where Mr. Church and that other lawyer were that kept on playing ping-pong with your life were?

MR. JONES: On the first time they did say

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that Mr. Church had some prior engagement he had to take care of. Other than that I just showed up for court and there was a different lawyer.

MR. KING: Did they ever give you any documents about the case?

MR. JONES: No. The only documents I received were documents I wrote the court and asked them for.

MR. KING: Can you give me an idea of what documents you asked the court for?

MR. JONES: Transcripts of my trial. Well, of the court records rather.

MR. KING: Can you be a little more specific? Is it - - I am talking about during - - prior to being sentenced.

MR. JONES: No. This was after I was sentenced.

MR. KING: So, you had not received any documents from any one regarding what you were being charged with so that you could physically see it and understand it?

MR. JONES: Yes, they gave me --

MR. KING: Who is they?

MR. JONES: That I recollect somebody sent

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me a paper of the charges.

MR. KING: I am talking about -- I am referring to the lawyer.

MR. JONES: No. No.

MR. KING: They never filed any motions that you know of.

MR. JONES: Not that I know of.

MR. KING: They never provided you with a copy?

MR. JONES: No, I was not provided with anything from the lawyers.

MR. KING: Thank you.

MS. BANKS: Maybe I misread, but is it your statement that the first public defender, Mr. Church later went over to the prosecution's office?

MR. JONES: Like I said, this is what I heard. I can't substantiate that, but that was several times in other people's cases. Also that people have said that Church -- Mr. Church was working for the district attorneys department. But I can't substantiate that. I can't say it's true.

MR. KING: I have a question for Mr.

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Gradess. The prior testimony from Mr. Vellejo, was his attorney Mr. Church too?

MR. GRADESS: Yes. Let me ask you a few questions. One, at the outset of your testimony you referred to a Thomas Church.

MR. JONES: Uhm-uhm.

MR. GRADESS: Do you believe that to be Stanford Church perhaps?

MR. JONES: It could just possibly be, but I was under the impression that the name was Thomas.

MR. GRADESS: Second, it has been said that -- I assume the place of your arrest was Orleans County?

MR. JONES: Yes.

MR. GRADESS: Earlier you said that you knew that you were guilty of assault and menacing. How did you know you were guilty of it? Did your lawyer ever discuss that with you?

MR. JONES: No.

MR. GRADESS: Did they ever discuss the elements of the crime or any aspect of it?

MR. JONES: No.

MR. GRADESS: What is it that you actually



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knew?

MR. JONES: Well, I knew that I committed the assault and the menacing was somewhere up in the air. So I just accepted it because they said I threatened somebody. But I didn't actually threaten them. They said if you had the knife in your hand that is perceived as a threat.

MR. GRADESS: Who is the they that said that?

MR. JONES: The district attorney.

MR. GRADESS: So, at no time did you ever discuss with your lawyer the assault and menacing charge. Your lawyer accepted it from you that you were guilty of it; is that correct?

MR. JONES: Yes.

MR. HORTON: Were you told the difference between a felony assault and a misdemeanor assault?

MR. JONES: No, nobody never told me that.

MR. HORTON: Do you know the difference?

MR. JONES: Not really.

MR. HORTON: When you say that you committed assault, you are speaking generically,

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if you will, not to the degree to which you were charged with?

MR. GRADESS: You hit somebody?

MR. JONES: I did hit somebody.

MR. GRADESS: That's all you knew?

MR. JONES: Yes.

MR. GRADESS: And the degree of injury to a person or the mental state that you were in, nobody ever talked to you about it?

MR. JONES: No. The only time I found that out was like after I had took the plea and I sent for the records. And in those records was hospital records and doctors. That attending doctor that night at the emergency room, whatever.

MR. GRADESS: Your lawyer never shared those with you?

MR. JONES: No.

MR. GRADESS: Number 2. Secondly, I would like to go back to the phone call that you described for Mr. Williams. You were in jail for eight months prior to trial?

MR. JONES: Yes.

MR. GRADESS: You were visited once by

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Mr. Stefaniak?

MR. JONES: Yes.

MR. GRADESS: During that visit he indicated that there would be a plea and sentence of three to six?

MR. JONES: Right.

MR. GRADESS: Thereafter you received a phone call. The phone call was, you believe, from Mr. Williams?

MR. JONES: Yes.

MR. GRADESS: Could you go into that one more time and tell us what you recall that he said to you.

MR. JONES: As I said that was one day I was in jail and the guy from the jail came in with some guys from court and said the lawyer said call him. So I called him. And then he asked me to go into my case, explain to him, you know, what happened. And I told him, well, I could not very well do that because all these guys are in here and he said okay. But I will tell you something, if I were you I would be leery of three to six, of the three to six that they're offering you because if it was me I

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would not give that. I'd give you more time.

MR. GRADESS: That must have been  
comforting words to hear from your defending  
lawyer at that point.

MR. JONES: Yes.

MR. GRADESS: How much time transpired  
between that phone call, and the day you were in  
court, and the three to six disappearing?

MR. JONES: The next week.

MR. GRADESS: Last question. No one came  
to see you in jail between that time?

MR. JONES: Not between.

MR. GRADESS: No telephone calls?

MR. JONES: No.

MR. GRADESS: You referred to being before  
the judge and the prosecutor made reference to  
things about your past that were not true.

MR. JONES: Well, not going about my past.  
Just like the living arrangement. Okay. He  
said that Mr. Jones and Ms. Fletcher had been  
broken up for several months. That was not  
true. It just had been two weeks. And, you  
know, just personal stuff. I mean, it wasn't  
stuff that really related to the case, I didn't

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MR. GRADESS: Those were misstatements that the prosecutor made to the judge at the time of sentencing?

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MR. JONES: Yes.

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MR. GRADESS: Those statements related to your personal background?

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MR. JONES: Yes.

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MR. GRADESS: And the history about you, things about you?

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MR. JONES: Yes.

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MR. GRADESS: How many of those statements were made by the prosecutor in front of the court that your lawyer did not let you answer?

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MR. JONES: Well, I was not the one, because the rest of them, I wasn't really paying any attention. I mean, I know that I should have been, but I was not. This one was, it was the one that caught my attention because he said they had been separated for two months and that it had only been two weeks.

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MR. GRADESS: I take it that the house you had the key to was her house?

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MR. JONES: Well, it was at the time, yes.

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But what happened, when we first moved in there the house was in both our names. Then we had a little separation thing before. So, I moved out. So, we got it. I call the landlord and told him to take my name off the rental thing, and he did. And then we went back together.

MR. GRADESS: Had your lawyer ever discussed with you your relationship with her?

MR. JONES: No.

MR. KING: One question. What happened when you were arrested? Were you advised of your rights?

MR. JONES: Yes.

MR. KING: And you clearly understood that?

MR. JONES: Yes.

MR. KING: Two questions. At your arraignment or indictment, who appeared with you or were you alone, sir?

MR. JONES: Well, between arraignment- -

MR. KING: They called you in and said you had been indicted for X amount of charges and you were asked, do you have an attorney, if you don't the court would appoint one for you. Do you remember that?

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MR. JONES: Well, it is I was not called.  
Let me think now. I don't want to make no  
statements that are not true. It was either --  
it was either Mr. Church or Mr. Stefaniak that  
was with me. No other lawyers were appointed.

MR. KING: Let's get to when Mr. Church  
was, or the other person assigned to you was in  
criminal court.

MR. JONES: No, in city court.

MR. KING: In Supreme Court?

MR. JONES: No, City Court.

MR. NOWAK: They start in local court.

MR. KING: Were they assigned prior?

MR. NOWAK: It was prior.

MR. KING: Sorry.

MR. GRADESS: Thank you, Mr. Jones.

Aspacio Alcantana. Good morning.

(Testimony interpreted by Maria Munoz.)

MR. ALCANTARA: Thank you for giving me the  
opportunity to talk here. And it is great that  
this particular activity is taking place. For  
me it is a sign that there is a political will  
to make a change.

I have been working with CITA for about

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2 twelve years. CITA has hundreds of worker that  
3 have come to our office and I have visited  
4 hundreds and hundreds of workers in these years,  
5 these twelve years. And I have had a  
6 relationship with the workers, very close  
7 relationship.

8 We provide educational workshops in the  
9 office as well as in the fields about the rights  
10 of the farm workers and about the importance of  
11 being united and to reenforce laws that exist.  
12 And all this time I have been able to -- I have  
13 seen cases, and which I have been there with  
14 them, next to them and which the workers have  
15 signed police reports or from the INS Office  
16 without knowing what they are really signing  
17 for.

18 It is a problem. It is an issue of  
19 interpretation translation. I have seen many  
20 cases like this one in which there are not too  
21 many people to be able to interpret in Spanish.  
22 And there are not many lawyers who are assigned  
23 to defend workers.

24 Sometimes a lawyer may have many cases  
25 assigned, and it does not mean that it is a bad



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lawyer, but he may have been given too many cases. And what happens is that the lawyer comes and sees the person that they are going to defend five or ten minutes before going to court. And the worker doesn't know what's going on and there has not been a time to have interpretation about what's happening, what's going on.

I remember an opportunity in which a worker was making a statement in front of the judge and the worker was talking about the debts that he had. But in the Mexican culture when they refer to debts they say to be en droga, which means to be doing drugs. But he had never taken drugs. He didn't mean that. He was talking about the debts that he had.

So luckily the lawyer was able to clarify that he was -- he was not taking drugs, but it was that he was talking about his debts. The money that he owed.

And is it that cultural point to understand. The language, the person who is accused, and if a lawyer only spent five or ten minutes with the person, with the worker, how is

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he going to have the time to get the information interpreted.

I have realized that the workers are in a state of fear. The fear comes up first because they don't know the language, the English language.

The fear comes from they do not know the rights here, their legal rights here in the United States. And they have had bad experiences back in their country where they come from. Where sometimes they don't believe about the legal process.

For us it is very important that justice here in the United States take into consideration that the farm workers are people, people who are brought to this county. They are not criminals, just because they may be -- they're undocumented.

And those farm workers need more respect. People need to have more respect for them and invest more money in resources so justice could be made in their cases. Because usually what happens is that in minor cases, because the judge does not understand what has been said,

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the person may receive the most serious sentence.

I am very proud that we're doing these hearings and that we're doing something to better improve the situations. Lawyers and interpreters need to be provided in every case and the worker needs to be given enough time to discuss the case and to know the truth.

And just because they're Hispanic or Latino they don't -- they do not have importance. And they don't dedicate or receive the necessary time to discuss the issues. Many times the police officer and the INS officers are arbitrary with the worker and use fear as a method to compromise the worker to do some things that are not really right.

We need defenders who are neutral, really neutral and that they don't see our community as a community of less importance.

What I see is that much education is needed for the workers, but there is also a lack of education for the defenders of the workers.

Thank you very much.

MR. GRADESS: Any questions?

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MR. NOWAK: Could you tell us where your  
office is?

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MR. ALCANTARA: 158 Hamilton Street.

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MR. NOWAK: In Albion?

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MR. ALCANTARA: Yes.

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MR. NOWAK: Do you have any other offices  
in Brockport?

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MR. ALCANTARA: The office here in Albion  
is new. We have had an office for about a year  
and a half in Brockport in St Lukes Church. We  
share our office with Rural Migrant Ministry.  
And we were also in Rochester for about a year  
sharing offices with Legal Services.

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MR. NOWAK: Thank you.

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MR. VARGAS: Mr. Alcantara, thank you for  
coming today. You have spoken very eloquently  
about how many of the farm workers that you work  
with who are unfamiliar with their legal rights  
in this country because of language or coming  
from different countries.

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I just want to ask you a couple of  
questions to elaborate on that. Is it your  
experience that the people that you work with,  
when they are arrested, are they advised

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regarding their rights in their native language?

MR. ALCANTARA: What I understand is that not all the time a person who gives the rights speaks Spanish. So it is all done in English. And the worker with the little English that they understand and they know, they sign because of fear of what is happening, what is going on.

MR. VARGAS: When they first then come into contact with the court system and their defense lawyer, you have spoken about the short time that the defense lawyers often have with the people that they work with. Is it your experience or understanding that there is an effort by defense lawyers to explain the legal system to farm workers maybe from another country?

MR. ALCANTARA: There is no time. The little time they have, it is not even enough to study the case.

MR. VARGAS: And one final question. I am familiar with the defense project of the New York State Defenders Association and we are interested also in when defense lawyers are advising people that they represent, whether or

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not they are citizens of the United States, regarding possible effects on their status in this country, and one who is not a citizen, if they plead guilty to a crime.

MR. ALCANTARA: Essentially INS officers, they push the workers to let -- to tell them where they're coming from. After they try to make the worker talk and give information, give out information.

There was a worker who knew, who had learned that he could stay silent and when the INS took over the group, all the other workers talked about themselves, about their case without knowing that they could be silent. But this young guy whose name is Alberto Cardlon, he decided to stay silent. He said, I need a lawyer. And he was pushed and pushed by INS and they took him here and they arrested him after he kept silent. At the end he had to sign for voluntary departure. He was extremely depressed before seeing the lawyer, although he requested that he wanted to see a lawyer.

The attitude was very aggressive. And they harassed him and he feels the fear, makes them

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feel the fear.

MR. VARGAS: How did this one individual know about his right not to answer the questions?

MR. ALCANTARA: Because we provide workshops and we had a specialist from the Legal Center Rights Center in Rochester from Manhattan and he talked to them about what they should do if they are stopped by immigration. And he took it very seriously.

But in retrospect, the way he was treated, was alienated, the pushing way by the agent.

MR. VARGAS: Then you said an organization. Do you remember the name?

MR. ALCANTARA: The Labor Rights Center.

MR. VARGAS: How common is it that some one knows of their rights?

MR. ALCANTARA: It is not very common. It is one of the problems, that many of the workers don't know about the rights in the United States. Many believe that they do not have any rights. Many feel that because they are undocumented they have lost all their rights. They don't have any rights.

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MR. VARGAS: I just want to get back to the question that I had. Most specifically based on your knowledge and your experience with the people that you have been working with that have faced criminal charges in this area, do you know if the criminal defense lawyers advise farm workers if they are noncitizen of the United States what might happen to their ability to stay in this country if they pled guilty to a crime, if you know?

MR. ALCANTARA: I did not answer the question well.

MR. VARGAS: When someone is facing a criminal charge, if you know, do you know if people are getting advice regarding whether they might be deported from the United States if they pled guilty to a certain crime?

MR. ALCANTARA: I have heard about cases where they have been advised, but they are misdemeanors, and many cases where they are pushed, pressured to sign the papers, the report. They are. The testimony that I have heard was mostly from the workers that got pressured and the humiliation they have to go



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through.

MR. VARGAS: Okay. Thank you.

MS. BANKS: I am Lenore Banks, New York State League of Women Voters and Client Advisory board member. I wonder how you are funded.

MR. ALCANTARA: CITA receives funding from churches, donations. Also from membership votes and individual donations. Foundations that give for this cause.

MS. BANKS: In other words, no government money.

MR. ALCANTARA: No.

MR. GRADESS: Any one else? I have a question that I would like to ask you. You have been doing this for twelve years. I would like to get a sense of the scope of the number of cases that you might say in that twelve years that have to do generally with criminal courts in Genesee County, Monroe County and Orleans County, the sense of volume.

MR. ALCANTARA: In reality I have been in this county for three years. When we started it was in Orange County. But I am in this three years. I have heard truthfully more than

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fifteen case.

MR. GRADESS: More than --

MR. ALCANTARA: Fifteen cases.

MR. GRADESS: I raise that because we are trying to get a handle on the interplay between people's fear and the early entry of INS into these cases. One of the things that I would like to ask you is, we have a sense that on routine traffic stops and on minor cases the INS is in these cases before the public defender. That people are sort of diverted to INS even before they get to court. Is that your experience?

MR. ALCANTARA: What actually happens is somebody stops a van with workers. I am trying to remember a case that happened. I think it was in Holly, but I can't remember exactly the town.

The police stopped the driver. Right next to the driver was his wife. In the back there were about four passenger workers. He was stopped because one of the lights were not -- was not working. The driver is an American citizen and his wife is a legal resident. But

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when they were stopped they not only asked them for their papers, their documents, to the driver and his wife, but they were -- they went on asking questions to the people in the back of the van and asking them for their documents.

So that the people in the back didn't have their documents or their legal documents. So right away they called INS and they were taken.

And what I don't know or what I don't know is if a sheriff could do that. In this area they could call the INS right away and do this. But that is something that happens very often here. They stop somebody because of a traffic violation and right away they call INS. They pass the case to the INS.

And it is that concept that if you're a person of color or Hispanic they believe, they tend to think that you are undocumented because of your color.

MR. GRADESS: Two specific questions about this. One, we have here a number of witnesses outside of the hearing that expressed the fact that the police use the INS as their interpreter of choice. Is that also your experience?

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MR. ALCANTARA: Yes.

MR. GRADESS: That is apparently the excuse they use.

MR. ALCANTARA: Yes.

MR. GRADESS: This is a slightly more technical question. You described earlier INS officers getting statements from Hispanic speaking workers. The worker not understanding what is being said. Are you under the impression that the INS translates a document and makes a deliberate mistranslation so that the workers would sign?

MR. ALCANTANA: Repeat your question.

MR. GRADESS: Are you under the impression or do you have any evidenced that the INS makes deliberate mistranslations of the document for the farmer to sign?

MR. ALCANTARA: What I have heard is from the workers. That they have said I have signed the paper, but I don't know what it was about.

MR. GRADESS: So, it is not a matter of them reading something that is not there. It is just them being frightened to sign it?

MR. ALCANTARA: Yes.

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MR. GRADESS: Thank you.

MR. HORTON: Do you have a sense of when an individual who does not speak English, and does not understand their rights, and they are perhaps pleading guilty in court without ever asking for an attorney?

MR. ALCANTARA: I have received information from workers who have signed without knowing, and they don't know. They're not aware that when they're signing the document, they are pleading guilty.

MR. HORTON: Are you talking about confessions or statements that they give to the police?

MR. ALCANTARA: Yes. There was a case last year. There was a young worker who did not speak any English or Spanish. He spoke a dialect. He went to a store and he took a small battery for his radio. He did that so he could come outside and show a coworker if that was the right battery. But the person working at the store thought that he was stealing it. And he -- and I believe it was a woman. She immediately called the police.

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When the police officer arrived he started asking questions in Spanish to the worker. But he could not understand what the officer was saying. And the officer got upset because they believed, they thought the worker didn't want to talk. But the reason why he would not talk was because he could not understand either Spanish nor English.

And these -- and they called INS and he was deported. And he was incarcerated for weeks because he -- because they were saying that he didn't want to cooperate with the police.

MR. HORTON: When you say that, are you talking about a native indian?

MR. ALCANTARA: Yes.

MR. HORTON: I guess to follow up on what you are saying. Maybe we need to educate them also that statements or confessions do not automatically mean a conviction. That those statements and confessions, they could be questioned as to whether they are voluntary or not. As to whether they are voluntary and knowing, and maybe they could not use them in court.

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MR. NOWAK: It is a statement.

MR. GRADESS: I have two questions. Last question, maybe we could retrieve this from another witness. Between say February and whenever the season begins, could you tell us if you know the increase in the number of people in the area in the growing season in which workers are primarily in Orleans County?

MR. ALCANTARA: The increase in the number of people?

MR. GRADESS: Yes, the influx of immigrant workers. What are the numbers that we are talking about during the growing season?

MR. ALCANTARA: I don't have a number. But the time, the season when we have more farm workers is from May to August. That is when the number of farm workers increase coming from Florida, from Texas, or North Carolina.

MR. GRADESS: Thank you very much for your testimony. Sister Marlana Roger.

SISTER ROGER: I am Sister Marlana Roger. I worker for the Catholic Diocese of Buffalo and Rochester. But my work is primarily in the counties of Genesee, Orleans and Niagara County.

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I am Assistant Director of the Hispanic Migrant Ministry of the Catholic Diocese of Buffalo and Rochester.

What I am going to say Aspacio just said. A couple of things that you need to be aware of is the fear factor for people who are being arrested in a country that is not theirs. And who are being told things in a language that is not theirs. And of the arresting officer who does not speak Spanish.

Now, I know we are concentrating on Hispanics here. I would like to be assured that you hear my comments for all minority populations, even through I work for Hispanic people. Whenever I am doing something like this, do not forget that we have many people from all other languages whose rights are also being violated in the same manner just as the Spanish population is.

I come from a background of twenty years of working in Latin America and in Brazil. So, when I came back -- I have been doing this ministry for five years. What I came back to this country I was horrified to know that I was



1  
2 going to have to fight here for the rights of  
3 people that I was fighting for in Latin American  
4 where they were being blatantly neglected. I  
5 came here to find that they were also being  
6 blatantly neglected. I was horrified by that.

7 People who are incarcerated, I am talking  
8 specifically about the Hispanics, but it is all  
9 of them, I am sure, who do not speak the  
10 language.

11 When they are incarcerated the Hispanics  
12 specifically don't have access to the normal  
13 routes of help from family members. Like they  
14 need toilet articles. They need clothing,  
15 underwear, and T-shirts. They don't have access  
16 to those articles that family members are  
17 expected to provide. The Hispanics, when they  
18 come in don't get any of that.

19 I learned a lot of this stuff. I didn't  
20 know it. I learned it because I go weekly to  
21 the Orleans County Jail. I have given the folks  
22 who have come in my phone number so they could  
23 call me collect. That is the only way they  
24 could call out of jail. So they don't get  
25 despondent. They get really, really despondent.

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There are so few people to communicate with them. They get suicidal.

I have had them call me and talk to me. They call me at 10:00 at night because that is when I come back. It does help. They just cry and cry on the phone.

A young woman asked me one time if she could -- if I could bring her some sanitary napkins and underwear. She did not have any. That was the first time I realized that there was a need there because people's family bring those thing in. So I did that. I learned.

Now I ask people right away, do you have what you need. But she did not have those things. I bought them immediately. I took them to the jail. It was another four or five days before she ever got them.

One of the other girls called me and said, did you bring the things for so and so. I said I brought them. That same day I called the jail and said, I brought these in. Why hasn't she received this.

I have to say that generally the people in Orleans County jails are very, very good. I am

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very impressed with their work and I work well with them.

Okay. The lack of interpreters is horrendous. I am going to ask you a question. Is it not a law that there is suppose to be an interpreter? Is they're not a law?

MR. NOWAK: The judicial law provides that the court must supply interpreters.

SISTER ROGER: That is what I thought. Anyway, I am involved. I say right away, remember you need to have an interpreter present.

Almost never at indictment is there an interpreter. Almost never, even though they have been advised that there needs to be one.

Often when I am present, and then right away I will get -- I will get pressed into that service, which is okay with me. But I would like to say, you know, I am glad to do this. I am not doing it for the money. But interpreters do get paid \$50 an hour to interpret. I am not looking for that. I just want to make sure, you know, the law. Why can't you see. It is honor. It is not that I want to get paid for it.

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Another thing that happens, I noticed an African American gentleman when I came in. They do not understand the legal language. I don't know who asked him about the indictment. He didn't know what you were talking about. He needed to hear, was there a lawyer present the first time he went to court, because he doesn't know what you mean by indictment. And neither do these -- neither did the Hispanics when you use the legal language.

You have to use another word because people who are not use to being in the legal circle do not know all of that language. It has to be simplified or explained. Okay. Right now I am working with a woman. She had three hearings. She comes up for her fourth. A lawyer has been present. An interpreter has been present only once. So it keeps getting deeper. And what happens is it makes the time longer and longer.

MR. NOWAK1: She is in jail?

SISTER ROGER: She is out of jail. This is a horror story, the story I am going to tell you.

There is a young couple that at the end of

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April or the beginning of May on a Saturday afternoon they were going to do their grocery shopping. Mom, dad, a baby a year and a half old, out of state license plate.

So the car was pulled over, and because they are undocumented, not because they wanted to do bad things, they, of course, didn't have a driver's license. He has his Mexican license, but he did not have a New York license or plate on the car. All that stuff, traffic violations. Are you normally put in jail for a traffic violation? Is that normal procedure? No.

I said -- so I said this to the sheriff, they were in jail or they were picked up. They don't speak any Spanish. The arresting officer motioned to the woman that he wanted her purse. She didn't know what he was saying, but she thinks she has to give it to him. So she gives him her purse. He goes through her purse. He finds two different documents, two different names.

Okay. So she is now charged with being in possession of a forged instrument. Do you think she knew what that meant? Not a clue. Not a

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clue. Okay. She is in jail. Okay.

They get taken to the Public Safety Building. This is around 6:00. The family they live with works the 3:00 to 11:00 shift. They have no way to get anybody else at about 11:30 at night. Finally their family comes to get the baby. There has been no food in between. Can you imagine what a year and a half year old baby is like with no food from 5:00 until mid-night seeing mom and dad in handcuffs, seeing all these strange people around that he doesn't understand. He was screaming bloody murder.

The mother was put in jail. The baby went home. I think that one of -- that someone from the family is going to be testifying later this afternoon. I don't know. But anyway, so the baby goes home. The mother is in jail. The father is in jail. I became aware of this. I called who was then under Sheriff Ron Harling (phonetic), a very fine man whom I knew because of my contact in Orleans County Jail.

I asked him, I'm pretty sure he didn't know what was going on. I said, do you know? Are you aware of this? He was totally unaware.

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2 Social Services was moving in to take the baby  
3 away because they said the mother is a criminal.  
4 Okay.

5 So I said, this is what this is at this  
6 point, Ron. This woman is not a criminal. She  
7 is no more a criminal than I am. All she wants  
8 to do is work and feed her child. She is being  
9 treated as a criminal because of what I already  
10 said.

11 So Ron got on the phone right away and  
12 called the jail first of all to see what was  
13 going on. He called and he got her released  
14 right away, which was a special thing. If I  
15 didn't know Ron Harling that woman would have  
16 sat in jail and her baby would have been taken  
17 away from the family. That's it. New land, new  
18 place, and placed in the foster care center  
19 home. Okay. That is not an exaggeration. It  
20 is a true case. Okay.

21 So, Rose is finally getting out of jail.  
22 Her husband was deported in the mean time.

23 Your question -- somebody asked a question  
24 about, I guess, it was this gentleman. Do they  
25 know what the effects of these things are, of

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2 their ability of becoming citizens. I am not  
3 sure that they did know. But I know. So I  
4 raised it right away, and questioned, how could  
5 this act be charged when it was not voluntary.  
6 And the language, we don't know where we're  
7 going to get with that.

8 It is a plea bargaining statement between  
9 the district attorney and the public defender,  
10 whom I want to say is a very fine person. I am  
11 very impressed with the public defender. She is  
12 a young woman. But we don't know what is going  
13 to happen with that. It does carry a seven year  
14 prison sentence. Okay. For that lady who is  
15 not trying to do anything, you know, she got a  
16 fake document. But talk to her about a forged  
17 instrument, that is a little exaggerated.

18 MR. GRADESS: Would you state for the  
19 record who the very fine public defender is.

20 SISTER ROGER: Patricia Pope. Patty Pope.  
21 She was with me any number of times trying to  
22 see what we could do here. Okay. So, in the  
23 mean time the husband has been deported.

24 When Rosa went for her next court date  
25 there was no interpreter. There was an



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interpreter at the second one.

Now she has a fourth one in August. I am going to be around so I will plan to call again and say don't forget you need an interpreter. Okay. But I don't mind doing that. But I should not have to do that. Whatever I need to do for these people. But it shouldn't have to be that way. What's going to happen?

MR. NOWAK: On the interpreter that you asked me about, I said that the law provides that one must be provided. It does not mean that they have to be an employee of the court system.

By being provided it means that the court system is obligated to contract with someone.

So, in many jurisdictions, especially the town court jurisdictions, they are hired on a case by case basis. So it would not be unusual for a particular court to hire you to be an interpreter for a court appearance in that town whenever they need your services. It doesn't have to be an employee.

SISTER ROGER: I am aware of that. I wanted to be sure it is a requirement and it is

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not honored. It is not honored.

So as of all of the three times she only had one occasion when, as has already been stated by Aspacio, a public defender. I have been to the indictment enough times to see and I have -- I feel sorry for the public defender because the person is indicted and the judge who is hearing it calls such and such a person to come up and takes that and pleads and goes over to the paper, or she goes off with the stack of papers.

By that time they have got fifteen cases. They don't make any contact with these folks ahead of time until the next time of the court date. And when you're talking about somebody who does not speak the language you have got an even bigger problem.

The question that someone asked about, are they advised of their rights, I don't know. I don't want to say they are or aren't. I am saying I don't know.

Again the fear factor comes into this. You know, I have to say I am a pretty self-confident person, but I was a little butter-flied coming

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here thinking I am going to come and speak to you. And you are not judging me on anything. I have not done anything wrong. Okay. I was testifying.

I am in court in Buffalo on Tuesday. I get butterflies. I speak English very well. You could see there is not a problem. But you get nervous when you are talking about somebody who is in a foreign court, who is hearing a language that is not their own. I don't care how many times I explain it, they don't get it. They don't understand what you are saying because they are so terrified.

They are also coming out of the context of the court system that they knew in their own native country, which unfortunately is one they could not have confidence in. So they don't believe they are going to be protected. They don't believe their rights are going to be honored because that is not their experience.

I am going to give you two more examples and then I will stop. I came here from a meeting with Sister Judy and Father Ivan. We three work together, and Sister Judy told me of

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a case that happened last month in Sweden Town Court, a Monroe County case.

A young man was brought in, he is Hispanic, for a traffic violation. He had been in jail. He still is in jail, apparently because there was no interpreter to tell him and there was no public defender to tell him what was happening. He got a traffic violation. He does not have anything else. Why is he in jail? Would I be in jail on a traffic violation?

MR. NOWAK: Do you know the name of the person?

SISTER ROGER: No, but I could find out.

MR. NOWAK: If you could give it to me.

SISTER ROGER: Would I be in jail because of a traffic violation? No. Normally because I have white skin, I won't go do jail. You know, so we're not only talking -- when we're talking about a lot of rights being disregarded. Rights being disregarded here.

I said to Ron Harling with the case of this baby, Ron, do you think we are looking at racial profiling? I said, would I be in jail if I did not change my license plate as quickly as I was

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suppose to? He didn't answer, but he knew. I just want to say, are we talking about racial profiling.

So many of the cases that we have seen and the cases that you are going to hear, TV has to do with that.

MR. GRADESS: Was that traffic stop in Albion?

SISTER ROGERS: Yes. It was in Gaines. Because the case is being heard in Gaines.

MR. NOWAK: Again town court.

SISTER ROGER: Right. I guess that is it. Let me see if I have said everything I wanted to say. I have said everything. If you want to ask me questions.

MR. NOWAK: When you speak of Sister Judy, do you mean Sister Judy Horn?

SISTER ROGER: Judy Tinger (phonetic) she is Director of the Hispanic Ministry. She is the one that deals with all those cases. She happened to have been in court at the same time as that young man.

MR. NOWAK: I was confused. You stated it was in Monroe County and your office handles

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primarily Niagara, Orleans and Genesee County.

SISTER ROGER: There is a Sister Janet. We work together. We meet to do planning for Father Ivan. I asked him if he would like me to include anything. I told him what I was going to be saying. He said that -- he is Chaplin to the jail. He was invited to come, but because of his time, the church, you know, and that I was coming, he said you are going to say what I would be going to say. That is no different from what I would say.

MR. GRADESS: Any more questions?

MR. HORTON: Sister, what is your sense of Hispanic Spanish speaking people going to court on a first occasion and pleading guilty without an attorney, because no attorney, obviously, has been assigned prior to the person's appearance?

SISTER ROGER: I could speak to that from my experience with them. Some of them, if it is a traffic violation and they have not been in jail, and it is something that is so obvious that they didn't have a registration or something like that, I will say to them -- they ask me to go to be with them, and often I end up

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interpreting. I say you might as well plead guilty because this is wrong. You didn't have that and pay the fine. That's the end of it. Okay. If it is as simple as that.

There are others, which I don't know enough about the law to know what they could -- how could they plea bargain. They are into something else.

Many immigration folks often will ask for a date for a hearing. So they -- and then they should have a public defender. They want to try to stay. And often if they have worked, they have a living situation, then often times the immigration judge will allow them four to six months, which legally they could do. That will give them some time to earn a little money.

MR. HORTON: When there is an interpreter do you feel that at times there are problems with an interpreter's understanding based on dialect or as you mentioned fear?

SISTER ROGER: Yes. Absolutely. Because of an interpreter, a legal interpreter who is to interpreter exactly what has been said and what has been asked. I have been present and a judge

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has seen that I talk to a person ahead of time. And the judge has stopped and said, could you please talk to them because they understand you. And I just -- my Spanish is not that good, but they do understand me.

I use the simple language and have said, do that Joe. I would say, I would use indictment and I would often use that the first time I went to court. Then he would have known exactly what happened. But he did not understanding indictment. Plus I was probably nervous about sitting in the room. It is not that people are guilty. In general it is that fear and legal language that they don't understand.

MR. NOWAK: That is the part of the system that they don't understand.

SISTER ROGER: Exactly. That is another thing. But if you are saying if the first time they went to court if they will understand, that is normally what you are talking about.

MR. GRADESS: You indicated -- out of my peripheral vision, the fact that you are prepared to answer the number of increase in the population.



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SISTER ROGER: At this time of year in three counties it goes up between four and five thousand. Take in western Monroe County, because it is probably not at its peak now, but it will be at top peak in September when the big flux of apple pickers and cabbage cutters come in.

Right now those are the amounts in the orchards, and the early cabbage is being cut. The rest of the cabbage is being cultivated. It will -- things will peak. You have apple pickers and cabbage pickers coming in.

MR. GRADESS: Does your office or anyone that you know of have an estimate of their economic value to Orleans County or this region?

SISTER ROGER: I don't have those figures with me. I didn't expect you to ask me that.

MR. GRADESS: Would you supply that for the record.

SISTER ROGERS: I think I could get ahold if it. It is a big time. These folks come in. They use the laundromats, supper markets. They use everything here. They use the fast food places.

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MR. GRADESS: It doesn't sound like they're getting too much.

SISTER ROGERS: Absolutely not. Their wages -- from the wages are withdrawals, normal taxes, and they are not eligible for Social Services because they are undocumented. So they get nothing. And often there has been when they will apply for food stamps, that is because of that.

MR. NOWAK: Plus the value of the produce that they deliver.

SISTER ROGER: Exactly.

MR. NOWAK: We should talk about the economic overview, what they are doing. Their work product is of enormous value.

SISTER ROGER: None of us in this room would be eating or drinking anything. Coffee, tea, fruits, vegetables, meats, milk, dairy products, they wouldn't be out without these folks.

MR. GRADESS: Are you aware of any suicides that have occurred?

SISTER ROGER: Attempted. The jail has called me.

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MR. GRADESS: Would you put that on the record for me.

SISTER ROGERS: I don't know the name.

MR. GRADESS: Describe it.

SISTER ROGER: The jail will ask me, do you think so and so is suicidal? They have asked me that and I have always been able to say no. One time they called me after the fact.

MR. GRADESS: Does the jail have any Spanish speaking staff?

SISTER ROGER: I know that they do. They have some people who speak a few words. But I would like to go on record also that in Orleans County Jail the people really, really bend over backwards almost to try to be human. So I don't want to bad mouth them because I have had some good working relationships.

MR. GRADESS: In the scope of the reference to the need for toiletry for pretrial detainees and other needs that would ordinarily have been served by their families, but their families are not here, what is the scope of that service?

SISTER ROGER: I have probably done it about five times. And when it happens we're

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looking at like \$60 by the time I buy underwear, socks, and toilet articles.

MR. GRADESS: Are any parishes involved?

SISTER ROGERS: Parishes, often we'll have things from the parishes.

MR. NOWAK: I wonder, are there any parish programs where parishioners are asked to make donations toward that effort? I know in my parish back in Rochester we are regularly asked and do contribute clothing to various programs. The list goes on and on. I wonder if that goes on.

SISTER ROGER: Absolutely. And probably that is the only way that we could keep on operating. People, especially in late May and June, in the Buffalo parish and Rochester parish have come to our office in Brockport and have contributed. Hundreds around the county have contributed toilet articles, welcome bags. They have in there toilet articles, tooth brushes, all that kind of stuff as well as T-shirts, towels, as well as toilet paper.

MR. NOWAK: Could you get those products without having to pay through your budget?

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SISTER ROGER: If I have to I could use them, if not I have to buy them. During the year I don't. Some of the stuff at that time of year is plentiful.

MR. GRADESS: Thank you very much.

MR. SALGADO: I'm am a paralegal/organizer for Farm Workers Services. I have been working there for three years.

My first exposure to the farm worker was Rural Opportunities. I was there in 1999. What I am here for today, briefly, is one case in particular and just a general idea of what our office faces in terms of phone calls from family members of undocumented workers who have already been deported and want us to help somehow. And the question always is, did they get an attorney, a public defender. And almost ninety percent of the time it is no.

Our office only does labor law and civil law, which does not deal with criminal cases. But because of the fact that I am an organizer, I get approached a lot by workers who have been indicted or workers who have -- when they have a court appearance.

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The first thing that they don't know is if they are going to have representation or not. As always I ask them, has the public defender been assigned to you and they always say no.

And another situation that I want to talk about is the interpreting translation. There are stories where inmates are translating in the court. Let's say that they have a court hearing and another case is waiting after that case. I have heard cases where inmates who have been brought to the trial are asked to translate. I have heard stories where public defenders act as the public defender and the prosecutor.

My specific story that I want to talk about happened here in the Albion. The public defender here, I believe his name is Mr. Church. Basically the story destroyed the life of a particular farm worker. I don't feel I have the liberty of saying his name.

Originally the case was about a gentleman who was accused by his wife of having molested his children. And then in court later on she admitted -- she admitted that she had lied on purpose because she wanted a divorce.

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It was really a complicated case. It was originally a criminal case. Then afterwards he was filing for joint custody. While he was filing for join custody there was another -- I don't remember what the other criminal charge was that he was facing. He was assigned to Mr. Church. I remember the gentleman called me all the time, can you talk to my public defender to see if I could talk to him. It was like, what do you mean? To see if you can talk to him.

Well, he does not want to talk to me. I made an appointment. He said he doesn't need to talk to me. He just needs to see me in court. I called on Mr. Church and I said I have this gentleman who is a friend of mine. It is not my client. I am not doing this on behalf of my service. He needs to talk to you and he claims to have evidence in his possession that he needs you to see for yourself to represent him more competently. He was like, well, okay, because I told him he wanted to speak to him. Then, which was once I was there and he would not let me translate. No. No. He was like -- I did understand everything. I was trying to

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translate to him.

So that is that particular case. Other than that I don't have any specific cases, more than just a phone call I get passed to me from a family member of the people that have already been arrested and deported who never have seen a public defender.

The problem, the main problem with all this is, I think, the vicious cycle of ignorance and racialism. Some of that has taken place in the legal system period. I mean, basically, the legal system is a game. The law is a game.

The laws were written by white males at some point. And as males, as we know, we like to fix things. Males like to fix things. That is our nature. We don't think of prevention. We just set the rules and play the game.

Many of us get rich and live off of already existing times. How can this be helped? How could we make the system better?

I would say try to educate ourselves more. Those of us that are playing with the law and detaching, and that detachment, we suffer from all the brainwashing that the legal system has



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given us.

What is happening now with the Hispanic Latino Mexican farm worker is that culture where everything is really connected. There is no detachment between what happens, why you went to jail, why were you arrested, to the reason behind it all.

But once they see an attorney, if they have been lucky, at the moment of seeing an attorney the attorney has complete detachment. It is just a game they play. These are laws we're going to play the best way we could play. Some, we won't play, you just come show up in court and they will do their thing.

It would be my suggestion that for this to be resolved it is education of those involved in the legal system in terms of the need to get away from detachment entirely.

Another problem that I see, and I have been speaking a lot about this lately in presentations that I have been doing, is that racialism is very much alive. And it is creating that road that starts with the arresting officer, and the public defender, and

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even judges.

I was talking the other day and I was advised about how in the '70's and '80's animation companies like Warner Brothers and Walt Disney, they have this campaign of presenting the Mexican as a rat with a big hat drunk in the corner.

So the children of the '70's like myself, I was born in 1973, we have had -- I am thirty years old and that is thirty years of brainwashing as to the depiction of the Mexican.

That is at the root of everything. That is at the root of the arresting officer's mentality, the root of the community, the root of the abuse that is going on. That is at the root of the judge when he is sentencing. His right to penalize someone that wants to speak and he goes, shut up when he assigns the public defender. And he would only want to talk. That is the general burden Mexican's face.

It is more that mainly we need to look at our own mentality toward the Mexican worker who in reality is the reason for the economy in New York. He is number one and yet they are being

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treated like fourth, fifth degree citizens.

And that would be my main suggestion. If the purpose of business is to find out what needs to be done to beat the system, and interpreters are very important. I don't want to diminished the importance of that, but at the same time that is not going to fix everything.

One of biggest influx of the state of what has happened is because usually arraignment happens and so they are displaced and happen to come here. A number of them don't speak Spanish. So you would need to match them with an interpreter that speaks many languages. So a problem as big as that is a problem.

I would state again, racialism. What's the usual time or more time dedicated. Some kind of campaign that deals with erratic cases, ignorance, and racialism. Some of the workers in the legal system - -

MR. NOWAK: Could you comment on that because some of what I think he indicated was that when INS is involved people are going into the process without their public defender and that the public defenders are for the criminal

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justice process and to be advised by INS. Could you talk about if they are entitled to counsel at an INS hearing when there are no criminal charges?

MR. VAGUS: Well, unfortunately, the statute provides that there is a right to have a lawyer, but there is not -- it does not provide the government to provide the lawyer, if you cannot afford to have lawyer with you. So, unfortunately that is it. It is different from the criminal justice system, I would imagine.

MR. GRADESS: Maybe you could comment on this. If there is an awareness among the community that the workers, among the farm workers' community that you work with, about the legal right to have an attorney in the criminal justice immigration system and that in United States legal system, a distinct legal process?

MR. SALGADO: I think there is an awareness there. I believe an increased amount of education is available for the farm worker community especially because of the lack of assistance from the legal system. Like there is a lot of agents that are acting as lawyers now.

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I saw Sister Roger, she is in education. And all the different agents that they have to act as lawyers at some point whether it is good advice or not, because of the fact that there is no other person that is going to counsel them as to their preventive legal rights. So, there is that.

But as it has been mentioned here before, what happens is that the fear overcomes it all. I mean, and the use of fear has been very, very successful here in this particular industry with this particular group of people. I think it was Darian from SS that said that there are two ways to get people to completely give up their civil rights, completely forget about their rights.

One is they believe they are under attack as they had with the Polish. And two, they believe they are criminals. Make them believe they are criminals.

So what the immigration system has done in this country, what it has done is criminalize the farmers here. Once they are convinced it is criminal, they are waiting to go. They are willing to go on believing that they have no

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2 rights. Even if you tell them what the rights  
3 are, once they get to that point that is it.  
4 They are convinced that they have -- they have  
5 no rights. They are criminals as far as they  
6 are concerned. It has been done successfully.  
7 That is a successful thing that the INS has done  
8 for years.

9 MR. VARGAS: I guess it might work both  
10 ways. Let me ask you, when somebody is facing  
11 criminal charges, you termed it previously that  
12 many of the people that you are aware of that  
13 are facing a criminal charge are without a  
14 public defender, without a criminal defense  
15 attorney. Are the people that work with it  
16 aware that in the criminal justice system when  
17 they are facing criminal charges as opposed to  
18 immigration charges that they do have a right to  
19 a lawyer and that they could waive that right?

20 MR. SALGADO: I think the majority do at  
21 some point know that they have that right  
22 whether they saw it in a movie, or we are doing  
23 the job and letting them know that about their  
24 Miranda rights. Their Miranda rights is  
25 something that has been pretty much explored in

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the whole world, so people have that idea.

Nonetheless many people don't have public defender speakers. If one is there. It is an unknown phobia. That idea that the arresting officer in the past has the duty to call INS and immediately speed up the process. That would be the main one, I would say, that it just completely go from arrest to deportation.

The second one, this would be just my assumption, is there no real interest in it. I mean, there is no real interest because there is no real complaint against them. I mean, if you could get a criminalized group of people and convince them that they could get off with a fine, which that is another thing of how they will get the money, from other of workers.

Besides the fact, we get money out of this by taking deductions out of their paychecks even through they are undocumented and that money stays in the local government. So \$40 a worker, \$30 of deductions a week. You do the numbers. How much money stays in the local government? They will never see that money. Besides it goes to the fine. The legal system is sucking them

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dry.

And at that point, I don't think there is a real interest to even mention it, you see now I think about it. I don't know, the cultural aspect. Before someone asked to offer information. For example, I don't know if the workers are aware for it to be offered. Instead of asking, do you know that you need the representation of a lawyer or if they wait for someone to say this is what you need to have.

I don't know if there is any interest in telling them you have this right to have a lawyer. If it is much easier to wait for immigration, which is another thing that there is a lot of things that happen here. Sometimes they are being detained there, being even prosecuted with the hope that at some point INS comes. That is even being verbalized.

MR. VARGAS: Other people have testified to that. Is it your experience that a lot of local police departments are, after stopping or detaining someone, whatever the reason they claim, they then turn the people over to INS?

MR. SALGADO: There are hundreds of cases a



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year that I personally deal with.

MR. VARGAS: Without the person going to criminal court directly?

MR. SALGADO: Once they arrest them, once they detain them, they do call immigration. And it is indicated according to the season. If it is the peak season, immigration will not come because they know the farm work is always heavy. According to the season they tend to call or they don't tend to call.

What happened after 9/11 and after a lot of very successful things that has been done by CITA, again, immigration raids, they're not coming. So the police a lot of times hold the cases. I'm dealing with just police detaining and then letting people go because immigration never came.

They call in the growers and say I have some of your workers. I need you to pick them up. They said we'll be there. Three or four hours later they are there. They realize they avoid a lot of civil rights.

MR. HORTON: Mr. Salgado, the type of cultural changes that you are talking about in

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2 the work system, the entire work system of New  
3 York State Farmers, the New York State Defenders  
4 Association is in the process of doing. Without  
5 there being standards for attorneys who  
6 represent the board, to including standards to  
7 what we have been referring to as Client-Center  
8 Representation.

9 There are a number of items, just to  
10 mention a few. Clients want a lawyer who  
11 represents a person, not a case. Lawyers, I  
12 want a lawyer who knows and relates to the  
13 community from which his or her client comes  
14 from. Clients want a lawyer who is conscious of  
15 his other her prejudices and recognizes how  
16 these might affect his or her ability to  
17 effectively represent the client.

18 At least, and obviously we can't talk about  
19 judges or police officers, at least as far as  
20 attorney representing, the power is there, the  
21 type of things you are talking about.

22 MR. SALGADO: Definitely. I would say,  
23 first, one is the key right there and you have a  
24 lot of work ahead of you if what you are trying  
25 to do is change the system. Because it becomes

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with the economic system. While ideas of detachment is present and life -- and I mean -- I would say that there needs to be some kind of humanizing of the staff.

I don't know how that would go about. I mean, if maybe some retreat or something, or sort of maybe switching roles. You become the farm worker for a few days and get exposed to it and see how it is. I don't know how it would be, but definitely that is a very good list in what I read so far about what needs to be done.

MR. HORTON: When you say hundreds of people are being deported without ever going through the criminal court system, were you referring to Monroe County? Are you referring to Monroe County? Genesee County? Orleans County? What region?

MR. SALGADO: The whole state.

MR. GRADESS: If we could ask you to, if you have a minute, on those standards, would you share with us --

MR. SALGADO: Now or later?

MR. GRADESS: Later. If you would be in touch with us. I guess the one question I have

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relating to these, I would like to change the world. We are working on it. But the things that we are doing right now involve organizing the community of farm workers, especially communities all across the state.

The thing that has been most prominent in the work up here is fear. While it is different, very different than that fear in other farm communities. In some client communities there is no fear. There is resignation and despondency. But the fear, your organization in this community, how profound is it and what are the ways that you have found to get over that?

MR. SALGADO: Education would be the first one. I mean, that would be the first attempt I would say. I think I have had a lot of success in building up self-esteem and building up awareness of self.

For example, in the Mexican community not to many Mexican workers are aware of or even if they are aware of the significance of their contribution to the economy. I mean, the United States is a super power. For workers to really

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2 see that in their absence the economy would  
3 fall. In the United States is a big thing. I  
4 think that has helped.

5 In terms of getting rid of the fear --  
6 another thing is their awareness that they come  
7 from a nation that is rich in natural resources,  
8 of industry, that is another way for them to  
9 realize that they come from a nation that is  
10 from one of the peaks of humanity, astronomy,  
11 medicine. If all of those things are absent in  
12 the workers, and then fear overcomes. Whenever  
13 you have been deprived of privileges of your  
14 identity, then fear is a God sent, because you  
15 feel loneliness. Loneliness is another one of  
16 the things.

17 I would say that this is very successful,  
18 getting the camps to meet with other camps.  
19 Workers are to meet with other workers because  
20 when you have a group of people that have been  
21 manipulated in their own country, to have  
22 recently gone naturalism, to say my state is  
23 better than your state, and they come here and  
24 already feel that they are from this country.  
25 They come here and get isolated into camps

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2 according to what state they came from, you are  
3 definitely going to achieve to have isolated  
4 people that don't want to meet. So, that would  
5 be one of the things that you have to overcome.

6 To overcome fear would be to have people  
7 meet, camps meet, have as many people as  
8 possible aware of the situation here, their  
9 situation in the economy. Their situation as  
10 human beings and about other things.

11 When you have people who will hold their  
12 chin up, I think fear is not that successful.

13 MR. GRADESS: Thank you. Our next witness  
14 is Laura Fitzsimmons. Welcome. Would you go  
15 ahead and tell us what you have to say.

16 MS. FITZSIMMONS: I have been working with  
17 the migrant community for approximately ten  
18 years. And I have been called on at certain  
19 times to serve as an interpreter. When there  
20 has been a problem with a worker, a migrant  
21 worker that has been incarceration or has been  
22 picked up by the police and needs interpretation  
23 to seek the public defender, a public defense  
24 lawyer.

25 My experience has always been positive

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because I feel the community, the migrant community has been getting the assistance and the help. As far as that, they know when they do, they know that it exist. It is there for them and they have been receiving it.

So, that has been -- again, that has been my experience. All positive.

MR. GRADESS: Do you want to answer questions?

MS. FITZSIMMONS: Sure. I'm done.

MR. GRADESS: Well, tell us the counties that you cover.

MS. FITZSIMMONS: It is mostly Genesee, Orleans, Livingston, and Wyoming. It has mostly been Genesee, mostly Batavia and Albion that I have dealt with.

MR. GRADESS: So the experience that you have had is actually with the Genesee County Public Defenders Office?

MS. FITZSIMMONS: Correct.

MR. GRADESS: It has been positive?

MS. FITZSIMMONS: Correct.

MR. GRADESS: You also have been in these other counties. Tell us what you mean by

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positive. Describe positive public defender response to a charge.

MS. FITZSIMMONS: The public defenders have been wonderful in so much as they tell the client exactly what is going on and say, listen this is what is going on. These are your options. And you know if you plead to this, we'll deal with it. It will be done. Do it again.

It is not so much that they are saying it is okay what you did. No, it is not okay. But we will assist you. We will help you and the help has been there.

And it is, in my opinion and in my experience, it has been followed.

MR. KING: Do they explain to the client that if they plead guilty they will be deported?

MS. FITZSIMMONS: It is not -- it is explained not so much if you plead guilty, it is explained to them that regardless, you are here undocumented. You run the risk of having immigration, who is just down the street and it could happen. But it has not happened in any of the cases that I have dealt with. That has not



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happened.

MR. KING: What about if they have a green card and they are arrested and they plead guilty, they could still be deported.

MS. FITZSIMMONS: You see, I am not aware of that. So, I don't know the extent of that. But yes, I am sure it could happen.

MR. KING: I am saying, have you experience a case of an attorney who has explained that to a person who has a green card?

MS. FITZSIMMONS: I have not dealt with anybody like that.

MR. KING: That's okay.

MR. NOWAK: Could you tell us who you work with in the Orleans County Public Defenders Office?

MS. FITZSIMMONS: In Orleans County I have just -- I have spoken with the people, not so much the lawyers. It was another co-worker of mine. She asked me to speak to them from my experience of what could happen.

MR. NOWAK: You have no cases. So, you have no cases in Orleans County. So you would not know in terms of a positive defense, and

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being down in Orleans County you have had no first hand experience?

MS. FITZSIMMONS: No experience.

MR. NOWAK: How about Livingston County? Have you worked with public defenders in Livingston County?

MS. FITZSIMMONS: I have had a couple of cases. The public defender's name, I do not remember.

MR. NOWAK: And Wyoming County, you don't remember any?

MS. FITZSIMMONS: No, I don't remember.

MR. NOWAK: Did you have cases in Wyoming County?

MS. FITZSIMMONS: No, I have not.

MS. BANKS: You said it was a very positive experience. I imagine it is very positive for you to feel as if you were helping these people.

MS. FITZSIMMONS: Correct.

MS. BANKS: Have any of the people that you have helped come back and say I am in trouble again. I just pled guilty and I didn't mean to?

MS. FITZSIMMONS: No, ma'am.

MS. BANKS: Well, you are doing nice work.

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It is a good community service.

MS. FITZSIMMONS: Thank you.

MR. GRADESS: I must share with you, you are the first witness that we have talked to in ninety hours who has had this positive attitude. For the record, would you describe sort of what your day is.

MS. FITZSIMMONS: I'm sorry.

MR. GRADESS: Describe what your day and jobs are like.

MS. FITZSIMMONS: Every day is different. One day I could be taking someone to immigration court. Another day I could be taking someone to the hospital having a baby. Another day I could be just so much as going to someone's home that needs to get ahold of someone or get a plane ticket because something has happened in Mexico and they need to fly out on the next plane. Again, it is my job. It is quite different each day.

MR. GRADESS: Our last witness described that he has seen hundreds of cases where people were picked up for routine traffic stops and that sort of stuff, and they would be diverted

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immediately into INS custody. Has that happened with you?

MS. FITZSIMMONS: That has never happened with me. Never.

MR. GRADESS: Have you ever had the occasion when -- how many cases would you say in the ten years that you have done this have you been an advocate in criminal court?

MS. FITZSIMMONS: Approximately, ballpark, maybe fifty.

MR. GRADESS: And what percentage of those people would you say have been subsequently deported to Mexico?

MS. FITZSIMMONS: About maybe ten percent.

MR. GRADESS: And the other forty staying here had no INS consequences?

MS. FITZSIMMONS: No, not that I know of and I see these people still in the community.

MR. GRADESS: Do you ever have complaints about people who are sent back to their native country and are trying to get their wages that are owed to them? Is that ever part of your experience?

MS. FITZSIMMONS: No, I have never had that

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experience.

MR. GRADESS: I have no more questions.  
Thank you for coming.

MS. FITZSIMMONS: You are welcome.

MR. GRADESS: Our next speaker is Velma  
Smith.

MS. SMITH: Good afternoon. I am Velma  
Smith, Executive Director for New York Division  
of Rural Opportunities. Rural Opportunities,  
Inc., is a not-for-profit organization, which  
provides advocacy and service to farm workers  
and other disadvantaged individuals in New York,  
Pennsylvania, Ohio, New Jersey, Indiana, and  
Puerto Rico.

As a migrant farm worker child growing up  
in Orleans County I experienced first hand the  
racism, the isolation, and discrimination most  
farm workers continue to experience today, some  
forty years later.

There are still outdoor toilets, workers  
still live in substandard housing hidden on  
unpaved back roads. And workers continue to  
live on the small wages they earn putting food  
on the tables of Americans across this great

1  
2 county. The only changes that have occurred are  
3 the faces of those migrant and seasonal farm  
4 workers, the majority of which are Hispanic.

5 In general the deck is stacked against farm  
6 workers in all the places most of you take for  
7 granted. For example, when workers come into  
8 town to spend their hard earned dollars, they  
9 are greeted with hostility and discrimination by  
10 residents and shop owners. And there is usually  
11 not one employee who can provide them with any  
12 customer services due to language barriers.

13 Those that must go to local human service  
14 offices are forced to have a small child  
15 translate for them because most agencies do not  
16 have bilingual staff. When stopped by law  
17 officials they are penalized and many times  
18 arrested because they cannot speak English.

19 Even the court system fails this population  
20 by not having readily available translators or  
21 providing adequate representation. This happens  
22 daily across New York State.

23 There are two recent publicized cases in  
24 Orleans County that clearly shows the treatment  
25 of farm workers. The recent shooting at workers

1  
2 while they worked in the field by local  
3 residents and the case last year that uncovered  
4 slavery of workers.

5 Workers can be fired for simply speaking  
6 out, as you have learned from your attempt to  
7 have workers come forward to share their  
8 experiences with you for these testimonies.  
9 Many are fearful of repercussions from their  
10 employers or INS that they refuse to speak out.

11 These workers suffer these conditions  
12 because like all of us they need to cloth and  
13 feed their families. What a price to pay for  
14 something so common.

15 Workers only recently got toilets and  
16 drinking water in the fields while they worked.  
17 Although this law only exist when a specified  
18 stated number of workers are in the field. This  
19 has never been the case for construction  
20 workers, they have always had toilets no matter  
21 how isolated the site or how small the number of  
22 workers. Farm worker youths, working conditions  
23 does not reflect the regulations placed on the  
24 youths, thereby permitting youth at a much  
25 younger age to labor in the fields, putting

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these youths at greater risk.

You must ask yourself why these conditions exist. Is it because these workers are Hispanic? It is because they have language barriers? Is it because they are poor?

Knowing first hand the conditions these workers endure, I am angry that you communities and elected officials do not care about these individuals. I am angry that conditions have not changed in forty-two years.

I sincerely believe this treatment continues because farm workers do not have a voice and these conditions they are forced to live under, ensures they will never have a voice.

It is essential that the Public Defenders Office be more accessible to this population as well as provide on-going education to farm workers regarding their rights.

It is my hope that these hearings will support the vast need of the undeserved populated and persuade the New York State Defenders Association, Genesee Public Defenders Office and the New York State League of Women



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Voters to become a positive change agent that will ensure that farm worker's voices are heard.

MR. GRADESS: Thank you very much, Velma.

MS. SMITH: One of the things that I wanted that add is when you talked to different agency representatives, depending on their relationship with workers, I think relationships are going to be different. If you advocate on behalf of farm workers, what you are seeing as obstacles, if you teach, if you bring in teachers. These are things that you don't deal with in your life. It is supported by voters. There are your employers, you are not going to be given information that says your employers are not positive employers. Those agencies in a lot of cases do not speak on behalf of farm workers.

Even when they were in groups of agencies that served farm workers those agencies are not agents who will speak on behalf of farm workers because they themselves suffer repercussions of not being funded or losing their jobs because they are associated with us, along with other agencies.

A lot of agencies don't want to be attached

1  
2 to Rural Opportunities because of the name that  
3 we have. We advocate on behalf of farm workers.  
4 I think that in itself is an issue that when  
5 you're seen as an agency that supports the  
6 rights of farm workers, that other agencies sort  
7 of back off. And I think that some of those  
8 agencies that will talk to staff, who won't have  
9 those experiences, even through it is shocking  
10 me, that you could have a black eye and not see  
11 any of those things. It is just you're a bad  
12 person or a person of color in Orleans County.  
13 It is a group up here. I don't see anything  
14 that has changed.

15 I lived in a migrant labor camp. We built  
16 houses there through HUD that still houses farm  
17 workers and that those houses would not have  
18 been accessible to that group of farm workers  
19 had it not been for people coming out advocating  
20 and expanding the system. Janice was part of  
21 that. If it had not been by advocating and  
22 trying to change the system none of those things  
23 would have happened.

24 Out of that the community offers resources.  
25 Because of that there is a complex. Because

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that project was built they were able to add to that supplies and build homes for the community.

But it still doesn't mean that the community supports those workers or that they are treated fairly. I would think that it is just sort of any -- even that a person of color would like is like everything.

I as Executive Director of Rural Opportunities experience racialism every day and it is not okay. And imagine somebody who does not have the power, or the opportunity, or the access to it. It would be triple, double, you know, so racialism.

I hope from these hearings we are able to at least provide some education to farm workers and act so we are better able to identify and educate farm workers on their rights. I think that would serve a purpose.

MR. NOWAK: Have you had complaints or heard of situations where police officers are stopping people in cars because they are people of color?

MS. SMITH: We have in our office here in Orleans County. We call it driving while

1  
2 intoxicated Monday. When on Monday morning  
3 everybody that gets arrested over the weekend is  
4 in our office. Because a lot of times what  
5 happens is workers are stopped because -- and  
6 lots of them know, I know, have continued. They  
7 get pulled over because there are a lot of  
8 people in the vehicle or they have an out of  
9 state plate, usually Texas or Florida, and  
10 workers get pulled over all the time.

11 As part of our meetings we invite law folks  
12 to come in and talk about regulations and all of  
13 those things, but if you are Dunkirk, New York  
14 and you get pulled over by a police officer five  
15 or six times during the season, there is  
16 something wrong with that. I mean, it is not --  
17 I mean, how could you get pulled over that many  
18 times.

19 And I think that people, workers are sorted  
20 out and pulled over because of what they look  
21 like. We have cases where workers who go to the  
22 grocery store on Saturday and INS sits in the  
23 parking lot at that local grocery story and  
24 picks people out. So, I think that it is  
25 isolated when they do choose to select people

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out.

I mean, I have three black sons. I guess they are black because I am. But I tell them that if you know that you have issues with your license, you are a black man driving, you need to make sure your license is current because you are going to get pulled over. So if you are talking about communities who really don't walk and fumble in general, I think it is just another way of actually harassing that population.

I know in Wayne County it is something that happens all the time. And Orleans County is no different. It is no different. We use to have a staff person in our office who would sometimes even translate on Tuesday in the court in Albion for workers that had been arrested so that they would have somebody that would translate for them. And, many, many times it is kids who translate or friends that you bring with you. And you guys know if you are not a trained translator you could not translate, especially legal and medical issues.

MR. NOWAK: So what you are saying is that

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the court is using family members to be the court interpreter?

MS. SMITH: Or whoever you bring with you.

MR. NOWAK: And not necessarily a court interpreter.

MS. SMITH: No. And sometimes they come back if you don't have somebody with you. You know, I know in this county there is a list of translators and it was given to officials. So if you want to contact people who are translators, that are qualified translators, you could. So that if you need somebody to translate for medical or court there was a list of people that you could rely on. I don't know how current that list is.

Actually for our office here we tell staff that we will not translate that. You need to have somebody who can translate. It is not our job to translate and you need to have a paid translator. And that happens all the time. I mean, sometimes we translate for businesses and sometimes for the Department of Social Services. And sometimes we translate just so our clients could get the service. That should not have to

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be specialized when you know you have a population who needs the service.

MR. KING: You said that you deal Victim Resource Center. Have you seen or have you heard of stories where victims have heard from the public defender on a particular arrest?

MS. SMITH: Well, what happens usually is -- that's the bad part. I never dealt with the Public Defenders Office. I have been doing this job with Rural Opportunities for thirty years. I have never had any contact until I was contacted this time. I was really surprised to hear that our only contacts have only been with the form of Legal Services. Whenever there is an incident with Legal Services with immigration, that's when we went. We are called and requested in by that group to provide those kinds of services.

I have never used any other Public Defenders Office or anybody else. And I was quite curious to be educated on what did the Public Defenders Office do. What was their array of services that they provided?

And if I as the Executive Director does not

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2 understand all of those functions, I am sure  
3 that most other staff will not understand those  
4 functions either.

5           When we have a group discussion and shout  
6 out -- if somebody said, is the public defender  
7 involved in that, and they were, well it is not  
8 the public defender. It is the DA's office.  
9 So, what is the branch of government that  
10 handles what and how those things are done is a  
11 great educational process so that we make better  
12 referrals and we are talking to the right  
13 people.

14           I just saw it as a great thing that the  
15 public defender was actually looking at issues  
16 that would actually evaluate and serve the farm  
17 workers. Have I thought that was great? I  
18 still think that is great.

19           I met a new staff member for the first time  
20 in his office a few weeks ago and I know that  
21 his job is not an easy one. I was really glad  
22 to meet a new staff person who is bilingual and  
23 qualified to do the job. And you have an office  
24 to staff that, the population. That is the only  
25 way that you are going to change how people are



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treated by bringing in people who are from that population.

I would say the seventy-five percent of the people who work for me have been ex-farm workers or live in farm worker communities, but they know and so you don't come in with this preconceived value system and judge. That I am able to meet people where they are and it is continued education that is provided to staff. I think that is the first thing.

I bring those people in so they are part of us. And if you don't make them inclusive of them and any other group, that's a great place. It starts.

We worked for a long time with Wayne County trying to bring Hispanic working bilingual staff into the department of Social Services. The biggest issue was that they couldn't pass the civil service test. What the hell is a service if nobody could pass it.

And my thing was that they would say okay, we'll teach this person how to speak Spanish. I think you could some how teach a Spanish person to learn those things. Didn't happen. We have

1  
2 to find more ways to get people who are  
3 bilingual, who are from the community involved  
4 in those services that are being provided at the  
5 Public Defenders Office, at the District  
6 Attorneys Office, and workers in our court  
7 system, and works in our agencies. Those  
8 individuals bring a lot.

9 We did last year one hundred and seventeen  
10 placements and those people were placed in from  
11 secretarial jobs to truck drivers. It is not  
12 like that number of people would not have  
13 skills. You are going to see they are hard  
14 workers and they give one hundred and ten  
15 percent on the job.

16 I think a lot of it is just having those  
17 people access the service. They could be  
18 involved. But I think that really needs that.

19 MR. HORTON: Even the court system fails  
20 that population, and I am reading off of this,  
21 by failing to provide adequate representation.  
22 Do you have specific instances that you are  
23 aware of or could share with us about the  
24 representation that was not adequate?

25 MS. SMITH: We have had staff many times

1  
2 that will write letters for somebody, not the  
3 court. So, I think it could be a little more  
4 lenient or to show that in, perhaps usually if  
5 they are represented by the district attorney  
6 who is in the court system, but nine times out  
7 of ten if there is not a staff person that could  
8 translate they plead guilty, pay a fine, and do  
9 whatever the penalty is just to move it along.

10 One thing, in Orleans County typically  
11 things are adjourned forever. You could go to  
12 court ten or fifteen times on a shoplifting and  
13 it takes you forever to just to deal with it.

14 If you have got a farm worker who has to go  
15 back to Florida or Texas, nine or ten times they  
16 are going to plead guilty just to get it over  
17 with, or that you're going to have somebody that  
18 translates and you need to have a translator  
19 translate those things, it becomes an issue.

20 A lot of times people plead guilty to speed  
21 up the process and also it makes it easier on  
22 the District Attorneys Office.

23 I mean, I would want to know if the  
24 district attorneys have -- if they have paid  
25 translators on staff. I would bet you not. I

1  
2 think is it easier a lot of times to have  
3 translators that translate. I think it is the  
4 exception not the rule.

5 MR. HORTON: For undocumented workers do  
6 you have a sense of a tendency that they are  
7 brought into court and they plead guilty on the  
8 first appearance and/or they get an attorney,  
9 because they want to avoid INS?

10 MS. SMITH: I could not answer specifically  
11 to that. Primarily we don't serve workers who  
12 are here undocumented. We usually refer them to  
13 the local community church or some place else  
14 where they could be served. Usually the migrant  
15 ministry. We won't do any representation in  
16 those kinds of cases. We hand it over to  
17 somebody else.

18 We have a clinic and our office is across  
19 from where Legal Aid comes out and works with  
20 people on immigration issues. If you don't come  
21 out of work on those nights, mostly every client  
22 in our office is undocumented or there are  
23 members of the family that are undocumented.

24 The guesstimation for Orleans County is --  
25 that says that seventy-five percent of the

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workers here are undocumented.

We enrolled fourteen hundred farms workers in the last program year. That was documented. It tells you the vast number of workers that are here and I think that the ones that are undocumented tend to be more isolated, more in the shadow that you won't see. And most of them would not know that we serve, we provide like employer/training services. We might provide a food pantry distributor or emergency services on a one time basis. As far as extended services, we wouldn't. We can't. Really it is a group that is not served.

MR. GRADESS: I would like to ask a couple of questions. What is your relationship, if any, with Community Action in this county?

MS. SMITH: Well, we receive money in the community service block grant.

MR. GRADESS: You are based in Rochester?

MS. SMITH: Yes, but we have an office on Main Street. We have four sites here in Albion, and an apartment complex that's out on Camp Road.

We have a good relationship with James

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Sharp, who is Director for the Community Action Program. I don't think that the agency merely serves farm workers. They could make a referral to us or some place else.

One issue has been if we do the community service. We don't. We did up to when it was not as hard to serve undocumented farm workers with community services. But in the last couple years it has been a little more stricter. There are some things you can do and some things you can't do.

MR. GRADESS: The reason I raised that is because you have lived in this county your whole life. We have been looking at that particular farm workers population and we thought that you are experiencing in the kind of problems that we are here about today. We're also looking at entire client communities throughout the state.

Tell us a little bit, if you don't mind, about the poor people in this county and the respect that they receive because that problem is a part of your experience as well.

MS. SMITH: Yes. I would think that other people are colored and it is really funny, most

1  
2 people don't think there are a lot of people of  
3 color in this county. There are quite a few.  
4 There are quite a few people of color that live  
5 here. I don't think there a power base of  
6 people that live here.

7           You have families that have been here for a  
8 long time. We came here in the late sixties.  
9 When we came to this county camp, which is more  
10 colored and it was one of the biggest migrant  
11 labor camps in the county, It housed about two  
12 hundred. The growers owned the stores and  
13 rented property out like a landlord.

14           And back in those days you could purchase a  
15 meal ticket. Where you would go to his store  
16 and he would punch out whatever you bought.

17           Like if you bought five dollars he punched  
18 out five dollars. The tickets were yellow. I  
19 could still see them. But he owned all of that  
20 land and he made money. He sold you the gas  
21 that you cooked with and gas that you heated  
22 your place with. And rent was like fifteen  
23 dollars a month or something. He owned  
24 everything.

25           That's where a lot of your local people

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come from. A lot of the people that are colored come from the migrant population.

I believe like in the early '70's, '71's, two people from Rochester, they came up from Rochester and we had people, you don't have to pay him, rent was up. Don't do that. Like a group of people came in and said they're southern blacks that came from Florida, that came from Arkansas. You don't have to do these things. People shop, pay rent, shop, and buy at the store.

Eventually Buck County gave the property to people who lived there. They in turn got hundreds of dollars of funding and they built projects which is a little farther back from the road. It was like fifty-six units of houses that was built there.

And the transition was that people moved from outdoor toilets and outdoor faucets. There was no training and education of the transition for the people. So the apartment complex went down really fast.

I actually moved to Albion at that point. I am a CITA product. You asked me about



1  
2 Community Action. My first job at Head Start  
3 was as a secretary. My first experience outside  
4 of that was actually working with Head Start and  
5 Community Action as a worker, experienced  
6 worker. So that kind of program gave me an  
7 opportunity to change my life.

8 And I think I have always run into people  
9 that thought there was more to me than I  
10 realized. But at the age of seventeen I had  
11 already dropped out of school and had three  
12 babies. So, I mean, my last child was born when  
13 I was twenty-one.

14 By the time I was twenty-two I went back to  
15 high school, got my diploma, and that is how I  
16 met the Community Action people and got the job  
17 and my work experience. And from that, it was  
18 those actions and contacts I had from Head Start  
19 and Community Action, they made the difference  
20 with me.

21 Had I remained probably in labor camp I  
22 don't know what would have happened. Maybe I  
23 never would have gone back to school. I was the  
24 one to make the change, but I had access to  
25 having the opportunity to access those things.

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When I lived in Albion my landlord was a district attorney. I was remembering going into court because I knew the district attorney. That if you had four or five tickets, sure you could get it lowered, you know the district attorney. That, you know, you could get things done if you are living in the community. And to have that connection we tend to make our own little rules.

It is hard being a minority in a small county where everybody knows everybody or trying to get into the system not knowing what the game is that is being played.

Representation with my own son at sixteen when at Eckerd's they said he stole lifesavers. He was sixteen. I never got called. I found out from his brother that they had arrested him. They had held him until we came and I wound up going to court here in Albion and we got an attorney. Had we not gotten an attorney he would have been asked to plead guilty and would have had a record saying that he had a theft conviction behind him. I wound up getting a lawyer I knew in Brockport who represented the

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case. That was the first time he got into trouble. But if somebody doesn't have those resources you go through the court system and you are always told to plead guilty. Just plead guilty.

And it is just that if you want to come here on Tuesday night, and Tuesday night in Orleans County is court night. A lot of people just go.

MR. GRADESS: Traffic or criminal?

MS. SMITH: Traffic and some criminal. They do it last.

MR. GRADESS: Tell us about Thursday night.

MS. SMITH: Thursday night is -- well, they line up on the street. Have you ever seen the line?

MR. GRADESS: I want you to describe this for the record.

MS. SMITH: People are lined up on the street and waiting for court to open, it is like 6:30 or 7:30. The court starts and usually they do the district attorney's. You are meeting the district attorney at that point. And they discuss your case and you are told to go back

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and either get representation or to see if you could provide representation yourself. But nine times out of ten you are going to be continued to another date. Most of the time you come with somebody who could translate for you. If you cannot -- or you bring somebody that is a representative.

Nine times out of ten those locals are not going to come with an attorney. You are told by the judge that you can't have legal representation. Most people at that point in time will plead guilty. So it is over or you come back many times.

I know a lot of times we have had staff that comes with a client two or three times simply because you have to be there to translate or they have not found anybody to represent them. I could not think of any lawyer in this county that I ever called to represent a person. And the only lawyer that I could call by name would be John Cebula. I know John Cebula from the public stuff. But after his office was here in Albion. But John is more for those poor people in the county. He is the one and only

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attorney that people would know by name.

Other than to have money to have representation, and I think there are very few people that have money around here. You could usually get written up of in the journal. They do a write up about cases and arrests. When I come to Orleans County I always make sure I read that first. It is business, but it is just how things are done.

And many times I think because it is just adjourned and adjourned so many times it is really where you just have to plead guilty to get through the system so that you are not going to lose your job or that you don't have a way to get there. If you don't show up there is a bench warrant for your arrest, which is a whole other event.

The other thing is that many times you don't know who you could contact and it is not really a friendly environment where you could say give me a list of attorneys that I could contact or people who would translate for me. I don't think that it is that kind of user friendly information. Do you know what I mean?

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MR. GRADESS: I know what you mean.

MS. SMITH: It is not a system where they try to help you get through the system.

MR. GRADESS: Has there ever been an effort in the client community or in the community at all to raise the issue about public defender representation?

MS. SMITH: No, not that I am aware of.

MR. GRADESS: And one last question. It may sound strange, but I feel like asking you. It is going back to the farm workers. There is a lot of racialism in New York State, are all of them -- is there an element described as an experience kind of racialism. It almost seems to have it is own characteristics. I wonder, do you know what I mean when I say that? Talk about that a little bit.

MS. SMITH: You know, about five years ago in Wayne County there was a farm worker who was beat up by a state police in a Walmart Store because he bought a radio and he was -- he had the radio with him and he was leaving the store. And they thought he had stolen it. So, they called the State Police and the police beat this

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person up because he was a community gofer. All he was trying to do was to show them that he paid for the radio and that he had a receipt.

And they're not really listening. Because I think one of the things that discrimination is is that you are already guilty when the accusation is made. And they beat this guy up and because there was a lot of damage he wound up collecting money in Wayne County. I think it was like eighty or ninety thousand dollars that he won when he began a suit. But it was simply because that state trooper in that store didn't take the time to try and understand that he purchased the radio already and it was his. He wasn't walking in the store with it.

It just shows you the force that I think that the authorities have when they do come there. And there had been an incident where a group of farm workers can't come into a store together. They have to come in one or two at a time as if somehow they are either going to steal or take something out of the store. I mean, these are adults who are spending their hard earned dollars that are treated like they

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are little kids.

I know a lot of stores do that when kids come in with their backpacks from school. They will only let so many kids in the store. These are adults that are shopping for their families. That you would do the same kind of treatment. It is so blatantly. I don't shop at that one.

There is one of the gas stations on the corner, because at 2:00 in the morning when the bars close, they would only let two people of color in the store at one time. So I don't shop there because of that sign.

MR. GRADESS: Are you providing right now this contemporaneous information, right now in this town?

MS. SMITH: Right now, yes. And that in itself tells you the mindset of the community that you would have at 2:00 in the morning and you lock your store doors and only let two people in at a time. I made a choice not to shop there and I don't buy gas there. That is it. I don't shop at Eckerd's because Eckerd's for a long time would charge people with stealing even when they were not.



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There have been cases where they said people had stolen something and it wasn't so. My thing is you don't care. They don't protect. You tend not to want me in your store. I don't shop here.

It is an educational process. A lot of people think that if it is there I should have the opportunity or the right to do that, but my right is that if you don't treat me like a customer that is wanted in the store, I don't do business there. And that is sort of, you know, I move on.

And I believe in Brockport you do have a lot of families here and I have been there quite often, I don't see that. A lot of those things have changed.

I think you have a lot of positive things that are going on in Orleans County, but a lot of things have not changed. One is your judicial system and the people who operate it.

MR. GRADESS: One last question arising from something you said and testified to this morning. Do you think that these adjournments in Orleans County are purposeful motives to get

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people to sort of roll over and go to INS to be deported?

MS. SMITH: I think so. The other thing, people in Orleans County know that nine times out ten you hire an attorney from Orleans County. If you bring an attorney from some place else it is not seen as welcoming. And then you have to teach that attorney that comes in from outside, this is the good old boys here, the network. And you need to work within that network.

A lot of times I think people are forced to have attorneys that are from this area rather than having representative from some place else, usually because you are not welcome.

I just think that the judicial system itself is lacking a lot of things. And I think that it is because the minorities in this county really don't have any power in the system. I mean, you are not going to see anybody in this courtroom that looks like -- who looks like here. That just doesn't happen. Not even a court clerk, an employed man, none of those things.

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I mean, it is going to be people who are white who make the rules. That is sort of sad in this day and age, especially when you have Brockport Community College right there. All those people are colored coming from New York State getting those degrees.

I think that if we truly wanted to change the community that the one place that we would regroup, I believe, would be to retrain the farm workers.

MR. VARGAS: There has been testimony here that farm workers who are undocumented or who may be undocumented are turned over to immigration by the local police department in this area. It sounds like you are, and that you are saying that you have worked with farm workers throughout the state.

I was curious to the extent that you have any knowledge of this. Is that a problem? Is that something that happens mostly in this area of the state or is it throughout the state?

MS. SMITH: I think we have had more cases in Wayne and Orleans County than in our other office in the Hudson area. But it does happen

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2 here. We have also in a lot of counties had  
3 meetings with law officials at the beginning of  
4 the season to talk about how to better prepare  
5 farm workers and to identify them as well as,  
6 you know, we have done that with the state  
7 police in Wayne County and local officials in  
8 the Dunkirk area, different places.

9 But we do have some police departments who  
10 are willing to work with us and to educate farm  
11 workers.

12 A lot of Mexican farm workers are smaller  
13 guys. They are going to get drunk faster than  
14 somebody that is a bigger guy. If you say if  
15 you drink this many beers that is too much  
16 alcohol. What it means and what is considered  
17 to be drunk.

18 We have done that in Chautaugus County. We  
19 have had law officials and a lot of policemen  
20 that work there who come in and have done that  
21 presentation specifically for worker.

22 When I offer police to come in and talk  
23 about laws and registration, you know, for your  
24 car, we have so many people, there is standing  
25 room only. So farm workers come when they know

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they are going to learn about those kinds of things. Whenever we want to get a big group of people you go to that topic and you have a huge group of farm workers that show because it is something that he really wants to know about.

The biggest issue is Hispanics. Hispanics are stopped by the police. They are not asked for a license and insurance card. They are asked for license and immigration cards, or license and your blue card.

So that is the mindset of a lot of law officials when they stop you. It is that they already decided that there is an immigration issue, not that I am stopping you on a traffic violation.

MR. VARGAS: Do you know if that is more so in one area of the state rather than throughout the state?

MS. SMITH: Well, more in Orleans County and Wayne County.

MR. VARGAS: Like what you just described, police officers asking if there is an immigration document.

MS. SMITH: Yes, with a farm worker. There

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2 is one that we sort of laugh about it, that he  
3 had gotten picked up for driving while  
4 intoxicated. And so we we're explaining what  
5 happens. How did you get picked up, because the  
6 cop first arrested his brother. And he says,  
7 well, what happened was he arrested. My brother  
8 earlier that night he got through, and he said  
9 he thought he was going to wait until all the  
10 police had gone home and come back out later.  
11 But he still got picked up because the cop was  
12 still there waiting on him.

13 They know the route the farm workers take,  
14 but that's why we saw a need to teach farm  
15 workers to know what happens if you drink too  
16 much, simply because I think a lot of times in  
17 this country this comes from a lot of having  
18 more leniency or you don't have to have that  
19 document of the driver's license. It was  
20 something to cut down on some of those  
21 violations.

22 Some of it I think we could do by  
23 identifying immigrants better. If you have got  
24 six people in one hand who have been drinking,  
25 but also to look at them as individuals and say

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because you do weigh less it is going to take less beer to make you meet the illegal drinking. And so those are some of the things that we have done.

MR. VARGAS: Thank you.

MR. GRADESS: Thank you very much.

MS. PALMER: I apologize for being late.

MR. GRADESS: Please begin by telling us who you are and what you do. And a tell us what you would like to.

MS. PALMER: My name is Ramona Palmer. I am the Director of Victim Resource Center for the Finger Lakes. We cover Wayne County for domestic services and we have a collaboration with Farm Workers Legal Services. We cover ten counties for migrant farm workers who are victims of domestic violence.

What we basically did in the collaboration is we switched roles. We have obviously been to the Outreach and the crisis intervention. And we do counseling. The Farm Workers Legal Service representing the farm workers, they may go in and find that there is a legal issue and then find out also that there is battery going

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2 on within the home. So we basically switched  
3 roles.

4 We have two full-time attorneys that  
5 represent these women and all of the information  
6 is kept in a separate building. We then train  
7 the staff and Farm Worker Legal Services  
8 regarding Outreach, and educate and provided  
9 them with the training to be domestic violence  
10 workers certified in rape crisis, certified in  
11 New York State.

12 We basically switched roles. Our  
13 responsibility is to assist them with doing  
14 Outreach. And we also represent the woman in  
15 Family Court for orders of protection, family  
16 offense petitions for custody, child support,  
17 and other legal issues.

18 The only thing we cannot do on the grant is  
19 to assist them with immigration issues, and we  
20 need to refer them.

21 We are here from what I gathered to talk  
22 about some of serious issues of migrant farm  
23 workers who are victims of domestic violence and  
24 how they are treated when they come to the court  
25 system.



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Our job is to represent those women, so we don't represent the abuser, we only represent the woman in a domestic violence situation. It is a nice program because we meet with those women prior to the court date. We also work with the local counties to access domestic violence services for them within the county.

If they need emergency shelter we would work with that county to provide access to that emergency shelter. We work with the county domestic violence agency to provide many other services such as Section 8 housing, if they need that emergency housing. If they need any medical attention, public health.

So along with the legal component of it we provide a lot of kind of wraparound services to those individuals within the county.

Before I took this job I had no idea of some of the serious -- the serious nature of what is going on in our state. And I am sure it is probably going on across the country.

I was amazed to find out the discrimination of the migrant farm worker women and women of color. I really did not believe before I took

1  
2 this position that that was such a serious  
3 issue.

4 There are so many stories that I could tell  
5 you, it would take up so much time. I thought  
6 about just talking about a couple of cases.

7 We had a woman who was in a relationship  
8 and she was a migrant farm worker with a pastor.  
9 And the pastor's father worked at the sheriff's  
10 department. It became so bizarre. Whenever she  
11 left her house, and she would call me that she  
12 was leaving her house, she would be arrested for  
13 something.

14 First it was when the plates changed, the  
15 New York State plates changed on her car, that  
16 she did not change the plate. She didn't  
17 understanding anything about. So they arrested  
18 her.

19 The next day she was fearful to go to the  
20 bank. She called me and asked me to come and  
21 help pick up her automobile because they  
22 arrested her again and said that she cut someone  
23 off.

24 This went on for almost -- I think she was  
25 arrested sixteen times. She could not leave her

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2 home without being arrested. While we deal with  
3 the public defender regarding if this is a  
4 criminal matter, we would represent the woman.

5 My biggest concern is not so much about the  
6 public defenders. I think that they are  
7 stressed. I think that they have to do a great  
8 deal of work. I think they have very limited  
9 resources. I think that they spend the amount  
10 of time with the clients that they can. I think  
11 that when they have -- some of the clients have  
12 court appointed attorneys, and they have very  
13 limited time and resources to meet with them.

14 My basic concern isn't so much from that  
15 point as my concern is about the police in our  
16 state. I have seen things that I just really  
17 never thought would happen in this country.

18 I've gotten into arguments, and I'm not  
19 much of an arguer, fighting with the police  
20 department over and over again. I spend a great  
21 deal of my time on the phone arguing and trying  
22 to access some basic resources for these  
23 clients. So much that my board of directors  
24 puts five dollars away every time we have a  
25 board meeting so they can bail me out of jail.

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It is like this feeling, and they're waiting to bail me out of jail.

MR. NOWAK: Was it in your jurisdiction, the police actions that involved these sixteen people?

MS. PALMER: This is the Newark Police Department. I have a very good relationship with Chief Bogan (phonetic). I don't with his officers. I am over there on a regular basis arguing with them. They scream obscenities at me. They yell at me when I am sitting waiting to speak to a client.

I do have some leverage now because of this grant, because we have attorneys who can represent these women. And it is a wonderful grant through the Department of Justice.

It is under the Violence Act. Violence Against Women Act. It is a wonderful grant because we can provide legal representation and we spend a great deal of time with these women and their families to supply them with fair legal representation along with accessing services in their county. Whatever their respective county is.

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Prior to having the attorneys, I would say I had no leverage. And at least now that they know we have attorneys within our building that can assist these women, somewhat a little bit more legally, we have a little bit more leverage with the police department.

We have dealt with the public defender in Wayne County. I find that in at least Wayne County, and we dealt with the public defender in Albion and some of the other counties, they have been very fair with us and have spent time explaining things. I find that they've been fair and just.

One of the things that Carl asked me was, how do you think that they are? Are they fair to the abuser? Are they fair and just to the abuser? Quite candidly, I don't care. I do care, but that's not what my job is. I can't worry about if they have been treated fairly on that end.

My job is to focus in on the women. That's his job or her job to represent that individual.

We ask for a lot of things when we come to court. We don't always get what we want. So I

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believe that they are being treated as fairly as possible.

I think that our system is the best in the world, but I think it has some real movement needed, real need for improvement. Do you have any other questions?

MR. VARGAS: Ms. Palmer, with respect to the farm workers that you represent, your agency representing non married relationships with a noncitizen, I know you said your focus is on your client, the abused women.

Now there has been an issue in other counties were there is a domestic violence charge, is that because of the immigration implication of the charges against the alleged abuser? That sometimes even the interest or the desire of the victims aren't respected or maybe that is what I am hearing from other parts of the country, it may be. That the woman may want and need an order of protection, but may not necessarily want the alleged abuser deported from the country. It may be that it was that you are providing support for her and that maybe he is providing support for her or her children.

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Is that something you are seeing in your work?

MS. PALMER: I find that -- you know, we discussed this with my staff and when we go to other domestic agencies within the county that we cover it is bewildering to me. And I understanding that it is one of those things that may take time to clear up.

We certainly want them to be treated fairly and I believe that is why the Violence Against Women Act is there. I believe that is why they provide attorneys to us, and they provide the resources to us.

But there certainly is a wall that goes up if they are not here legally. And it is not just in court. It is throughout the Department of Social Services and it is accessing other services that they need within the community.

And there certainly is, you know, it is a very serious issue if they are not documented.

We had one woman who came to us and I put her into emergency shelter and she was undocumented. And when her child was born in the United States, and she was only eighteen months old, they came to our emergency shelter.

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2 While we had to notify the Department of Social  
3 Services that she was in there because we  
4 received some other funding from them, I did not  
5 bill them for the mother's stay. I billed them  
6 for the child's stay because the child is a  
7 United States citizen. It has been eight months  
8 and I never received payment for that bill  
9 because the mother is undocumented.

10 We have many issues. This woman -- a good  
11 example is that we actually try to work within  
12 the community. I was very concerned that she  
13 spoke no English. She was brought over here by  
14 the boyfriend when she was pregnant. She came  
15 to the community. Rural Opportunities, I  
16 contacted them. They were wonderful.

17 They were going to help us secure some  
18 funding to send her back home. She refused to  
19 go back home because his family paid \$2,000 to  
20 have her brought across the border. If she  
21 returned home her family, which is very, very  
22 poor, would have to pay the \$2,000 back. So  
23 until she could somehow work and pay that money  
24 back to her family she refused to leave.

25 There are so many issues regarding



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2 immigration issues. Many of these -- the  
3 majority of these women are brought here by  
4 their husbands or by their boyfriends and then  
5 there will be a domestic violence issue. They  
6 don't really care what happens to them at that  
7 point.

8 We try to work within the community to  
9 bring as many resources to that individual as we  
10 can. Which, of course, the public defender  
11 can't do. Which, of course, a court appointed  
12 attorney can't do. But we will bring the  
13 Catholic Church in if they have a migrant  
14 Outreach program. We will bring Public Health  
15 into it. We will bring whatever resources that  
16 that client needs along with legal  
17 representation. But the immigration issue is  
18 huge, very serious.

19 MR. VARGAS: Have you seen this issue where  
20 the victim is telling local law enforcement,  
21 whether it be the police or the court system,  
22 that they want an order of protection, but they  
23 don't want their client deported?

24 MS. PALMER: Yes.

25 MR. VARGAS: Are those wishes respected?

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MS. PALMER: Most police officers, and I am not -- I don't mean to spend all of my time on police officers. My brother is a police officer. I have a great deal of respect for what my brother does. He is in Monroe County.

They really don't want to do the paperwork as far as an order of protection. And especially, they don't even know what to do with undocumented women. They don't know what to do with them. They don't understand the law. They don't understand the Violence Act. They don't understand the level of the order of protection for these clients.

So the majority of them will respect, but we have a bilingual advocate that covers our office twenty-four hours a day, seven days a week. We have gotten calls from the women. The police officer is there. He is letting him translate, the abuser, translate for the police officer. He is saying she is fine. He could go now. That is not what she is saying.

You know, we have had to come down. We have had to go down and call the police officer and obviously step in and explain that, no, put

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her on the phone. That is not what she wants.  
She wants him removed from the house.

So we run into those issues. I am sure if  
the police department had someone to twenty-four  
seven do that, they would probably call the  
person in. I don't believe that they do. I am  
always giving them the benefit of the doubt  
because of my brother.

They have limited resources. I understand  
the frustration with the police department.

Another example, I had a woman we took in  
for an order of protection against her boyfriend  
who she had children by. I walked her over to  
the courthouse with someone from probation at  
the time. And then walked to the police station  
because he was coming to get his personal  
belongings that evening. The police officer  
stood on the street and said to me -- I said,  
are you giving her a 911 phone, she only speaks  
Spanish. She could call us also, but he is  
coming to get his belongings. He certainly  
injured her and broke up most of the apartment.

So I asked the police officer who was going  
to be on call that evening. And he just looked

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at me, and I am very glad she didn't speak English, because he said to me, I am not going up to this person's house at 2:00 in the morning. He's outside here all the time. I refuse to go up there.

I started to make -- so the probation officer said, I want to make a formal complaint to the police chief who was in another area. And she said it's a triple down effect. Where do you think it is coming from?

So those are the issues that we run into all the time. They don't want to deal with them. They don't want to go to the camps at night, at 3:00 in the morning, a migrant camp.

If there is a domestic violence issue normally the woman now will call us and we will go.

I have asked police officers to go with us or at least to escort us there so we could pick up the woman. Nine times out of ten they never show.

I went to pick up one woman and the 911 operator said to me, well, that's a known drug house. And I said, well I am trying to get

1  
2 there. She's in a crisis. I had our van. I  
3 had another staff person with me. And she said,  
4 I don't know exactly where it is, but call one  
5 of the police officer to give you directions.

6 So, it was down a very long dirt road out  
7 in the woods. And this was about 2:30 in the  
8 morning. We drove down there. We always make  
9 sure we turn the van around so there could be a  
10 quick exit.

11 And as I am pulling out I see two police  
12 officers about a quarter of a mile down the  
13 road. They're waiving to us. And I slowed down  
14 my van. And I said, yes. And they said are you  
15 the people that wanted the escort there? And I  
16 said, yes. How did it go? Well, I'm glad I'm  
17 not dead. I'm glad. I said, it is fine. Thank  
18 you for your help. It's no problem.

19 So, we don't depend on the police anymore.  
20 I don't depend on them for escorts. We just  
21 have to take another staff person with us all  
22 the time. It is just -- I could see if it was  
23 he was at a very bad accident or if there was  
24 some other thing that was maybe more important  
25 than what we were doing at that time. But they

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were just standing there talking.

I am going to make a crack, they probably had coffee and donuts in the car. And I said that to my brother, and I'm sure they were having coffee and donuts.

But it is very difficult with the migrant women. They are brought here. They are hard workers. They treat their children with dignity and respect. We have never had -- while, I can't say this about many of our clients, we have never had any of these woman abusing their children. They are certainly very family oriented.

It is a very -- it is frightening for a women in domestic violence to come forward who is a citizen in this country, who speaks the language, who has family members around them.

I mean, you take all those resources out and this is a woman who doesn't speak the language. Who was dragged here from another country. Who has no friends or family. Who is fearful of the police. I am a United States citizen and I am now fearful of the police. So I can't imagine that the call is easy for them.

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I think it is a very difficult situation.

We try to work with the Farm Workers Community Service, we really trying to do the Outreach as best we can. We go into camps. We go into day camp facilities. We hold law clinics. Our attorneys bring someone in who speaks Spanish. We do law clinics. Everything is translated from English to Spanish for the clients. We go into schools because many of the children access the schools to learn English as a second language. We do presentations there.

We do the best we can to reach as many of them as we can to let them know that there is a lifeline there for them.

MR. VARGAS: Thank you.

MR. GRADESS: Any other questions? Let me ask a couple of questions. I think one of the reasons, I think it was I who had a conversation with you about the effects of fairness because I sensed that it might be possible that you viewed the public defender as being fair, and the fact that you are an adversary in the case. In other words, if they weren't fair to you.

MS. PALMER: No, I'm sorry. I didn't mean

1  
2 to sound like it. Many times we have gone and  
3 asked for a full order of protection and gone in  
4 and we received a restraining order from them.  
5 So, I think because we have asked for everything  
6 and we always don't get it.

7 I think it seems fair to me that the public  
8 defender believes that the father should have  
9 access to the child and see the child if the  
10 child is not in danger. We certainly have many  
11 more restraining orders.

12 We have had full orders of protection where  
13 they can't go near the mother or the child. We  
14 had a case, which is the one I was telling you  
15 about, which is why I was late.

16 We went to court with a woman and he -- the  
17 day care facility is afraid of him. It is a  
18 migrant day care facility. They are fearful of  
19 him. And the court basically said that he could  
20 pick the child up there and actually see the  
21 child for visitation there.

22 That they have requested that the facility  
23 not be utilized in that way because they are  
24 fearful of him. But the court still then  
25 supplied another facility for that person to see



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his child. So, it seems fair from his point.

I don't believe he should see the child at all. But that is my personal opinion. But it seems like he has been represented fairly in that case.

MR. NOWAK: Is that particular case in the Wayne County area?

MS. PALMER: That case is in Wayne County. The other two are not in Wayne County.

MR. GRADESS: What I think would be useful to us, if you could state for the record the nature of your federal funding that actually allows the lawyers in your office to do work that would otherwise be done by either a public defender or assigned counsel.

MS. PALMER: That's correct.

MR. GRADESS: You twice made reference to the fact that you have the kinds of resources to do things which public defenders can't do. I think it would be helpful if you would describe some of the things that you do, the amount of time that you have spent interviewing and the other functions.

MS. PALMER: Depending on the seriousness

1  
2 of the case, if it is a current order of  
3 protection and we need to access it as soon as  
4 possible, they meet with the client. They bring  
5 them down and meet with the client to secure the  
6 order of protection.

7 At some point they spend a great deal of  
8 time with them regarding custody, visitation,  
9 and child support.

10 MR. GRADESS: What would a great deal of  
11 time mean?

12 MS. PALMER: I would say six or seven times  
13 just to work on the custody and child support.  
14 They come into our office or our attorneys go to  
15 wherever they are. They bring one of our  
16 bilingual advocates with them to do the  
17 interpretations. They will -- she just came to  
18 Albion a short time ago and met for an hour and  
19 a half with a client. She's coming back up, our  
20 attorney is coming back up with a bilingual  
21 advocate again.

22 So we meet with them. But not only that.  
23 Once we are doing the legal component of them,  
24 and we as the agency and now that we cover all  
25 these counties, we step in and secure all of the

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services that we can to access those people within that county also.

So, all the other services that we may need. She may need to go to the doctor. She may need to take her child to the doctor. She may need emergency housing. Housing after that.

So we really kind of step in and provide all those services with the attorney and the attorney finds out what she needs.

MR. GRADESS: One last thing. You and I talked about a case that I would just like you to talk about on the record. You had a bit of an experience with Mr. Church. Describe for me the facts of that case.

MS. PALMER: Yes. When we first secured the grant I, of course, didn't know what Mr. Church did. I did call because it was a conflict of interest regarding migrant farm workers.

We had represented someone, and that while there may have been some cross abusing going on, I really believed that this gentleman was the victim. But because we had represented the woman on another issue I was concerned about a

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conflict of interest. And there is funding on the grant to pay for the attorney.

So I contacted Mr. Church as an attorney and explained the situation that there was a conflict of interest and asked if he would assist us. So he did step in and represented the gentleman because we were obviously representing the woman. And he worked with us on securing what I think was fair for both the husband and the wife.

They were both treated very fairly. So he certainly was somewhat of a colleague. I didn't know what his position was in the county when I originally called him. He seemed very fair. And both -- you know, they're both separated and they're both doing very well, both husband and wife, and with full access to the child. It seems like it was one of the more better cases. It worked out very well. So, he certainly was very fair and did a great job.

MR. GRADESS: Just so the record is clear, did you know that he was a public defender but this was in his private capacity?

MS. PALMER: Yes, I know.

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MR. GRADESS: Thank you very much.

MR. CEBULA: My name is John Cebula. I apologize for being a little late. I understand that I was suppose to be here at 12:15. But I was at an administrative hearing, not for a farm worker.

I am the Executive Director of Oak Orchard Legal Services. We are a nonprofit private corporation funded primarily by Federal Legal Service Corporation. We represent low income people in Orleans County, Genesee County and Wyoming County. We do civil cases, unlike the Public Defenders Office, which offices are available in each of the counties we serve.

So, I am not directly familiar with much of the criminal representation provided by that office.

However, our program has had a history with migrant farm workers. I came here in 1971 as a VISTA volunteer. I was subsequently hired on the staff. And in those days there were few services particularly targeted to farm workers. But because there was a large farm worker's population here in Orleans County we considered

1  
2 it an important part of our responsibilities to  
3 try to provide services to those workers.

4 In those days I would say probably the most  
5 important issues were housing, and camp  
6 conditions, health conditions, labor conditions.

7 In the late '70's our program and Monroe  
8 Legal Services worked together to form what is  
9 today Farm Workers Legal Service Program. And  
10 in the last roughly twenty years they have  
11 assumed much of the responsibility of those  
12 types of migrant farm workers specific issues in  
13 the civil area.

14 So our program, Oak Orchard has not been  
15 involved recently with those types of issues.  
16 However, we still see migrant farm workers in  
17 the area of domestic relation problems, some  
18 housing problems, public benefit problems  
19 primarily.

20 I guess I was asked given the fact that we  
21 don't do criminal work, so I am not in criminal  
22 courts, and I am not seeing necessarily how farm  
23 workers are treated in the criminal context. We  
24 have not done a lot with farm workers in recent  
25 years because of the Farm Workers Legal Service

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Program.

I think I was asked to appear and provide background on our experiences in years past and some of our involvement with the court system in Orleans County, how it might overlap the civil and criminal, and our interaction with Public Defenders Office.

I think probably one of the things that is most critical in terms of kind of creating the view with which farm workers find themselves in in dealing with probably almost everything they deal with in our community is the problem of almost being invisible.

These are folks who are not from here. These are folks who are not living here. They are transits. They don't vote here. They don't advocate here. When we were doing farm workers work it just seemed that it was hard to get any institution, whether we're talking about the court system, whether we're talking about administrative agencies, whether we're talking about local government or local business, to treat migrant farm workers the same way that they would treat local citizens.

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So, I think part of the overall problem is that probably we are not in a position to address this idea that they are outsiders and we don't need to take care of them. And I am afraid that that kind of pervades all aspects of community involvement with farm workers.

Now I have noticed, and probably most of you are aware, that the Village of Brockport over in Monroe County does hold a festival every spring and early summer, I am not sure what the month is, in which all the farm workers in different camps in western Monroe, and eastern Orleans are invited. They do all kinds of social things. I think there is even a parade involved.

The Village of Brockport plays it up big in the community. I was very impressed when I first realized that. I think this has been going on for a few years.

It would be, I think, helpful if that kind of thing were in position to be tried in other communities, to try to make the farm workers feel at home. But also have the local communities, particularly those people that



1  
2 seldom come in contact with migrant farm  
3 workers, realize that they are a valuable  
4 segment of the community.

5 They are the ones who are picking the food  
6 that you are putting on your table to feed your  
7 family. And nobody treats them with the respect  
8 that I think their level of importance is in our  
9 lives.

10 In terms of legal experience, I guess two  
11 thoughts came to my mind in thinking about  
12 addressing you today. One is I think although I  
13 believe there is a difference between how cases  
14 are handled civilly and criminally, and I think  
15 you folks who are involved in the legal system  
16 are obviously familiar with this, but I think  
17 that the courts tends to be less one sided in  
18 civil cases.

19 A lot of things that I may see between two  
20 private individuals, you don't have the  
21 impression that the court is necessarily as  
22 heavily weighed on one side or the other as one  
23 would expect in the criminal sphere where it is  
24 the People of the State of New York, the  
25 protector of all of us in this room, all of us

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in Albion Correctional Facility, including everybody against this lowly probably indigent individual accused.

And I think that is a much more uneven balance in the approach that the legal system takes in that type of legal proceeding over what we see.

Now, that is not to say that farm workers get an even break in civil matters. I don't believe that is true. I don't believe that is true for poor people in general. In the state court system I think we're fortunate, whether we're talking about here in Orleans County, south of us in Genesee, Gary Bailwick (phonetic) and my -- actually our office is there.

We have judges who are sensitive to many of the concerns that arise when you are dealing with cases involving migrant farm workers.

What concerns me always has been and probably always will be is I don't think we could solve the problem. It is the town and village justice courts where you have nonprofessional justices who are local business people, who have relationships with the farmers,

1  
2 and who live in those communities. And,  
3 obviously, there is not going to be a completely  
4 even approach to handing out justice and  
5 disputes between farmers and farm workers in the  
6 community. But that is true, as I said, about  
7 probably all indigent clients.

8           So there is this question of  
9 evenhandedness. I know years ago there was talk  
10 of moving to some type of district court system  
11 to try to professionalize the lower level  
12 courts. That has never really gone anywhere. I  
13 think that is unfortunate, but I don't know if  
14 any of us are going to have much of an impact on  
15 it.

16           A second major issue that comes to mind in  
17 thinking about farm workers and public defender  
18 services is that our services are accessible  
19 to adequate translation services.

20           The administrative hearing I was at that  
21 made me late today involved a Puerto Rican woman  
22 and we had five witnesses. We did have a  
23 translator and I think actually she was quite  
24 good. I was pleased.

25           But it just helped to remind me of how much

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more complicated it is to -- this is when you're actually in a courtroom, to get a story out to help someone. A judge who knows nothing about your circumstances and knows nothing about what happened, to help this judge get a clear picture of what happened. So many of us who speak English have a hard time communicating that picture clearly.

When you add on top of that all the information of what the person said, how the interpreter interprets it, and the variations that may occur between that in the interpretation back to the person about what is being said by the lawyer, the judge, or anyone else in the courtroom, it just magnifies the difficulty of providing representation.

Again in the state court system you do have, I think, vastly improved access to translators. I am still not convinced that there is great universal access in the justice court system.

I have been in justice courts where professional translators were available. So I know that in some situations the services are

1  
2 there. I am not always sure that -- I am not  
3 always sure about the quality of that service in  
4 some of these courts.

5 And I sometimes worry about, particularly  
6 with untrained non attorney justices, probably  
7 with a large case load, probably trying to get  
8 through things quickly, may accept when someone  
9 is asked, do you understand English and they  
10 say, yeah. And that may be the only word they  
11 know. There may be a not very serious  
12 exploration about the need for the service.

13 And I think that can result in a lot of  
14 situations where people are not understanding  
15 what is going on, what their rights are, what is  
16 going to happen to them. And I think that to  
17 often these folks are going to try to give the  
18 impression that they can communicate in English  
19 when they can't very well.

20 The same applies to the folks who have  
21 difficulty reading and writing. And you hear  
22 about all the instances where people develop  
23 techniques to try to convince everyone that they  
24 know how to communicate when in reality they  
25 don't.

1  
2           And I guess I'm worried that there are as  
3 many folks who because of their lack of English  
4 language skills are shuffled through the legal  
5 system. That it just seems that they could be  
6 subject to such a wide array of disadvantages  
7 and that we need to figure out some way to  
8 ensure that everyone who needs interpretation  
9 services gets them. And that those are adequate  
10 services.

11           The Public Defenders Office. I think in  
12 Genesee County we are very fortunate. I greatly  
13 respect Gary Horton as Administer of our Public  
14 Defenders Program and our Chief Public Defender.  
15 And I appreciate the quality of the staff that  
16 he has been able to secure and maintain for as  
17 long as they are willing to stay.

18           Unfortunately my experience in Orleans  
19 County has not been as positive. Remember I  
20 mentioned I came here in 1971. And in those  
21 days the Public Defenders Office was a one  
22 person operation. I am sure there was very  
23 little in the way of resources. I am sure the  
24 salary was very minimal. I believe there was  
25 little, if anything, available for investigative

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2 resources, and any help of legal research, or  
3 legal writing. I think the resource issue was  
4 very weak.

5 But unfortunately there was also an  
6 individual who acted as public defender who had  
7 some person limitation. And there were many  
8 instances where I felt that folks seeing their  
9 attorney for the first time in the courtroom,  
10 maybe speaking with them five minutes before the  
11 disposition of the case, that many people  
12 probably were not adequately represented.

13 I believe over the years both resources  
14 available to the Public Defender Office here and  
15 the staff who have staffed that office in recent  
16 years have been significantly improved. Much  
17 greater energy and skills than in those days.

18 On the other hand I think the Public  
19 Defenders Office probably shares in large part  
20 something with programs like ours, Legal  
21 Services Programs on the civil side.

22 That is -- we talked about this at a  
23 meeting yesterday. It struck me.

24 I think we have to always keep reminding  
25 yourself of this. That you have too many cases.

1  
2           Everybody is overworked. Everybody feels the  
3           need to process the cases. You got to get these  
4           cases done. You got to get them through. The  
5           court system is putting pressure on you.  
6           Funders are putting pressure on you. And you  
7           are continually being pushed to handle as many  
8           things as quickly as possible.

9                     And to often we may look at our clients as  
10           numbers as opposed to individuals. This was  
11           talked about at this meeting that I was  
12           mentioning from yesterday. And I think that it  
13           is important that we try to change that kind of  
14           culture in these kinds of programs.

15                    The public defender and legal services,  
16           that we figure out ways to help staff who come  
17           into these types of jobs with high minded ideals  
18           maintain those ideals in the legal service area.  
19           And I am sure it is true with the public  
20           defender area down through the years, probably  
21           more so in past years.

22                    But in the early years people went to work  
23           in legal services programs to get experience to  
24           learn to some degree how to practice law. And  
25           then go out and get what they thought was a real



1  
2 job. And that was prevalent at least through  
3 the '70's and into the early '80's.

4 The legal Service Corporation began  
5 identifying a need to figure out ways to try to  
6 retain experienced people and try to keep the  
7 energy, the excitement, the drive, the desire to  
8 help those who can't help themselves alive under  
9 these almost impossible conditions of numbers  
10 and under the lack of resources.

11 So efforts were made to try to improve  
12 salaries, to try to provide retirement benefits,  
13 to try to improve things like vacation time as  
14 well as a wide variety of training activities,  
15 to try in improve staff skills so that people  
16 feel they were growing. To try to create  
17 internal structures where people would feel  
18 there was advancement maybe from a staff  
19 attorney to supervising attorney. You had some  
20 place to go.

21 I think we have to look at all of the  
22 different tools that can be used. We need to  
23 keep reminding ourselves. When you get that  
24 overwhelmed and overworked you stop thinking  
25 about the service to the individual client. You

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think about getting the task done.

We have to figure out ways to continually reenforce the ideals that brought all of us into this type of work.

I understand that there are very good efforts on the way to try to do this. And I certainly commend you for those efforts. I don't know if you have any questions

MR. GRADESS: Yes. Questions.

MS. BANKS: I worked for Legal Service Corporation in Buffalo. I shouldn't say I worked for them, I was on the board. But I did work there. I have two problems with town village justices.

I have been in the legal community in New York. We have been campaigning for a district court because there are something like twenty-five thousand nonlawyer justices. And I think three years ago it seemed that one of the problems was you are suppose to pass an examination to be certified. They were given examines to pass.

I also understood that the legal judicial conduct, it was noteworthy they were going after

1  
2 town village justices. They were out of  
3 proportion when you have a lawyer trying to  
4 handle very serious cases that come before a  
5 town justice. It is a comment, not a question.  
6 It will come up again.

7 MR. CEBULA: I think we all have to keep  
8 fighting for it.

9 MR. GRADESS: I have one question. We have  
10 had pretty disturbing testimony today about the  
11 current circumstances of representation in  
12 Orleans County. So it is, I guess, in an odd  
13 sense to hear what's worse. I wonder if you  
14 could pinpoint to the year that you were  
15 describing what the lawyer's function was with  
16 the person's limitation, and then after the  
17 years you were we referring to from 1972, 1971,  
18 to what years that public defender operated  
19 here?

20 MR. CEBULA: I believe it probably would  
21 have been somewhere around 1980. The early  
22 1980's. Somewhere in their.

23 MR. GRADESS: So, it may be over more than  
24 a decade in which, in your opinion, people were  
25 getting bad representation in this community.

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Sir, as a preface to my question, was there any over sighting of this lawyer whatsoever in this county?

MR. CEBULA: Not that I am aware of.

MR. GRADESS: Did the county itself ever take into account the bad performance of the public defender?

MR. CEBULA: Not that I am aware of.

MR. GRADESS: Did the Bar Association ever take action?

MR. CEBULA: No.

MR. GRADESS: Did the prosecutor ever take action?

MR. CEBULA: Not to my knowledge.

MR. GRADESS: Let the record reflect that Mr. Nowak is going to leave us. Our next speaker is Mr. Dennis Sexton. Thank you for being patient with us.

MR. SEXTON: I am always told that my voice does not carry. Please let me know if you can't hear me.

I am going to start off by saying that I don't think I could help you very much today in solving problems that luckily don't largely

1  
2 exist in the areas that I work in, largely  
3 because the Office of the Public Defender and my  
4 office are in constant contact.

5 I work in Genesee County and Wyoming  
6 County, and part of Livingston County, and part  
7 of Steuben County.

8 And my first job with the State University  
9 is to enrolled people in the migrant program.  
10 In other words, I adjudicate or decide who is  
11 migrant and who is not.

12 To give you a definition, in case people  
13 don't know what a migrant is, it is like a  
14 person that is an orphan. A migrant is a person  
15 who has crossed a school district line in the  
16 last three years in order to seek or obtain  
17 agricultural employment.

18 MR. GRADESS: Pardon me. In the last how  
19 many years?

20 MR. SEXTON: Three years. This is  
21 predicated upon the fact that we are an  
22 educational program. That is the first part of  
23 my job. Actually, both parts of my job.  
24 Educational programs for children of migrants  
25 and also out of school youths up to their

1  
2 twenty-second birthday. So that we concentrate  
3 on educational things.

4 We don't normally do legal things. So we  
5 don't concern ourselves with that, but it always  
6 comes in that way. So that is what a migrant  
7 is. If a person who has been stationary in one  
8 place, one school district for three or more  
9 years, they have put down roots and in whole  
10 they don't have a problem of a person arriving  
11 new.

12 In our case, in my area largely, they are  
13 people from Mexico and Guatemala. I can't think  
14 of in my area if there were any black workers.  
15 I use to work up here and I know there are many  
16 black workers up here from Jamaica. We don't  
17 have that where I am.

18 If there is a racial issue it is probably  
19 because it is Hispanic. It is one grade less,  
20 but it is the bigots you have to worry about.  
21 Luckily we are making strides there to.

22 My second job is with the school district  
23 and I do migrant Outreach education. And that  
24 includes everything from trying to preventing  
25 them from falling into the hands of the law by

1  
2 explaining -- by explaining to them the  
3 differences that exist between here and where  
4 they came from. And I do that when I first meet  
5 with them, when I go to enroll them in on the  
6 job.

7 And I defer to the next part of my job,  
8 which is to explain that you don't drive without  
9 a driver's license. You don't drive without  
10 legal plates. You don't drive an unregistered  
11 vehicle, et cetera.

12 I often get smirks because, necessity being  
13 the mother of invention, these people are  
14 restricted to camps. If they are going to do  
15 their laundry or shop, or whatever, a lot of  
16 them do drive illegally.

17 And, of course, I warn them against  
18 drinking and driving. Nobody, including myself,  
19 wants to meet a drunk driver on the road. I  
20 don't want to see anybody else's child killed no  
21 matter if it is a migrant worker or anybody  
22 else.

23 So, it is trying to let them know how  
24 different it is here. If you are from Mexico --  
25 and I lived in Mexico for six years. I worked

1  
2 with farm workers there. Anybody, a fourteen  
3 year old, could jump in a car without a license.  
4 There is no consequences. It depends on who is  
5 present in the police department if you could  
6 get away with it.

7 Even for killing someone you could get away  
8 with it. It is a very pretty lawless society  
9 compared to here. And this is a big shock to  
10 them.

11 The other thing that I realized from  
12 working down there for six years is if they come  
13 to a society where by and large our police are  
14 honest, in Mexico when you are arrested for  
15 anything you could be tortured before you reach  
16 the police headquarters. They just pull over to  
17 the side of the road and take you in the woods  
18 and start burning you with cigarettes. I have  
19 seen this happen firsthand.

20 The family I was living with was in a  
21 situation where they had nine children and one  
22 morning we woke up with there were people  
23 standing all around the room with rifles and  
24 they took two of the sons into custody. And the  
25 family immediately panicked.



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The mother and father ran off to the mountains thinking they were going to be next because they belonged to the wrong political party. The daughters of the family were married and single. They went around and collected money from all the neighbors in the village to come up with about \$350 to get them out of there as soon as possibly because the longer you wait to pay the more you pay. You are paying a higher rate official. Corruption just permeates the system. That is by way of background.

When they come here it is a dreadful shock to them when they are taken into custody for something like driving without a license and they post bail. Some of them think that is a fine. And before I started doing what I do, I think a lot of them use to go home and pack a bag and went to another part of the county or state.

Now we have explained to them that if you get in trouble call me and I'll explain what is happening to you. Sometimes this is done when they are in custody.

Generally speaking the judges and justices

1  
2 in our area are very good. They don't treat  
3 them differently from anybody else. In fact, I  
4 would lean over the other way and say that the  
5 justices at Oakfield and Genesee County  
6 generally are very good. It is a little more  
7 difficult down in Wyoming County where the  
8 migrant phenomenon is rather new in the last two  
9 years.

10 This is because largely speaking for  
11 probably twenty-five to fifty years now our  
12 clients were composed of field workers,  
13 harvesters, planting crops, weeding crops.

14 Just recently in the last two years dairy  
15 farmers have found out that Mexicans are very  
16 good workers and are very good workers and they  
17 have come on very strong in the dairy business.

18 There we have run into pockets of more  
19 racist attitudes. And part of that was because  
20 the farmers didn't use their heads either.

21 There was in Perry, New York confrontations  
22 just about a year ago. Four apartments smack  
23 dab in the center of town. A little tiny town,  
24 the first nonwhite people that ever showed up  
25 there and all of a sudden any crime that was

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committed was blamed on a Mexican.

One night the police raided and bashed in doors. They actually never pressed any charges. They took people in and questioned them and let them go.

Zeroing in on now on the specifics. Another thing I do, for instance in area of statutory rape. Gary can tell you we have one serving time now, a four and a half year sentence for statutory rape.

In Mexico there is no clear cut rules in the Mexican society about who you pick up to make love to. Preferably a virgin, fourteen years olds.

So I explain to them the very first day I meet them that this does not fly here. I issue a condom to each one and explain why they're used, how to use them, for pregnancy and disease.

I think a lot of them are following my advice. And I tell them that they are for sale in any of the supermarkets and in the drug stores.

To prevent them from picking out a fourteen

1  
2 year old in the neighborhood, which in this case  
3 it was a thirteen year old. And her mother  
4 happened to be what we call a camp lady and she  
5 use to bring her around to the camps and sell  
6 her services and her daughter's.

7 In fact, I testified on behalf of that  
8 felony. Technically speaking it was statutory  
9 rape. I warned him ahead of time, but he didn't  
10 listen. He said she is willing, she wants me  
11 and her mother knows it. I said, well if they  
12 turn on you, somebody is going to accuse you and  
13 you're going to be in jail and he is now.

14 So there are the areas. Statutory rape I  
15 think is an important one because these guys  
16 lead a solitary life in the fields. They maybe  
17 don't see a female for a whole week. They want  
18 to ride to the supermarket and/or to have a cup  
19 of coffee, and it is really to see the girls.  
20 So that's the nature at their ages, eighteen to  
21 twenty-five generally. Okay.

22 But we have to let them know the parameters  
23 here so they don't get in trouble. We'll never  
24 know if it is working. I hope it is working.  
25 And like we really have not had too much of a

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problem.

Probably a couple of things that the police don't understand, and this is because again of the cultural background differences, they pull somebody over for, let's say an unlicensed vehicle or whatever, or no insurance or whatever. Sometimes they give them four or five tickets and take them into custody.

They find a large amount of money on the person, maybe a \$1,000 or \$1,500. \$1,500. Immediately their conclusion has been drugs. They are involved in drugs.

If they are good enough to call me, which I have asked the police to do in various departments in our area, I explain to them, well, this is an undocumented alien and he can't have a bank account. He can't open a bank account. He is holding the money until the next Mexican store arrives at his house to send his money to the family in Mexico. That is probably why he had \$1,500 in his pocket. Aside from the fact that if he is earning \$200, or \$300, or \$400 a week that he would not have dreamed of earning that in Mexico. In Mexico he maybe

1  
2 earned \$14 a week, \$2 a day. All of a sudden  
3 he's got this wad and he is walking into  
4 Walmart's and he just loves to peel it out in  
5 front of everybody, which is temptation to  
6 robbers too.

7           And I probably have had more problems with  
8 migrants being victimized because the people  
9 that victimize them know that they will not be  
10 reporting the crime for fear of being detected  
11 by INS. That happens a lot.

12           Just recently I had three apartments in one  
13 building out in the fields way out in the middle  
14 of nowhere. That the camp ladies come and use  
15 the fellows. They tell them it doesn't cost and  
16 two days later they get home from work and there  
17 is no stereo left, there is no gold chains,  
18 nothing left of any value in the camp because  
19 they know their schedule and when they won't be  
20 in the camp and they come back and rob them.  
21 They don't report it because they don't want to  
22 be alerted and taken to INS.

23           Now in our area we have one thing working  
24 for us, and you may remember. About five years  
25 ago there was great confrontation between about

1  
2 seven workers where the INS was waiting for them  
3 on the road not far from their house in Byron,  
4 New York.

5 And they started. The workers all piled  
6 out of these couple of vans. And I think there  
7 were about fourteen, but seven actually got  
8 caught. They started chasing them through the  
9 fields and fired guns.

10 Finally an elderly farmer near by came out  
11 and started yelling at the INS, why are you  
12 doing that? They were his neighbors, you know.

13 Ultimately, if you remember the story, it  
14 made the national press. And they sent  
15 investigators here.

16 INS had lied. First they said there were  
17 no shots fired. It must have been hunters. And  
18 the old man said, well, I'm eighty-four years  
19 old and I now the difference between a shotgun  
20 and a pistol. And all the neighboring farmers  
21 stuck up for him.

22 Ultimately INS admitted that they had  
23 fired, which they shouldn't have done. Their  
24 excuse was that they all had knives. But they  
25 worked in the cabbage fields. That's how you

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harvest cabbage with a big knife. You don't do it with scissors.

So, that has worked in our favor. Mostly, as far as I could see, for this to have occurred on this, the police department, different officers have told me we don't enjoy handing people over to the INS. We don't like to.

They call us and tell us that they need so much money to fill, let's say an airplane. That they may lack fifteen or eighteen people to send out a group. You know there are certain sizes of groups. And they round up the likely and the police just ignore them. I have been told that by officers. So that has worked in our favor.

In my work I often have to work with the police, maybe identifying a dead person or whatever, and to find out their true name, and contact the family in Mexico. Maybe send the body home. I have done that like three times. And they have come up and said now what can we do for you. I said call me instead of calling the INS when you get somebody, please. Because often the problem could be solved right then and there.



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I was called recently at 12:30 at night to go and translate at an arraignment. And it saved an awful lot of problems.

The other thing is that with the presence on terrorism, I seem to see that the INS is responding to some of those calls that are made.

We had a call recently in Attica. Three fellows were being driven into town by a female, an American, that worked on the farm. She was pulled over for a bad muffler. The officer immediately saw the three Mexicans, called for another car and took them out of the car. When the other car arrived they are all put in handcuffs and the lady was not taken to headquarters.

And he got on the phone and proceeded to rant and rave to INS for about half an hour using a lot of foul language saying that these could be terrorist. And we all work for homeland security and they did not want to come out and pick them up. They were not going to.

So as a final assault, before they left he said, I am sending INS to your house. I know where you live. They will be there within a

1  
2 couple of days. So that was a little case of  
3 prejudice there.

4 I think maybe some of the farmers might  
5 have gotten together and had a meeting with the  
6 chief of police because this guy was really a  
7 crusader.

8 As far as the public defender is concerned,  
9 in the two areas that I have field workers in  
10 who earn maybe \$3,000 to \$8,000 or \$9,000 a  
11 year, depending on the weather, their work is  
12 largely dependent on the weather and how long  
13 they are here. It is not a great amount of  
14 money and most of that goes home to Mexico.

15 In the dairy farm end of it they are much  
16 better paid. And they could depend on that  
17 check every week because cows have to be milked  
18 three hundred and sixty-five days a year  
19 regardless of the weather.

20 So those people that get into trouble,  
21 whether it be traffic violations or whatever, we  
22 have had discussions on this and usually they  
23 earn more money and that wouldn't warrant being  
24 taken care of by the public defender.

25 The field work end of it, and this goes

1  
2 back to what I was telling you before about the  
3 mentality they have about the police, if they  
4 are arrested for anything and we mention public  
5 defender or lawyer, they usually want to avoid  
6 that like the plague. Avoid a courtroom.

7 They think immigration might be waiting in  
8 the wings, which sometimes they are. Somebody  
9 could alert them from the police headquarters or  
10 somebody working in the jail,

11 I saw that happen one day. A jail worker  
12 notified an INS agent that I was with and  
13 translating for said, by the way we have another  
14 illegal upstairs that you might be interested  
15 in. So they have a deadly fear of the police  
16 because of their background.

17 If and when they get to court, let's say a  
18 second appearance and they are fined, let's say  
19 \$500, and they maybe they put up a \$1,000 in  
20 bail and they get it back, they're astounded  
21 because in Mexico that would have been stolen.

22 I had a fellow in jail for months and he  
23 told me he had \$500 in cash in his pocket plus  
24 \$200 in cash from his paycheck. He was sure  
25 that the police had stolen it because he had not

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seen it any more. I said, didn't they give you a piece of paper. He said, I don't know. I went out and checked with the sheriff. It was sitting right there in the safe. When he was transferred over to the INS I went with him and he went home to Mexico.

So they are astounded by our system and our system confounds them because that is not what they were raised on. They have a great fear of people in uniform and treat them with great respect because in Mexico if you don't you get tortured or shot. I am not exaggerating about that. I worked out in the backwoods of Mexico. I saw it happening.

So it is a large process of education which we work on every day and hopefully because of that we don't often need the services of the public defender.

We know that they are there and we have contact with the public defender. But because of those things, with the those two things, that maybe dairy farmers they are earning too much money or in the field, the fact of going to court and losing a day's wages, and the fact

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that they avoid the courtrooms and police --  
okay. Whatever. They will pay whatever to just  
forget it. Let's just get it over with.

That is about all I have to say really.  
You might have questions, but I don't have  
anything exiting to tell you about people not  
being defended properly in my area. It  
generally doesn't happen.

MR. GRADESS: Questions.

MR. HORTON: The situation you described as  
far as field workers avoiding going to court,  
avoiding lawyers, and getting it over with as  
quickly as possibility, you do in your work  
directly accompany people to court quite  
frequently, do you not?

MR. SEXTON: I have done that if they need  
translation or transportation. Some times I  
just go there and keep my mouth shut.

MR. HORTON: Could you give us some  
estimate of what the percentage is of the cases  
that are disposed of without the request for  
counsel?

MR. SEXTON: What?

MR. HORTON: What is the percentage of

1  
2 cases that are disposed of without a request for  
3 counsel?

4 MR. SEXTON: Eighty percent. Eighty  
5 percent would be willing to plead guilty and pay  
6 the fine. It might be \$400 or \$500 in fines.  
7 They think that if they appear in court and if  
8 they are taken by INS and deported, the illegal  
9 expenses that they would have gotten back would  
10 be about \$2,000. Lessor of the two evils, pay  
11 the fine and be done with it.

12 MR. HORTON: Of that eighty percent, what  
13 percentage of that number would be minor traffic  
14 violations as opposed to criminal offenses?

15 MR. SEXTON: Most of them. I could only  
16 think of that rape case and a murder case that  
17 we worked on a couple of years ago.

18 Our community is largely law abiding. The  
19 necessity of driving a car could immediately get  
20 you in trouble in five different ways. Plates,  
21 insurance, et cetera.

22 And although you advise them against it,  
23 what are you going to do when you're working and  
24 sweating out in the fields all week and you are  
25 working with insecticides. And we advise them

1  
2 to change. If they are going into the fields  
3 that have been treated with insecticides, you  
4 certainly want to change your clothes when you  
5 get home, as soon as you get home before you  
6 eat, bath, and dispose of those clothes and have  
7 clean ones the next day.

8 Therefore part of my work is through the  
9 Salvation Army and others and I get all sorts of  
10 old clothes so they have enough clothes to  
11 change clothes every day. If they can't wash  
12 clothes come Saturday or Sunday they're in rough  
13 trouble for the next week.

14 I mean, a big event in the life of a  
15 migrant worker is to go to the laundry and to  
16 buy groceries. Those are about the only things  
17 they do. They might play soccer on their day  
18 off.

19 They don't have a lot of time to get in  
20 trouble. They are out there bending their backs  
21 in those fields all day long. And when they get  
22 home they cook their dinner and then they go to  
23 bed. And they start over again the next  
24 morning. So by and large they are a very law  
25 abiding community.

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The problem comes in with the booze, which comes maybe on their day off or maybe a labor contractor will provide them with the booze to keep them happy and content at home. And then they get into trouble when they run out of beer and they want to go out and buy more.

MR. GRADESS: What percentage of those traffic cases would you say are driving while intoxicated?

MR. SEXTON: Half. And I have a couple in jail right now. Two in Buffalo. They are probably deported. There is a holding order already for them.

MR. GRADESS: Are those case where they would be referred to a lawyer?

MR. SEXTON: I have nothing to do with it. That is out of my area. I can't work with them there. Many times the court drops the case because to hire a translator cost money. In a little local town, say Oakfield Town Court, you might have to pay \$25 an hour for a translator. Well, they say we're not getting into that. They kind of say, let's just call INS. It is easier getting rid of the case that way. Let



1  
2 them plead down or call in INS. It is easier  
3 and the court calendars, the way they are,  
4 that's the way it happens.

5 MR. GRADESS: Gray, I am confused. You are  
6 describing a set of circumstances where the  
7 interest of the farm workers is to get rid of a  
8 case quickly so they don't face INS. And in  
9 describing just now a circumstances where the  
10 court in order to not proceed with a criminal  
11 case will call in INS.

12 MR. SEXTON: No, I wouldn't say that the  
13 court would call them. Well, we have a fellow  
14 who went with his wife -- he was married to an  
15 American girl. He went into Social Services on  
16 something about Medicaid and two INS agents were  
17 waiting there.

18 It was simply that one of the social  
19 workers at Social Services knew he was coming in  
20 and suspected that he was an illegal alien, and  
21 she had them waiting. All the supervisors and  
22 workers denied that anybody did it, but they  
23 were waiting there when he got there.

24 It could be anybody that does that. And  
25 these people live among us, the ones that don't

1  
2 like anybody that's colored or a little  
3 different than them. And that unfortunately is  
4 still here.

5 No, the courts are very just. But a police  
6 officer, he has access to them before the  
7 justice does, before he takes them to  
8 arraignment. Very often they're the ones that  
9 call.

10 And we have eliminated some of that by -- I  
11 mean, like in the sheriff's department, we have  
12 officers there that are very good. If they know  
13 what's happening they call me. It might be one  
14 of the officers out on the road that has a  
15 different opinion and he might call the INS or  
16 extensively to translate and help us.

17 Well, when the INS comes they certainly  
18 help them. They translate and ask for their  
19 papers. And they are on their way to  
20 deportation.

21 So, it can be the officer could be  
22 overworked and maybe it's an easy way to get rid  
23 of the case, just call the INS and ask for a  
24 translator. Ask for somebody to come, I think  
25 I've got somebody here that might be without

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papers.

Recently, because of being so close to the Canadian boarder, when asking for help, the INS is not responding to some of these calls even to the police.

Some of the ladies of the night have arguments with workers and they could make an anonymous report to INS. And INS has to respond to that call, so they tell us. So that it is all over the block.

The activities in INS are sometimes, we think, rather secret. They change their methods from time to time. It is an agency that has grown incredibly in the last five years. The budget has gone from something like a couple million, a few millions into the billions and billions. I think they are funded by the CIA.

MR. GRADESS: When you made the statement that eighty percent plead guilty and fifty percent of those are driving while intoxicated, could you attach a number to that? Are we talking about seventeen a year or seventeen hundred a year?

MR. SEXTON: Not that many. Prevention is

1  
2 what I worked on. Who knows if I will ever know  
3 the result of that. I did -- two years ago two  
4 fellows were killed on a Saturday night. I met  
5 them in the afternoon. They were driving drunk  
6 then on a different road.

7 I pulled my car over and I got out and  
8 asked them to please give me the keys because I  
9 think you're going to kill somebody or  
10 yourselves. They said, no, we're not going to  
11 go off of this dirt road. It was a paved road  
12 into their camp. Nobody used that road. I  
13 pleaded with them, please give me the keys. One  
14 of them got a little rambunctious. I could have  
15 had a real problem. I was taking a group on an  
16 excursion to Niagara Falls.

17 When I came back later that night with the  
18 group the two in that car had been killed  
19 driving at ninety miles per hour. So, what was  
20 your original question?

21 MR. GRADESS: My original question was of  
22 the eighty percent that pled guilty are half  
23 driving while intoxicated?

24 MR. SEXTON: A number?

25 MR. GRADESS: The number attached, the

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volume to it.

MR. SEXTON: Mostly Genesee and Wyoming County, if it is fourteen a year it would be a high number. Fourteen a year. There is two right now, that's a double whammy. A couple more are coming up in the next couple weeks. And then I have a long period of camp. Then I go on the warpath and start reeducating and telling everybody there are two guys in jail right now because they got in a car. They either had open contains in the car or they had been drinking and they went out to get more beer. Be careful, because this is how you get yourself deported.

You can work in the fields every day and go to your house, and go buy your groceries, and do your laundry usually with no problem. But when you invite trouble you're going to get it.

MR. GRADESS: Let's try the topology of cases, because they are all over the block, as you said. There are these cases that prevention works for them, hopefully.

MR. SEXTON: We hope.

MR. GRADESS: There are these cases where

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you might go with a worker to court, get out early, INS is not involved and the case is over with.

MR. SEXTON: That's right.

MR. GRADESS: There is a set of cases that are diverted to INS by the police that you don't have anything to do with. And then there are maybe fourteen cases beyond that that find their way to the court. Is that accurate?

MR. SEXTON: Fourteen would be total. The total for the whole range. I think we could be very proud of the fact that we don't have a lot of problems. That is why I said you won't be hearing much excitement about my area today.

You heard from Laura Fitzsimmons earlier and she might have told you the same thing. We work on a lot of prevention.

MR. GRADESS: Partly I am inquiring only of the cases that are diverted to the police where the police might do a traffic stop. In your jurisdiction if you are not there, they don't want to call you and they have a van full of workers, they call in INS and those people never make it to the court and you never see them; is

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that correct?

MR. SEXTON: I probably would never see them. I would hear about it. Usually it is misinformation that I would hear. I would have to track it down. Usually Dennis could help us.

My two cousins and seven others were picked up and they were INS. Well, usually it is not the case. You're usually in the local jail. Very often INS uses Wyoming County Jail or Orleans County Jail and they pay a rental more or less until such time as they have room for them. Their whole prison down there is not for illegal aliens. And not to mention that they have about one or two down there that might accommodate seventy or seventy-five, maybe one hundred total. If this is full -- and some accommodate people to sent off to deportation. They will pay rent to these various counties where they are picked up and say hold them until we come for them. And then they could come any time of day or night to get them.

The police, the local police hardly get a warning. All of a sudden INS might call and these people are there an twenty minutes later

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and then they take them to the INS facility.

So mainly what I am doing is if they are in that situation, I go in and there is a holding order from the INS. I simply -- I'm not going to help anybody break the law. I inform them what is happening to them because they don't know. They are mystified. Where am I? They have no idea what town they're.

I remember once I had to go over to Mayville. I had called about four jails before that. They were way over in Mayville. And they were transferred to the INS facility after that.

So the first thing you have to do is track down all the rumors because the people, the Mexican people who call, you don't know exactly where the people are. They know maybe where they were taken and that usually gives me a clue. But if Genesee County Jail is full they might ask another county to hold them.

MR. GRADESS: Do the local authorities pretty much cooperate with you?

MR. SEXTON: They're really very good. Gordon Dibble and -- I forgot what the other chief investigator's name, Bill Torrinteno



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(phonetic) -- is that right? Bill something.  
No, they are very good. They seem very  
sympathetic because of the language barrier and  
they know that most of them are not criminals.  
They don't want to jump all over them. They  
realize they are very hard workers and they are  
sending money home to a third world country  
where the poverty is unbelievable to most  
Americans.

So, we have been doing this work with the  
police. I would be very frank about it. I saw  
it from the other end, the extreme poverty. I  
know why the clients tends to get into it. And  
if it were twelve feet, they would climb to it.  
If you have a couple of babies at home, because  
of starvation you would do anything.

But they are here. I don't help people get  
here. Once they arrive if they are a migrant  
worker I help them in education. We are not  
required to ask for documentation.

MR. GRADESS: Is it accurate, is my  
understanding accurate, that your program does  
not provide services to people who put down  
roots?

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MR. SEXTON: After they put down roots they no longer have a need for us. When a child changes schools because maybe -- and this is why our program originally did not include dairy farm workers. It was only field workers who largely went from here to Florida, here to Georgia, who came back and the need was here. Here to Texas. The base of operation might have been in Texas or Arizonian. That was considered a migrant worker.

The university went to bat many years ago and got the law changed to include dairy farm workers because whether your child changed from an Albion school to Perry and then over to Letchworth in the course of a year and a half, that child has changed schools.

The first time the child changes schools the possibility of him not graduating from high school is about forty percent and each successive move does that again. The child keeps falling behind.

So for the children of farm workers we're sending the need, the flag in the school, in the classroom by the teacher. And we send in our

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tutors and work with the child one on one taking them out of the class, catching them up on their reading and math at a level with the class and then they go on. And we have saved a lot of kids from dropping out of school. That is our main thrust. We have quite a few families here too.

We have fellows who are like sixteen, eighteen, up to twenty-five or fifty years old or seventy, but we only deal with up to twenty-two year olds. If somebody is forty years old and gets into trouble, I really can't help them. He is not part of my program. We're just very overworked and don't have the number of funding to take care of everybody.

So we are dealing with the people we deal with in educational programs. When I go into that camp I go in with an English book, cassette and dictionary. If they have time in their schedule, which they usually don't in planting and harvest time. I even send them an English teacher to teach them English as a second language. But usually that is in the off season. Some workers stay here all year and

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work in the cabbage warehouse. In the winter they would have more time to take classes.

We teach them how to communicate in the supermarket, gas station, on the street, with their boss so that they know the names of the tools and the functions at work. Things like that.

So it is educational and it is something we are constantly doing. And hopefully educating them about the difference in the mentality of the police here as opposed to Mexico and other countries. They come right out and say it is incredible here. I say whatever you do don't offer them a bribe, because they would do that in Mexico. Don't even think about it.

MR. GRADESS: Do you have a written curriculum for what you teach?

MR. SEXTON: No. It is kind of involved. Some of it, yes. But some of it is often involved to the problems that crop up.

MR. GRADESS: If someone put down roots and leaves that service, who picks up where you left off?

MR. SEXTON: They would no longer fulfill

1  
2 the definition of migrant, they are no longer  
3 migrants. Migrant, meaning moving, you are no  
4 longer moving. Three years here and the kids  
5 are three years in the same school, and that is  
6 mainly what we are concerned about, the kids.

7 Now all those other people you have been  
8 hearing about, spousal abuse, and specialities,  
9 by and large those things don't exist, but they  
10 do and probably in similar proportion in the  
11 general society.

12 But our main trust is to keep the kids in  
13 school. And for those out of school just to  
14 help them amalgamate into their work and to be  
15 able to shop at the supper market and things  
16 like that.

17 When you get somebody that arrives from a  
18 mountain village and the first time you walk in  
19 with them into the supermarket and the automatic  
20 door swings open they jump three feet out of  
21 fright. They never saw anything like that  
22 before. That's the difference in cultures that  
23 we have to overcome. And maybe seven days ago  
24 they were in that mountain village that they  
25 never left in their life. And because they're

1  
2 the sole support of their family they arrive  
3 here and we try to teach them English.

4 They may speak Spanish in an indian dialect  
5 also. That does not mean they are stupid,  
6 because maybe they were never in school in their  
7 life. Or maybe they went to fourth grade or  
8 sixth grade. But they are terrifically hard  
9 workers.

10 I mean, their work effort is incredible.  
11 From the farmer's end of it we appreciate that.  
12 And by and large from my point of view, some  
13 would disagree with me, by and large the farmers  
14 treat them very well. There are exception.

15 When that happens I go into battle. If  
16 somebody doesn't have heat in their house or  
17 something like that I will be the first one to  
18 raise my voice.

19 But by and large they are very good. I  
20 have families who tell me, anything you find  
21 wrong just come and tell me because I want to  
22 fix it. And usually they -- with the good ones  
23 the action is very prompt. The other ones tell  
24 you to get off their property. So, I've been  
25 tossed out at a few places too.

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MS. BANKS: Where is your funding from? Is it directly from Rural Opportunities?

MR. SEXTON: No. Rural Opportunities is different. They are not specifically educational. They are worrying about people that are wanting to get out of farm work. That is one of their main trust.

Let's say somebody has been here a number of years --

MS. BANKS: I misspoke. Let's say an Outreach worker.

MR. SEXTON: That is what I am, an Outreach worker.

MS. BANKS: Who funds you?

MR. SEXTON: The local school district and the Research Foundation out of Albany. And ultimately that money comes from the general tax fund. It is about a six hundred million dollar program nationwide, usually administered by the state universities in each state. But that can vary from state to state.

We have a lot more migrants -- well, no. It is debatable whether we have a lot more migrants, but twenty years ago it was. Twenty

1  
2 years ago there were a lot more black people  
3 working in the fields and a lot have moved onto  
4 other things. And better education and they  
5 moved out. This is the new group coming in. It  
6 just happens to be the way it is happening.

7 We have this long boarder between a very  
8 rich country and a very poor country. And it is  
9 like a migration.

10 MR. GRADESS: Thank you very much. Our  
11 next witness is John Solberg.

12 MR. SOLBERG: I am John Solberg. I am the  
13 Program Director for CITA. Really I just wanted  
14 to comment here and just offer what limited  
15 experience I do have.

16 I started at CITA this last -- just in  
17 March and part of my work has been to serve  
18 really as the bilingual person in our staff. So  
19 many of the encounters that have happened have  
20 to do with interfacing in the system of any  
21 kind. I have had the good fortune of being able  
22 to come in.

23 Most of our encounters with the system have  
24 been around legal issues at one time or another.  
25 Many times around just laws that are not being



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followed. I mean, labor laws.

And as we were talking about it the thing that I learned is that I don't know the answers, but I know I have connections and so to facilitate the connection within the legal system, immigration. And in this case the Sheriff's Office, the District Attorney Office, or the Public Defenders Office are really critical pieces which most people don't have. And less of which are the farm workers.

One of the experiences that I -- there are a couple of things that -- actually three different experiences that I want to relate that are interesting.

One is that I accompanied a farm worker to court in Brockport and there were no services available to translation, no translation services to translate. So basically I acted as an interpreter. And there was absolutely no problem with that whatsoever. The judge asked questions, the district attorney asked questions. We translated. It was a very simple matter. They lowered the charge.

MR. GRADESS: I am sorry. I didn't hear

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what the matter was.

M. SOLBERG: It was a speeding ticket and basically through negotiations with the district attorney the charge was lowered to something without points and the farm workers was ecstatic and agreed to it, to paid the fine. There was no problem.

Just the other night I went with another farm workers to the court here in Albion and he had been driving without a license, never had a license. So he was driving without a license. And there was another charge, obstruction of a windshield or something like that.

And again there was nobody in the court that could speak Spanish. We talked with the district attorney and the district attorney basically said, did you know -- or asked the question, did you know that if you drive without a license that you could get up to a year in jail, if you're driving? And I just translated and he said no. And he said for that reason we just can't lower these charges. We are going to leave the charges the way they are and if you want to plead guilty to the charge as stated you

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can do that. And if you would like to go to court on it you could do that as well.

We got to the judge. The farm worker said I will -- he told me he would prefer this to be, to have the charges, to plead guilty, pay the fine and get out of there. He was a little bit nervous about being in a court situation.

We got there and the judge basically said, are you a certified translator. I said, no. She said, then we will post phone this to the 18th of August when we have a certified translator. So that was that.

But there was a public defender present, but he didn't speaking Spanish. So I am going to accompany him on the 18th just to make sure that he has a chance to talk with a public defender about his case and make some informed decisions about what needs to happen.

I don't know the law. I don't -- and I didn't know what consequences might happen to him. So I certainly wasn't going to take it upon myself to make that judgement.

But it was interesting, in two cases it was completely different. But the onset, the

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process began without any translator present.

And I don't know what he would have done if he had shown up without me. I mean, there was nobody there that spoke Spanish.

MR. GRADESS: And the public defender didn't take occasion to take advantage to speak with his client? Was the public defender appointed to represent that client?

MR. SOLBERG: At that point, no.

MR. GRADESS: Was that the client's first appearance in court?

MR. SOLBERG: Yes.

MR. GRADESS: And the only thing that happened was it was adjourned?

MR. SOLBERG: No. The other thing that happened was that the district attorney looked at the ticket and after a discussion with the farm worker he basically read a little slip that says basically that these are the charges. As a result of a discussion with his attorney here is the charges. Basically take it or leave it. Plead guilty or --

MR. HORTON: This was unlicensed operation, he never had a license?

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MR. SOLBERG: He never had a license, but he got a ticket for driving without a license. In other words, he didn't get a ticket for unlicensed operation. Do you know what I mean? In other words, the policeman gave him a ticket for not having a license on his person.

MR. HORTON: There are two things he could have been charged with. Unlicensed operation or what is called aggravated unlicensed operation, which is operating while his license or privilege to operate in the state has been suspended or revoked for some other court proceeding. Who was it that said he could get a year in jail?

MR. SOLBERG: The district attorney. He said -- he was asked if he had ever had a license. He said no.

MR. HORTON: Was he asked if he ever appeared in court if he had his privilege or license revoked or suspended?

MR. SOLBERG: No.

MR. HORTON: Because if it was unlicensed operation you could get up to fifteen days in jail.

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MR. SOLBERG: That was a pretty clear misstatement of the facts. It was a shock to me. So anyway, the next date on the 18th he has another hearing and I am going to suggest that we talk to the district attorney or the public defender to find out what the truth is here. So, that was -- those are to completely different kinds of experiences.

MR. GRADESS: Did I understand that the form which he received from the hands of the district attorney after the district attorney spoke to him said, I have discussed -- you have discussed this with your lawyer and this is the offer? Or I have discussed this with the district attorney and this is the offer?

MR. SOLBERG: Basically there was some format. There was some form. I didn't think like to study it. And it had written something to the effect of charges as given, handwritten. And, you know, a signature.

And it was clear that what he was doing with every ticket is he was going through and negotiating with people and lowering some of them and keeping some of them. That is what he

1  
2 was doing with each of the tickets. On that one  
3 he said he could have been charged with a more  
4 serious offense, which would be driving without  
5 ever having a license. He was not going to  
6 lower these charges. That is what he said.

7 The other experience I want to share a  
8 little bit with you was an experience with the  
9 Kendall shooting. There were fourteen farm  
10 workers that were out in the field in Kendall  
11 and they were fired upon by at least one man, a  
12 nineteen year old man with a high powered  
13 assault rifle. Some thirty to fifty rounds. So  
14 it wasn't a random shooting.

15 And as a part of their immediate response  
16 to that they called 911 and the sheriff came and  
17 they arrested two people that had been present  
18 who were no longer at the site. They had gotten  
19 in a car and left. And they charged them with  
20 reckless endangerment. One with 1st degree and  
21 the second with the 2nd degree. And they had  
22 taken statements from two of the farm workers  
23 that could speak English, although there were  
24 fourteen there.

25 That evening the farm workers came to CITA

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at a meeting to meet and basically began to kind of dump what had happened in rapid Spanish. And it become really clear that somebody needed to make sure that this process was followed, since there were only two people that were given depositions and there were fourteen there, and there was only two people that spoke English that they weren't going to get the story.

The next day we called the sheriff's department and talked at length with them about what was going on. They were very helpful. I have received no trouble at all with the sheriff's department on this particular thing.

I went over and I talked to them. I saw the charges and I suggested that they get a translator and get depositions from everybody because the farm workers needed to participate in this process as well. I mean, there was more to this.

So there was some reticent about that. Someone said, I don't know. Well, I said, well, I'll get the translator and you guys pay for it. So I got a translator from Rochester who came out for two successive nights. And the



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investigator took depositions from everybody.

On one of those nights we had the district attorney come out and talk with all the farm workers at CITA explaining what the charges were.

Some question came up about this being racially motivated. This question was raised by the farm workers to which the DA downplayed that as a we can't prove that. Those things are so hard to prove. Not discounting, but putting it on the back burner. The victims -- Crime Victims Unit person provided 911 telephones for each of the houses in which the farm workers lived. I've been going, you know, maintaining some communication between them since nobody in the sheriff's department spoke Spanish.

So if they don't have somebody at hand nothing happens. Communication doesn't happen. And we, never having done this before, I volunteered to do the translating when it is necessary.

But I have also been trying to whenever it has anything to do with the court or anything directly affecting something legal, I get

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somebody certified. I say that is not my job.

So three of the farm workers testified to the Grand Jury, which is quite an experience for them and there has been an indictment. For you let it out and you give it, whatever you do with it.

It has been indicted on four counts and now we are waiting to see what happens next. The arraignment part of it will happen next week.

And what CITA is trying to do and what personally I will -- I'm trying to do is to keep the farm workers as involved as possible in the process so they first of all, and see what it is. Secondly, there is a lot of eyes on this process. And thirdly, that the system takes them seriously. And so far we're just, I mean, we're doing pretty well.

The biggest thing for me is the lack of language capability. It is a huge barrier. Farm workers are also required to go and find somebody and we just happen to be there, which is nice.

MR. GRADESS: Does anyone in the prosecutor's office speak Spanish?

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MR. SOLBERG: No.

MR. GRADESS: The prosecution, not only on this crime but any other crime cases involving farm workers as a victim, would be substantially hindered by that.

MR. SOLBERG: Absolutely. And I have seen that they do respond with translating services when necessary. No one said, no we're not going to do that. So they have actually followed through on the process. But that is only when you walk into the courtroom. And so all the preliminary stuff, all of the wondering, you know, we're scared, how do you deal with this. They end up dealing with it pretty well by themselves.

I am just -- I am really glad that we're around to be of service to them.

That's about it. Those are the experience that I could relate. I have seen it over and over again. The farm workers find themselves in a situation in which some right or some rights basically is being violated or some law is not being followed and they are the ones that suffer for it.

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And they're not wanting to do anything about it for fear of the INS, number one. And fear that they are going to be run off and they are not going to have a home to live in. Or fear that they are going to break apart some relationship. That is important among them in this community.

So if there is somebody in their community who is perhaps doing something a little -- that they shouldn't be doing, and he is involved, they won't talk about anything when that person is around.

There are issues with functions of contratistas, crew leaders, contratistas, which are being undertaken by farm worker because would the contratista know -- well, I don't know who knows what, but I don't believe this is done in ignorance.

Now the owner has a certain relationship with a contratista and there are certain regulations that govern that and the contratista has certain relationships with the farm workers. And there are rules that govern that. If you don't want to follow those rules you just find

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somebody else to do it.

They are passing on things like transportation, things like paying rent, things like doing that to the farm workers. So the contratista can say, I am not doing anything and the owner could say, I am not doing anything. And then the farm workers who is part of his own community and nobody wants to make him be the fall guy. So everybody is quite. And that is my job to try to figure out how to break that and try to begin to unravel it without, in fact, destroying the structure that the farm workers have to deal with each other. And that is the challenge that we are all learning.

MR. GRADESS: Gray, how long have you been doing this work?

MR. SOLBERG: I have been here since February. I spent four years living in Mexico working with poor people putting together a safe and long cooperative. And there were a lot of issues there that are very similar. It wasn't immigration. That wasn't a problem, except for me.

MR. VARGAS: You commented about fear that

1  
2 the immigrant farm workers have reporting  
3 problems to law enforcement. Could you  
4 elaborate on that further? What you have  
5 observed and also what basis, if any, people  
6 have for those fears. What it is or is there  
7 not a basis for that?

8 MR. SOLBERG: Well, I have not -- well, I  
9 have not had a direct experience with a farm  
10 workers who has been picked up by the INS yet.  
11 I am sure that will happen. I mean, I have  
12 talked on the phone with them, but only after  
13 the fact.

14 MR. VARGAS: You are limiting your  
15 testimony to somebody reporting a crime?

16 MR. SOLBERG: Yes. But in any case I have  
17 talked to people who have been picked up by the  
18 INS. But I have heard countless stories and the  
19 conversation among the farm workers is that if  
20 you enter into the legal system almost a  
21 necessary outcome of that is some confrontation  
22 with the INS or immigration. And so there is a  
23 reticent that you don't enter into that. And  
24 people are great at just not talking.

25 So the biggest fear in terms for the farm

1  
2 workers relative to the legal -- a crime or  
3 reporting a crime really has to do with the INS.  
4 That has been my experience.

5 And in the beginning of this year there  
6 were several people in Orleans County who were  
7 simply picked up coming out of a store buying  
8 envelopes or coming out of a laundromat. I  
9 forget the name of the town, but in Orleans  
10 County, for apparently no reason. I mean, there  
11 were no -- there was nothing specific going on.

12 MR. VARGAS: Do you know who was doing the  
13 picking up? Was it the local police?

14 MR. SOLBERG: It was a sheriff's deputy. I  
15 went to the sheriff's department and I asked  
16 them about that and he knew who it was and he  
17 was doing his best to restrain that guy. And it  
18 turned out to be kind of a save the country from  
19 immigration guy.

20 I was going to say something else. I lost  
21 my thought.

22 MR. GRADESS: He was coming out of a  
23 laundromat.

24 MR. SOLBERG: Yes. He came out of a  
25 laundromat and was simply picked up and

1  
2 deported. And that went around like wildfire.  
3 And, you know, from the next month things were  
4 quite. Nothing happened. There was nothing  
5 going on here. Everybody was happy.

6 I spent quite a bit of time talking with  
7 the sheriff's department and district attorney  
8 about generally the Hispanic's or the Mexican's  
9 relationship to the law from my experience in  
10 Mexico. I watched it. That the law is not to  
11 be trusted. The law is to be paid. Whoever has  
12 the power has the law. And if you get caught by  
13 the law or if you are picked up by the law you  
14 really don't know what's going to happen. There  
15 is no process that you could trust.

16 And so when a big white guy gets out his  
17 car and walks up to a bunch of farm workers in a  
18 car, he is bringing with him a whole history and  
19 basically generating a fear. So if he comes  
20 across that way as well, he is just -- they are  
21 not going to get cooperation. They are going to  
22 get withdrawal.

23 The sheriff was telling me about several  
24 occasions in which there had been crimes  
25 committed. I mean like assault type crimes and



1  
2 Mexican witnesses that were there would not say  
3 a word, just not a thing. And it was not  
4 because they were good friends of these people,  
5 it was because they would have to go into the  
6 system, join the system and they were not with  
7 it.

8 So I think a lot of this fear gets accented  
9 by the behavior of the sheriffs, and the sheriff  
10 deputies, or the state police. I mean, I have  
11 seen the flashing lights behind me. So I pull  
12 over and I see this guy get out. Is standing  
13 and he walks up to you. And as a presence that  
14 does not like make you feel like dad is coming  
15 down. It is more like I don't know who is  
16 coming down or like why is he coming down. I  
17 feel that. So I think that is a piece that we  
18 are trying to work with.

19 MR. GRADESS: That raises an issue that  
20 Mr. Alcantana testified to. You said that this  
21 doesn't seem to be a hospitable community to  
22 farm workers. I wonder how hospitable it has  
23 been to CITA. I wonder if you could describe  
24 for the record the antagonism or fear you are  
25 understanding.

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MR. SOLBERG: I started out by assuming there is no problem. Personally I have no experience and I don't have any experience. So I'm not going to pretend that I do. I am not, you know, going to take on the racialism I have seen. I am not going to take that on as a receiver of it.

I have simply been very fortunate with every person that I have met, whether it is the district attorney, or the sheriff, or the deputy, or the jail people, or a judge, whatever.

Basically, including the farmers and just said, you know, this is my job. This is CITA. This is what we do. I am here to do this and this and this. How could we do this.

So I have not personally experienced any kind of negative response toward me or toward CITA. I think time will tell. I mean, if you ask me that in another three or four months after we've had a whole season, I probably will have had a few experiences. But up to now my experience has been, you know, I have not been like welcomed with open arms, especially when

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you talk about farmers and growers. But I have not felt any kind of immediate rejection either.

MR. KING: Have you ever experienced or ever encountered a migrant worker being convicted of a charge and not knowing what the charges were when they were convicted?

MR. SOLBERG: I have heard of that.

MR. KING: Or never having an interpreter?

MR. SOLBERG: Not having an interpreter, yes, a great majority of the time, the whole thing without an interpreter.

MR. KING: From arrest - -

MR. SOLBERG: From arrest all the way through paying a fine. I have never heard of anyone actually going to jail for a crime without having any English/Spanish, but traffic tickets, yes.

MR. KING: I mean, if you were to go from a scale from one to ten and ten being the worse, what would you consider that to be?

MR. SOLBERG: My experience is limited.

MR. KING: What do you mean by limited?

MR. SOLBERG: I don't want to make an evaluation unless I have some clue as to what I

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am talking about.

MR. KING: Basically like talking about people going through the criminal justice system for a month for a minor infraction from start to the end of a ticket, not having anybody speak their language.

MR. SOLBERG: I would say that the system, if you look at the qualities of the system that are provided, the system's services, I would give it a very low rating. About a three.

If I were to look at the number of people who are willing to work with the farmer workers and Hispanics, to walk through that process and provide that, just because they don't want to see this injustice dumped on them, I'd put it much higher. But the services are being provided voluntarily by people that care.

MR. GRADES: Based on what you know, where would you place the public defender?

MR. SOLBERG: I have no experience whatsoever with them.

MR. GRADESS: So other than in the Albion Village Court and in Brockport those are your three?

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MR. SOLBERG: Yes. I mean, I have gone to another courtroom and worked with the farm worker on another issue in court and the Social Service people provided a translator. But I didn't know she was going to show up and it was good she showed.

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One of the things that I noticed in that encounter was that the lawyer, this person's lawyer did not speak Spanish. He was not explaining to his client, what are the consequences, what are options of what might happen. And the translator, that wasn't her job. So I basically was working as an advocate for the farm worker asking a lot of questions of the lawyer. And having the lawyer explain to the farm worker the consequences.

18

MR. GRADESS: Was that a criminal case?

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MR. SOLBERG: No, it was a civil case as well. But it is, I guess, just these first three or four months having been eye opening experiences. And it just gets bigger.

23

24

MR. GRADESS: Maybe we will have to come back.

25

MR. SOLBERG: The more attention that we

1  
2 could pay on this and the more we can shape the  
3 legal system in a way that actually serves those  
4 that need it the most, are better. I would say  
5 that I could spend all my time working with farm  
6 workers who are just needing someone to walk  
7 with them through the legal system or filling  
8 out forms, I could spend one hundred percent of  
9 my time doing that. And spend none of it  
10 organizing people or empowering people to  
11 empower themselves. And I think that speaks  
12 something to the way our system is organized of  
13 those who care and the services so that  
14 empowering of those that need it is last on  
15 the list.

16 A great way to keep people disorganized is  
17 to have all organizers have to do government  
18 services for them. So I am -- the hope that I  
19 see is in the people that really do care and  
20 that I guess that are in the system in a  
21 systemic way rather than a kind of token, you  
22 know, we could fix this case. We could fix that  
23 case. Or whatever generates these cases. That  
24 is where we need to start fixing things.

25 That is a part of what we want to do at

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CITA, to empower the worker so that they can speak and that someone among them could act as their own translator and that they have the right to do that in the work situation.

It still doesn't exist, does it? It will. It will. I guarantee it.

MR. GRADESS: Any one else? I know I speak on behalf of the New York State League of Women Voters and the Public Defenders Office, I would like to thank you and thank CITA for all of the hope that you have given us over the last four months in preparing for the last hours that we spent with you for this hearing.

Without you we would not have been able to do this. Thank you very much.

MR. SOLBERG: You are welcome and thank you guys for your commitment.

MR. GRADESS: Our next speaker is Betty Garcia Mathewson.

MS. GARCIA MATHEWSON: Good afternoon. You could call me Betty. Let me see, where do I begin. I have lived in this community for about sixteen years. In early 1990 I began working with the farm worker community. At that point I

1  
2 worked for Rural Opportunities. And so at that  
3 point in my life I was very much more closely  
4 involved in the day to day kinds of things, the  
5 specific cases, and the trials and tribulations  
6 that the people that we serve had been dealing  
7 with in the criminal justice system.

8           When I say the people we serve, because  
9 over the last decade the migrant stream has  
10 changed some. It has continued to transform  
11 even more to the Latino population. It was just  
12 at the beginning of that ten years ago. So at  
13 that point in time it was a mixture of  
14 African/Americans, the new incoming Mexican, and  
15 Guantanamon's, Puerto Rican's and some more  
16 white farm workers than you see today. And  
17 today we are most predominately in the migrant  
18 stream, Latinos. And that kind of  
19 transformation has been happening around the  
20 country.

21           I would say that the kinds of issues that  
22 people were having then, and that I hear people  
23 having now, are similar. They are the same  
24 issues.

25           My current position -- in that position, I



1  
2 ran three Rural Opportunities offices. I was  
3 administer there. So my programing unit was in  
4 Genesee and into Niagara County. In that I  
5 worked with staff who worked in all of those  
6 communities. That was that and I am getting  
7 into my current capacity. It is statewide.

8 I work with the Cornell Migrant Program.  
9 We provide systems change support to school  
10 districts and nonprofit agencies.

11 I personally made this shift because I felt  
12 like I wanted to really work on making our  
13 agencies more efficient and more effective.

14 My work on systems change and diversity is  
15 aimed at the public sector because the public.  
16 As you know, we pull drowning people out of  
17 river forever. And that's nice. But we have to  
18 walk upstream and see what is throwing them in.

19 Part of what you are doing now is part of  
20 that walking upstream. We periodically have to  
21 stop and assess. So I want to thank you for  
22 that. That's an important thing.

23 The issues that we have, and I don't want  
24 to reiterate a lot of like the specific stuff  
25 that I know that Renan Salgado spoke about this

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morning. I know him well. I would trust anything that came out of his mouth. And I would say ditto to it.

But what is unique about my present position is that I provide this support to Rural Opportunities, New York State Migrant Act and the Extension System in New York State.

Migrant Act and Rural Opportunities are both statewide. They both serve farm workers. They are sprinkled all across the state. I have interactions with staff and administrators all across the state. And I would -- and the work I do, the kinds of interactions I have with people are understanding differences in workshops where people come to learn about our inherent differences. How we have experienced them and then put that out and reflect upon our society. And then we learn a vision of partnership, which I believe is our U.S. American ideal.

And so in those interactions there is a lot of personal sharing, and breaks, and overnights such as retreats. So I would say in those interactions with staff I get a lot of stories and people thinking and trying to figure out how

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to respond to me. Okay.

Then we do skill based training, giving people specific skills like negotiating common ground, facilitating consensus, really listening to each other, those curriculum development evaluations. Those kind of things.

Then I do a lot of work with administration and management. A lot of strategic planning on how to make change throughout an organization. How to systemically create the kinds of things that allow your classroom teachers to expand their curriculum. And a lot of your school counselors to work well with all kids.

So I am just saying that to you so that you have a sense of the quality of my different interaction with the different people across our state.

What I came here to talk about was the fact that none of what you have heard today is a surprise. We have inherited a divided society. We all know it. We just don't talk about it because we're tense. We have like this thing like it is our fault. It is none of our fault. We all got it. It is not even our parent's

1  
2 fault. You know. I mean, it has been going on  
3 for a long time.

4 So when we have people serving other people  
5 of cross difference inequity happens. Just  
6 recently we desegregated the data in all of our  
7 schools. It doesn't matter if a young black man  
8 is in a middle class school or a poor rural  
9 community like Albion, he is not going to do as  
10 well as his white counterpart. It doesn't  
11 matter if you're poor, you are not going to do  
12 as well as the middle class kids.

13 It is conscious? No. Does it happen every  
14 time the teacher utilizes all of the teaching  
15 strategies with the kids she is most familiar  
16 with until she figures out one that works. With  
17 the kids she doesn't know it is not even  
18 conscious that she stops trying.

19 You know the district attorney or the  
20 public defender, they're not conscious that  
21 they're not paying attention.

22 We have a case in this community right now  
23 and it's not the district attorney and the  
24 public defender, but the district attorney has  
25 identified with the perpetrator in his family

1  
2 more than the fifteen people that the  
3 perpetrator shot at. And all of the things that  
4 he is saying is around a young boy, you know, a  
5 boy with poor choices.

6 If we switched the color and put a Mexican  
7 man, two Mexican young men shooting at fifteen  
8 white men and woman at work, the guy would not  
9 be out on bail right now, you know.

10 So, systemically infused throughout our  
11 entire system, and it is not because individuals  
12 are bad, you know, and then you add to that the  
13 training that we get as police officers, or  
14 as -- I know Jesus Vallejo, he was here this  
15 morning. And he told me before he could speak  
16 English he got harassed all the time. Now that  
17 I can defend myself, and he is a pretty  
18 confident man, he always has been. I have known  
19 him since when he first came to this community  
20 when he was about seventeen. He has always been  
21 confident. So once he learned English he could  
22 defend himself and do okay. But that is the not  
23 the average seventeen year old, and that's not  
24 the average twenty year old, or whatever.

25 So we have young men away from their

1  
2 families alone. And I don't care what color  
3 young man are or how much money they make, if  
4 you have lots of young men alone, whether it is  
5 in the service, or college, or fraternities,  
6 what do a lot of young men do alone? They get  
7 into trouble. Right. They do stupid things.  
8 Why? Because woman are not -- moms,  
9 grandmothers, uncles, aunts are not there. You  
10 know, the calming influence that are around us  
11 that are supporting us are not present.

12           And in another community when college kids  
13 got upset because the drinking laws went up to  
14 twenty-one, and they did what we would consider  
15 rioting, if they were not college kids. They  
16 broke windows in cars. The community came  
17 together and strategized to find out how to make  
18 these college kids feel more at home.

19           That would not be the response when young  
20 people of color do that. And it doesn't matter  
21 if they are immigrants or not. That's not the  
22 response when poor white people do it. It  
23 doesn't matter if they have been here for ten  
24 generations or not. You know, the white people  
25 working in dairy farming, they have been poor

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white people since the 1600's here and they get treated, you know like that.

So that the problem is endemic is not a surprise. But the solution has got to be systemic. The solution has got to include ongoing training starting with management. You can't start with the district attorney or police officers on the front line. You have to start with the people providing them leadership.

You know, I have to start with the principle and the director, and the program administer because if they can't walk the talk they can't create the environment for their staff. And then I could start working with staff.

And people need to truly understand our inherited divisions. And you know, it is not a big deal. We're all in the mess now. I don't have to point at white men and say you're the bad guy. Because, you know what, I'm a bad guy too as a straight person, or as a formally educated woman, or as a middle class woman. Sometimes I am the bad guy and sometimes you are the bad guy. We all have been -- you've been a

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bad guy as a man. Right. Take away the black.  
You know.

So, we have to really understand as  
professionals if you are going to put a bridge  
in it may not matter. But if you are working  
with human beings especially in our public  
sector, our tax money pays for everybody to get  
services. And everybody doesn't. Across the  
board everybody doesn't.

And so systemically we need to do  
organizational development, organizational  
change, initiative in the public justice system.  
There is no small answer. There is no easy  
answer. There is no easy answer. There is no  
one shot thing. It is a systemic integrated and  
understanding at all levels in the department.  
That we got this master working on changing.  
This is about American.

To me it is so clear, you know, that tax  
money is meant to serve all people. And  
therefore understanding what we have inherited  
and understanding that we are all human and we  
can't do it well, we have to invest, and have  
diversity competencies, and understanding just a



1  
2 matter of course in every single one of our job  
3 descriptions. And in every one of our annual  
4 evaluations. That is a portion of what we have  
5 to do.

6 I am involved. I work at Cornell  
7 University. I am involved in a research project  
8 funded by USDA, because the nature of  
9 transforming communities is happening across the  
10 nation. You are in a unique community right now  
11 when you sit in Orleans County because it has  
12 been happening here for a long, long time.

13 In other parts of the nation where they are  
14 just building hog plants, and they have these  
15 huge hog farms and chicken farms and processing  
16 plant communities, they are having five thousand  
17 Mexican immigrants move in within a period of  
18 two or three years. A small rural community.

19 You know, huge things are happening. Huge  
20 things are happening. And they are not positive  
21 in communities.

22 But you know what, the processes are not  
23 bad, but they don't think about their community.  
24 The immigrants that are coming in are not bad.  
25 The police are not bad. But all the same things

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you heard complained about today are happening in those communities. Because people are coming into a context of learned racialism.

This is the most hostile community that I am in and I live here. How ironic. And I'm a diversity women. And I live in the most hostile community and I spend time in. I have lived and worked in Illinois, Wyoming, South Carolina, New York, North Carolina. Okay.

But Orleans County is the most hostile place I've ever lived in as a Latina. And I am a well spoken, clearly bilingual -- you know, I speak English better than most people if you are in this community that speak English, and I speak Spanish. But this community, and it is not bad people, it is not. I know those people. I love these people that I have grown to know.

Once they know we have gotten far enough along in racialism, that individually once people know you, they could put you in a little exception box and grow to love you. But it doesn't change transfer to those split second judgements we make at work. It doesn't transfer to, oh look, I've got Vallejo coming in with a

1  
2 ticket. I wonder if this person speaks English.  
3 I wonder if they'll need that. We don't have  
4 that level of consciousness. It doesn't  
5 transfer and people don't even realize how rude  
6 they are and how mean they are.

7 The cool thing is that we are far enough  
8 along that with consciousness people make a  
9 change. There are some people who have done  
10 incredible work in research in video to video.  
11 I don't remember their first name.

12 They researched white people's responses to  
13 applicants in job interviews. To me that's  
14 transfer, so I am going to tell you this. Okay.

15 They took white and black applicants, same  
16 qualifications. So when the applicants were  
17 unqualified for the job the white people  
18 accurately perceived the qualification of both.  
19 When they were both qualified for the job there  
20 started to be disparity in perception perceiving  
21 the black applicant to be less qualified. The  
22 greater over qualified they were for the  
23 position the greater disparity and perception.

24 So the more qualify you are as a person of  
25 color the less accurately that white people

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could perceive you.

The good part of that is there is a good part. At this point in our histories none of us want to make those kinds of things. We always are appalled at, you know, what we use to consider disgrace or anything. We have got great literature and we are moving out of that. There is so much subtleties.

Now when white people have a consciousness about it, when they learn about it -- you know, we all make that mistake. A little information and disparity and perception get cleaned up. Greater disparity and inaccurate perception get taken away with education.

As a heterosexual woman I may do some very -- make a homophobic decision. But if I am not clear, that decision would be homophobic. Okay. That is as far as we went. I don't want to hurt a guy purposely and most white people don't walk around and want to hurt an immigrant. They don't want to do that. It is very clear. Those are people that go about with -- but we make a lot of subtleties based on not knowing.

But we make a lot of subtleties based on not

1  
2 knowing. Like teaching the same curriculum to  
3 people who are not present, not paying  
4 attention. But once we bring consciousness to  
5 people's minds, and we are conscious, we're far  
6 enough along that we stop ourselves and think,  
7 no I have got to change my behavior.

8 So people do change behavior with  
9 consciousness and people make decisions not to  
10 be racist or not to be classiest when they  
11 clearly understand which is which.

12 And we are running through a busy day and  
13 we have this kind of a public defender's case  
14 load and this kind of public defender's life, we  
15 don't always have the time in the day to stop  
16 and be conscious. If people have not been  
17 trained to stop and be conscious, they're not  
18 going to be.

19 So it is about training people to be  
20 conscious and training people what more subtle  
21 systemic racialism looks like.

22 The fact that we had someone shoot fifteen  
23 people working in the fields in our community  
24 and it took a week before the police  
25 investigators interviewed them, that is racist.

1  
2 When all you have to do is go open a Rochester  
3 yellow page in the telephone book, and there are  
4 pages of professional interpreters.

5 The two people who were interviewed were  
6 two people that spoke English. And they weren't  
7 going to interview anybody else. It took John  
8 Solberg, the person that sat here before me, to  
9 say, no, you need to talk to everybody. It took  
10 John Solberg to bring the interpreter.

11 So I guess I could end my little tangent  
12 here, if you want to ask me any questions, but  
13 my testimony was really about highlighting the  
14 systemic nature of this. If you don't find  
15 disparity, you didn't do a good job.

16 We should expect to find it and we need to  
17 emotionally prepare people to intellectually not  
18 wrestle with the information because there is no  
19 institution in American that we will go into and  
20 find total equity. We won't. But it is about  
21 creating American. Right. Democracy is working  
22 every day.

23 In ten years we might be sitting here  
24 talking about a different immigrant worker or a  
25 different way, but it is about making America

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work. So that my story.

MR. GRADESS: Questions.

MR. KING: I just was wondering workers about what you are saying in a different situation. Like in our organization we are top heavy. We have white and African/Americans on the senior staff and we have a Hispanic black who is a female. She covers three grounds.

MS. GARCIA MATHEWSON: Right. Right.

MR. KING: But we are looking for an education and one of the things that became a little disturbing to me is to see that in the whole organization there are other blacks, but there are only two blacks. They were the only people who were reviewing the resumes, which is one other crucial part.

My response was I got all of these, I will read all the resumes to make sure of that because we have a problem with people of color or people of color with some backbone.

MS. GARCIA MATHEWSON: Right.

MR. KING: It is all right to hire people with color. Anyway, the reason I mentioned that is that the first commitment is that we are

1  
2 suppose to be a very conscious organization. We  
3 work with Hispanic African/Americans, I guess  
4 more white neighbors.

5 We have been in business for twenty-five  
6 years and most of the people that live in our  
7 developments are African/Americans and  
8 Hispanics, but yet nobody saw that. We need to  
9 have more people of color, you know review the  
10 resumes and I am just mentioning that.

11 MS. GARCIA MATHEWSON: The hiring process  
12 is critical because the reality is that  
13 sometimes -- well, in our organization  
14 especially for public servants we want to hire  
15 people with diversity lens. We want to hire  
16 people with a little bit more maturity level to  
17 work with a cross differences. And some of the  
18 people that are farther along are people of  
19 color and the more empowered they are they are  
20 scary us.

21 I as a woman am scary to some people. It  
22 shocks me because I am a little lady. You know,  
23 I'm not that big and I'm pretty nice. But I am  
24 very accretive. So I don't fit with what they  
25 are taught. And they could handle the same



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behavior out of any of you three guys and they won't think twice about it.

And so that is really important. Around our hiring table we need to have these kinds of conversations and we need to have the kind of questions for people because I want you to bring in people of color, but I want you to bring in empowered people of color to help you make a difference. And I don't care if you bring in white people. That's a wonderful thing, but I want you to bring in white people with a lens who have some consciousness.

It is more expensive, and I tell the organizations I work with that you have an ethical responsibility to support the people that you have already hired. You have an ethical responsibility to help them make that movement because you hired them.

But when you are hiring new people you want to really work on someone with that lens because that is more expensive to create. That is inner reflection. That is personal consciousness. That is thinking. That is harder. I could teach you how to fill out a form. There are

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rules and regulations. If you are smart enough to get job, if you are smart enough to go to college. We can learn. Right. Skills are easier to teach.

And so hiring is critical. And thinking well about hiring. And thinking well about everybody that comes in. If you are bringing new people in, don't bring more people in with the same problems. We have come far enough. There are so many people out there thinking well about these issues with the greatest of intention.

MR. KING: When you were talking about consciousness you made a statement, if a person was conscious that he would think about it. I am sure that here is a group of people that I would consider conscious. But in Albion they continue to set up the same kind of set up.

MS. GARCIA MATHEWSON: We have to help people be conscious over every little thing that happens. We raise consciousness on interviews and we raise consciousness on professional development. We raise consciousness on Outreach. Until we finally get to the point

1  
2 that people are like, I get it. I do that all  
3 the time. I get it. But we don't automatically  
4 do it all the time.

5 We think we're conscious because we are  
6 comfortable being together. But being  
7 comfortable being together is not being  
8 conscious. It is about saying, okay this  
9 requires an extraordinary consciousness around  
10 race and class and ability.

11 I mean, ability, I mean there is a huge  
12 percentage of the people who are in our  
13 correctional facilities that have some kind of  
14 learning disability or some level of mental  
15 retardation. That is significant. I think it  
16 is something like eighty percent last time I  
17 knew. I use to run the program.

18 So whatever the difference is, and we all  
19 know what the excluded groups are, you know.  
20 Women, colored, gay. Whatever. Poor, educated  
21 by life, speaking English as another language,  
22 you know. Too big, too small. You know.  
23 Anybody that is not Christian. So we all know  
24 what that is.

25 Anything time we are working with cross

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differences we have to be conscious.

MR. GRADESS: Is it accurate to say -- let me take a moment. Is it accurate to say that the reason why white people in American misperceive how far and better things have come in civil rights, because of what you said, when they were conscious, because we are comfortable with each other. Is that the kind of movement you are describing?

MS. GARCIA MATHEWSON: We have made that, but we have a lot more.

MR. GRADESS: That is a terrific concept. Darryl is out of the room in the hall, and he always says that too. Maybe if I hear it from two of you I would understand it.

When you said at the outset that you have to go on to training management. We can't talk that language to people --

MS. GARCIA MATHEWSON: First. You can't talk to them first.

MR. GRADESS: I would like to understand that clearly. I think the sense of building from below and relating to people who might more easily take it and sort of run a revolution, all

1  
2 the sorts of things that come together are very  
3 hard to understand. I would like to technically  
4 have an understanding of what you are saying.

5 MS. GARCIA MATHEWSON: I would not totally  
6 put that aside either. When you are making a  
7 systemic movement it is really important to put  
8 a big investment up front on your management and  
9 leadership. If you think about a manager's  
10 role, a manager's role is about creating an  
11 environment for their staff to do their work.

12 If I just started training a teacher, let's  
13 say, I create people who then want to go make  
14 changes. But they can't make changes without  
15 their boss or building administrator's support and  
16 resources. Which means access to expanding  
17 materials, time for planning, maybe additional  
18 training. Do you know what I am saying?

19 So there is a place where by the nature of  
20 the role of management, management needs to have  
21 a sense and an understanding so that they could  
22 help create the environment for people that come  
23 back charged up and want to do work.

24 Now, at the same time, because we do many  
25 things at once when we are making systemic

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change, we are cleaning out lots of really good understanding stuff, different stuff across the board and not one size fits all.

Like we have a training which, actually I'll leave a few of these flyers with you, that is a three day experience that people come to.

This is not for people you want to fix. Okay. The choir -- the choir practice is singing. Right. This is for people who want to think well not only about themselves, but about other people as well. Okay. That is not the one size fits all training.

For some people diversity training is just sitting in a room next to somebody who is different watching a presenter for twenty minutes. All right. And for another person it is the demographic changing that they need to know it is happening everywhere in their community.

So, as you are working with management, management is putting stuff out and then you are creating a body of change agents throughout our system.

I would guess you have incredible district

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attorneys sprinkled around this state.

MR. GRADESS: You meant public defender.

MS. GARCIA MATHEWSON: Yes, public defenders sprinkled around the state. People that are so committed to the concept of the American justice system. So that you then find people who are change agents. You probably have some great secretaries. Do you know what I mean? Some great county -- I don't know your title. Whatever. You have people sprinkled throughout the system.

That group which is what you were thinking of. That is what I thought of when you thought of what was coming from the bottom.

That group is like the voice of the organization. You invest in them as well. They give a lot of recommendations to management, because management can't make decisions in a vacuum. They need perspectives from everybody.

And that needs to be diverse across all of our group identifies, and all of our positions, and all of that kind of stuff. And then because you are a public organization -- I mean my hope is that the work I am doing with nonprofit is

1  
2 that people will be begun doing service well  
3 enough like in Rural Opportunities, other people  
4 and places, that they would help their cause,  
5 push up county public defenders, push them to do  
6 the work they should.

7 So I want to be the consumer person to help  
8 you.

9 MR. GRADESS: That leads me to the second  
10 question that I have. We just handed you a set  
11 of standards that have been drafted by our  
12 Client Advisory Board to characterize what they  
13 would like to see as a relationship between  
14 client an attorney.

15 Now there is -- I guess what I want you to  
16 do is to sort of apply your thinking that you  
17 just described with reference to systemic social  
18 change around the issue of race to this  
19 particular problem which we are facing trying to  
20 get, people who for a variety of reasons, have  
21 reason to resist this. Some of those are  
22 personal reasons. Some of those are those of  
23 financial reasons. Some of those are experience  
24 deficiencies. Whatever they are, they clustered  
25 as any obstacle. When you make reference to



1  
2 these folks, nobody being a bad person, but  
3 tactfully it would be very helpful to this board  
4 for us to hear your thinking on how we might go  
5 about taking advantage of your thinking to  
6 accomplish and embody these standards.

7 MS. GARCIA MATHEWSON: Well, when I read  
8 this, and that to me is what I really believe  
9 partnership is, the us idea. This is what we  
10 create. We create wonderful documents and  
11 wonderful standards. This is beautiful. This  
12 is a public defender's operating partnership  
13 across whatever.

14 We can't achieve this without a focus on  
15 our inherited division. I keep coming back to  
16 that.

17 This is a vision, but without focusing on  
18 getting to the place where we all know, we have  
19 to have movement to get there. And different  
20 people have different movements in different  
21 places.

22 Systemically you start with the best of  
23 intention, nobody is that bad guy and everybody  
24 has got to socialize. But if you work for me I  
25 have to have certain expectations. I have to

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have certain standards because I am paying you.  
Right.

And so training, support, and evaluation measures need to be congruent so that you are developing, you are giving people an opportunity to develop these skills, because these are skills. And we could all sit around the table and say we could do that. We could accept responsibility and school character education. And we're talking. And then children see the janitor, the teacher, the secretary, the superintendent, the school principal all treated differently and in a very different respect level.

But we could all sit at a table and say respect. So, we do have universal concept that we all buy into, but we socialize to respect different people differently.

So systemically we have to have the training, the resources, and then the evaluations all be congruent to end up at this place. That is why you have to help -- do a lot of work with management. That is the work of systems change. That is to help management in

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making those various systems work.

I can't evaluate you on something I have not given you the opportunity to learn. And if you already work for me I can't change the rules without giving you a chance to learn.

There is a lot of really good thinking and a lot of really good work in this field in the United States right now. It is a wonderful time for you guys to be doing this.

MR. VARGAS: Does your program have any experience with -- does your program at the Cornell Migrant Program have any experience with doing diversity training with legal offices here in New York? And how has that experience been with any sector whether it be the District Attorneys Office or prosecutor's office, where ever?

MS. GARCIA MATHEWSON: We have actually, after a racially charged incident in Sodus had been talking to the local police and sheriff's department. They did approached us about doing work with them. We really hadn't had time. So we have not as a system. I do have a colleague that currently works for us, that prior to

1  
2 coming to our program did some training with  
3 police officers.

4 And that experience was that it was a very  
5 difficult group. I think if we were to design  
6 -- and it could be done, you have to go in where  
7 -- we all have to start with our excluded group.

8 You can come in -- like when I do a  
9 workshop with a lot of women who are white  
10 woman, I can't talk about racialism right away  
11 because they feel totally powerless. So to make  
12 them think about their dominate identities when  
13 their entire life is poverty and gender. It  
14 gives them a different experience. That doesn't  
15 work.

16 So to work with the criminal justice system  
17 you would want someone with enough knowledge of  
18 identity development, and different identities,  
19 and the multiple identities, and you would want  
20 to really talk to different police officers  
21 because they work with different people and they  
22 are in communication with people on the front  
23 line. So you need to think like that.

24 Lawyers are also another group. You know,  
25 that we have different unique experiences.

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2           So, what I would say is that my colleagues  
3 and I have come to believe about people as  
4 Edwardo's negative experiences, it had more to  
5 do with just coming in, not really having been  
6 really prepared to think about that group and  
7 its uniqueness within the community. And then  
8 not having been really prepared to come to a  
9 diversity workshop, you know, the way in which  
10 we respectfully create an environment for people  
11 to come that are willing to participate and not  
12 be a hostage. Yes, the training hostage is  
13 really different and it is not as effective.

14           And so that is a long enough story. Sorry.  
15 But that -- so we have not had a lot. And there  
16 may be people who specifically work on that.

17           My focus is public institutions. I do this  
18 because I want to help America be more. And the  
19 justice system is a part of that.

20           MR. GRADESS: Anyone else? Thank you,  
21 Betty.

22           MS. GARCIA MATHEWSON: Thank you. Thank  
23 you for listening.

24           MR. GRADESS: Our next witness is Cerafine  
25 Zapien.

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2 (Interpreted by Karla Andrews.)

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MR. ZAPIEN: In August of 1997 I was doing my laundry at the laundromat and the police was watching two families in the laundry. I called immigration a couple of times to come to call immigration. I check with my family. Me pay \$3,000 to lawyer. Me paid \$3000.

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MR. GRADESS: I think it would be better if he testified in Spanish.

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MR. ZAPIEN: Me paid \$3,000 and the last court date he did not see the judge and his family. He didn't see the judge to see what he was saying. The attorney came and he told him that his family could remain in the country for four months.

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In December 12th, I had to take my family to the American consulate in Guadalajara, Mexico to present their papers that actually took my family out of the country.

21

22

I remained in Mexico for ten months after twenty-eight years of not being back.

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In September of 2000, I came back with my son and I went everywhere, Byron, Batavia, Elba, and here Albion all by myself. And I can't

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still fix anything to bring my family back. And that is my story.

I have an attorney that he is trying to fix me a visa. So I receive two letters from American consulate about my daughter but nothing about my wife. This is what my attorney has told me. She has -- she has a court date in Mexico for her medical examine.

And I have been telling my attorney what is going on with my wife. And they told him that they are working on it but I still have not seen anything.

At least I would like my daughter to come back so that she could start school. She just finished in her ninth grade. And I believe that this is to stop, this thing to stop.

And the thing about the police here, this 23rd of June I was walking down Main Street. There was a man sitting outside on the street and he had been asking for a ride from the street. And I told him yes. And then I put the signal light on because I was going to make a right and the policeman was on the back of my car. And when I talked to my friend, then the

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policeman put his lights and parked behind me.  
He took my car and he sent me walking to my  
house.

I have to go to court on the 18th of this  
month. And I don't know what they are going to  
do on the 18th when I have to go to court.

In this area all the state police stop any  
Spanish, Mexican, Latino and they ask them for  
the green card instead of the license or another  
form of identification.

And then sometimes when somebody carries  
their green card they tell -- they say, you are  
not immigration to be asking for my papers. And  
the answer they get is I am not so much asking  
for your papers and then they just call  
immigration. They call immigration and two more  
officials.

If you argue -- if you have papers then  
they will let you go. If you don't have papers  
they take you with them.

The other case I wanted to say is in  
October of 2000, I have been here for two days  
since I was from Mexico. This was in LeRoy in  
the morning. I went to a gas station at Red



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Apple. We were like ten in a van from the contractor. We bought coffee, soda and we went to work.

At ten at night we were coming back and we went to the same gas station and in that moment a lot of police, a lot of sheriffs, police from the state were running around the gas station that nobody should get out of their car.

The people that were in the store were checked. There was a Mexican that was illegal citizen and he spoke English. And he was asking what was going on. And they were telling him something is wrong. And then all the cars, the police, the sheriff and the troopers they took all of them back to the police station.

There was a student from Germany. They handcuffed him. They were taking him to the police station. And in a very small room, ten people. Jose is the name of the person that knows English. He says what happened. The officials say I don't know.

In a while they took them out of the room and we were put in a big room. And three immigration officials came and they say good

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night.

A man, a young man, do you have papers. There were people from Guatemala, Mexico. Nobody had papers. The student from Germany had his permit, but he had it in his house. He had a permit, but it was in his house.

I took my social security card and I gave it to them. The guy from immigration asked if it is a good one or if it was a forged one. And I said I don't know. You gave it to me. Okay. And then he put it on the table.

After they take everyone. Then one policeman say, he talked to me that I should go to him. And I went. And he wanted to take a picture and my fingerprints. And I say why. I have a license and I have my social security card.

And he said in the morning that -- in the morning that you were in the store three people robbed the store. And I say I didn't rob anything. And I didn't get my picture taken. And I didn't get the fingerprints.

There was a policeman and he say what's going on here. And the other policeman said,

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well this man doesn't want to get his picture taken or his fingerprints. I said of course I'm not going to let my picture be taken or fingerprints because I didn't steal anything.

And then from there I was taken to court in front of a judge. And the judge asked me for my date of birth and he gave me a sheet of paper so that I would sign it. And that from that night I would get one year in jail. And I stand up and I said I am not going anywhere until I talk to an attorney myself. And he say do you have money to hire an attorney. And I say I don't, but I could get it.

And then my employer, the one I was working for, was in the hall with the other farm workers. And the judge called him in with the police. And then if my employer, the grower wanted to take me back that night so I could go to work the next date day, then he would have to pay \$500.

Then the grower took his wallet and he paid the \$500. He paid for me, for two other young men. And here in the jail of Albion there were two guys from Guatemala for nineteen days in

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jail.

The youngest one was for one month in the jail in Batavia. After that they paid \$1,500, each one of them, and they were released. The two Guatemala's went back to Florida and the other one stayed and went back to the farm and the contractor was paid some money.

Me and another guy that was in Mexico went to court once and we asked for the video to see who had actually robbed the store. And they said that in the store the police didn't know about the video.

We have to go back in December to court and the girl found an attorney from that town. In last court date the attorney talked to the judge first and then the attorney came back and asked us, but the other man didn't have papers so he just wants to go back to Mexico.

And the contractor told me, do you want me to keep handling the case, but I felt really bad those days. I had left my family in Mexico. And I have to pay money back in Mexico. With my child here I didn't have a car and I needed to work, so I keep myself here and maintain my

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young kids and then send money to Mexico.

And then I say, well, I'll sign. And the judge said if you sign right here the case will be closed because there won't be any cost to continuing.

But at that time and in that store they're very racist. And that is what an attorney from Brockport told me that if I wanted to continue with the case, but I didn't have a car and I didn't wanted to keep losing days from my job. And I need to maintain myself and family and pay my bills.

I would still like to reopen the case because that man from that store is very racist. I have a lot of stories, but I just want to focus on those three because if not I would not finish.

With the grower that I use to work for in Kendall, when I had to leave for Mexico I left all my stuff there. Everything for my family.

The winter of 2000 had passed and they took all my things and threw them in a barn, in one barn. When the summer came they burnt them.

Now I don't have anything, any clothes,

1  
2 nothing. And these are the most recent problems  
3 that I have. That's all I have.

4 MR. GRADESS: Questions.

5 MR. ANTONETTE: My name is Wilfredo. I  
6 work with Rural Opportunities in Albion. He is  
7 my client. I am a trained employed counselor.  
8 My job is working to break down all these  
9 barriers and dealing with some of these issues.

10 I am not an attorney. I don't know the  
11 law. So my job is to find people like him. It  
12 is very different to find someone that is  
13 Hispanic and understands the issues.

14 I could make my job easier by being able to  
15 identify which client would be easier to work  
16 with and which one would not be. I could make  
17 my life a little easier, my job a little easier.

18 When he was pulled over I had to go to the  
19 police station to find out why. And I have been  
20 pulled over before. And there was nothing of  
21 record in his arrest report when they pulled him  
22 over as to why they pulled him over.

23 To begin with I have seen a lot of Hispanic  
24 cars pulled over before. This have a rosary  
25 hanging out of their rearview mirror, an

1  
2 obstructive view. It is easy to make your job  
3 easier when you could profile somebody. And I  
4 would say the law of averages are that maybe  
5 five, maybe one, but you know, that's not a  
6 right thought.

7 The law is suppose to be equal. So, I have  
8 known this guy for years. I worked in the  
9 office many years ago.

10 And I will start again, I was gone ten  
11 years ago. We had same type of issues. I am  
12 here again as of December. I see the same type  
13 of things coming up with these problems. And it  
14 is good that we have somebody in Genesee County  
15 now that is bilingual and could communicate.

16 That is where a lot of problems were with  
17 people not understanding the law.

18 I was born and raised in this country. I  
19 could speak both languages. When somebody comes  
20 to this country, first they don't trust the  
21 government. Even if they are bilingual they  
22 don't understand the system.

23 This guy could remember a date from 1972.  
24 He is sharp. He could remember these things.  
25 He is so incredibly wise. I have to say that he

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is a very credible person. He is a very honest person. He does everything the way the law says. He should not have those types of issues and problems.

All I have to say is that in my personal experience with clients, this is one of many that I have dealt with over the years in this area.

MR. GRADESS: Thank you. Mr. Cerafin, is that his last name or first name? What is your last name?

MR. ZAPIEN: Zapien.

MR. GRADESS: Earlier when you were talking about the police you made reference to the state police in Albion. Was it the state police or was it the sheriff?

MR. ZAPIEN: The sheriff has never done anything to me. The ones from the state have and in the area of Batavia. The ones from the state and the ones that stopped me right here last month were the ones from the town here. There are three cars, black and white. I call them the skunk. They need -- there is one called Officer Gary (phonetic) that is always



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stopping Mexicans.

MR. GRADESS: In the LeRoy Town Court, do you remember the judge?

MR. ZAPIEN: I have the papers in my house.

MR. GRADESS: If I gave you two names would it help? Judge Dusen.

MR. ZAPIEN: I don't remember.

MR. GRADESS: If you get the papers to us we would appreciate it. My last question. The arrest that you described in October of 2000, was that near the end of the growing season?

MR. ZAPIEN: Yes.

MR. GRADESS: Is that a frequent occurrence, that kind of mass arrest that you are describing that occurs during the end of the growing season?

MR. ZAPIEN: No. It is -- it is like right now where a lot of workers are arriving.

MR. GRADESS: What about when they are leaving?

MR. ZAPIEN: Yes, at the end of the season too.

MR. GRADESS: Thank you very much.

MR. HORTON: Your most recent incident that

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you described where you were actually charged with something, Mr. Zapien, when the police stopped you --

MR. ZAPIEN: Yes. The police told me that I had a suspended license, but I don't believe it.

MR. HORTON: That was when the car was towed?

MR. ZAPIEN: Yes.

MR. HORTON: Did you get your car back from impound?

MR. ZAPIEN: I have. I had to pay \$95 to get it back.

MR. HORTON: And you have a court date coming up?

MR. ZAPIEN: The 18th of August.

MR. HORTON: Do you have an attorney for that?

MR. ZAPIEN: There is a public defender.

MR. HORTON: Do you know who the public defender is?

MR. ZAPIEN: No. But he works in Albion.

MR. HORTON: Did you see the public defender in court?

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MR. ZAPIEN: And there was another one from here too.

MR. HORTON: Were you able to speak with him?

MR. ZAPIEN: Yes, I did a little.

MR. HORTON: Was there an interpreter?

MR. ZAPIEN: Yes, I had an interpreter, but it was a woman that was with me.

MR. HORTON: Did the public defender ask you about your license?

MR. ZAPIEN: He just asked me why was I stopped and if I had to look for my license and I said yes.

MR. HORTON: I'm sorry. If you looked for your license?

MR. ZAPIEN: If I renewed my license and I did renew it.

MR. HORTON: Do you have a license now?

MR. ZAPIEN: Yes.

MR. HORTON: You have not talked to the public defender since you were in court?

MR. ZAPIEN: No. I don't know if the person that took me there is the one. That's not him.

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MR. HORTON: Do you know if the public defender has tried to contact you since this?

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MR. ZAPIEN: I don't think so because I went back to court.

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MR. HORTON: You went back to court?

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MR. ZAPIEN: Yes, here.

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MR. HORTON: Was the attorney there at that time?

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MR. ZAPIEN: Yes. The last time, no.

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MR. HORTON: The last time your attorney was not there?

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MR. ZAPIEN: No. Wait. The first time, no. The second time, yes the attorney was there.

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MR. GRADESS: Anybody else? Thank you very much. That concludes our hearing in Albion. It is ten to five on July 31, 2003.

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

I, Sheila A. Becker, do certify that;

On the 31st day of July, 2003, I reported in stenotype machine shorthand the proceedings held in the matter of THE NEW YORK STATE DEFENDERS ASSOCIATION AND THE LEAGUE OF WOMEN VOTERS OF NEW YORK STATE HEARINGS ON THE ADEQUACY OF DEFENSE SERVICES AVAILABLE TO FARM WORKERS.

And that the foregoing transcript, pages numbered one through two hundred and seventy-six, is a true, accurate, correct, and complete record of those stenotype machine shorthand notes.

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SHEILA A. BECKER, Notary Public,  
County of Monroe  
State of New York.  
Reg. #01BE4797179  
Exp. 4/30/07

Dated this 22nd day  
of July, 2003  
at Rochester, New York

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