

1 THE CLIENT ADVISORY BOARD OF THE NEW YORK STATE DEFENDERS
2 ASSOCIATION, THE LEAGUE OF WOMEN VOTERS OF NEW YORK STATE
3 and THE FORTUNE SOCIETY

4 -----x

5 IN THE MATTER OF:

6 The Adequacy of Public Defense Services
7 in New York City and Commenting on
8 Draft Client Standards for
9 Client Centered Representation

10 -----x

11 June 24, 2003

12 10:30 a.m. To 4:30 p.m.

13

14 Fortune Society Building

15 8th Floor

16 New York, New York

17

18

19 ASE REPORTING SERVICE

20 P.O. Box 7233, Capitol Station

21 Albany, New York 12224

22 (518) 458-1091

23

24

1

2 Panel:

3 Jonathan Gradess

4 Marion Hathaway

5 Leonore Banks

6 Alice Green

7 Baqoita Wheeler

8 Darryl King

9 Amy York

10 Scott Christianson

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	SPEAKERS:	Page
2	Catherine Waid	4
3	Donna Blanchard	40
4	Juan Dones, Sr.	74
5	Jay Paulin	102
6	Chean Nelson	129
7	Kevin Giffin	154
8	Anonymous witness #1	174
9	Garnett Wilson	204
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Proceedings

1 MS. HATHAWAY: All ready?

2 To make sure I get everything in
3 that I want to say, I want to read this.

4 I will start off by saying, good
5 morning and welcome.

6 Thank you for coming.

7 My name is Marion Hathaway, and I'm
8 the Chairperson of the Client Advisory Board of
9 the New York State Defenders Association, and I
10 want to welcome all to the hearing on the
11 Adequacy of Public Defense Service in New York.

12 We want to solicit comments from
13 the client community on our Advisory Board's
14 draft standards for Client Centered
15 Representation.

16 The New York State League of Women
17 Voters and the Fortune Society joins us today
18 in this endeavor.

19 These standards drafted by our
20 Advisory Board have been submitted to several
21 Client Focus Groups, and to those members of
22 the Defenders Association who are serving time
23 in prison.

24 This revised draft, that's the
25 draft that we will be working with today, is

Proceedings

1 being circulated throughout the client
2 community for input, and to gain the sensus of
3 people's experiences with the issues addressed
4 by the standards.

5 At the root of these standards is
6 our desire that the relationship between the
7 defender, and the clients, and the State, be
8 strengthened, and that in strengthening that
9 relationship, we can see all new opportunities
10 for clients and attorneys to work together, to
11 make a better public defense system.

12 The format for today is fairly
13 straight forward. We will take testimony from
14 those witnesses who are scheduled to appear,
15 and from others who may appear.

16 After the witness has testified,
17 members of our Committee will ask questions for
18 the record.

19 And now at this time I would like
20 to ask the New York State Defenders Association
21 Executive Director to make a few remarks, and
22 to take over from here.

23 MR. GRADESS: Great.

24 Thank you, Marion.

25 For the record, this is the -- we

Proceedings

1 are relauncing a series of hearings in
2 cooperation with the League of Women Voters in
3 the last century.

4 The last few years, in '98, and
5 '99, and 2000, we held hearings in this State
6 for the purpose of getting a picture of
7 problems in the Public Defense System, and
8 there were a lot of witnesses.

9 The hearings were held in the City
10 of New York, in Rochester, in Syracuse, in
11 Albany.

12 A special hearing was held with
13 prisoners' families, who were afraid to come
14 forward at one point to testify before the
15 Legislature, so they testified before us, and
16 we sanitized their remarks, and they testified
17 on their own behalf.

18 But one of the things that
19 characterized those hearings, was the real
20 absence of the voice of the client community.

21 Although there were some advocates,
22 and some clients who testified, the purpose of
23 this second round of hearings is to be in the
24 client community, and to conduct a series of
25 hearings.

Proceedings

1 They will be held in client
2 community groups beginning here at Fortune,
3 and among farm workers in western New York.

4 We hope to hold some hearings with
5 native Americans, to see how their
6 representation takes place in New York State
7 Courts and with others.

8 So with that, let me call on
9 Catherine Waid to speak.

10 MS. WAID: Thank you, and thank you
11 all for allowing me to speak before you.

12 I have not had very much contact
13 with the criminal justice system. I got most of
14 my information by watching television, until
15 about four years ago, when I myself was a crime
16 victim, and it took me two years to lock my
17 assailant up, so I am not coming to you as
18 someone who is against incarcerating people,
19 but I always thought that our criminal justice
20 system was a just system, perhaps not perfect,
21 but that it somehow worked, at least most of
22 the time.

23 My experience as a crime victim, I
24 lost everything, I became unable to work, I
25 lost my home, my job, my health.

Waid

1 I still need to have surgery on my
2 knee. I ended up in a homeless center.

3 The landlord, during the trial,
4 sold the building I had been living in, my pets
5 were destroyed, I lost everything.

6 I am still on disability.

7 It was during that time when I met
8 the person I'm here to speak about, and we
9 became very good friends.

10 I credit him with literally saving
11 my life. I don't know if I would have survived
12 what I went through, but that's another issue.

13 He was arrested and charged with
14 car stripping.

15 What happened was a -- there was an
16 altercation with him and someone else. A gay
17 man came on to him.

18 The facts aren't terribly
19 important, we are talking about a broken
20 window.

21 He called me and told me that he
22 had been arrested, and that he had a Legal Aide
23 attorney.

24 Should I say names or does it
25 matter?

Waid

1 MR. GRADESS: Sure, you can say
2 whatever you like.

3 MS. WAID: At no time did I feel
4 that he was being represented by an attorney.

5 You know, you watch Law and Order,
6 and you see court-appointed attorneys, and they
7 are vigorously defending their clients. I saw
8 nothing like that.

9 I felt it was another
10 representative of the District Attorney who was
11 there to simply guide us through the
12 incarceration process.

13 Because my fiance has a criminal
14 record, he used to do drugs, I was told --
15 well, he was going to be convicted, anyway, so
16 you might as well just plead guilty.

17 I know if he says he didn't do it,
18 you go to trial, and she said, nobody cares
19 about that.

20 In fact, I was informed by her that
21 had he been white or middle class, in all
22 likelihood he wouldn't have even been
23 arrested,, or it would have an issue of
24 restitution, or just pay for the window, or
25 something of this sort, she said, you know.

Waid

1 But the reality is, he has a
2 record, the person whose window was broken,
3 does not, he's a middle class person from New
4 Jersey, the police do not investigate, all she
5 seemed to do is want him to plead guilty, and
6 she just kept pressuring me to have him do so,
7 and I said, I'm not going to pressure him to
8 plead guilty.

9 Do something, if he says he didn't
10 do it. I wasn't there, but if this is what he's
11 telling me, and this is what he wants to do,
12 then he has a right to do that.

13 And at that point they offered him
14 1 to 3 years if he would plead guilty, and she
15 said, if he goes to trial, then he'll get 2 to
16 4 years for breaking a window.

17 And he says, no, you know, I want
18 to go to trial. She kept pressuring me, kept
19 pressuring him.

20 She would -- she even brought her
21 supervisor in to pressure him, wrote up
22 motions, as he explained it to me, said that he
23 said things that he never said, and she said --
24 and she told him, and she told my friend, we
25 can go into court and say some things -- you

Waid

1 know, anything about homosexuals, that he came
2 on to you, and that's why you had a fight with
3 him, during which the car window was ostensibly
4 broken, because there are a lot of gay people
5 in New York, and it won't look good, and nobody
6 would believe it, anyway.

7 And this is the conversation I'm
8 having with her on the phone, and I said, well,
9 look, I wasn't there, but if this is what he
10 says happened, and that's what he wants to do,
11 but people won't like it, I said, but this is
12 not what this is supposed to be about.

13 I went to all the court
14 appearances. It dragged on. Finally she, after
15 this -- after she brought her supervisor in,
16 and he said to her, he said, excuse me, but I
17 didn't say this. These things that you have in
18 these papers that you were submitting, this is
19 not what I told you, you know. This is
20 malpractice or something. Something is going
21 on here.

22 And all of a sudden, we go to court
23 the next day, and she did not look at me, she
24 said -- she gave me a fishy hand shake, and she
25 would not meet my eyes.

Waid

1 Now, I'm sorry, when somebody can't
2 look at me in the eye, I get a little nervous.
3 She said, I'm taking myself off the case due to
4 a conflict of interest.

5 This is not some big major
6 corporation with stockholders, you know. We
7 are talking about a broken window. What the
8 hell conflict of interest could you possibly
9 have?

10 The conflict of interest was that
11 he told her, I did not say this, this is not
12 right. All of a sudden, she takes herself off
13 the case.

14 Okay. Now he's appointed an 18B
15 attorney. Now, this gentleman did not call and
16 keep pressuring me to get Miguel to plead
17 guilty. He never called me back at all.

18 I would leave messages, he would
19 not communicate with me, never went to see
20 Miguel. To this day he has not gone to see
21 Miguel.

22 Miguel is in jail for over six
23 months without a trial, because he's poor. He
24 couldn't make bail.

25 Finally, after this was dragging on

Waid

1 and on, do you know what happens to poor people
2 when they go to jail, and they cannot make
3 bail? They lose their apartments, they lose
4 their homes, their children will be taken away,
5 their pets will be destroyed.

6 I mean, this is not about a booked
7 and case number who is sitting in jail. I mean,
8 your entire life can be destroyed, and you
9 haven't been convicted of a crime yet.

10 I called the District Attorney up
11 who handled my rape case, and I said, my friend
12 has been in jail for over six months, what is
13 going on? And he said, what? So I briefly
14 explained to him the story.

15 He said, write a letter to the
16 judge. I said okay. I mean, look I don't know
17 how to deal with this kind of stuff, you know.
18 So I did. I wrote a letter to the judge. I
19 said -- I explained exactly what had happened.

20 I said, look, my friend has been in
21 jail for over six months now without trial.
22 His first attorney just kept pressuring him to
23 plead guilty, and now he has an attorney that
24 won't call me back, never goes to see him.

25 The judge gave the letter to the

Waid

1 DA, who then gave it to Miguel's new attorney.

2 When I went to court the next week,
3 his attorney wouldn't speak to me, he totally
4 ignored me. He knew very well who I was, I
5 stick out like a sore thumb.

6 Finally, I cornered him outside,
7 because it was postponed yet again, and he went
8 ballistic on me. For 10 minutes he cursed me
9 out in the hallway. How could you do this?
10 Blah, blah, blah, blah, blah. Now you've blown
11 the whole case. Now they know what we're going
12 to say.

13 I said, everybody knew this, to
14 begin with. This is not my fault, he's been
15 sitting in jail for over six months.

16 To this day he does not call me
17 back. He has called me, I think, two or three
18 times in all this period of time, to tell me,
19 you know, if there was a court date.

20 Finally, because I couldn't get any
21 information out of him, at one point I called
22 up and said, look, you know, it would be easier
23 to just call me back, then to listen to all my
24 phone messages.

25 He called me back in two seconds,

Waid

1 I'm not getting paid to call you back. I don't
2 have time for this, and he chewed me out again.

3 I don't call him any more. I'm
4 afraid to.

5 Finally, the case did go to trial,
6 and this is, at this point, he's never gone to
7 see Miguel.

8 I was confused as to what was
9 presented. I did not get to hear all of it,
10 because they wanted me to testify at one point
11 as to what had happened earlier that day, but
12 listening to the testimony that I did hear,
13 which was Miguel's testimony, I was confused.

14 I don't think his attorney even
15 fully understood what Miguel -- what his
16 explanation of the facts were.

17 Now, I know that it is not like
18 television. There you have scriptwriters and
19 people who are actors, who are more articulate
20 than most people, but I don't think his
21 attorney ever understood, because I said to him
22 afterwards, because it didn't make any sense to
23 me, how is it going to make sense to a jury?
24 Because he said they could bring up his
25 previous record, and there were mistakes

Waid

1 there.

2 The judge said, you could bring
3 this up, and this, and his own attorney brought
4 up something that wasn't supposed to be brought
5 up, and then, when that was discussed in the
6 courtroom, you know, the judge's attitude is,
7 well, oops, dismiss the juror.

8 You know, you take alternate
9 jurors, and I was with the attorney, an we
10 talked to them in the hall, and we asked them,
11 because he said, I always like to speak to
12 them, he said to the first one, he said, what
13 would you have done? I would have acquitted
14 him.

15 They didn't have any real evidence
16 at all.

17 The second woman said, he's
18 obviously a low life and he concealed beer on
19 him.

20 I got to the operator, and, no,
21 they all sit in the park and we drink wine, and
22 we listen to the opera, we carry it in picnic
23 baskets.

24 Does anybody come and arrest them
25 for concealing anything? I don't think so.

Waid

1 But if you're black, or your Spanish, or your
2 poor, you have a beer can on you, all of a
3 sudden you're a major criminal.

4 He was out at 3:00 in the morning
5 because he was living in a shelter and they had
6 a curfew. He had no place to go.

7 Most people don't know that, and, I
8 mean, I could go on and on.

9 This is not about his case fits the
10 facts. His lawyer didn't even understand his
11 case, because he never took the time to even
12 talk to him.

13 When I would try to speak to him,
14 he would not return my calls. Now, all of a
15 sudden, the Court is pissed off that he had the
16 nerve to request his constitutional right to a
17 trial, and now he's about to be sentenced to 25
18 years to life are for breaking a window.

19 He's been convicted of breaking a
20 car window, car stripping. It's an E felony,
21 which is actually supposed to be a misdemeanor,
22 but it's because of his record, it's been
23 elevated to an E felony, and he is now facing
24 discretionary persistent offender.

25 I believe grateful that his

Waid

1 attorney got Miss York, but at no time do I
2 feel that we were represented.

3 And he would call so many of my
4 friends, you know, many who are attorneys, my
5 brother is an attorney, not a criminal
6 attorney, he doesn't do criminal law, and every
7 single one said to me, well, there is no
8 justice.

9 A friend of mine, he's an ex judge,
10 an ex DA, you know, he now has a big law firm,
11 and he said, well, when I was doing criminal
12 law, he said, I never saw much justice there.

13 I mean, I grew up in a white middle
14 class area. I had no I idea these things went
15 on, and, you know, our symbol for justice is
16 the lady with the scales.

17 Well, she is not watching the
18 evidence and the letter of the law, and the
19 spirit of the law. She is watching how many
20 shackles you've got on your plate.

21 Look at who we are locking up. We
22 were locking up more and more of our own
23 citizens.

24 I mean, what more evidence do you
25 need? And who are we locking up? We are

Waid

1 locking up blacks and Hispanics, minorities,
2 poor people.

3 These people are disappearing and
4 our media is supporting it, and if you think
5 that because you're white, or you're middle
6 class you're save, you're not.

7 Attorneys are now being prosecuted
8 for vigorously defending their clients, if
9 their clients are unpopular.

10 There is an attorney that's now
11 being prosecuted for -- now they are saying she
12 is a terrorist, because she is vigorously
13 defending an unpopular client.

14 I turned on the TV the other night
15 and there was a show, and it was called
16 Mouthpiece, and is all about attorneys who
17 represented Maffia people. I mean, it is like
18 the public -- like our television is like
19 gearing up to re-educate the public, attorneys
20 who represent these despicable people. Well,
21 they are just as bad.

22 I'm sorry, but this is a very
23 subtle message to attorneys that if you mount a
24 vigorous defense for an unpopular client, you'd
25 better watch your back.

Waid

1 You say, well, it's just a TV show.

2 Go look at your TV shows, what do you see?

3 Crime show, crime show, crime show.

4 A couple of more shops, because we
5 have now to defend the war, Iraqi freedom, our
6 freedom for Americans.

7 I haven't been political since the
8 Viet Nam war, but I am ashamed of my country
9 now, on a national level, on a local level, and
10 it is all part of the same fabric, and you
11 can't just pull out one little piece here.

12 And until we make justice available
13 for the poor, for the unpopular, for people we
14 just plain don't like, we are not safe either.

15 And if we think that we are, any of
16 us, then we are being naive.

17 MR. GRADESS: Catherine, can I ask
18 you a question?

19 MS. WAID: Sure you a can.

20 MR. GRADESS: Have you had occasion
21 to look at the standards?

22 MS. WAID: Yes, I have.

23 MR. GRADESS: Do you think you could
24 tell us what you believe of them, and maybe
25 address yourself to the ones dealing with

Waid

1 sentencing?

2 If that's an issue of immediate
3 concern, what might you tell us about them,
4 from your point of view?

5 You told us some already.

6 MS. WAID: I think we need to really
7 closely examine plea bargaining.

8 From what I understand, I have been
9 told, it's over 80 per cent of the people in
10 prisons that are there on plea bargains.

11 Now --

12 MS. BANKS: You said 80 per cent?

13 MS. WAID: I have been told that.

14 I don't know if this is an accurate
15 number or not, but the experience that I have
16 had with Miguel is basically, you plead guilty,
17 or else.

18 MS. BANKS: And then you feel it
19 gets punitive, if you don't take the plea?

20 MS. WAID: If you don't.

21 The DA was perfectly willing to
22 sentence him to 1 and a half to 3 years if he
23 pleaded guilty.

24 Now, all of a sudden they are
25 trying to put him away for life.

Waid

1 MS. YORK: But the judge initiated
2 that?

3 THE WITNESS: It's part of the
4 system.

5 MS. YORK: I'm just clarifying that.

6 MS. BANKS: Why don't you clarify it
7 for the record?

8 MS. YORK: I'm sorry, that the DA
9 didn't initiate sentencing as a discretionary
10 persistent, the judge did, and the judge kind
11 of pushed the DA.

12 That's my understanding.

13 I'm not arguing for --

14 MS. WAID: There is one other point
15 that I want to bring up, and that's that a lot
16 of people are arrested for petty crimes. In
17 fact, one of the things that they were holding
18 against my friend is, he was homeless, and he
19 was arrested for sleeping in an abandoned car.

20 The car had no tires, the windows
21 were broken, an abandoned car. They arrested
22 him. He said the car is abandoned. Well, they
23 said, it belongs to somebody, and he was
24 charged with auto stripping, which, for some
25 reason, there is some kind of catchall terms

Waid

1 having to do with automobiles, and he was
2 arrested, and they put him in jail, and the DA
3 said, look, you plead guilty, and you are here
4 for ten days, you go home, otherwise you sit.

5 So what would you do?

6 He spent almost 7 months in
7 Ricker's for this one, so he pleaded guilty.

8 That's what they told him to do,
9 and he left.

10 Now, that's one of the things they
11 are bringing up, saying that, you know, you
12 were convicted of this in the past, and he said
13 to the first attorney, I pleaded guilty to that
14 charge, because I didn't want to sit in jail
15 for 6 months, and she said, you mean you came
16 in and lied to this Court?

17 That's what you told me to do, not
18 you personally, but that's what you people told
19 me to do.

20 They arrest people. If they can't
21 make bail, they may sit there for six months,
22 so they had plead guilty to some silly petty
23 charges.

24 Their conviction rate goes up, the
25 DA looks good, and now their record looks bad,

Waid

1 and then down the road they throw these very
2 same things up to them and say, but, look at
3 all these offenses that you were committing.

4 It's like a game, like you're
5 collecting chess pieces.

6 MS. GREEN: Do you know whether
7 either one of the attorneys looked at the
8 presentence report?

9 MS. WAID: Well, his first attorney
10 -- I mean, he hadn't gone to trial yet.

11 MS GREEN: It hadn't gotten to that
12 point yet?

13 MS. WAID: I had not spoken to his
14 present attorney.

15 MS. YORK: The present attorney did
16 forward me a copy of the presentence report,
17 the probation presentence record.

18 MS. GREEN: Was that a review of it
19 with the defendant?

20 MS. WAID: He's never gone to see
21 Miguel, ever.

22 MS. GREEN: So that never happened
23 with him?

24 MS. WAID: I don't think he has any
25 idea what -- of much.

Waid

1 MR. GRADESS: Is it a fair
2 characterization that as I look at these
3 standards, neither of the lawyers that
4 represented Miguel, he never met any of them?

5 They did meet some of them, did
6 they meet any of them?

7 MS. WAID: No, I don't think they
8 met any of them fully.

9 15 addresses plea negotiations and
10 obviously -- did he have them, that 15, well
11 informed about plea negotiations, and whether a
12 plea is offered?

13 Maybe I have another standard that
14 pleas are not forced upon.

15 MS. WAID: It's -- from my
16 understanding, just from what she was telling
17 me, clients are told, look, you either plead
18 guilty, or else you will pay.

19 And it's one thing to have it --
20 you know, a slight reduction or something, it
21 is another to penalize people for saying, look,
22 you know, I want my constitutional rights, and
23 for it to go from 1 and a half to 3, to
24 suddenly turning into a life sentence, to me is
25 punitive.

Waid

1 It has nothing to do with breaking
2 a window. I mean, going back to watching Law
3 and Order, people kill people and get less than
4 this.

5 There are, three strikes you're
6 out. This is supposedly to be for violent,
7 horrific criminals. The sentence makes no
8 sense.

9 The man that raped me, he was a
10 serial rapist, and he was convicted of three
11 rapes, he destroyed my entire life.

12 We found dozens of other woman who
13 were too terrified to come forward. He got 24
14 years, three -- 8 for each three women.

15 What he did to me, he destroyed my
16 life, he got 8 years.

17 Miguel broke a window, and they
18 were trying to lock him up for life.

19 None of it makes any sense, and I
20 don't trust any of these people any more.

21 And --

22 MS. YORK: I'm sorry, can I ask one
23 question?

24 I will ask you to explain -- I
25 mean, once Miguel was convicted at trial, there

Waid

1 is a whole other part of, you know, what my
2 involvement is, and pretty much it then becomes
3 my responsibility, and not the attorneys any
4 longer, for the most part.

5 Can you speak to that a little bit?

6 MS. WAID: After he was convicted,
7 his lawyer then came and said that, in fact,
8 they weren't looking to give him 2 to 4 years,
9 that they were going to ask for the 25 to life,
10 and he explained to me that the judge wanted to
11 sentence him to this, and he said -- but that
12 he was going to try to get a sentencing
13 specialist, which is Miss York.

14 I had never heard of this, so I
15 said, what's that? So she explained to me that
16 this was a social worker who would come in and
17 look at the person's background and the
18 circumstances, and make a recommendation.

19 He said, I don't know that the
20 judge will go for it. He said, can you pay for
21 it? And I said, I'm on disability right now.

22 I mean, I finally got an apartment,
23 I was in a shelter for 14 months, I don't have
24 any money, I get \$600 a month, I'm trying to
25 get my life back together, I said, I don't have

Waid

1 any money. If I had money, I would have had an
2 attorney for Miguel.

3 I didn't say that to him. I didn't
4 want to insult him.

5 I said, first, I would have bailed
6 him out, he wouldn't have spent -- I have no
7 money.

8 MR. GRADESS: Let me call your
9 attention to the standard line where it says, a
10 lawyer look aggressively seeks resources, such
11 as interpreters, experts, and even
12 investigators, did the lawyer in this case make
13 an application to have Amy appointed?

14 MS. WAID: Yes, after he was
15 convicted, yes, he did.

16 MR. GRADESS: And was she appointed?

17 MS. WAID: Yes.

18 MR. GRADESS: Was that after or
19 before he asked you for money?

20 MS. WAID: After.

21 He said he was thinking of doing
22 that, he said, but he wanted to know if I had
23 any money.

24 MS. YORK: I might clarify.

25 MR. GRADESS: I'm going to let you

Waid

1 testify after this. I believe it will be a
2 little easier.

3 MS. WAID: Because I didn't really
4 know what a sentencing specialist was, but he
5 said he knew somebody.

6 MR. GRADESS: What borough was this
7 in, this case?

8 MS. WAID: Manhattan.

9 And so he said, when I told him I
10 don't have any money to pay for that, and then
11 he said, well, I can petition the Court to see,
12 you know, if they will approve it. He said, I
13 don't know if they will go for it.

14 And at that point I tried to call
15 him a number of times, to find out indeed if
16 that had been successful, and he would not
17 return my calls, and -- but he did get the
18 Court to do that, and that's how Miss York has
19 been involved.

20 MR. GRADESS: And during this time,
21 when he wasn't returning your calls, it's your
22 testimony that he never summoned Miguel at
23 Ricker's Island either?

24 MS. WAID: I don't believe he has
25 ever seen him either.

Waid

1 He's only spoken to him, to the
2 best of my knowledge, when they would go to
3 court.

4 MR. GRADESS: And Miguel has been
5 keeping in touch with you during this time?

6 MS. WAID: As best he can.

7 MR. GRADESS: Have you occasion to
8 visit him?

9 MS. WAID: Yes, I have been stripped
10 searched.

11 Visiting someone in jail takes all
12 day, and it's humiliating, it is demeaning.
13 You are searched repeatedly.

14 Now, I understand they don't want
15 people smuggling things in, but being told to
16 take off your underwear, bend and squat, I
17 believe is getting a little ridiculous.

18 The whole purpose is to keep you
19 from visiting. He can only make a limited
20 number of phone calls. If he calls me collect,
21 it's like \$5 a phone call.

22 I don't have a lot of money to give
23 him.

24 MS. BANKS: There is a group --

25 MS. WAID: I am trying protest that.

Waid

1 MS. BANKS: Right.

2 And phone calls is the issue?

3 MS. WAID: Because it's hard for him
4 to even keep in contact with me.

5 He can't call his attorney, because
6 his attorney is never there.

7 MS. BANS: There is a group that
8 I'm thinking of --

9 MS. YORK: Yes, the Fifth Avenue
10 Committee.

11 MS. WAID: So I give him a few
12 dollars every month, because this is all I
13 have, you know.

14 I'm sometimes getting -- by the
15 end of the month, I have like no food. It's the
16 last week of the month, I have spaghetti in the
17 house. I mean, I -- so I can't give him very
18 much money.

19 I do try to give him -- at the
20 beginning of the month I give him 20 or \$30,
21 just so he can call me, but it's hard keeping
22 in touch with him.

23 I go to visit him as often as I
24 can, though it's so up setting, it's just a
25 horrific procedure.

Waid

1 So it is very hard for them to keep
2 in contact with either their attorney directly,
3 or even indirectly, because they can't make
4 phone calls.

5 MS. WHEELER: I'm just curious, when
6 you were strip searched, did they single you
7 out, because they couldn't strip search all the
8 people that went through there?

9 MS. WAID: I had gone through like
10 three or four metal detectors, and had been
11 searched, etcetera, etcetera. I was in the
12 visiting room, which is a big room.

13 I don't know if you have ever been
14 there.

15 MS. WHEELER: Yes, many times.

16 MS. WAID: And I was actually
17 sitting with Miguel at the table, and the guys
18 came in, and they pulled two women out, and
19 took them at random, and I had to sign a paper
20 allowing them to do this to you, but I was told
21 if I didn't, that I wouldn't be allowed to
22 visit him any more.

23 MS. BANKS: So it's with your
24 consent?

25 MS. WAID: Oh, of course.

Waid

1 MS. HATHAWAY: This happened after
2 you were in the visiting room?

3 MS. WAID: Yes.

4 MS. WHEELER: After you were in the
5 visiting room, they pulled you out of the
6 visiting room?

7 THE WAID: Yes.

8 MS. BANKS: And this was a regular
9 procedure, a random strip?

10 MS WAID: Yes, they put you on buses
11 and they move you from jail, to jail, to jail,
12 and periodically they pull you off the bus, and
13 they have dogs come and sniff everybody, and
14 they sniff the bus, and ostensibly, if they
15 find drugs on the bus --

16 MS. WHEELER: This must be something
17 relative.

18 John, have you ever heard of this
19 before?

20 MR. GRADESS: Yes.

21 MS. HATHAWAY: Recently?

22 MS. WAID: After I was stripped
23 searched, I called the Mayor's office to
24 protest, and she laughed at me. She said, well
25 they have been doing that for years.

Waid

1 MS. HATHAWAY: No, they haven't.

2 MS. WHEELER: No, I have been in and
3 out of prisons upstate, and I never heard of
4 it.

5 I've heard of them taking a prison
6 and putting people into holding pens, and then
7 having them stripped, and then they just throw
8 all the underwear in one pile, and so when they
9 are ready to leave, they don't know whose
10 underwear it is, they have to just take
11 whoever's.

12 I had been told they periodically
13 come in and search, and if he has paperwork,
14 and things that Amy wanted, and I asked him to
15 for it, and he said, I don't have it any more,
16 because they come in the cell and thrash
17 everything, letters, paperwork, everything.

18 MS. HATHAWAY: He was sent to jail
19 because he had a prior record, it had nothing
20 to do with the misdemeanor of breaking a
21 window?

22 MS. WAID: That's essentially it.

23 MS. HATHAWAY: You have a prior
24 record, you go to jail for that?

25 MS. WAID: That's why he was

Waid

1 convicted, that's why he was arrested.

2 MS. HATHAWAY: This has nothing to
3 do with anything, the crime is offer, it's
4 done, otherwise he would have been out in the
5 street, in the first place.

6 MS. WAID: And I was told that by
7 the attorneys, and by other attorneys, and they
8 all just -- their attitude was, how could I be
9 so naive to think it was anything else?

10 MS. BANKS: You mentioned something
11 about gay people.

12 That's not a popular cause?

13 MS. WAID: It was late at night --
14 Miguel's version of the story is, it was late,
15 he had been out drinking with a friend, his
16 cousin, who was going to actually help me move
17 out of the shelter, it was after midnight, he
18 couldn't go back to the shelter, so they stayed
19 in a bar, and they were drinking, his cousin
20 decided to leave, he decided to take a leak in
21 the street -- I don't know why men do those
22 things -- anyway, he's out there and answering
23 nature's call.

24 He didn't see there was a guy in a
25 car next to him, who was also drunk. It was a

Waid

1 kind of a gay bar. The guy gets out, and says,
2 you need some help with that? He made some
3 comments concerning the size of the his organ
4 --

5 MS. BANKS: What I was really
6 trying to get at --

7 MS. WAID: -- and he said, well you
8 can't say that.

9 MS. BANKS: Is the judiciary, and
10 including the judge, and/or the DA, reacting
11 according to what is popular at the time? In
12 other words, it's not politically correct?

13 MS. WAID: It was his attorney who
14 said, you cannot go into court and say things
15 about gay people. There are a lot of gay
16 people in New York, and it won't look good.

17 MS. BANKS: That's a bunch of bull,
18 because they care nothing about gays here
19 either, but the whole fact is that Miguel --

20 MS. WAID: It has nothing to do with
21 anything, so he might just as well plead
22 guilty, because he's going to be convicted,
23 anyway.

24 MS. HATHAWAY: I just want to know
25 from that, if it had anything to do with the

Waid

1 judge's decision, Miguel is of Latin decent, or
2 whatever?

3 MS. WAID: Yes.

4 MS. HATHAWAY: And the person -- was
5 he able to tell you that the person he got into
6 confrontation with, was he white?

7 MS. WAID: He was a middle class
8 Jewish guy from New Jersey, who was there with
9 his lover.

10 MS. HATHAWAY: That's it, that's it.

11 MS. WAID: He didn't have a record.

12 MS. HATHAWAY: If they both were
13 white, it never would have happened.

14 If they both had been white, it
15 would have been nothing, it would have been a
16 misdemeanor, they get a desk appearance.

17 Because one was white and one was
18 not --

19 MS. WAID: Miguel told me when he
20 was arrested, that the cops -- when the cops
21 got there, the guy was actually beating Miguel
22 up.

23 Miguel is the one that got beat up,
24 and he had like a bite mark on his finger.

25 I saw it, saw the scratches on his

Waid

1 back, and the guy said that he had broken his
2 car window.

3 Miguel said the guy came onto me,
4 and they ran.

5 They have the computers in the
6 police cars, and it came up that Miguel had a
7 record.

8 He was arrested.

9 They never even investigated
10 anything Miguel said, and from there, it went
11 straight, and I was told over and over again,
12 look, this is just the way it goes, get used to
13 it.

14 And the point is, we are talking
15 about a broken window.

16 Even if you say he broke the
17 window, it's a broken window.

18 MS. BANKS: What was the original
19 charge?

20 THE WITNESS: Car stripping.

21 He broke a window in a car.

22 MS. HATHAWAY: That's not even car
23 stripping, that's just a broken window.

24 MS. BANKS: And that turns into a
25 felony, and now it's been upgraded to a felony,

Waid

1 and now they are trying to sentence him as a
2 persistent?

3 MS. WHEELER: As a --

4 MS. WAID: As a persistent.

5 MS. BANKS: And it was your
6 suggestion that we look into the plea process?

7 MS. WAID: It's coercive.

8 MS. BANKS: I was under the
9 impression it was 95 percent.

10 MS. WAID: It could be, but there is
11 an awful lot people in jail, because they just
12 won't go to trial for things, because --

13 MS. BANKS: It takes time.

14 MS. WAID: -- we know they are going
15 to lose.

16 I always thought there was a few
17 innocent people in jail, a lot of innocent
18 people in jail, and then, when they come out,
19 they can't get housing, they can't vote, they
20 can't get school loans, they can't get jobs.

21 It's just a vicious cycle.

22 MR. GRADESS: Let me ask, do you
23 have any other comments on the standards that
24 you want to make?

25 MS. WAID: Yes.

Waid

1 I think, to try make attorneys more
2 involved with their clients, and some of the
3 attorneys are truly overworked, they are so
4 undermanned with cases that they can't do their
5 jobs.

6 When you have dozens of cases,
7 there is no other way, there can be only more
8 than a booking case number.

9 They are lucky if they can keep the
10 names straight.

11 MS. BANKS: I think you said there
12 isn't one of these, one of these standards -- I
13 believe we ought to know plea bargaining, how
14 it works, and not under the Law and Order
15 perception of TV, and that the judge is
16 supposed to carefully ask you, do you
17 understand the conditions of the plea? Which,
18 in this case, would have meant, you may end up
19 with a life sentence.

20 MS. HATHAWAY: It has always been
21 coerced.

22 MS. WAID: No, no, he would have
23 gotten -- if he had pleaded guilty, he would
24 have gotten 1 to 3 years.

25 That was what he was offered, and

Waid

1 he said, I won't plead guilty to something I
2 did not do.

3 MS. HATHAWAY: I see.

4 MS. WAID: The fact that he refused
5 to do it now, they are pressured. You know,
6 they are trying to put him away for life.

7 The whole procedure is to make them
8 go to jail, and not stay out, and so that's
9 what they do, and that's why they are coerced,
10 and that's why they plea bargain.

11 I just found out recently, I read
12 something maybe the beginning of the winter,
13 that very quietly there is a whole system of
14 cops who are trained to do certain things to
15 coerce, their whole system, a whole unit to do
16 this, to make a person say these things.

17 MS. BANKS: This whole plea thing I
18 find very interesting. It's 98 -- 95 to 98 per
19 cent is settled by pleas.

20 The reason the courts are so
21 overburdened, is that if they didn't plead out,
22 in most of their cases, you might get a trial
23 within 20 years, which, of course, is
24 unconstitutional, because you are entitled to a
25 speedy trial.

Waid

1 MS. WAID: Miguel, it took 7 months
2 for a broken window, that they weren't
3 compiling DNA on. This was not O.J. Simpson,
4 it was a broken car window.

5 I mean, what did they have? At one
6 point, when one of the few conversations I had
7 with his attorney, when he was postponed yet
8 again, he called me that morning to say, don't
9 bother coming, because I tried coming every
10 time, because if they don't think somebody is
11 watching, I mean, you will vanish, and he said,
12 well, it's being postponed, because they can't
13 find the witnesses, and they said, oh, no, no,
14 the DA is too busy.

15 Now, that kind of made me a little
16 nervous when his own attorney isn't sure what's
17 going on.

18 Is seven months a speedy trial?

19 I don't think so.

20 MR. GRADESS: Catherine, is there
21 any last remark you want to make?

22 We have another witness who we want
23 to call.

24 MS. WAID: I just want to say thank
25 you.

Waid

1 MR. GRADESS: Well, thank you.

2 MS. HATHAWAY: Thank you for being
3 here.

4 MR. GRADESS: Thank you very much.

5 MS. HATHAWAY: Thank you.

6 MR. GRADESS: Donna Blanchard, we
7 are ready for you.

8 MS. BLANCHARD: Yes.

9 MR. GRADESS: We are ready, whenever
10 you are.

11 We would like to hear what you have
12 to say about the Client Representation
13 Standard.

14 MS. BLANCHARD: Okay.

15 Where would you like me to start?
16 As far as his first attorney, second or -- the
17 first attorney that he had, Andrew Worgan,
18 W-O-R-G-A-N, is his last name, okay.

19 He had only drawn up the standard
20 draft on the motions, he didn't give them to
21 Jayson, we had to ask him for them.

22 MR. GRADESS: Jayson is your son?

23 MS. BLANCHARD: Right.

24 I had to make copies and mail them
25 to Jayson myself.

Blanchard

1 He never had a client-lawyer
2 conference, Jayson, at any time, and we are
3 talking about a year and a half.

4 The only time he spoke to Jayson
5 was right before Jayson came out.

6 They offered Jayson 18 years. He
7 never spoke to Jayson, he told Jayson, take it,
8 take it. Jayson didn't even understand what
9 was going on.

10 A week later it came out they
11 offered Jayson 12 years. Jayson comes out,
12 behind Jayson there is another District
13 Attorney, Jayson had three so far, he's been
14 there over two years.

15 MR. GRADESS: You mean another
16 lawyer, a defense lawyer?

17 MS. BLANCHARD: No, another District
18 Attorney was standing behind the District
19 Attorney that was Jayson's District Attorney,
20 was behind Jayson, saying, we might lose,
21 because we don't have any evidence, but I'm
22 promising you, I'm going to make sure you get
23 25 to life.

24 While this is being said, the judge
25 says, you took a gun and you shot this man.

Blanchard

1 Meanwhile, it was stated it was a
2 knife.

3 So Jayson is totally confused, and
4 Jayson said -- he looked and turned around, and
5 when he turned, and they told him, turn around,
6 because he was looking at me, because I didn't
7 know what was going on, so Jayson said to the
8 lawyer, I'm not going to say something I didn't
9 do.

10 So the lawyer said, take it.

11 He said, your Honor, I told my
12 client it was a great offer.

13 Take it, take it.

14 So they are still standing behind
15 Jayson saying, we're promising you, we might
16 not win, but if we do, you're getting 20 to
17 life, I'm telling you, I'm telling you.

18 No, this is not the District
19 Attorney that is scheduled for Jayson's case,
20 it is another one.

21 So Jayson said, I have to think
22 about it.

23 The judge said, well, I'm giving
24 you a week, and if you don't take it, you can
25 forget it. He said, I'm not giving you any more

Blanchard

1 pleas. I mean, just nasty.

2 So Jayson walks back, and because
3 Jayson has never been in trouble before, or
4 never been in the system, he couldn't
5 understand it.

6 MR. GRADESS: How old is Jayson?

7 THE WITNESS: He just had another
8 birthday, Jayson is 23.

9 Jayson has been in there now --
10 Jayson turned 23 May 18th. This happened in
11 June. He's been in there that long, since June
12 of 2001, sitting there.

13 The hearing he just had, that was a
14 Huntley hearing, for a couple of weeks, and no
15 trial, no nothing.

16 I went through everything I could,
17 finally Jayson accepted a plea of 12 years, and
18 then he took it back, because he -- which they
19 told him he had to take.

20 He say that I intentionally did
21 it. Jayson said he didn't know, because it was
22 a fight. Jayson was attacked by a group by his
23 self.

24 Now, I was outside, so I seen it,
25 but I didn't say anything about that to them.

Blanchard

1 So Jayson wouldn't say he
2 intentionally did anything, so the judge said,
3 you took a gun, and went after the guy again
4 with a gun, and he went after the guy.

5 So Jayson went back in the back,
6 and he came out the next time and he said, I
7 want to withdraw the plea that I took.

8 So the judge said okay, you can
9 forget about any pleas, nothing else, forget
10 it, you're going to trial.

11 So Jayson said, all right.

12 So he reads his bible a lot. So I
13 wrote to Mr. Murphy, a four-page letter, I
14 asked Mr. Murphy if I could please have
15 Mr. Worgan released.

16 I asked him about the other papers,
17 where is the papers? Where is the coroner's
18 report? Where is the police reports? Where is
19 everything?

20 When they picked up Jayson for
21 questioning, they put Jayson in handcuffs.
22 They didn't pick him up for questioning, they
23 put him in handcuffs, left him like that for
24 eight hours in handcuffs, and Detective
25 Valentine, on the stand, admitted he helped

Blanchard

1 Jayson write this statement.

2 I paid a lawyer \$3500 to come in
3 with Jayson for questioning. One lawyer went to
4 the precinct, left his card, which they have on
5 the -- a copy of it on the top, with his name
6 and address on it, to call them if they picked
7 Jayson up.

8 Jayson was not doing anything
9 illegal. They came to the house, where his
10 girlfriend was, and picked him up, and he said,
11 I'm Jayson Blanchard, no problem.

12 They put handcuffs on him and said,
13 you're under arrest, just like that, with no
14 questioning, and just left him sitting in the
15 room for eight hours.

16 He still has marks on his arms from
17 it, because Jayson is like broad, so it was
18 hard.

19 And Jayson was telling me, mommy --
20 tears came out of my eyes, because they had it
21 so tight, and what they did was, they
22 threatened his brother.

23 Then they came to my house and told
24 me that they had heard that they are going to
25 kill me, a brother of the boy that's deceased,

Blanchard

1 and that I should find a place, because they
2 shot up a van in front of the house, because
3 they were told I was in it, and that I should
4 move.

5 MR. GRADESS: Who is this that, that
6 came to you?

7 MS. BLANCHARD: Detective Valentino,
8 the same one that picked Jayson up.

9 This is what went on for like three
10 weeks. So when Worgan, which was Jayson's
11 lawyer for a year and a half, someone that I
12 wrote to Mr. Murphy about, his only
13 conversation to me was the trips that he was
14 taking with his family to Switzerland, to
15 Paris, nothing about Jayson.

16 Every time I asked about the
17 papers, he told me that we weren't entitled to
18 any papers.

19 I said why? What do you mean we're
20 not entitled to any of the police records, or
21 any of the coroner reports, or anything? He
22 said, you're not entitled to them.

23 So he said, why don't Jayson just
24 take a plea? Just like that.

25 I said, when are you going to speak

Blanchard

1 to Jayson and explain these things to him?

2 He said, when I have time.

3 He would walk away, and that would
4 be the end of it.

5 You would call him, he never would
6 call you back.

7 So when I wrote to Mr. Murphy, and
8 I finally got through.

9 It took me a lot to get to Mr.
10 Murphy. I wrote him a letter. He dismissed
11 Mr. Worgan.

12 MR. GRADESS: When you're referring
13 to Mr. Murphy, you mean the Administrator of
14 the Assigned Counsel Panel?

15 MS. BLANCHARD: Yes, he's the head
16 of 18B counsel, and he dismissed Mr. Worgan.

17 Mr. Worgan called my house and told
18 me I got him in trouble. I told him, I'm not
19 upset about that, you did absolutely nothing.
20 My son sat there for a year and a half, you
21 never did anything for him at all.

22 He was totally confused, totally
23 confused.

24 All Jayson does is sit there in the
25 law library, or read his bible, that's all he

Blanchard

1 did. He nothing else to do, he was giving up.

2 Jayson didn't know. It was like
3 Mommy, maybe I should take the time and take
4 the plea?

5 I said, but you're going to take
6 something that you didn't do. You're going to
7 admit -- are you going to say you
8 unintentionally went and did something to
9 somebody, when you didn't?

10 So he said, that part is true, but
11 they said that, if I lose, they promised me 25
12 to life.

13 He said, Mommy, I'm afraid. You
14 know, if something happens to you, I will die,
15 and I told him, don't think like that, keep
16 reading your bible. You know, things will work
17 out.

18 The lawyer, the first one that I
19 had, I paid the \$3500 dollars to. Now he gives
20 a bill for \$4500.

21 Now, I'm told this new DA -- Jayson
22 has had three DAs now -- they passed it down to
23 another one, the second one he had was Claude
24 Stuart, the one that had the boy that made the
25 newspaper, that they had about a lie, about a

Blanchard

1 shooting.

2 I don't know if you remember this
3 in the paper, that he had some drug dealer lie
4 about this boy, saying that this boy killed
5 someone else?

6 And the boy stayed in jail, and the
7 aunt came forward, after two years, because
8 they wouldn't listen to his statement, and it
9 was all a lie.

10 That was Jayson's second Assistant
11 District Attorney. Now Jayson has a new one.

12 MR. GRADESS: What borough is this?

13 MS. BLANCHARD: Queens.

14 Now, he has another District
15 Attorney.

16 So now he has Mr. Maltz as his new
17 lawyer.

18 Mr. Maltz, I have to admit, within
19 a month he got the coroner's report, police
20 reports, everything.

21 MR. GRADESS: What his name?

22 MS. BLANCHARD: Juda Maltz.

23 MR. GRADESS: Go ahead, I'm sorry.

24 MS. GREEN: He's an 18B attorney?

25 MS. BLANCHARD: Yes.

Blanchard

1 He said he could not believe how
2 Andrew Worgan did his job.

3 He asked for the papers from
4 Jayson's files, he gave him like, I think, just
5 the motion papers from the beginning, from a
6 year and a half, and he said, this is all you
7 have?

8 He said, here, he said, shut up,
9 Juda, just like that, right in the courtroom,
10 but he doesn't believe it, I couldn't believe
11 it, he couldn't believe it, that he had none of
12 the paperwork, none of the paperwork.

13 Now, this is over two years that
14 Jayson has been just sitting there. So they
15 figured Jayson will sit there, and sooner or
16 later Jayson is going to breakdown and take
17 something.

18 Now, they have no witnesses that
19 they say anything, there is no weapon, there is
20 no nothing.

21 The boy that did it, shouldn't have
22 been in our complex, because of what he's done
23 in the past. He has a horrible police record.

24 They seen him, from what Detective
25 Valentino toll me, at 2:30 in the morning, they

Blanchard

1 seen enter our complex with a weapon, robbing
2 somebody with a gun.

3 Now, this is what I was told he
4 did.

5 Also, there was a woman who was
6 there, and she returned into the building,
7 because she didn't think who the group was.
8 She said, it was 2:30 in the morning, but she
9 didn't know who these people were.

10 Now, Detective Valentino stopped
11 me, that they have it, because we have
12 surveillance where we live, very important
13 surveillance. He told me he seen him with a
14 gun, and then a knife at somebody's throat.

15 I do not know why they did not send
16 any police at that point. I do not understand
17 that. I asked him that. He couldn't answer
18 that question.

19 Now, still Jayson sits there.

20 Now, Juda Maltz, he's trying his
21 best. Like he said, after two years, now we
22 finally got an investigator, a
23 Mr. Lafermeaner. It's almost two years now,
24 and he comes out to investigate.

25 He said he came around the complex,

Blanchard

1 he couldn't find anybody that could remember
2 seeing it.

3 He walked around the buildings, he
4 said that he seen three teenagers that said
5 that they think they remember hearing about it,
6 but they didn't see it, but that was about it,
7 that was the only thing he could find.

8 The people that seen it, that were
9 in Jayson's group, that attacked him, that was
10 like only four people, you know, it's too long
11 a time to remember, it was really ridiculous.

12 I mean, Andrew Worgan and the first
13 lawyer I paid all that money to, did absolutely
14 nothing. It's ridiculous. I mean, they do
15 nothing.

16 Juda Maltz, I give him credit, he's
17 trying, he's trying.

18 Andrew Worgan, I don't know why
19 they bother to pay him, I don't know why they
20 bother to pay him at all, he does absolutely
21 nothing, except, accept anything. Whatever the
22 plea is, accept it, accept it, I mean, any time
23 there is a plea.

24 He sits with the District Attorney,
25 he doesn't sit on the defense side. He sits on

Blanchard

1 the District Attorney's side and speaks to
2 them.

3 MR. GRADESS: Donna, let me ask you
4 a question, just about your earlier testimony.

5 At the beginning you said that
6 there was a time when a District Attorney, a
7 second District Attorney, came up behind your
8 son and his lawyer, and that lawyer was Andrew
9 Worgan, and whispered in his ear --

10 MS. BLANCHARD: Didn't whisper.

11 MR. GRADESS: What did his lawyer
12 do?

13 MS. BLANCHARD: Nothing, absolutely
14 nothing. He didn't say anything at all. It
15 was a whisper.

16 I could hear it, where I was
17 sitting. He would lean forward, he would stand
18 there, and he said, I promise you, we might not
19 win, but if you lose, I promise you 20 to life,
20 I promise you, I promise you.

21 Andrew Worgan did absolutely
22 nothing, said absolutely nothing.

23 At that time Claude Stuart was his
24 Assistant District Attorney. When they said the
25 gun, Claude Stuart said it was a knife, Andrew

Blanchard

1 Worgan didn't say anything, he didn't open his
2 mouth.

3 When the judge said, you took a
4 gun, and Jayson said gun? And Claude Stuart
5 said, your Honor, it was a fight, and it was a
6 knife, and Jayson doesn't even remember how it
7 happened, with that part, and Andrew Worgan
8 stood there, he turns around, and he looks at
9 the audience, like he's on stage, and he didn't
10 say anything.

11 When the other Assistant District
12 Attorney came behind the other one, he stood
13 right behind Jayson, where the court officers
14 are, he stood right there, and every time the
15 judge would say, take the 12 years, he said,
16 I'm not going to give, you know, time, but
17 you'd better take it. He said, I promise you,
18 we might not win, but if we win, you are going
19 to get 20 to life.

20 MR. GRADESS: Let me ask you to do
21 this. It sounds like you've had an experience
22 with two 18B lawyers, one who was somewhat
23 better than the other?

24 MS. BLANCHARD: Yes.

25 MR. GRADESS: Do you think you could

Blanchard

1 take a look at the standards and describe your
2 experience with each?

3 Have you had on chance to read
4 them? Did you get a chance to read them?

5 MS. BLANCHARD: Very quickly, very
6 quickly.

7 MR. GRADESS: You want to take a
8 minute and take a look at them?

9 MS. BLANCHARD: Okay.

10 In what I want in a lawyer, and
11 that one and --

12 MR. GRADESS: Yes.

13 MS. BLANCHARD: Okay.

14 MR. GRADESS: Take a second and look
15 at them, if would you, and see what stands out
16 to you.

17 MS. BLANCHARD: All of them. I wish
18 all of them could be like this, but I know that
19 would be impossible. I know that would be
20 impossible.

21 MR. GRADESS: Was there any aspect
22 that you compared the two lawyers that you had,
23 where one, in fact, did meet these standards,
24 and the other did not?

25 Has your second lawyer --

Blanchard

1 MS. BLANCHARD: Juda Maltz, he takes
2 time. If he can't go, what he does, when they
3 bring Jayson, he makes sure he takes at least a
4 half hour with Jayson, prior to, or after
5 trial, even if he can't go to Ricker's Island.
6 So he'll always take at least that much time
7 and explain.

8 If I called Juda Maltz, he will
9 always return my calls, no matter what.

10 I give him that.

11 I can always call him, he will take
12 time and explain.

13 He will make copies of anything I
14 need, paperwork. He will explain everything on
15 the papers to me, everything.

16 I give him that, I give him that
17 much.

18 He will go in the hallway, explain
19 what happens. If I don't understand anything in
20 the courtroom that went on, he will explain
21 that to me.

22 MR. GRADESS: And he discusses with
23 you and your son, as well?

24 MS. BLANCHARD: Right, he goes and
25 he sits down with him inside.

Blanchard

1 He will go in the back and sit with
2 him, and explain everything to him, where
3 Andrew Worgan would go in the back for five
4 minutes and say, you're mother said she loves
5 you.

6 Oh, yeah, her hair looks pretty.
7 You know, stupid things, not about what's going
8 on.

9 Andy then leaves, and Jayson would
10 call me later, and be so upset and say, Mommy,
11 I don't know what to do.

12 And then I tell him -- I don't know
13 what to do, and that's when I finally did what
14 I had to do.

15 It took a lot to get to Mr.
16 Murphy. I mean, I went through everybody. You
17 just don't get to Mr. Murphy.

18 MR. GRADESS: Well, we would
19 appreciate it very much if you would tell us
20 how much difficulty you had getting to Mr.
21 Murphy?

22 Wouldn't we?

23 MS. HATHAWAY: Yes.

24 MS. BLANCHARD: I had called five
25 different people, finally it was a lady,

Blanchard

1 because I was in tears, I was in tears, I told
2 her I was at the end, I didn't know which way
3 to go, she said, sweetheart, I'm going to give
4 him you a phone number that I'm not supposed to
5 give you, she said, because I can tell you're
6 at the end of your ropes, and the phone number
7 was to Mr. Murphy, and he told me that -- well,
8 he could tell that I was like at the end, he
9 said, you would have to write me a letter, he
10 said, write everything that's going on,
11 everything that's wrong with Mr. Worgan, with
12 respect to your son, and said, I'll handle
13 everything else.

14 Within a week Mr. Worgan was
15 relieved.

16 MR. GRADESS: But that was after she
17 gave you the special number that she was not
18 supposed to give you?

19 MS. BLANCHARD: Yes, because she
20 knew -- I called, they told me, call this
21 number.

22 I called that number, and somebody
23 else would give me another number, I would call
24 that number, and somebody would give me another
25 number.

Blanchard

1 I was like calling number after
2 numbered, and number and finally, I don't even
3 remember what number this was I called, it was
4 that many numbers, you know --

5 MR. GRADESS: Were all of those
6 numbers at the 18B plan?

7 MS. BLANCHARD: First I went through
8 the Bar Association, and they told me that the
9 18B counsel that she gave me, that the 18 --
10 something to do with the 18B, I don't know
11 exactly what it was, and they told me that
12 there is no number that I can call.

13 One lady told me there is no number
14 that I can call for that. Then finally I called
15 something else to do with the defense, I forget
16 what it was, I'm not really sure what it is,
17 and it was like four or five phone calls, and
18 this lady told me at that point -- I was in
19 tears, and she gave me a number, and she told
20 me, I'm not supposed to give out this number,
21 but I'm going to give it to you, she said,
22 because I can tell you're at the end of your
23 ropes.

24 And Mr. Murphy answered the phone,
25 and he told me what you have to do, because I

Blanchard

1 can't talk to you over the phone, I don't do
2 that, he said, you've got to the write me a
3 letter, and he gave me an address.

4 I wrote a letter, and it was a
5 four-page letter, you know, a typed letter, and
6 I sent it, and as I told you, within a week he
7 was released.

8 And Mr. Worgan called me and he
9 told me, hello -- he has this thing about
10 calling me by my first name -- he said, hi,
11 Donna -- he never called me before, not when
12 Jayson was involved, and he says, hello,
13 Donna,.

14 I knew his voice. I said, yes? He
15 said, you know, you've got me in a lot of
16 trouble.

17 Right?

18 I said, I'm glad, you know. I
19 said, I'll hold a minute, so I can get a
20 tissue. I think I'm going to shed a tear.

21 So he said, yeah. Well, I wish you
22 luck with Jayson.

23 I know he didn't mean it, and so I
24 hung up the phone.

25 That was the only time he's ever

Blanchard

1 called my house.

2 MS. GREEN: Do you know whether he's
3 still on the 18B panel?

4 MS. BLANCHARD: I've seen him in the
5 courtroom twice since then. He waives, and he
6 still does his little act with people, still
7 goes up there and tells people to accept, and
8 that's something that should be stopped.

9 When you go in Judge Hanafée's --

10 MR. GRADESS: What is his name, and
11 how do you spell it?

12 MS. BLANCHARD: Hanafée,
13 H-A-N-A-F-E-E, and when you go in there, you're
14 guilty.

15 I don't care what you do, if you
16 didn't do it, or if you did it, you're guilty.
17 The first thing is to accept the plea, accept
18 the plea.

19 If you don't accept the plea, you
20 go to trial, you are going to get it, you know,
21 and I've sat in for over two years in that
22 courtroom, so I've seen a lot of people go and
23 come. That is his first thing, accept the plea.

24 MS. BANKS: Could I ask what court
25 that is?

Blanchard

1 MS. BLANCHARD: That's Tap C in
2 Queens Criminal Court, Tap C.

3 MS. BANKS: And what is that you
4 recommend?

5 MS. BLANCHARD: That he should not
6 be allowed to help everybody to accept a plea.

7 I thought in this country you're
8 innocent until you're proven guilty.

9 Everybody is not guilty, but when
10 you go in Judge Hanafee's courtroom, you're
11 guilty.

12 I don't care who you are, every one
13 that I've seen come in there, he offers them a
14 plea.

15 If they don't accept the plea, his
16 first words are, if you go to trial, I'm going
17 to hang you, I'm going to make sure you get the
18 maximum.

19 That's his favorite line.

20 MS. HATHAWAY: Could you clarify
21 something for me?

22 MS. BLANCHARD: Yes.

23 MS. HATHAWAY: Is your son -- did
24 your son go to trial? Is he just sitting
25 there?

Blanchard

1 He's been there two years without
2 going to jail or anything?

3 MS. BLANCHARD: Nothing.

4 MS. HATHAWAY: He's been sentenced
5 to nothing.

6 MS. BLANCHARD: Well, he is just
7 sitting there.

8 MS. HATHAWAY: He's been sitting
9 there for two years?

10 MS. BLANCHARD: Yes.

11 MS. YORK: Could you clarify one
12 thing about prior to your going to the panel,
13 to the people you talked to, and the attorneys
14 regarding trying to withdraw the plea, that was
15 a whole another phase?

16 MS. BLANCHARD: Right.

17 MS. YORK: Do you want to discuss
18 that a little bit, about thinking you had to
19 hire a private attorney to withdraw the plea,
20 and all of that?

21 MS. BLANCHARD: Oh, you mean in the
22 beginning when I hired --

23 MS. YORK: No, before you went to
24 the panel, like how you were going to get the
25 plea withdrawn.

Blanchard

1 MS. BLANCHARD: Oh, when we were
2 looking for another lawyer then?

3 MS. YORK: Trying to figure out what
4 to do.

5 MS. BLANCHARD: Yes, what to do with
6 trying to get a private lawyer, at that point,
7 yes, because his lawyer was so terrible, we
8 were trying to find another lawyer.

9 Yes, at that point we were trying
10 to find money, like \$20,000, and that's what
11 everybody wanted, to try to find another lawyer
12 to withdraw the plea, to try to get something
13 with Jayson, because he was just sitting there,
14 like at that point I think it was almost two
15 years exactly.

16 MS. HATHAWAY: Do you feel that the
17 attorney that he has, now meets any of these
18 standards that we are trying to put forth?

19 MS. BLANCHARD: Yes, Juda Maltz,
20 like I told you, I have to admit, he returns my
21 phone calls, he's gotten all the papers, he
22 demands the papers.

23 Judge Hanafee treats him like a
24 dog. He objected -- objects to things, he asks
25 for things, Judge Hanafee tells him, oh, please

Blanchard

1 this isn't 1929, just be quiet, go sit down.

2 This is how he talks to him, you
3 know, and this isn't right. It isn't right.

4 And I told you, when you go into
5 Tap C, you're guilty. Everybody is guilty.

6 If you don't accept the plea,
7 you're going to trial, he'll tell you, I'm
8 going to make sure you get the maximum.

9 So everybody is scared. When you
10 go in there you're scared.

11 Now, like I told you, my son never
12 has been in trouble before, so he's never been
13 in a situation like this, so he doesn't know,
14 he doesn't understand anything.

15 He's learning real quick now where
16 he is, because he's in there with rapists with
17 murderers, he's in there with everything, you
18 know, drug dealers, everything, so he's
19 learning a lot, being where he is, but I told
20 him, keep your bible, stay in the law library,
21 you know, try to keep your mind -- you know,
22 maybe your body is there, but try to keep your
23 mind somewhere else, because you come in there,
24 everyone I have seen, that comes before Judge
25 Hanafee, the first thing he says is, I'm going

Blanchard

1 to give you a break. You know you shot him,
2 whatever, or you stabbed him, whatever, it
3 doesn't matter if the man said he's innocent or
4 not, take 15 years.

5 MS. HATHAWAY: Are they trying to go
6 to trial now or what, or is he still sitting
7 there?

8 MS. BLANCHARD: We started the
9 Huntley hearing two weeks ago.

10 Now, the first lawyer that I hired
11 they -- Juda Maltz, Jayson's lawyer, said that
12 Judge Hanafee has already said that he's going
13 to say that Jayson didn't have a lawyer, that I
14 paid the money to, when they picked him up.

15 Now, they didn't have a warrant
16 when they picked Jayson up. Jayson wasn't doing
17 anything. He was not doing any illegal
18 activities, they just went to the house, like I
19 told you, and they said they wanted to question
20 him, and they put handcuffs on Jayson.

21 MS. HATHAWAY: Did they -- I mean,
22 did they read the Miranda rights, did they do
23 that?

24 MS. BLANCHARD: After they went
25 through that, when Jayson asked to call his

Blanchard

1 lawyer, they told Jayson, you want to play hard
2 ball, I'm going to show you hard ball.

3 This is when they took Jayson's
4 arms, and Jayson told me they twisted his arms
5 back, and put the handcuffs with his arms
6 twisted one way, one arm twisted one way, and
7 one arm twisted the other way, and they put
8 the handcuffs on top, and then they left and
9 just walked away.

10 So Jayson went through this. So
11 Jayson said, you call my lawyer. And every
12 time Jayson said it, they said, call what
13 lawyer? And they had the lawyer's name right
14 there.

15 I called. When I called, the
16 lawyer called there, they said they didn't have
17 Jayson.

18 They lied.

19 So -- and this lawyer, he didn't
20 really do too much, anyway, because he could
21 have went to the precinct, anyway, but he just
22 took my money, but he has on the paper \$4500
23 that I gave him, but I gave him \$3500.

24 So they said that Judge Hanafée is
25 going to say that he didn't have a lawyer. So

Blanchard

1 they are going to say this, he's going to lose
2 that, but that part I'm not going to worry
3 about that right now, you know, it's just, I
4 told you, Tap C is the worse place in the
5 world, it's the worse place in the world.

6 MS. BANKS: I'm not familiar with
7 the term "Tap C"?

8 MS. BLANCHARD: That's Judge
9 Hanafee's courtroom, Tap C.

10 MS. BANKS: Oh.

11 MR. GRADESS: Did the lawyer testify
12 at the Huntley hearing?

13 MS. BLANCHARD: He came in and said
14 that he went to the precinct. They had him
15 describe the detective room, he said everything
16 that was on the board, the names, numbers, what
17 Valentino looked like, everything, even the
18 chairs, the color of the tables, the color of
19 the walls, everything.

20 Now they are saying he lied.

21 MR. GRADESS: And other than going
22 to the precinct, did he do anything else?

23 MS. BLANCHARD: No.

24 MR. GRADESS: Are there other
25 questions that you guys have on the standards?

Blanchard

1 MS. WHEELER: I don't know if I
2 missed it or not, you did read over the client
3 standards?

4 MS. HATHAWAY: She read it, yes.

5 MS. WHEELER: Was there anything in
6 particular that stood out for you?

7 MS. BLANCHARD: Really, I told you
8 if you could get -- this would be a perfect
9 lawyer, but I know that wouldn't be possible,
10 you know, they don't make them, they don't make
11 a lawyer like that.

12 There is no possible lawyer on
13 earth that would be this perfect, but Juda
14 Maltz is like -- he's trying, he's trying his
15 best, but they treat him like dirt in Judge
16 Hanafee's courtroom.

17 I mean, if you see how they talk to
18 him, like he's a child. I mean, they literally
19 say, Juda, shut up.

20 I mean, what kind of respect is
21 that? I mean, this is a lawyer, he doesn't sit
22 on the DA's side, he sits on the defendants
23 side, where he's supposed to be, where
24 Mr. Worgan would be over there with the DA
25 talking like, oh, Switzerland was great, you

Blanchard

1 should go sometime, nothing about what's going
2 on, where you see Juda Maltz with his work out,
3 going over it before the case is called.

4 He's doing what he's supposed to
5 do, and I told you, within less than a month he
6 got -- he got all the papers that we were
7 asking Mr. Worgan for, and Mr. Worgan is like,
8 you can't get them, you're not entitled to
9 them.

10 And the motions we got, we had to
11 send them to Jayson, he didn't give Jayson
12 anything, he didn't do anything.

13 I don't know why they allow him
14 even on the panel. I don't know what good he is
15 to anybody. I really don't, I really don't.

16 He's the one that goes along with
17 the Judge Hanafée, with accepting the plea, and
18 he tells Judge Hanafée, right in the courtroom
19 in front of the client, whatever client he has,
20 your Honor, I told him to accept the plea, I
21 told him. I told him it's the best thing he
22 can get. I don't know why he's not taking it.

23 He's standing there right with the
24 client next to him, telling him, I've tried
25 everything I could to get him to take it, and

Blanchard

1 Judge Hanafee says, look I'm telling you, take
2 it, take it, you go to trial, you are going to
3 lose.

4 You know, who knows if the guy did
5 it or not, or if the woman did it or not,
6 everybody is guilty in Tap C, everyone.

7 It's terrible, it's terrible, it's
8 terrible, it's terrible.

9 There has to be a lot of changes,
10 there has to be a lot of changes, a lot of
11 changes. It's terrible. It's terrible.

12 And when a layers tries to fight
13 it, he's treated like he's nothing, not a
14 lawyer, he's treated like he's nothing.

15 I mean, even on Jayson's case when
16 he had -- when the lawyer was on the stand, and
17 the new District Attorney asked about what was
18 in the room, and she said, I'm not sure, but
19 she said, because they won't allow me in there,
20 but Mr. Maltz told me he objected to something,
21 and Judge Hanafee told him, Juda, shut up and
22 sit down.

23 I mean, you know, how do you speak
24 to a lawyer like that?

25 And this is another lawyer sitting

Blanchard

1 on the stand, and she asked the question, and
2 Mr. Maltz said, you know, this is grounds for
3 an appeal, what you just said is grounds for an
4 appeal, and so he said, yes, we'll put it on
5 your appeal.

6 This is the judge? It's
7 ridiculous, it's ridiculous, it's ridiculous.

8 Juda Maltz tries his best, but like
9 I told you, he's treated terribly, he's treated
10 terribly, terribly.

11 But as far as speaking to Jayson, I
12 can call him right now, as soon as he can call
13 me, if he's in court, he will call me right
14 back, whatever it is, he'll explain it to me,
15 or set up an appointment for me to come in the
16 office.

17 I don't care what it is, he'll sit
18 down, he'll offer me lunch, coffee, or whatever
19 it is, and explain it to me.

20 MR. GRADESS: That's terrific.

21 MS. BANKS: And this is the Supreme
22 Court?

23 MS. BLANCHARD: Yes.

24 MS. BANKS: He's an Acting Supreme
25 or was he elected?

Blanchard

1 MS. BLANCHARD: Judge Hanafee?

2 MS. BANKS: Yes.

3 MS. BLANCHARD: He hasn't been there
4 that long, he hasn't been there that long.

5 There was something in the
6 newspaper recently about Judge Hanafee.

7 He hasn't been there that long.

8 MS. BANKS: You don't know whether
9 he was elected or he's an Acting Supreme Court
10 Judge?

11 MS. BLANCHARD: I don't know.

12 MR. GRADESS: Any other questions?

13 Donna, do you have anything that
14 you want to say finally?

15 MS. BLANCHARD: No, I think I got a
16 lot out that I wanted to get out.

17 MR. GRADESS: Thank you very much
18 for testifying this morning.

19 MS. BANKS: Thank you.

20 MR. GRADESS: We'll take a brief
21 adjournment for 10 minutes and then we'll ask
22 for Juan Dones, Sr. to testify.

23 MS. HATHAWAY: Thank you very much
24 for coming.

25 MS. BLANCHARD: Thank you for having

Blanchard

1 me.

2 MS. HATHAWAY: We hope that
3 something will be able to come out of this that
4 is positive.

5 MS. BLANCHARD: There has to be a
6 lot of changes, there really does.

7 Thank you.

8 MR. GRADESS: Thank you.

9 (At this point in the hearing a
10 recess was taken.).

11 AFTER RECESS

12 HEARING CONTINUED.

13 MR. GRADESS: Okay, we're going to
14 get started. We're going to get started this
15 afternoon on a kind of tight schedule, so we're
16 going to try to hold the testimony to 10
17 minutes, and we're going to focus on the
18 standards, and talk about the standards.

19 Mr. Dones, please begin.

20 MR. DONES: You want me to go one by
21 one by one?

22 MR. GRADESS: Whatever you would
23 like.

24 Have you reviewed them, and if you
25 do have comments for us, tell us.

Dones

1 MR. DONES: I have reviewed all of
2 them, and the two of them that figure out to
3 most is number 3, first of all, "visits,
4 accepts phone calls, answers letters and takes
5 time to counsel and explain".

6 The lawyers that I went through
7 never had the time to answer a phone call, they
8 never had the time to see me.

9 The only time that you would see
10 them would be five minutes, if that much,
11 interview, between the bull pen and the judge's
12 chambers. They never had time to talk to you.

13 I spent a lot of time in the system
14 preparing my own legal defense, and every time
15 that I bring something to my attorney, he says,
16 we can't use this, we can't use this, we can't
17 use this, but the law book said that we could
18 use them.

19 The lawyers never really gave
20 anybody, or gave me the time to know just what
21 my case is really about.

22 I kept explaining to him, I told
23 him I got railroaded. I told that I did not
24 sell to her. I never gave it to her, and he
25 still didn't want to hear it.

Dones

1 MR. GRADESS: Did he ever take the
2 time to sit down and talk to you about the
3 case, in terms of the legal issues, as to why
4 he disagreed with you?

5 MR. DONES: No, he talked about the
6 indictment, to tell me they are offering me 3
7 to 6, they are offering you 4 and a half to 9,
8 your criminal records said that you should get
9 this.

10 MR. GRADESS: Now, you had an
11 appointed lawyer?

12 MR. DONES: I had a Legal Defender,
13 a Public Defender.

14 MR. GRADESS: Where was this.

15 MR. DONES: In the Bronx.

16 MR. GRADESS: Was it a Legal Aide
17 Society lawyer, or someone from the Bronx
18 Defenders, or who was it?

19 MR. DONES: It was just a Legal
20 Aide.

21 MR. GRADESS: A Legal Aide?

22 You are sure it might not have been
23 18B counsel?

24 MR. DONES: It was not 18B, I know
25 the difference between both of them.

Dones

1 MR. GRADESS: Okay, thank you.

2 MR. DONES: Basically, what he just
3 continued to say was, take the plea, take the
4 plea, take the plea.

5 That's all that ever came out of
6 his mouth.

7 I said, represent me, and present
8 my case. I didn't do that, I said, but you're
9 supposed to be my counsel, present it.

10 He said, it is not acceptable,
11 because you're not a paralegal.

12 And I had said, what does this have
13 to do with anything? He said, I have people
14 working on your case, but he never showed
15 anything to that effect.

16 He never showed me that they are
17 working for my case, all he told me was, take a
18 plea, come in for three minutes, take a plea,
19 now go back.

20 A lot of times they kept playing
21 switch with you on the telephone, your lawyer
22 is not here today, so I'm just going to present
23 you in front of the judge, and give you another
24 date.

25 Before you went in front of the

Dones

1 judge, you already knew what was going on. Then
2 you asked for an assistant. He said, I can't
3 help you, your attorney is the one who is
4 handling your case. I'm just filling in for
5 him for today.

6 And I got shuffled a lot until
7 finally, after a while, I have to take a plea,
8 because your back is against the wall.

9 MR. GRADESS: How many times were
10 you in the system?

11 MR. DONES: I have three state bits,
12 I have four felonies.

13 MR. GRADESS: And were they all
14 essentially the same, that you're describing?

15 MR. DONES: No, the first one was
16 armed robbery, because I was in a vehicle with
17 some fellows, and if one commits a crime,
18 you're all guilty.

19 I gave a guy a lift in my vehicle,
20 and I didn't know that he had robbed a store,
21 so when we got pulled over, we all were guilty,
22 even though I have nothing to do with it.

23 The gun is in the car, you're
24 driving, you're getting away, man.

25 And when I asked him, don't I have

Dones

1 the right or anything? Then comes the words,
2 well, you have the right to shut up.

3 I didn't want to use curse words,
4 and slapped me.

5 MR. GRADESS: Who was it that
6 slapped you?

7 MR. DONES: To police.

8 Don't I have the right to an
9 attorney?

10 You have the right to shut up, and
11 that's to right I had.

12 MS. GREEN: Ever been visited in
13 jail by an attorney?

14 MR. DONES: Never.

15 His word was, I don't have the time
16 right now.

17 If you want, so I'll make time.

18 MS. HATHAWAY: If you want to, he
19 would make time?

20 MR. DONES: Yes, but what I could do
21 is, I will see you in the courtroom and, then
22 sometimes they would schedule a court appointed
23 visit with your attorney in the courtroom, and
24 he wouldn't show, so you would be there all
25 day, and you tell the officers, can I go back?

Dones

1 No, you have a scheduled appointment with your
2 attorney, you have to be here.

3 MS. YORK: Are you talking about in
4 the attorney room and at the courthouse?

5 MR. DONES: At the courthouse.

6 Even in Manhattan I went through
7 the same thing.

8 MR. GRADESS: And when you needed to
9 go to one of these visits, what time would you
10 have to leave?

11 You were on Ricker's Island?

12 MR. DONES: Yes, on Ricker's
13 Island.

14 They would wake you up at 4:00 in
15 the morning, you would be in the bull pens by
16 5:30, you wait in the bull pens until about
17 9:00 o'clock, to go to the courtrooms, and then
18 in the courtrooms, you would get there about 10
19 o'clock, then you had to wait on a hot bus.

20 You stayed until they get you into
21 building. Then you had to wait to go
22 upstairs. Then still you had to wait, and you
23 would be in there about 12 o'clock.

24 MR. GRADESS: So you would have the
25 experience, and then the lawyer did not show

Dones

1 up?

2 MR. DONES: Right.

3 And it would be a common thing for
4 him.

5 MS. GREEN: Anyone in your family
6 every try to communicate with the lawyer?

7 MR. DONES: They tried to
8 communicate with the lawyer, and all they tell
9 you is that -- you get his machine, you get his
10 secretary, he'll get back in contact with you,
11 and that's what I would get.

12 I wouldn't even write them. One
13 time I got so upset because I got a Xerox
14 letter back, which I know was prefabricated.

15 MR. GRADESS: A form letter?

16 MR. DONES: Yes.

17 The only thing that was changed was
18 my name, the date, and nothing else.

19 MR. GRADESS: And what did that
20 letter say, if I might ask?

21 MR. DONES: The letter say that we
22 are working on your case, the best that we can,
23 we are looking through certain avenues to get
24 you a better -- what was it? It wasn't plea
25 bargain, he used a different word -- to get you

Dones

1 the best deal possible. In other words, a plea
2 bargain, even though that's not what I wanted
3 in the beginning.

4 He tried to claim me innocent, and
5 sometimes you're guilty by association, but
6 most of the time you're judged by your record,
7 because they look at you, and they look back at
8 your record, and they say, well, he's a common
9 criminal. It's not the first time.

10 And I strongly, in my heart, I feel
11 that the public defender is working with the
12 district attorney. I strongly feel it.

13 I may be wrong, but in my heart I
14 don't feel it any way different than that way.

15 MR. GRADESS: In your heart, can you
16 describe the way you feel that way?

17 MR. DONES: The reason that I feel
18 that way, is when I go in the court, I see them
19 being chummy, and giggling, and the laughing.

20 Wait a minute. He's supposed to be
21 on my side. How do you hang out with the other
22 side?

23 And that's what it is, the deal was
24 with the enemy.

25 MR. GRADESS: Do you think we ought

Dones

1 to address that in the standards, something
2 about how a lawyer should act in the courtroom?

3 MR. DONES: I feel that the lawyer
4 should act that way. He should be in the
5 courtroom, is the most important thing is give
6 your client, 10 minutes, even 10 minutes before
7 you even enter into the courtroom. Let's talk
8 about it. This is what is going on. This is
9 what they are offering. This is what I found
10 out, to give you a chance to at least know
11 what's going on, not say, hello, guy, take
12 this, adjourn it.

13 I have been through the system so
14 much, that I finally decided to turn the
15 tables.

16 Today I work for the Fortune
17 Society, I'm a counselor there, and I do this
18 because I'm tired of seeing people get shafted,
19 people going to jail, people going through the
20 system, and a lot of these clients that I see
21 come in, do not deserve it, to have lot of
22 clients that are under age, that have a mental
23 disability or physical disability, and they
24 are being incarcerated because they have no
25 knowledge of what's going on, and it's scary,

Dones

1 too.

2 It's a shame that the Public
3 Defenders are telling them, well, here, take a
4 program, fine. The program will get you out of
5 jail, but what about the conviction?

6 The conviction stays with them for
7 the rest of their life.

8 Now, they are categorized as a
9 criminal, because they take a plea.

10 Most of these clients don't even
11 know what they are copping out to. They look
12 at it, and they say a trial, 3 to 6 years, you
13 can go home today, let's take this plea, and
14 they take this felony, and that's the scary
15 part.

16 When they take the felony, a person
17 has been in there the six months, eight months,
18 they say, wait a minute, I can go home today,
19 but they don't know about tomorrow. Tomorrow
20 that felony is facing you for the rest of your
21 life when you try to get a job.

22 I got clients that can't even get a
23 job in McDonald's. That's bad. You can't even
24 get a job in McDonald's, because you have
25 felony conviction, and a lot these, I call them

Dones

1 kids, because a lot of them are kids, they are
2 being sucked up in the system, sucked up dry,
3 because somebody is trying to make a quota,
4 somebody is trying to make numbers.

5 It's not fair to them.

6 I always tell my client -- I keep
7 this in my pocket at all times. That's me 10
8 years ago. That way they know that I don't
9 talk just from the books, I talk from the penal
10 system when I give them the counseling.

11 MR. GRADESS: Describe for the
12 record what you just showed us.

13 MR. DONES: I showed you my jail
14 house D card when I was dead, and that's what I
15 tell them. This is what I looked like when I
16 was dead.

17 And the reason why I'm so strict
18 with them, is because I don't want them to be
19 me one day. I don't.

20 I don't want them to go through
21 what I had to go through, and a lot of them are
22 coming up so young and so ignorant, and I don't
23 mean stupid, I mean ignorant, because they
24 don't know.

25 And here you have a lawyer who was

Dones

1 supposed to help you, and you died, and the
2 lawyer's best interest is, if I get rid of this
3 case, I can work on the next one, so they are
4 so overwhelmed.

5 MR. GRADESS: Let me ask you this
6 question, you have read these standards, what's
7 your overall thought about them?

8 MR. DONES: The standards look good
9 in black and white, but can they honestly --
10 can this be -- if this was a lawyer, he would
11 be a super lawyer. So it's hard.

12 You'll find these standards in
13 different lawyers, but you can't find it all in
14 one.

15 MR. GRADESS: Well, we are
16 interested in finding only these standards, so
17 we are interested in your point of view, as to
18 ways that we can make this happen.

19 For example, what ways do you think
20 we can -- what are the ways that we could teach
21 the kids about what you're saying, to have a
22 greater expectation, to be in power, to make
23 better demands, to appreciate how the system
24 works, to know that, when they are getting
25 screwed, not just to be screwed, but to know

Dones

1 that they are being screwed, so they can
2 perhaps react to this?

3 MR. DONES: The easy way that you
4 can look at anybody that comes from the legal
5 system is that you should have a set of
6 standards of what a lawyer can and cannot do,
7 that way you won't be in doubt.

8 Like when I go to the hospital, I
9 see it says the medical guidelines of what a
10 doctor must do for you. Okay. Why can't we
11 have something like that through the legal
12 system? The same way that they know these are
13 your rights, I don't want to say a criminal
14 bill of rights, because that's what they need
15 to do, okay, a defendant bill of rights.

16 MR. GRADESS: A client bill of
17 rights?

18 MR. DONES: Yes, this is what you
19 are entitled to, this is what you're supposed
20 to get, and if you don't get that, you go to
21 the bottom of the 100 lawyers' list, or
22 whatever you want to put on the bottom of it,
23 somewhere where we can call and say, our rights
24 are not being met, lawyer so and so is not
25 taking care of my needs. What do I do about it?

Dones

1 Nothing.

2 You can't do nothing. So at least
3 give me somebody that I can call, somebody that
4 says, okay, we hear your case, you're
5 documented in, and we'll get back in contact
6 with you as soon as possible.

7 That doesn't mean one day, two days
8 or three days, but maybe you put a little fire
9 under somebody, maybe they will jump a little
10 bit.

11 MR. GRADESS: Do you think it's
12 possible to organize a clients' organization
13 that would have these interests uppermost in
14 their minds?

15 MR. DONES: It is possible, but you
16 have to be a person -- the best person to do
17 this would have to be somebody that has been on
18 both sides of the law, because when you get
19 shafted, you now how much it hurts, and then
20 you can separate the sympathy from the apathy,
21 and you know, okay, this hurt me, I don't want
22 to go through this, and how best to do it?

23 The person has got to be on both
24 sides of the law, he has to know both sides.

25 MR. GRADESS: When you say "both

Dones

1 sides" what specifically do you mean?

2 MR. DONES: What I mean is that you
3 had to be through the system, went through the
4 heartaches and pain, and hopefully now you're
5 on this side of the system where you're working
6 on making it better.

7 Even the community workers that
8 work in our neighborhood, if they are making it
9 better, you know, find -- my daughter goes to a
10 school where they are assisting the children
11 with a -- they have a legal class, PS 209 in
12 the Bronx, on Webster Avenue, and they are
13 assisting the kids with legal rights, not only
14 criminal legal rights, but all the rights that
15 they have, and it's a excellent program that
16 they have started, an excellent pilot program,
17 and it is working for the kids, because the
18 kids know their rights before they reach junior
19 high school, then they have something to look
20 at when they reach junior high school, and
21 above and beyond that.

22 MS. GREEN: In light of what you
23 said, could you react to number 2?

24 MR. DONES: Okay.

25 The first part is, are they

Dones

1 listening? I don't think so. Yeah, we're going
2 to get to get to your case, but I've got
3 another 20 cases that I've got to go through,
4 and I'm a counselor, and I have 20 cases, and I
5 can't get through all the cases, and it hurts.

6 If lawyers would have a lot less
7 paperwork, and a lot more people work, we would
8 be a lot better off, because they can't help
9 you when they have got so much paperwork, and
10 the key word is "overwhelmed".

11 They go in there with 20 folders,
12 and you hear the judge calling out all these
13 calendars, and in a five-minute span they've
14 gone from 20 cases, and nobody has heard a
15 word.

16 I mean, the lawyers, they are not
17 treating you with respect, too.

18 If they treat somebody with
19 respect, you have to know them. You have to
20 know dignity, you have to know what's on their
21 mind, what's hurting you.

22 That's like me going back saying,
23 how are you doing, Jonathan? Well, let me tell
24 you my trouble, and they will say, see you
25 later on.

Dones

1 Where is the respect? If I don't
2 have the courtesy and dignity to listen, what's
3 really going on? Well, then that's a problem.

4 MS. HATHAWAY: How do you feel about
5 number 5?

6 MR. DONES: I don't believe in that,
7 because most of the lawyers that I have dealt
8 with, the Legal Aides, they are not even in my
9 community. Most of them live in Jersey. Some
10 of them live in Connecticut, in suburbia.

11 MS. HATHAWAY: They know nothing
12 about where you come from, and they don't try
13 to find out?

14 MR. DONES: Of course not.

15 MS. HATHAWAY: They don't make any
16 effort to try to find out where you come from?

17 MR. DONES: They don't know, because
18 when I'm with them, and I tell them, you know,
19 the corner of so and so, he doesn't know where
20 it is.

21 MS. HATHAWAY: How do you get
22 attorneys appointed from Jersey and other
23 places?

24 MR. DONES: No, no, I'm saying you
25 have Public Defenders that live outside of the

Dones

1 city, so how could you know any community, if
2 you don't live in it?

3 I know they live outside of the
4 community but you're saying even that they are
5 working in the -- they are working in the
6 Bronx, they have been assigned to the Bronx
7 Criminal Court, they are on 16th Street or
8 whatever, they don't know enough about the
9 client, and they don't take the time to try the
10 find out about the community and where the
11 client comes from.

12 They don't -- I honestly feel that
13 they don't know the neighborhood at all. If
14 they knew the neighborhood, they would know
15 some of the challenges they would have to go up
16 against.

17 MS. HATHAWAY: That's what I am
18 trying to allude to, talking to clients,
19 talking to families, you know, even making an
20 effort to get to the area to find out.

21 I know they know to come from the
22 train station, from 161st, I used to work
23 there, but other than that, some lawyers are I
24 afraid to come into your neighborhoods,
25 honestly.

Dones

1 I've spoken to them about checking
2 out the neighborhood, so you could see that
3 they are what that whole neighborhood is about,
4 where I got arrested, because I got arrested on
5 the FDR Drive at 101st Street, on the east side
6 of the park.

7 MS. HATHAWAY: On the east side?

8 MR. DONES: Yes, right by the water
9 treatment plant.

10 There were no spots there, there
11 are no buildings there, but he said that I sold
12 in the so called neighborhood in front of the
13 building.

14 There is no building there.

15 MS. HATHAWAY: I know where it is.

16 MR. DONES: There is a building on
17 the other site, but there is no building on
18 this side of the park, and so they don't know,
19 they don't know the neighborhood, they are
20 going to agree to whatever is written on the
21 report.

22 MS. YORK: And you're entitled to an
23 investigator?

24 MR. DONES: No.

25 MR. GRADESS: Mr. Dones, let's just

Dones

1 dream for a minute. Can you envision a
2 curriculum that could be created with the
3 client community, that could be out to train
4 Legal Aide lawyers, or other Public Defenders,
5 so that they could be actually taught some of
6 the things that they don't know?

7 MR. DONES: It can be done. I mean,
8 you would have to sit done, but dreaming about
9 it, or thinking about it, the first thing I
10 would do was walk the lawyer through the
11 neighborhood, put the lawyer in the bull pen
12 for a day, put him there a day or two.

13 You see, we even have a saying for
14 what we call the lunch they give us. They call
15 it bull pen therapy. They give us a sandwich,
16 sandwiches, sandwiches, a baloney sandwich.

17 You're lucky if you don't get
18 diseased, and we call the bull pen therapy, or
19 cop-out lunch, because when they feed you that
20 long enough, you're going to cop out.

21 Put to lawyers in there for a
22 while, let them see what it feels like, let
23 them know what it feels like to sleep on the
24 floor, let them know what it is to sleep next
25 to a lake of urine, that smells like urine all

Dones

1 day long, or have to sit on a bowel that hasn't
2 been cleaned for three days, let them
3 experience that, may be that will wake them up.

4 MR. GRADESS: Would you be
5 interested in your Client Adversary Board kind
6 of a curriculum?

7 MR. DONES: I have no problem with
8 that in a heartbeat.

9 MR. GRADESS: That would be
10 terrific.

11 Are there other questions?

12 MS. WHEELER: Could you address
13 number 14, the latter part of that? Address it
14 with respect to your line of work.

15 MR. DONES: Okay.

16 "Knows about, identifies mental
17 and physical health, and substance abuse issues
18 concerning his or her client and seeks
19 assessment and services".

20 The problem is that these lawyers
21 are not qualified to know the differences
22 between a McDiver patient and a Cami patient.

23 The difference between both of
24 those is that a McDiver patient is mentally ill
25 and then got addicted on drugs.

Dones

1 A Cami patient is a patient who was
2 chemically addicted to drugs and now these
3 drugs took his mind, and sends it somewhere
4 else.

5 Now, he's mentally ill, most of
6 these counselors say, okay, he has a mental
7 problem.

8 If you don't know the diagnosis,
9 you can't help the guy, you really can't.

10 You just think, okay, he's ill, but
11 you don't know if he was mentally ill first
12 off, or was he chemically addicted, in the
13 first place.

14 You need to know which one came
15 first in order to help the person.

16 Sometimes it could have been
17 something simple, the guy was taking
18 medications over the counter, mixed with some
19 drugs, and it took his mind away, so now he's
20 mentally ill.

21 Some of these clients have the
22 minds of a five year old, and it's scary when a
23 client tells me, I don't know where the court
24 is at. Can you direct me? I've got lost going
25 to the program. I'm on 18th Street, where are

Dones

1 you?

2 I have clients that actually told
3 me this.

4 So how come the lawyers, knowing
5 that they have a medical problem or mental
6 problem, don't send them for mental
7 observation?

8 They know the basis. First here is
9 a program that will make you go home today,
10 just cop out to this, without helping, and then
11 they try to wait on us.

12 Now, you go find him a medical
13 place to go, you go find out if he's medical
14 Cami, you find him services.

15 And some of these clients are under
16 age, and we can't even find them services,
17 because they have a parent that is not involved
18 in their treatment, and it's scary.

19 MR. GRADESS: I think he's got an
20 appointment, and the next witness has got an
21 appointment, so if there are no other questions
22 --

23 MS. YORK: I have one question.

24 MR. GRADESS: Go ahead.

25 MS. YORK: How are psychologists or

Dones

1 other experts, or sentencing advocates, or
2 psychiatrists, appointed in the cases that have
3 come to your attention, just out of curiosity,
4 to assist with doing some kind of a background
5 workup, or mental status evaluation?

6 MR. DONES: You know the ones that I
7 have, the number is zero.

8 MR. YORK: Okay.

9 MR. DONES: No one else.

10 MR. GRADESS: You're referring to
11 all of your cases, or all your clients' cases.

12 MR. DONES: We have clients that I
13 have had, that I know of, that have a mental
14 disability, in one way or another, I have to
15 send them to get a psychosocial, and to get
16 a medical background check, because of special
17 schools, or health things that they tell me,
18 but through the court system, they don't check
19 that, they don't.

20 They just move them along, move
21 them along, and then we've got to do the
22 paperwork and foot work.

23 MR. GRADESS: Anything you'd like to
24 add?

25 MS. BANKS: I'd like to see him join

Dones

1 us.

2 You're right, you have seen both
3 sides.

4 MR. DONES: I've seen all three
5 sides, I'm an addict, I'm classified as a
6 criminal, because I have a criminal record, and
7 today I'm doing the right thing, I'm in
8 recovery.

9 So I've seen all three sides.

10 MS. BANKS: Do you think it's
11 possible to give effective representation,
12 without having seen the inside of prison, and
13 how much are we expecting of the lawyers, the
14 poverty lawyers?

15 That's an open question.

16 MR. GRADESS: Why don't we let him
17 answer it?

18 MR. DONES: What was the question?

19 MS. BANKS: We have-- we don't have
20 enough defense counsel -- attorneys.

21 How -- is it possible to teach
22 these counsel for the defense, for the poor, a
23 way to teach them, without actually going into
24 the prison and doing the things you said,
25 spending a night?

Dones

1 MR. DONES: I think, in my personal
2 opinion, I believe it would be harder for them,
3 because they haven't felt the pain yet, and my
4 personal opinion is, it should be part of that
5 internship.

6 Maybe as an internship. Let it be
7 part of the curriculum. A lot of us has got to
8 do a certain amount of hours in an internship.

9 I'm thinking of the TV star,
10 Deborah Norville, the TV star spent 8 hours
11 inside a cell, and I'm sure she did not suffer.
12 I mean, it was a show, it was entertainment?

13 That's a different thing.

14 MS. WHEELER: So did Diane Sawyer?

15 MR. DONES: This is reality, it's
16 not entertainment. They did it for the cameras
17 and everything. Let them see how it really is.

18 I think they really need to see
19 what we really go through in order to get the
20 best service.

21 Like I've always said, the best
22 counselors are ex-addicts.

23 MR. GRADESS: We appreciate your
24 testimony very much.

25 We would like to feel free to call

Dones

1 on you.

2 MR. DONES: Yes, at any time.

3 MS. GREEN: Thank you.

4 MS. HATHAWAY: Thank you very much.

5 MR. GRADESS: You both have to leave
6 next, so how about we run you through?

7 MR. PAULIN: Fine.

8 MR. GRADESS: Go ahead.

9 MR. PAULIN: What do you want me to
10 discuss first?

11 MR. GRADESS: We would like you to
12 talk about the standards, your reaction to the
13 standards.

14 MR. PAULIN: Jayson Paulin,
15 J-A-Y-S-O-N P-A-U-L-I-N.

16 To standards, like I said, some of
17 them are a little farfetched and some of them
18 are pretty goods.

19 The basic standards that a lawyer
20 should go by, like he was talking about number
21 5, number 6, number 5 I can say "knows and
22 relates to the community from which his or her
23 client comes from", some Legal Aide lawyers, I
24 guess, who come on, they don't really know and
25 understand what goes on in our community, or

Paulin

1 how police might do a sweep on the block, and
2 lock everybody up, and come up with a story
3 that everybody played a role in it.

4 You know, they don't understand how
5 that might go on, or how, where I live at in
6 Harlem, mostly every other block has drugs on
7 it, but in the daytime, it's a different scene
8 from at night, you know.

9 So they don't really want to
10 understand that unless they have actually been
11 there at nighttime to see what goes on, or
12 knows what goes on, because you can see one
13 thing, and then a completely different thing
14 going on.

15 Number 6, "is conscious of his or
16 her prejudices and recognizes how these might
17 affect his or her ability to effectively
18 represent the client".

19 I believe that no lawyer would
20 actually go and say that, look, I'm prejudiced
21 against this person, or this group of people,
22 and I can't work with this client, because I'm
23 not following anything you say.

24 I don't think no lawyer in their
25 right mind would say that.

Paulin

1 MS. GREEN: Is that what you mean by
2 "farfetched"?

3 MR. PAULIN: Yes.

4 MS. HATHAWAY: These are your
5 farfetched ones you are talking about?

6 MR. PAULIN: Yes.

7 MS. HATHAWAY: Okay.

8 Number 6, definitely.

9 MR. PAULIN: Number 10, that's not
10 really too farfetched, it depends upon the
11 lawyers, so you know I noticed that if a lawyer
12 sees you doing some work on your case, he might
13 work a little harder, because he knows, you
14 know, what you're talking about, or you have
15 some kind of idea about the law.

16 Not that you might not really
17 understand what you're talking about, you have
18 an idea of what you are talking about.

19 Number 12, "is committed to winning
20 freedom and decency for his or her client", I
21 don't know, it depends upon the lawyer, I
22 think, because a lot of lawyers don't believe
23 you're innocent, you know.

24 They are so used to everything
25 coming out so, that's like the norm in the

Paulin

1 game, you know. Let me see if I can make it so
2 you can get on about your business.

3 MS. BANKS: So instead of freedom,
4 you get offered a plea that is farfetched?

5 MR. PAULIN: Yes, but that was like
6 number 15, you know.

7 MS. BANKS: Number 12?

8 MR. PAULIN: I was talking about
9 number 12.

10 MS. BANKS: Yes, I'm saying
11 committed to freedom.

12 MR. PAULIN: Freedom could mean less
13 cop out, to less pleas.

14 MS. BANKS: There is pressure to
15 take a plea, that's why it's relating to that,
16 to 12.

17 MR. PAULIN: It's not so much
18 pressure, I don't believe it's so much
19 pressure.

20 I believe the pressure comes when
21 you don't see your lawyer willing to fight the
22 case, you know, so you know that okay, hey, I
23 could beat this case, but I need somebody that
24 will to in there and fight for me.

25 So, you know, that's -- if I'm

Paulin

1 going in there, and I'm fighting my lawyer, the
2 DA, and the judge, that are together, I know I
3 don't have a chance of winning, so, you know, I
4 try to take the less thing as possible so I can
5 live, and hopefully get back out to society or
6 something.

7 Number 13, you ain't going to never
8 have a problem with that one, because they are
9 going to tell you that, any time you talk to
10 them.

11 MS. HATHAWAY: So that's not far
12 fetched, that's the norm?

13 MR. PAULIN: Yes.

14 That should get a star plus right
15 there.

16 MR. KING: When did you start
17 getting introduced to the criminal justice?

18 MR. PAULIN: I got introduced to the
19 criminal justice system in like 1986. I was
20 16, I had countless misdemeanors due to
21 substance abuse, in and out of jail.

22 Most of them is just petty larceny
23 charges, and a lot of them have to do about
24 thievery. Most of them my record is basically
25 thievery.

Paulin

1 I have felony convictions and
2 possession of stolen property, which was a
3 vehicle in '93.

4 MR. KING: I wanted to know about
5 the bull pen therapy.

6 Are you familiar with that
7 terminology?

8 MR. PAULIN: I mean, everything --
9 when you're inside the system, and you're
10 trying to get to court from inside the system,
11 everything is like hurry up and wait.

12 They hurry up to get through to
13 wait. So sometimes you'll still be waiting
14 until they hurry to get you through again, and
15 you wait some more, because you haven't seen
16 somebody to last time you got there, so it's
17 like the lawyer don't even send any one. Just
18 to send you a note, that would help so much.

19 You know, you wait so long for your
20 court dates. They might be a month apart, and
21 to me, I anticipate going to court when I was
22 locked up, because that's when I find out, you
23 know, what's going on, or something new
24 developed, or anything came.

25 You wait all this time, and this

Paulin

1 guy don't show up, or he don't even send an
2 assistant or paralegal to come in the bull pen
3 and say, look, your lawyer is not here today,
4 but he said blah, blah.

5 That would help on the inside and
6 make you feel a lot better, because even though
7 I know I'm not going to go in and be before the
8 judge today, at least he sent somebody to tell
9 me something.

10 I might still be angry, but not
11 that angry, as opposed to sitting all day
12 waiting for a court officer to ask, is my
13 lawyer coming, or when are they going to call
14 my case?

15 You know what I mean.

16 MS. HATHAWAY: Before you get away
17 from it, are any more out of other four, that
18 you find farfetched?

19 MR. PAULIN: Of the ones that I
20 talked about, number 13, I'm sorry, I feel
21 sometimes -- yes, I went from 13 to 15. I mean
22 12 to 15, but number 13, "his or her client, no
23 matter what the opposition is" --

24 MR. GRADESS: When you're describing
25 these as farfetched, you're not suggesting that

Paulin

1 a client doesn't want a lawyer who does these
2 things, you're just saying, in your experience,
3 you've never seen it?

4 MR. JUSTIN: Yes, I've never seen a
5 lawyer that would actually exercise these
6 principals, these guidelines here.

7 I am not saying all lawyers,
8 because I had a case last year -- no, 2001, I
9 was arrested for a drug sale. Never in my life
10 have I been locked up for a drug sale. I got
11 picked up on 140th Street -- no, as a matter of
12 fact, I got picked up on my block on Seventh
13 Avenue between 145th and 146th Street sitting
14 on my stool.

15 The police came by, locked some
16 guys up on the corner, everybody disbursed, and
17 came down past my building, and the cops
18 followed them, and he stopped me, and I was
19 sitting in front of my building, he said, you
20 wait here. He searched me, he didn't find no
21 drugs, no money on me at the time, locked me
22 up, didn't tell me what I was being arrested
23 for.

24 When I got to the precinct it was a
25 guy, a guy that got arrested on the same block,

Paulin

1 he had drugs, they found the drugs on him in
2 the precinct, and another buy, they put all
3 three of us together with a drug sale.

4 They said that I went to one guy
5 and said to this guy, and then this guy went to
6 this dude, and this dude came out of no where
7 and made the sale, hooked us all up, charged me
8 with possession of a controlled substance they
9 found on this other guy in the bull pen, and
10 wrote up the paperwork about everything, but to
11 make a long story short, I went to jail -- no,
12 as a matter of fact, I went to the grand jury,
13 the lawyer that I had, that was appointed to
14 me, he didn't want me to go to the grand jury,
15 I'm telling him I want to go to the grand jury
16 and testify, because none of this happened the
17 way it did, and he said, well, you are going to
18 get indicted.

19 I said, well, if they are going to
20 indict me, let them indict me, anyway, because
21 I want them to indict me, based upon my
22 testimony, and he tried to discourage me with
23 everything in the world, from going to the
24 grand jury.

25 MR. GRADESS: What kind of lawyer

Paulin

1 was this, an 18B, a Legal Aide?

2 MR. PAULIN: I had 18B, because
3 everybody that was locked up had Legal Aide,
4 and they was like, then don't have Legal Aide
5 represent all of us at the same time, but I
6 don't even know if he was a lawyer, because he
7 was like yotta, yotta, yotta, but to make a lot
8 of things sought out, when I went in front of
9 the judge, I told the judge I wanted to go to
10 the grand jury, I let the Court know that I
11 wanted to go to the grand jury, so before he
12 even opened his mouth to say something, and
13 they put in notification, I went.

14 Now, I went to the grand jury, they
15 didn't hear the case, the other co-defendant
16 that I had, the one that I was supposed to have
17 talked to, he went to the grand jury, he has to
18 go to the grand jury to know if the guy that
19 got caught about the distribution, that
20 actually made the sale, he didn't ask to go to
21 the judge.

22 So the day that we are all supposed
23 to go to grand jury, the next court date he got
24 indicted, they let me go, and let the other guy
25 go, but what happened was, when I got out that

Paulin

1 night, I got rearrested, and they charged me
2 with another drug sale, this time up the hill
3 on 145th Street, the corner of 145th and
4 Amsterdam. They said that I made a drug sale
5 with a Spanish guy on 146th and Broadway,
6 between Broadway and Amsterdam.

7 I wasn't home for no more than five
8 hours, from being released in the grand jury,
9 to coming back to testify, and then I got
10 another sale.

11 So when I got arrested for that
12 one, I went to the grand jury, I got indicted.

13 The same lawyer I had, I went, he
14 said okay, yes, I will send you in front of the
15 grand jury, no problem, because now I've got
16 organized for another drug sale, and the DA
17 brought that up, inside the grand jury
18 proceeding, but I never been arrested for drugs
19 before.

20 Now, the day I was supposed to go
21 to the grand jury for the other case, I was
22 supposed to be scheduled to go back to the
23 grand jury for the first day when I got
24 arrested, he waived my appearance.

25 So now I'm indicted on both cases.

Paulin

1 I told them I had witnesses that I wanted to
2 produce before the grand jury, I never produced
3 my witnesses, but they later came and testified
4 at my trial, and I was telling him I want to go
5 to the grand jury, I want to go the grand jury,
6 he said no, no, I'm not letting you go. There
7 is nothing that you can say to me that is going
8 to change my mind.

9 I never made it out of the bull pen
10 to the courtroom, so I couldn't tell nobody.

11 The day I was supposed to be in
12 front of the grand jury, I was back to Ricker's
13 Island.

14 Of course I knew I was indicted,
15 because I didn't even go, because are they
16 going to indict. If you don't go, it's an
17 automatic indictment.

18 So what happened was, I fired this
19 guy. I have never forgotten his name. It was
20 Paul Fineman. I fired him, and I put in that
21 motion, I did it myself.

22 Before I met any new lawyer, I went
23 to the law library, I got a 190.50 motion to
24 get back to the grand jury.

25 When I met my new lawyer, I gave

Paulin

1 him the motion. He adopted the motion, and
2 submitted it to the Court, and to tell you how
3 that motion got answered, the judge was like
4 your lawyer -- how did he say it? The DA has
5 some kind of stupid rebuttal, and they was --
6 like the judge finally said that it was my
7 lawyer's choice or whatever, not to the send me
8 to the grand jury, and I did all this research,
9 I gave my new lawyer all this case law, and he
10 put in some more stuff, some more paperwork,,
11 and found some Court of Appeals' cases, and the
12 judge still shot it down.

13 So, to make a long story short,
14 based upon what that first lawyer said, and my
15 second lawyer called my first lawyer, and the
16 lawyer told him some sentences, he put it in
17 the motion, and he still denied the motion.

18 To make a long story short, the
19 second lawyer that I had, he was good.

20 MR. GRADESS: Did he fit into these
21 standards in some way?

22 MR. PAULIN: He fit all of them. I
23 can actually say he fit all of them.

24 MR. GRADESS: Would you share his
25 name with us for the record?

Paulin

1 MR. PAULIN: His name is Irving
2 Stein.

3 MR. GRADESS: And was he an 18B
4 lawyer?

5 MR. PAULIN: Yes.

6 I got lucky, I really got lucky,
7 because for some reason he believed I didn't do
8 it, you know. He believed I didn't do it.

9 I went to trial, and at trial, I
10 testified at my trial, my wife came and
11 testified, because she was my witness that was
12 supposed to be prepped for the grand jury, but
13 that was never -- the Grand Jury never even
14 heard about it, and I went to trial, and I won
15 on the second trial.

16 The first -- I went to trial on the
17 second day first, and then the first case they
18 just dismissed it, because the DA made may go
19 through all this nonsense, she kept bringing me
20 back and forth to court and, you know, she
21 didn't want to just down right dismiss the
22 case, you know, it was special narcotics, in
23 Manhattan, and there was one --

24 MR. GRADESS: And who was the judge?

25 THE WITNESS: That was -- I was to

Paulin

1 go in front of the Court, and I stayed locked
2 up about nine months before I came home.

3 MR. GRADESS: What judge did you
4 appear before?

5 MR. PAULIN: I was in front of Judge
6 Obis, Part 51, and that's where all my calendar
7 cases was going, and when I went to trial, I
8 went across to street at 111, in front of a new
9 judge, I think his name was Caruso or something
10 like that, and my lawyer, he went as far as --
11 it was a jacket that really got me out.

12 He went to my wife's house and got
13 the jacket, he rode through the neighborhood,
14 rode through around Harlem, you know, to see
15 where the liquor store was at, and because that
16 was my defense, the Harlem Liquor, like was
17 part of my defense, this restaurant called
18 Copelands on 145th Street, because, my friend
19 had worked there, and I went to speak to him,
20 he had ate when I got out, and he rode there,
21 got the time that the liquor store was opened,
22 and the hours, he rode a way down to Seventh
23 Avenue, road around that area, and he did like
24 his homework, as far as he had an investigator,
25 but the investigator really didn't do too much,

Paulin

1 just called certain people, but he said he rode
2 through the neighborhood, and he took pictures,
3 and the DA took pictures, too, because I went
4 to trial, and the DA had picture of a street,
5 and I had a picture.

6 It was funny, it was a billboard
7 with a police car, and the police arrested
8 somebody, it was a billboard on the corner of
9 146th Street and Admsterdam, it was a big
10 billboard with a police car, and then having
11 somebody in handcuffs, and he submitted that at
12 the trial, but my lawyer, you know, he got that
13 thrown out, because it's like kind of
14 prejudiced, you know.

15 MR. GRADESS: You sound like you
16 liked this lawyer?

17 MR. PAULIN: Yes, he was real good,
18 because he took time out to fight for me, you
19 know, and I believe he was good, like that,
20 because he used to be a DA in Queens, so it was
21 like, that he knew what this guy was going to
22 do, the DA, when it came down for trial.

23 You speak and everything before
24 trial, it was just like nonsense to me, you
25 know, because we were just going back and

Paulin

1 forth, back and forth, back and forth, and when
2 it really came done, to trial, is when he came
3 out of his bag and -- because I don't think he
4 was fighting for me on the court dates, you
5 know, because I guess there wasn't really too
6 much he have to do until, it really came down
7 to picking a jury and going to trial.

8 MR. GRADESS: Did he visit you?

9 MR. PAULIN: No, he had me come over
10 to the court.

11 MR. GRADESS: Did you hear the
12 questions I asked the witness right before
13 you?

14 MR. PAULIN: Yes.

15 MR. GRADESS: For a court visit,
16 could you describe it for the record, what your
17 experience was?

18 MR. PAULIN: A court visit is like
19 going to court.

20 MR. GRADESS: What time would you
21 have to get up?

22 MR. PAULIN: They said 4 o'clock.

23 You get strip searched, and you get
24 to sit in the bull pen, but I don't know when
25 we got out.

Paulin

1 They don't take us to court until
2 everybody was scheduled for court, and then you
3 went to court. Then they took everybody that
4 like was scheduled for counsel visits. They
5 went to Ricker's Island, to jail that was in
6 Manhattan, or the case in Manhattan that had
7 counsel visits, or presentence reports, or, you
8 know, the probation report.

9 They picked us all up, and then
10 took us to the court, and then you waited in a
11 certain part until your lawyer shows up, and
12 when they pull you out of the bull pen.

13 MR. GRADESS: So what time would you
14 leave Ricker's?

15 MR. PAULIN: I left Ricker's Island
16 about 4:30 in the morning, so you would sit all
17 day in a bus.

18 You would then sit in the bull pen
19 from like 10:30 to 11 o'clock, until whatever
20 transaction come about, and then they pick you
21 up, then they transport you to the court, and
22 the Court is so busy, and you would still sit.
23 After that you are then brought back to an area
24 where you wait for the bus to take you back.

25 These busses, they don't take

Paulin

1 everybody out at the same time, it's according
2 to that when arrive at the court, or if you're
3 on trial.

4 They pull you on that bus first,
5 because they don't take everybody together,
6 also depending on how many busses there are.

7 First you go upstairs, and come
8 like an hour later, you sit in this hot bus,
9 and then nothing much happens between those two
10 buildings.

11 And so you get upstairs, and when
12 you get upstairs, you wait for two or three
13 hours for lunch to come, they don't come around
14 until 12:00, usually 1:00, maybe, and their
15 lunch time they show up, and when you finally
16 get to see your attorney, it would be in a
17 conference room than would not be a private
18 room, it would be like this, and it has
19 sections, you know, like cubbyrooms, and it has
20 a steel gate you're talking into to your
21 lawyer.

22 On the next side you could see the
23 other person sitting right there.

24 MR. GRADESS: And could you see the
25 other person?

Paulin

1 MR. PAULIN: Yes, the only thing is,
2 it is open at the top. It's just high, where
3 you can get over it, and you could see your
4 attorney, and the attorney could see that, but
5 I had like kind of sections off a little bit.

6 MR. GRADESS: How did you feel about
7 those conversations?

8 MR. PAULIN: I didn't really care, I
9 just wanted to get out of there.

10 It's like when you -- all my life
11 I'm going back and forth to jail, but I didn't
12 do this one, and I wanted to take the plea for
13 this one, you know, any other time I would
14 like. I know I did it, and probably I was
15 running so much, I probably needed some rest, I
16 will take it, no problem,.

17 There wasn't even nothing for a
18 lawyer to do but just show up and let me get
19 the plea, because it was basically like
20 misdemeanors, and most of them was in Nassau
21 County, and in Nassau County it's a whole
22 different ball game than New York City, you got
23 no money, you ain't going nowhere, there is no
24 RR, there is no 30 days.

25 I don't even know anybody got 30

Paulin

1 days in Nassau, so that's a whole completely
2 different ball game.

3 MR. GRADESS: What's your living
4 situation now, what are you doing now?

5 MR. PAULIN: Right now I'm with
6 Fortune Society by choice. I have no legal
7 ties, or any probation, or parole. I have no
8 issues like that.

9 I'm currently living in the Fortune
10 Academy, which is on Riverside Drive and 140th
11 Street. It's their transitional houses. I am
12 trying to get an apartment or something and,
13 basically, I'm attending the substance abuse
14 program, just to stay clean and safe, out of
15 trouble, to give me something to do, because
16 I'm trying to get into Vesid, and I'm waiting
17 on that paperwork to come back, so I can go to
18 school starting my CDF.

19 That's basically it.

20 MR. GRADESS: How do you like the
21 academy?

22 MR. PAULIN: It's beautiful.

23 MR. GRADESS: As long as Fortune is
24 sharing this hearing with us, we put in this
25 commercial.

Paulin

1 Were you going to say something
2 else?

3 Any questions from the panel? He's
4 got to get back to working, so I don't want to
5 hold him.

6 MS. GREEN: Going back to the
7 farfetched thing, does that mean that these
8 standards are not possible to be met by an
9 attorney, or are there some that are impossible
10 to even think about?

11 MR. PAULIN: I think number 6, that
12 was really impossible.

13 MS. GREEN: I thought that was what
14 you were saying. That's sort of what I figured
15 you were saying.

16 MR. PAULIN: Yes, number 6.

17 MS. GREEN: Okay.

18 MR. PAULIN: A lot of lawyers don't
19 advise you. They tell you what they are going
20 to do. They advise you, look, I think you
21 should do this, no, I think you'd better do
22 this, and that you just roll with the punches.

23 The other lawyer, I was going to
24 writing him up and everything, and send it to
25 the Judiciary Committee, or something, and at

Paulin

1 the time I was so busy trying to fight the
2 trial, fight the case, that I just left that
3 alone, because my mind was too occupied with
4 other things, you know, but it was funny,
5 because I met somebody on Ricker's Island who
6 had him for a lawyer, who said, you'd better
7 get rid of him, and he had 3 to life, and he
8 didn't get rid of him.

9 MR. GRADESS: Did you have any
10 questions to Juan Dones regarding putting
11 together a curriculum to train lawyers, to
12 teach them about neighborhoods, and teach them
13 about copping and that sort of thing?

14 MR. PAULIN: Yes, it's so important.

15 MR. GRADESS: We have another
16 witness waiting, and he step can up, and you
17 can walk in the back.

18 MR. PAULIN: They could take a lunch
19 break near Harlem.

20 MR. GRADESS: My question is, how do
21 we get them to know these things?

22 MR. PAULIN: I guess maybe 80 per
23 cent of their cases, 90 per cent of their cases
24 are in Manhattan, probably coming out of Harlem
25 or the lower East side.

Paulin

1 That's the only place it's coming
2 from.

3 You know, midtown, they got the
4 court for that, but they wouldn't know
5 basically from the cases that they get, what's
6 going on in that community.

7 MR. GRADESS: What I'm saying is, do
8 you think there are people with your expertise
9 to be willing to help train them?

10 MR. PAULIN: Of course. I mean, you
11 can't really train them, you could probably
12 inform them.

13 So training them, I don't know how
14 you would train them, unless you put them out
15 there and give them some jack and get them
16 locked up.

17 That's the only trick I know.

18 MR. GRADESS: Well, that's an
19 approach.

20 MS. HATHAWAY: Do you think the
21 attorneys would actually be receptive to this
22 and would really listen to what's trying to be
23 conveyed to them?

24 MR. PAULIN: Some will.

25 MR. GRADESS: Do you think Eric

Paulin

1 Rothstein would?

2 MR. PAULIN: I think he would. I
3 believe him -- I don't know, but I know that he
4 would investigate it.

5 I don't think he would get down in
6 the trenches, but he would investigate it. He
7 would give it a thorough investigation, and
8 that's what he did for me, on both cases.

9 He had both of my cases, you know,
10 and he gave it a thorough investigation, and
11 you know, it was funny, because the police was
12 -- at that time it was the end of the Guliani
13 administration, and they was locking everybody
14 up, and it seemed like they were locking people
15 up and coming out with a story.

16 It was the same precinct that
17 killed my best friend's mom with a flash
18 grenade, the same precinct, the 23rd Precinct,
19 and they got this 3030, which they call this
20 30th Precinct on 150th Street, the whole area
21 is like crazy.

22 They locked me up with a guy, he
23 couldn't even speak English. I don't even know
24 his name. I never seen the guy a day in my
25 life. He couldn't speak English, and I saw how

Paulin

1 he and me really got together, and yet he
2 doesn't even speak English, and I don't speak
3 Spanish, you know. It was crazy.

4 And then he went on the run. I'm
5 going back and forth to court and I couldn't
6 cop -- well, put it this way, this is how
7 messed up it was, before I had my case, none of
8 them could cop out unless I copped out first.
9 So they was offering them a good deal, but they
10 couldn't take that deal unless I went and said
11 I was guilty, and I wasn't doing that.

12 So eventually, months, months
13 later, they separated the cases. This guy they
14 offered him a 1 to 3, they was offering me a 3
15 and a half to 7. He made the sale and got
16 caught with all the drugs, walkie-talkies.

17 I look on the discovery sheet, 1 to
18 3. They offered me a 3 and a half to 7, and he
19 said if I go to trial, they was going to give
20 me a Section 212. I said, I've got to take my
21 chances. I don't even know this guy, you know,
22 and I took my chances.

23 It just so happened that I had
24 lawyer that, you know -- maybe he wanted to
25 really win this case, you know, and he seen it

Paulin

1 was kind of like a weak case. He did it.

2 MR. GRADESS: Do you think he would
3 have done the same thing if he thought you were
4 guilty?

5 MR. PAULIN: I don't know if I
6 could convince him like I really didn't do it,
7 I was not guilty, I don't know.

8 I think he would have done it any
9 way, because the case was so weak. The way she
10 wrote up the paperwork, the whole story was
11 like fabricated.

12 I guess he seen all of that, you
13 know, and what I was telling him, kind of gave
14 him more ambition, because when I told him,
15 when I first met him, I'm not doing anything
16 those days, so every time we go to court, he
17 don't even tell me what the offer is or
18 whatever the case maybe.

19 I don't care if I've got to come to
20 court every day, I'm not going to let that bull
21 pen therapy get me stressed out, because some
22 people, they would go back to court so much,
23 they would just take the plea just so they
24 could go upstate, or go to the building and do
25 their time. I'm not doing that.

Paulin

1 I come to court every day and all
2 that, but I'm not -- my lawyer, he was good,
3 because he used to come to court, used to get
4 me out earlier. He used to come in at 9:00,
5 and I used to go back to Ricker's Island at
6 12:00.

7 I was happy about that.

8 MR. GRADESS: Any other questions?
9 We should let you go back, then.

10 Thank you, Mr. Paulin.

11 MR. PAULIN: Thank you.

12 MR. GRADESS: Good afternoon.

13 MR. NELSON: Good afternoon.

14 I would like to start with my
15 personal beliefs and my personal experience
16 with Legal Aide lawyers.

17 MR. GRADESS: Terrific.

18 MR. NELSON: Okay.

19 It's my belief that Legal Aide
20 lawyers, or least the ones that I have come in
21 contact with, believe or insist that their
22 client cop to a lesser charge, take what they
23 feel is the best offer.

24 It seems that is the only solution
25 for the situation. It seems that that's the

Nelson

1 only solution for the situation.

2 It would appear that their sole
3 purpose in representing a client, would be for
4 them to cop out to a lesser charge and not
5 actually finding out if their client actually
6 committed the crime or not, and a lot of people
7 who are going, I believe, going through the
8 justice system, can't deal with, like bull pen
9 therapy, or long bus rides, and things of that
10 nature, so they cop out to a lesser charge,
11 with hopes that they could just go to whatever
12 prison that they are sentenced to go to, and
13 then it will be all over, however, not
14 realizing that that felony would follow them
15 for the rest of their lives and affect their
16 job situation and their standards in whatever
17 community they live in.

18 I believe that Legal Aide lawyers
19 could be more sincere to their clients,
20 follow-up, have investigators to investigate
21 certain things.

22 From my special experience, I asked
23 my Legal Aide lawyer in this case -- I asked
24 the Public Defender that was representing me in
25 this case, if she was mandated to follow-up and

Nelson

1 investigate certain things, however, she said
2 she did, but what she didn't do, because if she
3 would have would have came back to me with a
4 different response, saying it's a -- she is
5 saying that she did, however, my personal
6 belief is that she didn't follow it through to
7 the extent, because she would have came back to
8 me with a different response than what she did,
9 therefore, causing me to sit on Ricker's Island
10 for 14 months, and I believe the case could
11 have been -- there could have been a different
12 outcome in the case, and her insisting that I
13 not testify in front of the grand jury, more
14 like insisting, when I asked her why, she would
15 give me all negative responses -- not negative,
16 but as if to believe that I would never win in
17 the grand jury.

18 I mean, I wouldn't win the grand
19 jury's belief that I didn't commit the crimes
20 that I was accused of.

21 MS. HATHAWAY: You feel that she was
22 steering you away from the grand jury?

23 MR. NELSON: Yes.

24 MS. HATHAWAY: As opposed to
25 encouraging you maybe to go before the grand

Nelson

1 jury?

2 MR. NELSON: Exactly.

3 MR. GRADESS: Let me ask you a
4 question to clarify the record.

5 When you used -- and you have used
6 the phrase "Legal Aide" and you've used the
7 phrase Public Defender, are you representing
8 which, the New York City Legal Aide Society?

9 MR. NELSON: Well, I believe it's
10 the Public Defender.

11 MR. GRADESS: The Public Defender?

12 MR. NELSON: Yes.

13 MR. GRADESS: What county are you
14 in?

15 MR. NELSON: I'm in Bronx County.

16 MR. GRADESS: Is it possible that
17 it's the Bronx Defenders, or where is there
18 office?

19 MR. NELSON: Their office is located
20 on the Grand Concourse.

21 MR. GRADESS: Okay.

22 Go ahead.

23 MR. NELSON: And I just believe if
24 they were to follow-up and have more faith in
25 what their clients are saying -- yes, there is

Nelson

1 a lot of people guilty, and then, again, there
2 are a lot people not guilty.

3 In New York State alone they
4 already hold you accountable for whatever your
5 record maybe, regardless of how long you've had
6 police contact, and all that plays a part.

7 That's pretty much it.

8 MR. GRADESS: Have you had occasion
9 to look at the standards that were drafted by
10 the Client Advisory Board or NYSDA?

11 MR. NELSON: The second draft, "a
12 lawyer who"?

13 MR. GRADESS: Right.

14 MR. NELSON Yes, I have.

15 MR. GRADESS: We would like to hear
16 your thoughts on this.

17 What we are trying to do is
18 formalize them.

19 We would like to hear from you
20 whether they are clear, whether something
21 should be added, whether they are realistic.

22 If not realistic, if you have had
23 experience with them, with a particular aspect,
24 we'd like you to talk about it.

25 MR. NELSON: Okay.

Nelson

1 Number 12 I commented on, committed
2 to winning. I would I like a lawyer who was
3 committed to winning something for his client.
4 I believe that's good.

5 A lot these that you have here,
6 sir, I personally experienced.

7 Like you would try to contact a
8 lawyer, you leave a telephone number, a direct
9 phone number, the lawyer would never call you
10 back, and then when I would speak to my mother,
11 she would ask me, well, why hasn't this lawyer
12 called back? And I would tell her why, and
13 then I would speak to a lawyer, I was telling
14 them I was trying to contact them, my mother
15 was trying to contact them, I'm busy, I'm on
16 trial, I'm doing this, I'm doing that.

17 And in one of these forms, and what
18 I have here, I can't really state what's going
19 through the Legal Aide lawyer's mind, however,
20 if they are stacked up and have cases, I don't
21 believe it's a good idea to try to rush through
22 them and not effectively study the case.

23 Out all of these 19 I have here, I
24 personally have experienced all of them.

25 MR. GRADESS: When you say you have

Nelson

1 experienced them, you mean you have experienced
2 the opposite of all of them?

3 MR. NELSON: Right.

4 MS. HATHAWAY: Negative?

5 MR. NELSON: That's what I mean.

6 MS. HATHAWAY: So you picked out 12.
7 You considered that doable? You said that's a
8 good one?

9 MR. NELSON: Yes, 12.

10 Number 3, client wants a lawyer who
11 visits, accepts phone calls, answers letters
12 and takes time to counsel and explain.

13 Maybe they won't have to talk with
14 so many sophisticated words, because a lot of
15 the individuals might not know to understand
16 some of the words they use.

17 MS WHEELER: Which is number 4?

18 MR. NELSON: Yes.

19 Number 5, "knows and relates to the
20 communities from which his or her clients come
21 from".

22 MS. HATHAWAY: Are you saying these
23 are the ones you find good or these are the
24 ones --

25 MR. NELSON: These are things that I

Nelson

1 believe that they should do.

2 MS. HATHAWAY: Okay.

3 So these are the things that they
4 should do, but they didn't?

5 MR. NELSON: Correct.

6 Well, my experience --

7 MS. HATHAWAY: We are talking about
8 from your experience?

9 MR. NELSON: Right.

10 MS. HATHAWAY: But you're saying 12
11 and 3? Are you saying that 12 and 3 --

12 MR. NELSON: They should do.

13 MS. HATHAWAY: -- or all of them
14 they should do?

15 MR. NELSON: Yes, number 12 and
16 number 3 is probably ones that I experienced
17 throughout the whole 14 months.

18 MS. HATHAWAY: That they should do?

19 MR. NELSON: That they didn't do.

20 MS. HATHAWAY: The most negative?

21 MS. GREENE: That you think are very
22 important? Out of all of them was, you sort of
23 can figure out you think is most important?

24 MR. NELSON: Yes.

25 MR. GRADESS: During the time you

Nelson

1 were on like Ricker's Island, you were there
2 for 14 months?

3 MR. NELSON: Yes.

4 MR. GRADESS: Did your lawyer visit
5 you?

6 MR. NELSON: No.

7 MR. GRADESS: Did your lawyer take
8 phone calls from you while you were there?

9 MR. NELSON: I could never reach the
10 office.

11 The times that she stated she would
12 be there, I would call, and I would always get
13 her receptionist, and I would always leave
14 messages, and then I decided to write her, so I
15 started writing, and I got -- in fact, I would
16 ask her for some paperwork, I can't remember
17 which paperwork it was, however, it came a
18 month later, and I felt that I was already on
19 Ricker's Island for nine months, and I can't
20 say if the DA had the paperwork or not, or was
21 able to receive it, however, she told me that
22 the DA didn't have the paperwork work at the
23 time, and, honestly, I didn't really believe
24 her, because she was holding up my process from
25 fighting my case from the inside.

Nelson

1 MR. GRADESS: Let me take you back
2 in your case, if I could, and see if you could
3 focus on a question.

4 Was there an instance in the
5 relationship -- how early in the relationship
6 with your lawyer did you begin to trust her, or
7 what was it specifically that happened, if it
8 was a specific thing that made it happen?

9 MR. NELSON: Well, when I first --
10 okay, what made me not trust her was, one time
11 I was in court, and she brought up a partner of
12 hers to speak to me, and I had a list of things
13 that I wanted to ask her, and it was like 12 or
14 13 things on the list, and all 13, if she
15 didn't shoot them down, her partner did.

16 So, as far as programs, and am I
17 eligible, why haven't I been offered one?

18 I haven't been in contact with the
19 police since 1983, and now it's 2001, why am I
20 not eligible for a program?

21 And why are you keep insisting that
22 I cop out for these years? Why not go to
23 trial? Why don't you want to go to the grand
24 jury?

25 And right there and then I started

Nelson

1 to get the impression that she wanted to hurry
2 up with the case.

3 MR. GRADESS: How soon after you
4 were arrested did that meeting take place?

5 MR. NELSON: Well, a week or two
6 after, when I was indicted.

7 As a matter of fact, when I got
8 indicted, she wasn't even my lawyer, she came
9 to Criminal Court, it was two and a half weeks,
10 approximately two and a half weeks, and the
11 first thing out of her mouth was, I think you
12 should take the plea.

13 MR. GRADESS: Were you a straight
14 indictment or had you been arrested and held in
15 Criminal Court?

16 MR. NELSON: I was arrested and
17 held, 8D-A indictment.

18 I didn't have a grand jury
19 indictment, but then after asking certain
20 people inside the facility, I was told that
21 unless you go to the grand jury, you are
22 automatically indicted, and her whole thing
23 was, I sit in the grand jury and I tell my
24 story, because if it goes to trial, I would
25 have to remember that same story, and I was

Nelson

1 trying to say to her, well, that's exactly what
2 happened, I'm not adding anything or taking
3 anything out.

4 MS. HATHAWAY: That was the truth,
5 and you don't have to worry about it?

6 MR. NELSON: That's exactly what
7 happened.

8 And she stated to me quote "it's a
9 good idea, because of your previous record
10 pertaining to the same crime", and I explained
11 to her I came off of parole in 1993, and now
12 it's 2001, and I haven't had police contact
13 since, and it's like she wasn't fighting for me
14 in court.

15 It's like everything the DA said,
16 she agreed to, without no kind of rebuttal or
17 anything. It was fine with her, and then they
18 said, 7 years is not that long. You'll do 5
19 out of 7. And I said, you've got to do it with
20 me. I mean, 5 years is a long time.

21 I have a two year and a four year
22 old at home, five years is a long time.

23 She just made me feel like a few
24 times I want to cop out, I wanted to cop out.
25 She made me scared to go to trial.

Nelson

1 MS. GREEN: Did you eventually
2 plead?

3 MR. NELSON: Eventually the case,
4 after time, went on.

5 The case was broken down, and they
6 went from 7 and a half to 15, and 6 to 12, 6 to
7 12, to 5 to 10, 5 to 10, to 4 and a half to 9,
8 4 and a half to 9, to 3 and a half to 6, 3 and
9 a half to 6, to 2 and a half to 5, 2 and a half
10 to 5, to 2 to 4, and then I had some hearings
11 which determined whether the evidence in my
12 case would be -- be able to be used at the
13 trial, and the judge stopped me, if I blow that
14 hearing, if I was to not win that hearing, I
15 would be -- the offer would go back down to 5,
16 2 and a half to 5.

17 So I had the hearing, the judge
18 decided -- he said, I will decide it on the
19 testimony, but when I came back in the court
20 the next morning, the first thing they said to
21 me was, they are going to give you the
22 program.

23 That's what you have been wanting
24 for the last year and some change, the last
25 year and a half, and me not using -- not

Nelson

1 thinking clearly, with no excuse for ignorance,
2 no excuse for not knowing the law, I took the
3 program, but the judge didn't say, if you blow
4 this, if you don't win this hearing, I'm going
5 to give you the program.

6 He said, if you blow this hearing,
7 I'm going back down to 2 and a half to 5.

8 So when I came in the next morning
9 to get the decision, the judge said, she says
10 to me, we are going to give you the program.

11 So I feel that pertinent
12 information was withheld from me when I wasn't
13 in the presence of the district attorney and
14 the judge.

15 MR. GRADESS: Let me switch gears
16 for a second.

17 In your first -- in the case that
18 you were previously on, in which you were on
19 parole, what was your representation like with
20 relationship to these standards?

21 Who represented you in your first
22 case?

23 MR. NELSON: This present case?

24 MR. GRADESS: The earlier case.

25 You said you got off parole in

Nelson

1 1993?

2 MR. NELSON: A Legal Aide lawyer.

3 He was young, I was young, and I
4 was sentenced to 2 to 4, and I was told that I
5 could go to shock camp for two to 6 months --
6 for six months, and be home in six months.

7 I had a 24 month sentence, so I
8 took that.

9 I didn't do any research back then
10 like I did on this case. I was younger, I was
11 naive to a lot of things. I just didn't
12 follow-up. I just did not do my homework. I
13 didn't use consequential thinking.

14 MS. HATHAWAY: Were you then aware
15 that you could have done that, though?

16 MR. NELSON: Excuse me?

17 MS. HATHAWAY: Maybe it wasn't the
18 fact that you didn't use the consequential
19 thinking that you were aware of, that you could
20 have done these things, that you know these
21 things now?

22 MR. NELSON: Yes, my mind wasn't in
23 the right place, I was quote unquote, a
24 hoodlum.

25 MS. HATHAWAY: No, I mean, were you

Nelson

1 aware that you could, for yourself, do the
2 research?

3 THE WITNESS: Yes, I was aware of
4 it.

5 MS. HATHAWAY: All right.

6 MR. NELSON: I just chose to take
7 the easy ride, I guess.

8 MS. BANKS: What are the
9 consequences of shock camp?

10 MR. NELSON: It has to be a
11 nonviolent crime, your first felony, and you
12 have to be under the age, I believe, of 35, and
13 that's pretty much it.

14 MS. BANKS: I got the impression
15 that you found it very negative?

16 MR. NELSON: Shock camp?

17 MS. BANKS: Yes.

18 MR. NELSON: No, it's a great
19 program. It shows you discipline. It is like a
20 boot camp atmosphere, like a military boot camp
21 atmosphere.

22 MR. GRADESS: Are there questions
23 from the panel on the standards that you want
24 to ask?

25 MS. HATHAWAY: Mr. Nelson says

Nelson

1 that most of them he experienced.

2 His personal experience is that it
3 was all negative.

4 I guess I need to know, is there
5 anything in these 19 standards that you think
6 are realistic enough, that it might happen, or
7 it does happen in some instances, or what you
8 would like to say happens?

9 What do you say on there that you
10 think might be doable?

11 MR. NELSON: Okay.

12 18 is doable. Actually, "informs
13 clients about sentencing, prison, prison
14 programs and incarceration process".

15 19 --

16 MS. HATHAWAY: In speaking about the
17 attorneys, do you feel that when they would be
18 approached with this, that you could honestly
19 get that they would honestly -- if the client
20 wanted these things, and did talk to the
21 attorneys about them, do you feel that, you
22 know, you could really get their ear?

23 Would they really be able to listen
24 to you normally, or that you would really have
25 to get adamant with them, that this is what you

Nelson

1 need to know, and this is what I feel you
2 should be doing, and I don't feel you are?

3 MR. NELSON: Yes, they did listen.
4 She listened, however, when she listened, I
5 feel that she always had her own perception in
6 her mind.

7 MS. HATHAWAY: How many attorneys
8 have you had represent you?

9 It seems there have been two
10 different cases.

11 Was this the only attorney that you
12 have ever -- it's not the only attorney that
13 you ever had to deal with, right?

14 MR. NELSON: No, this is the only
15 one -- the case right here is the only one that
16 I really -- okay, to be honest, I didn't commit
17 the crime. The other ones I committed the
18 crimes.

19 MS. HATHAWAY: But were they Public
20 Defenders, or did you hire them, or were they
21 assigned to you?

22 MR. NELSON: Assigned to me.

23 MS. HATHAWAY: So the difference in
24 the attitudes of the other ones that were
25 assigned to you, and whatever the case was, as

Nelson

1 opposed to this one that you are talking about
2 now, how did they differ?

3 Would you have preferred to have
4 one or the other, someone like the others, as
5 opposed to her?

6 MR. NELSON: I would have preferred
7 to have an older attorney, a previous attorney
8 on this case than I had on this one.

9 My lawyer on this case, it seemed
10 like she wanted to hurry up and get rid of it,
11 for whatever reasons.

12 I don't know, but then, as I set up
13 the case, and I fought the case, and I seen
14 that the time kept dropping, then they started
15 believing in what I was saying to her, and the
16 information that was given to the grand jury by
17 the police officer was not precise, so she
18 started believing in me after that.

19 MS. HATHAWAY: She began to see that
20 you were right --

21 MR. NELSON: Yes, I was
22 investigating and researching the whole case,
23 so, therefore, I left her no choice.

24 MS. HATHAWAY: So if you hadn't
25 shown that initiative, she probably would have

Nelson

1 been still in that same mode of floating along?

2 MR. NELSON: Right.

3 I probably would have still been
4 sitting on Ricker's Island fighting.

5 MS. HATHAWAY: Okay.

6 Was there anything at all a
7 positive outcome of your dealing with these
8 attorneys, that you can see listed here, that
9 you felt was consistent?

10 MR. NELSON: Yes, number 6.

11 MS. WHEELER: Really?

12 MR. NELSON: Yes.

13 MS. WHEELER: That's really
14 interesting.

15 If that is true, would you explain
16 to me your experience?

17 MR. NELSON: Okay.

18 For instance, during my Mapp
19 hearing the police stated that I was the sole
20 occupant of the apartment during the
21 observation. However, in there police report --
22 in his police record he stated I was the sole
23 occupant of the apartment during the
24 observation, as well as his grand jury
25 testimony.

Nelson

1 Now, once he's back on the stand a
2 few months later, he states that another
3 individual and his wife were in the apartment
4 during the time.

5 So she was conscious of what he
6 said in his police report, and to what he
7 testified just now in the Federal Court, and
8 she made that to be a point in my defense.

9 Number 9, as far as investigators,
10 I do believe that she sent an investigator
11 there, but what made me not believe her, is she
12 said she was going to go with the investigator
13 at lunchtime, and the case was 96 blocks from
14 the courthouse, 69 blocks from the courthouse,
15 and that she was going to come back and see me
16 in the bull pen, but she never came back.

17 Now, I can't say if she went or
18 didn't go, because after I had some people on
19 the outside go to see if those people still
20 lived in the apartment, and if the cord was
21 coming from the hallway into the apartment,
22 they said that nobody was there, no, nobody
23 lived there any more.

24 So then she came back the next day
25 and stated that, but I don't know if she went

Nelson

1 there, I don't know if they moved out after she
2 went, or whatever, because they seen that I was
3 fighting the case.

4 Number 13, after a certain amount
5 of time on Ricker's Island, after she seen -- I
6 guess she started believing in me more,
7 she, during the Mapp hearing, I believe she had
8 done a superb job in directing the questions to
9 the arresting police officer, as far as his
10 credibility, if he was lying or not. I mean,
11 different techniques she was using.

12 I was just writing down certain
13 questions that I wanted her to ask the officer,
14 but the way she was advocating, the way she was
15 asking him the questions, I believe it was a
16 great job, because, in fact, it did show beyond
17 a reasonable doubt that his grand jury
18 testimony differed from his testimony he was
19 making at that point in time.

20 MS. WHEELER: So I see that you're
21 not finished, so overall her representation
22 was?

23 MR. NELSON: Yes, overall her
24 representation was okay, but it took a long
25 time -- it took 14 months out of my life.

Nelson

1 In the beginning I wasn't getting
2 the same response from her that I was getting
3 towards -- in other words, I feel that she
4 wasn't taking -- I'm not going to say serious,
5 I feel that she wasn't giving her all in the
6 beginning of the case, until she seen the time
7 starting dropping down.

8 MS. HATHAWAY: And she saw how you
9 were reacting?

10 MR. NELSON: She seen how I was
11 investigating on my own, and every time I seen
12 her, I had different questions for her.

13 MS. WHEELER: That's an interesting
14 point, a very good point.

15 Did you hear that, Jonathan?

16 MR. GRADESS: No, I didn't.

17 MR. NELSON: I feel that as time
18 went on, and she seen that I was researching
19 and doing my own homework in the law library in
20 the facility and coming up with different
21 avenues to find out the truth, then she started
22 advocating.

23 MR. GRADESS: We need to call
24 another witness, but let me ask you one last
25 question, if I could.

Nelson

1 How do you think -- I mean, this is
2 hypothetical, but if your lawyer, from the
3 outset of the representation said, Sean, like I
4 have had a lot of cases, and there are going to
5 come times during the course of my
6 representation with you where I'm not going to
7 be able to be in touch with you, but I'll come
8 up for air, I will come to see you, or answer
9 all your questions , I will be able to take
10 your calls, and I will try then to answer the
11 questions that you have, and I want you to bug
12 me if the answers are not satisfactory, because
13 I'm busy, but I want to work for you, what do
14 you think that would have done to your
15 representation?

16 MR. NELSON: That would have made me
17 feel a lot better. It would have made me feel
18 as if she just wanted to hurry up my case
19 through the system, through the judicial
20 system. It would have -- it definitely would
21 have made my faith in her.

22 MR. GRADESS: Do you think, if she
23 had done that at the beginning, you would have
24 felt more consistent about her representation?
25 I mean, at the end of her game, she came on.

Nelson

1 MR. NELSON: Right.

2 MR. GRADESS: And that was okay?

3 MR. NELSON: Right.

4 MR. GRADESS: If she had done that
5 at the beginning, do you think you would have
6 sort of seen her as a consistently good lawyer
7 at this point?

8 MR. NELSON: Not really, because her
9 first thing to me was, take the plea. The
10 offer is not going to get any better than 7 and
11 a half to 15, regardless of what I was saying,
12 regardless of what I was showing her.

13 I mean, the law, it says "without a
14 reasonable doubt", and there were things in my
15 case that weren't clear, and it seems that that
16 was overlooked, and, like I said, once again,
17 as time went on, the time started going down,
18 the offer started going down, then it seemed
19 like she stepped up her game, as if to make me
20 believe, okay, maybe he is telling the truth,
21 maybe the DA doesn't have as much evidence as
22 she thinks she has.

23 MR. GRADESS: Okay.

24 Thank you.

25 MR. NELSON: Thank you very much.

Nelson

1 MS. HATHAWAY: Thank you so much.

2 MR. GRADESS: Okay, Kevin, please
3 begin.

4 MR. GIFFIN: Well, my story is, I
5 just finished doing 7 and a half years, I have
6 been home for a year, and now I'm in this
7 treatment program.

8 I was arrested August 24th for a
9 crime that happened in April of '94, I was
10 arrested that summer in August of '94, and I
11 had a Legal Aide, which like she look at the
12 case or whatever, and she didn't want to touch
13 it, and then I got another Legal Aide, which
14 was a male, and he just happened to be
15 representing a client, that his name was in
16 this case, you know, so he couldn't represent
17 me, because, I guess, they can't do that, the
18 third Legal Aide, I had she tried to do a lot,
19 but I don't think she accedes to everything
20 that we needed for her to properly represent me
21 in the case. You know, she had no investigator
22 --

23 MR. GRADESS: Now, when you say she
24 was the third lawyer that you got, a 18B lawyer
25 or another Legal Aide?

Nelson

1 MR. GIFFIN: She just came to Bronx
2 County from Westchester County, and they gave
3 her to me, and me being on Ricker's Island for
4 15 months, and being tired, you know, I didn't
5 really look at that, you know, like she's new,
6 she have to get used to being in the Bronx. I
7 was so tired, I wanted her to represent me an
8 get it over with.

9 MS. GREEN: You said the first one
10 wouldn't touch it?

11 MR. GIFFIN: Yes.

12 MS. GREEN: What's that mean?

13 MR. GIFFIN: Well, she will gave the
14 case up, I guess, or she had too many cases on
15 her case load.

16 MS. GREEN: Oh.

17 MR. GIFFIN: She didn't want to deal
18 with it.

19 MR. GRADESS: You've used the word
20 "Legal Aide".

21 Are you referring specifically to
22 the Legal Aide lawyer or your private lawyer?

23 MR. GIFFIN: No, Legal Aide Society,
24 that's who represented me, and it was a case of
25 misidentity. You know, another black male my

Nelson

1 size, approximately my height, committed the
2 crime, and like, during trial, it was like, you
3 know, the prosecutor -- everything was in their
4 favor, you know, like Legal Aide didn't have no
5 type of rights, as far as her trying to do, not
6 do what she wanted to do.

7 If I had a private lawyer, I know a
8 private lawyer would have, you know -- could
9 have got some type of authority up in there and
10 handled what he had to handle, but Legal Aides,
11 I don't see them getting that, and that was a
12 big problem that I had, you know.

13 She tried to fight, but it -- like
14 everything was knocked down, as far as lineups,
15 as far as me being the only dark male in a
16 lineup, and a dark male committed the crime.

17 As far as things like that, as far
18 as one of the dudes that actually committed the
19 crime coming in to tell on himself, but the
20 jury was deliberating, and he never got a
21 chance to tell his side of the story, of what
22 he did.

23 You know, it was just a bunch of
24 things, as far as being upstate, putting in the
25 appeal, and never getting a chance to meet the

Nelson

1 appeal lawyer.

2 MR. GRADESS: Who represented you on
3 the appeal?

4 MR. GIFFIN: That was a long time
5 ago, sir.

6 You know, I don't know, but it was
7 some people at the Legal Aide Society referred
8 me, you know, and the lawyer, later on.

9 MR. GRADESS: As far as the
10 standards, what do you think of them?

11 MR. GIFFIN: To me number 1 is good,
12 number 5 is good, number 8, number 9, number
13 10, number 12, and number 13.

14 MS. HATHAWAY: When you say they are
15 good, you mean they are doable?

16 MR. GIFFIN: Yes.

17 I will hope and pray one day they
18 can be doable, because I really think that
19 would help a lot of people, you know.

20 If you don't have the money to
21 represent yourself, then, you know, you are
22 going to get whatever is going to be given to
23 you.

24 I didn't ask for a month, because I
25 didn't want one, because I didn't do the crime,

Nelson

1 so I didn't want to hear anything about a
2 month, I was taking it all the way, regardless
3 of what.

4 Whatever was going to happen, I was
5 never going to cop out to no plea, to something
6 I didn't do.

7 It wouldn't matter how much time
8 they took off of it, I wasn't going to do it,
9 because that's admitting something I didn't do,
10 and I wasn't going to do that.

11 MS. GREEN: But you got pressured to
12 do so?

13 MR. GIFFIN: I blew trial, I blew
14 trial. It was like a week and a half process,
15 and I blew trial.

16 MS. HATHAWAY: When you say you blew
17 trial, you took a plea?

18 MR. GIFFIN: No, they found me
19 guilty.

20 MS. HATHAWAY: Well, when you used
21 the term you blew trial, you didn't take the
22 plea?

23 MR. GIFFIN: No plea, no trial,
24 meaning that you got convicted.

25 MS. HATHAWAY: Okay. All right.

Nelson

1 MR. GRADESS: Now, tell me when you
2 refer to 1, 5, 8, 9, 10, 12 and 13, what's your
3 feeling on the others that you left out like 2,
4 3, and 4?

5 Tell me about those, what your
6 reaction to these are?

7 MR. GIFFIN: "Listens to them and
8 treats them with dignity and respect", that's
9 something they do.

10 "Visits, accepts phone calls,
11 answers letters and takes time to counsel and
12 explain," well, I got letters and all that.

13 Visits and accept phone calls, it
14 was like no time for that.

15 MS. HATHAWAY: You were on Ricker's
16 how long?

17 MR. GIFFIN: 15 months.

18 MR. GRADESS: And you were visited
19 by your lawyer?

20 MR. GIFFIN: No, I saw her when I
21 went to court in the court building before you
22 go in front of the judge, she would come and
23 talk to me.

24 MR. GRADESS: Did you ever ask her
25 to visit you?

Nelson

1 MR. GIFFIN: Well, I told her to
2 come a few times, you know, we had things to
3 talk about, you know, because two witnesses in
4 the case, they testified in my behalf, and they
5 saw who did it, and all that, she never got a
6 chance to really talk to them.

7 The only chance I had to talk to
8 them is on the day that they actually came and
9 testified, so that's not like enough time to
10 sit down able talk to them.

11 MR. GRADESS: What were you charged
12 with?

13 MR. GIFFIN: I was charged with
14 robbery in the first degree, grand larceny in
15 the second degree.

16 MS. GREEN: Was there ever a formal
17 request to see your attorney?

18 MR. GIFFIN: No.

19 It was a cab driver robbery.
20 That's like, you know -- those are one of the
21 serious crimes now, you know.

22 \$12 was taken from the man, you
23 know, and he was the only witness to the crime.

24 MR. GRADESS: Let me just clarify
25 something that was asked of you.

Nelson

1 You were asked whether or not there
2 was a formal request for a lawyer, but on a
3 couple of occasions you asked your lawyer to
4 come see you; is that correct?

5 MR. GIFFIN: Yes.

6 MR. GRADESS: And your lawyer did
7 not come?

8 THE MR. GIFFIN: They said they
9 didn't have the time.

10 MR. GRADESS: Okay.

11 That's formal enough for me.

12 Go ahead, I'm sorry.

13 MR. GIFFIN: Number 7, she did that,
14 she did that.

15 MS. GREEN: Well, basically, in
16 picking out those numbers, you decided that
17 those are the most important?

18 MR. GIFFIN: Well, the ones I
19 circled are the most important to me.

20 MS. HATHAWAY: That you would like
21 to see done?

22 MR. GIFFIN: Yes.

23 I didn't like number 5, "knows and
24 relates to the community from which her clients
25 come", like if somebody would have known the

Nelson

1 community, they would have put in an a good
2 word about me and stuff like that, you know,
3 how I help out in the community and all that,
4 such things like that, knows the law
5 diligently, investigates the facts, and appears
6 to be creatively and competitively.

7 Yes, that's something good.

8 MR. GRADESS: Were you offered a
9 plea in this case?

10 MR. GIFFIN: No.

11 I told them I don't want to hear
12 about a plea.

13 MR. GRADESS: So you didn't get
14 badgered to plead out?

15 MR. GIFFIN: No, I told them I
16 didn't want to hear nothing about a plea, I had
17 no choice, but to take them all the way.

18 MR. GRADESS: This is a trial case,
19 as far as it was concerned?

20 MR. GIFFIN: Yes, I put in for a
21 speedy trial.

22 Those don't happen because they had
23 me waiting for 15 months.

24 MR. GRADESS: There is something I
25 want to go back to.

Nelson

1 You're saying that during the
2 conversations of this representation, you had
3 three Legal Aide lawyers?

4 MR. GIFFIN: Yes.

5 MR. GRADESS: From the Legal Aide
6 Society of the State of New York?

7 A. Yes.

8 MR. GRADESS: You know this to be
9 the case?

10 MR. GIFFIN: Yes.

11 MR. GRADESS: First lawyers, you
12 said, said, I don't want to deal with this.

13 The second lawyer came on and said
14 there was a conflict.

15 MR. GIFFIN: Conflict of interest.

16 MR. GRADESS: Because Legal Aide was
17 representing a person in what case?

18 MR. GIFFIN: Yes, named in the case.

19 MR. GRADESS: And yet the third
20 lawyer you got, was a Legal Aide lawyer?

21 MR. GIFFIN: Yes.

22 MR. GRADESS: You've sure of this?

23 MR. GIFFIN: She just had come from
24 Westchester County, and like she didn't even
25 know really what was going on, but me being so

Nelson

1 tired of, you know, going through bull pens and
2 all that, it's just tiresome the way it is, and
3 you want to get it over with.

4 You know, whatever is going to
5 happen, is going to happen, but she tried, she
6 tried, but I don't think she had all the
7 resources that she needed to fully represent
8 me.

9 MR. GRADESS: Now, in terms of
10 investigation, what do you believe was done?

11 MR. GIFFIN: I don't believe
12 anything was done, because they didn't
13 investigate it.

14 She would have found out that one
15 of the people that visited the crime, lived in
16 the building right where the crime happened,
17 and like I was trying to tell her at one time
18 that the DA came in with the big photograph of
19 the building, with the largest mountings in the
20 building where, you know, I suppose he came
21 down the steps to the cab, whatever, and I was
22 telling her that she could use that, because
23 the plans of the window, that actually divided
24 the crime, that was right in that frame.

25 MR. GRADESS: What did they say to

Nelson

1 you?

2 MR. GIFFIN: She says she wasn't
3 going to go that route, you know, and this and
4 that.

5 My sister wanted to take the
6 stand. She didn't want to put my sister on the
7 stand.

8 It was just won of the things that,
9 you know, she didn't want to do.

10 MR. KING: Did she share any
11 documents with you, DD5s, which is police
12 reports?

13 MR. GIFFIN: Yes, I had those.

14 MR. KING: Where did you get them
15 from?

16 MR. GIFFIN: She gave them to me. I
17 asked for those, and she gave them to me.

18 MR. KING: You asked for them?

19 MR. GIFFIN: She just didn't hand
20 them to me.

21 I said, do I know what's going on
22 with this place, and recall that, and she said,
23 I will print them up, and give them to you, and
24 all that.

25 MR. KING: And when did you know

Nelson

1 that she DD5s?

2 MR. GIFFIN: Well, I knew when you
3 asked for them, I asked was they in there.

4 MR. KING: I'm trying to get the
5 framework.

6 Was it during trial, or was it a
7 pretrial that you knew that she had these
8 documents?

9 MR. GIFFIN: At the pretrial.

10 MR. KING: It was pretrial?

11 MR. GIFFIN: Yes, and just knowing
12 that some one of the kids came to actually tell
13 on herself, and nothing being done about it.

14 MR. GRADESS: I'd like to you to go
15 into that more.

16 MR. GIFFIN: That really hurts.

17 MR. GRADESS: When did it happen?

18 MR. GIFFIN: The second day of
19 deliberation. They was deliberating, it was
20 like the second day, he came in with a 18B
21 lawyer, pronounced their names and everything,
22 but, you know, the prosecutors, you know, they
23 really are slick.

24 It was a lady, she was pregnant,
25 you know, rubbing her belly, you know, I'm

Nelson

1 about to go out and have my baby, and this and
2 that, and I don't know if that did anything
3 with the jury, but it looked like it took away
4 from what we were trying to do -- not do,
5 because she got over that, and the judge just
6 was like, we are not going to let him testify,
7 if they come back guilty with his testimony,
8 and such and such, we'll get back to you.

9 It's been going on 9 years, they
10 haven't got back to me yet, you know, so --

11 MR. GRADESS: This person who came
12 in, who got him to come in?

13 MR. GIFFIN: Well, you know, some
14 people talked to him, you know, told him it was
15 the right thing to do.

16 It was like -- he wasn't going to
17 be facing so much time as I was facing, you
18 know, and he finally came in.

19 You know, he was a crack addict.
20 You know, he finally came in.

21 MR. GRADESS: And the jury was in
22 deliberation?

23 MR. GIFFIN: Yes.

24 MR. GRADESS: But he did speak in
25 the court?

Nelson

1 MR. GIFFIN: He pronounced his name,
2 and his lawyer, an 18B lawyer, he pronounced
3 his name, but the prosecutor said, we don't
4 feel the jury should come back in and hear his
5 testimony, because where has he been? Why
6 didn't he come earlier?

7 And, you know, if somebody is
8 trying to prove their innocence, this man
9 should be allowed to talk in front of the jury,
10 regardless of what. He should be allowed to
11 talk, allowed to talk, so, you know -- and
12 another reason why, is that we found out later
13 that he was going to testify on the -- against
14 one of his partners in another crime of robing
15 cab drivers.

16 He was going to testify against
17 him, so they didn't want him to testify in my
18 case, because that would be, you know, putting
19 him with the other kid and all that, so they
20 didn't want to do -- not do that, so that's
21 like -- you know, that worked against me, too.

22 MR. GRADESS: Do you remember the
23 name of your lawyer?

24 MR. GIFFIN: Robert Franklin, and
25 the prosecutor was, I think, Juda, D. Mach,

Nelson

1 M-A-C-H, something like that.

2 MR. KING: Is she 18B?

3 THE WITNESS: No, Legal Aide.

4 MR. KING: Okay.

5 Thank you.

6 MR. GRADESS: Any questions from the
7 panel about the standards?

8 MS. BANKS: The bottom line is, the
9 basic mistrust that you or anyone else that you
10 know have dealt with these attorneys, these
11 defense attorneys?

12 MR. GIFFIN: Well, for me to
13 distrust, is -- well, it is not really
14 distrust, it's just that I know for what fact
15 that they are not going too far, like a private
16 lawyer would have, to handle my case. That's
17 just a fact.

18 MR. GRADESS: Would you identify
19 what it is you think a private lawyer would
20 have, that they wouldn't have?

21 MR. GIFFIN: Well, a private lawyer
22 has got access to, you know, investigators.
23 They would go around the neighborhood talking
24 to people. They could really get into the
25 nitty-gritty of the case and all that.

Nelson

1 Legal Aide, I don't see that
2 happening, because, you know, cop out, cop out,
3 I'm not coming out.

4 MR. GRADESS: You had reference here
5 to a private lawyer, as to a lawyer who was
6 paid.

7 MR. GRIFFIN: A private lawyer, you
8 know, that he's got people that helps him out
9 and all that.

10 The Legal Aide is a person that
11 just came from law school as a helper and all
12 that.

13 So I don't think that was enough
14 help. I think she needed more help.

15 MS. BANKS: You had said you were
16 the only black man in the lineup?

17 MR. GIFFIN: Yes.

18 As soon as the shade went up, it
19 went back down.

20 MS. HATHAWAY: If you were given the
21 choice of a Legal Aide attorney and a 18B,
22 which would you rather have?

23 MR. GIFFIN: 18B all the way.

24 MS. HATHAWAY: You don't have to
25 think about it now?

Nelson

1 MR. GIFFIN: Yes.

2 MS. BANKS: Because that's a step up
3 to a private lawyer?

4 MR. GIFFIN: Yes, and I think they
5 have to work harder.

6 MS. BANKS: They were more
7 motivated?

8 MR. GIFFIN: Exactly so.
9 They have a little heart for you,
10 they care a little bit.

11 MS. BANKS: Is the fact that a lot
12 of people come before an attorney, and they
13 don't feel like the attorney gives a damn, or
14 cares what happens to them?

15 MR. GIFFIN: Yes, some of them is
16 like that.

17 Well, the second lawyer I had, I
18 really think that he told -- I really think he
19 told his client to take his plea and go on
20 upstate, and do as little bit of time, because
21 it was just a coincidence, you know, like that
22 was really a coincidence that he just happened
23 to be representing two people that, you know,
24 was stated in the same case, you know, because
25 his client is the one that actually committed

Nelson

1 the crime, and I was the one that looked like
2 him, big and dark skinned.

3 I was the one that looked like him,
4 and, you know, from him getting all the
5 information about this crime, knowing that time
6 was going to be done, is like he probably went
7 back and said to him, you know, just stay there
8 a little time, 1 to 2, 2 to 4, take it.

9 MS. HATHAWAY: And the one who
10 actually did do it, took a plea?

11 MR. GIFFIN: Yes.

12 MR. GREEN: So you ended up doing 1
13 to 2 and a half, and won on appeal?

14 MR. GRIFFIN: Yes, I got shot down.

15 These people committed the crime,
16 the two was never pursued or anything like
17 that.

18 It was just like he did get him out
19 of here, and case closed.

20 MR. GRADESS: Just before you leave,
21 could you give us an insight into the basic
22 program?

23 MR. GIFFIN: Well, basically, it is
24 a therapeutic community, you know, and there
25 were drug addicts also, and stuff like that,

Nelson

1 behavior problems, and, you know, they teach us
2 how to, you know, get all that out of us, and
3 all that, and teach us about how the world is
4 going, how we have to speak, how we are
5 supposed to act in the world, and stuff like
6 that.

7 They tell us to drop your images
8 and become real men, for once, you know, and it
9 was a good program.

10 MS. GREEN: How did you get into it?

11 MR. GIFFIN: I got a dirty urine,
12 and my parole officer advised me to go there,
13 and it's been worthwhile, it's a very good
14 program.

15 MR. GRADESS: Anything else?

16 Is there anything else that you
17 would like to share with us?

18 MR. GIFFIN: I'm good.

19 MR. GRADESS: Thank you very much.

20 MS. HATHAWAY: Thank you very much
21 for coming.

22 You have been very helpful.

23 MR. GIFFIN: Thank you.

24 ANONYMOUS WITNESS #1: I need to say
25 something before we go on the record.

Nelson

1 MR. GRADESS: Stay off the record.

2 (Discussion had off the record.)

3 MR. GRADESS: Let us call him
4 anonymous witness number 1, and we'll know who
5 that is.

6 Okay.

7 Anonymous witness number 1, please
8 let us know you're thinking on the clients and
9 understandings.

10 ANONYMOUS WITNESS #1: When I came
11 through it was back in 1969, and the whole
12 criminal justice process was different.

13 In terms of representation, because
14 of what I was charged with, I was charged with
15 felony murder, so I wasn't allowed to have a
16 Legal Aide attorney.

17 In the beginning they assigned me a
18 Legal Aide attorney for arraignment purposes,
19 and then after that stage I was assigned two
20 18B attorneys for representation.

21 The problem I had with the process
22 and the representation, was not getting enough
23 information from the initial stages of the
24 arrest, about what I was being charged with,
25 whether I was -- there was a sealed indictment

Anonymous witness 177

1 that happened prior to my arrest, so at the
2 time that I was arraigned on the indictment, I
3 was never told that I was being arraigned on a
4 sealed indictment.

5 I thought that I was just going
6 through arraignments, and then later on, not
7 via the attorney, but via some guys that, when
8 I was in Manhattan, at the time, the Toombs,
9 and I showed them some documentation that had
10 been given to me, that I became aware that I
11 was actually arraigned on a sealed indictment.

12 I had two attorneys, one I never
13 saw.

14 The one that I did see, to start
15 out with, he was sarcastic. He would say, you
16 realize -- the first thing he said to me, when
17 I saw him after my arraignment was -- you
18 realize that if there was a dealt penalty, that
19 you would be facing the death penalty.

20 And, of course, at that point
21 everything just sort of shut down.

22 And then, as I came back and forth
23 to court, and I discovered, from talking with
24 other guys who was in the Toombs, who had been
25 around a while, because I was in the Toombs for

Anonymous witness 178

1 about 18 months in pretrial detention --

2 MR. GRADESS: You say your case was
3 in 1969?

4 ANONYMOUS WITNESS #1: Yes.

5 MR. GRADESS: So you were there at
6 the time of the Toombs' riot?

7 ANONYMOUS WITNESS #1: Right, the
8 tenth floor.

9 Some of the other inmates told me,
10 listen, I, forget about the death penalty.

11 He shouldn't have mentioned that in
12 the first place, because you wasn't facing the
13 death penalty.

14 And, secondly, I sort of got inside
15 information as to what the sentencing ranges
16 were, I knew I could have gotten a life
17 sentence.

18 When the first offer came, it was
19 15 to life, and I rejected that offer, and I
20 was also told that it wasn't going to get any
21 better, that this was the best offer that I was
22 going to get.

23 And going back and forth to court,
24 we used to call it the bull pen treatment, they
25 would run -- I think I went to court 24

Anonymous witness 179

1 consecutive times, and never made the
2 courtroom, and the reason we call it the bull
3 pen treatment is because, once you're in court,
4 you sit in the same cell the entire day, you
5 got a baloney and cheese sandwich, and it beats
6 you up, it beats you up, because you're laying
7 around on the floor, you're in a cell where
8 everybody is using the same toilet, and
9 oftentimes the toilet didn't work, so we used
10 to call it the bull pen treatment to get you to
11 cop out.

12 And on one occasion, after the 24th
13 time, when I went before the judge, I decided
14 that I was going to break, I just said, I have
15 been here 24 consecutive times, and never seen
16 an attorney, when am I going to see a lawyer?

17 And then shortly after that the
18 lawyer that I was assigned to represent me got
19 relieved, and they assigned me a new attorney,
20 and basically --

21 MR. GRADESS: Were both lawyers
22 relieved, the one you never saw?

23 ANONYMOUS WITNESS #1: Well, the
24 other one I never saw. He could have been
25 relieved from the very beginning.

Anonymous witness 180

1 Both of them showed up twice, and
2 then after that I saw one, and then 24
3 adjournments. I never seen him again.

4 So after my outburst, the judge
5 decided to relieve both of them. The other one
6 was just assigned as attorney of record,
7 because at that time, given the charges, you
8 had to have two attorneys, and then they
9 assigned someone different, and then the plea
10 offer started.

11 It came down from 15 to life, to
12 8 -- it was 8 and a 3rd to 25.

13 The thing that I was trying to get
14 the attorney to understand, was that there was
15 more than me involved in this case. It wasn't
16 just -- I wasn't just the only defendant.

17 And what happened was, the person
18 who also was involved, got a minimum sentence.
19 He got a sentence of, I think it was like 1 to
20 3, to testify against me, and he had been
21 sentenced a while back.

22 So I said, well, I want to go to
23 trial, because I'd rather take my chances at
24 trial. I'm not just going to take a 3rd to
25 25. It doesn't make sense.

Anonymous witness 181

1 And then, after 18 months, when I
2 was gearing up for trial they denied all of the
3 hearings, I didn't get the identifications, I
4 didn't get the Mapp, I didn't get any of that,
5 and so I was afraid at that point, because I'm
6 saying, I'm going to trial on the record, there
7 isn't going to be any identification issues,
8 any statement or confessions that was made, and
9 the fact that I had already been indicted upon
10 and arrested on a sealed indictment, so what he
11 said to me was, none of that matters, we'll go
12 to trial, and then I was told I can't take the
13 witness stand.

14 So, I mean, there was no
15 investigation, there was no one sent out to
16 talk to people in the community or anything, it
17 was that I was going to go to trial on a naked
18 indictment, and then you think my next
19 adjournment that came, and the offer went down
20 to 7 to 21, there was something that was in the
21 case that I overheard, that sort of stuck with
22 me, and that was, I heard a case mentioned by
23 the name of Escobedo, and the Escobedo case
24 was, you can't question the defendant after a
25 sealed indictment.

Anonymous witness 182

1 So I was asking the attorney what
2 does that mean, what does it mean, because I
3 was actually interrogated in the precinct, and
4 I said, what does it mean when they are saying
5 that?

6 Because I had sealed -- I was
7 arraigned on a sealed indictment, that there
8 shouldn't have been an interrogation at the
9 precinct, and no questions should have been
10 asked of me, or anything, and he said it didn't
11 matter, the question was, was I willing to take
12 the 7 to 21?

13 So I sort of felt hopeless, and
14 then, after, you know, the 24 consecutive court
15 appearances, the 18 months in the Toombs, as I
16 mentioned, I mean, that was my very first
17 arrest.

18 There had been several riots, many
19 riots in the Toombs before it led up to the
20 major riot, and I was the tenth floor. I don't
21 know if you know anything about the tenth floor
22 in the Toombs, but I shutter to think about it,
23 but the tenth floor was completely gated all
24 the way around, from top to bottom, and I just
25 got tired, so I said, you know what, I'll take

Anonymous witness 183

1 the 7 to 21, and I will be done with this,
2 because at the time I was calculating I had
3 already had about two years in, and the most I
4 would have to do is another five years, because
5 you had to do the minimum, one-third of the
6 maximum at that time, but the interesting thing
7 for me was, when I got upstate, I immediately
8 went to the law library, and I started doing
9 research on my own case, and I come to find
10 out, when I took the plea, one of the
11 conditions that was a part of my plea, was that
12 I could not raise the Escobedo issue on appeal.

13 I didn't know what the Escobedo
14 issue was, all I knew was, they weren't
15 supposed to talk to me at a certain point, so I
16 took the plea.

17 The judge said, if you decide to
18 appeal this case, you cannot raise the Escobedo
19 issue on your appeal.

20 So I said, what's the difference?
21 You're not telling me what is new. I don't
22 know what it is I'm giving up, so it doesn't
23 matter, I will just take the plea.

24 When I got upstate, I was assigned
25 an appellate attorney, who I have to say

Anonymous witness 184

1 remained in contact with me, did a lot of
2 research, forwarded me the paperwork, and said
3 to me that issue was grounds for an appeal.

4 MR. GRADESS: Was that lawyer a
5 Legal Aide lawyer or private lawyer?

6 ANONYMOUS WITNESS #1: 18B.

7 MR. GRADESS: 18B also?

8 ANONYMOUS WITNESS #1: Yes.

9 And he said that the reason I
10 couldn't raise part of the plea negotiation,
11 was -- that I couldn't raise the Escobedo
12 issue, was because my case would have been
13 reversed on an appeal, once they read the facts
14 of the case and so forth.

15 So I felt like raped to a certain
16 extent, because they deliberately withheld
17 information that could have been used at trial,
18 and I wouldn't have gone to state prison.

19 The issues would have come out as
20 to why the first person was offered the plea to
21 testify against me, but then, after that got
22 played out, I ended up doing seven years, and
23 that's basically it.

24 In terms of representation, I
25 didn't get really any representation at all.

Anonymous witness 185

1 MR. GRADESS: Well, have you had a
2 chance to look at these standards?

3 ANONYMOUS WITNESS #1: Yes.

4 MR. GRADESS: Would you address them
5 for us, from a point of view of how you see
6 representation taking place now in the cases
7 that you're aware of, or your own?

8 ANONYMOUS WITNESS #1: I think
9 number 1 is becoming more recognizable, that
10 you need to represent a person, as opposed to a
11 case file, because a person comes with a
12 history, and you need to, even in terms of a
13 advocacy, you need to be able to get to court
14 to see this person as a human being, in spite
15 of what the case filed might say.

16 MR. GRADESS: And you're seeing
17 lawyers that are doing that?

18 ANONYMOUS WITNESS #1: I think there
19 is a recognition of it, that that needs to be
20 done.

21 I can't say that it's being
22 applied, but there is some recognition that
23 that needs to be done.

24 And I say that because, even being
25 involved with defendants today, attorneys will

Anonymous witness 186

1 say, can you give me a written evaluation about
2 this person's background, circumstances,
3 education, employment history, so that when I
4 go before the Court, I can present something,
5 saying this is who this person is, this is a
6 human being.

7 So I think this is a recognition
8 that might need to be done, but, as I said, I
9 can't say that it's being done across to board.

10 Number 2, that's a wish that that
11 could happen, that people -- you know, that
12 defendants would be listened to, that people
13 would be listened to with compassion and with
14 respect.

15 It's not about that. It's about
16 moving the calender. It is about -- this is
17 what you're facing. This is what they are
18 offering, what do you want to do?

19 It's not about whether you were
20 guilty or innocent, or whether you have an
21 alibi. None of that stuff matters.

22 It's the next time this case is on,
23 you may not be offered the 2 to 4, it could be
24 2 to 6, or do you want the 2 to 4 today, or do
25 you want to hold off and see if they come back

Anonymous witness 187

1 with a different offer?

2 There is another discussion, you're
3 presented with options, in terms of what you're
4 willing to plead to.

5 So I would say that that's a wish.

6 Number 6 I think is very important,
7 in the sense that often times you get attorneys
8 who come from completely different
9 neighborhoods than the defendants, and they
10 can't relate to a lot of the information that
11 you may convey to them, about where they need
12 to go to look for people, send out
13 investigators, to get an idea what the
14 neighborhood looks like, where it took place,
15 and to be conscious that they are coming from a
16 totally different background than I am coming
17 from, and that they can't apply their frame of
18 reference, as opposed to where they come from,
19 to where I'm coming from, because it's entirely
20 different.

21 And there is a culture gap that
22 takes place, that even the communication, the
23 language -- oftentimes attorneys don't have a
24 clue sometimes what clients are saying, you
25 know, because a lot of times they speak the

Anonymous witness 188

1 street language, so --

2 MS. WHEELER: How best would that
3 gap be breached?

4 ANONYMOUS WITNESS #1: I think if
5 there was a time that -- I believe you have to
6 have attorneys who have worked in that
7 community for a period of time, because this
8 way they get to pick up on the language, they
9 get to pick up on certain things about the
10 culture.

11 I mean, a classic example for me is
12 the Bronx. You have attorneys in the Bronx who
13 have worked there for a long time, and they are
14 familiar with the language, they eat in the
15 neighborhood, they talk to the local homeless
16 guy, they may give somebody, you know, going by
17 somebody, lunch in a restaurant, so they are
18 not alienated, they see themselves as a part of
19 the community, and you could communicate a lot
20 better.

21 In fact, they know more slang than
22 some of the clients know, so you
23 instantaneously sort of have an identification
24 that this person has some idea about what I'm
25 saying, and where I'm coming from.

Anonymous witness 189

1 MS. HATHAWAY: You could then
2 maybe connect 5 and 6, because you are talking
3 about both of them, aren't with you?

4 ANONYMOUS WITNESS #1: That's true.

5 And also what plays a role here is
6 that Legal Aide attorneys, just to try to
7 connect this, are often treated like the
8 defendant, in terms of what do you want to do
9 for your client? Do you want this plea or not?

10 And a lot of times they feel like,
11 I've got to go along with whatever, because I
12 think they feel hopeless.

13 Whereas, with the 18B and private
14 attorneys, they get a lot more respect. They
15 get a lot more recognition, they get a lot more
16 leeway in the courtrooms, they come in, they
17 get their cases called before the Legal Aide
18 attorneys, and they are out.

19 I also think that 8 is important.

20 The surprising thing about number 8
21 is that oftentimes Legal Aide attorneys do not
22 have enough time to prepare a case that they
23 can diligently apply the law to, because 90
24 percent of their time is spent in plea
25 negotiations.

Anonymous witness 190

1 So it's not like they get the
2 opportunity to go to the library to do research
3 on the case, cross-reference cases, it's all
4 about a plea.

5 So that doesn't happen. I mean,
6 currently that doesn't happen.

7 And I'm saying number 10, I think
8 there isn't such a thing as partnership with
9 the client, because (1) there isn't time,
10 because of the case load.

11 MS. WHEELER: Should there be?

12 ANONYMOUS WITNESS #1: Yes,
13 absolutely.

14 MS. WHEELER: As far as you're
15 concerned?

16 ANONYMOUS WITNESS #1: Sure.

17 MS. WHEELER: Let me ask you this.
18 In other words, if you are a jail-house lawyer
19 --

20 ANONYMOUS WITNESS #1: Right.

21 MS. WHEELER: -- could you take the
22 next step, and do what you were be able to do
23 better with your attorney?

24 ANONYMOUS WITNESS #1: Absolutely,
25 because, you know, you have the time to do the

Anonymous witness 191

1 research, you talk to other people who have
2 been through the process.

3 I mean, like when I came through, I
4 was supplied -- after I went to the law
5 library, and I was there for a while, I was
6 able to communicate better with the appellate
7 attorney about what was going on, and, as I
8 said, when I raised the Escobedo issue with
9 him, he wrote back to me and he said, you know,
10 you maybe on to something here. Let me do a
11 little more research, and I will get back to
12 you.

13 When he did the research, I mean,
14 he sent me copies of the Escobedo case, he sent
15 me copies of later cases, he suggested cases
16 that I should shepardized, to cross-reference
17 the cases, and he said to me, I think that you
18 have a good appealable issue.

19 The issue is whether we're going to
20 be able to get past the fact that it was
21 included in your plea bargaining, that you
22 couldn't raise this issue on appeal, so I would
23 say the better informed you are, the more
24 effective you can be in terms --

25 MS. WHEELER: The more effective

Anonymous witness 192

1 your attorney is?

2 ANONYMOUS WITNESS #1: Yes, that's
3 right.

4 And you feel like you are part of
5 the process, not that you are just being -- you
6 know, you're just a case, you're just being
7 cycled through the system.

8 I would say number 12, again, I
9 have to go in terms of number 12 is something
10 that I would like to see happen, but didn't
11 happen, simply because it is about expedience.
12 It's about how quickly do we move a case
13 through the system?

14 It's not about dignity, it's not
15 about freedom, is about what is the least
16 amount of time you're willing to take, so that
17 we can move this case along.

18 At that point it's about waiving
19 what's being offered, versus what you can get
20 if you go to trial, and it's a game of cat and
21 mouse.

22 If you go to trial, you can get 25
23 years. Today they are offering you 3 to 9.
24 You turn down 3 to 9, you come back, and then
25 it goes down to 2 to 6.

Anonymous witness 193

1 So it's that kind of bartering that
2 takes place, except you don't play a role in
3 it.

4 Your role is to decide on the
5 number that you're willing to take, and that's
6 about as much as you are actively involved in
7 the case.

8 Number 13, I think needs to happen,
9 on a more aggressive advocacy, needs to happen,
10 and what I mean is, its -- I think attorneys
11 need to, in my mind, back away so much from the
12 plea bargaining process, and start to
13 aggressively look at the facts, the
14 circumstances of the case, and start to put
15 forth some advocacy for their clients.

16 Advocacy isn't happening now. The
17 system moves on plea bargaining.

18 So I don't see that kind of a
19 advocacy taking place, where there is time,
20 that the attorneys have time to prepare for
21 legal representation, so you often end up just
22 taking a plea.

23 And 14 is crucial. It is really a
24 very crucial part of this process, because at
25 no point is a person really evaluated to what

Anonymous witness 194

1 your mental state is, and what your substance
2 abuse history maybe.

3 That usually occurs when the
4 defendant -- when there is an outburst, you
5 start cursing in court.

6 You have not done something that's
7 unacceptable in the courtroom in order for them
8 to say, we need to have this person examined.
9 Otherwise, no one asks you about your mental
10 state.

11 The substance abuse issues, except
12 for at the point of plea, right before you take
13 the plea, they ask you, are you of sound mind?
14 Do you understand what's going on? Are you
15 taking this plea of your own free will?

16 That's usually the only time you
17 get questioned about your mental state, whether
18 you're under the influence of any substances
19 before you take this plea.

20 I would have to say the substance
21 abuse at this point is being raised much
22 earlier in the process, is actually being
23 raised at the point of address -- of arrest,
24 rather.

25 Whether there is any substance

Anonymous witness 195

1 abuse issues, because then the consideration
2 comes in about whether a person should get a
3 program or not, any kind of treatment program,
4 alternative sentence.

5 MS. WHEELER: And then are you
6 saying there is no actual testing done?

7 Suppose somebody says no, I don't
8 have a drug problem?

9 ANONYMOUS WITNESS #1: That can work
10 two ways. It can impact on the type of plea you
11 get.

12 If the Court position is that based
13 upon this crime, and based upon the fact that
14 you were arrested, and you had 15 vials of
15 crack in your possession, and it maybe your
16 very first arrest, it can work, in the sense
17 that if you don't have a substance abuse
18 problem, but you admit you have a substance
19 abuse problem, then you are likely to get a
20 treatment program at the time of sentence.

21 If you say you don't have a
22 substance abuse problem, then the thinking is
23 that you're a dealer, and, therefore, you
24 should get a lengthy prison sentence.

25 MS. WHEELER: So from one point it

Anonymous witness 196

1 can work against your background, and then not
2 being informed exactly how it works, sometimes
3 they treat their own selves?

4 ANONYMOUS WITNESS #1: That's right,
5 because you can get -- the thing at Ricker's,
6 and I could tell you that if you have a drug
7 case when you get to court, and say that you
8 have a substance abuse problem, because you
9 know that you're going to be considered for a
10 program, it can work against you, if the type
11 of program they are offering you is one that
12 you don't want.

13 Let's say you were thinking that
14 you were going to get a 9 month or 12 month
15 program, and then you come in and they say, 18
16 to 24 months, and you say, oh, I don't have a
17 substance abuse problem, I don't want to go
18 into a program for 18 to 24 months, that even
19 that offer doesn't come back around, and now
20 you're stuck with whatever to minimum sentence
21 is.

22 So it can work against you, and it
23 can work for you, depending upon the
24 circumstance.

25 I guess that's about it.

Anonymous witness 197

1 19, the presentencing reports are
2 supposed to be reports that are done either by
3 the investigator for the attorney for the
4 Department of Investigation, and is supposed to
5 present background information about the
6 person's -- the defendant, but that report,
7 instead of being used in a positive way, has
8 been used in an adverse way, because what
9 happens is, when the judge reads the
10 presentencing report, they go right to what the
11 negative issues are in that report, and you
12 generally don't hear positive things in a
13 presentencing report, it was, that the person
14 showed up at probation with an attitude, so
15 much so, that lawyers are saying to their
16 client, when you go to probation, be pleasant.

17 It's not so much that this person
18 came from a dysfunctional family, doesn't have
19 medical coverage, was homeless, they look at
20 that, but if you show up to probation with an
21 attitude, or you showed up high, or whatever it
22 is, that becomes the issue that determines what
23 sentence you get, and a lot of the other
24 information is just sort of overlooked.

25 MS. HATHAWAY: So how do you

Anonymous witness 198

1 suggest --

2 ANONYMOUS WITNESS #1: That
3 presentence report, in my mind, is very
4 valuable, and provides the Court with
5 background information about this person's
6 history.

7 We have a person who -- just to
8 give you an example -- who had a drug case,
9 that had three different appointments that he
10 was supposed to show up for probation to do the
11 presentence investigation, and he missed all
12 three appointments.

13 We made a home visit, and we
14 discovered that the reason he missed the three
15 appointments was because his mother, who he was
16 living with a drug addict, and there were times
17 that she wasn't home, so he couldn't leave the
18 house, because he had a three year old sister,
19 and the judge was ready to say, you know, you
20 missed three appointments, we can't do the
21 investigation, I might as well remand you, and
22 was getting ready to put the person in, but
23 when we made the home visit, and we got more
24 background information, we were able to go and
25 say, listen, we have to get ACS involved in

Anonymous witness 199

1 this case, because there is a three year old in
2 the household, his mother is a crack addict,
3 and the reason he's missed his three
4 appointments is because he cannot leave his
5 three year old sister in the house.

6 The judge got involved, directed
7 the attorney to get an investigator to go to
8 that house, make a home visit.

9 As a reporting agency, we contacted
10 ACS.

11 So those were circumstances that
12 should have come out via the probation report,
13 but because he never showed up for the report,
14 he was at risk for being remanded.

15 So that presentence report is --
16 I'm talk, not about myself, but I just
17 interviewed a woman last week, who is 38, who
18 has 7 children, she was kidnapped by the Bloods
19 and held hostage, the father of the children is
20 in prison, three of the children is by one
21 father, two by another, and she doesn't know
22 who the other parent is. I mean, the parent
23 is.

24 I'm going to use that information
25 in a presentencing report that we do here at

Anonymous witness 200

1 Fortune, to say, this is what -- and she makes
2 23,000 a year, and I asked her, how do you
3 support 7 children on \$23,000 a year?

4 She got arrested for bad checks,
5 and I'm going to use that report to show what
6 this woman's living condition is, what her home
7 circumstances is like, the fact that she has 7
8 children, and I am going to try and use that
9 information to say, you know, we really need to
10 take a look at this woman's life, and is prison
11 going to solve this issue? Because now you've
12 got 7 kids that are going to end up in the
13 system.

14 I don't know what's going to happen
15 with it, but I believe, that's to answer your
16 question, how important the presentence
17 investigation is.

18 MS. HATHAWAY: Is something very
19 much needed?

20 ANONYMOUS WITNESS #1: Yes, without
21 a doubt.

22 MS. WHEELER: Now you're saying,
23 because they do this.

24 Okay, I'm saying, what should be
25 different about doing this?

Anonymous witness 201

1 ANONYMOUS WITNESS #1: Well, the way
2 it's done now, is that, if I'm doing the
3 presentence investigation, you would come to
4 the office, and I would sit down with you, and
5 I would talk to you in an office, I would talk
6 to you about -- one of the questions that you
7 have to warn people about, when they go to the
8 presentence investigation is, do not say you
9 didn't have anything to do with this crime,
10 because if you say you had something to do with
11 the crime, when you go back to court, they will
12 take your plea back, and then you will be
13 facing the original sentence.

14 So what they focus on is, did you
15 do this crime? And because the person has
16 already been prewarned, they will say yes, I
17 did it, but show some remorse.

18 That is probably the number 1
19 circumstance that is looked at in that
20 presentence report, how did the person
21 interview? Were they truthful?

22 And it's very little in that report
23 about background information, because there is
24 no home visit that's attached to that report,
25 and everything that's done, is done at -- is

Anonymous witness 202

1 taken from the information that's provided by
2 the person being interviewed, and I think that
3 a lot of instances, if a home visit was made,
4 they would discover a lot that's going on in
5 the households, that could make a difference in
6 terms of how the Court would view this person
7 at the time of sentence.

8 MR. GRADESS: I have one last
9 question before we let you go and we take a
10 break.

11 Earlier you had a comment about how
12 Legal Aide lawyers are identified with their
13 client, and we have had a couple of witnesses
14 who had talked about the adverse reaction that
15 they get to seeing their lawyer smoozing up to
16 the DA in the courtroom.

17 To what extent, at all, do you
18 think some of that is fact, or if it isn't
19 tactical?

20 To what extent do you see it as
21 part of the problem you were talking about?

22 ANONYMOUS WITNESS #1: I don't think
23 it has anything to do with tact.

24 Maybe in a few cases it might have
25 something to do with tact, but I think it has

Anonymous witness 203

1 something to do with the old buddy system, you
2 know, where are you going for lunch after this?
3 I mean, I've actually heard these things.

4 I've even heard attorneys say,
5 look, this jerk should be taking this plea, but
6 he's not. So what I'm looking for is an
7 adjournment.

8 MR. GRADESS: So is it in your mind
9 that if the Legal Aide lawyer identifies with
10 the client in a strong way, and is treated
11 adversely by the Court, is treated by the Court
12 because he or she is identified by a lawyer,
13 they are safer being on the other side of the
14 room?

15 Is that part of it?

16 ANONYMOUS WITNESS #1: I think they
17 are respected more.

18 The attorneys that get the respect
19 are the ones that come in and really fight for
20 their client, even if it's a losing effort.
21 It's known that this attorney will fight. Okay.
22 And is respected.

23 Judges respect that. And the
24 client, you know, the information gets around
25 you know, people will say, I had that lawyer

Anonymous witness 204

1 he'll fight for me. Okay.

2 Because when -- on the open, where
3 they are budding up, you send a message of
4 suspicion, distrust, what are they talking
5 about? And why are they so friendly?

6 And usually when that kind of
7 conversation takes place, by the time the
8 attorney gets back to the client, he has
9 already said, well, look, you don't want to
10 take the plea. I will talk to the DA. This
11 case going to be adjourned.

12 If you want to take the plea, they
13 are willing to give it to you now. So I don't
14 think it has a whole lot to do with whether it
15 is going for any impact on the attorney's
16 representation. They are just talking about
17 general issues, wife's, and how is the family?
18 And, you know, that kind of stuff.

19 I've actually heard this stuff, so
20 it's not stuff that somebody else said to me,
21 I'm a part of that process daily, and attorneys
22 that actually go and fight, no matter how
23 ridiculous it might seem, in their effort they
24 are respected.

25 So I think it does make a

Anonymous witness 205

1 difference.

2 MR. GRADESS: Thank you very much,
3 witness number 1.

4 ANONYMOUS WITNESS #1: I hope this
5 information has been useful.

6 MR. GRADESS: Yes, very helpful.

7 Thank you.

8 We are going to take a little
9 adjournment now for lunch.

10 (At this point in the hearing a
11 recess was taken for the luncheon period.)

12

13 After LUNCH

14 HEARING CONTINUED.

15 MR. GRADESS: Okay, we are ready to
16 resume, and our next witness is Garnett Wilson.

17 Welcome.

18 MR. WILSON: #1: Thank you.

19 MR. GRADESS: All right.

20 You had helped us with one of the
21 focus groups in one of the earlier drafts of
22 the standards, so we are really pleased to have
23 you testify.

24 Let's hear what you have to say?

25 MR. WILSON: Well, I just want to

Anonymous witness 206

1 relay an incident.

2 I was arrested, it was
3 approximately '84, '83.

4 The reason I remember is because my
5 father past the away in '85, and I was
6 incarcerated, and I didn't find out until about
7 two weeks before he was buried, so that's how I
8 remember about the case.

9 The case that I went up for was an
10 attempted robbery, and the cab driver retracted
11 his statement, stating that it wasn't really a
12 robbery, it was an argument we had about a fare
13 and about the direction.

14 And so, anyway, you know, the thing
15 about it is the police officer came, an off
16 duty police officer came and confronted the
17 situation, but I was on parole, and I happened
18 to have drugs in my pocket at the time, so I
19 jumped out of the cab and ran, and so it made
20 me my problem.

21 However, to make a long story
22 short, when I went to court, I took a jury
23 trial, because I took it all the way. I took
24 it all the way to trial, and I had a Legal Aide
25 lawyer. My Legal Aide lawyer, he didn't appear

Anonymous witness 207

1 to believe my account of what happened.

2 The cab driver retracted his
3 statement, and a juror -- I was sentenced. I
4 was convicted of attempted robbery, sentenced a
5 year and a half to 3 years, and you have the
6 sequence of events went.

7 It was a juror, an attorney's wife
8 on the jury, and she wrote a letter to the
9 judge stating that the jury was split between
10 my guilt or innocence, and then it was brought
11 up about my past record, that I was arrested in
12 1981 for bank robbery, I was known as the
13 Aides' bank robber, and I only got a year for
14 that, and so it was like this guy should have
15 gotten more time for that.

16 I had -- my past record was
17 supposed to be, because my attorney asked me
18 when I took the disabled, he asked me if I have
19 a record, and I said I didn't, and I forget the
20 name of the motion but --

21 MR. GRADESS: Sandoval.

22 MR. WILSON: Yes.

23 My record wouldn't be open any
24 further, right?

25 She would send a letter to the

Anonymous witness 208

1 judge saying it wasn't -- that the jury was
2 swayed, based upon my past conviction, you
3 know, even with the cab driver retracting that
4 I was just angry with this guy, he was
5 insulting, and I said that he said that he
6 attempted to rob me, but he really didn't
7 attempt to rob me.

8 Anyway, my attorney advised me, he
9 said, don't worry about it, we're going to
10 appeal. You've already been sentenced.

11 I was sentenced, so they couldn't
12 supposedly -- supposedly the sentence was done,
13 however, that I would come back down on appeal
14 and I should be exonerated, based upon the
15 letter that the juror wrote to the judge.

16 It's 2003, I haven't heard
17 anything. So, you know, my attorney advised me,
18 he says, don't worry about it. I said, is there
19 some kind of motion that you can do or stay the
20 sentencing. He said, don't worry about it, you
21 have been up north before, you know how to
22 handle it, you'll be all right, just go up and
23 do your time, come back, and we'll work on it
24 then.

25 I said I been in prison, there is

Anonymous witness 209

1 no guarantee you'll come home when you are in
2 prison. So we had a discussion, and he said,
3 you know, you've been around the jails, and
4 you'll be okay.

5 So I was pleased. I went to
6 prison, did my time, but I never heard from the
7 appeal, and he supposedly filed it. I never
8 heard yeah or nay. I don't know what happened.

9 MR. GRADESS: To this day you don't
10 know what happened to the appeal?

11 MR. WILSON: That's right.

12 MR. GRADESS: And there was never
13 any effort to reopen the case?

14 MR. WILSON: Not by me.

15 I've often thought about it, I've
16 often thought about it, that I should have,
17 because the juror's letter in my sentencing, I
18 remember her letter being -- because the judge
19 read it in court, and I remember it being added
20 to the minutes, you know.

21 MR. GRADESS: How did you get that
22 information?

23 MR. WILSON: Excuse me?

24 MR. GRADESS: How did the jury get
25 the information?

Anonymous witness 210

1 MR. WILSON I don't know. I forget
2 exactly how she got it, but she said my -- you
3 know, my prior arrest, that robbery, because I
4 was robbing banks with a note saying I had
5 aides, so it was a high profile case, when I
6 was finally arrested, and I was tested, and
7 they found I didn't have the virus or anything,
8 and they asked me why did I use this? And I
9 had said, well, I didn't want to use a gun, and
10 that's why I got charged with robbery in the
11 third degree.

12 I don't know how the Feds did not
13 take it up, but the State charged me with
14 robbery in the third degree, because I didn't
15 even have a weapon, even though the District
16 Attorney tried to make the note appear to be in
17 the form of a weapon.

18 So the DA had that information. I
19 mean, I'm sure he had it. It's the DA's job,
20 and, you know, to get another conviction.

21 It was like, we're not letting this
22 guy get away again.

23 So it was linked to a juror or
24 whatever, because the jury was -- you know, the
25 case should have been thrown out when the cab

Anonymous witness 211

1 driver revoked his testimony. He wouldn't even
2 come to court, and they arrested him and held
3 him, like they do with witnesses.

4 MR. GRADESS: A material witness?

5 MR. WILSON: Yes, until the case.

6 And he said he retracted it. It was
7 an argument, it got hot, I was upset, he was
8 upset, he might have been threatened, but it
9 wasn't threatened by a robbery.

10 You are going a long way, you're
11 trying to pat the ride, and then it was, get
12 out of my cab.

13 That's what the robbery was really
14 about, get out of my car, I don't have to take
15 this verbal abuse, it was too late.

16 It was about 2 or 3 in the morning,
17 and I needed to get -- as a matter of fact, I
18 was going back to my parole officer.

19 My parole officer had allowed me to
20 come to New York, and my father was living, and
21 he was supposedly dying, and it was, I went
22 there, and he got better, and I came back to
23 New York to get my parole transferred, to take
24 care of him.

25 Well, a house, and I was going to

Anonymous witness 212

1 live in, and take care of him, and I got that
2 arrest, I got, and I have never got back, and
3 he never knew what happened to me.

4 My wife at the time was in -- my
5 wife went on vacation to Georgia for two weeks,
6 and the relatives that were in, didn't know
7 where I was, they only knew how to contact me
8 through my phone here, and no one picked up, no
9 one answered.

10 So when she came back, she found
11 the messages, and when I called from prison, he
12 said, you know, your father was buried like two
13 weeks ago, and so that thing kind of sticks out
14 in my mind.

15 And my attorney, he didn't -- you
16 know, it was like one of those brush offs. It
17 was like, you're a crook, whatever. What you
18 are saying is probably a lie, and eventually I
19 have been known to lie. This particular time I
20 was telling the truth.

21 It's like that cry wolf thing. I
22 mean, you cry wolf, and this time you're really
23 telling the truth.

24 That's where my history preceded
25 me, and it tainted the way that I was dealt

Anonymous witness 213

1 with.

2 Yes, I live with that, but, you
3 know, that's life. It helps me do what I do now
4 with these kids. You've got to stow that stuff,
5 because you'll wreck yourself, and it won't
6 feel good.

7 When I tell that story to them, it
8 makes it real, you know. So today, you know, I
9 do stuff, because this is the way I get a
10 chance to give back, you know, some of it
11 back.

12 I mean, it qualifies all of my
13 history of negativity and lawlessness. It makes
14 me able to have an experience to say to you
15 people.

16 I mean, my attorney definitely
17 could have done a better job. It's cut and dry.

18 I could have done a better job of
19 living now, but --

20 MR. GRADESS: So could we all.

21 MR. WILSON: I think part of the
22 reason why I didn't really pursue it, is like I
23 kind of like accepted it. I know I accepted
24 culpability for this.

25 I put myself in a position to be

Anonymous witness 214

1 mistreated like that. It just helped me accept
2 it, and move past it, as opposed to walking
3 around with a resentment, but that's my
4 experience.

5 You know, prior to that I've always
6 been given counsel, Legal Aide counsel.

7 I got a good experience, because
8 the attorney, when I had the bank robberies, he
9 was excellent. I mean, he -- I was guilty, but
10 he kind of like painted a picture to the Court,
11 I wasn't just a guy walking in a gang asking
12 for money. He gave a history of how I had
13 gotten to be that of a guy.

14 MR. GRADESS: That was a Legal Aide
15 attorney?

16 MR. WILSON: Yes.

17 MS. BANKS: Do you remember her
18 name?

19 MR. WILSON: It comes and goes, but
20 I see his face.

21 That's what old age will do for
22 you. I'm 56 years old now.

23 MR. KING: You're old now?

24 MR. WILSON: I don't know how I can
25 even remember this guy.

Anonymous witness 215

1 MS. WHEELER: It will come to you.

2 MR. WILSON: Yes, it will, but I
3 remember him. He was unassuming. It was a
4 short guy, you know.

5 I don't remember his religion, only
6 that he was a Caucasian, but he was -- I don't
7 know, he kind of like believed in me.

8 Maybe it was like, how come a guy
9 like that -- what made you go in the bank and
10 say you had aides? And from there may be it
11 was an approval thing.

12 I don't know, because the police
13 officer that arrested me, he got a feather in
14 his cap, you know, and for me to get the amount
15 of time I got, I think all of that played a
16 part in why the jury found out that I was this
17 guy that did that, and that's all I got. They
18 gave me a 1 to 2 to 3. It was 8 bank robberies,
19 but the time was run concurrently.

20 I knew there was a God, you know.
21 Because I was prepared to do about 30 years or
22 more.

23 The Feds didn't take it up, they
24 gave it to the State.

25 MR. GRADESS: Let us draw your

Anonymous witness 216

1 attention, if we could, to the standards, which
2 we would be interested in your thoughts on them
3 at this point.

4 They are a little bit different
5 than when you last saw them.

6 MR. WILSON: Yes.

7 MS. WHEELER: If anything, will you
8 be able to add something that may not have been
9 stated here, that you feel would be important?

10 MR. WILSON: At the moment, I
11 don't.

12 When I read it, I got these two
13 attorneys in my head, and I said, yes, that guy
14 was that, this guy wasn't that.

15 That day was that this guy wasn't
16 that, you know.

17 And the last guy, he didn't appear
18 to have the sensitivity at all. It wasn't right
19 out of the gate. I should have gotten another
20 attorney. I should have requested another
21 attorney.

22 It was so blatant, that he stands
23 out in my mind, that it was obvious there was a
24 destain for me. It seemed like it was a
25 destain for the whole -- I really don't have

Anonymous witness 217

1 time for this. It was always --

2 MS. BANKS: Would he say that he
3 presumed you were guilty?

4 MR. WILSON: Yes. He practically
5 said that, you know. Well, you're going up,
6 you know. It was almost like, well, if you
7 didn't do that, you have done something. You
8 know, it was that kind of thing.

9 I mean, it's okay for me to say it,
10 but you're my attorney, and it's bad if you say
11 it.

12 I accept that, but you're my
13 attorney. That's no way to do your legal job.
14 I mean, I don't think you should have been a
15 judge.

16 My attorney, number 14, he really
17 did that, he zealously advocated for me, and
18 with insurmountable odds.

19 The videotapes -- when they finally
20 did arrest me, the videotapes indicated this
21 was the guy. So then he went to work on
22 introducing the Court to the person, as opposed
23 to, you know, the stereo type that you would
24 figure a bank robber would be.

25 MR. GRADESS: What special things

Anonymous witness 218

1 did he do to do that? How did he do that?

2 MR. WILSON: He asked me about my
3 background, you know, my parents, my upbringing
4 and my motivation. How did I get that
5 desperate? And I told him. And he brought
6 that into the courtroom, you know, in a
7 situation that -- I think he was a respected
8 attorney, even in the Legal Aide, because I
9 don't think if he wasn't -- I think he had a
10 history of being that guy, you know, that was
11 fair and zealous.

12 I have been in court with attorneys
13 who, you know, the judge don't respect them,
14 the Court, they just say okay, you know, you
15 get to feel your attorney is a nobody, is not
16 liked, or don't belong to the proper circle or
17 club, or had the proper connection.

18 He didn't seem like a buddy, but he
19 was like a respected adversary. He had this
20 kind of thing, you know.

21 But my last attorney, you know, it
22 was almost like the judge and he were in a
23 partnership, to like how fast can we resolve
24 this matter? We have something to do, you
25 know.

Anonymous witness 219

1 Everybody was like, you know,
2 you'll be all right. You didn't get what you
3 deserved. Now you will go away and do that,
4 but --

5 MR. GRADESS: Did I cut you off on a
6 question, Darryl?

7 MR. KING: No.

8 He was referring to number 1, you
9 know, about the person representing the case,
10 not the case, but the person?

11 MR. WILSON: Yes.

12 This guy, number two, he actually
13 solicited stuff.

14 MR. KING: So would you agree -- go
15 ahead, finish.

16 MR. WILSON: Meaning he -- you know,
17 there was stuff about me that I didn't choose
18 to bring out, because I had -- I felt like
19 nobody cares.

20 You know, I'm used to an attorney
21 not caring, and he went deeper, and then I saw
22 he really was interested, and I talked about
23 some stuff, and he presented it, you know.

24 Number 2, he listened to and
25 treated me with compassion, dignity and

Anonymous witness 220

1 respect.

2 MS. BANKS: And these were both
3 Legal Aides?

4 MR. WILSON: Yes.

5 MR. KING: I was just going to say,
6 would you, as a person that's been, you know,
7 both in court and also going to court with
8 people, how do you feel about these standards?
9 Are they -- do you think that they are -- I
10 mean, I know that they are positive, but do you
11 really think they would be effective and make
12 the legal system -- dealing with people from
13 you're community, would they make a difference?

14 MR. WILSON: Absolutely.

15 MR. KING: If they were applied?

16 MR. WILSON: Absolutely.

17 You know, I don't suffer from --
18 oh, it wouldn't matter, it doesn't make a
19 difference, who cares.

20 I believe that people matter, and
21 that one person makes a difference. The way --
22 if you've got an attorney who aspires to this
23 in representing people, who are less
24 knowledgeable, and less economic, able to
25 represent themselves, or have proper

Anonymous witness 221

1 representation, if you got a guy or a lady in
2 court that comes and does these things, I mean,
3 then let the chips fall where they may.

4 And we are talking about evening
5 the playing field a little bit here, you know,
6 and we've got affirmative action.

7 In cases we need affirmative
8 action, because there is an injustice and an
9 imbalance, and it's that this kind of stuff --
10 I believe you start at the core, you know.

11 I don't know how to incorporate
12 these kind of standards with an attorney,
13 because people front, and they say the
14 appropriate stuff, but -- I don't know --

15 MS. BANKS: When we have got a state
16 wide independent public defense commission,
17 there will be standards, uniform standards
18 throughout the state, right, Jonathan?

19 MR. GRADESS: Right.

20 MR. WILSON: You see, it's almost --
21 it's hard.

22 I work with people, it's hard to
23 instill or even measure integrity in a short
24 period of time.

25 I'm saying in a classroom setting,

Anonymous witness 222

1 I think when you realize that someone has the
2 integrity, it's their track record.

3 They've got to work for it.

4 I mean, you can, impose it, you can
5 ask for it, and somebody can say yes, I can do
6 that, I can do that, but the proof is in the
7 pudding.

8 MS. BANKS: I think you know what I
9 mean.

10 MR. WILSON: Under the stress of the
11 daily courtroom and the serving the public, and
12 being unappreciated by the people that you are
13 even trying to represent, sometimes that
14 standardness did come out, and a lot of this
15 stuff can slip away.

16 You know, people look like they are
17 ready to do what they are hired to do. Because
18 of quote, unquote, the All Mighty dollar, and
19 it looks good, and that's why I love these, but
20 I think it's going to be -- after you set the
21 guidelines, then you've got to have to monitor
22 the shit out of them, because it could be a
23 joke, because somebody can say, yeah, yeah,
24 everybody.

25 I mean, it's human nature to say, I

Anonymous witness 223

1 can do that, I can do that, and then you get in
2 the middle of this, and your values slip, and
3 your resolve gets worn down, and it's gotten an
4 ongoing -- you know your track record.

5 Well, maybe you need to interview
6 the people that have been represented over and
7 over.

8 Okay, what's your case load?

9 With your ex amount of cases, maybe
10 you could talk to 30 per cent of those people.

11 Did you like Mr. So and So? I know
12 you've got sometime, did you feel -- there have
13 been times I went to prison and I felt, well,
14 I'm going, but --

15 MS. HATHAWAY: Do you feel like this
16 is worth pushing?

17 MR. WILSON: Absolutely.

18 MS. HATHAWAY: As we have it here?

19 MR. WILSON: Absolutely.

20 MS. HATHAWAY: We have a fight, and
21 we have been doing it, and it's been getting
22 tougher and tougher, and the people we have to
23 get to, we know they don't want it, in the
24 first place, but we need to know if you feel
25 that is workable?

Anonymous witness 224

1 MR. WILSON: I'm about hope, I'm
2 like hoping in the flesh.

3 So, you know, I have been hopeless.

4 MS. WHEELER: I want to thank you
5 for your last statement, though, because it's
6 my sentiments exactly about the monitoring and
7 the follow-up.

8 MS. HATHAWAY: And they are not
9 going to like the idea of being monitored by
10 people that they think are a novice.

11 MR. WILSON: Yes, but, you know,
12 that dedication, you know, if you can instill
13 in people -- like I had to get better with --
14 let me tell you about a personal review.

15 I had to get confident with case
16 folders, and folder reviews, because initially
17 I saw that as an attack on my ability, some
18 kind of troubleshooter, and then I had to
19 change my prospective on it.

20 I had to say, you know, I want to
21 be an efficient counselor, and all of this
22 stuff helps me become that person, and I had to
23 stop seeing myself as being under attack.

24 That was my own stuff, and I'm
25 saying that these thing needs to be installed

Anonymous witness 225

1 in people. It's got to be in my supervisors.

2 We are team players.

3 I help you be a better supervisor,
4 you help me be a better counselor, you know.

5 And I know that's kind of like
6 somebody that is altruistic, but I choose to
7 just hold onto it, and rather than to wait for
8 it to be offered.

9 So we are talking about starting
10 somewhere. This panel, I believe it's a great
11 thing, you know. I hope it not a -- it's not my
12 job, but I hope it's not a political -- you
13 know how they set things, oh, we make a
14 commission, and you just draw up a commission,
15 and the commission don't do shit.

16 You know, it's just part of the --

17 MS. HATHAWAY: Did anyone tell you
18 how long this has been in the hopper?

19 MR. WILSON: About 3 or 4 years.

20 MR. GRADESS: The independent
21 commission?

22 MS. HATHAWAY: Yes.

23 MR. GRADESS: That's what he's
24 hammering on.

25 MS. BANKS: It's going to be a

Anonymous witness 226

1 working thing.

2 MS. WILSON: I'm a fan.

3 MR. WHEELER: Do me one favor, would
4 you, please, from your definition, and this is
5 for my own benefit, what does it mean to you in
6 pay back?

7 MR. WILSON: Pay back?

8 MR. WHEELER: Because you stipulated
9 earlier that you are doing what you're doing
10 now, and it's your way of paying back.

11 MR. WILSON: Well, it was a social
12 ill, I practiced exploiting people's situations
13 for my own personal gain.

14 Some of it was drug induced, but a
15 lot of it was a way that I like validating
16 myself. I felt -- I alienated myself in the
17 system, and I felt the system alienated me, so
18 I use that as an excuse.

19 Now, today -- and I've got a saying
20 that I used to wake up in the morning looking
21 for a victim, today I wake up looking to help
22 someone, you know.

23 So that's my way, and I look for a
24 forum to do that.

25 I'm not a guy to stand on a soap

Anonymous witness 227

1 box, and I don't do it for accolades. I think
2 that I have suffered from lying and practicing
3 that as a life style, and today I just deal
4 with the truth, and I work hard at it, and
5 dealing with this and staying with the
6 truthkeeping.

7 It's very simple, because I believe
8 that what I give up, I get back.

9 So it's a way of like paying
10 society back, you know, and it is kind of like
11 a way to turn a negative with a positive, you
12 know, understanding some of the people that I
13 work with, some of their life-styles.

14 Some of their value systems were
15 mine, and I know what it takes to breakthrough,
16 so I don't preach. I just -- I look for those
17 guys that are ready, and I think I've got a
18 pretty good eye for it, because I now how I
19 got.

20 MS. WHEELER: Did the attorney that
21 you are so much in favor of, do you think that
22 the help he gave you was ever a benefit to you?

23 MR. WILSON: I think the guy didn't
24 do shit for me, helped me more, because you
25 can't count on people who they profess they

Anonymous witness 228

1 need to be.

2 You need that buddy, because it
3 just made me take better care of myself, and my
4 position in life.

5 And I am not advocating that, but
6 this guy, he helped me, because, you know, I
7 set myself up to be victimized by somebody who
8 didn't care, who didn't give a damn, you know,
9 and I understand how we do that today, and I
10 work on that, as opposed to -- I work on the
11 person, the part that we play, the part that I
12 play that set me up for this guy.

13 That's the way I work, and I let
14 other people work on the system.

15 You know what I mean?

16 You can have jobs, but if you got
17 somebody who don't believe that they are
18 worthy, they are going to sabotage everything
19 you give them, so I work on that part, and I
20 will do this thing.

21 MS. WHEELER: They are just
22 substantiating their own life?

23 MR. WILSON: Yes, unconsciously, I
24 believe unconsciously.

25 I just believe they feed with this.

Anonymous witness 229

1 MS. WHEELER: But I'm stuck just a
2 little bit here, because, unfavorably as you
3 did talk about the attorney, which you talked
4 about this attorney so favorably, it actually
5 was visual to me, so think again, and tell me
6 how he helped you turn your life around?

7 MR. WILSON: Well, he gave me an
8 opportunity, by his positive representation.
9 He gave me an opportunity, where I didn't go to
10 prison for a very long time. I believe he had a
11 master hand in that.

12 You know, I made my thinking based
13 upon a lot of the stuff that he brought out,
14 and not only in the courtroom, and my
15 presentencing, you know, and, you know, like
16 poor representation may cause someone to do a
17 much longer stretch, and what he learned me to
18 do was buy his positive representation, whether
19 I went away, I was committed to not tarnishing
20 my prison record, because I didn't go in there
21 with a lot of resentment, and the last time I
22 went, I was kind of angry, I felt like I had
23 been totally railroaded, just based upon who I
24 appeared to be to the Court, and who I was in
25 some ways, even though I just wasn't that guy

Anonymous witness 230

1 at that particular case, but this guy, this
2 guy, you know, the thing that he helped me do
3 was to have faith in the system, you see,
4 because it is important when I did make my turn
5 around.

6 It was important that I held this
7 last attorney up a long time, because I wanted
8 to be a victim.

9 The Court don't do no shit for you,
10 and, you know, I told you that I became an
11 advocate of the truth, and this other guy, just
12 like I was talking, this other guy was this,
13 and he doesn't deny that he was what an
14 attorney -- I don't care whether he was Legal
15 Aide or whatever, what he was, was what an
16 attorney should be, you know, even with a case
17 that was so-called cut and dry, it was closed.

18 You know what I mean?

19 And so as hard as I was trying to
20 be a victim, and to disbelieve in the system, I
21 know the system works, because the people that
22 were -- this guy, this guy was part of the
23 system, and he made it work for me, so
24 that's -- that was real for me, that was real,
25 you know.

Anonymous witness 231

1 I got like an A and B story, and if
2 I tell it all, you now, you can talk about it
3 with.

4 MS. WHEELER: Well, the legal system
5 isn't this, but that particular attorney was.

6 MR. KING: Had you gotten 15 years,
7 would you have been happy with that
8 representation?

9 MR. WILSON: The first guy?

10 MR. KING: I'm talking about the
11 bank robbery.

12 MR. WILSON: I was expecting it.

13 MR. KING: No, if you had gotten 15
14 years -- I want you to answer, that if you had
15 gotten 15 years, 10 years, would you have been
16 happy -- would you now be able to say that you
17 were happy with the representation?

18 MR. WILSON: The representation that
19 I got?

20 MR. KING: Right.

21 MR. WILSON: Yes.

22 MR. KING: And the robbery -- why
23 I'm asking that is, even if I'm guilty, I
24 wanted a fair chance to be represented, so I
25 can get the best out of what's due me?

Anonymous witness 232

1 MR. WILSON: That's where he went.

2 It was beyond my wildest dreams to
3 get what I got for that. It was beyond my
4 wildest dreams, but if I had got 10 or 15
5 years, I kept saying it was because of poor
6 representation, because he went with the
7 only -- I remember he said the only hook we
8 have is, I show these people your motivation
9 behind that, he says, and he says we've got
10 something going for us, because the judge, when
11 they read your thing, he was laughing.

12 That was like what made this guy
13 think of that, and they had ran this test, and
14 they found out I didn't have aides, so he says,
15 we got to -- on some level they kind of respect
16 you, you know, because I was saying I don't
17 want to use a gun, because I didn't want to
18 really hurt anybody, and I knew banks were
19 insured, so I really wasn't taking money out of
20 little people's pockets.

21 That was the rationale, and he made
22 the jokes.

23 The judge said, thank you,
24 Mr. Wilson, for considering society and bank
25 robbery, not something we advocate for, but I

Anonymous witness 233

1 hope you share with us your name of your
2 lawyer.

3 MR. WILSON: His name might have
4 been Guess.

5 Was it Guess?

6 It may have been Guess.

7 Or maybe one of them was named
8 Guess, but --

9 MR. GRADESS: When it comes to you.

10 MR. WILSON: Yes, I thought I had
11 it, because -- maybe I'll ask my wife, she
12 might remember.

13 MR. GRADESS: Anybody else?
14 Anything else?

15 Thank you very much.

16 MR. WILSON: Thank you.

17 Mr. GRADESS: Good to see you.

18 MR. WILSON: And good luck and God
19 bless.

20 MR. GRADESS: Thank you.

21 So that then concludes the hearing
22 of the 14th today, June 24th, 2003, and we will
23 adjourn these hearings until we go to Orleans
24 County for hearings with farm workers in July.

25 Thank you very much.

Anonymous witness 234

1 (Whereupon, the hearing was
2 concluded).

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Leonard Infeld, Court
Reporter and Notary Public, hereby certify that
the proceedings herein are from the notes taken
by me in this matter of the aforementioned
case; and that this is a correct transcription
of the same.

Leonard Infeld, CSR

