

NEW YORK STATE DEFENDERS ASSOCIATION

&

LEAGUE OF WOMEN VOTERS OF NEW YORK STATE

FACT FINDING HEARING

Thursday, April 22nd, 2004

1:00 p.m. - 7:07 p.m.

Schoharie County Child Development
Council/Head Start
Administrative Building
114 Lark Street
Cobleskill, New York

PANEL:

Jonathan Gradess
Marion Hathaway
Lenore Banks
Darryl King
Jamie Burke

ALSO PRESENT:

Barbara Baggott
Karla Andreu

A.S.E. REPORTING SERVICES (518) 458-1091

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1 MR. GRADESS: Let's open
2 this hearing. We are -- it's April
3 22nd, and we are in Schoharie
4 County. We're holding a Fact
5 Finding Hearing to assess public
6 defense services here.

7 And we have called a
8 number of witnesses who are going to
9 share their experience with the
10 public defense system in Schoharie
11 County and talk to us about what
12 they think could make improvements.

13 Just for the record, we
14 have been holding these hearings
15 throughout the State of New York.
16 Had a Fact Finding Hearing in the
17 late '90s with the League of Women
18 Voters in New York City and in
19 Syracuse and in Rochester and in
20 Albany. And one of the things that
21 happened was that they were very
22 provider heavy. And we now have
23 been trying to capture in our
24 defending the right to be heard,

1 every county, every client campaign,
2 the voice of the client community.
3 And, so, a series of hearings have
4 been held throughout the State in
5 the last year and a half in New York
6 City and in Western New York and
7 Albion and Schenectady. We've held
8 speak outs in Albany and
9 Schenectady. We've done some video
10 taping. But what is the precursor
11 to this hearing was a -- a listening
12 session that we held several months
13 ago in cooperation with the
14 Schoharie Community Action Program.
15 And that followed on the heels of
16 our staff investigator taking a look
17 at issues of defense services here.

18 Then our Community
19 Organizer, Karla Andreu, began
20 coming to Schoharie County in
21 January of 2004 to lead an
22 organizing process of identifying
23 community leaders and educating
24 groups about the public defense

1 system and in working with local
2 organizations, including the Human
3 Services, coordinating counsel and
4 agencies; an interagency day, some
5 church leaders and schools and SUNY
6 students. And she did street
7 outreach in a number of the towns.
8 And, so, that has brought us to this
9 day.

10 If we could just take a
11 second and introduce our panel. As
12 I said I'm Jonathan Gradess. I'm
13 the Director of the New York State
14 Defenders Association; joined by
15 Marion Hathaway, who Chairs our
16 Client Advisory Board; and Lenore
17 Banks, who is a member of our Client
18 Advisory Board and a liaison with
19 the State League of Women Voters;
20 Darryl King, a member of the Client
21 Advisory Board, who is from
22 Brooklyn, New York, who works with
23 the 5th Avenue Committee. We expect
24 to be joined shortly by Jamie Burke,

1 who is a staff attorney with
2 Brooklyn Defenders Services.

3 So, at this point we have
4 our first witness, who we are going
5 to refer to as Anonymous Witness
6 Number One.

7 Welcome, Anonymous Witness
8 Number One. I want you to take your
9 time, share with us. If you need to
10 take a break or anything else, just
11 do that. But just talk to us.
12 We're just trying to sit around this
13 table and get some information.

14 TESTIMONY OF ANONYMOUS WITNESS #1:

15 ANONYMOUS WITNESS #1:

16 What do you want to know?

17 MR. GRADESS: What has
18 been your experience with appointed
19 lawyers in this county.

20 Have you -- let me just
21 ask at the outset. Has she received
22 a copy of the fourth draft of the
23 standards?

24 MS. ANDREU: They're on

1 the table.

2 MR. GRADESS: Okay. One
3 of the things I'm going to ask you
4 to do before we finish is just to
5 take a look at a couple of these
6 standards.

7 Our Advisory Board has
8 created Client Centered
9 Representation Standards, which
10 we're trying to have assessed in the
11 client community.

12 And I want you to take
13 this moment to do that. But we'll
14 take a little break for a minute and
15 let you take a look at that after
16 you talk.

17 But what those standards
18 talk about are about the
19 expectations that clients have from
20 their lawyers.

21 And our understanding is
22 you've had some experience with
23 lawyers, and you wanted to share
24 that experience. And, so, I'd just

1 like you to talk about it.

2 ANONYMOUS WITNESS #1: The
3 first time I went to court, the
4 very, very first time that my
5 lawyer, I don't remember his name,
6 you're talking about five years ago,
7 didn't -- didn't do a thing for me.
8 And at that time their father, my
9 ex, his brothers did drugs, his
10 sister drank, his mother was
11 abusive, and he still got visitation
12 of my kids. And at the time the
13 kids were only, like, five and
14 three. My lawyer did nothing for
15 me.

16 MR. GRADESS: When you say
17 your lawyer did nothing, tell us
18 more affirmatively what kind of
19 relationship you had with your
20 lawyer. Did he visit you?

21 ANONYMOUS WITNESS #1:
22 Nope.

23 MR. GRADESS: How long did
24 he represent you?

1 ANONYMOUS WITNESS #1: A
2 couple of times in court. But,
3 then, when we went to court a couple
4 of times, but I still wasn't getting
5 anywhere so I gave in. You see
6 that's the biggest part of this
7 problem is, is -- is every time my
8 defense lawyer does not fight for
9 me, I end up going back to the same
10 situation again.

11 I need a defense lawyer
12 that's going to be there to get me
13 out of what I am in, domestic
14 violence. And that's what keeps
15 happening. I've been going through
16 this for the last twelve years.

17 MR. KING: But he was
18 asking how long had you had this
19 first lawyer?

20 ANONYMOUS WITNESS #1:
21 Well, we've had him four or five
22 times.

23 MR. KING: I mean, how
24 long in terms of years or --

1 ANONYMOUS WITNESS #1:

2 Maybe six months.

3 MR. KING: Okay.

4 ANONYMOUS WITNESS #1: But
5 you've got to understand, I've been
6 there lawyers. I've been through
7 lawyers. They don't do their
8 homework. They don't fight for me.
9 They don't call me. I have to call
10 the -- when I went back to court the
11 last time, not this time, the very
12 last, last time, I had to call my
13 lawyer, I had to ask him questions.
14 Now isn't he supposed to be fighting
15 for me? Isn't he supposed to find
16 out what's going on with these kids?

17 MR. GRADESS: Make this
18 concrete for a second. Your case
19 was in court? You were in family
20 court?

21 ANONYMOUS WITNESS #1:

22 Uh-huh.

23 MR. GRADESS: You were in
24 family Court here in Schoharie

1 County?

2 ANONYMOUS WITNESS #1:

3 Again.

4 MR. GRADESS: And when was
5 the first time you were in Family
6 Court in Schoharie County?

7 ANONYMOUS WITNESS #1: My
8 son is ten. This is 2004. So, four
9 -- maybe 1996.

10 MR. GRADESS: Okay. And
11 the case that was in Family Court in
12 1996 was for what?

13 ANONYMOUS WITNESS #1: It
14 was because I left my abusive ex. I
15 had -- just had my -- my son was --
16 my little one is seven, was, like,
17 maybe three months old, and I had my
18 ten years old, which was -- was
19 three. And I left him because he
20 was abusive.

21 MR. GRADESS: And you
22 brought a petition in Family Court?

23 ANONYMOUS WITNESS #1: I
24 brought a petition.

1 MR. GRADESS: And what was
2 that petition -- what were you
3 trying to achieve?

4 ANONYMOUS WITNESS #1: I
5 wanted -- I wanted sole custody of
6 my kids.

7 MR. GRADESS: Okay. And
8 what -- what specifically happened
9 in court with your lawyer?

10 ANONYMOUS WITNESS #1: He
11 basically -- I basically tried to
12 tell him that his mother was
13 abusive. I tried to tell him that
14 there were drugs and alcohol there.
15 I tried to tell him that the house
16 was dirty. It was not liveable.
17 And still, because he had a good
18 lawyer and I couldn't afford a
19 lawyer, I had a public lawyer, he
20 would win every time.

21 MR. GRADESS: So your
22 husband had a privately retained
23 lawyer and you had appointed
24 counsel?

1 ANONYMOUS WITNESS #1:

2 Right.

3 MR. GRADESS: Would your
4 appointed counsel ever make a visit
5 to your home?

6 ANONYMOUS WITNESS #1:

7 Nope.

8 MR. GRADESS: Did the
9 appointed counsel ever make a visit
10 to any other place, you know, any --
11 to investigate the place --

12 ANONYMOUS WITNESS #1:

13 Nope.

14 MR. GRADESS: Did you --
15 how many times outside of court did
16 you ever meet your appointed lawyer.

17 ANONYMOUS WITNESS #1:

18 Only when it was court time.

19 MR. GRADESS: In court?

20 ANONYMOUS WITNESS #1: In
21 court.

22 MR. GRADESS: And how long
23 would these meeting be for?

24 ANONYMOUS WITNESS #1: In

1 court? Five minutes.

2 MR. GRADESS: And did he
3 ever ask you for any documents?

4 ANONYMOUS WITNESS #1:
5 Nope.

6 MR. GRADESS: Did he ever
7 talk to you on the telephone?

8 ANONYMOUS WITNESS #1:
9 Nope.

10 MR. GRADESS: When you
11 would get into court, try and share
12 with us a little bit of what would
13 happen. How would he differ, his
14 behavior, from the private lawyer
15 that your husband had?

16 ANONYMOUS WITNESS #1:
17 What do you mean? Like --

18 MR. GRADESS: Well, when
19 -- what would the private lawyer do
20 that differed from what your lawyer
21 did?

22 ANONYMOUS WITNESS #1: His
23 lawyer actually talked to him on the
24 phone and actually called him, from

1 what I understand. My public lawyer
2 did not even call me, did not -- it
3 was like when I told him certain
4 things, he's like, well, you need
5 proof. Well, I'm thinking to
6 myself, well, isn't that your job to
7 find out? It's not my job. My job
8 is to take care of the kids and make
9 sure that they're safe. Your job is
10 to work and help me keep my kids
11 safe. And that's how I felt. And
12 every lawyer that I have gotten does
13 not do that except for this last
14 one.

15 MR. GRADESS: So, how many
16 lawyers, until this last one, have
17 you actually had? This is one --

18 ANONYMOUS WITNESS #1:
19 This is one lawyer --

20 MR. GRADESS: -- one
21 custody case that's been going on
22 since 1996?

23 ANONYMOUS WITNESS #1:
24 It's been custody. It's been

1 visitations. It's been now I want
2 to move out of the county. It's
3 been violations. It's been -- he's
4 violated Orders of Protection. A
5 whole bunch of stuff.

6 MR. GRADESS: Do I
7 understand that in your relationship
8 with him he was abusive to you?

9 ANONYMOUS WITNESS #1:
10 Yes. And --

11 MR. GRADESS: And -- and
12 to the children?

13 ANONYMOUS WITNESS #1:
14 Yes.

15 MR. GRADESS: And did this
16 ever come out in the court?

17 ANONYMOUS WITNESS #1:
18 Yes. It's still coming out in the
19 courts and he's still getting
20 visitation of these kids.

21 MR. GRADESS: And when it
22 came out was it your lawyer that
23 brought it out?

24 ANONYMOUS WITNESS #1:

1 Yes. This last lawyer I got, Matt
2 Tully (phonetic spelling), he's the
3 one that brought it out.

4 MR. GRADESS: So, you've
5 had the experience of having
6 three -- four lawyers --

7 ANONYMOUS WITNESS #1:
8 About three to four lawyers --

9 MR. GRADESS: -- who did
10 not do anything, and one lawyer has
11 done something?

12 ANONYMOUS WITNESS #1:
13 Yes.

14 MR. GRADESS: The
15 "something" that that last lawyer
16 has done you're happy with?

17 ANONYMOUS WITNESS #1:
18 Yes, because he's actually trying --
19 he's actually stopped -- my daughter
20 was molested when she was 9 months
21 old. When I went to court for that,
22 the lawyer did nothing for me. So,
23 until my daughter was 9 months old,
24 until she was 2 years old was

1 molested and abused, until I got
2 Matt Tully. After I got Matt Tully
3 the abuse stopped.

4 MR. GRADESS: And how did
5 it stop?

6 ANONYMOUS WITNESS #1:
7 Because he fought for me. He came
8 up with documents. I give him
9 doctors. You got doctors' records.
10 I mean, he did everything possible
11 he could to try to help my daughter,
12 and I thought that was awesome.

13 Now I'm going back to
14 court again just to try to stop the
15 visitation. I want sole custody --

16 MR. GRADESS: But he still
17 represents you?

18 ANONYMOUS WITNESS #1:
19 He's -- he's trying to represent me,
20 but the problems is because he has
21 such a good lawyer, Matt can't find
22 anything on him.

23 And that's part of the
24 biggest problem. The Judge does not

1 understand domestic violence. He
2 does not understand kids. He does
3 not understand when a little girl
4 that's 9 months old, with
5 disabilities -- he doesn't
6 understand what molestation is. He
7 doesn't understand what abusive
8 people men can be.

9 I'm not just blaming the
10 defensive people, I'm blaming the
11 Judge. Because if this Judge would
12 have stopped it the first time, my
13 daughter would have never been
14 molested. My kids wouldn't be in
15 the mess they're in right now.

16 MR. GRADESS: Did the
17 lawyers -- do you think the lawyers
18 who represented you had any
19 difficulty representing you because
20 you were a victim of domestic abuse?

21 ANONYMOUS WITNESS #1: I
22 think so.

23 MR. GRADESS: Could you
24 tell us what you think that -- how

1 that happened?

2 ANONYMOUS WITNESS #1:

3 Most -- I think most defenders do
4 not understand women being in
5 domestic violence.

6 When you sit there and --
7 even -- even now Matt -- Matt Tully,
8 he's a good lawyer, don't get me
9 wrong, he -- he doesn't understand
10 what domestic violence does to a
11 woman. It tears you apart. It
12 makes you like you can't do
13 anything. And I've been fighting
14 this for 13 years. And I -- I can't
15 do it anymore with him.

16 Now my -- now my ex wants
17 my two older ones and now I've got
18 to go back to court and try to fight
19 for that again. I'm going saying I
20 can't -- that I'm going to lose and
21 I'm not going to win, but the Judge
22 could say the kids could go live
23 with his (sic) father and then
24 what's -- what's going to happen to

1 my two older kids because the Judge
2 doesn't understand.

3 Matt doesn't really
4 understand domestic violence.

5 I think we need to be --
6 more education on -- on -- on
7 domestic violence for women. It's
8 just not the men anymore, it's about
9 the women that get abuse.

10 I've been beat up. I've
11 been hit. My kids have seen it. My
12 ten year old child has seen it. And
13 he's doing domestic violence now,
14 all because the defense lawyers
15 didn't do their job the first time.

16 MR. GRADESS: Take a
17 minute, if you would, and look at --
18 well, before we do that, are there
19 questions from the panel that you
20 want to ask?

21 MS. BANKS: I'm amazed --
22 you've described so many of our
23 standards that were completely
24 violated. Thank you for sharing

1 them.

2 MS. HATHAWAY: How did --
3 like, when you were in court, what
4 was the difference -- I think this
5 is back in -- on Jonathan's
6 question, and the actions of your
7 husband's attorney to him while you
8 were in court -- you know, at court,
9 talking with him, sitting with him,
10 talking about the case with him and
11 your attorneys, which you said did
12 nothing with you, shared nothing
13 with you or whatever --

14 ANONYMOUS WITNESS #1:
15 They were scared. They were scared
16 of the paid lawyer. Ever time I've
17 gone to court they're scared of the
18 lawyers that are actually getting
19 paid. And I see it in their faces
20 all the time.

21 MS. HATHAWAY: Did at any
22 time, although you might not have
23 any reason, did your husband's
24 attorney ever say anything to you?

1 Like, did you see him holding
2 conversations at all with your
3 attorneys?

4 ANONYMOUS WITNESS #1: No.
5 The only one I've seen is Matt Tully
6 do that with my lawyer (sic). And
7 he's also tried to even talk to my
8 ex. He's the only lawyer.

9 MR. KING: All right.
10 Have you ever filed police charges?

11 ANONYMOUS WITNESS #1:
12 Yep.

13 MR. KING: And what ever
14 happened to the police complaint
15 with your attorney --

16 ANONYMOUS WITNESS #1: He
17 got away with it.

18 It wasn't with -- through
19 my attorney. My attorney couldn't
20 do it because it was for Family
21 Court --

22 MR. KING: What I mean is,
23 what was the end results with you
24 filing your complaint, going to

1 court, being represented by
2 somebody, is that correct?

3 ANONYMOUS WITNESS #1:
4 That -- that -- when he went to
5 jail, Matt Tully was my lawyer at
6 the time --

7 MR. KING: Uh-huh.

8 ANONYMOUS WITNESS #1: --
9 Matt Tully is the one that made me
10 -- did the complaint and he went to
11 jail.

12 If it wasn't for Matt
13 Tully he would have never went to
14 jail. But because -- like I said,
15 the paid lawyer, he had just a paid
16 lawyer (sic), he got off free from
17 it.

18 And, then, when we --
19 tried to go back to Family Court to
20 try to sober up, he's -- he's
21 abusive, the Judge didn't want to
22 listen to it.

23 MS. BANKS: Is this the
24 same Judge that put him in jail?

1 ANONYMOUS WITNESS #1: No.

2 MS. BANKS: Different.

3 ANONYMOUS WITNESS #1: No,
4 actually, yes, it was. It was the
5 same Judge that put him in jail. He
6 got caught on another violation.
7 The Judge ordered something --
8 because I put a petition in, and
9 then he got caught on a D.W.I. And
10 that's how he got to jail.

11 MS. HATHAWAY: But not on
12 your petition?

13 ANONYMOUS WITNESS #1: It
14 was partly on my petition --

15 MS. HATHAWAY: I mean, but
16 before that. Had he not gotten
17 caught on a D.W.I. he may not
18 have --

19 ANONYMOUS WITNESS #1: He
20 probably --

21 MR KING: I mean, but
22 prior -- prior to your lawyer, Matt
23 Tully, prior to him, had you ever
24 filed a domestic violence case

1 against your husband?

2 ANONYMOUS WITNESS #1: No.
3 My lawyers never told me to. I
4 didn't know what domestic violence
5 was.

6 MR. KING: Did you ever
7 file charges against your husband
8 for molestation?

9 ANONYMOUS WITNESS #1: No,
10 because I didn't know.

11 MR. KING: Okay.

12 ANONYMOUS WITNESS #1: I
13 was too scared. I didn't file it,
14 but C.C.S.I. did help me file it.

15 MR. KING: When was that?

16 ANONYMOUS WITNESS #1:
17 That was 9 months -- it was -- my --
18 when my daughter was one. She's
19 been going -- by one-and-a-half is
20 when we found out that she was
21 molested.

22 MR. KING: Okay. So, now,
23 Matt Tully knows that your child has
24 been molested. What is he doing,

1 you know --

2 ANONYMOUS WITNESS #1: He
3 actually -- what happened was, when
4 I went -- when I went through that
5 with him --

6 MR. KING: Uh-huh.

7 ANONYMOUS WITNESS #1: --
8 he actually got me full custody of
9 my daughter at the time. He helped
10 me. Stephen (phonetic spelling),
11 her father, didn't want anything to
12 do with her.

13 MR. KING: But -- I mean,
14 what happened to -- had there been
15 any criminal charges?

16 ANONYMOUS WITNESS #1: The
17 criminal charges, no, because my
18 daughter doesn't talk, and nobody
19 would talk about what happened to my
20 daughter. So, there was charges,
21 but there was not enough evidence to
22 prove that she was molested.

23 MR. KING: What about
24 medical records?

1 ANONYMOUS WITNESS #1:
2 There was a medical record stating
3 she had been touched, but not enough
4 evidence to prove or convict
5 anybody.

6 MR. GRADESS: The first
7 four lawyers that represented you,
8 did any one of them ever hire an
9 investigator to investigate?

10 ANONYMOUS WITNESS #1: No.

11 MR. GRADESS: Did they
12 ever ask the court for an
13 investigator, to you knowledge?

14 ANONYMOUS WITNESS #1:
15 Nope.

16 MR. GRADESS: Did they
17 ever ask the court to appoint an
18 expert to examine you or your
19 daughter?

20 ANONYMOUS WITNESS #1:
21 Nope.

22 MR. GRADESS: Was your
23 daughter or you ever examined during
24 that time?

1 ANONYMOUS WITNESS #1: My
2 daughter was examined through the
3 police because my daughter brought
4 blood. I took her to the doctors
5 and that's how the police got
6 involved. But she was examined
7 then.

8 MR. GRADESS: What
9 happened as a consequence of that
10 examination?

11 ANONYMOUS WITNESS #1:
12 They found evidence on top of her.
13 She wasn't penetrated, but there was
14 evidence on top. But because nobody
15 talked --

16 MR. GRADESS: They didn't
17 proceed with the case.

18 ANONYMOUS WITNESS #1: --
19 they didn't proceed with the case.

20 MR. GRADESS: Now, I take
21 it the "Judge" that you have been
22 referring to in your testimony is
23 Judge Bartlett?

24 ANONYMOUS WITNESS #1: You

1 got it.

2 He doesn't like women, by
3 the way, either. Because what he --
4 he's been my Judge for the last five
5 years. He does not like women. It
6 took me this long to get him --
7 finally to get him to believe what's
8 been going on in my house, with my
9 kids, and what he's been doing to
10 me.

11 MR. GRADESS: When you
12 referred to the need for training --
13 or -- or let me -- withdraw that --

14 Your testimony a minute
15 ago, you indicated that you yourself
16 didn't understand domestic violence.
17 So, there came a time when you came
18 to understand that you were the
19 victim?

20 ANONYMOUS WITNESS #1:

21 Yes.

22 MR. GRADESS: Is it fair
23 to say that prior to that time you
24 thought you were the only one being

1 treated this way?

2 ANONYMOUS WITNESS #1:

3 Yes.

4 MR. GRADESS: Well, tell
5 us, for the record, if you would,
6 what was the process that got you to
7 understand that you had been a
8 victim?

9 ANONYMOUS WITNESS #1:
10 C.C.S.I.

11 MR. GRADESS: Tell us what
12 that is and what happened there.

13 ANONYMOUS WITNESS #1: I'm
14 not sure what -- exactly what it's
15 called.

16 MR. GRADESS: Coordinated
17 Childrens Service Initiative.

18 ANONYMOUS WITNESS #1:
19 That's it. If it wasn't for those
20 people and my current partner, I
21 would probably either be dead and
22 lost my children by now, if it
23 wasn't for them helping me, trying
24 to help me understand what domestic

1 violence is, trying to get the
2 lawyers to understand domestic
3 violence.

4 Numerous times, when I've
5 gone back to court, I've even tried
6 different defense lawyers and they
7 tried to help me. Unfortunately
8 those -- this last -- well, this is
9 the second time I've had Matt Tully,
10 we -- we finally got a good lawyer.
11 So, that -- that really helped. But
12 if it wasn't for C.C.S.I. I probably
13 would be dead.

14 MR. GRADESS: Do you know
15 whether C.C.S.I. trains the defense
16 lawyers, and this could be the
17 appointed lawyers in this community
18 at all?

19 ANONYMOUS WITNESS #1: I
20 do not know.

21 MR. GRADESS: When you
22 were talking about training, what
23 were you talking about? What would
24 you like to see?

1 ANONYMOUS WITNESS #1: I'd
2 like to see the Judge -- I'd like to
3 see the Judge go through classes.
4 Like, when there's people out there
5 that go to domestic violence
6 classes, I'd like to see a Judge to
7 go through it. I'd like him to
8 understand what it's like, what --
9 what it's like for a woman to be
10 degraded and -- and -- and be scared
11 and -- I used to hide things down my
12 pants because I was so scared of my
13 ex, just so he wouldn't find out a
14 phone number. And at the time I
15 didn't know it was domestic
16 violence.

17 MR. GRADESS: Did he keep
18 you in the house?

19 ANONYMOUS WITNESS #1:
20 Yes.

21 MR. GRADESS: Want to
22 state for the record how long that
23 happened?

24 ANONYMOUS WITNESS #1: See

1 let's see, my son's 7. It happened
2 the last six years; from when my --
3 my -- my second son was born, that's
4 when he started treating me like
5 crap. So, it's been about six years
6 I've been going through this with
7 him.

8 MR. GRADESS: And if you
9 tried to leave what would happen?

10 ANONYMOUS WITNESS #1: If
11 I -- well, I -- if I would have left
12 him? He would have made my life
13 miserable.

14 He's kidnapped my kids
15 before. He's kidnapped my kids.
16 He's put my kids through hell.

17 His mother, his -- she
18 brainwashes them, tells them I'm a
19 bad mom. I mean, all these words.
20 My kids have come home and told me
21 this.

22 MR. GRADESS: These four
23 lawyers that represented you before
24 you got this good one, you indicated

1 that they seemed to be afraid of the
2 private lawyer. How did they seem
3 to react to the Family Court Judge?

4 ANONYMOUS WITNESS #1:
5 From what I understand, when you
6 look at a Judge you're looking at
7 the Judge, you don't look down at
8 the Judge. Everybody I've had
9 always looks down at the Judge --
10 always looks down at the table.
11 Matt Tully is the only one I've ever
12 seen with eye contact with him.

13 And I've seen James Bryan
14 (phonetic spelling) -- I can't
15 remember the other lawyer, but James
16 Bryan I'll never forget. He was the
17 worst I've ever had.

18 MR. GRADESS: What was bad
19 about him? What happened?

20 ANONYMOUS WITNESS #1: He
21 never did -- he never fought for me.
22 And when I tried to tell him things,
23 like, the one time Stephen said I --
24 I -- I supposedly did something and

1 I swore on the phone and I never
2 swore on the phone. I told him
3 that, but, yet, he didn't tell the
4 Judge that. So, it made out to be
5 like I was lying, and the Judge
6 believed him because she's an
7 expensive lawyer.

8 And I just -- I -- I just
9 don't understand how people like me
10 can get screwed because I can't
11 afford a lawyer.

12 MS. HATHAWAY: I have some
13 question. Do you live -- all of
14 this time you've been married are
15 you living --

16 ANONYMOUS WITNESS #1: We
17 weren't married.

18 MR. GRADESS: -- for all
19 the time you have been together and
20 the children, have you all ever
21 lived just you and your husband and
22 children, or you -- have you always
23 lived with the family; with his
24 family? Are you all in the same

1 house; the family, the mother --
2 your mother-in-law, sisters and
3 everything --

4 ANONYMOUS WITNESS #1: It
5 was a house and then there was an
6 apartment attached to it --

7 MS. HATHAWAY: Oh, it's
8 what they call a mother and
9 daughter --

10 ANONYMOUS WITNESS #1:
11 Yeah.

12 MS. HATHAWAY: Okay. So,
13 your house was attached to -- so,
14 then, all of you are living in the
15 same --

16 I have a few questions,
17 really.

18 Now I want to know, how
19 were you able to get rid of the four
20 lawyers you had, you know, at the
21 time you were able to get rid of
22 them?

23 And the other question is,
24 I don't know if it's possible, but

1 have you talked -- has anyone ever
2 talked to you, ask who he could make
3 a complaint to about the Judge?

4 You've had this Judge five
5 years and you know -- you -- you've
6 had his cynicisms, or whatever it is
7 and everything, has anybody ever
8 told you how you could make a
9 complaint against him? How you
10 would not have to appear before him
11 again or something?

12 ANONYMOUS WITNESS #1: No
13 one's ever told me that.

14 MS. HATHAWAY: Would that
15 be the general realm of the lawyers?
16 Or how would you go about doing
17 that?

18 ANONYMOUS WITNESS #1: He
19 may not even know. He's out in
20 Troy. This guy that I have now is
21 out in Troy.

22 MS. HATHAWAY: Oh, so you
23 don't have --

24 ANONYMOUS WITNESS #1: He

1 lives in Troy.

2 MS. HATHAWAY: Oh, okay.

3 But you -- you still have him?

4 ANONYMOUS WITNESS #1: I
5 still have him.

6 MS. HATHAWAY: Okay.

7 Well, I mean, before -- you had --
8 this is the second --

9 ANONYMOUS WITNESS #1: No.

10 MS. HATHAWAY: -- but the
11 others, how were you able to get rid
12 of them, you know?

13 ANONYMOUS WITNESS #1: I
14 actually -- I know the lady that's
15 the County Clerk, Linda, she --
16 because I've been going to court so
17 much we become friends. And I asked
18 her -- actually C.C.S.I., which is
19 Lisa Roth (phonetic spelling) is my
20 parent partner, she actually said --

21 MS. HATHAWAY: Oh. So
22 they assisted --

23 ANONYMOUS WITNESS #1:
24 Yes.

1 MS. HATHAWAY: -- they
2 assisted so that --

3 ANONYMOUS WITNESS #1:
4 Yeah. If it wasn't for them, for
5 them helping me and Ms. Barb, over
6 there, with Domestic Violence, I
7 probably wouldn't be here doing
8 this.

9 MS. HATHAWAY: I -- I
10 don't know if there is such a thing
11 that exists, but --

12 MR. GRADESS: Well, there
13 is. I think at the moment what
14 Marion is -- is talking about is,
15 you should -- you should discuss
16 with your lawyer what steps ought to
17 be taken against the Judge.

18 She has a special
19 situation, that she's got a case
20 pending before the Judge. So, that
21 ought to be a decision that you and
22 Matt Tully --

23 MS. HATHAWAY: That's
24 right. And it's been five years

1 you've had him, you know, and --

2 MR. GRADESS: There may be
3 things that can happen as a result
4 of this hearing, but we don't want
5 to have you make that decision --

6 MS. HATHAWAY: Not now --

7 MR. GRADESS: -- you
8 should talk to your lawyer.

9 Let me just ask you,
10 because we're going to call your
11 empowering witnesses next.

12 ANONYMOUS WITNESS #1:
13 Okay.

14 MR. GRADESS: You've done
15 really very well. But if you could
16 just take a quick look at -- at a
17 couple of standards on this piece of
18 paper and just give us your
19 reaction.

20 I'm -- I'm interested,
21 particularly, number six. And I
22 want to pursue -- if you'd just take
23 a second and read that.

24 It reads (Reading)

1 "Acknowledges personal prejudices
2 that might affect his or her ability
3 to effectively represent a client
4 and takes appropriate steps to
5 shield the client from resulting
6 harm."

7 It may be a little wordy,
8 but I guess what I'd be interested
9 in hearing you talk about is whether
10 or not you think -- and if you
11 could, for the record, characterize
12 what you think, in your own words,
13 these lawyers who represented you,
14 who didn't have a clue about
15 domestic violence, how did it show
16 up to you? What would you say to
17 them that they would miss? And what
18 would you ask of them that they
19 wouldn't do?

20 ANONYMOUS WITNESS #1: I
21 don't know -- I don't know exactly
22 what you mean.

23 MR. GRADESS: I mean,
24 how -- how could you tell that they

1 were not getting it?

2 ANONYMOUS WITNESS #1: Oh,
3 how I tell. Because when you --
4 when you sit and talk to a lawyer
5 and you try to explain to them like
6 being beat up, being emotionally
7 abused, the kids having a hard time
8 dealing with things and they're
9 getting abused and beaten up, and
10 things like that I tried to explain
11 to him, that I've been very afraid
12 of Stephen. He's very controlling.
13 Very intimidating. And I found out
14 that that's all part of domestic
15 violence, which I didn't know about,
16 and still to this day he still
17 controls my life, which makes my
18 life very hard.

19 In some aspects, I just --
20 they can listen to me, but they're
21 not getting it out. They're not
22 getting to the Judge to let the
23 Judge understand.

24 Like, I could tell -- I

1 could sit here and tell a lawyer
2 today, you know, well, this guy's
3 been abusive and -- and he's
4 controlling, he's intimidating, you
5 know, he's running my life, he won't
6 let me move out of the county, I
7 mean, I could sit here and tell you
8 all that, but when we get in front
9 of the Judge, it doesn't come out.
10 He doesn't say anything to the
11 Judge. The Judge needs to know
12 these things.

13 MR. GRADESS: And if I
14 heard you correctly earlier, you
15 said that your entire meetings
16 before Matt Tully were conducted in
17 the courthouse, just before the
18 court proceeding?

19 So, there's never a time
20 where a lawyer sat down with you and
21 talked to you for a half an hour or
22 an hour about this; all four of
23 those lawyers?

24 ANONYMOUS WITNESS #1:

1 Matt was the only one. Matt -- Matt
2 always tried to tell me to get there
3 a half hour early or -- or I've
4 called him lots of times and he's
5 actually called me back.

6 I have another situation,
7 a problem, where I have three kids
8 at home that have 102 fevers, he's
9 in -- he's in court right now and
10 he's going to call me back.

11 But -- that makes me feel
12 good, though, because he will call
13 me back before the kids have to go
14 to visitations tomorrow. And that's
15 what makes me feel confident about
16 Matt Tully.

17 And he says this time I've
18 done my homework. I've done
19 documents and he's doing his
20 homework. I'm doing my homework.
21 So, it's actually -- we're working
22 together as a team this time.

23 MR. GRADESS: And what was
24 the occasion that got you Matt

1 Tully, is my last question? Was it
2 the luck of the draw or something
3 else?

4 ANONYMOUS WITNESS #1: I
5 think it was the luck of the draw.
6 Because we just -- we asked -- we
7 asked for a different lawyer. And
8 then when Matt Tully -- when I saw
9 Matt Tully the first time, I knew he
10 didn't understand domestic violence,
11 but I knew he -- he understood where
12 I was coming from. And -- and
13 that's -- that's why I kept him.
14 Because no matter what he still
15 tried to fight for me.

16 MR. GRADESS: And has he
17 been open to learning about it?

18 ANONYMOUS WITNESS #1: I
19 think so. I think he's starting --
20 I mean, I think -- I think I've had
21 him, like -- well, the last time I
22 went to court, I think I had him,
23 like, three or four times. And now,
24 once again, I have him again. This

1 is my second time for a different
2 petition. And I think he's starting
3 to understand a little bit more
4 about what's going on.

5 And -- and the one thing I
6 like about him is -- is he's caring.
7 He's -- he just shows so much --
8 like, I don't know how to explain
9 it. It -- it's like he cares. The
10 other lawyers, they didn't give a
11 crap.

12 He told me that I was a
13 good looking woman, and I could find
14 a man if I needed to, and I don't
15 need to be with a jerk like that.
16 And I've never, ever had a lawyer
17 tell me that. And that made me feel
18 really nice because it was -- it was
19 actually nice that he was sticking
20 up for me and not -- he was trying
21 to be my friend, instead of being
22 just my lawyer. And that's what you
23 need.

24 MR. GRADESS: Well,

1 Anonymous Witness #1, we're very
2 glad you came in and you did a
3 terrific job --

4 MS. HATHAWAY: I have
5 one --

6 MR. GRADESS: You have a
7 question? Go ahead. I'm sorry.

8 MS. HATHAWAY: Just one
9 thing -- question.

10 Moving backward. What
11 type of relationship and what type
12 of man did your children's father
13 seem to be before you all got into
14 the situation of having children and
15 so forth? Did you see any of these
16 tendencies -- he didn't show any of
17 these tendencies prior, right?

18 ANONYMOUS WITNESS #1: He
19 might have, but like I said, I
20 didn't know what domestic violence
21 was.

22 MS. HATHAWAY: No. I
23 mean, how did he treat you when you
24 first met, you know, in that time --

1 ANONYMOUS WITNESS #1: He
2 was fine until we had our second
3 son. And then after that --

4 MS. HATHAWAY: It began
5 after the second. How closely are
6 your first and second?

7 ANONYMOUS WITNESS #1: My
8 son is -- my oldest is ten, and
9 my -- well, my second youngest is 7.
10 So, they're 3 years apart.

11 MS. HATHAWAY: Oh, that's
12 not very -- evidently something in
13 your relationship you did not know
14 had happened between those 3 years
15 or --

16 ANONYMOUS WITNESS #1: He
17 has a drinking --

18 MS. HATHAWAY: -- or by
19 the time the children came along,
20 and -- and other things, and you
21 became the target?

22 ANONYMOUS WITNESS #1:
23 Yep.

24 MS. HATHAWAY: You were

1 handy.

2 ANONYMOUS WITNESS #1:

3 That's another thing, just before I
4 leave, the Judge needs to know about
5 people who have drinking problems.

6 MS. HATHAWAY: The Judge
7 knows none of this?

8 ANONYMOUS WITNESS #1: No.
9 He knows that Stephen has a drinking
10 problem--

11 MS. HATHAWAY: Yeah.

12 ANONYMOUS WITNESS #1: --
13 but the Judge doesn't acknowledge
14 it.

15 MS. BANKS: But the D.W.I.
16 didn't --

17 ANONYMOUS WITNESS #1: No.
18 He doesn't acknowledge -- he's
19 already broke the violation of
20 the -- I just want to make sure you
21 understand this, the Judge needs to
22 know about people that break
23 violations. He needs to know about
24 people that break Orders of

1 Protection. He needs to know about
2 people that drink all the time. He
3 needs to know how people that --
4 that are abusive. He needs to know
5 the signs.

6 MS. HATHAWAY: None of it
7 has been presented by --

8 ANONYMOUS WITNESS #1: No.

9 MS. HATHAWAY: -- by your
10 attorney?

11 ANONYMOUS WITNESS #1:
12 It's been presented, but the Judge
13 didn't get it.

14 MS. BANKS: He didn't get
15 it.

16 ANONYMOUS WITNESS #1: No.

17 MS. HATHAWAY: He got it,
18 he doesn't care.

19 MR. GRADESS: I'm sorry, I
20 have one last question that I want
21 to ask you.

22 When the decisions have
23 been -- when you have been in court,
24 has the decision making been done in

1 open court or in chambers?

2 ANONYMOUS WITNESS #1:

3 Chambers? Where --

4 MR. GRADESS: I mean, are
5 you left there in court while the
6 lawyers scamper off with the Judge?

7 ANONYMOUS WITNESS #1: No.

8 MR. GRADESS: It's all
9 done in open court?

10 ANONYMOUS WITNESS #1:

11 Yes.

12 MR. GRADESS: Well, thank
13 you for coming.

14 Any other questions?

15 MS. BANKS: Thank you so
16 much.

17 MR. GRADESS: Thank you.

18 ANONYMOUS WITNESS #1: Can
19 I go now?

20 MR. GRADESS: Yes, you
21 can.

22 MR. KING: Thank you very
23 much.

24 MS. BANKS: Thank you.

1 (Off-the-record
2 discussion.)

3 TESTIMONY OF ANGIE SMITH:

4 MR. GRADESS: Angie Smith.

5 MS. SMITH: Yes. Hi. How
6 are you doing?

7 (Off-the-record
8 discussion.)

9 MR. GRADESS: I'm sorry.
10 Angie Smith.

11 MS. SMITH: That's me.

12 MR. GRADESS: Well, maybe
13 we'll do a different order. Okay.

14 (Off-the-record
15 discussion.)

16 MR. GRADESS: So, do you
17 have a prepared statement?

18 MS. SMITH: I prepared
19 some notes and I went through this
20 list here.

21 MR. GRADESS: Great. Just
22 go any way. We'd like to hear
23 anything that you have to say.

24 MS. SMITH: Great. What I

1 did was, go through -- we had sent
2 out sort of a bulletin sheet with
3 topics. So, I kind of just went
4 down the list and addressed --

5 MR. GRADESS: Great.

6 MS. SMITH: -- things.

7 With regard to eligibility, and I'm
8 talking about the Family Court
9 system here, that's what we -- we
10 seem to do a lot of work with
11 attorneys in Family Court as a
12 domestic violence agency, more so
13 than we do in public defenders in
14 Criminal Court because, you know,
15 usually our client is the one on the
16 side of the prosecution, so we don't
17 deal with public defenders that
18 much.

19 But as far I can determine
20 with eligibility, I've asked about
21 this before, what is the standard
22 used to appoint an attorney? And
23 I've been told that the Judge
24 decides on a case-by-case basis and

1 that there isn't sort of a standard
2 measure applied across the board.
3 And I've heard that from the court
4 staff. That's what I've been told.

5 MR. GRADESS: Does the
6 Judge use any criteria on this
7 case-by-case basis, as you
8 understand?

9 MS. SMITH: I can't -- if
10 he does, they're not telling me what
11 that is. So, I'm not -- I'm not
12 sure.

13 MR. GRADESS: So, if a
14 stranger would have come to
15 Schoharie County and asked the court
16 for it's eligibility standards, they
17 would be given nothing, is that your
18 understanding?

19 MS. SMITH: That's what
20 I've done.

21 MR. GRADESS: Okay.

22 MS. SMITH: Okay. With
23 regard to appointments; how quickly
24 are appointments made? They are

1 made pretty quickly. You know, if
2 you put in an application like on a
3 Thursday afternoon, by Monday
4 they've told you who your court
5 appointed is. So, I don't see any
6 problems with that at all.

7 MR. GRADESS: And your
8 reference here is exclusively to
9 Family Court?

10 MS. SMITH: Yes.

11 MR. GRADESS: Okay.

12 MS. SMITH: Again, with --
13 again, with the Family Court.

14 With regard to client
15 relations; there's a lot of concern
16 in that area. For example, the
17 first time most of our clients meet
18 their attorney is 5 minutes
19 before -- 15 minutes; 5 to 15
20 minutes before going into a court
21 case. Barb's saying no, it's
22 sometimes 5, before going into the
23 court case. So, this is their very
24 important custody case and they're

1 -- they're meeting their attorney
2 for the first time 15 minutes before
3 they're to go in. So, they're going
4 in with a lot of questions, not a
5 lot of information about how the
6 process has gone.

7 Now, if Barb is with them,
8 you know, she's prepared them, Barb
9 is our legal advocate, she's
10 prepared them as much as she can,
11 but they still have a lot of
12 questions. And there's an awful lot
13 of people that use the court that
14 don't have an advocate or somebody
15 preparing them. So, that's a big
16 concern for most of the families.

17 We find that getting
18 return phone calls to the office or
19 to the clients is really
20 problematic.

21 And many of the attorneys
22 meet with clients -- you know, their
23 regular meeting place is at the
24 court. They don't have sort of an

1 office set up that they can meet
2 with.

3 I've been in court myself
4 and had -- sit at a table like this
5 in the law library and had one
6 attorney meeting with three
7 different people, that he had cases
8 with that day, talking about all of
9 their information, sort of out in
10 the open like this. So, there's not
11 any privacy.

12 MR. GRADESS: When you say
13 that, do you know that a single
14 lawyer was at a table and three
15 clients were present?

16 MS. SMITH: Right.

17 MR. GRADESS: And in front
18 of each of the two clients he was
19 having a conversation with his
20 individual client?

21 MS. SMITH: Exactly.
22 Preparing each one of them for their
23 case and --

24 MR. GRADESS: So, the two

1 clients who had nothing to do with
2 Case A heard everything about Client
3 A?

4 MS. SMITH: That's it.

5 MR. GRADESS: And the same
6 thing for the -- thank you.

7 MS. SMITH: Yeah. And
8 most of the time cases are discussed
9 in the hallway or in the waiting
10 room. There isn't a private place
11 that -- you know, I think they do
12 the best they can as far as
13 talking -- you know, keeping -- most
14 of them, keep their voices down, and
15 that sort of thing, and try to
16 protect privacy, but there really
17 isn't a lot of privacy to be had,
18 so --

19 MR. GRADESS: Now, just
20 for the record, is that because --
21 is there an attorney/client
22 conference room that isn't used or
23 is there no attorney/client
24 conference room?

1 MS. SMITH: There is a --
2 there is a space in the back, yeah.
3 Barb's saying one. So, if there's a
4 lot of cases going, it's just not
5 workable.

6 MR. GRADESS: Okay. This
7 room that you described with the
8 table, that had the lawyer and the
9 three clients, is that the space
10 that you were referring to, or is
11 that yet another space?

12 MS. SMITH: No. The is
13 just the law guardian --

14 (Multiple conversations.)

15 MS. SMITH -- he would just
16 sort of tell people meet me down
17 there and that's how it -- that's
18 how it went

19 MR. KING: Normally, how
20 many lawyers are there? Just one
21 particular day with the three --
22 with the three at the one time,
23 about how many lawyers were in court
24 doing domestic violence?

1 MS. SMITH: I have no
2 idea. I have no idea.

3 Some days you can go and
4 there's 10 or 12, other days -- you
5 know, it really depends on what day
6 it is.

7 MR. KING: Well, I'm
8 trying to find out, if -- if -- I
9 mean, there's no excuse, but was
10 there any room to use the rooms, to
11 the best of your knowledge --

12 MS. SMITH: Not -- no.
13 Because that case that I'm referring
14 to was before we moved back into
15 this permanent courthouse. So,
16 there wasn't a lot of space. There
17 was two -- two little meeting rooms
18 at the time.

19 So, yeah, I guess to
20 answer your question, that there's
21 so many attorneys and there's one or
22 two little rooms, so it's not
23 possible to have privacy for all the
24 attorney and clients there, you

1 know --

2 MR. KING: So -- so, are
3 you saying that that's the general
4 practice with all the attorneys that
5 come there?

6 MS. SMITH: I don't -- I
7 hate to say all of them --

8 MR. KING: I'm sorry --

9 MS. SMITH: -- a big
10 majority --

11 MR. SMITH: Majority --

12 MS. SMITH: -- a big
13 majority. There's some that are
14 very, very good. I -- I really want
15 to point that out. There's some
16 that are very, very good, meet with
17 their clients, really inform them,
18 will meet with them out of the
19 court, return phone calls. They
20 investigate. They do all kinds of
21 things. Some of the law guardians
22 are just excellent in that regard,
23 also.

24 MS. HATHAWAY: Do you know

1 if the attorneys encourage the
2 client's family, family members or
3 whoever is close to them, to call?
4 And then if they do call, if they
5 try to call them back or they never
6 answer the calls or do they get to
7 see them --

8 MS. SMITH: Family
9 members?

10 MS. HATHAWAY: Yeah. The
11 client's incarcerated, whatever the
12 case may be --

13 MS. SMITH: Oh.

14 MS. HATHAWAY: -- but
15 get -- they say well, you know,
16 here's my number, whatever, you can
17 call my office.

18 MS. SMITH: Uh-huh.

19 MS. HATHAWAY: And I can
20 get back to you. Do you know if
21 they encourage that?

22 Then if it happens, if you
23 know if they really do get back to
24 the -- to the persons, because they

1 don't know any more about the case
2 that's in there?

3 MS. SMITH: Most of -- I
4 can just speak to what our clients
5 tell us and they say that a lot of
6 them have trouble getting returned
7 phone calls from their attorney.
8 So, court appointed. Family
9 Court --

10 MS. HATHAWAY: Then, well,
11 if they -- they have problems of
12 getting, then the families aren't
13 going to hear from him at all.

14 MS. SMITH: Family -- not
15 really. We don't deal much with the
16 families. Here and there, but not
17 much. Mostly right with the victim
18 of violence herself we deal, so --

19 MR. KING: No one ever
20 looked at the circumstances of
21 household, never visits the house,
22 nor talks to other family or friends
23 to kind of like substantiate the
24 person's complaint?

1 MS. SMITH: There's a
2 couple that I can think of that do
3 that all the time as a general
4 practice; the rest, it doesn't look
5 as if it happens.

6 MR. KING: And who are
7 those couple -- I don't -- you don't
8 have to name them if you don't want,
9 but if you can? What are they or
10 A.T.V.s or -- or are they --

11 MS. SMITH: Public
12 defenders --

13 MR. KING: -- public
14 defenders?

15 MR. GRADESS: There are no
16 public defenders in Schoharie
17 County, they're all assigned counsel
18 lawyers.

19 MS. HATHAWAY: They're all
20 assigned counsel lawyers?

21 MS. SMITH: That's what we
22 deal with. We deal with all
23 assigned counsel, we don't deal with
24 public defenders at all.

1 MR. GRADESS: You don't
2 have a public defender in this
3 county?

4 MS. SMITH: Huh-huh.

5 MR. GRADESS: All you have
6 is an appointed counsel system.

7 MS. SMITH: Yep.

8 MR. GRADESS: And I
9 suspect that the same lawyers who
10 are doing the criminal defense work
11 are doing the respondent work in
12 Family Court and maybe doing in
13 this -- maybe even the community law
14 guardian work?

15 MS. SMITH: They do.
16 Yeah. They're all -- it's all the
17 same pool of people.

18 MR. GRADESS: So, I'd like
19 to take you back to the place where
20 you said some of these lawyers are
21 very, very, very good.

22 MS. SMITH: Uh-huh.

23 MR. GRADESS: Of the whole
24 collectivity of the appointment

1 panel, recognizing that some do
2 better than some? What it is like?

3 I mean, these are
4 respondent lawyers, representing
5 women in Family Court, some of them
6 do very, very well.

7 MS. SMITH: Uh-huh.

8 MR. GRADESS: You're not
9 just talking about law guardians?

10 MS. SMITH: Right.

11 MR. GRADESS: Okay.

12 Describe for us, if you will, the
13 difference in those cases.

14 What it is -- from your
15 vantage point, working with domestic
16 violence, which is it's own complex
17 holligon on issues --

18 MS. SMITH: Uh-huh.

19 MR. GRADESS: -- when you
20 say "good lawyer," what is that
21 person doing? What do you think --
22 what do you think is expected? What
23 ought to be expected? What should
24 we expect of lawyers doing good

1 work? And what isn't being done by
2 the lawyers who you think are doing
3 poor work?

4 MS. SMITH: The woman that
5 we work with; number one, the first
6 thing in their minds is the safety
7 issue. And I don't feel that
8 there's adequate training around
9 domestic violence and the safety
10 issues involved. And I can give you
11 a good example of this. There was a
12 woman who had an Order of Protection
13 issued by a criminal court and it
14 was violated two or three times.
15 And Christmas time came around and
16 dad wanted to see his children for
17 Christmas. So, everybody, even
18 Family Court, and the decision is
19 made to -- she was there without an
20 advocate, the decision was made to
21 let her be the supervisor for the
22 visitation.

23 Now, there's already an
24 Order of Protection that's been

1 violated three times in the Family
2 Court, but that sort of -- not
3 considered or followed and everybody
4 agreed that this would be a good
5 thing.

6 Those are the kinds of
7 things that concern me, that
8 those -- that' -- that's almost a
9 common sense thing.

10 They need to -- the women
11 need to know that somebody's looking
12 out for their safety and
13 representing them in a way that they
14 will fight for them.

15 I get the feeling a lot of
16 times that they would just rather
17 settle it or mediate it away. And
18 that really doesn't work for our --
19 our clients because the dynamic of
20 domestic violence makes it so that
21 many times this whole court
22 procedure -- whole court proceeding
23 is being used against the woman to
24 regain control into her life. And I

1 don't think that's recognized by the
2 court system.

3 And the other thing is, so
4 much of the outcome of the case;
5 custody I'm thinking of mostly,
6 depends on the attorney you get
7 because there are maybe, you know,
8 ten percent of the pool that are
9 just excellent. And if the other
10 side gets the attorney you know
11 you're in trouble.

12 And there's -- could be
13 more communication between the
14 Family Court and the Criminal Court
15 because they both have cases going
16 with the same family, and they'll
17 keep adjourning it. Family Court
18 will say, well, I'll adjourn it and
19 see what happens in Criminal Court.
20 Criminal Court will say, I'm going
21 to adjourn it and see happens in the
22 Family Court, but there isn't any
23 back and forth feedback in a lot of
24 cases. I mean --

1 MS. BANKS: The integrated
2 domestic violence --

3 MS. SMITH: Yeah. We
4 don't have that here.

5 MS. BANK: Does it sound
6 like it might be a good idea?

7 MS. SMITH: Oh, yeah.

8 MR. KING: Is the same
9 prosecuting office; prosecutor's
10 office for the domestic violence is
11 the same prosecutor's office for
12 criminal cases?

13 MS. SMITH: Yeah. All of
14 our cases -- any arrests would go
15 through the District Attorney's
16 office and the County. So, it's all
17 the same --

18 MR. GRADESS: And who is
19 the presenting agent in Family
20 Court? Who presents the case in
21 a domestic violence case?

22 MS. SMITH: Whoever files
23 the petition out. So, if it's the
24 woman going to file for an Order of

1 Protection, she would file out the
2 paperwork or her attorney; the
3 attorney would do that. Barb helps
4 with some of that. So, anybody can
5 file.

6 MR. KING: I mean, if you
7 know, how many prosecutors do you
8 have in this county?

9 MS. SMITH: I think
10 there's four right now. There's the
11 District Attorney and then he has
12 three assistants --

13 MR. KING: You mean -- you
14 have four District Attorneys that
15 run both Family Court issues and
16 Criminal Court issues against the
17 same family, and it's --

18 MS. SMITH: Yeah. No.
19 The prosecutors, mainly Criminal
20 Court. The prosecutor's office is
21 all criminal actions. So, Family
22 Court. There's -- actually there is
23 a client -- an attorney who is on
24 the District Attorney's team who

1 does Family Court case work, also.

2 MR. KING: What I'm trying
3 to get to --

4 MS. SMITH: A couple of --

5 MR. KING: -- that here
6 you have a Criminal Court, a
7 violation of protective -- you know,
8 Protective Order, and a Family Court
9 case with violation of protective --

10 MS. SMITH: Uh-huh.

11 MR. KING: -- and it --
12 the --

13 MS. SMITH: Yeah. There's
14 no mechanism --

15 MR. KING: -- don't seem
16 to cross lines through the -- the
17 District Attorney's office. So, at
18 least the District Attorney will
19 turn on the light and, you know,
20 pursue it in a different fashion.

21 MS. SMITH: Yeah. That
22 piece somehow, the communications
23 doesn't just go back freely.

24 MR. KING: Yeah.

1 MS. SMITH: But sometimes
2 if Barb's involved in the case, as a
3 piece of her, she can pass that
4 information back and forth -- am I
5 going to fast again?

6 THE COURT REPORTER: Yes.

7 MS. HATHAWAY: Isn't that
8 a conflict? Isn't that a conflict?

9 MS. SMITH: I think you
10 guys can decide that.

11 MR. GRADESS: Let her talk
12 about what she -- she knows and
13 we'll worry about the problems
14 afterward.

15 Let's go back to the
16 question that you -- you answered a
17 minute ago and rephrase it some way
18 and see if I'm correct. You -- you
19 described a case in which a client
20 of yours, a woman, who had been a
21 victim of domestic abuse and to have
22 had an Order of Protection, was told
23 that she would have to supervise the
24 Christmas visitation of her

1 batterer --

2 MS. SMITH: Uh-huh.

3 MR. GRADESS: -- of her
4 children, I take it in her home?

5 MS. SMITH: Or maybe up to
6 his house. I can't remember --

7 MR. GRADESS: And that
8 was -- well, even worse.

9 MS. SMITH: Well, it seems
10 like common sense.

11 MR. GRADESS: That was
12 ordered by the Family Court?

13 MS. SMITH: It was
14 approved by -- yeah.

15 MR. GRADESS: In the case
16 of that court, was there any
17 objection made by the lawyers to
18 that?

19 MS. SMITH: No. What
20 happens most of the time in our
21 court is, the attorneys settle
22 everything. So, they hatched all
23 this out, negotiated everything.
24 The Judge rarely makes a decision on

1 his own. You know, usually these
2 deals are presented. And -- you
3 know, he may say, I want to bring in
4 this agency or that agency to do an
5 investigation, he may -- he asks for
6 those things, but he rarely makes
7 the decision. Things rarely go to a
8 trial.

9 MR. GRADESS: So, these
10 are like prejudicial male bonding
11 experiences taking place --

12 MS. SMITH: Basically.

13 MR. GRADESS: And am I
14 correct in your understand, you're
15 saying that the lawyers who are
16 engaged in this decision making
17 haven't really got an understanding
18 of domestic violence to begin with?

19 MS. SMITH: Exactly. I
20 mean, and we've done trainings.
21 There have been trainings in the
22 county before, you know, any of us
23 were involved with the agency, I
24 just think that they get the

1 training and think, well, I
2 understand domestic violence, I get
3 that, and then don't apply it or
4 take it into consideration when
5 they're working on custody cases.

6 MR. GRADESS: Could you
7 detail who the trainings were for
8 and who was called upon to go to
9 them and who did them?

10 MS. SMITH: This was in
11 the last three years. We put on two
12 trainings for law guardians --

13 MR. GRADESS: The "we" is
14 that Catholic Charities?

15 MS. SMITH: Catholic
16 Charities. We did it in cooperation
17 with Upstate Law Project and the New
18 York State Office for the Prevention
19 of Domestic Violence. They sent the
20 folks in to -- to run the actual
21 training. So, we've done that two
22 times.

23 We've put on other
24 trainings for law enforcement, that

1 we've had -- Bob Passino (phonetic
2 spelling) from the New York State
3 Offices for the Prevention of
4 Domestic Violence come and train
5 police, prosecutor's office, State
6 Troopers.

7 MR. GRADESS: What about
8 the appointed counsel, were they
9 required to go?

10 MS. SMITH: They weren't
11 required to go, they could come and
12 get credit for it; C.L.E.

13 The first year we had a
14 very good turnout. We had twenty or
15 so people --

16 MR. GRADESS: Lawyers?

17 MS. SMITH: Yes. Second
18 year we had five?

19 MR. GRADESS: What
20 accounts for the difference in your
21 mind?

22 MS. SMITH: I don't have a
23 clue.

24 MS. BANKS: What about

1 judicial trainings?

2 MS. SMITH: We have one
3 scheduled this year, we're going to
4 give. We're going to do one this
5 year.

6 MS. BANKS: What -- what
7 level?

8 MS. SMITH: With all
9 the -- we wanted to do one for all
10 the magistrates; the town.

11 MS. BANKS: General --

12 MS. SMITH: -- judges and
13 have somebody from the New York
14 State office come in and run a
15 training on that. Because that is
16 problematic, also. I've been in
17 cases before -- I've been in a
18 courtroom where the Judge will
19 berate the woman and -- who's been
20 victimized, she's gone in an
21 ambulance to a hospital with
22 injuries, and he's -- the Judge is
23 sort of putting the blame on the
24 woman and the man is pretty much let

1 go.

2 You know, we're just going
3 to excuse -- but we really need to
4 bring awareness to the town courts.

5 MS. BANKS: What was
6 interesting for me is that your
7 mention of the real division -- one
8 family with a problem or two
9 problems are divided between Family
10 Court and Criminal Court --

11 MS. SMITH: Uh-huh.

12 MS. BANKS: -- and never
13 the two shall meet.

14 MS. SMITH: Right.

15 MS. BANKS: And that's one
16 of the big arguments for those
17 favoring court reorganization. The
18 natural ally is the domestic
19 violence community --

20 MS. SMITH: Yes.

21 MS. BANKS: -- to get the
22 other one through, so to speak.

23 MS. SMITH: That's true.

24 MS. BANKS: But I

1 understand that that has problems,
2 too --

3 MR. GRADESS: Yeah.

4 MS. BANKS: -- which
5 you're going to educate me on.

6 MR. GRADESS: Well, you
7 indicated -- why don't you continue.
8 We've taken you on a little detour.

9 MS. SMITH: Okay. That's
10 all right.

11 MR. GRADESS: We're in the
12 middle of attorney/client relations
13 on the -- let the record reflect
14 that what the witness is referring
15 to is the Notice of Fact Finding
16 Hearings that refers to this hearing
17 that identified six areas of
18 inquiry; eligibility, prompt
19 appointment of counsel,
20 attorney/client relations, caseload,
21 resources and Criminal Justice
22 System.

23 So, I think you're in the
24 middle of attorney-client relations.

1 MS. SMITH: Yeah. I think
2 that -- even with our detour, we
3 covered just about everything I had
4 on that.

5 MR. GRADESS: Okay.

6 MS. SMITH: I just want to
7 speak about the caseloads. They do
8 seem really high, so that people are
9 not always -- I don't believe the
10 attorneys are always having time to
11 investigate all the cases or talk to
12 all the key players. There's some
13 that really do and they do a great
14 job about it. But a lot of law
15 guardians rarely ever see the
16 children at all, have ever met them,
17 whatever. Sometimes they'll make
18 the decisions just by meeting the
19 parents and sort of deciding which
20 one they believe more.

21 MS. BANKS: Without seeing
22 the child at all?

23 MS. SMITH: Right. That's
24 the norm. here. That's -- that's

1 the norm.

2 MS. BANKS: Would you say
3 that that's the reason for the short
4 trip is -- is money? They don't
5 feel like they're getting paid
6 enough to meet clients outside of
7 court?

8 MS. SMITH: Maybe time. I
9 just -- I don't know. Maybe they
10 have time constraints and they can't
11 get to everybody, with so many
12 cases.

13 I -- you know, that's my
14 guess, but I don't know.

15 And then there was -- with
16 regard to expert witnesses. We've
17 done a few cases, offered to find
18 expert witnesses for different cases
19 in Criminal Court and in Family
20 Court, and they're not always --
21 they've never been, actually, used,
22 the ones that we've offered.

23 And I have been in court
24 myself with -- I was with a woman

1 once who only spoke Spanish. She
2 was an immigrant and she was a
3 victim of domestic violence. And,
4 so, she was quite a ways into the
5 court case before we got involved.
6 And I was told that she had an
7 attorney that speaks Spanish and
8 that's why she wasn't appointed --
9 you know, they didn't bring in an
10 interpreter. So, I watched the
11 interaction for a while and he did
12 speak Spanish, but he never talked
13 to her. He carried on in English.

14 So, we did ask and we got
15 the interpreter put on and that's
16 how it worked.

17 So, I don't know if it's
18 just not offered or what the story
19 is, but --

20 MR. GRADESS: When someone
21 was telling you that her lawyer
22 spoke Spanish and that's why there
23 wasn't an interpreter, who was the
24 person who was telling you that?

1 MS. SMITH: That was the
2 client and the Family Court clerk.

3 MR. GRADESS: Thank you.

4 MR. KING: One other
5 question, if you know, the person
6 that spoke Spanish, were -- were
7 they able to file the charges?

8 MS. SMITH: I don't know.

9 MR. KING: I mean, were
10 they -- are there Spanish police
11 officers in the community or --

12 MS. SMITH: Oh --

13 MR. KING: -- officers
14 that speak Spanish?

15 MS. SMITH: -- I see what
16 you're saying. I don't think she
17 ever went to that level. I think
18 she went the Family Court route and
19 didn't go to -- pursue any criminal
20 case.

21 MR. KING: So, I mean, I
22 don't understand Family Court, so
23 excuse my ignorance. But someone
24 files a family -- I mean, a domestic

1 violation case --

2 MS. SMITH: Yeah.

3 MR. KING: -- in Family
4 Court, and it could be criminal, do
5 they ever mix the two for the
6 client?

7 MS. SMITH: Well, there
8 is -- there's usually criminal
9 allegations in the petition, but
10 they -- you know, they don't order
11 that --

12 MR. GRADESS: You can do
13 both. You can take a family event
14 proceeding in Criminal Court and in
15 Family Court.

16 MR. KING: I mean, you
17 know, if you go -- I can't speak
18 English and I go file a complaint in
19 Family Court, but my Family Court
20 complaint could also be a criminal
21 complaint, does somebody in Family
22 Court --

23 MR. GRADESS: Advise you
24 of your right to file in Criminal

1 Court?

2 MR. KING: -- or direct --
3 or have some kind of apparatus in
4 Family Court to transfer it over --

5 MR. GRADESS: That's a
6 good question.

7 MR. KING: And -- and then
8 what does the lawyer -- I mean, what
9 does the lawyer do? I'm -- that's
10 just for the record.

11 I'm sorry for these
12 confusing questions.

13 MS. SMITH: That's okay.
14 Where are we at?

15 MR. GRADESS: We're right
16 past the Spanish speaking client.
17 If -- as long as we're out here on
18 the detour, could I ask you another
19 question --

20 MS. SMITH: Uh-huh.

21 MR. GRADESS: -- that was
22 sort of alluded to a minute ago. Is
23 it -- you have an agency that deals
24 with domestic violence.

1 MS. SMITH: Uh-huh.

2 MR. GRADESS: These
3 lawyers that we were referring to a
4 minute ago in terms of the
5 attorney/client relationships and
6 preparation, does a woman's lawyer
7 ever come to Catholic Charities and
8 say, yeah, I represent so-and-so,
9 tell me about her case, tell me
10 about that so I can be a better
11 advocate; what -- what do we have
12 that establishes this -- that sort
13 of thing?

14 MS. SMITH: It's pretty
15 rare.

16 MR. GRADESS: Rare?

17 MS. SMITH: Yeah.

18 MR. GRADESS: Could you
19 quantify the rarity of it? Like,
20 how many times in the course of the
21 last 12 months has a lawyer for a
22 woman come to you for -- to seek
23 your assistance in representing her?

24 MS. SMITH: Oh, to seek

1 our assistance. Almost never -- I
2 mean, it hasn't happened. If they
3 know that we're -- if Barb's
4 involved and may have information,
5 she has called them and contacted
6 them. They'll usually, you know,
7 give that -- give the returned call
8 on -- and try to strategize.

9 But, I don't know when is
10 the last time I saw an attorney in
11 our building.

12 MR. GRADESS: Let the
13 record reflect we've been joined by
14 Jamie Burke, who, apparently, had a
15 car break down, had to rent one, and
16 is finally here and we welcome you.

17 MS. BURKE: Hi. Sorry for
18 being late.

19 MR. GRADESS: Go ahead.
20 I'm sorry.

21 MS. SMITH: That's it.
22 That's all I have to say about that
23 part.

24 MR. GRADESS: Okay.

1 MS. SMITH: So, I guess
2 the last thing --

3 MR. GRADESS: Resource,
4 Criminal Justice System.

5 MS. SMITH: Just -- I
6 guess with regard to the Criminal
7 and Family Court issue that we sort
8 of brought up before, a lot of times
9 they spend a lot of time in court
10 all day and then at night they're in
11 court again; in Criminal Court, the
12 same groups of people. So, I
13 believe that they become pretty
14 close and there's a lot of
15 information going around that, you
16 know -- you know, the client, and
17 we've had one residential, who comes
18 into the courtroom and sees sort of
19 this gathering of lawyers, sitting
20 at a table, joking with each other,
21 and then the batterers, the abuser's
22 family comes in and sort of pats
23 them on the back, they're getting
24 this impression that, you know,

1 there's no hope for me in this case
2 because these guys are all in this
3 together.

4 So, I think that is -- if
5 you talk about politically, that --
6 that's something that makes it
7 difficult for maybe the true
8 elements of the case to come out.

9 So, that's really all I'd
10 like to say about that.

11 MR. GRADESS: Well, let me
12 ask you in that regard or the segway
13 to take -- draw your attention to
14 Standard 19. And I'll tell you it's
15 in bold type, actually, because even
16 in the fourth draft we were looking
17 for the language that really
18 characterizes or captures what
19 you've just described. So, why
20 don't you take a look at that
21 language and tell us what you think
22 of it as a standard.

23 It states (Reading)
24 "Refrains from display of affection

1 and collegiality with the
2 prosecution that might project the
3 image of a conflict of interest."
4 That's kind of what you're talking
5 about.

6 MS. SMITH: It is. Now --

7 MR. GRADESS: Although in
8 this case it's not just the
9 prosecution.

10 MS. SMITH: Right. It's
11 not just the prosecution, but
12 definitely with the other side.

13 MR. GRADESS: Tell us what
14 the -- what your clients feel about
15 that?

16 MS. SMITH: Do you have
17 anything you want to say about that,
18 Barb, because, I mean --

19 MS. BARB: They're not
20 always there because -- our client's
21 not always there because they're,
22 quote, "a witness." So, it's really
23 New York State against -- against
24 them.

1 So, if I'm there, I'll
2 tell the D.A. how I feel about it.
3 And -- but if the woman is there,
4 you know, I'm sure that she would
5 feel, like Angie said, what's -- you
6 know, like, what's the use.

7 MS. SMITH: Yeah.

8 MS. BARB: Yeah. But --
9 or sometimes they already feel that
10 even before they get to us; that he
11 is friendly with the police or he's
12 friendly with this or they all went
13 to school -- it's a very small
14 community. They all went to school
15 together. And it's not all of them.
16 So what chance do I have? They're
17 not going to believe me.

18 (Off-the-record
19 discussion.)

20 MR. GRADESS: Okay. Go
21 ahead.

22 MS. SMITH: That's all.

23 MR. GRADESS: Did you have
24 other comments on the Standards that

1 you wanted to make? I know you've
2 reviewed them.

3 MS. SMITH: I did. Now,
4 most of what I marked I had already
5 addressed in here -- oh, no. No,
6 no, no. Number 15, I don't believe
7 when we're in the Family Court
8 setting, I -- I think I talked
9 before about the 5 to 15 minutes
10 before going in, people get to
11 review their case. So, with that
12 timeframe, I don't think that people
13 are able to really understand what
14 the consequences of what they're
15 agreeing to are going to be long
16 term for their children. So, I -- I
17 don't believe that people get the
18 information that they need to make
19 these decisions in that timeframe.

20 MR. KING: Excuse me.
21 They don't go back -- I mean, the
22 lawyer meetings for 15 minutes and
23 they all go into court and then the
24 decisions are made? They don't go

1 back to negotiate what was
2 discussed --

3 MS. SMITH: Yes. They
4 go -- they'll negotiate, they'll say
5 this is what, you know, the other
6 side has suggested, this is what
7 they want to do. But I'm saying in
8 a 5 minute timeframe, before you're
9 going into court, that's not enough
10 time to decide longer term, how
11 that's going to work for you,
12 this -- you know, should be, maybe,
13 worked out before coming and they
14 don't always have all the
15 information about well, what does
16 this mean if I agree to this; what
17 does that mean long term. They're
18 getting sort of little bits or
19 snippets of information, they're not
20 making informed decisions.

21 MR. KING: Okay. Thank
22 you.

23 MR. GRADESS: I maybe
24 read -- reading something into

1 you -- a statement that you made,
2 but tell me if I'm right. Is -- is
3 there sort of a pattern and practice
4 of law guardians generally
5 recommending removal in these cases?

6 MS. SMITH: No.

7 MR. GRADESS: There's not.

8 MS. SMITH: Huh-huh.

9 MR. GRADESS: What happens
10 when the law guardian hasn't sort of
11 investigated the case at all and the
12 lawyers are coming into court,
13 having a pre -- determined, what's
14 the determination that usually was
15 made?

16 MS. SMITH: I guess it
17 would have to do with custody and
18 joint custody and visitation. And
19 those types of issues being decided
20 without seeing the child,
21 advocating, you know, law guardian
22 coming in and advocating for, you
23 know, dad to have X, Y, Z or mom to
24 have X, Y, Z without really knowing

1 all the circumstances. That's
2 the -- that's really the frightening
3 thing. And sort of ignoring the
4 domestic violence issues or the --
5 all of that kind of stuff and -- and
6 pushing -- because the Judge will
7 always look to law guardian and say,
8 what do you recommend? What do you
9 think about this? And if they
10 haven't been to the home or even
11 looked for -- I mean, how many
12 families are in the court with a
13 criminal history, tons and tons of
14 D.I.R.s, tons and tons of arrests,
15 and they don't have that
16 information. So, that's important
17 information to have when you're
18 deciding, you know, where this child
19 is going to live and how much time
20 they're going to spend with an
21 offending parent. They don't have
22 that.

23 So, that's the kind of
24 thing I'm talking about. There's no

1 investigation into the family; into
2 the family's life. Who does the
3 parenting? All of those kinds of
4 things.

5 MR. KING: Who -- who are
6 the legal guardians? I mean, where
7 do they come from?

8 MS. SMITH: They're all
9 appointed, also.

10 MR. KING: And where --
11 what's their qualifications to make
12 them law guardians --

13 MS. SMITH: They're
14 attorneys --

15 MR. KING: Oh, they are
16 attorneys --

17 MS. SMITH: -- and they're
18 appointed by the Judge.

19 MR. KING: Okay. They're
20 attorneys -- the legal guardians,
21 are they the same attorneys that
22 represent the client? Okay.

23 MS. SMITH: Yeah. It's
24 one pool and they're all assigned.

1 MR. GRADESS: One pool of
2 lawyers and --

3 MR. KING: And how many --
4 how many -- do you know how many
5 attorneys are there --

6 MS. SMITH: I don't.

7 MR. KING: -- about?

8 MS. SMITH: I don't.

9 MR. KING: Total figure?

10 MS. SMITH: I would guess
11 thirty, but I don't know.

12 MR. KING: Thirty?

13 MR. GRADESS: If you could
14 wave that old Catholic Charities'
15 wand over this community and get a
16 few things that you think would make
17 life better in the representation of
18 the women that you work with --

19 MS. SMITH: Uh-huh.

20 MR. GRADESS: -- in Family
21 Court, what would those few things
22 be?

23 MS. SMITH: I would like
24 the issue of family violence to be

1 taken seriously; that it would be
2 checked into; that offenders would
3 be held accountable for their
4 actions; and that people would
5 listen to the children about what's
6 going on. I think those things
7 would go a long way.

8 MR. GRADESS: And in the
9 -- in the specific issue of
10 appointed lawyers who represent
11 women who have been subjected to
12 domestic violence, but maybe in
13 court for visitation or custody, and
14 I take it not a lot of neglect and
15 abuse cases, the way these thing
16 run, or are there?

17 MS. SMITH: We have -- we
18 have a big crossover. In fact, I
19 talked to somebody from C.P.S. today
20 and they were estimating 60 percent
21 of their open cases have domestic
22 violence components. So, a lot of
23 times C.P.S. is involved in a case
24 that has violence, also.

1 MR. GRADESS: Well, I
2 mean, I guess what I'm asking is, is
3 the non-investigation that's taking
4 place just on issues of custody and
5 visitation can have some pretty
6 serious ramification --

7 MS. SMITH: Yes.

8 MR. GRADESS: -- if it's
9 abuse and neglect --

10 MS. SMITH: Sure.

11 MR. GRADESS: -- how much
12 of that is going on and is it any
13 different in those cases; the same
14 kind of negligence being applied in
15 the representation of those cases?

16 MS. SMITH: Probably
17 C.P.S. could talk to you more about
18 that, but I think it's the same
19 across the board. I don't think
20 that it's different just because
21 we're a domestic violence agency.

22 Did that answer your
23 question?

24 MR. GRADESS: I think so.

1 Yeah.

2 Any other questions?

3 MS. HATHAWAY: What seems
4 to be you all seem to have a core of
5 what actually causes the domestic
6 violence; the abuse in the family?
7 Is there a center core that you are
8 able to zone in on, that causes --

9 MS. SMITH: Have you got
10 an hour?

11 MS. HATHAWAY: I
12 understand.

13 MS. SMITH: There's so
14 many different things --

15 MS. HATHAWAY: I mean, but
16 you do -- you can pinpoint it to a
17 point, that is --

18 MS. SMITH: Yeah. I
19 think -- you know, personally I
20 think there's a learned pattern of
21 behavior from families. And that's
22 why I feel so strongly about
23 accountability because the next
24 generation of children is watching

1 and learning that there's no
2 consequence for this behavior. So,
3 it's an effective way to get your
4 way and it's an effective way to get
5 somebody to do what you want them to
6 do. So, it -- it continues. The
7 cycle continues. It's a learned
8 pattern --

9 MS. HATHAWAY: Control and
10 the violence.

11 MS. SMITH: I believe it
12 is.

13 MS. HATHAWAY: Thank you.

14 MS. BURKE: Do you
15 think -- not to interrupt, do you
16 think if there was a system
17 available where either the Judges or
18 the attorneys that are assigned to
19 the case could tap into prior
20 domestic history between the
21 batterers and the victims, if there
22 was a system; like a computerized
23 system, that lists all of the old
24 Orders of Protections or any D.I.R.s

1 that were filed or open 61s, which
2 are police reports of suspected
3 abuse, if there was a system where
4 those could be accessed by the
5 court, that would be helpful?

6 MS. SMITH: Oh, yeah.
7 That would be great because most of
8 the cases you don't even get a
9 fraction of that information. Even
10 if we try to get that information,
11 we don't always get all of it; you
12 know, the history. So, that would
13 be great.

14 MR. KING: Wouldn't it --
15 I mean, isn't that -- is that
16 available to the attorneys?

17 MS. SMITH: You'd have to
18 dig around. You'd have to call the
19 police agencies, you'd have to talk
20 to the client and -- and find out
21 when were these arrests, you know,
22 prior to -- you know, prior
23 relationships. Maybe they don't
24 even know about prior relationships.

1 That's why a database, or something
2 like that, would be helpful to just
3 to keep all of that in one central
4 --

5 MR. GRADESS: Thank you.

6 MR. KING: Thank you very
7 much.

8 MS. SMITH: Thank you.

9 MS. BANKS: Thank you.

10 MR. GRADESS: Judge Nancy
11 Hisert.

12 Good afternoon, Judge.
13 We're not doing too badly on your
14 client, I see.

15 JUDGE HISERT: No. No,
16 not at all.

17 MR. GRADESS: If you could
18 put your name and the court you sit
19 in, for the record?

20 JUDGE HISERT: Sure.
21 Justice Nancy Hisert, Cobelskill
22 Village and Town Court.

23 MR. GRADESS: Well, thank
24 you for coming today.

1 Do you have prepared
2 remarks?

3 TESTIMONY OF JUDGE NANCY HISERT:

4 JUDGE HISERT: Actually, I
5 do not. I told -- I said that I
6 would be happy to come down and
7 respond to any questions that you
8 might have.

9 MR. GRADESS: That's
10 terrific.

11 Have you seen a copy of
12 the Notice of Fact Finding Hearings?

13 JUDGE HISERT: Yes -- yes,
14 I believe I have.

15 MR. GRADESS: I mean, I
16 think we'd like to start with that,
17 if we could. I'm particularly
18 interested in taking a look at
19 systemically what's happening in
20 this community and using your court
21 as kind of just a spot check on
22 that.

23 So, if you could start
24 with the nature of standards used to

1 determine eligibility, and that
2 would be helpful, and where they
3 come from, and that sort of thing.

4 JUDGE HISERT: Please keep
5 in mind that this is a college
6 village, and I'm sure that you're
7 aware of that. So, many of the
8 clients that we do have are college
9 students. And this, sometimes,
10 raises a question as to are they
11 eligible or is it their parents who
12 are eligible? So, we try to field
13 each case individually.

14 As far as a countywide
15 standard, I don't believe, I'm not
16 aware of a standard that is in place
17 right now. But something that is
18 done on an individual basis by the
19 justice and the defendant. Kind of
20 review each person individually.
21 So, I can't say if you're making
22 less than \$20,000 dollars you're
23 entitled to a defense attorney.
24 That's not how I make my judgment.

1 MR. GRADESS: How do you
2 make your judgment?

3 JUDGE HISERT: Well,
4 that's a good question. You
5 basically -- we have them fill out a
6 Financial Affidavit and on that they
7 indicate what assets they may have
8 and the number of dependants that
9 they have and if they have any loans
10 outstanding, what their salary is.
11 And that's -- taking a look at that
12 and thinking about today's cost of
13 living, we just make a judgment.

14 MR. KING: Can I ask -- I
15 mean, what happens in the precinct?
16 Like --

17 JUDGE HISERT: Pardon me?

18 MR. KING: What happens in
19 the precinct, when the person is
20 arrested and they say they would
21 like an attorney?

22 JUDGE HISERT: They would
23 like an attorney. Well, we ask them
24 if they would please complete a

1 Financial Affidavit. If they want
2 it --

3 MR. KING: I'm talking
4 about in the -- in the -- I'm
5 arrested --

6 JUDGE HISERT: Okay.

7 MR. KING: -- and they
8 want to question me --

9 JUDGE HISERT: Uh-huh

10 MR. KING: -- and I don't
11 want to be questioned --

12 JUDGE HISERT: In a
13 prison?

14 MR. KING: No. In a
15 precinct. I don't know -- I don't
16 know -- I don't know what they call
17 them up here. Sheriff's office.
18 Police station --

19 JUDGE HISERT: Police
20 station. Now you got it --

21 MR. KING: I'm sorry.

22 (Laughter)

23 MR. KING: I'm sorry.

24 JUDGE HISERT: I thought

1 you said "prison." Excuse me.

2 MR. KING: No, no --

3 JUDGE HISERT: And I have
4 a little cold today, so I'm having
5 trouble hearing, anyway.

6 Generally speaking, what
7 happens is, you're talking about
8 on -- the situation when someone
9 goes out and gets arrested.

10 MR. KING: Right.

11 JUDGE HISERT: Okay. They
12 are -- what happens in our county,
13 they are brought in front of a
14 justice. The justices in Schoharie
15 County are not attorneys. First
16 keep that in mind, okay? We are not
17 attorneys. We are elected officials
18 and we're serving our
19 municipalities. So, we are called
20 out for hearings 24 hours a day
21 because Cobelskill Village happens
22 to have a police force, but we're
23 really the only one in the county
24 that does. So most of the other

1 arrests are made by the Troopers or
2 the Sheriff's department. So, they
3 can't take them to a jail, they take
4 them to a judge who arraigns them.

5 Now, at that point in
6 time, if a person says I want to be
7 represented by an attorney, we'll
8 say, you need to complete a
9 Financial Affidavit. Depending upon
10 what they're being charged with, we
11 determine at that time if we're
12 going to set bail, depending upon
13 the charge, or if they're going to
14 have to go to jail until bail is
15 posted. Okay. So, they're going to
16 be R.O.R'd or we're going to set a
17 bail figure.

18 At that time they are not
19 represented by an attorney. They
20 will not be represented, if they are
21 qualified, until their next court
22 date.

23 MS. BURKE: Who makes the
24 bail argument?

1 JUDGE HISERT: Who makes
2 the bail argument? It's -- the D.A.
3 may make a recommendation. If it's
4 felony; if they're being charged
5 with a felony, our court cannot hear
6 felony cases, but we can do felony
7 arraignments, okay.

8 If it's a felony, the D.A.
9 makes a bail recommendation. If
10 it's a misdemeanor, or a violation
11 in some cases, the Judge makes that
12 decision.

13 MS. HATHAWAY: What is the
14 requirement of -- of the panel of --
15 you're not attorneys. What is the
16 requirement to -- to do this type
17 of --

18 JUDGE HISERT: To be a
19 justice?

20 MS. HATHAWAY: Yes.

21 JUDGE HISERT: To be a
22 justice you -- you're elected by
23 your Town or your Village, first of
24 all.

1 MS. HATHAWAY: Elected
2 official --

3 JUDGE HISERT: There is no
4 college education involved. You
5 don't have to have a college degree.
6 You can be a lay person, you know,
7 whatever.

8 MS. HATHAWAY: Do you get
9 any training beforehand --

10 JUDGE HISERT: Yes, we
11 do --

12 MS. HATHAWAY: -- so you
13 know what these terminologies are
14 and --

15 JUDGE HISERT: That's
16 correct. That's correct. We do.
17 We have to go for a six day training
18 session. Six day --

19 MS. HATHAWAY: How many
20 days?

21 JUDGE HISERT: Six. Six
22 days. Okay. And after that we are
23 tested. And if you pass the test
24 then you can serve as a judge.

1 Okay.

2 MS. HATHAWAY: Well, is
3 the community at large apprised of
4 this? Are they -- they -- they
5 don't know this? Do they think that
6 the panel are attorneys or have that
7 type of knowledge, or they don't
8 know?

9 JUDGE HISERT: I -- I have
10 got to believe that the
11 municipalities -- because you're
12 talking about a different
13 environment here than a small -- in
14 a large city. You're talking about
15 small communities.

16 MS. HATHAWAY: Okay. Yes.
17 I was referring -- trying to find
18 out how --

19 JUDGE HISERT: Right. I
20 would guess that these people in
21 these small communities know that
22 the person that they've just elected
23 is not an attorney. Let's put it
24 that way, if that's what you're

1 asking --

2 MS. HATHAWAY: I guess --
3 I guess I asked because -- okay, you
4 said a six day training.

5 JUDGE HISERT: Right.

6 MS. HATHAWAY: And --

7 MS. BANKS: And that's a
8 pass/fail, isn't it or --

9 JUDGE HISERT: Yes, it's
10 is.

11 MS. HATHAWAY: Yes.

12 JUDGE HISERT: Well, it's
13 graded and you have to get a certain
14 grade, let's put it that way --

15 MS. HATHAWAY: Do -- do
16 you have arbitrators or mediators in
17 the county?

18 JUDGE HISERT: There are
19 some that are available, but I'll be
20 honest with you, they're seldom
21 used.

22 MS. HATHAWAY: No. I just
23 want to know, do you have any idea
24 how -- how long that training is, as

1 opposed to your training? I don't
2 mean you per se --

3 JUDGE HISERT: No, I
4 understand.

5 MS. HATHAWAY: -- but how
6 long, that same years --

7 JUDGE HISERT: No, I do
8 not --

9 MS. HATHAWAY: -- as
10 opposed to the six day training?

11 JUDGE HISERT: I do not.
12 I know some of -- arbitrators,
13 mediators are not attorneys, if
14 you're -- I can answer that
15 question.

16 MS. HATHAWAY: But
17 their --

18 JUDGE HISERT: But I don't
19 know their training.

20 MS. HATHAWAY: Because I'm
21 a Certified Arbitrator/Mediator, and
22 I'm not an attorney.

23 JUDGE HISERT: Okay. So,
24 I don't know.

1 MS. HATHAWAY: The
2 training was, like, 3 months; 90
3 days --

4 JUDGE HISERT: Uh-huh

5 MS. HATHAWAY: -- and then
6 some other stuff behind that.

7 JUDGE HISERT: Uh-huh

8 MS. HATHAWAY: And then
9 you still had to go before a panel
10 of -- you know, of persons and the
11 trainees, who, then, know, to make
12 sure you know what you were supposed
13 to and what you're not supposed to
14 do because there's a difference.

15 But, so, hopefully
16 everybody's going to be able to have
17 an open mind. And if they don't
18 know, then maybe they can speak to
19 their colleagues, you know, like,
20 clue me in on this.

21 JUDGE HISERT: Uh-huh

22 MS. HATHAWAY: But -- and
23 I don't know if it's feasible that
24 the community should be aware of

1 this, but I think they should.

2 JUDGE HISERT: Well, as I
3 said, I don't know exactly what the
4 community is aware of, but they have
5 to vote for the individual.

6 MS. HATHAWAY: Yes. I
7 mean, but they have no -- yeah, they
8 have no --

9 MR. KING: One other
10 question, getting back to -- when --
11 okay. When you -- when the person
12 appears before you --

13 JUDGE HISERT: Uh-huh.

14 MR. KING: -- and they
15 want an attorney and you have to --
16 they fill that form out, like, right
17 then and there --

18 JUDGE HISERT: Generally
19 speaking they do.

20 MR. KING: At one o'clock
21 in the morning.

22 JUDGE HISERT: That's
23 correct.

24 MR. KING: Okay. Now,

1 what happens after that? If -- if
2 you decide that the person -- you
3 want the person to have a lawyer --

4 JUDGE HISERT: They
5 qualify for an attorney.

6 MR. KING: They qualify
7 for an attorney.

8 JUDGE HISERT: Okay. What
9 happens then is, we notify -- we
10 have a -- actually, it's an attorney
11 and his wife in the community that
12 will appoint assigned attorneys.

13 MR. KING: Okay.

14 JUDGE HISERT: We -- we
15 notify that office that so and so
16 needs an attorney, he will be back
17 in court next Tuesday, put it that
18 way.

19 MR. KING: So, you mean,
20 that person stays in prison -- jail
21 from -- until their next court date?

22 JUDGE HISERT: That's
23 possible.

24 MR. KING: And that could

1 be a week?

2 JUDGE HISERT: That could
3 be a week.

4 MR. KING: I'm just trying
5 to --

6 JUDGE HISERT: No, I
7 understand --

8 MR. KING: -- it's
9 different in New -- in Brooklyn.

10 JUDGE HISERT: That's
11 correct.

12 (Multiple conversations.)

13 MR. KING: 72 hours is the
14 most that you could be --

15 JUDGE HISERT: Okay. Let
16 me --

17 MR. KING: Really, you're
18 supposed to have --

19 MS. BURKE: 26.

20 MR. KING: 26 hours.

21 JUDGE HISERT: Okay. In
22 our justice system, when we arraign
23 -- we're talking about the justice
24 courts now, not the judge, when we

1 arraign an individual who is being
2 charged with a felony, he's entitled
3 to a hearing on whether or not
4 there's enough evidence for him to
5 be held, okay. And that hearing has
6 to take place -- I believe it's 124
7 hours.

8 So, if it's a felony
9 charge and, again, we can arraign
10 felonies, but we can't ever see the
11 case through the end, in that
12 instance, if he goes to jail on
13 bail, the District Attorney is very
14 aware who's in jail, okay. Let me
15 underline that. They know. They
16 have an office in the same building
17 as the jail. So, they are aware of
18 the people that are there.

19 So, if it's a felony and
20 they want an assigned attorney, then
21 immediately that's going to take
22 place, because then the attorney
23 will be contacting the defendant,
24 plus the District Attorney to

1 determines whether or not there will
2 be a hearing, okay. So that person
3 will not be in jail for a long time.

4 MR. KING: But what about
5 arraignments; now, if you have to do
6 an arraignment, at what point does
7 the attorney get involved?

8 JUDGE HISERT: Probably
9 not until the next court date.

10 MS. BURKE: After the 180
11 days?

12 JUDGE HISERT: Hours? I'm
13 sorry.

14 MS. BURKE: After the 124
15 hours --

16 JUDGE HISERT: Hours -- if
17 it's -- if it's a non-felony --
18 we're talking -- there's two
19 categories here, okay? The felony
20 hearing would be heard -- I mean, if
21 there's a hearing it will be heard
22 within the 124 hours or 140 hours,
23 if it's the weekend, okay? If it's
24 a misdemeanor, okay, that's what we

1 can hear; misdemeanors and
2 violations. In that instance, what
3 a judge will do who does this
4 arraignment, and the person goes to
5 jail because sometimes that's the
6 decision that's made, they schedule
7 it for the next D.A. day in their
8 court or perhaps their next official
9 day.

10 In Cobelskill Village
11 Court I hold court once a week. I
12 have two D.A.s in my court, on each
13 D.A. -- on each night in my court,
14 because it's that busy a court.

15 Most of the other courts
16 in the county, however, are not as
17 busy. They may have a D.A. present
18 only once a month, okay. So there's
19 a big difference there.

20 MS. HATHAWAY: So, what
21 happens to the person who is not
22 eligible for an attorney?

23 JUDGE HISERT: He's not
24 eligible for an attorney.

1 MS. HATHAWAY: Yeah --

2 JUDGE HISERT: Well, they
3 usually get on the phone and get an
4 attorney themselves.

5 MS. HATHAWAY: Fine. And
6 if the person is in jail and they're
7 waiting for their next hearing, are
8 they eligible -- can they get -- be
9 bailed out within that time?

10 JUDGE HISERT: Oh, yeah.
11 If bail was set. And I would say 99
12 percent of the time we set bail.

13 MS. HATHAWAY: And they
14 can -- they can -- even though --
15 they can get out --

16 JUDGE HISERT: Oh, yeah.
17 And most people, not everybody, but
18 most people get bailed out.

19 MR. GRADESS: Well, let's
20 say a police officer brought a
21 felony arrest to you on a Thursday
22 night --

23 JUDGE HISERT: Okay.

24 MR. GRADESS: -- and you

1 have held that person in the local
2 county jail.

3 JUDGE HISERT: Uh-huh.

4 MR. GRADESS: How do you
5 insure that that person has a lawyer
6 before he or she is indicted if
7 they're entitled to counsel?

8 JUDGE HISERT: Before
9 they're indicted?

10 MR. GRADESS: Yeah.

11 JUDGE HISERT: Well, first
12 of all, if it's a felony, there's no
13 question in my mind that the D.A. is
14 not going to move forward unless
15 they have an attorney. Does that --
16 does that answer the question?

17 MR. GRADESS: But the D.A.
18 will not bring a case into a Grand
19 Jury unless the person is
20 represented?

21 JUDGE HISERT: I would
22 believe not. I mean, I don't want
23 to say definitely, but that would be
24 my calculated answer. That he would

1 not do that because he knows that
2 they're entitled to an attorney --

3 MR. GRADESS: And in the
4 -- in the courts that where the
5 adjourned date might be more than a
6 week; might be a couple of weeks --

7 JUDGE HISERT: Okay.

8 MR. GRADESS: -- how does
9 the -- how do those courts insure
10 that the person gets a lawyer in
11 time for the felony examination?

12 JUDGE HISERT: They have
13 to.

14 MR. GRADESS: So, is there
15 a lawyer appointed within 144 (sic)
16 hours --

17 JUDGE HISERT: Oh,
18 definitely. Oh, yeah.

19 MR. KING: What happens if
20 you --

21 JUDGE HISERT: Oh, yeah.
22 If it's a felony --

23 MR. GRADESS: And are
24 felony examines routinely held in

1 the county?

2 JUDGE HISERT: I have to
3 say that many times the hearing --
4 the time of the hearing is waived.

5 MR. GRADESS: You mean it
6 will be adjourned?

7 JUDGE HISERT: It --
8 right. If waived. Right. So, that
9 they -- instead of doing it within
10 the 5 days, they're going to proceed
11 wherever. And then, you know, if
12 they find that they need a hearing,
13 then they're schedule it later.

14 MR. GRADESS: And that's
15 done with a -- with an appointed
16 lawyer who consents to the --

17 JUDGE HISERT: That's
18 correct. That's correct.

19 MS. BURKE: Is that
20 because of the time constraints
21 placed upon the attorney that's
22 assigned, that -- if you arraign a
23 felony arraignment on Thursday,
24 like --

1 JUDGE HISERT: Okay.

2 MS. BURKE: -- Jonathan
3 had said, and then you call the
4 lawyer on Friday. He's not
5 available, doesn't get the message
6 until Monday. Tuesday or Wednesday
7 is the felony examination day --

8 JUDGE HISERT: Uh-huh

9 MS. BURKE: -- routinely
10 that attorney will waive because he
11 then needs time to gather
12 information, doing --

13 JUDGE HISERT: I would
14 guess that --

15 MS. BURKE: -- an
16 investigation --

17 JUDGE HISERT: I would
18 guess that's the answer --

19 MS. BURKE: -- interview
20 the client?

21 JUDGE HISERT: I would --
22 I would believe that -- I -- I can't
23 say for certain because I'm never
24 involved in that type a situation.

1 I would guess it's a matter of the
2 attorney wishing to get -- to garner
3 more information, to gather more
4 information and have more time to
5 speak to the attorney -- or to speak
6 with the defendant.

7 MR. KING: Have you ever
8 ran into a case where you have
9 denied a person counsel because
10 their family makes too much money
11 and the family never sent counsel?

12 JUDGE HISERT: I can't
13 recall that I've done that. There
14 have been, on occasion, that I have
15 not granted an assigned attorney.
16 And, again, this is in the matter of
17 some college students, perhaps, as
18 opposed to the general clientele of
19 the county.

20 MR. KING: Well, what
21 happens if -- if anyone -- you deny
22 them and you run into a case where
23 the family doesn't want to be
24 involved and won't send an attorney?

1 JUDGE HISERT: Then
2 usually the defendant will probably
3 express that; that their family
4 doesn't feel obligated. I've never
5 had that happened, let's put it that
6 way. I mean, really --

7 MR. KING: I can -- I can
8 see that --

9 JUDGE HISERT: Yeah.

10 MR. GRADESS: Do I take
11 it from your answer -- from your
12 testimony that it's the view of your
13 court that when you have a minor in
14 the court it's an appropriate
15 inquiry to ask about his parents'
16 income?

17 JUDGE HISERT: Well, a
18 minor? What are you -- what are you
19 referring to?

20 MR. GRADESS: Someone
21 under the age of 21, someone under
22 the age of 18.

23 JUDGE HISERT: Someone
24 under the age -- well, yeah.

1 Someone under the age of 16, first
2 of all, will never appear in my
3 court --

4 MR. GRADESS: Right. No.
5 I'm talking about --

6 JUDGE HISERT: Okay.

7 MR. GRADESS: -- there's a
8 class of people between 16 and 18 --

9 JUDGE HISERT: Uh-huh.

10 MR. GRADESS: -- who we
11 call "minors" for particular
12 purposes and then there are people
13 under the age of 21, who we call
14 "minors" for other purposes --

15 JUDGE HISERT: Okay.

16 MR. GRADESS: -- I'm
17 interested in the people between 16
18 and 18, and 16 and 21, whether or
19 not you routinely inquire about
20 their parents income?

21 JUDGE HISERT: I would
22 say, if it's a person who's in high
23 school, we're going to probably, you
24 know, grant that assigned attorney,

1 if that's what you're asking,
2 probably.

3 Again, I -- I don't want
4 to be guessing here. If I had, you
5 know, some cases more specifically
6 in front of me -- that's not my
7 usual situation to deal with.
8 You're talking about the -- not my
9 general, typical situation where I
10 have to assign an attorney. In
11 fact, I can't recall one right now
12 that I've ever had to even consider
13 an assigned attorney for someone
14 under the age of 18.

15 MR. GRADESS: Really.

16 JUDGE HISERT: Yes.

17 MS. HATHAWAY: What's the
18 usual age?

19 JUDGE HISERT: I would say
20 it's 18 and above. And most of the
21 18 year olds we're talking about are
22 college students. So, they're not
23 from this area.

24 MR. GRADESS: Okay. So,

1 college students, you would then
2 inquire into parental income?

3 JUDGE HISERT: Sometimes,
4 not all the time. Sometimes.

5 MS. BURKE: What's the
6 determining factor as to when you do
7 and when you don't?

8 JUDGE HISERT: That's a
9 good question, too. Sometimes
10 it might simply be their mannerisms,
11 how -- sometimes when I'm doing an
12 arraignment the officer will simply
13 say, you know, this person was very
14 uncooperative. It' -- sometimes
15 it's the demeanor, I mean, it's not
16 -- it's -- it's -- what do I want to
17 say? There is no list of things
18 that I address. I'm looking at the
19 individual and I'm really trying to
20 determine whether or not -- does he
21 support himself or is he being
22 supported by his parents? That's --
23 that's how I'm making the
24 determination --

1 MS. HATHAWAY: Do you ask
2 them?

3 JUDGE HISERT: Oh,
4 definitely. Definitely. There's no
5 question about it. I ask them, are
6 you supporting -- are you living at
7 home? Do you parents support you?
8 Yes, they do; no, they don't. Then
9 I'll make further inquiry.

10 MR. GRADESS: What if a
11 client said to you, I go to SUNY
12 Cobelskill, my parents are paying my
13 tuition and I don't want them to
14 know about this criminal charge, I
15 want a lawyer, what would you do? I
16 mean, well, what do you think you'd
17 think about? I'm not asking you --
18 I'm not trying to put you on the
19 spot, I'm just trying to get your
20 thought process.

21 JUDGE HISERT: I -- I
22 would have to see what it is
23 they've, you know. What are they
24 being charged with?

1 MR. GRADESS: They're
2 being charged with aggravated
3 harassment for making phone calls to
4 girls in the dormitory.

5 JUDGE HISERT: I -- I'd
6 probably would say, then, can they
7 afford their own attorney?

8 MR. GRADESS: And.

9 JUDGE HISERT: Some
10 college students can, believe it or
11 not.

12 MR. GRADESS: And -- and
13 if the college student said, no, I'd
14 like you to appoint one, I don't
15 have any income.

16 JUDGE HISERT: He
17 personally does not have any income?

18 MR. GRADESS: I have no
19 personal income, I have no banks
20 account, I have no -- I have no
21 stocks, no bonds, I have a little
22 work study but I use it up for
23 hamburgers, I myself have no money,
24 but I certainly don't want my

1 parents to know about this case, and
2 I -- so, I'm entitled to a lawyer
3 and I'd like one.

4 JUDGE HISERT: I'd
5 probably -- my response probably
6 would be, I will assign an attorney
7 at this point in time for
8 arraignment -- to complete
9 arraignment procedure and then we'll
10 make a further determination at that
11 time, after the D.A. has become
12 involved in the case; whether or not
13 we'll continue.

14 MR. GRADESS: And --

15 JUDGE HISERT: And I have
16 done that on many of times. I --
17 this is -- they say, I can't afford
18 an attorney. And I'll say, okay. I
19 will assign an attorney. However,
20 if The Court determines, in fact,
21 that you could afford an attorney
22 and your parents are supporting you
23 and they can afford an attorney,
24 then we're going to ask those -- the

1 parents, or you, to pay the county
2 back. It's never happened, but I've
3 made that comment.

4 MR. GRADESS: And when you
5 use the phrase "complete the
6 arraignment," could you state for
7 the record what you mean by that?

8 JUDGE HISERT: Typically,
9 when they -- when they come in for
10 an arraignment; whether it be in the
11 middle of the night or the first
12 court appearance, because some of
13 these people are arraigned for the
14 first court appearance because
15 they're given appearance tickets.
16 Even if they're being charged with a
17 misdemeanor don't means that they're
18 arraigned at odd hours. They are --
19 they are arraigned. Their first
20 court appearance because they're
21 given appearance tickets, okay.

22 What I do at that time is,
23 I will read them the charge and ask
24 do they wish to be represented by an

1 attorney? And if they say "yes,"
2 then, typically, that stops then. I
3 don't go forward with it. I don't
4 ask any more questions. You know,
5 the next time we'll -- the attorney
6 will be apprised of the charges when
7 the attorney's brought in court.

8 The person's given a copy
9 of the charge immediately when I
10 arraign them.

11 MR. GRADESS: So, there
12 might be cases where you would --
13 you would be releasing that person
14 on their own recognizance --

15 JUDGE HISERT: Right.
16 Well, definitely --

17 MR. GRADESS: --
18 continuing it later.

19 So, there might be cases
20 where you would be sending someone
21 to jail, appointing a lawyer and
22 continuing the arraignment later, is
23 that right?

24 JUDGE HISERT: Right.

1 It's a rare time that I would be
2 sending somebody to jail whose being
3 arraigned on a misdemeanor on a --
4 an appearance ticket. That
5 rarely -- I mean, I personally have
6 never done that.

7 MR. GRADESS: Is it a rare
8 thing for you to send someone being
9 arraigned on a misdemeanor whose
10 been brought to you by an arresting
11 officer, to put that person in jail?

12 JUDGE HISERT: Have I done
13 that?

14 MR. GRADESS: Yeah.

15 JUDGE HISERT: We set
16 bail? Definitely. Sometimes -- oh,
17 go ahead.

18 MR. GRADESS: So, then
19 when you appoint the lawyer in that
20 case, if the person is eligible,
21 what did you do at the next
22 appearance, do you act like -- you
23 start the arraignment again?

24 JUDGE HISERT: Not -- not

1 from the very beginning because I've
2 already read him charges, but now
3 the -- but now the attorney -- maybe
4 it's the first time that the
5 attorney is seeing the charges on
6 the next court date. He may or may
7 not have seen this individual prior
8 to that. I don't know. Okay.

9 Then we just -- just
10 proceed and ask -- at that time
11 they'll enter a plea of guilty or
12 not guilty, and go from there.

13 MR. GRADESS: Ever take a
14 plea of guilty at the initial
15 arraignment without a lawyer
16 present?

17 JUDGE HISERT: I can't say
18 I've ever done that.

19 MS. HATHAWAY: Since most
20 of these are college students, what
21 -- what is -- what is the general
22 scope of arrests? What is it --

23 JUDGE HISERT: Okay. I
24 just happen to -- I just happened to

1 make a list before I came here,
2 quickly. And petty larceny,
3 conspiracy --
4 MS. HATHAWAY: Conspiracy
5 to do --
6 JUDGE HISERT: No. Excuse
7 me. It's not conspiracy. Control
8 or possession of stolen property.
9 Excuse me. A false written
10 statement, burglary in the third,
11 D.W.I., criminal trespass, false
12 impersonation, unlawfully dealing
13 with a child. That's usually giving
14 alcohol to someone underage,
15 typically that charge. D.W.I.,
16 forgery, criminal possession of a
17 forged instrument, grand larceny,
18 menacing, D.W.I., criminal
19 possession of a witness -- of a
20 weapon, excuse me, aggravated
21 unlicensed operation of a motor
22 vehicle, harassment second,
23 aggravated harassment, violation of
24 probation, petit larceny again. And

1 just typically, I think I've
2 probably covered the predominant
3 ones. That -- that would cover it,
4 okay.

5 MR. KING: What about your
6 felony cases, I mean --

7 JUDGE HISERT: Pardon me?

8 MR. KING: Felony cases.

9 JUDGE HISERT: What about
10 those cases?

11 MR. KING: I mean, do you
12 ever pick up serious felony cases;
13 homicide --

14 JUDGE HISERT: Oh,
15 definitely. I've had homicide in
16 front of me. I've had rape in front
17 of me, you know. Sodomy. Yeah.

18 MR. KING: And, then, what
19 do you do with those cases --

20 JUDGE HISERT: Grand
21 larceny. I arraign the individual.
22 Do you want an attorney? Yes, I
23 do --

24 MR. KING: What do you

1 mean you arraign them?

2 JUDGE HISERT: They --
3 they -- I should have written --
4 they appear in front of me, okay, I
5 complete their name, address,
6 personal information, I read them
7 their -- I ask them -- I read them
8 the charge, I provide them a copy of
9 the charge, I asked them if they
10 understand the charge. I tell them
11 that they're -- do they wish an
12 attorney? If you can't afford an
13 attorney, would you like an assigned
14 attorney?

15 MR. KING: Okay.

16 JUDGE HISERT: That's it,
17 basically.

18 MR. KING: What I -- what
19 I -- what I don't understand, is
20 when -- when a person is arrested
21 for a felony -- a serious felony
22 charge --

23 JUDGE HISERT: Uh-huh.
24 Uh-huh.

1 MR. KING: -- and at
2 their -- their arrest the person
3 says, I want an attorney.

4 JUDGE HISERT: Uh-huh.

5 MR. KINGS: That is a
6 serious case. What do the police
7 do?

8 JUDGE HISERT: The -- the
9 --

10 MR. KING: I mean, do the
11 police come to you and say to you
12 that we can't interrogate this
13 person because he asked for an
14 attorney or do they continue to
15 interrogate the person?

16 JUDGE HISERT: I don't
17 know what the police do. All I know
18 is that if they pick someone up on a
19 felony and they bring them in for an
20 arraignment and -- and I do what I
21 have to do, I'm not sure what the
22 police do.

23 MR. KING: Okay. If you
24 know, how -- if a person was

1 arrested at ten o'clock --

2 JUDGE HISERT: Uh-huh

3 MR. KING: -- at night --

4 JUDGE HISERT: Okay.

5 MR. KING: -- how long

6 would it take, and say they're two

7 miles away from your office -- I

8 mean, your home --

9 JUDGE HISERT: Okay.

10 MR. KING: -- how long

11 does it take them to get to your

12 office? Or do you -- I mean, do you

13 know -- do you know -- are -- are

14 you told --

15 JUDGE HISERT: Where

16 they're coming from --

17 MR. KING: -- what time

18 they were arrested?

19 JUDGE HISERT: What time

20 they were arrested? No. I don't

21 know what time they were arrested.

22 But again, let me back up.

23 Schoharie County -- okay, Schoharie

24 County, there's no City Court,

1 there's nothing like that. The
2 county judge is not going to go out
3 on an arraignment.

4 MR. KING: Right.

5 JUDGE HISERT: It is we;
6 the Village and Town justices. And
7 I believe there's only four
8 Villages. I think there's only
9 three Villages -- well, maybe
10 there's two because one just --
11 again, that even has a judge. The
12 rest are all Town judges. And it's
13 a very remote area here.

14 I can be doing a felony
15 in -- as a justice as I can do a
16 felony arraignment for anyone in the
17 entire county, not just the Town of
18 Cobelskill. So, this person could
19 be a half hour away.

20 MR. KING: Right.

21 JUDGE HISERT: So, I don't
22 know what they discuss between the
23 arrest and the arraignment.

24 MR. KING: But I'm saying,

1 nobody -- is it documented what time
2 that person was -- I mean, if -- I'm
3 a lawyer. I want to know what time
4 you stopped my client. And then I
5 want to know how long did it take
6 you to get from where you stopped my
7 client to the justice.

8 JUDGE HISERT: Okay. I'm
9 sure the police agencies could
10 answer that.

11 MR. GRADESS: Well, if you
12 were arraigning a homicide on a
13 Thursday night at ten o'clock --

14 JUDGE HISERT: Uh-huh.

15 MR. GRADESS: Would the
16 District Attorney come out for that
17 arraignment?

18 JUDGE HISERT: No.

19 MR. GRADESS: You'd be in
20 the court -- would it be done in
21 your house?

22 JUDGE HISERT: Oh, gosh,
23 no.

24 MR. GRADESS: Where would

1 you do it?

2 JUDGE HISERT: In my
3 court.

4 MR. GRADESS: So, you'd go
5 down to the court --

6 JUDGE HISERT: Oh,
7 definitely.

8 MR. GRADESS: And the only
9 person that would be there would be
10 the defendant and the officer?

11 JUDGE HISERT: That's
12 probably correct. Usually, in that
13 situation there's probably more than
14 an officer.

15 MS. HATHAWAY: Do you ever
16 have any dialogue with the officer
17 or do they attempt to have any
18 dialogue with you, expect this
19 person -- and, you know -- and they
20 put that person in your charge, is
21 there any dialogue between --

22 JUDGE HISERT: There's
23 very little dialogue. The only time
24 I might have some dialogue is when

1 they might say this person has been
2 belligerent, uncooperative, that
3 might be a dialogue --

4 MS. HATHAWAY: And then
5 that --

6 JUDGE HISERT: Or about
7 the case specifically? No.

8 MS. BURKE: Is there a
9 court reporter present.

10 JUDGE HISERT: No, there
11 is not. We're not a court of record
12 --

13 MS. BURKE: Recorded --

14 JUDGE HISERT: -- we're
15 not a court of record. There are
16 never court reporters in our
17 courtroom unless it's a jury trial
18 or a pretrial hearing.

19 MS. HATHAWAY: Well, what
20 happens with the records? How do
21 they -- I mean, how do you --

22 JUDGE HISERT: I know it.
23 I know. Coming from the City it's
24 probably a different situation.

1 MS. HATHAWAY: There's

2 no --

3 JUDGE HISERT: There's

4 no --

5 MS. HATHAWAY: -- I mean,
6 there's a difference, but I guess
7 I'm trying to say since there's no
8 recorder and there's no court
9 reporter, and you're doing your job,
10 how is the record? Who keeps the
11 record? Who knows what -- what has
12 been said between -- you know,
13 what's going on? Where's the
14 record?

15 JUDGE HISERT: There is no
16 record.

17 MR. KING: You don't
18 write -- did you write the time that
19 the person comes in?

20 JUDGE HISERT: On my
21 arraignment sheet I do.

22 MR. KING: And you write
23 the time that your arraignment is
24 over?

1 JUDGE HISERT: That --
2 that it's over?

3 MS. BURKE: Yes.

4 JUDGE HISERT: No.

5 MS. BURKE: No?

6 MR. KING: Otherwise, you
7 -- I mean, you just write the time
8 they come --

9 JUDGE HISERT: Actually --
10 excuse me. If it's in the middle of
11 the night arraignment, if it's out
12 of court arraignment I don't write
13 the -- I might note the time, but
14 that's not -- I don't have to write
15 the time. I write the date, but not
16 necessarily the time.

17 MS. BURKE: But if the
18 issue is making sure that this
19 person has his preliminary hearing
20 --

21 JUDGE HISERT: Uh-huh.

22 MS. BURKE: -- within 144
23 (sic) hours?

24 JUDGE HISERT: I'm on top

1 of that in my court. There's no
2 question about it. I -- I make
3 whatever notes I find necessary to
4 make. It's not as though I just
5 walk in and walk out. But there's
6 no official record, it's the judge's
7 notes.

8 MS. HATHAWAY: If some --
9 you know, like they're saying, if a
10 person is arrested at night --

11 JUDGE HISERT: Uh-huh

12 MS. HATHAWAY: -- ten
13 o'clock, whatever the case may be --

14 JUDGE HISERT: Uh-huh.

15 MS. HATHAWAY: -- and do
16 you get that information the same
17 night or is it the next day that
18 it's brought to you because you have
19 to be -- you have to go to your
20 court. So, are you ever at court at
21 night at all or have you had to
22 leave your home to go to court at
23 night or --

24 JUDGE HISERT: Maybe ten

1 times a month.

2 MS. HATHAWAY: Oh.

3 JUDGE HISERT: It's a very
4 busy court. And I can say, we are
5 on call twenty-four hours a day.

6 MS. HATHAWAY: All right.

7 JUDGE HISERT: In addition
8 to that, Cobelskill Courts are in a
9 very convenient location. Three
10 miles down the road is the State
11 Police, okay. In the Village of
12 Cobelskill I have SUNY police
13 officers, I have the state police, I
14 have the Village police and I have
15 the ENCON that are all sending me
16 tickets. It's a very busy court.

17 And if a Judge is not
18 available they can call a Judge who
19 -- jurisdiction -- whose court
20 borders theirs, the Township borders
21 the other town. So, not only do I
22 do a lot of arraignments for
23 Cobelskill, our court does a lot of
24 arraignments for surrounding towns.

1 A lot of the Judges have full-time
2 jobs. I happen to be retired. So,
3 it's a very busy situation.

4 MS. HATHAWAY: When --
5 (Multiple conversations.)

6 JUDGE HISERT: A lot of
7 the arraignments we do at night are
8 not necessarily the college
9 students. They are people in the
10 community and in the Town.

11 MR. GRADESS: I want to go
12 back to this place where you might
13 stop the arraignment when the person
14 asks for an attorney.

15 JUDGE HISERT: Uh-huh.

16 MR. GRADESS: You will,
17 however, in those cases set bail or
18 set some kind of a securing order --

19 JUDGE HISERT: A bail or
20 R.O.R. Sometimes R.O.R.s. I
21 don't -- if they are a person who
22 lives in the community, they have a
23 home in the community, okay, or they
24 work in the community, I don't

1 necessarily send them to jail, I
2 will simply set -- R.O.R. them.

3 MR. GRADESS: Will there
4 ever be an occasion where you might
5 issue an Order of Protection at
6 arraignment --

7 JUDGE HISERT: Oh, no
8 question --

9 MR. GRADESS: -- where a
10 person is not represented by
11 counsel?

12 JUDGE HISERT: Definitely.
13 I've done that on many occasions.

14 MR. GRADESS: What kinds
15 of occasions would you do that?

16 JUDGE HISERT: Any time
17 that the person -- it's when the
18 victim usually calls an officer,
19 correct, I mean, calls the officer
20 and says, you know, I'm whatever.
21 There's a domestic violence issue in
22 my home. And at that time, I --
23 it's been my experience, that the
24 officer inquires of the victim if

1 they wish a -- an Order of
2 Protection. And that's when I will
3 issue it at that arraignment.

4 MR. GRADESS: So, there
5 will be a defendant, there will be
6 an officer there and the officer
7 will be speaking on behalf of the
8 victim --

9 JUDGE HISERT: Yes. And
10 they would simply say -- yeah. The
11 victim would like an Order of
12 Protection.

13 MR. GRADESS: What about
14 in a D.W.I. case in terms of the
15 suspension of a driver's license,
16 what would happen in that
17 circumstance between -- you'd have
18 the arraignment, you deny it, assume
19 hold it open. What do you do in
20 terms of suspending a driver's
21 license --

22 JUDGE HISERT: I don't
23 suspend a driver's license until
24 they're represented by an attorney

1 in my court. I will not do that
2 unless it's a refusal. And if it's
3 a refusal, by law we have to suspend
4 the license.

5 MR. GRADESS: I have one
6 other question about the -- just
7 this eligibility stuff and it's
8 probably --

9 JUDGE HISERT: I wish it
10 was more clear cut, believe me.

11 MR. GRADESS: So do I.
12 When you were reading, somebody was
13 talking in my ear. I didn't hear.
14 It was all of your clients or these
15 were your college student clients?

16 JUDGE HISERT: Oh, I don't
17 know who they are.

18 MR. GRADESS: You don't
19 know?

20 JUDGE HISERT: I --
21 actually, I got this list from -- I
22 have to sign off when I assign a
23 counsel, and they send their bill to
24 me and then I have to sign it. But

1 I just grabbed that folder today.
2 And I only went back until -- what
3 was the date? September of last
4 year. And I just pulled them.
5 And -- you know, and I just wrote
6 down the charges.

7 MR. GRADESS: Okay. Do
8 you appoint lawyers in violation
9 cases?

10 JUDGE HISERT: No, I do
11 not.

12 MR. GRADESS: Could you
13 tell us why?

14 JUDGE HISERT: Yes, I
15 will. If a person is being charged
16 with a violation, it is the District
17 Attorney's policy that they would
18 not get jail time. He says that up
19 front.

20 MR. GRADESS: Does the
21 District Attorney of this county
22 believe that that forecloses the
23 right to counsel?

24 JUDGE HISERT: I don't

1 know -- I don't want to say what he
2 thinks.

3 MR. GRADESS: But do you
4 think that?

5 JUDGE HISERT: Well, if he
6 is willing, my -- my experience has
7 been if the District Attorney is
8 willing to do a plea bargain with
9 that individual, and typically if
10 he's being charged with a mis -- not
11 usually mis -- let's go back to
12 violations. Was a violation. And
13 if that person is willing to listen
14 to the D.A. And the D.A. sits down
15 and talks or goes in another room,
16 an office, and speaks to that
17 individual about the violation
18 charged --

19 MR. GRADESS: This is at
20 arraignment --

21 JUDGE HISERT: The one
22 that's -- no -- well, yeah. Because
23 a -- violations come on court night.
24 They don't make an arraignment in

1 the middle of the night. Yes.

2 Yeah.

3 MS. BURKE: The D.A.
4 speaks to the defendant in another
5 room, is that what you're saying?

6 JUDGE HISERT: No. No,
7 no, no. No. Excuse me. Let me
8 straighten this out here. Let's
9 just say that a person is being
10 charged for harassment; a simple
11 harassment or a simple trespass,
12 okay. They're violations. That
13 person comes in and I arraign that
14 individual. I ask that person does
15 he wish to plea guilty or not
16 guilty? And in most cases they're
17 going to say not guilty. Most
18 cases.

19 I will say, okay. I'm
20 going to schedule a Bench Trial for
21 you. And that's exactly what I do.
22 I schedule a Bench Trial. They come
23 in. We have one -- two -- two
24 mornings a month, typically, that we

1 hold Bench Trials. And now they
2 have an opportunity to speak with
3 the arresting officer, to see if
4 they can reach some kind of a
5 discussion. If they can't, then,
6 actually, I hold a Bench Trial.

7 MS. BURKE: The defendant
8 speaks with the arresting officer?

9 JUDGE HISERT: Yes.
10 Uh-huh. And maybe they can reach a
11 plea and maybe they cannot. And if
12 they cannot, then I actually conduct
13 a mini Bench Trial. The officer
14 presents his side of it, of course,
15 and the -- and the defendant
16 presents his side of the case, and
17 then I would make a decision.

18 Have I had to do that
19 often? No.

20 MS. HATHAWAY: You -- I
21 think I understood you to say that
22 you will set bail? That you set
23 bail?

24 JUDGE HISERT: Yes, I

1 do --

2 MS. HATHAWAY: What --
3 what -- what scale -- I don't know
4 if that's the right terminology, but
5 what -- what scales do you use for
6 setting bail? I mean, what is
7 the --

8 JUDGE HISERT: How -- how
9 I make my decisions?

10 MS. HATHAWAY: Make your
11 decision --

12 JUDGE HISERT: Well, if
13 they're being charged with a
14 misdemeanor I know up front that the
15 most serious misdemeanor their fine
16 cannot be in excess of \$1,000
17 dollars.

18 If they're being charged
19 with a violation I know that their
20 fine cannot be in excess of \$250
21 dollars.

22 So, in my court,
23 typically, I go by that scale. It
24 might be just \$100 dollars and it

1 might be \$500 dollars --

2 MS. HATHAWAY: Yeah, but,
3 you use that for --

4 JUDGE HISERT: Yeah. I
5 try not to -- I try not to exceed
6 those maximums.

7 Have I on occasion?

8 Rarely, but I have.

9 MR. GRADESS: I'd be
10 interested in moving onto another
11 area of inquiry at this point.

12 The -- well, let's take
13 for example your list. That list
14 represents the vouchers filled by
15 assigned counsel --

16 JUDGE HISERT: That's
17 correct.

18 MR. GRADESS: -- in your
19 career?

20 Can you give us sense of
21 say, how long you've been a Judge?

22 JUDGE HISERT: Town Judge
23 for ten years and Village Judge for
24 four.

1 MR. GRADESS: Okay. So,
2 like, in those 14 years --

3 JUDGE HISERT: Well,
4 actually, they overlapped.

5 MR. GRADESS: They
6 overlapped. In the last decade --

7 JUDGE HISERT: Okay.

8 MR. GRADESS: -- how's
9 that?

10 JUDGE HISERT: That takes
11 them both in.

12 MR. GRADESS: How many
13 trials would you say --

14 JUDGE HISERT: Jury
15 Trials?

16 MR. GRADESS: Jury Trials.

17 JUDGE HISERT: Actually, I
18 have had very few. I have had only
19 one that actually went to a jury,
20 okay. I have had two others, that I
21 can recall, that we commenced
22 proceedings, but they never got to
23 the jury.

24 MR. GRADESS: How many

1 Bench Trials would you say you've
2 had in that time?

3 JUDGE HISERT: Now, Let me
4 ask you this question. When you say
5 "Bench Trials," but for example last
6 week I had between 25 and 30 Bench
7 Trial, most on V & T. But you're
8 not concerned with V & T?

9 MR. GRADESS: No. I'm
10 taking about cases for which there's
11 already counsel --

12 JUDGE HISERT: Okay.

13 MR. KING: What's "V & T"?

14 JUDGE HISERT: Vehicle and
15 Traffic.

16 MR. KING: Oh, "V."

17 JUDGE HISERT: V & T.
18 You're talking about -- let's see.
19 Local -- for example, I had one this
20 morning on a noise ordinance. Is
21 that the type of Bench Trial you're
22 talking about?

23 MR. GRADESS: If you had
24 one. Does that carry --

1 JUDGE HISERT: Yes, I
2 did --
3 MR. GRADESS: -- the
4 penalty of -- of jail?
5 JUDGE HISERT: Yes, it
6 does.
7 MR. GRADESS: Okay.
8 JUDGE HISERT: Uh-huh. It
9 could. But again, the arresting
10 officer was present.
11 MR. GRADESS: But there
12 was not an appointed lawyer?
13 JUDGE HISERT: No, there
14 was not.
15 MR. GRADESS: And that's
16 because?
17 JUDGE HISERT: We knew
18 that we would not give jail time.
19 He made that -- I guess the D.A.,
20 that his -- that seems to be his
21 policy.
22 MR. GRADESS: It sounds
23 like the District Attorney of your
24 county is interpreting a Federal

1 Standard from the Argersinger versus
2 Hamlin case and applying it in New
3 York. We can talk about this after.

4 But I guess what we're
5 trying to get a handle on, and
6 you're a perfect person to give us
7 that handle, is sort of the health
8 of the system.

9 JUDGE HISERT: Uh-huh.

10 MR. GRADES: In all of
11 these -- so I take it there's not a
12 big trial rate.

13 JUDGE HISERT: No.

14 MR. GRADESS: In these
15 vouchers that you have I take it
16 they are sort of a reflection of
17 lawyers who get this phone call from
18 the man and his wife, and I take
19 it --

20 JUDGE HISERT: That's
21 correct. Whoever makes the phone
22 call. Right.

23 MR. GRADESS: They've been
24 appointed, they come into a case.

1 When would a -- what would a typical
2 case that doesn't result in trial
3 consist of?

4 JUDGE HISERT: That
5 doesn't result --

6 MR. GRADESS: One
7 appearance? Two appearances? Three
8 appearances? Five hundred dollar
9 fine -- a \$500 dollar assigned
10 counsel voucher or \$50 dollar
11 assigned counsel voucher, what's the
12 sort of ordinary case that takes
13 place? A fairly quick, one shot,
14 entry of a plea --

15 JUDGE HISERT: I wish I
16 brought -- a lot of these cases are
17 resolved the same evening as the
18 individual brought in.

19 MR. GRADESS: So the
20 lawyer might be meeting that client
21 for the first time in your court?

22 JUDGE HISERT: That's
23 correct.

24 MR. GRADESS: So what

1 would be the -- tell -- tell us how
2 that goes? Give us a typical
3 evening, because you're not,
4 obviously, trying cases all night.
5 Tell us what a night is like on
6 court night; D.A. night?

7 JUDGE HISERT: Well, you
8 know, for the most part -- I would
9 say three out of four of my court
10 nights are extremely busy. My
11 calenders range probably from forty
12 defendants, up to the eighties.

13 Now, I'm talking about
14 combination of Vehicle and Traffic
15 and Penal cases. We have them all
16 at the same time, okay. So, now I'm
17 looking at sometimes a room full of
18 people, some want assigned
19 attorneys, some don't have any idea,
20 obviously, what's happening. Some
21 are very worried and concerned. But
22 anyway, I try to -- I try to first
23 do the V & T tickets because they're
24 usually much faster to do. People

1 are going to plead guilty to speed
2 or they're not. So, we assign them
3 another date to come back. And then
4 we kind of concentrate on the Penal
5 cases.

6 A person comes in the
7 first time for -- for the
8 charge and, again, because it's a --
9 if it's a violation the word
10 "attorney" doesn't even enter into
11 my mind because I know the policy of
12 the District Attorney.

13 If it's a misdemeanor,
14 they want an assigned attorney,
15 maybe it's the first opportunity
16 that I've had to tell him you're
17 entitled to assigned attorney. Will
18 you complete a Financial Affidavit?
19 They will be brought up in front me
20 at some point, and I will look it
21 over and I will sign it. Most of
22 the times I appoint the attorneys,
23 okay, right then and there. Does
24 not go to Mr. Dunkin (phonetic

1 spelling) because it's in court. It
2 happens right at that night.
3 Because typically in our courtroom
4 we have two or three assigned
5 attorneys sitting there because
6 that's how busy we are.

7 So, that assigned attorney
8 gets on -- gets a copy of the -- of
9 the case, and he will speak with the
10 D.A., will speak with his client, he
11 will speak with the District
12 Attorney, and he might reach a plea
13 that evening. And if he does, then
14 we conclude the case in one evening.

15 MR. GRADESS: Okay. This
16 seems like a self evident question,
17 but I'm just going to state it for
18 the record, because -- I take it,
19 then, that most of these cases are
20 not independently investigated by
21 defense lawyers?

22 JUDGE HISERT: Most of the
23 violations?

24 MR. GRADESS: Most of any

1 of these cases that result in the
2 disposition on the same night of the
3 appointment. They don't have the
4 time or ability to investigate
5 independently the cases, right?

6 JUDGE HISERT: I would say
7 that's probably -- that -- that
8 could be true, I don't know.
9 Because I don't know -- I don't have
10 -- I do not have the police report.
11 I'm not -- I don't have that
12 information, okay. The D.A. has
13 more information than I have, okay.

14 So, what the defense
15 attorney has for information, I
16 don't know. I don't know what he's
17 relying on. But, obviously, if it's
18 being resolved in the same evening,
19 I would say, probably, he's relying
20 upon what the defense -- the
21 defendant tells him.

22 MR. GRADESS: So is it a
23 fair characterization of like a
24 typical night in your court that a

1 defense lawyer would come in, meet a
2 client for the first time, talk to
3 the prosecutor and have some
4 conversation with his new client, or
5 her new client --

6 JUDGE HISERT: Uh-huh.

7 MR. GRADESS: -- and then
8 enter a plea of guilty? That's sort
9 of a typical way it goes?

10 JUDGE HISERT: More
11 typical would be they enter a plea
12 of guilty to a lesser offense.

13 MR. GRADESS: I don't want
14 you to feel like I've snickered you
15 and this is all over, so I want to
16 state something that I started --

17 JUDGE HISERT: Please.

18 MR. GRADESS: -- to say so
19 you don't feel caught. But the
20 District Attorney is actually
21 misleading you. The violations have
22 a right to counsel in this state and
23 under the State Constitution, under
24 the County Law and under the

1 Criminal Procedure Law.

2 And what I think he is
3 doing is misinterpreting a Supreme
4 Court case called "Argersinger
5 versus Hamlin," which holds that for
6 Federal purposes, if there is not
7 jail time served, counsel is not
8 required.

9 But there -- not only are
10 there exceptions to Argersinger,
11 that's not the law in New York.

12 So, maybe after this we'll
13 be happy to share with you the --
14 the law in that because it's -- it's
15 a little incorrect, and he's putting
16 you in a terrible position, frankly.

17 Let me move on to -- let
18 me move on to the thing that we --
19 you may have heard some of those
20 items sitting here, with reference
21 to attorney/client relations. How
22 do you find -- how do you find zest
23 in a relationship between attorneys
24 and clients? I mean, is it pretty

1 proforma? Is it good? Is it bad?
2 Or are there problems? Do you ever
3 get complaints --

4 JUDGE HISERT: I would say
5 over the course of my ten years of
6 having assigned counsel in my
7 courtroom, maybe less than 5 times,
8 if that many, has a -- a defendant
9 ever asked to have another assigned
10 attorney. I think that's an
11 indication.

12 I'm very satisfied with
13 the assigned program in our county.
14 I think it works very well. I have
15 no complaints with it at all.

16 MR. GRADESS: When you
17 describe satisfaction what is your
18 measure of satisfaction? I mean, is
19 it that people always come when you
20 call or how -- how -- what's your
21 measure of satisfaction?

22 JUDGE HISERT: The fact
23 that the cases are adjudicated or --
24 in -- in a timeframe that, you know,

1 are adequate. Not lingering for
2 months or years, they're
3 adjudicated --

4 MS. HATHAWAY: Do you and
5 your colleagues ever get together
6 and --

7 JUDGE HISERT: Yes. We
8 have monthly meetings. We have
9 monthly meetings.

10 To go back to the
11 education. I said initially we have
12 to go to a pretty intense training;
13 the six days. It's like three
14 weekends that we attend this. And
15 each year we have to attend two days
16 -- two days of training; two more
17 days of training.

18 MS. HATHAWAY: But when
19 you and your colleagues meet, do you
20 all have suggestions for each other
21 or are you --

22 JUDGE HISERT: Oh, we talk
23 about many things. We talk about
24 many things. We have guest

1 speakers. We have an organized
2 magistrate -- County Magistrate
3 Association.

4 MS. HATHAWAY: No, I mean
5 just between you and your colleagues
6 --

7 JUDGE HISERT: Oh, I'm
8 sorry.

9 MS. HATHAWAY: -- when you
10 -- when you hold your monthly
11 meeting, is it just you and your
12 colleagues together or are you --
13 you're saying that you all have
14 guest speakers that come in. I
15 mean, do -- do you ever have a
16 meeting we're just you and your
17 colleagues are doing the same thing,
18 where you talk about --

19 JUDGE HISERT: We talk
20 about policy, we don't talk about
21 cases.

22 MS. HATHAWAY: Yeah. Not
23 individual cases, but --

24 JUDGE HISERT: Oh, yeah.

1 MS. HATHAWAY: -- overall
2 policy and --

3 JUDGE HISERT: Uh-huh.
4 Sure --

5 MS. HATHAWAY: -- helped
6 you and that type of thing?

7 JUDGE HISERT: Uh-huh.
8 Yep. We do. See how it rates, so
9 we can compare notes.

10 MS. HATHAWAY: Right --

11 MR. KING: I mean -- one
12 other question. Just -- the policy
13 that you practice in your court, is
14 that similar to the other courts?

15 JUDGE HISERT: You're
16 talking about assigned attorneys?
17 Is that what you're talking about?
18 Whether or not we assign an attorney
19 for violations?

20 MR. KING: Right.

21 JUDGE HISERT: I would say
22 yes.

23 MR. KING: Okay.

24 JUDGE HISERT: To the best

1 of my knowledge. I don't want to
2 speak --

3 (Multiple conversations.)

4 JUDGE HISERT: -- I would
5 say yes because it's the same D.A.
6 There's and A.D.A. and I believe
7 there are three A.D.A.s. and I have
8 two in my court every week --

9 MR. KING: No. I just
10 wanted to see if there was some kind
11 of conformity around --

12 JUDGE HISERT: Oh,
13 definitely.

14 MR. KING: -- around --
15 you know, not saying --

16 JUDGE HISERT: Right.

17 MR. KING: -- you know,
18 police practices.

19 JUDGE HISERT: I would say
20 for the most part yes, all conforms.
21 I can't speak for them, but to the
22 best of my knowledge.

23 MS. BURKE: Can a client
24 who has -- can a defendant who has

1 not been assigned an attorney come
2 to you to ask for attorney
3 assignment prior to his arraignment
4 date; if he knows he has a ticket
5 and he has a summons to appear on
6 May 1st, can he come to you on April
7 30th and say, I want a lawyer
8 because I want to speak to him about
9 my case prior to --

10 JUDGE HISERT: I --

11 MS. BURKE: --

12 arraignment --

13 JUDGE HISERT: -- I'm
14 not -- I'm only a part-time Judge,
15 so I'm not in court every day. I'm
16 not there. I'm not available every
17 day.

18 MS. BURKE: Okay. If he
19 came on the day that you -- your
20 D.A. day --

21 JUDGE HISERT: Okay.

22 MS. BURKE: -- knowing
23 that his D.A. day is the next D.A.
24 day --

1 JUDGE HISERT: Okay. If
2 he happens to get me in court, I
3 would have -- I would give him a
4 Financial Affidavit, ask him to
5 complete it, probably, and return
6 with it on the next court day.

7 MS. BURKE: So, he would
8 not be assigned an attorney until --

9 JUDGE HISERT: Not --
10 generally speaking the answer is no.
11 Is it possible that might happen,
12 yes. But it hasn't happened. I've
13 never had somebody in advance, that
14 I recall, that ever asked for that.
15 Because most -- most people
16 get appearance in most -- the
17 majority of the defendants get
18 appearancetickets and they come on
19 the first court date.

20 MR. KING: And is it --
21 even -- even though they might --
22 say on a misdemeanor case --

23 JUDGE HISERT: Okay.

24 MR. KING: -- are the --

1 are the defendants explained about
2 the -- the collateral consequences
3 of a plea?

4 JUDGE HISERT: Because
5 they are represented by an attorney
6 or an assigned attorney, is that
7 what you're asking?

8 MR. KING: In most
9 misdemeanors, are they assigned an
10 attorney?

11 JUDGE HISERT: Oh, yeah.
12 Uh-huh.

13 MR. KING: Most of them or
14 all of them?

15 JUDGE HISERT: Well,
16 they're either retained or assigned
17 because I give them that choice.

18 MR. KING: Okay. So --

19 JUDGE HISERT: It's rare
20 that they don't have an attorney.
21 Once in a while somebody says, I
22 want to represent myself.

23 MR. KING: So -- but --
24 but is it -- does -- I'm --

1 JUDGE HISERT: I know what
2 you're asking --

3 MR. KING: I'm trying
4 to -- I'm trying to find out, and I
5 don't know if you're the proper
6 person to find this out, but does --
7 does the attorney explain to the
8 client the possible collateral
9 consequences of them taking a plea?

10 For instance, like if you
11 have five of these --

12 JUDGE HISERT: Uh-huh

13 MR. KING: -- this can
14 wind up, you know, the -- the next
15 one could wind up --

16 JUDGE HISERT: In jail.

17 MR. KING: -- charge --
18 charging you with a felony.

19 MR. GRADESS: You might
20 lose your house, you might lose your
21 opportunity to go to college, you
22 might have immigration counts, that
23 sort of thing?

24 JUDGE HISERT: Well, no

1 those things in particular, but, yes
2 I'm -- yes? They are -- I would
3 have to say, that they're apprised
4 of future consequences, is that your
5 question, if they plea guilty to
6 that plea? Because -- you know, and
7 the D.A. is pretty addiment, that he
8 wants anyone charged with a
9 misdemeanor to be represented by an
10 attorney. He pretty much holds to
11 that standard. He said I want to
12 make sure that they understand their
13 rights. And that's very important
14 to him and it's very important to
15 me, that a misdemeanor -- I can't
16 ever remember putting anybody in
17 jail, I don't remember, on a
18 violation, to be honest with you --

19 MR. KING: But you see,
20 it's not -- it's not you --

21 JUDGE HISERT: It's just
22 not a problem --

23 MR. KING: -- it's not
24 you --

1 JUDGE HISERT: I know.

2 MR. KING: -- it's not
3 you. But five years down the line,
4 well, I picked up one this year, I
5 picked up one that year and --

6 JUDGE HISERT: Right.

7 MR. KING: -- and then
8 two years later I picked up another
9 couple. And I'm not -- well,
10 they're all spread out. And then
11 when -- and then when they get a
12 little serious case and all those
13 other cases come up, and they
14 demonstrate the person is
15 incorrigible, doesn't want to follow
16 the law --

17 JUDGE HISERT: Uh-huh.

18 MR. KING: -- and -- and
19 the amount of sentencing in a more
20 serious case becomes, you know,
21 larger than normal.

22 JUDGE HISERT: That's --
23 that's very possible. I -- I have
24 to agree that the person who is

1 being charged with that misdemeanor
2 has been apprised of that. I -- I
3 don't know.

4 MR. KING: That day is
5 rare -- that's rare in New York
6 City, so --

7 (Laughter)

8 JUDGE HISERT: But it's
9 different up here in Schoharie, I
10 think it is. I don't know. I've
11 never been to New York City, but,
12 you know --

13 MR. GRADESS: We'd be
14 happy to take you for tour.

15 JUDGE HISERT: That's
16 okay. You're welcome to visit my
17 court, also.

18 MR. GRADESS: Well, I
19 don't know.

20 I've got a quick question
21 for you. Something you said
22 earlier, is there ever a time when
23 the policy -- where people say we're
24 not going to have a jail sentence on

1 a misdemeanor and, therefore, that
2 person doesn't get a lawyer?

3 JUDGE HISERT: No.

4 MR. GRADESS: Okay. Any
5 other questions --

6 JUDGE HISERT: Not -- not
7 that I'm aware of.

8 MR. GRADESS: That's good.
9 And the eligibility form that you
10 use, is it something that was given
11 to you? It was there when you came?
12 You invented it?

13 JUDGE HISERT: No.

14 MR. GRADESS: It's always
15 been?

16 JUDGE HISERT: It's always
17 been.

18 MR. GRADESS: So, it's
19 certainly at least a decade old?

20 JUDGE HISERT: Oh, yes.

21 MR. GRADESS: Okay. Good.

22 Are there any other
23 questions? Did you want to say
24 something?

1 JUDGE HISERT: No. That's
2 all right. I'm fine.

3 MR. KING: Would she look
4 at the --

5 MR. GRADESS: Oh, yeah.
6 I'm sorry. We would like you to do
7 one other thing.

8 JUDGE HISERT: Okay. Did
9 you give me one of these?

10 MR. GRADESS: Yeah. It
11 would help us. Did you get a chance
12 to look at those standards?

13 JUDGE HISERT: This here?

14 MR. GRADESS: Yes.

15 JUDGE HISERT: I was
16 briefly reviewing it when I was
17 sitting around.

18 MR. GRADESS: We'd very
19 much love you to comment on that, if
20 you had any thoughts about it.

21 If you want to take a
22 minute and look at it, that would be
23 terrific. Although, I think you're
24 reading the Third Draft and you

1 should be reading from the Fourth
2 Draft.

3 JUDGE HISERT: Oh, I'm
4 sorry.

5 (The Witness complying
6 with request.)

7 JUDGE HISERT: That it's
8 very thorough.

9 MS. BANKS: Well, thank
10 you.

11 MR. GRADESS: Thank you.
12 Well, that's what we're aspiring to,
13 anyway.

14 JUDGE HISERT: Yeah,
15 really, it -- it certainly looks
16 very complete.

17 MR. GRADESS: We would
18 really like to thank you for coming
19 in. It's been very helpful --

20 JUDGE HISERT: Thank you.

21 MR. GRADESS: -- and I --
22 you really know your court, and I
23 appreciate how you presented it to
24 us.

1 MS. HATHAWAY: Yes.

2 JUDGE HISERT: Thank you
3 very much. Thank you.

4 MR. GRADESS: Thanks for
5 coming.

6 JUDGE HISERT: You're
7 welcome.

8 MS. BANKS: Thank you.

9 JUDGE HISERT: You're
10 welcome.

11 MR. GRADESS: Okay.
12 Rebecca.

13 All right. Our next
14 witness is Rebecca Thillet, and she
15 is testifying here in her individual
16 capacity, not as a representative of
17 any organization.

18 Welcome.

19 MS. THILLET: Thank you.
20 Do I start or do you?

21 MR. GRADESS: Yeah. We're
22 here to listen to you.

23 MS. THILLET: Okay.

24 TESTIMONY OF REBECCA THILLET:

1 MS. THILLET: My name is
2 Rebecca Thillet. And the experience
3 that I've had is mainly in Family
4 Court. The agency that I work for,
5 I work with families in crisis.
6 And, so, there have been occasions
7 when I have gone to court with
8 family members as a support for
9 them. I do have a lot of families
10 that even if I haven't actually gone
11 to court, they have situations in
12 court, mostly dealing with custody,
13 visitation, things like that.

14 And there is -- I guess
15 there's a few particular cases that
16 I wanted to talk about, and I was
17 hoping the people involved in those
18 cases were going to be able to
19 testify today and I don't think they
20 were able to make it. So, I'm not
21 going to use their names.

22 The one case, I'll call
23 her "Mary," okay?

24 MR. GRADESS: Mary it is.

1 MS. THILLET: I've been to
2 court a number of times with this
3 mother. She was -- she had -- and I
4 don't know how much of the details
5 of the case that I need to talk
6 about, but I guess --

7 MR. GRADESS: As much as
8 you feel comfortable about

9 MS. THILLET: -- okay. To
10 make the -- yeah. To make the
11 point, I guess I have to go into
12 some kind of detail --

13 MR. GRADESS: The thing
14 we're particularly interested in is
15 the relationship between clients and
16 lawyers, and whether or not the
17 lawyers are adequately representing
18 the clients --

19 MS. THILLET: Uh-huh.

20 MR. GRADESS: The good
21 ones, what they do; and the
22 difficult ones, what they do, too.

23 MS. THILLET: The
24 experience that I would say almost

1 all of the families that I work with
2 have had is, that they have had very
3 little contact with the lawyers who
4 represent them prior to court.

5 Some of them have shared
6 with me great frustration because
7 they feel that, you know, if they're
8 going into court on something as
9 important of whether they're going
10 to get to keep their children or
11 not, and the law guardian's involved
12 or their assigned counsel only meets
13 with them a half an hour, 15 minutes
14 before going into court, they don't
15 feel adequately represented.

16 They don't feel like
17 the -- the people who are defending
18 them have the time to -- to find out
19 exactly what's going on with their
20 case or to get to know them or the
21 details of the case well enough to
22 represent them well. And that's --
23 that's been the frustrations that a
24 number of families that I've worked

1 with have expressed to me.

2 There are a few cases,
3 families that I've worked with, who
4 have talked about desperately want
5 to change their assigned counsel
6 because they felt like they were
7 getting bad advice or no advice.
8 They felt like they were asking
9 questions that weren't being
10 answered. And they -- they weren't
11 able to change assigned counsel.

12 I think -- I know of one
13 who requested. What I've told them
14 to do, if someone comes to me with
15 something like that, there has been
16 a few that I've referred to your
17 office, and say at least ask
18 questions, and there was one who
19 requested for the Judge, the Family
20 Court Judge, to change the assigned
21 counsel. And they just wouldn't do
22 it. They didn't feel like there
23 were good enough reasons to do that.
24 She is still -- she is still in the

1 middle of a case that's being --
2 it's been ongoing for at least a
3 year. She has some very strong
4 concerns about the safety and
5 wellbeing of her children when they
6 have visitation with the father and
7 she -- no one is listening to her.

8 She's requested some
9 testing, she's requested anything
10 that could possibly help her and
11 she's said she feels like she's
12 getting nothing.

13 MR. KING: Can you qualify
14 "testing"?

15 MS. THILLET: Well, she --
16 she's asking her assigned counsel
17 what can be done to determine
18 whether my child is safe or not,
19 because my impression is that she's
20 not safe. She's got -- at this
21 point her daughter's fifteen to
22 eighteen months old. So, her
23 daughter can't come home and tell
24 her.

1 But she said that she sees
2 some clear behavioral problems. She
3 also feels that there is -- there's
4 indications that this child is
5 probably neglected when the child is
6 with the father.

7 And, so, she wanted to
8 know from her assigned counsel what
9 can I do? You know, is there any
10 kind of testing that can be done?
11 Is there someone that -- that can,
12 you know, see my child and, you
13 know, help me make a determination
14 because she's not a professional.
15 She doesn't know how to go about
16 doing that. She's asking for advise
17 from her lawyer and she said she's
18 getting nowhere.

19 She said her -- she feels
20 like she's being constantly
21 dismissed by her lawyer. She said
22 he has been insulting to her. You
23 know, he said things to her that --
24 that she -- really upset her, you

1 know, and she feels that they're --
2 that she couldn't believe that
3 someone who would speak to her in a
4 way that's really disrespectful, at
5 least from her point of view, would
6 be someone that can represent her
7 while in court.

8 So, that's -- that's one
9 of the cases. And -- and that
10 continues to be a problem with this
11 person. She is someone I hoped
12 would come here today, but I don't
13 think she was able to because of --
14 of work restrictions, I think --

15 MR. KING: How long has
16 this case been open?

17 MS. THILLET: I don't know
18 exactly --

19 MR. KING: About --

20 MS. THILLET: -- but I
21 would say the first time that she
22 called me expressing concern was at
23 least six months ago. So, it was --
24 you know, her daughter was just a

1 baby then. But, you know, she had
2 some experiences with the baby's
3 father that -- that -- that, I
4 guess, led her to believe that her
5 child wouldn't be particularly safe.
6 She said nobody's listening. Her --
7 her lawyer is not helping her try to
8 figure out, you know, how to best
9 handle the situation --

10 MS. BURKE: What about the
11 child's lawyer?

12 MS. THILLET: The law
13 guardian?

14 MS. BURKE: Yes.

15 MS. THILLET: She has
16 never mentioned to me that there is
17 a law guardian.

18 My experience with other
19 cases has been that -- that people
20 are not getting good responses from
21 the law guardians.

22 There's another case that
23 I've worked with, and this is the
24 one I initially started talking

1 about, she is a single mom who now
2 has her two children back with her.
3 Her daughters are now 10 and 11, I
4 believe. Custody was taken away
5 from her when they were around 3 or
6 4, in the same court, in Family
7 Court here. She fought for them
8 then, she was a victim of brutal
9 domestic violence that was never
10 recognized in the court. For a lot
11 of years he had custody. She only
12 saw them sometimes. She was
13 terrified of this man. All the
14 signs were there to show that this
15 woman was -- was a victim of -- of
16 domestic violence. And it was -- it
17 was never addressed, never
18 recognized within -- within the
19 process of going to court, and so
20 forth.

21 It was just found out in
22 the past year that the father had
23 been sexually abusing the children
24 for all that time. And, so, now she

1 has custody back. And even in that
2 process, I went to court with her a
3 number of times, even in that
4 process she was treated more in
5 court like -- like now this is her
6 fault. How could she allow this to
7 happen. But yet, it was the court
8 that allowed that to happen. She
9 tried over the years, many, many
10 times to the get in touch with the
11 children's law guardian, and the law
12 guardian would not speak to her.
13 She had been expressing to the court
14 and the law guardian for years
15 there's something wrong. I know
16 there's something wrong. And then
17 finally when the child disclosed, he
18 went to jail. I think he's -- he
19 may be waiting for sentencing now,
20 I'm not sure, or sentencing has come
21 about.

22 But, now going back into
23 court to reestablish custody, now
24 the children are back with her,

1 there were a number of things that
2 happened. Again, her assigned
3 counsel didn't meet with her until
4 right before they went into court;
5 the day that she went to court. I
6 think her assigned counsel has over
7 -- over time been -- been more
8 supportive of her than I've seen
9 with other assigned counsels. But
10 she's still -- there wasn't --
11 there's not a lot of -- there's not
12 a lot of access. You know, the
13 things that she was dealing with
14 were -- were pretty devastating
15 things for her family.

16 Through the process of
17 going to court there were forensics,
18 they ordered forensics for -- for her
19 and her children. And, yet, she was
20 told that she had to pay for that.
21 There were no -- she had no
22 resources. This is a single mom who
23 had a very low paying job.

24 And -- so, she -- she was

1 told she had to pay for that. She
2 struggled to do that. We tried to
3 get her some help from the New York
4 State Crime Victims Board. And I
5 think there's -- there's been some
6 things that have come through with
7 that.

8 But all the way down the
9 line in this case, instead of
10 getting the support and help she
11 needed from the system, both
12 assigned counsel and even within
13 Family Court, she got the opposite.
14 And -- so her daughters were -- were
15 put in a position where for years
16 they had to deal with that kind of
17 abuse.

18 That's a case that, I
19 think, is -- is now finally -- she
20 has full custody of the kids. But
21 even after that happened, going back
22 into court with him in jail for
23 sexually abusing the kids, they
24 still were -- were treating her as

1 though that was her fault.

2 I stood up in court and
3 said it -- it appears to me that
4 there was absolutely no recognition
5 that this woman was the victim of
6 domestic violence. And that was --
7 that should have been clear to
8 everyone. She did talk about it a
9 little bit. But it -- it was a very
10 difficult case to try to get support
11 for because everywhere else she
12 was -- she wasn't getting any kind
13 of support. She wasn't -- her
14 assigned counsel I think did what he
15 could within -- with the system
16 that's here in Schoharie County, but
17 it wasn't --

18 MR. GRADESS: What did you
19 mean by that last -- what does that
20 mean "within the system that's here
21 in Schoharie County?"

22 MS. THILLET: I guess the
23 impression that I've had in my --
24 and -- and particularly in that

1 case, was that nobody was listening
2 to her. And nobody -- was when I
3 said that in court, and there were
4 other things to indicate that, that
5 wasn't addressed at all. It was
6 just ignored in the courtroom. She
7 was treated like the one who had
8 almost caused this situation, when
9 it was that court and that Judge who
10 had given custody to the father.

11 And, then, even as we went
12 to court they would bring the father
13 in. He was in the jail. They would
14 bring him in. Things are allowed to
15 happen. Like, she was sitting in a
16 chair, they went into -- I think it
17 was the Judge's chambers. And he
18 was allowed to walk right behind her
19 and pushed her chair. But for some
20 people that might not be any big
21 deal. For a woman who's been a
22 victim of domestic violence from
23 this man, the brutality that he --
24 he showed her and then the abuse

1 that he gave her -- her children,
2 that was a horrible situation for
3 her to be in.

4 And, in fact, there was no
5 recognition of that. There was not
6 sensitivity to how -- to how, you
7 know, that could have been handled a
8 little bit better.

9 And I think it's just that
10 they're going to do -- they're going
11 to handle things the way they're
12 going to handle it and it just
13 doesn't matter.

14 I don't know, did that
15 answer the question?

16 MR. GRADESS: Yeah.

17 MR. KING: Let me ask,
18 when you say that they meet with
19 them a half an hour or 15 minutes
20 prior, does that mean that they meet
21 with them for a half an hour?

22 MS. THILLET: No. Well,
23 not from what folks are sharing with
24 me. No.

1 MR. KING: But if -- how
2 long do they meet with them
3 actually, about?

4 MS. THILLET: I don't know
5 if I can answer that. I guess it
6 depends on the case. I think two of
7 the cases that I was actually a
8 witness to, I would say they talked
9 for 5, 10 minutes.

10 And what people are
11 sharing with them is that's --
12 that's what's happening.

13 MR. KING: The going rate.

14 MS. THILLET: That's --
15 that's pretty much. Yeah.

16 There was a time, years
17 ago, when I worked for a local
18 lawyer who sometimes had law -- he
19 was assigned law guardian and he was
20 law guardian for -- for some cases.
21 And it -- it just amazed me that
22 children who -- you know, whatever
23 he had to say, once he went into
24 court, was probably pretty much what

1 the Judge was going to go along
2 with. It carried so much weight,
3 and yet -- and he did meet with
4 children in his office. But a lot
5 of times it was on the day of court,
6 in his office, in those surroundings
7 and then go into court and make
8 recommendations about what should
9 happen with the children. And it
10 just seemed to -- I just -- I could
11 not believe it. That something that
12 was that important, how can
13 children -- how can you determine
14 what's best for children in a
15 setting like that?

16 My assumption before then
17 was that if someone's a law
18 guardian, they're going to take the
19 time to go to the child's house, see
20 them in their own environment, talk
21 to them and -- and develop some kind
22 of relationship to determine what's
23 best for them. And, you know, maybe
24 that's unrealistic. But it seems

1 like that's the only way that --
2 that a law guardian could make --
3 could make a statement of -- about
4 what's best for a child.

5 So, it seems like the
6 amount of time that they're spending
7 with the people they're making
8 recommendations about, that's been
9 an ongoing complaint of every family
10 that I've ever worked with, that has
11 had cases like this in court here.

12 MR. GRADESS: You would --
13 you had three cases -- I'm sort of
14 holding back from asking questions
15 because you had three cases you
16 wanted to describe, I thought.

17 MS. THILLET: Actually,
18 there was another one who, I think,
19 already came and talked about it
20 this morning.

21 MR. GRADESS: Put this in
22 context for me, if you will. I
23 mean, we've been here quite a while,
24 listening to stories, and these are

1 the themes -- this -- this theme of
2 spending very little time with
3 clients has been a part of all of
4 it. There has been a -- kind of
5 aspect of real clumsiness associated
6 with how both the lawyers and the
7 courts seem to deal with domestic
8 violence.

9 And I just sort of want to
10 know what you think is -- what's the
11 overarching problem here? Is it the
12 lake of training? Is it
13 cognithisitence (phonetic spelling)?
14 Is it too many men? What is it?

15 MS. THILLET: No, because
16 I think men can be just as educated
17 and sensitive to those matters as
18 anybody else, but it's a matter of
19 desire. You can get all the
20 training in the world, but if you're
21 not open to that training and not
22 really taking it in, it doesn't
23 matter. So, I think it's probably a
24 combination of things.

1 My impression has been
2 that the people who need the
3 training most are people who don't
4 think there's a problem, who don't
5 think there's any reason to get the
6 training. You know, they
7 wouldn't -- I just -- seems like
8 there's just a lack of sensitivity
9 to issues around domestic violence.
10 And I think it's probably a
11 combination. It's -- certainly
12 training would be helpful, but if
13 someone doesn't recognize that
14 there's a need for training and
15 doesn't recognize that they need to
16 be open to it, training's not going
17 to do any good.

18 MR. GRADESS: I -- I
19 understand there's been a discussion
20 of having an institutional office in
21 the County, a defender office for
22 you to -- have you been a part of
23 those discussions at all?

24 MS. THILLET: No.

1 MR. GRADESS: Has that
2 been -- has there been any
3 discussion in the domestic violence
4 community about the creation of an
5 institutional office, that would be
6 made more aggressive on this issue?

7 MS. THILLET: I don't know
8 that. Probably folks from Catholic
9 Charities who work with the domestic
10 violence problem would probably know
11 better than I would. It's not
12 anything I've heard about, but that
13 doesn't mean it's not happening.

14 MR. GRADESS: If you
15 could -- we also had some testimony,
16 actually, from Catholic Charities
17 earlier about the -- the lack of --
18 describing respondent counsel in
19 Family Court; lawyers for women, who
20 failed to sort of take advantage of
21 them as a -- as a resource or as an
22 agency.

23 And -- and I wonder if you
24 could tell us a little bit, for the

1 record, about the Family Connections
2 Project; what it used to do. What
3 happened to it.

4 MS. THILLET: Well, what
5 happened to it was it lost funding,
6 so it's gone.

7 MR. GRADESS: Who had
8 funded it before?

9 MS. THILLET: I'm not sure
10 exactly what the funding stream was.
11 I think the money -- I'm not sure.

12 MR. GRADESS: Well, that's
13 okay. Tell us what the project did
14 and how -- what you think of it.

15 MS. THILLET: Oh, I
16 thought it -- it was of so much
17 value in this county.

18 We used to get -- before
19 that program was established, Family
20 Connections Project gave folks a
21 place to have supervised visitation,
22 but it gave them so much more than
23 that because there were so many
24 support services there that were

1 available for families. And it was
2 -- it was a place that they did
3 everything they could to make it as
4 comfortable for families to come and
5 -- and have that kind of visitation.

6 Before that was
7 established, we used to get calls
8 all the time. I used to get calls
9 from folks who were saying I'm
10 ordered -- you know, we have
11 supervised visitation, we have
12 nowhere to have it. And now we're
13 getting the calls again now that
14 Family Connections is gone. Because
15 there was nowhere to have it. You
16 know, so people were going to, like,
17 McDonald's, or somewhere like. And
18 it's that a -- I don't know, it's
19 such an artificial situation to have
20 visitation. Also, the problem then
21 is appropriate supervision, if a
22 supervisor is necessary for
23 visitation to be safe and for it to
24 go the way that it should, if

1 there's not a place for it and not
2 people who are there, giving that
3 visitation, then sometimes
4 supervised visitation happens in a
5 place that's not always that safe,
6 or the situation was not always that
7 safe.

8 So, that program was one
9 that -- that is really missed in
10 this county.

11 There are a lot of people
12 who took advantage of it, who now
13 call and say, what are we supposed
14 to do now?

15 You know, they could not
16 believe that there funding lost.

17 I worked in Human Services
18 and we've lost funding for a number
19 of other things that were very good
20 over the past few years. It wasn't
21 just that one. But that one is
22 particularly missed. Because, then,
23 what do people do who -- who took
24 advantage of that? They had a safe

1 place to go, where they had the
2 support of environment, they also
3 had -- there was staff there who
4 provided so many other resources to
5 them and made them aware of other
6 resources in the community that
7 might help, you know, whatever their
8 family situation was. And that's
9 all gone now. So people are left --
10 there's not another service like
11 that in the county, so that service
12 is just gone.

13 MR. GRADESS: Thank you.
14 Have you had a chance to look at our
15 standards?

16 MS. THILLET: Yes.

17 MR. GRADESS: Do you have
18 any thoughts that you'd like to
19 share on -- about those?

20 MS. THILLET: I think -- I
21 think they're wonderful. And I
22 think a lot of people would assume
23 that something like this is already
24 in place; that this -- it makes

1 sense. It's what I think anybody
2 should expect if they're in need of
3 representation. It's very thorough.
4 I think it's -- I think it's
5 something that I would definitely
6 support, I'd want to see in place.

7 And I think some of them,
8 especially looking at some of the
9 things that are here, number two
10 says (Reading) "Listen to them and
11 represent them with compassion,
12 dignity and respect." I heard that
13 over and over and over again from my
14 families; that they feel like not
15 only are they not respected, they're
16 outwardly disrespected through the
17 court system.

18 And a lot of the families
19 I work with, it's not only the court
20 system they're dealing with, they're
21 dealing with going to the Department
22 of Social Services, having very low
23 incomes, having to deal with all the
24 things that go along with that, and

1 all the way down the line; in
2 accessing services that they need.
3 They run into -- there's
4 certain individuals in the agencies
5 in this county who are absolutely
6 wonderful and do everything that
7 they can to -- to treat people just
8 in this way. But this a what I hear
9 particularly from people who have --
10 who have to go through the court
11 systems or Family Court; that they
12 feel like they're totally
13 disrespected, the access isn't there
14 and they -- but they feel like they
15 have nowhere to turn. Where else
16 are they going to go? This is the
17 system they have. The people in
18 that court have so much power over
19 what happens in their lives; what
20 happens to their children, what
21 happens to their families.
22 They're -- they're, you know, in a
23 situation where there's nothing else
24 they can do --

1 MR. KING: I mean, you may
2 not be able to answer this question,
3 but has anybody ever brought this up
4 to the legislators? You know,
5 Congressman, the State legislators,
6 the Assembly --

7 MS. THILLET: Not that I
8 know of --

9 MR. KING: -- you know,
10 about -- you know, about what goes
11 on in the Family Court system and
12 domestic violence?

13 MS. THILLET: Not that I'm
14 personally aware of. I would
15 imagine that -- and -- and all of
16 us, depending on our funding stream,
17 have certain restrictions on what
18 kind of lobbying we can do. But I
19 would imagine that, you know, some
20 of the people from domestic violence
21 have certainly done what they could
22 to try to say, you know, there's a
23 real need here.

24 MR. KING: Has -- I mean,

1 has any of the -- the defendants --

2 MS. THILLET: Not that I
3 know of. And the -- the families
4 that I deal with would feel like --
5 I think that would be very
6 intimidating to them. They would
7 feel like nobody's going to listen,
8 anyway because that's been their
9 experience here.

10 MS. BANKS: And there
11 would be repercussions if they were
12 found --

13 MS. THILLET: That's --
14 and that's one thing that -- that
15 people are very afraid of. They
16 look at this system -- there's an
17 impression of -- of the Family Court
18 system, and I know I've heard people
19 say this about the Criminal System,
20 as well. I don't have as much
21 personal experience with that, but
22 this is like kind of an old boy's
23 network and all the lawyers know
24 each other, the Judge knows

1 everybody, and it's just whatever's
2 going to happen is going to happen
3 and there's nothing they can do
4 about it. That's how people are
5 feeling. So, that it certainly
6 makes them hesitant. These are
7 people who have tremendous power in
8 their lives. So, they're going to
9 really hesitate to do or say
10 anything that might -- that might
11 bring them some bad repercussions.
12 Yeah. I don't know that they feel
13 they can do that.

14 MR. GRADESS: But we have
15 sort of gotten the feeling that
16 people have been reticent in
17 Schoharie County to come out and to
18 talk because there will be
19 consequences.

20 MS. THILLET: Yep.

21 MR. GRADESS: And do you
22 think it's more than just this is a
23 small community?

24 MS. THILLET: Well, I

1 think that's a part of it. I'm from
2 New York City, so I had a lot of
3 adjusting to do when I moved here.
4 I think that's a part of it, but
5 it's -- I've talked to some other
6 people in the community who's lived
7 in other small communities and they
8 said Schoharie County was a little
9 unique in that regard --

10 MR. GRADESS: So, what are
11 they --

12 MS. THILLET: -- that it
13 is a -- particularly a closed -- a
14 closed kind of a place. Closed kind
15 of system.

16 I'm trying to think -- all
17 I can think of is narrow minded, but
18 -- and, you know, that might not be
19 fair.

20 MR. GRADESS: We heard it
21 described --

22 MS. THILLET: I don't
23 know. I guess it is --

24 MR. GRADESS: -- and I'll

1 just ask you, we heard a description
2 this morning from a witness who
3 indicated that she had four lawyers,
4 none of whom had done anything.
5 She's now on her fifth, who is --
6 she's very happy with.

7 MS. THILLET: Uh-huh.

8 MR. GRADESS: And one of
9 things that she described for the
10 previous four lawyers is, but when
11 they came into court none of them
12 looked the Judge in the face. She
13 described them as being sort
14 of puppy like, looking down at the
15 table. And one of the differences
16 with her current lawyer is he looks
17 the Judge right in the eye.

18 Does that ring true to you
19 in terms of your experience and
20 observations of the lawyers?

21 MS. THILLET: In a way. I
22 don't think I get the impression
23 that they're -- that they are
24 intimidated in the court, just that

1 they kind of know how it's going to
2 go and -- and it's what is expected
3 and --

4 MS. BANKS: They're going
5 to lose?

6 MS. THILLET: Yeah. Yeah.
7 And that they're just --
8 unfortunately it -- it has seemed
9 like they're just kind of like going
10 through the motions in some -- in
11 some cases. That's the feeling I
12 get. They're just kind of going
13 through the motions --

14 MS. BANKS: Like they
15 don't care?

16 MS. THILLET: -- but
17 everybody kind of knows what's going
18 to happen, anyway. Yeah. And
19 certainly there's -- not all of
20 them, but some of them.

21 It's just -- I -- I have
22 no idea whether lawyers are --
23 whether they have to do that kind of
24 work, whether they have to do a

1 certain percentage of that kind of
2 work, so they just kind of do it,
3 get it over with and don't put a
4 whole lot of effort into it.

5 MS. BURKE: Do you think
6 the lawyers perpetuate this feeling
7 of hopelessness among their clients?

8 MS. THILLET: Yes. Not
9 every single one of them, because
10 there have been a few that -- well,
11 I know -- I know of two. But my
12 experience has been yes. And that's
13 what families are sharing when they
14 -- when they talk to me. And they
15 feel like they're -- there's nowhere
16 they can go. Who are they going to
17 turn to? They really feel like
18 nobody's going to listen.

19 And, so, that was -- that
20 was like our selling point for this.
21 Like, now somebody's going to
22 listen. Please come in. And still
23 people were scared to come.

24 MS. BANKS: I certainly

1 admire those that do.

2 MS. THILLET: Yeah.

3 Because I think they -- that those
4 that have, have come forward, giving
5 all that, knowing that, you know,
6 something that could affect them
7 personally. It's a scary thing.

8 MR. GRADESS: Any other
9 questions?

10 Anything you want to
11 share?

12 MS. THILLET: That's it.

13 MR. GRADESS: Thank you
14 very much --

15 MS. THILLET: I'd love to
16 see changes, and I would love to
17 see -- this instituted (indicating).
18 I think it's -- it's -- it's, at the
19 least, what people should expect,
20 anyway.

21 MR. GRADESS: Thanks for
22 coming.

23 MS. THILLET: Thank you.

24 MS. BANKS: Thank you.

1 TESTIMONY OF GARY ARNOLD:

2 MR. GRADESS: Thank you
3 for coming. Could you tell us what
4 -- what brings you here and what
5 you'd like to say.

6 MR. ARNOLD: Yeah. I feel
7 our whole judicial system here is
8 corrupt. They're all in cahoots.

9 I'm trying to say it
10 without saying slang words like --
11 it's just -- it just bites. They --
12 it's just like the woman that was
13 very well spoken before me was
14 saying --

15 MR. GRADESS: Just use any
16 words that you want and talk the way
17 you would if we were at your kitchen
18 table, not unless --

19 MR. ARNOLD: No, no. No,
20 I wouldn't swear. No, I -- I -- I'm
21 very honest. Both my parents are
22 Marines. I was taught to tell the
23 truth, you know, and -- and just
24 take my knocks as they come if, you

1 know, you're wrong, you're wrong.
2 And if there's things that aren't
3 correct, no matter if it's me or
4 somebody else that does them, you
5 just -- you just say what's right
6 and you get it corrected. You know,
7 you tell the truth.

8 I need questions.

9 MR. BURKE: What's wrong?

10 MR. ARNOLD: With --
11 well --

12 MS. BURKE: With the
13 system -- what makes you think or
14 say that the system is corrupt?
15 What things have you seen, heard,
16 experienced that makes you think
17 it's corrupt?

18 MR. ARNOLD: Well, you
19 can't -- you can't go in and tell
20 them the truth. You -- like so far
21 in the past I've gotten ignored when
22 I'm talking. Then I would talk --
23 then I was told this last time that
24 I needed an attorney present, I

1 couldn't speak for myself. And, so,
2 I had to file out -- instead of
3 hiring an attorney, I said, well, I
4 don't have the money. And, so, they
5 court appointed me an attorney. And
6 then I went to court with him, which
7 he was totally incompetent, wasn't
8 doing anything for me. And they --
9 and they all want to fight with me.
10 I'm telling them what's -- what's
11 what. I'm doing my own case. I've
12 been on the web. I've been reading
13 things. I'm -- I'm no way an
14 attorney, but I'm not -- but I'm not
15 stupid, but I'm not super
16 intelligent. I'm not an attorney.

17 And -- so anyone that
18 doesn't have a mind is really going
19 to get screwed in this county, I
20 mean, big time. You know, I do.
21 And I'm not afraid to say anything,
22 either. I don't care. I go out and
23 they shoot me down, I don't care.
24 I'm at least going to say what I

1 want to say.

2 MR. GRADESS: You've been
3 charged with a crime?

4 MR. ARNOLD: Yeah. A
5 DeeWee (sic) and a speeding
6 ticket --

7 MR. GRADESS: Okay.

8 MR. ARNOLD: -- but --

9 MR. GRADESS: And the
10 DeeWee (sic) is currently pending in
11 court?

12 MR. ARNOLD: Yeah. Yes.

13 MR. GRADESS: And you've
14 been appointed a lawyer from this
15 community?

16 MR. ARNOLD: No. We don't
17 have any public defenders here, from
18 what I've been told. The first one
19 I got was --

20 MR. GRADESS: You get an
21 assigned lawyer?

22 MR. ARNOLD: Yeah, yeah,
23 yeah, yeah, yeah.

24 MR. GRADESS: Yeah. From

1 Schoharie County?

2 MR. ARNOLD: No. They've
3 both been out from Schenectady.

4 MR. GRADESS: Okay. And
5 do you talk with them? Do you meet
6 with them? Tell us what the
7 relationship is like.

8 MR. ARNOLD: Well, the
9 first one was actually, totally
10 incompetent. I reported him to,
11 I -- I guess it would be the bar. I
12 reported everybody to everybody I
13 could find on the net and with the
14 complaints form I could load down.
15 And I wish I had my packet with me,
16 I left it at home, but -- but that's
17 neither here nor there.

18 And, then, that's the one
19 that -- John Isman (phonetic
20 spelling), that -- said he was going
21 to make motions for me. I left the
22 court, then I went back in, they
23 told me I wasn't even supposed to be
24 there. That was about a week later.

1 And I said, well, yeah, I am because
2 this is the date I was supposed to
3 be here. And they said, no, your
4 last attorney withdrew, or whatever,
5 and you've been appointed a new
6 attorney. Your next court date --
7 or no. They didn't even give me a
8 next court date. Then I said, well,
9 what's his name? And they said Gary
10 Dislyle (phonetic spelling). And I
11 said, what's his number? And they
12 said, don't worry about it. He'll
13 contact you. But I looked him up on
14 the -- on the internet and got his
15 telephone number and finally
16 contacted him. And I'm noting
17 everything down in my calendar,
18 every day I call, the time and how
19 long until I get a call back. Every
20 letter I make copies of. I'm -- I'm
21 noting down everything. I'm going
22 to nail these people here.
23 They're -- they're -- they're
24 corrupt and they -- they just think

1 they can get away with anything.
2 All the -- all the police and the
3 court systems and these -- these --
4 it doesn't matter if it's our local
5 D.A.s, they're all in a little
6 circle. I'm sure they all have
7 coffee together and all that. And I
8 don't care. I mean, that's --
9 that's their thing, you know. I
10 mean, I know all the judges.
11 Everybody in this county knows
12 everybody. They know everything.
13 We all know when everybody's doing
14 anything, you know. And everybody
15 knows everybody.

16 And there is no real
17 justice here. I mean, you have to
18 -- you have to fight your own case,
19 basically --

20 MR. GRADESS: Sir, I take
21 it that part of -- are you
22 originally from here?

23 MR. ARNOLD: Not
24 originally. I've grown up all over

1 the United States --

2 MR. GRADESS: How long
3 have you lived here?

4 MR. ARNOLD: This last
5 tour, fifteen, sixteen years.

6 MR. GRADESS: So, part --
7 am I detecting as part of your
8 description of things here or your
9 observations, not only in your own
10 case, but of other people's cases?

11 MR. ARNOLD: Oh, yeah.

12 MR. GRADESS: Well,
13 without talking about your pending
14 case --

15 MR. ARNOLD: Oh,
16 definitely --

17 MR. GRADESS: -- talk
18 about some of these other cases or
19 what you've observed.

20 We're particularly
21 interested in -- the question that
22 Jamie had asked you had to do with
23 how do you draw your conclusion that
24 a person is incompetent or corrupt?

1 What -- what stuff do they do that
2 you're talking about? Because those
3 are kind of conclusions and we'd
4 like to know the facts that
5 underline them.

6 MR. ARNOLD: Well, as far
7 as -- I mean, I couldn't give you
8 specifics that happened to other
9 people except what I hear back, and
10 that's hearsay.

11 But, like, the last one
12 was saying, that they -- they just
13 feel like they're all Gods and
14 whatever they say goes. And you --
15 and whatever you say has no -- has
16 no meaning. It -- it's like, you
17 know, you're -- you're nothing to
18 them, you know. It's -- it's just
19 playing the little role. You go in
20 and the public attorneys or the
21 attorneys, they go back and they do
22 their documents and stuff like that,
23 and you're just sitting there and
24 you don't really have a say or do

1 anything.

2 MR. GRADESS: You feel
3 isolated in the courtroom?

4 MR. ARNOLD: Yeah.

5 MR. GRADESS: Left out of
6 the process?

7 MR. ARNOLD: Correct.

8 MR. GRADESS: Have you had
9 occasion to take a look at our
10 Standards?

11 MR. ARNOLD: No. I've
12 looked at my client rights, rights
13 in the courtroom, rights of the
14 attorneys, what --

15 MR. GRADESS: Well, why
16 don't you take a minute, take a look
17 at these and maybe you have some
18 comments on them --

19 MR. ARNOLD: Like what?

20 MR. GRADESS: In terms of
21 the experiences you've heard or your
22 own experience.

23 (Witness complying with
24 request.)

1 MR. ARNOLD: I'm having a
2 problem with the first thing. I --

3 MR. GRADESS: (Reading)
4 "Clients want a lawyer who
5 represents a person, not a case
6 file; who represents a client, not a
7 defendant."

8 MR. ARNOLD: Okay. Well,
9 that's a good point. That brings
10 back in my mind, when I was talking
11 with this new one that was appointed
12 to me, that I was talking -- I -- I
13 always ask questions about anything.
14 I asked him well, how much do you
15 get paid an hour? He goes sixty
16 bucks. And I said, so, you know, I
17 have all the time to talk to you
18 that I want? And he said, well, my
19 time is limited, you know. I said,
20 well you're getting paid for it.
21 And I -- I said, you know, and I
22 should have my time to talk to you
23 no matter how long it takes, to get
24 everything out that I want in my --

1 for my defense. And he said well, I
2 really don't care if you win or
3 lose, I get paid either way, you
4 know. Well, and I was like, well,
5 this -- this is not right. I said
6 -- I said, you have ethics and
7 standards that you have to go by
8 just like the court system, just
9 like the police. We all have laws
10 we have to follow. Nobody's above
11 the law. And it's really ticking me
12 off because everybody has to live by
13 standards and rules in life and --
14 and law. And -- and, you know, I'm
15 a law abiding citizen. You know,
16 I'm not an angel and I do things
17 wrong here and there, but, you know,
18 everybody's entitled to have a
19 defense and tell the truth. And --
20 and they have to do things right
21 just like we do, too. I mean,
22 everybody has to do it --

23 MR. GRADESS: So, you've
24 had questions that you wanted to ask

1 your lawyer and your lawyer didn't
2 take the time to answer them, is
3 that right?

4 MR. ARNOLD: Oh, yeah.
5 Yeah. And also, like, of this last
6 court meeting, I told him I wanted
7 to subpoena the -- the police
8 officer because they said that I
9 made a statement, they put the wrong
10 dates, they put the wrong times,
11 they put the wrong police officer
12 that I gave the statement to. And
13 he said, no. I want to file a
14 motion to suppress those, and stuff
15 like that. And I said -- he said,
16 I'm not -- I'm not subpoenaing any
17 cops because then you're going --
18 and I said, they're going to be
19 there, anyway. I said, you know, I
20 want them there. I'll cross examine
21 them, I'll rip them apart myself. I
22 said, I've been doing more on the
23 case than you have. You don't even
24 know what's going on. The D.A.'s

1 not up to speed on anything.
2 Because you can hear everything in
3 the courtroom. There's really no
4 privacy unless you go back in the
5 book room and then they ask you to
6 shut the door, or something, but --
7 it -- nothing goes anywhere here.
8 It's just ridiculous. And I'm not
9 letting it go on, and I don't care
10 if I do anything wrong and they lock
11 me up, I'm -- by talking --

12 MS. HATHAWAY: Let me ask
13 you, between the attorney that you
14 say that you're speaking to now and
15 the first attorney that you were --
16 that got paid, after that, that how
17 much longer did -- these -- did they
18 talk to you after they made those
19 statements, and you proceeded to go
20 on and stuff like -- you know, you
21 knew -- how long did they talk to
22 you after? Did they spend any more
23 time with you or did they leave
24 pretty soon after --

1 MR. ARNOLD: Okay. I'm
2 sorry. I got very confused by all
3 that.

4 MS. HATHAWAY: The first
5 one you said told you, you know, it
6 didn't matter because he got paid
7 anyway --

8 MR. ARNOLD: No. No.
9 That's this one. This current one.
10 The first one really didn't talk to
11 me hardly at all and --

12 MS. HATHAWAY: After you
13 told him about the standards and
14 what you knew about them, how much
15 longer did he, approximately, did he
16 speak to you? Did he leave you then
17 or cut you off?

18 MR. ARNOLD: Yeah. That
19 one, that was the one that said he
20 was going to file motions for me,
21 and then I left, and then the next
22 time I came back in for my court
23 meetings, which I wasn't advised by
24 anyone from anywhere; the attorneys,

1 the court -- and I had written them
2 all letters, too; the D.A. I have
3 all of my letters, copy of all of my
4 letters. I wrote everybody. I --
5 I -- I've made complaints to the
6 Judicial Board and the bar, I guess.
7 I have copies of all of those
8 letters, too. I -- I don't care --

9 MS. HATHAWAY: Did you get
10 any answers from any of them; from
11 any letters?

12 MR. ARNOLD: No -- oh
13 yeah. No. One of the --
14 Professional Ethic Standard people,
15 I think, it is. They said that they
16 were going to check it out. And if
17 they found that it was worth going
18 after, whatever, they would or --
19 which, basically, won't go anywhere,
20 either. I just know about things,
21 and nothing's going to go anywhere.

22 MS. BANKS: This was in
23 regards to your attorney complaint
24 to the Professional Ethics

1 Committee?

2 MR. ARNOLD: It's -- it
3 was the first one, yeah, that was
4 totally incompetent, didn't do
5 anything. I haven't reported this
6 one yet because then they'll just --
7 he'll -- he'll withdraw, then
8 they'll assign me another one and
9 nothing will go anywhere for, I
10 don't know how long. They'll try to
11 prolong this.

12 MR. GRADESS: Does all of
13 this come from your initial visit?
14 Did you initially desire to
15 represent yourself?

16 MR. ARNOLD: Well, yeah.
17 I went up in front of Nancy Hisert
18 and I said, you know, I want this
19 case dismissed on the merits and the
20 technicalities of the case. And she
21 said you have to be represented by
22 an attorney. Go over there and sit
23 down and fill out a Financial
24 Affidavit. I said okay, because I

1 do what the cops and the judges tell
2 me to do because what else do you
3 do?

4 MR. GRADESS: Well -- and
5 at that point did you begin forming
6 this -- I mean, did you feel
7 resentful at that time.

8 MR. ARNOLD: Oh, I felt --

9 MR. GRADESS: Did you ever
10 give the lawyer a chance, is what
11 I'm asking you.

12 MR. ARNOLD: Oh, yeah.
13 Yes.

14 MR. GRADESS: And, so,
15 what is the first thing that
16 disappointed you?

17 MR. ARNOLD: They don't
18 care. You're just another thing.
19 In this -- in this --

20 MR. GRADESS: Well, no --

21 MR. ARNOLD: Oh --

22 MR. GRADESS: -- Nancy
23 Hisert told you to go over there and
24 sit down, you fill out a form,

1 what's the next thing that happened?

2 MR. ARNOLD: I sat there
3 waiting, I don't know, an hour or
4 two, I don't know, until they told
5 John Isman that he was appointed my
6 attorney.

7 MR. GRADESS: And what's
8 the first thing he said to you?

9 MR. ARNOLD: I can't
10 recall that. But we went back and
11 talked a little -- basically, a
12 little bit.

13 MR. GRADESS: And what did
14 he say he was going to do?

15 MR. ARNOLD: You know, I
16 can't recall, and I'm not going to
17 make anything up. He basically --
18 he didn't do anything except waste
19 some of my time and withdraw from
20 the case. And I didn't even know.
21 I wasn't advised of it, or anything.

22 MR. GRADESS: Okay.

23 MR. ARNOLD: This system
24 here -- and -- and I'm sorry to use

1 language -- it bites. It's -- it's
2 no good, you know. It -- it doesn't
3 have any ethics, integrity. It's --
4 it needs dignity. It needs
5 integrity back into our -- our
6 community.

7 I mean, there's lots of
8 good people around here. It's --
9 it's, you know, not a bunch of brain
10 dead people. I mean, there's
11 intelligent and good people in this
12 county, and we need to have that --
13 we need a system here that -- you
14 know, and I like cops, and stuff
15 like that. You know, I mean, I have
16 nothing against anyone. I wanted to
17 be a cop when I was a little kid.
18 You know, but -- I'd be an honest
19 one, and I'd do what I said, and
20 I -- if I made a mistake, I wouldn't
21 be afraid to admit I made a mistake.
22 I wouldn't cover it up with a lie.

23 MR. GRADESS: Before we
24 let you go, what -- what are the

1 three -- if you could wave a magic
2 wand over Schoharie and get three
3 things that would make it a better
4 place in terms of the lawyers and
5 right to counsel and the court
6 system, what would they be?

7 MR. ARNOLD: Wow. I'd
8 make everyone honest, that would be
9 the first thing. That would be a
10 big one. Well, that would probably
11 cover it because if everyone was
12 honest they would do what they said
13 they would do, they'd be on time
14 when they said they'd be there and
15 there'd be no excuses and -- let's
16 see --

17 MS. LEWIS: May I add
18 something?

19 MR. GRADESS: Say what?

20 MS. LEWIS: May I add
21 something?

22 MR. GRADESS: Sure. Are
23 you together?

24 MR. ARNOLD: Yeah.

1 MS. LEWIS: Yes.

2 MR. GRADESS: Yeah.

3 MR. ARNOLD: Yeah. She's
4 witnessed everything --

5 MR. GRADESS: What's your
6 name?

7 TESTIMONY BY JOANNE LEWIS:

8 MS. LEWIS: It's JoAnne
9 Lewis.

10 A lot of it is, the county
11 it so small and so tight knitted,
12 it's like being in high school and
13 being in a click. And if you're
14 with the certain type you're not
15 going to get a ticket for anything.
16 You might get a little slap on the
17 hand, but you're going to walk away
18 with your license, you're not going
19 to have any repercussions from it.
20 If you're not in that click, you're
21 done. You're done. They'll just,
22 you know --

23 MS. BANKS: Like high
24 school.

1 MS. LEWIS: It's exactly
2 what it reminds me of in this
3 county. I'm not originally from
4 this county, but -- and when I first
5 came here I didn't know how long I'd
6 stay. But I ended up working in the
7 county. But I think it's horrible.

8 If you're friends with
9 this one and you're friends with
10 that one, you know, the heads are
11 turned. And that's -- that's not
12 good legal practice. I don't care
13 where you live. But in a small
14 community like this, it does make a
15 big difference. And everybody knows
16 it. Everybody knows it. Nobody
17 wants to say anything.

18 MR. GRADESS: Is there a
19 nature to the clicks? I mean, what
20 are the kind -- what click are you
21 guys in that's wrong? I mean, what
22 are the other people --

23 MS. LEWIS: Well, we are
24 not in any one, you know, where you

1 might be political officials that
2 golf together, drink together, who
3 knows what else together. I don't
4 know all of it, but that's some of
5 it. And it's okay for their buddies
6 to go out and drink and drive. I
7 know a lot of them.

8 MS. BANKS: The empowered
9 classes.

10 MR. ARNOLD: Yes. And
11 that's not right. They're no better
12 than I am. They're no better than
13 any of us.

14 They're just getting lucky
15 because heads are being turned.

16 Obviously, we all know
17 drinking and driving is wrong. And
18 I'm sure that he's learned his
19 lesson from this. However, what he
20 said he is entitled to good
21 representation, and he's not getting
22 it.

23 He'll call his attorney
24 and maybe a week later the attorney

1 will call, maybe.

2 MR. ARNOLD: Sometimes
3 it's been two or three weeks. I
4 have them all noted down on my
5 calender. I circle everyday that he
6 doesn't call, and I note when I've
7 called. And sometimes I've called a
8 couple of times and then I've
9 written letters, and -- and -- and I
10 write down. And I also stamp my
11 envelopes when received on the date,
12 and everything, to a -- answer to a
13 letter.

14 And which I have to write
15 him another letter because the
16 letter that I wrote him last, he
17 didn't seem to understand, even
18 being an attorney, I think he told
19 me 25 years, and I'm like, okay, so
20 I'm go to write down a letter like
21 I'm writing it to a first grader and
22 then maybe he'll be able to
23 understand it, line to line,
24 explaining every little thing.

1 And, you know, I don't
2 mean to put down first graders. I
3 mean, to put down the attorneys --

4 MS. BANKS: No. We
5 understand. I understand.

6 MR. ARNOLD: I'd rather
7 have a first grader defending me or
8 I'd rather defend myself, but I
9 can't -- I don't know how to file
10 the motions, or whatever. And
11 I'm -- and I'm sure, then, the
12 judges, which will just say, you
13 know, you're out of here anyway.
14 You didn't say this word right, or
15 something. I don't know.

16 I'll probably be locked up
17 pretty soon for just speaking, but I
18 don't care, you know, or they shoot
19 me out in the back woods, but I
20 don't really care.

21 MR. KING: It's not that
22 kind of a hearing --

23 MR. ARNOLD: Oh, yeah.
24 But once they get wind of this,

1 you're going -- this is a very small
2 knit community and everybody will
3 know about this --

4 MR. KING: Well, if they
5 do we will be -- if they did, we
6 would be interested in hearing --
7 hearing that -- that, you know, some
8 repercussions came out because of
9 you coming here --

10 MS. HATHAWAY: They're not
11 happy --

12 MR. KING: -- talking with
13 us --

14 MS. HATHAWAY: -- that
15 we're here doing this.

16 MR. ARNOLD: Oh, oh, I
17 doubt it. They don't like anything
18 being -- told in this county.

19 It reminds me of some old
20 movie "The Stepford Wives" and --
21 but, you know, it's kind of like the
22 Stepford County, it -- you know,
23 it's just a big click.

24 And -- and, you know, I --

1 like I said, I can understand people
2 being in -- friends and -- and
3 having, you know, groups, people
4 that associate with each other and
5 stuff, but it doesn't -- when you
6 have a job to do, you're supposed to
7 do it right, no matter what it is.

8 I've always done my jobs
9 to the best of my abilities, no
10 matter what I've done in my life, to
11 the best of my abilities, you know.
12 And -- and if I can't do something,
13 if someone says, can you do
14 something for me, and I can't do it,
15 I'll say, no, I'm sorry, I can't do
16 that job correctly because I don't
17 have that skill in that particular
18 thing, or whatever, you know. And
19 that's what these people should be
20 doing.

21 MR. GRADESS: Thank you.
22 Is there anything else, Mr. Arnold
23 or Ms. Lewis, you want to say?

24 MS. LEWIS: I can't think

1 of anything. The lawyer that he has
2 now acts as though, you know, it's
3 already -- you know, it's just a
4 job. He's already being paid. It's
5 not a win or lose. --

6 MS. BANKS: Go through the
7 motions?

8 MS. LEWIS: Absolutely.
9 And you can see it. It's written
10 all over his face. We were in court
11 Tuesday and, you know, he shuffled
12 his seat -- the guy was half dead --

13 (Laughter)

14 MS. LEWIS: It's awful.

15 MR. GRADESS: Well, thank
16 you, both.

17 MR. ARNOLD: Thank you.

18 MS. LEWIS: Thank you.

19 MR. ARNOLD: Thank you all
20 for listening I really, really do
21 appreciate it.

22 MS. HATHAWAY: Thank you
23 for coming.

24 MS. BANKS: Thank you for

1 coming.

2 MR. ARNOLD: Okay. Thank
3 you very, very much for listening.
4 This is great, you know --

5 MS. BANKS: Good. Do you
6 feel slightly empowered?

7 MR. ARNOLD: Well, I feel
8 that I was at least able to get
9 something off my chest. And I'm
10 going to keep calling and writing
11 letters to people -- well, first I'm
12 going to write another -- another
13 letter to this attorney and see if
14 he's going to do anything. I don't
15 know whether to, you know, withdraw
16 from him and try to represent
17 myself. I think it's called "Pro
18 Se," or what to do, because, you
19 know, I can beat the case. I've
20 gone through it. I've punched a
21 million holes through it. And --

22 MS. BANKS: You want your
23 day in court.

24 MR. ARNOLD: -- by the

1 rules of law I'm supposed to have
2 that opportunity. Exactly.

3 MR. GRADESS: Well, good
4 luck to you both.

5 MR. ARNOLD: Okay. Thank
6 you, all, very much. Have a good
7 day.

8 MS. BARNES: You, too --

9 MS. HATHAWAY: You, too.

10 (Off-the-record
11 discussion.)

12 TESTIMONY OF RHONDA WILTY:

13 MR. GRADESS: Hello, Ms.
14 Wilty.

15 MS. WILTY: Hello.

16 MR. GRADESS: How are you?

17 MS. WILTY: I'm very well.

18 Thank you.

19 MR. GRADESS: So, we've
20 been looking forward to hearing from
21 you, so thanks for being patient
22 with us.

23 MS. WILTY: That's fine.

24 MR. GRADESS: You know

1 what we're -- we're interested in
2 your perceptions of -- of how people
3 who are represented by appointed
4 counsel fair, what's good, what's
5 bad, what's in need of change, what
6 have you observed, that sort of
7 thing.

8 MS. WILTY: Okay. I can
9 speak through my experience that
10 I've had with the clients that I've
11 worked with; both at Head Start and
12 as the former director of the Family
13 Connections Project.

14 At Family Connections I've
15 provided -- my staff and I, provided
16 supervised visitation and access to
17 -- that was court ordered by Family
18 Court in Schoharie County, mostly.
19 There was other counties involved,
20 also, but it was mostly Schoharie
21 County, many of the parents, the
22 custodial parents, as well as the
23 noncustodial parents, that
24 participated in the program, talked

1 a lot to me about their concerns
2 regarding the representation that
3 they had during Family Court
4 procedures that ordered either
5 supervised visitation or monitored
6 access to their children.

7 Most of what I heard was
8 that the defenders or the counsel
9 that they were appointed, they've
10 never met with them prior to going
11 into court. Some of them spoke to
12 them very briefly on the phone, but
13 they didn't really have a lot of
14 contact with counsel so that they
15 can get a real clear picture of what
16 was happening in their cases.

17 We found this, too, with
18 some of the law guardians that were
19 appointed for the children that came
20 to my -- my site. A lot of the law
21 guardians had never even talked with
22 the children that were there to --
23 to find out what their -- you know,
24 what their -- for their input as to

1 what they had wished would happen or
2 what they would like to see happen.
3 Many of them never met with them,
4 never spoke with them. And not
5 everyone. Some of them were really
6 good and they were great and -- when
7 they worked, others didn't have any
8 contact with the child, whatsoever.
9 They were just names on paper.

10 And in part -- in part of
11 my program, what we did is during
12 visits with the noncustodial parent,
13 we would make observations. It was
14 our job to observe what was
15 happening, write down our
16 observations. And, then, when
17 people went back to court, they
18 would call these observations in so
19 that they could see how the
20 supervised visits were proceedings.

21 A lot of times we had
22 concerns with what was happening
23 with the children and the parents.
24 And I would attempt to contact the

1 law guardian on behalf of the
2 children so that they could know
3 what was going on, and many, many
4 many, most, I would say, did never
5 -- never returned my phone calls or
6 never contacted me to find out how
7 things we're going.

8 What I was told by the
9 parents of the children was when
10 they got ready to go back into the
11 court the law guardian would show up
12 and say, so, how are the visits
13 going? But not really be able to
14 provide any input to the court
15 regarding this because they didn't
16 really know what was happening.

17 Most of the -- a lot of
18 the cases, the majority of the cases
19 that we had at Family Connections
20 Project involved some type of
21 domestic violence situation. Most
22 of the supervised visitation was
23 ordered because there was -- had
24 been domestic violence within the

1 family, between the parents.

2 And I think that the
3 project worked as well as it did
4 because we had such a good
5 partnership and relationship with
6 our D.V. Unit in this -- in this
7 county.

8 What I see happening a
9 lot, I think, with a lot of the
10 clients that I've worked with is
11 that when there's domestic violence
12 involved in the family, the
13 representation by public -- by
14 counsel that's been appointed,
15 there's not a lot -- they don't get
16 a lot of background regarding what's
17 happening. So, when they go into
18 Family Court, decisions are made by
19 the Judge without fair
20 representation of what actually
21 occurred.

22 I think that I see that at
23 Head Start, too, with a lot of our
24 clients at Head Start. Sometimes

1 it's just -- we run into each other
2 all over the place. And we hear
3 that a lot, is, you know, oh, we
4 have to go back to Family Court
5 again, but I'd said, we'll you've
6 talked to your lawyer? Well, we
7 haven't even talked to them, and
8 they haven't called us. They said
9 to met us there a half an hour
10 before we got into court. That's
11 what we hear a lot of; they're going
12 to meet us there a half an hour
13 before we go into court.

14 How could you present your
15 concerns in a half an hour to
16 someone to have them be able to
17 represent you appropriately within
18 the court? So, I see a lot of that.

19 I'm trying to think what
20 to tell you. Those are my main
21 concerns as to the Family Court
22 process out here and the
23 representation that people receive
24 there, also.

1 MR. KING: Has anybody --
2 has any attorney ever contacted you
3 to get some background material, I
4 mean, background information about
5 the parent and the child, you know?
6 Like, say, it's a custody
7 case, you know, they were asking if
8 the child is being abused? Or has
9 the child ever complained to you? I
10 don't know if that's legal for them
11 to ask that, but has anybody ever
12 come to you or --
13 MS. WILTY: Very few.
14 Very few counsel ever contact us.
15 There are a couple of law guardians
16 in this county that do an excellent
17 job, and they would keep in contact
18 with me quite frequently. The rest,
19 no.
20 And all -- if there was --
21 a particular custody case that I'm
22 thinking that was in and out of
23 court for 12 years, and when we
24 finally got the -- the case for

1 supervised visitation, I attempted
2 to contact that law guardian I don't
3 know how many times, that was court
4 appointed, just to talk to him about
5 what the children were saying to me
6 during visits so he could understand
7 where they were coming from. The
8 man never, never returned my calls.
9 Now, this court -- this has been in
10 court for 12 years. You would think
11 somebody would want to come to some
12 kind of resolution for these
13 children, as well as for the
14 parents. The man never contacted me
15 at all.

16 The lawyer that was not
17 appointed, who was hired by one of
18 parties, of course, he kept in
19 constant contact because he wanted
20 to know what was going on.

21 But there was no way that
22 this man, who was appointed to
23 represent these children, was going
24 to call me back. I never heard from

1 him, ever.

2 MR. KING: Have you ever
3 had any molestation or any sexual --

4 MS. WILTY: Yeah. I've
5 had quite a few.

6 MR. KING: And have --
7 have you reported it to the lawyer?

8 I mean, like, the client
9 is saying, like, I'm calling the
10 lawyer, you know, and telling him
11 about this and nobody believes me --

12 MS. WILTY: Uh-huh.

13 MR. KING: -- you know,
14 could you call the lawyer --

15 MS. WILTY: Uh-huh. What
16 has happened at Family Connections
17 Project is most of the time by the
18 time I would get the -- the -- the
19 family with me, it's already in the
20 hands of Child Protective or through
21 D.S.S. as a preventive -- in the
22 Preventive Unit because it's been
23 court ordered already through Family
24 Court that they came to me.

1 There were children -- I
2 did one particular family who
3 there -- there was two children who
4 were involved, that it was still an
5 open case at the time that I had it.
6 But the child's close to --
7 within -- to my staff. And at that
8 point I was obligated to contact
9 D.S.S. because it was a Child
10 Protective issue already. So, you
11 know, they -- they already had there
12 own lawyers --

13 MR. KING: But -- you
14 know, I was -- what I was trying --
15 what I'm trying to get out is, have
16 you ever reported it to a lawyer or
17 someone and had the lawyer of the
18 defendant contact you, as an
19 investigation, to find out, you
20 know, how did you find out --

21 MS. WILTY: No.

22 MR. KING: -- what was
23 said to you --

24 MS. WILTY: No.

1 MR. KING: -- or what was
2 said to your staff? Was there
3 affidavits made out by your office?

4 MS. WILTY: No. No.
5 We've never had to do that.

6 MR. GRADESS: So, let me
7 understand this and restate it a
8 little bit for the record, in all
9 the cases that you had at Family
10 Connections, how many would you say
11 that is?

12 MS. WILTY: In 2 years I
13 think we had 168 families go through
14 our program. I believe that was it.

15 MR. GRADESS: And, so,
16 appointed lawyers in Family Court,
17 representing women who were custody
18 and visitational issues, in their
19 cases, as well as domestic violence,
20 those lawyers, how many came to you
21 to seek evidence to represent those
22 women?

23 MS. WILTY: Three; three
24 or four, maybe, if that.

1 MR. GRADESS: And, yet,
2 you were such a rich source of
3 information --

4 MS. WILTY: Uh-huh.

5 MR. GRADESS. We had a
6 witness earlier who testified about
7 the real value about Family
8 Connections, but we understand it's
9 no longer --

10 MS. WILTY: No. The
11 program did not receive funding
12 again after the contract ran out.
13 We were funded through a TANFF
14 grant. And when -- we had -- they
15 had all the cutbacks in the TANFF
16 program, we were not funded again.

17 To the credit of this
18 County's Department of Social
19 Services, they kept me on. They
20 funded me through the Department of
21 Social Services for an extra year,
22 and because the service was such a
23 needed service in this county. But
24 when their TANFF money was cut by

1 one third, then I was, you know --

2 MR. GRADESS: Were there
3 any other efforts to get to the
4 State for money other than through
5 TANFF?

6 MS. WILTY: Actually,
7 what -- working with the Department
8 of Social Services, we -- we -- and
9 I also met Judge Bartlett, who is
10 the Family Court Judge here, several
11 times in an effort to -- to get
12 funding from the Office of Court
13 Administration, and things like
14 that, but at this point I was told
15 that there was nothing that they
16 could really do to -- to help me
17 with that.

18 We went through the
19 Department of Social Services again.
20 We felt we may have found funding
21 through this year through them, but
22 we didn't get anything through that.
23 I haven't given up.

24 MR. KING: Now, through

1 the Head Start Program, do you still
2 get complaints, you know, of
3 families?

4 MS. WILTY: Yeah.
5 I've had a -- I'm a senior director
6 for Head Start, so I oversee two
7 sites for the program. And I -- but
8 my -- my former position I did
9 provide direct services for
10 families, as a family advocate.

11 MR. KING: Right.

12 MS. WILTY: And, so, a lot
13 of the work that I did for families
14 at that point is where I would hear
15 that. Most of it involved, because
16 we work with children, because Head
17 Start mostly works with children and
18 families involve the Family Court
19 process and what happens there.

20 MR. KING: Have -- have
21 you any contacts recently, not --
22 well, since you left there and
23 you've been running Head Start --

24 MS. WILTY: Uh-huh.

1 MR. KING: -- have lawyers
2 contacted you --

3 MS. WILTY: No.

4 MR. KING: None?

5 MS. WILTY: No.

6 MR. KING: And there are
7 families here were in custody -- in
8 domestic violence and --

9 MS. WILTY: Yes.

10 MR. KING: --
11 molestation and --

12 MS. WILTY: All the time,
13 but we have never -- we don't have a
14 lot of contact with the lawyers, no.
15 None. None that I've had. I've
16 been back at Head Start for a year
17 and half --

18 MR. KING: Have the
19 Districts Attorney's office
20 contacted you ever?

21 MS. WILTY: No.

22 MR. GRADESS: So, if you
23 were to -- sorry. Were you -- I
24 keep getting to the same place --

1 MR. KING: I just can't
2 believe -- I'm sorry --

3 MR. GRADESS: -- when
4 we -- we've heard 8 hours of
5 testimony now, something like
6 that -- actually, it's only 4, just
7 feels like 8.

8 How do you -- what -- what
9 is your answer for this sort of --
10 we've heard this county described as
11 sort of like an old boy network,
12 it's very small. We've heard that
13 the lawyers are sort of doggo in
14 court, we hear that it's all sort of
15 set up before you go --

16 MS. WILTY: Uh-huh.

17 MR. GRADESS: -- the
18 constant thing that we've heard is
19 nobody listens, nobody listens,
20 nobody listens. Then if you dig a
21 little further, it's like nobody
22 appreciates the issues of domestic
23 violence.

24 MS. WILTY: Right.

1 MR. GRADESS: What is your
2 explanation of this kind of
3 messiness that is coming from this,
4 that seems to characterize this
5 system?

6 MS. WILTY: One thing that
7 I think, not -- that I would really
8 like to see happen in this county is
9 that there'd be some domestic --
10 some education regarding issues of
11 domestic violence. I think that
12 lawyers, the lawyers in this county,
13 need to hear some more about, to
14 learn some more about how it affects
15 women, how it affects batterers, how
16 it affects the children. I think
17 that's imperative, that some
18 domestic violence education and
19 issues regarding that happens here.

20 The Judge would probably
21 benefit from that, also.

22 I do domestic training, so
23 I have a lot of that -- investment
24 in that. So, I think that -- and I

1 train people regarding issues of how
2 domestic violence affects children.
3 And I think that that's what the --
4 the police in this county need it.
5 The lawyers need it. The law
6 guardians need it. I think that --
7 we see a lot, and I do understand
8 how the process works and I do
9 understand the philosophy regarding
10 keeping families in contact, even
11 families that have experienced
12 domestic violence. And I thank our
13 domestic violence unit because I
14 know that the supervised visitation
15 system and the D.V. system sometimes
16 do not mesh well together because
17 there are different philosophies
18 about children who have witnessed
19 domestic violence will be
20 retraumatized by visiting with the
21 battered. I do understand that.

22 But I think that where
23 we've worked well together was that
24 Family Connections was a project

1 that protected children and did not
2 let them become retraumatized.

3 And the system needs to
4 understand that because we don't
5 have a supervised visitation and
6 access center any long in this
7 county and they don't have anywhere
8 that they can visit safely and be
9 protected and not retraumatized.
10 They want to -- they're still
11 attempting to keep these families
12 connected, but there's no safe way
13 to do that anymore. And people need
14 to be educated to that fact and --
15 and hear it from the custodial
16 parents who are frightened and from
17 the children who are frightened.
18 And I don't think they get that kind
19 of representation. They just say
20 well, this dad really -- or this mom
21 really needs to see this kid. They
22 need to stay connected, not thinking
23 about the issues that have been --
24 come involved. So, there has to be

1 some education around that, I
2 believe. But I -- that's my --
3 that's what I do. So, you know,
4 that's where I see it coming from.

5 MR. GRADESS: Now, the
6 Judge of your Family Court used to
7 practice law in this county --

8 MS. WILTY: Yes, he does.

9 MR. GRADESS: How long has
10 he been on the bench?

11 MS. WILTY: Gee, I think
12 -- I'm trying to think back because
13 I had experience when I was going
14 through some custody stuff, but I
15 didn't have appointed counsel, I had
16 my -- and that was -- that was ten
17 years ago, and he was there then.

18 MR. GRADESS: So, I guess
19 the question I'm getting at is,
20 there's been a lot of testimony
21 today about how small this community
22 is --

23 MS. WILTY: Uh-huh.

24 MR. GRADESS: -- I would

1 assume there are times when he has
2 cases where he can't actually sit as
3 the Judge because he's probably
4 represented the people, is that
5 true?

6 MS. WILTY: This past week
7 I was on vacation from Head Start,
8 but I had experience with two women
9 that I was in court with twice over
10 this past week. The first one I
11 went to -- we went to get an Order
12 of Protection to have her husband
13 removed from the home. He was
14 intimidating, threatening,
15 harassing, so on and so forth. When
16 we filled out the petition and went
17 down, the Judge had to recuse
18 himself because he had
19 represented -- represented the
20 respondent years ago. Couldn't do
21 it.

22 They needed immediate
23 relief. It need to be, you know, an
24 immediate order and he couldn't do

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1 it, and there was no one available
2 to do it. We were told that we
3 would have to go down to Catskill in
4 Greene County at eleven o'clock the
5 next morning in order to get the
6 order. And we did. And we got the
7 order.

8 But, you know, it's just
9 things like that. I mean, if you --
10 if you've practiced law in this
11 county, and it's a very small
12 county, and you've represented half
13 the people in the county in one way
14 or another it's very difficult, you
15 know, to -- to be able to provide
16 those kinds of immediate services
17 that are -- are needed.

18 MR. GRADESS: So, this
19 experience that you're describing
20 from this week is -- you're saying
21 is sort of emblematic of a problem
22 that you've observed before --

23 MS. WILTY: Yes.
24 Definitely. Uh-huh.

1 MR. GRADESS: Is there no
2 sort of conflict checking mechanism
3 that the Judge uses or the
4 petition to --

5 MS. WILTY: I don't
6 know --

7 MR. GRADESS: -- sort of to
8 screen out prior clients --

9 MS. WILTY: I don't -- I
10 really don't know that. I'm not
11 aware of one, but that doesn't mean
12 that there isn't, but I am not --
13 I'm not aware of one.

14 All -- I know that. I
15 have gone down before and we've been
16 told, you know, the Judge will not
17 be able to sit on this, but see if
18 we can find who's available to do
19 it.

20 In some cases there has
21 been somebody available to do it.
22 In this particular case or in two --
23 two other ones there wasn't. And,
24 you know, we weren't -- in one case

1 we were able to get an order that
2 was -- it -- that we faxed -- not
3 "we." The clerk faxed it to someone
4 else and they gave it to us based on
5 the petition that was faxed.

6 In this particular case we
7 had to go down to Greene County the
8 next morning to do it.

9 So, I think it depends --
10 Judge Humel (phonetic spelling) was
11 the -- was -- is also someone who
12 sometimes can take over, but was not
13 available to do it at that point, so
14 we couldn't.

15 So, it just scares me to
16 think that if you needed to have
17 immediate relief right then and
18 there it wasn't available because
19 the Judge had represented the
20 respondent --

21 MR. KING: What about the
22 justice; the county justice --

23 MS. WILTY: This was
24 Family Court. This was a family

1 offense, so we didn't even go to
2 Civil Court. I wasn't told that
3 they could do it. I don't know. I
4 really don't know that.

5 MR. GRADESS: I'm
6 interested, sort of, in -- but I
7 don't believe that we've had a
8 single person who talked about
9 lawyers meeting their clients
10 outside of court, except for one
11 story told earlier where one lawyer
12 was observed talking to three
13 clients in the same room, at the
14 same table, about three separate
15 cases.

16 I guess I'm interested in
17 your observation of sort of
18 confidentiality and privacy, sort of
19 the things that clients are entitled
20 to expect from their lawyers.

21 Have you seen any good
22 examples of that behavior or is it
23 all sort of hushed in the courtroom
24 sort of things?

1 MS. WILTY: If -- in our
2 -- in our courthouse, which is
3 really, really nice, there's two
4 waiting rooms over there. And I
5 have been subpoenaed a couple of
6 times as it -- at -- Family
7 Connections Project to -- so we go
8 over and everybody kind of sits in
9 the same waiting room. I've -- many
10 times the lawyers -- there's really
11 not a lot of places to go unless you
12 go out in the hallway and you
13 can't -- you really can't. I mean,
14 you can hear everything everybody
15 says, anyway. But what -- what's
16 strange about that for me is because
17 I've been doing this work for so
18 long is, when I go in I know
19 everybody, usually, who's there, and
20 so do all the lawyers know everybody
21 who is there. And people don't --
22 they just talk right in the waiting
23 rooms. And I -- most of the time
24 I'll get up and leave because I

1 don't want to hear what's going on
2 because I never know when I'm going
3 to see them again.

4 And so -- but, I have --
5 I've observed lawyers talking to
6 their clients in the presence of
7 other people, yeah. But I really
8 can't tell you, you know, if that's
9 become an issue of confidentiality.
10 To me it would be, as a client. I
11 wouldn't like it, but.

12 MR. GRADESS: I think if
13 we ever took this record and -- and
14 we were using the visits to the
15 Family Connections problem, some
16 smart lawyer would ask us this
17 question, so I'm going to ask you.

18 MS. WILTY: Okay.

19 MR. GRADESS: Was there
20 ever a time when the respondent's
21 counsel in one of these Family Court
22 cases sent his or her investigator
23 to the Family Connections Project --

24 MS. WILTY: Never.

1 MR. GRADESS: -- to seek
2 the record?

3 Was there ever a time when
4 one of these Family Court respondent
5 lawyers sent their own expert to the
6 Family Connections Project --

7 MS. WILTY: Never.

8 MR. GRADESS: So, to your
9 knowledge these cases went forward
10 in Family Court even though you were
11 running for two years of family
12 supervised projects --

13 MS. WILTY: Uh-huh.

14 MR. GRADESS: -- with the
15 lawyers essentially flying in the
16 blind about any information --

17 MS. WILTY: As far as I
18 could observe, yes.

19 MR. GRADESS: Except for
20 these three Family Court lawyers --

21 MS. WILTY: Uh-huh.

22 MR. GRADESS: -- who were
23 representing respondents and maybe
24 two law guardians?

1 MS. WILTY: Yes. Yes.
2 What we did, we would do our visit
3 assessment and observation, it was
4 sent directly to Family Court, to
5 the Judge. We would have to send
6 those reports to them. So, my
7 understanding was, that the Judge
8 would review our reports of how the
9 visits were going and it would help
10 him make decisions based on that.

11 MR. GRADESS: To your
12 knowledge, did the lawyers get
13 copies of those reports in court?

14 MS. WILTY: If they
15 requested it -- in court, I don't
16 know.

17 If they requested them
18 from Family Connections Projects,
19 then it was -- they were listed as
20 counsel on -- we could do that.

21 MR. GRADESS: But they
22 didn't?

23 MS. WILTY: No. The law
24 guardians, there's a couple of the

1 law guardians did, and we were happy
2 to help them with that.

3 I had a couple of law
4 guardians that came and visited
5 Family Connections Project and --
6 and sat in visits sometimes with the
7 children. But there was -- there's
8 two or three that would do that, the
9 rest of them I didn't hear from.

10 MR. GRADESS: Any
11 question?

12 I'd like to talk -- were
13 there any questions before we turn
14 to the Standards?

15 Have you had occasion to
16 review the -- our -- our fourth
17 draft --

18 MS. WILTY: Yes, I did. I
19 did look at those.

20 MR. GRADESS: We'd be
21 interested in your thoughts. If any
22 of them are particularly relevant to
23 your experience here.

24 These are standards that

1 our Client Advisory Board wrote
2 initially and then took to --
3 they're primarily criminal in
4 nature. So, maybe there's some
5 things that you would like to
6 comment on that, but --

7 MS. WILTY: Okay.

8 MR. GRADESS: -- but
9 they've been submitted to focus
10 groups of prisons and former prisons
11 and clients and jail house lawyers
12 and at a series of hearings with
13 clients throughout the State.
14 They're in their fourth draft, so
15 they're sort of fresh in their
16 fourth draft. We'd be very
17 interested in your thinking on them.

18 MS. WILTY: I think that
19 if we had standards in this county
20 things would be a lot different.

21 I really -- I really
22 believe, like, (Reading) "Works and
23 strategizes in partnership with his
24 or her client," that doesn't happen

1 here, you know. And that's
2 important. So important. I don't
3 know.

4 MR. GRADESS: It looks
5 like 9 doesn't happen either.
6 (Reading) "Aggressively seeks
7 resources --

8 MS. WILTY: No.

9 MR. GRADESS: -- "such as
10 interpreters, experts and
11 investigators, necessary for an
12 effective defense."

13 MS. WILTY: It think
14 number seven also could, you know --
15 I don't think that happens, either

16 MR. GRADESS: Number seven
17 reads (Reading) "Thoroughly and
18 carefully reads all charging
19 documents, discusses them with his
20 or her client and provides the
21 client with copies."

22 So, is that -- tell us
23 what happens in -- in these cases
24 here. That doesn't happen?

1 MS. WILTY: Not to my --
2 not to my knowledge. A lot of the
3 times the -- they would bring their
4 orders and things to me to help --
5 have me explain them to -- because
6 they didn't -- they didn't have
7 anybody who was explaining them to
8 them. And I'm not a lawyer. And
9 it's not my job to give them legal
10 advice or tell them what these
11 things meant, but they were looking
12 for help. And my advise to them
13 would be call your counsel and ask
14 them to explain. Well, I can't get
15 a hold of him. He's not going to
16 see me before I go -- a half hour
17 before we go to court. I want to
18 understand what this is about now.

19 And it -- the situation in
20 this county, too, is we have not --
21 a legal aide system here that is
22 tri-county. So, it's really
23 difficult to get a hold of anybody
24 at legal aide, also. And they only

1 spend a couple -- a couple or is it
2 two days in this county, I think, if
3 that. And they work in three
4 different counties. So --

5 MR. GRADESS: What are the
6 three counties that they cover?
7 This is the --

8 MS. WILTY: Going --
9 tri-county --

10 MR. GRADESS: -- Legal
11 Aide Society of Northeastern New
12 York --

13 MS. WILTY: Tri-county
14 Immediate -- Tri-county Mediation
15 and Legal Aide. It's Schoharie,
16 Fulton and Montgomery, isn't it? I
17 think so.

18 MS. BURKE: Because
19 they're not in the county today,
20 right?

21 MS. WILTY: I'm not sure.
22 I don't have their schedule anymore.

23 MR. GRADESS: But when
24 they -- said -- said by a woman who

1 drove from Brooklyn to be here.

2 (Laughter)

3 MR. GRADESS: Let me ask
4 you a question. When they do come
5 where do they -- where do they hang
6 out?

7 MS. WILTY: They -- down
8 at the Community Actions Program
9 offices down there.

10 MR. GRADESS: So, they're
11 there one day?

12 MS. WILTY: One or two.
13 Maybe two. I don't know anymore
14 because I haven't kept track.

15 MR. GRADESS: Karla, do
16 you have a question?

17 MS. ANDREU: If this was
18 another county today is it more of a
19 practice to file a 722-C -- more of
20 a practice to file 722-Cs to get
21 experts on the case from assigned
22 counsel? Would Family Connections
23 be considered an expert that could
24 be brought into the case?

1 MS. WILTY: I don't know

2 MR. GRADESS: Sure.

3 MS. WILTY: Yeah? Of
4 course, we don't have Family
5 Connections anymore.

6 MS. ANDREU: They don't
7 file 722-Cs.

8 MR. GRADESS: How about
9 turning to 19 for a minute.
10 Standard 19 is a -- is a work in
11 progress. It's going to be revised,
12 but right now it reads (Reading)
13 "Clients want a lawyer who refrains
14 from displays of affection and
15 collegiality with the prosecution
16 that might project the image of a
17 conflict of interest."

18 MS. WILTY: That's a good
19 standard to have in there.

20 MR. GRADESS: Well, tell
21 us why, from your point of view.

22 MS. WILTY: I think that
23 you've heard it probably from
24 everybody else; that everybody knows

1 everybody else. The D.A. and all
2 the Assistant D.A.s and all the
3 attorneys in this county they know.
4 They know. And it's when -- when a
5 client is sitting in a waiting room
6 and they're watching their attorney,
7 you know, joking it up with the
8 prosecution, it may make them a
9 little uncomfortable. It would make
10 me a little uncomfortable. You
11 know, I think that's a good --
12 that's a good standard to have in
13 there.

14 But you hear the "good old
15 boy network" all the time and I know
16 it's cliché, but it's -- it's alive
17 and well in this county.

18 MR. KING: And I -- and I
19 guess that after seeing that, that
20 prevents the client from being open
21 and honest --

22 MS. WILTY: It would be --

23 MR. KING: -- you know,
24 with giving that person the proper,

1 you know, information that might be
2 able to be --

3 MS. WILTY: Uh-huh.

4 MR. KING: -- win the case
5 because that person might tell the
6 District Attorney and the District
7 Attorney -- or Assistant District
8 Attorney be prepared for that and it
9 won't be a surprise to him. You
10 know, you could assume that.

11 MS. WILTY: You could.

12 MS. HATHAWAY: Do you --
13 do you think about -- should we
14 change that language or should we
15 leave it like it is or --

16 MS. WILTY: I think it's a
17 good language.

18 MR. GRADESS: Do you have
19 anything else that you have on the
20 Standards or anything else that you
21 want to say?

22 MS. WILTY: I don't think
23 so. No.

24 MR. GRADESS: Are there

1 questions?

2 Well, thank you very much
3 for coming. We appreciate it.

4 MS. WILTY: Thank you.
5 Thank you for coming, and we do
6 appreciate it.

7 THE WITNESS: And you're
8 welcome.

9 MS. HATHAWAY: Thank you
10 for having us.

11 MR. GRADES: Thanks.

12 MS. ANDREU: We'll go on
13 break. Our next witness is coming
14 at 5, so we'll take a break.

15 MR. GRADESS: Okay. We'll
16 break to five o'clock, then.

17 (Whereupon, a recess was
18 taken at 4:36 p.m.)

19 (Whereupon, returned from
20 recess at 4:52 p.m.)

21 TESTIMONY OF DONNA TAYLOR:

22 MR. GRADESS: So, begin.

23 You know what we're doing?

24 MS. TAYLOR: Uh-huh.

1 MR. GRADESS: We're here
2 to hear your story. We'll ask you
3 some questions afterwards --

4 MS. TAYLOR: Okay.

5 MR. GRADESS: -- but right
6 now we'd like to hear what you have
7 to say.

8 MS. TAYLOR: As far as the
9 court appointed lawyer, as far as my
10 custody case, it was a joke. I
11 mean, I ended up with sole custody,
12 but I never once spoke to this woman
13 unless it was 5 minutes before we
14 went to the courtroom.

15 The law guardian played a
16 big role, which, there again, you
17 know what, people that need to be
18 informed. I had no clue I could not
19 speak to the law guardian. I had no
20 clue I had to go through the lawyer.
21 I thought this woman was
22 disrespecting me. It wasn't that.

23 And my children are two
24 and three, and this law guardian has

1 made all of these provisions without
2 even knowing anything about them.

3 My ex-husband-to-be tested
4 positive for drugs and still gets
5 visitation?

6 If I tested positive that
7 day on the spot, my kids would have
8 been taken away from me. But he can
9 get unsupervised visits.

10 MR. GRADESS: Take us back
11 to the beginning. When did it
12 start, where was it --

13 MS. TAYLOR: Okay.

14 MR. GRADESS: -- what were
15 you doing --

16 MS. TAYLOR: Last April --
17 last April I asked my husband to
18 leave because I found out he had an
19 affair. And he got fired from his
20 job. So, I filed papers for support
21 and custody, fearing the safety of
22 my kids.

23 If you want me to remember
24 exact dates, I know I filed at the

1 end of April. We did not go to
2 court because -- I'm trying to think
3 that was support and custody. We
4 probably went to court for custody
5 in June, first time.

6 And exactly what
7 transpired? There were so many
8 court dates.

9 MR. GRADESS: Well, I
10 was -- I was just trying to put it
11 into context.

12 MS. TAYLOR: Okay.

13 MR. GRADESS: You were in
14 Family Court. It was in Schoharie
15 County, it was over the issue of
16 custody. So, just --

17 MS. TAYLOR: Right. Okay.
18 And it was -- my ex and I couldn't
19 agree on any visitation, so, of
20 course, the Judge decided for us. I
21 wasn't secure. He doesn't have a
22 license. He was driving a vehicle
23 with my kids, without a license.
24 There, again, the Judge agreed that

1 his girlfriend could be the
2 supervised visit. But there, again,
3 she wasn't tested for drugs. Now,
4 if he's testing positive, what makes
5 me think she's not doing them?

6 Like I said, these are
7 babies. They can't talk for
8 themselves --

9 MR. GRADESS: You were
10 represented at the time?

11 MS. TAYLOR: Yes. This is
12 a -- you know, I -- I'm not saying
13 my lawyer was that bad, as much as
14 not understanding the system and the
15 -- and the role the law guardian
16 plays in this.

17 I mean, I had to fight to
18 keep my children because, yes, there
19 was an alcohol issue and there was a
20 domestic violence issue.

21 I got great support from
22 Catholic Charities. Barb is
23 awesome. I mean, I depended on them
24 more than my lawyer. She kept me

1 more informed than my lawyer.

2 All -- like I said, it was
3 just like, okay, we're going in,
4 this is what's going to happen.

5 No, previsit whatsoever as
6 far as what do you want? What do
7 you think? What -- it just didn't
8 occur.

9 MR. GRADESS: So, on the
10 issue, for example, of the
11 visitation, what did you ask your
12 lawyer for and what did you lawyer
13 advocate for --

14 MS. TAYLOR: I wanted
15 supervised visits. And like I said,
16 the law guardian really controlled
17 the situation. I mean, the most I
18 could say is that I don't agree,
19 well, it didn't matter. He still
20 got unsupervised visits.

21 MR. GRADESS: What did --
22 what did your lawyer do in --

23 MS. TAYLOR: Well, pretty
24 much go with the flow, Donna. You

1 can't fight it. The law guardian
2 really does control the interest of
3 the children.

4 MR. GRADESS: So, there
5 were no objections raised, no
6 independent --

7 MS. TAYLOR: I -- I
8 objected and it was pretty much the
9 law guardian said point blank if the
10 Judge decided that -- you know,
11 Judge Bartlett decides men should
12 see their children. Point blank.
13 Men are entitled to see their
14 children. Which, okay.

15 But when I had to take my
16 children to McDonalds for eight
17 Sundays, and that man did not show
18 up once, I could not stop going
19 because I would be in violation.
20 Even though I called my lawyer and
21 said it's been three Sundays I've
22 taken the kids, he hasn't shown up.
23 Do I have to continue? Yes, you do.
24 You'll be in violation of the order.

1 I said why do I have to
2 waste my time and energy -- maybe
3 there's a Sunday I don't have \$5
4 dollars to buy my kids breakfast,
5 what am I supposed to do then? He's
6 not showing up. I have a witness,
7 signed an affidavit, every week that
8 I'm there, he's not. I gave him a
9 15 minute timeframe, thinking he's
10 supposed to be there ten o'clock,
11 and he's not. I thought that was
12 pretty ridiculous. Why -- we talked
13 about going back to the Judge and
14 have them stopped. Well, just --
15 just wait. Just ride out the 8
16 weeks because then we go back to
17 court.

18 MR. GRADESS: What
19 happened after the 8 weeks?

20 MS. TAYLOR: That's when
21 -- that was after he tested positive
22 for drugs and pretty much
23 relinquished and gave me sole
24 custody because they mandated him to

1 go for anger management and drug
2 rehab, and he just relinquished.

3 But in the meantime, which
4 I didn't realize either, and I don't
5 know who's fault it is, one of the
6 court visits I was told to open a
7 preventive case and had no clue what
8 that meant and didn't do it.

9 MS. BURKE: To open a
10 what?

11 MS. TAYLOR: Preventive
12 case. Didn't know. Had no clue
13 what they're telling me.

14 So, the next time I went
15 to court, yeah, I got by paddy (sic)
16 slapped. Why didn't you, Mrs.
17 Taylor? I'm like, do what?

18 You were supposed to go to
19 Services -- Social Services and open
20 a preventive case. I said, I don't
21 know what that means. No one told
22 me.

23 So, immediately following
24 I went upstairs and opened a

1 preventive case.

2 MS. BURKE: Can you
3 explain to me what a preventive case
4 is?

5 MS. TAYLOR: That's where
6 a social worker comes in, checks
7 everything out and makes sure
8 everything is the way it's supposed
9 to be. I had home visits.

10 MS. BURKE: No. Why do
11 you have to open one?

12 MS. TAYLOR: Because there
13 was alcohol and domestic violence.

14 MS. BURKE: The court
15 wouldn't just assign a social
16 worker --

17 MS. TAYLOR: I had to take
18 the initial step and do this; meet
19 with a social worker and then they
20 would assigned a caseworker to me.

21 The case -- my case was
22 closed in one month, as far as that
23 goes. I mean, I went for my alcohol
24 testing, I went for psychological

1 evaluation, I went to anger
2 management.

3 I had to fight to keep my
4 kids, but he still was given
5 visitation with all these issues.
6 Until he said -- when they brought
7 it up, you have not -- he did not go
8 to anything they asked him or
9 demanded of him, is when he chose to
10 relinquish rights to me.

11 Visitation is mutually
12 agreed upon. My lawyer knows what
13 that means, my ex-husband-to-be's
14 lawyer knows what that means, and
15 the Judge knows what it -- they all
16 saw it. Him and I can't agree on
17 anything. In the end -- then I won.
18 I've got my kids, is what it comes
19 down to.

20 They all -- they all
21 understood when it comes down to
22 visitation mutually agreed upon.
23 And that's fine with me. I have no
24 problem with that --

1 MS. HATHAWAY: Could I ask
2 you when you -- they -- they --
3 things that were presented to you,
4 that you didn't understand, once you
5 got home or got by yourself and
6 thought about these things you
7 didn't understand, did it occur to
8 you or did you attempt to call your
9 attorney --

10 MS. TAYLOR: No.

11 MS. HATHAWAY: -- and,
12 listen, tell me what this means
13 or --

14 MS. TAYLOR: I went to
15 Barb, Catholic Charities.

16 MS. HATHAWAY: Oh, you
17 went to her.

18 MS. TAYLOR: She -- that
19 organization in this county is so
20 needed. The lawyer didn't take the
21 time --

22 MS. HATHAWAY: So, they
23 were with you --

24 MS. TAYLOR: Yes.

1 (Multiple conversations.)

2 MS. TAYLOR: She went as
3 an advocate --

4 MS. HATHAWAY: -- you
5 know, was waiting until you got back
6 to court to find out what it was --

7 MS. TAYLOR: Theresa just
8 pretty much played it off like,
9 well, but you knew you should have
10 done it. I said, no, I didn't.
11 Barbara said, well, we'll do it.
12 We'll make sure you do it now.

13 MS. BURKE: Had you had an
14 opportunity to meet with your
15 lawyer, Theresa, I assume, prior to
16 just meeting her on the court date?

17 MS. TAYLOR: Never. I --
18 actually the first Monday after he
19 didn't show up the first Sunday, I
20 called her and it was approximately
21 ten days before she called back to
22 see if I had continued going.

23 I mean, he didn't show up.
24 This is what we agreed upon. How

1 many weeks do I have to continue?

2 No phone call right away.

3 You're a number, you're
4 not a person. And that's what you
5 feel like.

6 MR. GRADESS: Did you have
7 occasion to look at our Fourth Draft
8 Standards on clients and their
9 representation?

10 MS. TAYLOR: No.

11 MR. GRADESS: Can we give
12 her a copy?

13 If you would take a look
14 at the first standard it might look
15 familiar to you.

16 MS. TAYLOR: Thank you.
17 I -- I mean, this was in -- I saw
18 that woman in Schoharie County Court
19 today, spoke to her. She looked
20 like she had no clue who I was. You
21 don't have a face.

22 (Witness complying with
23 request.)

24 MR. GRADESS: We'd like it

1 if you would take a look at those
2 and see if there's anything that
3 those standards prompt in your mind
4 about your experience that you could
5 tell us about or what you think of
6 them, generally.

7 (Witness complying with
8 request.)

9 MS. TAYLOR: I mean, like
10 I know my case is -- is not that
11 different, because like -- the law
12 guardian controlled more so than
13 anything, but as far as Theresa
14 really trying to do anything for me
15 and, like, stopping the visitation,
16 nothing. Nothing.

17 MS. HATHAWAY: Theresa was
18 your attorney?

19 MS. TAYLOR: Yes.

20 MR. GRADESS: Do you know
21 if the law guardian ever saw your
22 children?

23 MS. TAYLOR: Never.

24 MR. GRADESS: So -- and

1 yet the law guardian controlled the
2 proceeding.

3 MS. TAYLOR: And I asked
4 why and they -- she told me because
5 they were too young.

6 I have to say the woman,
7 at the end of the case, did give me
8 respect and came up to me and said,
9 thank you for doing everything I
10 asked you to do. I said, no, thank
11 you. I have my children. No
12 problem.

13 MR. GRADESS: This is
14 Theresa who came up --

15 MS. TAYLOR: No. That's
16 the lawyer. The law guardian was
17 Marlene Patterson (phonetic
18 spelling).

19 MR. GRADESS: So, that, at
20 the end of the case the law guardian
21 came up to and thanked you for doing
22 everything?

23 MS. TAYLOR: Yes.

24 MR. GRADESS: So, what's

1 you're overall --

2 MS. TAYLOR: It's a
3 joke --

4 MR. GRADESS: --
5 impression of this experience?

6 MS. TAYLOR: It's a joke.

7 MR. GRADESS: What part of
8 it did you like the least?

9 MS. TAYLOR: I may not be
10 a perfect person, but if I have to
11 be -- to go through this to keep my
12 kids, which I said is fine. I'll do
13 whatever it takes. They're my
14 babies. And because, yes, there was
15 violence in my house. If you think
16 that's what I need? That's okay.
17 That's okay.

18 But, when this man can
19 have visitation and just get away
20 with testing positive for marijuana
21 and cocaine -- and is it -- it is
22 the lawyer? Is it the Judge? Is it
23 the whole system?

24 MS. HATHAWAY: In other

1 words, you had proof that he was
2 cheating --

3 MS. TAYLOR: I'm okay.
4 Right. Right.

5 MS. HATHAWAY: -- that
6 you -- that you were fit and --
7 didn't bother with him?

8 MR. TAYLOR: Right.

9 MR. GRADESS: Let me just
10 be clear. When you make this
11 reference there was violence and
12 there was -- there was alcohol and
13 domestic violence in the house,
14 you're referring to --

15 MS. TAYLOR: Both.

16 MR. GRADESS: Both of you?
17 Or your husband?

18 MS. TAYLOR: No. I mean,
19 he hit me, of course, it did -- I
20 mean, it was a lot of mental abuse.
21 But, yes, there was an occasion, the
22 one occasion the police came and I
23 had been drinking. Yes.

24 MR. GRADESS: Okay. Did

1 the -- let me just ask you some
2 questions, I think I know the
3 answers, but I'd like to ask them
4 for the record.

5 The lawyer that
6 represented you never visited you in
7 your home?

8 MS. TAYLOR: No.

9 MR. GRADESS: Never -- did
10 she answer your telephone calls,
11 ever?

12 MS. TAYLOR: After a
13 length of time, when I was
14 persistent --

15 MR. GRADESS: That one
16 call -- that one call of ten days,
17 how many calls did you make to her
18 from -- during the course of your
19 representation?

20 MS. TAYLOR: At least five
21 or six.

22 MR. GRADESS: And did they
23 all eventually get answered?

24 MS. TAYLOR: Eventually.

1 MR. GRADESS: Did she ever
2 write you a letter?

3 MS. TAYLOR: No.

4 MR. GRADESS: Your visits,
5 then, were never -- you never met
6 her in her office?

7 MS. TAYLOR: Never.

8 MR. GRADESS: How many
9 times was the case in court?

10 MS. TAYLOR: Probably
11 five.

12 MR. GRADESS: And so, in
13 that -- in those five times that's
14 the place where you met her --

15 MS. TAYLOR: Always.

16 MR. GRADESS: -- was in
17 the courtroom?

18 MS. TAYLOR: Always.

19 MR. GRADESS: So, totally,
20 how much time do you think she spent
21 with you?

22 MS. TAYLOR: Totally,
23 probably 40 minutes.

24 A lot of it was come in,

1 ask the question, go back out, you
2 know.

3 MR. KING: Have you ever
4 received any documents from her that
5 were handled in the courts?

6 MS. TAYLOR: Well, the one
7 thing I did have the problem with, I
8 went -- we -- I was given sole
9 custody on November 11th. And I'm
10 waiting patiently for my paperwork
11 in the mailing saying -- I need
12 this. I need to have this on file.
13 This was after January 1st, I called
14 Schoharie, I said, there's a problem
15 here. I have sole custody of my
16 kids. I have no paperwork to prove
17 it. Guess what, your lawyer forgot
18 to sign it. It's sitting in your
19 file. I said, please address it. I
20 would like a copy.

21 MR. KING: You didn't
22 receive -- during the 5 court
23 appearances, from the time you had
24 this lawyer, have you received any

1 documents about this case?

2 MS. TAYLOR: Just from the
3 court, not from her.

4 MR. KING: Never seen --
5 did she file any motions?

6 MS. TAYLOR: No. We
7 talked about filing one against him
8 for not showing up for the
9 visitation and just dropping it, but
10 we -- she decided that we should
11 wait until we go back to court.

12 MR. GRADESS: Yeah. They
13 were your Sundays --

14 MS. TAYLOR: Yeah.

15 MR. KING: I mean, what
16 documents did you get from the
17 court? I mean --

18 MS. TAYLOR: Just -- it
19 would always be just showing, you
20 know, when to show up and case
21 versus versus and continuation of
22 visitation.

23 MR. KING: Well, I mean,
24 you don't have any documents that

1 show that this happened?

2 If somebody says to you --
3 you say to somebody well, I went
4 through five months of -- five --

5 MS. TAYLOR: Oh, I have
6 everything. I didn't bring it with
7 me. I didn't --

8 MR. KING: No, no, no.
9 I'm asking you how --

10 MS. TAYLOR: All I know
11 is, I mean, they send you papers for
12 your next court date, continue -- it
13 would say for continuation of
14 visitation or --

15 MS. HATHAWAY: But they
16 don't have what happened -- they
17 don't have what happened at the case
18 or after the case or anything?

19 MS. TAYLOR: No.

20 MS. BURKE: Do you know if
21 there were any times that you asked
22 your lawyer to do something, that
23 she did not do?

24 MS. TAYLOR: No -- yes.

1 That one day -- I mean, there again,
2 who has the control? When I said I
3 don't think he should have
4 visitation and she did bring it up
5 to the Judge, but the law guardian
6 overruled her.

7 MS. BURKE: So, she did at
8 least --

9 MS. TAYLOR: She
10 attempted.

11 MS. BURKE: -- attempted
12 to say he should not have
13 visitation? So, it wasn't her
14 decision --

15 MS. TAYLOR: No.

16 MS. BURKE: -- it really
17 was the court's decision?

18 MS. TAYLOR: Yes. It was
19 between the Judge and the law
20 guardian.

21 MR. GRADESS: But other
22 than sort of saying he shouldn't
23 have visitation, did she make an
24 argument --

1 MS. TAYLOR: No.

2 MR. GRADESS: -- as to the
3 rational?

4 MS. TAYLOR: No.

5 MR. GRADESS: In the issue
6 of the driving -- the unlicensed
7 driving, when the court said let his
8 girlfriend drive the car. Did your
9 lawyer say -- object to that idea?

10 MS. TAYLOR: No. I thought
11 like, you know -- I thought an
12 in-house visit would be done at
13 their house before the children were
14 allowed, you know. I guess it
15 wasn't -- the law guardian said she
16 spoke to this woman and she seemed
17 okay.

18 MR. GRADESS: Let me just
19 clarify something you answered
20 before. When you answered that the
21 total amount of time that your
22 lawyer may have spent with you
23 during those 5 court appearances
24 during your case, did that 40

1 minutes include time in court?

2 MS. TAYLOR: No.

3 MR. GRADESS: So that
4 was --

5 MS. TAYLOR: It was the 5,
6 10 minutes before the court
7 proceeding.

8 MR. GRADESS: Just
9 checking.

10 Is there anything else in
11 the Standards that strikes you as --
12 like number 10 comes to mind.
13 Standard 10 says (Reading) "A client
14 wants a lawyer who works and
15 strategizes in partnership with his
16 or her client."

17 MS. TAYLOR: No.

18 MR. GRADESS: I take it
19 that wouldn't characterize your
20 relationship --

21 MS. TAYLOR: It's -- it's
22 just going through the motions.

23 MR. GRADESS: Let me give
24 a scenario, just a situation to see

1 what your reaction is to it.
2 Tomorrow a new friend of yours at
3 work, a new acquaintance confides in
4 you; says, I have a problem. I want
5 to gain custody of my child, what
6 should I do? What would be the
7 first thing you would say?

8 MS. TAYLOR: Run like
9 hell. I guess, I -- I don't know if
10 every court is like -- I don't know
11 how the system works. When you've
12 gone through this for the first
13 time, you're so ignorant to
14 everything and blasé because you
15 just don't know. If I have to go
16 back? Oh, boy. Lots and lots
17 more --

18 MS. HATHAWAY: And just
19 from experience right there, what
20 would you be able to tell her, the
21 person --

22 MS. TAYLOR: I wouldn't
23 have faith.

24 MS. HATHAWAY: Would -- if

1 I asked you like -- say I'm the
2 person, and I asked you --

3 MS. TAYLOR: If you can't
4 afford a lawyer, then I feel sorry
5 for you.

6 MS. HATHAWAY: -- but
7 just -- well, I can't --

8 MS. TAYLOR: No.

9 MS. HATHAWAY -- but just
10 what you have gone through, would
11 you be able to impart some of that
12 to me?

13 MS. TAYLOR: I would say
14 go to Catholic Charities.

15 MS. HATHAWAY: That's a
16 good start. And, then, would you
17 sort of embellish why you might tell
18 me to go --

19 MS. TAYLOR: Maybe -- I
20 mean, I don't know the caseload
21 through them, but they're the --
22 they're the ones that made me
23 understand a lot. It wasn't the
24 lawyer --

1 MS. HATHAWAY: But that's
2 what I mean --

3 MS. TAYLOR: -- it was
4 that lady sitting right there
5 (indicating).

6 MR. GRADESS: Out of --
7 how much time would you say Catholic
8 Charities spend with you?

9 MS. TAYLOR: As much as I
10 needed.

11 MR. GRADESS: How much do
12 you think it was during that same
13 period of time?

14 MS. TAYLOR: Hours.

15 MR. GRADESS: Hours.

16 MS. TAYLOR: I could stop
17 by the office without an appointment
18 and say, if you're not busy can I
19 speak to you? This -- but maybe not
20 Barbara, but somebody would help me
21 if she was out.

22 MR. GRADESS: So, you sort
23 of got a glint in your eye when you
24 thought about the possibility if you

1 had to do it again. So, what would
2 you do differently this time if you
3 had to do it again. What would be
4 the difference?

5 MS. TAYLOR: Actually, get
6 on the internet and look up laws.

7 MR. GRADESS: So, you
8 would take matters, essentially --

9 MS. TAYLOR: Yes.

10 MR. GRADESS: -- into your
11 own hands?

12 MS. TAYLOR: Try to
13 understand the law more.

14 You know, and the -- the
15 time issue. It's probably like that
16 all over, but it's just -- court is
17 long.

18 And there, again, this
19 man's not working, but I have to
20 leave my job every time and take
21 time, using my vacation time, to
22 what, give him visitation, when he's
23 not working.

24 It's been a year, I'm

1 fighting for support. Haven't seen
2 a penny. There, again, that's
3 another issue. Take -- you get a
4 court date, this and that, this is
5 postponed, blah, blah, blah. The
6 man owes me \$9,000 dollars and
7 that's okay. He's not in jail. But
8 I'm still working, taking care of my
9 babies.

10 MR. GRADESS: Questions?

11 MS. TAYLOR: How -- how is
12 that it takes so long? How is it
13 that it takes so long to decide
14 what's going to happen from court
15 date to court date, especially since
16 I've got no paperwork to see what
17 happened. What took so long when
18 decisions were made?

19 How much time did she
20 spend on my case? She never sent me
21 nothing. I see her on the street,
22 she doesn't even know me. Okay, I
23 know she has hundreds of clients,
24 but this is Schoharie County. This

1 is not a large -- maybe there's not
2 enough lawyers for the clients, you
3 know.

4 MR. GRADESS: So caseload
5 is a problem --

6 MS. TAYLOR: Oh, I'm sure.
7 I'm sure.

8 MR. GRADESS: But you saw
9 her today and she didn't recognize
10 you?

11 MS. TAYLOR: No.

12 MR. GRADESS: Well, that
13 must have been a stunningly and
14 empowering experience.

15 MS. TAYLOR: Yes.

16 MS. BURKE: Different hair
17 cut?

18 MS. TAYLOR: Yes. But
19 it's only been since November.

20 MS. BURKE: Well, she
21 should have recognized you then.

22 MS. TAYLOR: I knew her
23 prior to her being my lawyer, so --

24 MS. HATHAWAY: She

1 probably recognized her, she was
2 just hoping you wouldn't say
3 anything to her.

4 MS. TAYLOR: Well, I was
5 there on other business, so I went
6 my way, anyway.

7 MS. HATHAWAY: That was
8 good.

9 MR. GRADESS: Is there
10 anything else you would like to say
11 or share with us --

12 MS. TAYLOR: Just -- I
13 mean, I'm sure this is -- but there,
14 again, how -- you know, I really
15 thought I -- because my biggest
16 issue right now is I got my
17 children. I'll do anything for
18 them. But the support laws still
19 need to be changed again. It takes
20 three violations for him to even go
21 to jail. He has to be -- I -- those
22 people down there, I have to tell
23 you, Support Enforcement people are
24 nice. If you're nice to them,

1 they're going to educate you. So,
2 at least now I know the system of
3 what it takes -- and it's not that I
4 want this man to go to jail, I want
5 this man to pay support. So, what's
6 it take to put him in a corner to
7 say, step up to the plate. I did
8 not make these children on my own.
9 Because he doesn't want visitation,
10 that's okay with me. But you will
11 help me financially with these
12 children. Well, the file is about
13 this thick. It needs to be about
14 this thick (demonstrating
15 throughout.)

16 MR. GRADESS: So, a lot
17 of -- a lot of your frustration
18 comes from A, not knowing what was
19 going on; B, not being told what was
20 going on; C, not being listened to
21 and D, not having a real role in
22 this thing?

23 MS. TAYLOR: Yes. I mean,
24 there was support. I don't know if

1 my ex has a lawyer -- appointed. I
2 don't know how that works. But I
3 had to file a 111-G to get a lawyer
4 because I couldn't pay for one on my
5 own.

6 You can get one appointed
7 for custody, but not for support.
8 Did you know that?

9 MS. BURKE: No.

10 Ms. TAYLOR: Yeah. You
11 can't. And 111-G says that the way
12 he's paid when -- if and when you
13 ever receive support he gets 25
14 percent of it until his bill's paid
15 every month.

16 MS. BURKE: Really?

17 MS. TAYLOR: Yeah.

18 MS. BURKE: Can I ask you
19 just one more question? You stated
20 that you -- if someone came to you
21 and asked you for advise on family
22 court matters, you would tell them
23 not to have faith.

24 MS. TAYLOR: I would tell

1 them to start with Catholic
2 Charities and to do your homework
3 and to be patient. Patience. It
4 takes a while, but --

5 MS. BURKE: You still have
6 a feeling of hopelessness even
7 though you have gotten your
8 children?

9 MS. TAYLOR: Not for me,
10 personally. No.

11 I mean, like I said, I was
12 told to do a lot of things, and I
13 wasn't even upset about that.
14 That's okay. Because the more they
15 did for me made me a stronger
16 person. The more I was supposed to
17 do made me a stronger person. It's
18 okay. I'll take an alcohol test.
19 I'll take a drug test. I'll go to
20 anger management because it all
21 worked in my favor.

22 MS. HATHAWAY: I know that
23 you -- you're employed, but is
24 there -- is there any place, that

1 anyone could tell you any place that
2 -- because who -- you were not
3 receiving support from your husband.
4 He has no job, and he's not
5 interested, is there any place that
6 you could be told that would help
7 you with the aide of your children
8 so that you can just put him
9 completely out of your life? He's
10 not there for the children, anyway.

11 MS. TAYLOR: Well, you
12 know, there, again -- yes. Actually
13 I get daycare subsidiary. That's
14 the only way. But that still, I
15 mean -- I mean, not to be in my
16 personal business, but the man --
17 you know, there's a load in my name
18 that I've got to pay because he
19 walked. I mean, you know, when
20 you're married --

21 MS. HATHAWAY: Yeah, I
22 know. But you're paying it anyway,
23 right?

24 MS. TAYLOR: Yes. Of

1 course I am.

2 MS. HATHAWAY: But he's
3 still not doing anything?

4 MS. TAYLOR: No.

5 MS. HATHAWAY: So, if you
6 could get, maybe, adequate help from
7 some support to help you with your
8 children, to help you take care of
9 your children. He's not there
10 anyway, so you can just get him out
11 of your life like he doesn't
12 exist --

13 MS. TAYLOR: Yeah. And he
14 pretty much doesn't.

15 MS. HATHAWAY: -- rather
16 than, you know, go back to court --

17 MS. TAYLOR: But my
18 attitude is, there, again, it's not
19 a vindictive thing. This men --
20 when men think they can have babies
21 and not take care of them and just
22 leave them with their Mama. No.
23 It's not right.

24 MS. HATHAWAY: No, it's

1 not right.

2 MS. TAYLOR: It's not
3 right. You know, it's just not
4 fair. It's not fair to the mother,
5 it's not medi to the children.

6 I'm going -- I'm 42 years
7 old and going back to school because
8 I know I have to make more money to
9 take care of my kids. They're two
10 and three. I've got a lot of years.

11 MS. HATHAWAY: How many
12 children do you have?

13 MS. TAYLOR: Two. They're
14 two years old and three years old.
15 They're babies. Absolutely.
16 They're babies.

17 MS. HATHAWAY: Well, I
18 guess it will just depend on when
19 you wake up one morning say well,
20 I've had enough of this.

21 MS. TAYLOR: That's why --
22 I mean, let the court do its role,
23 but as -- my hands open, going to
24 the post office every day? No.

1 And let me tell you,
2 though, you know what, I'm
3 embarrassed that I have to be on
4 food stamps and get Medicaid --

5 MS. HATHAWAY: Don't be.
6 Don't be --

7 MS. TAYLOR: No. Because
8 that's where the anger comes because
9 he just gets to walk. I am the one
10 who has to slide that card at the
11 grocery store.

12 MS. HATHAWAY: But that's
13 -- that's the very reason that these
14 programs were set up. And there are
15 so many who deserve to get it, that
16 feel embarrassed and won't get it,
17 and it is going to people who it is
18 not supposed to go to. So, don't be
19 embarrassed that you have to -- it
20 was set up for that very reason.

21 MS. TAYLOR: You know, I
22 have pride. I go to work every
23 day --

24 MS. HATHAWAY: Well, when

1 you get to the point that you don't
2 need it anymore, then you'll let
3 them know. So, don't be
4 embarrassed --

5 MR. KING: Great people
6 come out of that program.

7 MS. HATHAWAY: That's
8 right.

9 MR. KING: Great people.
10 My wife is a Deputy Fraud
11 Investigator and ran into a
12 situation where she lost her job and
13 couldn't get another job. She went
14 back to school and got a master's
15 degree. So, she's very much high up
16 on the ladder.

17 So, for those that are
18 serious in using the program and
19 helping --

20 (Multiple conversations.)

21 MS. TAYLOR: I was born
22 and raised in this county. Well, I
23 don't want -- I mean, it's better
24 than the paper stamps used to be,

1 but people know what that card is.

2 It's --

3 MS. HATHAWAY: So, they

4 know --

5 (Multiple conversations.)

6 MS. HATHAWAY: -- because
7 they see you use the card and they
8 know what it is, do they come up to
9 you and offer you aide?

10 MS. TAYLOR: No.

11 MS. HATHAWAY: There you
12 go. Leave all your shame, or
13 whatever, inside here before you go
14 out the door. You have nothing to
15 be ashamed of.

16 MR. KING: We really thank
17 you for sharing.

18 MS. TAYLOR: Oh, thank
19 you.

20 MR. GRADESS: Thanks for
21 coming down.

22 MS. TAYLOR: I appreciate
23 it. Oh, you're welcome.

24 But that lady over there

1 is number one (indicating).

2 MR. GRADESS: Thank you.

3 (Whereupon, a short recess
4 was taken at 5:21 p.m.)

5 MR. GRADESS: This is
6 Albert Gustafson, who is a lawyer on
7 the panel here in Schoharie County,
8 who has just joined us. Thank you
9 for coming.

10 MR. GUSTAFSON: Thank you.

11 MR. GRADESS: Would you
12 like to -- would you like to make
13 any remarks? You know what we're
14 doing. Or should we just grill you?

15 TESTIMONY OF ALBERT K. GUSTAFSON, ESQ.

16 MR. GUSTAFSON: I guess, I
17 would -- I had thought about whether
18 I was going to back it or not, and
19 I'm glad I could.

20 I think the assigned
21 counsel plan has been a great boom
22 to young lawyers who are starting
23 out.

24 I myself moved to this

1 area about a year and a half ago.
2 And before I moved I wrote to
3 several law firms in the area. I
4 moved here for personal reasons, and
5 I got almost no response, actually.
6 I think I talked to one guy in
7 Montgomery County. His -- the
8 brother of the guy who's the public
9 defender in Montgomery County.

10 And when I first came here
11 I was lucky enough for six months to
12 deal with Roger Mallory (phonetic
13 spelling). But that firm, because
14 Susan Mallory is a prosecutor, was
15 precluded from doing criminal work,
16 so I couldn't be on assigned counsel
17 panel (sic).

18 But knowing that the time
19 was short and that I wouldn't
20 necessarily be there a long time
21 because it was just a stopgap
22 measure, I got on the panel at
23 Delaware County first, and after I
24 left that firm last February. So,

1 that means I've been on assigned
2 counsel a little more than a year
3 because February of 2003 is when I
4 left the Mallory Firm and got on the
5 assigned counsel plan here.

6 The thing I'd just like to
7 say is that it's really hard for a
8 lawyer just starting out. I've been
9 a lawyer twenty years and a New York
10 lawyer for ten years. But,
11 basically, I spent five years in
12 Seattle doing this kind of work for
13 free because -- for poor people and
14 trying to start my own practice.
15 And there was nothing to help me,
16 income wise, like the assigned
17 counsel plan and the law guardian
18 plan. So, I think it's a great
19 thing that New York State has done
20 this for the lawyers, not just for
21 the -- for the people.

22 And -- so, I've been back
23 and it's been good.

24 I don't really represent

1 anybody except indigent people.
2 I've -- in the last year and a half
3 I've had maybe four private clients.
4 And, actually, it's preferable
5 because I've always felt that one --
6 you know, I can -- I used to say
7 years ago that I couldn't represent
8 my client -- I'd say to my client, I
9 can't represent you and think about
10 my fee at the same time, so let's
11 try to eliminate that issue. And
12 that's certainly one of the best
13 things about the assigned counsel
14 plan from the lawyer's perspective;
15 that that issue doesn't come up at
16 all. And -- and -- so, that's --
17 that's great. Because I think that
18 the lawyer can do a good job for the
19 client without having to worry about
20 whether he's going to get paid or
21 not.

22 On the other hand, I have
23 expressed the opinion to several
24 that having a free lawyer, there is

1 a moral hazard involved there; which
2 is, that when a -- especially in the
3 area of Family Court, when a guy
4 knows he has a free lawyer, they'll
5 file a petition on anything.

6 Of course, people in
7 America will file complaints about
8 anything, anyway. But I think the
9 thought that -- that it will cost
10 them some money is kind of -- has a
11 solitary affect on frivolous
12 petitions.

13 And just recently I did,
14 even though I'm assigned counsel, I
15 researched it a little bit, and a
16 guy who had filed 55 petitions in
17 this county in five years against my
18 client, well, we won a dismissal.
19 And in the dismissal motion I
20 specially -- even though he was Pro
21 se and I was only assigned counsel,
22 I made a motion to request that the
23 fees that the County was going to
24 pay me be charged against him. In

1 other words, that he should have to
2 write a check to this County
3 Treasurer.

4 And part of my reasoning
5 for that is, that I do believe that
6 this -- me and this County is going
7 to face a fiscal crisis with the
8 rates going up on the -- on the --
9 there's another aspect to that,
10 which I'm sure you're going to deal
11 with in other testimony in terms of
12 raising the standards of the
13 representation. Because when the
14 rates go up, of course, the standard
15 of representation should go up, too.

16 MR. GRADESS: Well, let
17 me -- can I interrupt you and ask
18 you a question --

19 MR. GUSTAFSON: Sure. Any
20 question.

21 MR. GRADESS: -- as long
22 as you're on it. I don't mean to
23 break your flow, but --

24 MR. GUSTAFSON: No.

1 That's okay. I didn't -- I was just
2 telling them about something --

3 MR. GRADESS: -- I guess
4 we have a question that's relevant
5 to that. And this is, we were out
6 here on a -- at the beginning of an
7 investigation last summer before the
8 rates changed, and we sort of heard
9 the same kinds of things, in an
10 informal session, that we've been
11 hearing today. In fact, it was that
12 session that prompted us to come
13 back.

14 And all we've been hearing
15 today is that lawyers, now a year
16 later when the rates have gone up
17 substantially, are essentially
18 practicing law exactly the same why
19 they were then. There's very little
20 client/attorney contact. These's
21 are the complaints we've heard
22 today. That lawyers meet their
23 clients outside the courthouse on
24 fairly complex cases or cases that

1 have important overall domestic
2 violence implications. The time is
3 not given. The clients are not --
4 feel like they're listened to.
5 Investigative works seems to be
6 virtually nonexistent. The motion
7 practice seems to be not -- I'm not
8 sure it's even pedestrian, but it
9 doesn't seem to be very much, at
10 least what we've heard. And the use
11 of experts seems to be less than one
12 might expect.

13 So, is it going to change?
14 Are the rates going to change
15 practice in Schoharie? Have they
16 changed practice in Schoharie? Is
17 there any reason to believe that
18 things are going to be any different
19 than --

20 MR. GUSTAFSON: I
21 actually -- actually, I'd have to,
22 unfortunately, say no. I mean, I
23 wasn't really exactly shocked when I
24 came. I'm came from outside, you

1 know. But it's always been my
2 standard practice for twenty years,
3 thought, I was in Japan, you
4 remember, for seventeen years. So,
5 I left to go to Japan to do business
6 work, you know, business work. So
7 -- and I haven't been back in the
8 trenches since I was 5 years in
9 Seattle doing the same thing. But
10 it's always been my practice to put
11 a Notice of Appearance in the file,
12 and I've never seen anybody else do
13 that.

14 And, in fact, it's funny
15 because when I first got here I'd
16 look in the Family Court file and
17 I'd see several slips, you know,
18 because maybe the case has gone
19 through five or six different
20 assigned counsel, you know. And --
21 and -- the only way you'd know who
22 -- what lawyers were there was
23 because of the minutes. If you
24 looked in the minutes you'd see --

1 oh, they -- they must have been
2 here. But there were several slips
3 and several different, more
4 voluminous files, saying, please
5 submit your Notice of Appearance.
6 At first I thought that was to me.
7 These five or six things. And I've
8 already done it, you know. I said,
9 what's this about? And, so, nobody
10 does. And nobody files motions.

11 And, actually, a person
12 that papers -- you know, does some
13 research, and stuff like that, is
14 considered to be a little bit of
15 a -- of a joke.

16 Well, I'm not speaking for
17 all the lawyers, I'm just saying
18 some people have expressed this to
19 me. Oh, yeah, we had a guy like you
20 before about three, four years ago,
21 but he went and got a job, you know.
22 So, you know --

23 MR. GRADESS: So, is the
24 -- is the aggressive lawyer in this

1 community ostracized?

2 MR. GUSTAFSON: Not by the
3 Community. I mean, I'm just
4 saying -- I'm not saying ostracized,
5 I'm just saying a few people, you
6 know, it's not a good thing -- you
7 know, some people have expressed the
8 opinion that it's a good thing that
9 a new guy came in and stirred things
10 up a little bit. Some people have
11 expressed the opinion, you know,
12 many clients have said that they
13 can't find anybody else or that --
14 you know, I'm not trying to toot my
15 own horn. Because certainly one
16 other aspect of assigned counsel
17 work is that a lot of times there
18 are some very disagreeable
19 individuals that you have to deal
20 with as clients. And quite frankly,
21 honestly, it's a little easier for
22 me to be able to withdraw from that
23 case, as opposed to a client that's
24 paid me a massive retainer, that

1 I -- I'm obligated to.

2 The reason I'm assigned
3 counsel is because I'm from outside.
4 Most of the lawyers here are too
5 busy doing real estate closings or
6 real business, you know, up to --
7 bother with -- at the twenty-five
8 dollars.

9 Now, the interesting
10 speculation is, whether or not, now
11 that the rates have gone up to
12 seventy-five or sixty, whether a lot
13 of those other practors (sic) who
14 are going to jump in; the ones that
15 sat on the sidelines for so long.

16 But, economically,
17 probably at sixty or seventy-five
18 they still can't make money because
19 of the infrastructure they have.

20 I kept my infrastructure
21 very low. I have no -- almost no
22 expenses and, so, that's a good
23 thing for me.

24 But I think -- I know --

1 I'm not sure -- and then the other
2 thing, in this County, especially,
3 I'm not saying it's good or bad, but
4 they've said they're not going to
5 pay you for driving time. Now,
6 every other County around here --
7 I'm in -- I'm on the panels for
8 Montgomery, Delaware, Schoharie and
9 Oswego because I'm in a, you know,
10 position to do that.

11 And, so, law guardians are
12 still paid driving time. But in
13 this County assigned counsel are not
14 paid driving time, which is fine
15 with me. And on the -- on the -- I
16 mean, because you get paid the
17 mileage, but not the driving time.

18 So people have advanced
19 the idea that, well, I was thinking
20 about the case. But that reminds me
21 of, like, you know, charging you for
22 dreaming about the case or having
23 nightmares about the cases.

24 And, you know, and -- I

1 had a guy that actually, in Seattle,
2 charged me two tenths of an hour for
3 sharing a -- the bathroom with him
4 for a -- and I said, we weren't in
5 there -- to my friend, my landlord,
6 a State case. I said, listen, we
7 weren't in there 12 minutes, okay,
8 we were only in there about 2
9 minutes. So, you can't charge me
10 two tenths of an hour. I'll only
11 pay you one tenth of an hour.

12 MS. HATHAWAY: Can I ask
13 you --

14 MR. GUSTAFSON: Yeah.

15 MS. HATHAWAY: -- before
16 you get -- are you -- you said a few
17 sentences back --

18 MR. GUSTAFSON: Yeah.

19 MS. HATHAWAY: -- about a
20 client -- or someone that --

21 MR. GUSTAFSON: Clients --

22 MS. HATHAWAY: -- their
23 attitude or whatever --

24 MR. GUSTAFSON: Well, see,

1 actually, honestly --

2 MS. HATHAWAY: -- wait a
3 minute. No. Wait a minute. I just
4 want to know --

5 MR. GUSTAFSON: Yeah.

6 MS. HATHAWAY: -- before
7 you consider maybe withdrawing, if
8 you had attempted to find out what
9 made this -- this client act this
10 way or, you know --

11 MR. GUSTAFSON: Well,
12 usually -- yes. That's true. Or
13 rather I found out later.

14 MS. HATHAWAY: After
15 withdrawing?

16 MR. GUSTAFSON: Well,
17 yeah. I mean, like, for instance,
18 you know, they tested positive for
19 cocaine. This explained a lot about
20 why they didn't want even -- I've
21 only withdrawn from four cases, by
22 the way. And I just got -- I don't
23 know, maybe, I'm not sure exactly.
24 I haven't really numbered how many

1 cases I've had in the last year, two
2 months, or whatever. But the vast
3 majority, 95 percent of them are all
4 great. I mean, I'm not saying
5 they're good or bad people, but, you
6 know, they're just ordinary people.

7 MS. HATHAWAY: But do you
8 think --

9 MR. GUSTAFSON: But
10 there's a few. And I usually get
11 those because the other assigned
12 counsel won't take them, honestly.
13 I mean --

14 MS. HATHAWAY: Do you
15 think --

16 MR. GUSTAFSON: -- like,
17 third or fourth in one --

18 MS. HATHAWAY: -- do you
19 think if you had known beforehand
20 that this was the problem of the --
21 the client that you would have still
22 withdrawn --

23 MR. GUSTAFSON: No. I'm
24 perfectly happy to get in there,

1 make a little money and get out.
2 That's okay. I'm willing to give
3 the person the benefit of the doubt
4 from the beginning, anyway. And,
5 you know, usually persons are okay
6 on the phone, and stuff. It's just
7 that there are certain -- I've had
8 four individuals that were just
9 totally unreasonable, I mean, in
10 terms of what they were expecting to
11 do, you know. And, so, in the end
12 I -- and in all, actually, come to
13 think of it, all four of these
14 individuals I was their third or
15 fourth lawyer.

16 In other words, you
17 know -- I mean, in other words,
18 none -- none of the other lawyers in
19 the County that are doing the
20 regular practice would take them or
21 had had them before or there was a
22 conflict of interest because they
23 represented the other side.

24 I mean, aside from the

1 one guy, he was a one time person
2 who was coming up from outside --

3 MS. HATHAWAY: But -- but
4 sometimes the client has probably
5 thought about it or read or found
6 out certain things and they want to
7 express it, and maybe the attorneys
8 don't take the time or don't want to
9 hear how they came by that
10 information.

11 MR. GUSTAFSON: I'll agree
12 that the dynamic is true for most of
13 the assigned counsel here. I mean,
14 people want to read something on the
15 internet, something they found out
16 on the internet or like that, you
17 know. And -- and that's always a
18 dynamic, that's a difficulty for
19 attorneys and clients, you know; the
20 client that knows more than the
21 lawyer.

22 MS. HATHAWAY: No. Well,
23 when you said know more than the
24 lawyer --

1 MR. GUSTAFSON: Well,
2 thinks they know more.

3 MS. HATHAWAY: Where does
4 it come that you have time to -- the
5 two of you have time to talk about,
6 you know, if the concern is shown
7 that, well, this is -- this is what
8 you -- you know, think or this is
9 what you have seen on the internet,
10 but it isn't exactly like this; X,
11 Y, and Z, is there a time that this
12 takes place between the attorney;
13 not you, per say, but the attorney
14 and the client? Or they just say,
15 you think you know more than me
16 and --

17 MR. GUSTAFSON: No. I
18 make the time. I make the time.
19 People come to my --

20 MS. HATHAWAY: No. I said
21 not about --

22 MS. BANKS: They come to
23 your office?

24 MR. GUSTAFSON: Yeah. I

1 live in my -- I have my house right
2 over across the street. I mean, I
3 live in an apartment. I pay four
4 hundred bucks a month. I'm -- I'm
5 probably the only guy in this County
6 that's applied for food stamps, and
7 I was \$50 dollars over the \$950
8 dollar minimum a month. So, you
9 know, we're talking about when I
10 first started out here. I mean, it
11 wasn't easy. And people come to my
12 house. I mean, most of the lawyers
13 don't do that. Well, they have an
14 office or they live in their -- up
15 in the hills, or something.
16 Actually, there are a few lawyers
17 who don't have an office in town,
18 but they just meet their client in
19 court --

20 MS. HATHAWAY: Off --
21 offhand, how -- how,
22 approximately -- how much time do
23 you spend with your client before
24 you have to appear before the Judge

1 with them --

2 MR. GUSTAFSON: Well, in
3 my case, I was send -- see, I send
4 the Notice of Appearance. Actually
5 what I do is, I take the Notice of
6 Appearance over to the court, file
7 it, mail to the prosecutor and to
8 the D.S.S. people and respectively,
9 the opposing party, and I mail one
10 to my client. And then in the
11 letter, a cover letter, with that I
12 always say please give me a call.
13 This is my only phone (indicating).
14 So, they can always reach me 24/7,
15 but --

16 MS. HATHAWAY: At least
17 you give them an avenue --

18 MR. GUSTAFSON: What?

19 MS. HATHAWAY: I said at
20 least you give them an avenue.

21 MR. GUSTAFSON: Oh, sure.
22 Yeah. No. But I don't think the
23 law -- well, you know, obviously a
24 lot of people have their office or

1 they have their answering machine,
2 or whatever. But I think they're
3 all lawyers --

4 MS. HATHAWAY: But they
5 don't. Take my word for it --

6 MR. GUSTAFSON: -- yeah.
7 No. A lot of lawyers that don't
8 want to be bothered, you know, I
9 mean, expect for showing up for
10 court, you know.

11 Now, I mean -- and that's
12 the easiest way to do it. And
13 especially now that the driving's
14 been taken out, I think there's
15 going to be more people that just
16 want to meet them in court and say
17 --

18 MR. KING: And -- and --
19 and -- all your clients come to your
20 house?

21 MR. GUSTAFSON: No. I
22 mean, I -- I've even gone to their
23 house. Now, that's -- you know,
24 lawyers that make house calls, it's

1 ridiculous. I -- it's not
2 representative, you know.

3 All right. Recently over
4 in Montgomery County I actually
5 had -- they said I drove too much
6 because my client was from Ballston
7 Spa and I met him in Schenectady
8 half way, you know, to try to make
9 it a little easier, and charged for
10 that driving time. And Judge
11 Courtese (phonetic spelling) over
12 there took exception to it because
13 it was too much driving. So, I just
14 scratched it off, you know. I said
15 I'm not going to bother with it.

16 But, in general, you know,
17 a lot of poor people can't come to
18 see me at my office. I mean, you
19 know, their -- their only -- most
20 poor people here, the -- the -- they
21 can't -- only way they can get
22 around this County is by taking that
23 bus over to Schoharie, or whatever,
24 if they're in different parts. And

1 they're in Warnerville, or things
2 like that, it's just difficult.

3 MS. BANKS: Is that why so
4 many don't meet their clients until
5 5 minutes before?

6 MR. GUSTAFSON: Well, I
7 can't say why. Every case is
8 different, right?

9 MS. BANKS: Yeah.

10 MR. GUSTAFSON: I'm just
11 saying that a lot of clients don't
12 have the financial ability to come
13 and visit you.

14 MS. BANKS: Yeah.

15 MR. GUSTAFSON: Now, on
16 the other hand, a lot of them have
17 the time. I mean, you know, they're
18 not doing anything else.

19 And, then, the other
20 aspect is, that a lot of lawyers
21 that are on the panel -- I mean, the
22 ones that are on the panel, most of
23 them are actually doing only this.
24 And that's good. I'm not

1 saying that -- but a lot of -- some
2 of them are busy with other stuff.

3 Actually, when I think
4 about it, it's just the guys that
5 are -- the law guardians have other
6 things going. There aren't many
7 people that are actually -- that I
8 see doing assigned counsel that are
9 actually doing a lot of other stuff.

10 MR. GRADESS: So, the
11 assigned counsel panel in Schoharie
12 County are primarily exclusively a
13 hundred percent doing assigned
14 counsel work?

15 MR. GUSTAFSON: I can't
16 say that. I -- but I have that
17 impression that a lot of people
18 abandon the counsel -- the assigned
19 counsel and have not come back. I
20 mean, they abandon -- the first year
21 I was here it was only \$25 dollars
22 an hour, right, and I saw people
23 jumping out, and they weren't going
24 to stay. Then, why would they

1 bother with, you know, grody stuff.

2 I myself, I take
3 everything except support. I don't
4 take support cases anymore because
5 it's too grody for me, you know --

6 MS. HATHAWAY: If you have
7 a client that -- that maybe isn't
8 able or doesn't contact you by phone
9 and you don't get to see them until
10 you -- until, you know, their case
11 comes up, how much time --

12 MR. GUSTAFSON: Now, that
13 has come up a couple of times, where
14 I just met them at the court. They
15 haven't contacted me, I haven't
16 contacted them --

17 MS. HATHAWAY: Yeah. How
18 much time were you allowed to be
19 able to talk to them before you --
20 before you and your client have to
21 appear in court --

22 MR. GUSTAFSON: Well, see,
23 usually, that's the first
24 appearance, anyway, so it's just a

1 simple part matter of arraignment.
2 And I always plead everybody "not
3 guilty" anyway. I mean -- you know,
4 I mean, it doesn't matter what you
5 put on the -- in the arraignment.
6 So, I'll just waive --

7 MS. HATHAWAY: Well, after
8 you pass the arraignment, if you
9 have to go back for it again, and
10 still haven't been able to, you
11 know, talk -- you and the client be
12 able to talk, are -- how much time
13 are you able to talk with them
14 before you go to court --

15 MR. GUSTAFSON: Well, I --
16 I mean, I spend as much as an hour,
17 half an hour. In the first meeting,
18 I'm talking about, you know.
19 Because if you're talking about a
20 misdemeanor offense, or something,
21 it's not that difficult.

22 If it's -- if you're
23 talking about Family Court, again,
24 it's not that much stuff that you

1 need --

2 MS. HATHAWAY: After --
3 no. Past the first hearing, I mean
4 after the arraignment, after they --
5 if you have to go back to appear
6 before the Judge a second time --

7 MR. GUSTAFSON: Yeah.

8 MS. HATHAWAY: -- how much
9 time are -- are you able to spend
10 with the client before you appear
11 before the Judge that second time,
12 because they might have things to
13 ask you --

14 MR. GUSTAFSON: Well, I
15 can't fault the system. If you're
16 talking about the Judge, Judge
17 Bartlett is great about that. He
18 gives plenty of time. And most of
19 the Judges are pretty good about the
20 time.

21 As a -- as a practical
22 matter in a lot of these town
23 justice courts it's pretty crowded
24 there, you know. So, there isn't a

1 lot of to time to talk with a
2 person --

3 MS. HATHAWAY: I know, but
4 5 minutes --

5 MR. GUSTAFSON: --
6 before --

7 MS. HATHAWAY: -- 10
8 minutes? Half hour? What?

9 MR. GUSTAFSON: Well, hey,
10 you've got a lot of time to talk
11 because you're going to be waiting
12 there for an hour. You know, this
13 is the way it works, right. I mean,
14 you go there, you have a seven
15 o'clock hearing, and you won't be in
16 there -- in front of a Judge, stand
17 in front of a Judge until 9.

18 And the biggest thing is,
19 is it doesn't matter about the
20 Judge, anyway, it's the prosecutor,
21 I mean if we're talking about
22 criminal stuff. You've got to --
23 you know, you've got to talk to the
24 prosecutor. And Sacket's (phonetic

1 spelling) really great about that.
2 He doesn't -- he's a real gentleman.
3 He takes the time. I have no
4 complaints about Mr. Sacket or any
5 of the Judges --

6 MS. HATHAWAY: Well, I
7 guess I'm asking if the client
8 understands what's going on, you
9 know --

10 MR. GUSTAFSON: Usually
11 they don't. Usually they don't.

12 The key thing for me, the
13 most important thing for me when I
14 put in that Notice of Appearance and
15 Request for Discovery is so that I
16 can get the -- the -- the statement
17 from the police, and then I confront
18 the client about what -- okay,
19 what's this about? Same thing with
20 the petitions in Family Court. I
21 want to know what the other side's
22 saying first. I don't want to waste
23 a lot of time -- I shouldn't say
24 "waste", you know, but it is a waste

1 of time because they always have
2 their story and it's never 20/20.
3 It's like the movie "Rochel Mon",
4 (phonetic spelling), right?
5 Everybody has four different
6 versions of what happened, you know.

7 MS. HATHAWAY: And -- and
8 there's you, there's the other side
9 and there's the truth in the middle,
10 so --

11 MR. GUSTAFSON: Yeah.
12 Well, truth is relevant --

13 MS. HATHAWAY: It's just
14 that there --

15 MR. GUSTAFSON: -- you
16 know, in the legal profession --

17 MS. HATHAWAY: -- there
18 are clients who feel that they have
19 something to say and their
20 attorney -- they can't get the time
21 to express what they need to express
22 to the attorney before it's time for
23 them to appear.

24 MR. GUSTAFSON: Yeah.

1 Well, I think there might be some
2 individuals that might complain
3 about that; with me, even. Because,
4 you know, I -- I know this is a
5 weakness on my part. I don't ask
6 open-ended questions. I've never
7 been good on Direct Examination.
8 I've always been better on Cross
9 Examination. And because of all
10 this time I've spent in the criminal
11 defense area and in Family Court,
12 too, I've got a basic disposition to
13 believe that probably my client is
14 not telling the truth.

15 MS. HATHAWAY: That not?

16 MR. GUSTAFSON: Not
17 telling the truth.

18 MS. HATHAWAY: Why --
19 why -- why do you come to that
20 conclusion --

21 MR. GUSTAFSON: It's
22 become my experience, pretty much.

23 MS. HATHAWAY: But -- but
24 each person --

1 MR. GUSTAFSON: I don't
2 think I'm as gentle as I should be
3 to my clients, but I -- maybe --
4 well, you know as -- I don't know
5 how many other people here are
6 defense attorneys, but quite frankly
7 the biggest part of my job is to get
8 the individual to confront the
9 issues that he has within -- in the
10 system.

11 MS. HATHAWAY: But if you
12 think the client isn't telling the
13 truth in the first place how are you
14 going to be able to do --

15 MR. GUSTAFSON: Why should
16 I have to? It's not part of my
17 job to know. This is always what I
18 used to tell my clients, this is why
19 I don't have any clients, actually,
20 is that, you know, I always used to
21 tell them, listen it's not my
22 business to believe you. They said,
23 that really hurts me, Albert, that
24 you don't believe me. I said, I'm

1 not supposed to believe you. It's
2 not my job. My job is to tell you
3 whether the Judge is going to
4 believe you. And I tell you,
5 nobody's going to believe that
6 story --

7 MS. HATHAWAY: Well, how
8 do you know if the Judge is going to
9 believe them if you don't -- if you
10 tell me you don't believe me --

11 (Multiple conversations.)

12 MR. GUSTAFSON: But
13 lawyers -- lawyers always use --
14 always -- lawyers -- defense lawyers
15 always make arguments on behalf of
16 their clients that they don't
17 believe. I mean, you're not
18 supposed to let the guy go up and
19 lie on the -- lie on the stand,
20 but --

21 MS. HATHAWAY: You don't
22 let -- you don't let your clients
23 feel that -- I mean, know that you
24 don't believe them, do you?

1 MR. GUSTAFSON: Of course,
2 if I don't believe them. Yes. Of
3 course. That's essential to the --
4 why your client --

5 MS. HATHAWAY: But suppose
6 they are telling the truth, no
7 matter how far fetched it seems --

8 MR. GUSTAFSON: Well, this
9 very rarely happens. But, it is --
10 I mean, like you say, Lord, save me
11 from an innocent client, right?
12 Then you've got real problems.

13 MS. BURKE: Can I ask you
14 a few questions --

15 MR. GUSTAFSON: Yes.

16 MS. BURKE: -- not to
17 interrupt, Ms. Hathaway. How do you
18 deal with the problem of -- well,
19 there's a list in front of you.

20 MR. GUSTAFSON: Yeah.
21 I --

22 MS. BURKE: One of the --
23 one of the issues is, that -- that
24 we've come across, is that clients

1 feel that their attorneys don't
2 spend time with them, explaining
3 what's going on, what process is
4 taking place, what to expect on that
5 particular day in court or what the
6 consequences of a decision is.

7 And because you are in a
8 particular situation where your
9 office is your home and the clients
10 can't -- your office is in your
11 home?

12 MR. GUSTAFSON: Right.

13 MS. BURKE: And the client
14 can't get to you because of whatever
15 economic situation they have, or
16 they can't travel, so the only time
17 you really do get to see them, other
18 than to speaking to them on the
19 phone, is prior to the court
20 appearance. And say you have ten
21 clients on that day, how do you
22 resolve the issue of conferring with
23 them and strategizing their case
24 with them?

1 MR. GUSTAFSON: I don't
2 have --

3 MS. BURKE: Say it's not a
4 run-of-the-mill case, it's something
5 that actually has some -- some legal
6 issue to it.

7 MR. GUSTAFSON: Sure.
8 Number one, I never have more than
9 three or four clients a day, anyway.
10 I have days when I have no
11 clients -- I mean, no -- no court
12 hearings. I can go a week without
13 any, okay? So, I don't have that
14 pressure, but maybe some other
15 people have that pressure, I don't
16 know, in other jurisdictions, but I
17 don't. And I -- I try to
18 communicate with them. And, like I
19 said, we have a lot of time to hang
20 around.

21 Now, okay, I'll just --
22 you know, I'm not criticizing
23 anybody, honestly. When I first
24 came here to this County -- they

1 have a lawyer's room, right? And,
2 actually, a lot of lawyers, I think,
3 hid in that lawyer's room, you know,
4 from their clients. I mean, it's --
5 you know. And I'm not into sports,
6 I'm not into sitting around and
7 talking, but I -- you know,
8 that's -- so, that's -- I'm not
9 saying get rid of the lawyer's room
10 because the lawyer does have to have
11 some kind of place to think or to,
12 you know, be separate from the whole
13 thing. But that is time that they
14 can use. I try to use that time to
15 meet the client, talk to them or
16 discuss with -- usually, a lot of my
17 clients are repeaters, so I'll see
18 them in another context, I'll see
19 them on one thing or at that time is
20 a time I can tell them -- ask them
21 about this other thing, or whatever.

22 And quite honestly, the --
23 the difficult, legal issues, there
24 aren't that many of those cases.

1 I've got one case I did,
2 you know, I mean, they're not that
3 fun, and the -- I think, if
4 anything, is the difficult stuff is
5 the felony stuff. The misdemeanor
6 stuff, there sometimes will be some
7 legal issue and I've got to really
8 sort that out. Look at the
9 Discovery, you know, talk to the
10 client. And I mean, you know,
11 technically there are innocent
12 people, I mean, you know, because of
13 the law. There are legal issues
14 that where a person is technically
15 innocent even though they did do
16 whatever they're accused of. And I
17 try to sort that out, and I try to
18 do the researching for him.

19 I used to -- I won't give
20 an opinion right off the bat. So --
21 but I think -- but I think the hard
22 ones are the felonies, anyway. The
23 felonies is where you're going to
24 get into really serious legal

1 issues, especially -- and not just
2 legal, but factual issues,
3 especially in sexual abuse cases and
4 things like that.

5 MS. BURKE: Can you step
6 back a little bit and tell us how
7 you get assigned to a case --

8 MR. GUSTAFSON: Oh --

9 MS. BURKE: -- and what
10 stage you are?

11 MR. GUSTAFSON: -- the
12 process.

13 MS. BURKE: Yes.

14 MR. GUSTAFSON: Okay.
15 Well, basically, usually -- there's
16 two ways. One, is that Jan Dunkin
17 calls me on the phone and asks me if
18 -- if I'll take a case. And
19 actually there's only one -- I won't
20 take support cases. I don't want to
21 -- that's a combination of not
22 liking support and -- well, anyway,
23 I'm not going to -- my mom always
24 said if you're not going to say --

1 if you can't say anything good,
2 don't say anything at all. So, I
3 wouldn't say anything about that.

4 But anyway, the thing
5 is -- so she calls me. And then
6 sometimes it's on really short
7 notice. And I must infer that this
8 must be because nobody else was on
9 the panel or they can't be reached
10 or I'm the only one that has --
11 gives them their cell phone number.

12 Like, for instance, this
13 morning, I was just having my
14 breakfast at 10:30 when Jan called
15 me and asked me if I would make a
16 bail reduction hearing? And they
17 said they could fit it in -- the
18 Judge might be able to fit it in
19 today and, you know, in between
20 everything else. That guy was
21 popped last night. It's a probation
22 revocation case. But, he's got
23 \$15,000 bail, you know. Well, I'm
24 not going to go into the factual

1 issues of it, but the problem is
2 just -- it just was not right. And,
3 so, I -- I -- I went over there and
4 sat around, they said we couldn't do
5 it. And I had a thing at one
6 o'clock for a hair cut but I
7 cancelled it. And I was going to --
8 so, I went -- we went to the
9 hearing, and it was good because the
10 Judge, you know, honestly and
11 truthfully I says, you know, I've
12 got to say it to the Judge, when a
13 person's liberty's at stake he'll go
14 that extra thing to make the extra
15 time, squeeze us in somehow, so at
16 least that the -- well, the
17 defendant will have an attorney on
18 an issue of affecting the guy's
19 liability, not -- not just leave him
20 in jail, you know, for a -- from the
21 prosecution's viewing point,
22 they're -- you know, it's okay to
23 leave the guy in there, you know.
24 But, anyway, so -- so, that's the

1 way it usually happens, is Jan calls
2 me up.

3 Today I called Jan, she
4 said, oh can you do this? And like
5 that. And that's the normal way.

6 The other way is that in
7 Town Justice Courts, the -- or the
8 Family Court will call me directly
9 and say, would you take this case
10 for tomorrow? And, usually,
11 sometimes I just usually have at
12 least twenty-four hours, but with
13 Jan it's usually a week or two weeks
14 out. So, it's good.

15 And I have a lot of free
16 time in my schedule, so --

17 But, and the other way is
18 the Judges themselves. They know
19 me. And the guy, you know, is
20 there. And, so, they'll call Jan,
21 you know, and then -- well, usually
22 that's the normal system; is the
23 Judge calls Jan, says I need an
24 assigned counsel. Sometimes the

1 Judges in other counties, not this
2 county, but in Delaware County, they
3 will call me up directly and say,
4 look, I've got a guy here, will you
5 represent him at the next hearing
6 next week, or something like that.

7 And, finally, the only
8 thing that I'm there on another
9 case, right, in Jefferson, that's
10 happened with Judge Hait, H-A-I-T.
11 Yeah. He -- he -- you know, it's
12 happened a couple a times, that
13 there's so many people there, right,
14 and -- and, so, he'll just ask me if
15 I'll take the case right there.
16 And, you know, I have a chance to
17 talk to him and, basically, we'll
18 get an adjournment and we'll sit the
19 arraignment out. Or we'll just
20 waive the arraignment and plead "not
21 guilty" and go to a pretrial
22 conference.

23 So, I don't know.

24 As far as -- I don't

1 know what you all -- any other
2 question about that issue?

3 I think one thing I've got
4 to say --

5 MR. GRADESS: Well, I have
6 a question about the \$15,000 bail
7 case. And, so, am I to understand
8 that you were called to deal with
9 the client, that was the first time
10 you've ever met that client? That
11 was a new case --

12 MR. GUSTAFSON: Yeah.
13 Yeah. Well, actually, he happened
14 to be in the courtroom, but I
15 didn't -- I got him, actually, mixed
16 up with a different guy. He's on
17 parole -- probation revocation.
18 I -- I -- I -- I didn't recognize.
19 Well, actually, when I first met at
20 the jail, went to the jail and I
21 confused him with another fellow who
22 was --

23 MR. GRADESS: So, when you
24 were saying Judge Bartlett gives you

1 time, you, then, have time to put
2 materials together and -- and go out
3 and investigate or --

4 MR. GUSTAFSON: Oh, no. I
5 had nothing. Well, I mean, I hadn't
6 filled a Notice of Appearance,
7 right? I mean, I didn't have any
8 Discovery. I -- you know, this is
9 one of those -- it's not that
10 unusual and -- but given the
11 timeframe, you know, I mean, given
12 the timeframe, I mean, I get the
13 call at 10:30, I go over there at
14 eleven o'clock, I'm talking with my
15 client before and then I'm trying to
16 get him wedged into someplace into
17 Judge Bartlett's schedule. I didn't
18 have any paperwork.

19 MR. GRADESS: Were you
20 successful in reducing the bail?

21 MR. GUSTAFSON: He dropped
22 it to \$12,500 dollars. I mean, it
23 didn't make much difference. It
24 went from thirty -- we got the

1 thirty -- it was \$12,500 -- it was
2 \$15,000 cash, \$3,000 bond, and we've
3 go it dropped to \$12,500 and \$20 --
4 \$25,000 in bond, which is not
5 anything really since the guy's
6 indigent, right?

7 But, I mean, you know -- I
8 could talk a long time about -- I
9 mean, I like the prosecutor, Mr.
10 Sacket, he's a nice guy.

11 The Probation Department
12 in this County is the hardest
13 Probation Department in the State, I
14 think.

15 MR. GRADESS: On what
16 point of view?

17 MR. GUSTAFSON: Well, they
18 just -- once they've got you on the
19 hook, you know, they're going to --
20 I -- well, there's some really good
21 people in here, so I -- so, I have
22 to qualify that. This is the
23 toughest in the County.

24 I said to several people

1 that are on probation or violation,
2 I said, why did you move back here?
3 This is just Mississippi with
4 records. Well, but -- okay, it's on
5 the record, right. Anyway, but I'm
6 not referring to anybody
7 specifically. But there is kind of,
8 as maybe you -- as some of the
9 individuals may be aware in upstate
10 New York, you know, this is --
11 there's compliments of politics and
12 the State Police system and
13 everything that makes it very
14 difficult for somebody from outside
15 to, you know -- you know, I was
16 telling Mr. Sacket today, because he
17 said that this guy was under
18 investigation, that's why I shall
19 have the -- that there was nothing
20 solid there about what was the
21 investigation. And I just told him
22 that I'm never under investigation.
23 So, I don't know. That --
24 that -- that -- this is my personal

1 impression of the legal system up
2 here.

3 Now, it would be the same
4 way for the Democrats downstate, I
5 guess, you know. It's -- just up
6 here it's reversed, right?

7 Because --

8 MR. GRADESS: If you had
9 asked Judge Bartlett for 48 hours
10 and an investigator before the bail
11 application, would he have granted
12 you the ajournement, would he have
13 granted you the investigator?

14 MR. GUSTAFSON: I think he
15 would have, but I don't think that I
16 would have asked. I don't think it
17 was necessary.

18 MR. GRADESS: Because?

19 MR. GUSTAFSON: Well --
20 because that -- that -- because I
21 know this is what Sacket does. And
22 I -- okay. Yeah. That's one thing.
23 I know that Jim makes high deals.
24 The deals here are -- can be pretty

1 extreme.

2 On the other hand, he has
3 a valid, you know, fear of the
4 people you're pleading. Everybody
5 has a different view of flight
6 risks.

7 So --

8 MR. GRADESS: All right.
9 I guess the thing, though -- having
10 a hard time figuring is, how in the
11 few hours that you had did you
12 articulate an opposite point of view
13 in terms of flight risk --

14 MR. GUSTAFSON: Well, as
15 the United States Constitution and
16 Guantanamo Bay and whatever points
17 like that. You know, I mean, it
18 wasn't -- the facts are that this
19 gentleman had a regular job until
20 yesterday. He's a carpenter, a
21 union carpenter, in Schenectady. I
22 talked with him enough before -- the
23 Judge wanted me to talk to him
24 before we schedule a hearing, right,

1 the bail reduction hearing. And the
2 whole idea of having a bail
3 reduction hearing was -- came from
4 the Judge's side, which is a good
5 thing. You know, he didn't want the
6 -- at least we'd give it a shot, you
7 know.

8 Now, as it turns out the
9 individual had a long criminal
10 history and -- but, you know -- you
11 know, bail is a difficult issue
12 because we -- judging flight risk is
13 difficult. He -- you know, he had a
14 long criminal history, but he always
15 showed up for everything, but he's
16 looking at one to three years in the
17 slammer or the State prison.

18 MS. HATHAWAY: Do you
19 think the bail was made that high
20 because of his past record?

21 MR. GUSTAFSON: Yeah,
22 that's probably why --

23 MS. HATHAWAY: He actually
24 --

1 (Multiple conversations.)

2 MR. GUSTAFSON: Yeah.

3 Well, and -- see -- but the real
4 reason was the ongoing investigation
5 because --

6 MR. GRADESS: I always
7 like --

8 MR. GUSTAFSON: -- a
9 felony investigation, which I
10 couldn't get him to say what it
11 was --

12 MS. HATHAWAY: What it
13 was --

14 MR. GRADESS: I always
15 like to have a long criminal record
16 in a case when I'm arguing bail
17 because it gives me the opportunity
18 to see whether or not the client
19 showed up in all those previous --

20 MR. GUSTAFSON: Well, that
21 was the point. That was the
22 point --

23 MR. GRADESS: Did you get
24 a chance to do that?

1 MR. GUSTAFSON: Yeah.
2 Well, I didn't get the criminal
3 history until I was in the court --
4 MR. GRADESS: Uh-huh.
5 MR. GUSTAFSON: That --
6 that's the way it is, usually, in
7 these things. That's probation
8 revocation. So, I could look
9 through it and have to deal with it.
10 And I could see that it was in the
11 wrong hand, also, recently, you
12 know. And, so, this was not a good
13 thing, I mean --
14 MR. GRADESS: Did he show
15 up at his past proceedings --
16 MR. GUSTAFSON: He had
17 always showed up at everything
18 before, see, so, but -- but, you
19 know, that -- that -- that flight
20 risk, is that motivation to leave --
21 I made the point that he's not a
22 drug Lord, or anything like this,
23 you know, it's not necessary to have
24 an excessive bail, you know. And I

1 was looking for \$5,000 bail, but --
2 which my client couldn't put
3 together, either, probably, you
4 know --

5 MS. HATHAWAY: But you
6 didn't argue the fact that all these
7 other times that he appeared and he
8 did not run away or he didn't --

9 MR. GUSTAFSON: Of course,
10 I argued that. I argued that. But,
11 I mean, I'm not -- can't second
12 guess the Judge. He's the Judge.

13 MS. HATHAWAY: Yeah, I
14 understand that --

15 MR. GUSTAFSON: Now,
16 systemically, I will say that it is
17 kind of not so good that there is
18 only one Judge. And, you know --
19 like that. And there's only one
20 support hearing examiner. But you
21 know, you can't.

22 MR. GRADESS: Let me ask
23 you just one last question. The --
24 what is the practice around here of

1 filing 722-C applications can
2 applicate -- without your experts or
3 investigator?

4 MR. GUSTAFSON: Oh, okay.
5 Well, now, I've got that issue right
6 now because I've got a shattered
7 (sic) baby syndrome case, which I
8 can't talk about too much. I
9 just -- I -- I call these cases
10 overcoat cases. I just finished an
11 overcoat case that lasted a year and
12 a half; sex abuse -- child abuse
13 case. And, then, these are cases
14 that nobody else in the County will
15 take.

16 In this case, now I've got
17 a case where I want to bring in an
18 expert witness. This is something
19 my client -- I'm his third lawyer,
20 so that kind of bothers me from the
21 very beginning, right. And he found
22 some stuff on the internet, and I
23 won't name who the lawyer, he's not
24 from this County, but from another

1 County, who, basically -- he fired
2 that guy because he said that guy
3 wouldn't listen to or present the
4 arguments that he has from the
5 internet.

6 Now, if anything, I'm
7 going too far the other direction,
8 but I don't worry about it too much
9 because if -- if -- well, you know
10 -- you know, that there's defense
11 against shattered baby syndrome
12 which says that it's possible that
13 the child may have preexisting --
14 from having vaccinations in the
15 first year of childhood. It's kind
16 of a weird defense that's in the
17 internet. Although, there's a lot
18 of people in jail, yeah, I shock the
19 baby, but that's not what caused the
20 person's -- everything to crash
21 down, right?

22 And, so, that's -- without
23 giving it away, I've only -- I
24 always -- I give -- I got -- I found

1 a doctor down in Pennsylvania. And
2 everybody around here is wondering
3 why the hell we have to go down to
4 Pennsylvania to find a doctor who
5 will say this. And it's a tough
6 case --

7 MR. GRADESS: The expert
8 was granted?

9 MR. GUSTAFSON: No. Well,
10 see, the thing is, we're still at
11 the -- at the initial stage. Grand
12 Jury's coming up. My client wants
13 to testify in front of the Grand
14 Jury, which I think is going to cook
15 him. But I've got a letter from him
16 saying I told him not to do so. And
17 there's no other way that we can
18 show his credibility and he didn't
19 really mean to hurt his son.

20 Anyway, it's at the Grand
21 Jury stage. So, that is a
22 difficulty in how do you pay for
23 that guy to come up from -- we're
24 going to -- basically, I've given

1 the names and the list of witnesses,
2 and we've got to have him there at
3 the Grand Jury on Friday, April
4 30th. And what's going to have to
5 happen is, I'm going to have to --
6 and I don't think -- and my clients
7 wants assigned counsel, right? How
8 is he going to spend a thousand
9 bucks to bring that doctor up from
10 Pennsylvania to be available outside
11 the Grand Jury room to testify and
12 the Jury -- the Grand Jury might
13 say, no, right? I mean, they don't
14 have to listen to the guy, right?

15 So, there's a -- there's
16 a -- the case is Family Court and
17 Criminal. And downline I'm going to
18 ask the Judge for that expert
19 witness.

20 Now, I'll say that, you
21 know, I've had trouble in Montgomery
22 County getting the expert witness
23 because they don't want to spend the
24 money. I didn't realize it was

1 difficult to get forensic evaluation
2 because, to Judge Bartlett's credit,
3 he always grants a forensic
4 evaluation in almost every case.

5 Now, the only difficulty
6 with that is there is only one
7 psychiatrist over there. And some
8 people have -- to me, I don't know
9 understand what a forensic
10 evaluator -- I'm not going to name
11 that individual. There are actually
12 two guys over there, but they're
13 both -- I met one of them. He's a
14 nice guy. But anyway, I haven't met
15 the other fellow. But I don't
16 understand why it's important to be
17 able to count backwards by nines
18 from ninety-nine. You know, this is
19 like reciting the alphabet in the
20 D.W.I. thing. But this is -- so, I
21 always tell me clients, practice
22 that, you know.

23 MS. BANKS: What does it
24 show?

1 MR. GRADESS: You should
2 tell your --

3 MR. GUSTAFSON: I guess
4 whether -- whether your good with
5 numeracy or something --

6 (Multiple conversations.)

7 MS. BURKE: -- cognitive
8 thinking --

9 MR. GUSTAFSON: It's
10 always one -- it's always one
11 sentence that always appears in this
12 guy's forensic eval. I'm not
13 criticizing him, Doctor -- but, I
14 mean, I just always wondered why
15 it's import to be able to count
16 backwards. And it shows -- it shows
17 orientation to time and place and
18 ability to do numeracy, I guess.

19 MR. GRADESS: Do you ever
20 -- if you do get an investigator or
21 an expert, does your -- does
22 your vouchers ever get cut for
23 excessive time?

24 MR. GUSTAFSON: Only, like

1 I said, over at Montgomery County.
2 I'm not sure. I haven't actually
3 used an expert here. But we --
4 well, I take that back. I had two
5 guys come in, I had a neglect case,
6 and I brought -- my client has
7 bipolar disorder. And, as you may
8 be aware, that is -- you've got to
9 be able to show some nexus to some
10 act that he did. And this was the
11 key matter of the case. He didn't
12 actually do anything. You know, the
13 girl -- the mother did some bad
14 things, but -- Barb was in on that
15 case. But, anyway, the thing was --
16 so, it was crucial, because there
17 was a -- a -- well, Doc. Silverman
18 (phonetic spelling). I'll say his
19 name. Doc. Silverman, he had done
20 an evaluation on my client for
21 disability purposes in which my
22 client said he could do many things.
23 And -- and not good because he was
24 trying to get disability. But later

1 that came back around and -- and --
2 and hurt us.

3 So, what I went (sic) is,
4 I got another -- he had been to a
5 couple of other people, not doctors,
6 but social workers up in Schenectady
7 and Amsterdam, and I brought those
8 people in. And the Judge had no
9 problem with me bringing them in,
10 but -- you know, and -- and I had no
11 problem -- I just gave -- these guys
12 came over and -- well, actually I
13 just paid him the thirty -- they
14 were getting paid because they were
15 with the State. You know, they --
16 they were getting paid with their
17 regular job, see, so it wasn't like
18 they were losing any money. And,
19 so, I paid their, you know,
20 transportation expenses. And the
21 Judge paid that. There was no
22 problem with that.

23 But I am -- I'm coming up
24 now, with this one case of where --

1 how am I going to pay for this other
2 doctor with the alternative theory
3 of shattered baby syndrome. And I
4 can't figure out how to do it before
5 the Grand Jury.

6 Once we've got an
7 indictment, then, yeah. I'll bring
8 him in to the trial, and stuff. But
9 -- and -- and there's a limitation,
10 right? I mean, we've only got --

11 MR. GRADESS: Well, this
12 will be the first occasion you can
13 call our office tomorrow and ask and
14 we'll see what we can.

15 MR. GUSTAFSON: Well,
16 yeah. How -- that's true. Yeah.
17 That was -- that is specifically the
18 case --

19 MR. GRADESS: Well, give
20 us a call.

21 MR. GUSTAFSON: -- yeah.
22 Because it's a thousand bucks, so
23 how we going to get over there?
24 We've got the same kind of -- a

1 problem over in Montgomery County.
2 We've got Jeff Wittman (phonetic
3 spelling) to come in as an
4 independent witness on both sides.
5 It's a Family Court. And he's
6 great. Shockmel and -- and Wittman
7 are both good, but they're
8 expensive. These people cost \$3,000
9 dollars, at least, you know. And --
10 and our limitation's \$15,000, right?
11 So, for assigned counsel. I mean,
12 we can't, you know -- we have to ask
13 him to --

14 MR. GRADESS: You
15 should -- you should give us a call
16 tomorrow.

17 MR. GUSTAFSON: Yeah.
18 We'll have to make the special
19 circumstances affidavit, you know.

20 MR. GRADESS: Any other
21 questions?

22 MR. BURKE: No.

23 MR. GUSTAFSON: I just --
24 I do want to say that I, you know --

1 I -- I -- I don't mean to seem to
2 be curt to my clients. It just
3 happens, okay. And -- and that's a
4 feeling on my part. I acknowledge
5 that. I'm a human being, too, like
6 anybody else, you know. And
7 sometimes people can be extremely
8 demanding when they're under a lot
9 of pressure, or for whatever reason.
10 A lot of people that end up in
11 Family Court, especially men, are
12 there because they are very
13 controlling individuals, who think
14 they should run everything. And,
15 so, those individuals are difficult
16 for me to get along with sometimes.
17 And, again, those are the people --
18 the people I've fired are basically
19 been all people, either -- well,
20 three men and one woman, I mean,
21 I've fired a client, right. And
22 controlling individuals. And three
23 men. And, then, the one woman is
24 just -- the mental issues were too

1 heavy. I -- I -- I recused myself
2 because of my -- because of my own
3 previous experience with my mother
4 and her issues. And, so, it was too
5 personal.

6 MS. BANKS: Yeah. You
7 recognize you're bias?

8 MR. GUSTAFSON: Oh,
9 yeah --

10 MR. GRADESS: They
11 actually meet one of those
12 standards --

13 (Multiple conversations.)

14 MR. GUSTAFSON: But --
15 well, a lot of people don't do that.
16 I mean, they don't get that close to
17 the client. And, I mean, they --
18 they shouldn't, probably. I
19 maybe -- I've got more free time
20 than -- well, I'm here, right? I
21 mean, you know --

22 MS. HATHAWAY: Like you
23 didn't know. You just said now that
24 you did know why they were like

1 that, so -- in the beginning, you
2 know --

3 (Multiple conversations.)

4 MR. GUSTAFSON: Oh, no.

5 I -- I -- I came to understand how
6 they were like that. I mean --
7 well, you know, I can get a lot of
8 input from all of their previous
9 counsel and the other people.
10 Several of these people -- two of
11 these individuals are well known
12 to -- they're maybe -- I may be
13 their fifth or sixth lawyer because,
14 you know, these cases have a life
15 of, you know, 5, 10 years. And
16 everybody -- the only -- I just --
17 I'm not criticizing the other people
18 on the assigned counsel plan, but
19 they have a certain jadedness about
20 it. You know, when they sit around
21 the room there with the D.S.S.
22 people, and the D.S.S. people and
23 the lawyers, and they sit there and
24 joke about these other people, the

1 defendants or the parties -- not the
2 defendants, but the parties and the
3 family members. And, you know, it's
4 a jadedness there because they're
5 not a -- they've seen it. They've
6 seen the same person. And -- and
7 not everybody gives into that.

8 Yeah. I mean, you know --
9 so -- so, it's hard to -- hard to
10 care.

11 And on a certain level
12 I've had this discussion with some
13 people because some people have said
14 to the law guardian, you don't care.
15 And later in the attorney's room we
16 discuss this and I said, well, is it
17 really our job to care? Are we
18 supposed to really care? Aren't we
19 supposed to maintain our
20 objectivity? Because I found if I
21 cared too much, then I can't do a
22 good job as a lawyer. I don't know.
23 Maybe -- well.

24 MR. GRADESS: Okay. Well,

1 we have another witness, so thanks.

2 MR. GUSTAFSON: Yeah.

3 Thanks for letting me talk for so
4 long. And -- yeah. I apologize
5 for, you know, any --

6 MS. BANKS: That's fine --

7 MR. GUSTAFSON: -- if you
8 take exception to anything I said.
9 I mean, you know, and -- and --
10 yeah.

11 MR. GRADESS: No. We
12 appreciate you being the only lawyer
13 that came down to talk to us.

14 MR. GUSTAFSON: I guess
15 that's my claim to fame.

16 Thanks very much.

17 MR. GRADESS: Okay. Thank
18 you.

19 TESTIMONY OF MINERVA SOTO:

20 MR. GRADESS: I'm sorry we
21 held you up.

22 MS. SOTO: That's okay.

23 MR. GRADESS: So --

24 MS. SOTO: I am a client.

1 MR. GRADESS: Okay. Well,
2 we're interested in hearing what you
3 have to say.

4 MS. SOTO: I guess I
5 started off -- I got the papers to
6 go to court, custody battle, Family
7 Court, everything like that.

8 I had assigned counsel,
9 switched in the beginning. Didn't
10 agree with him and didn't think he
11 even put a concern into any of this.

12 I got switched to another
13 one.

14 Do I say names or no
15 names?

16 MR. GRADESS: It's your
17 choice.

18 MS. SOTO: Douglas Putnam
19 (phonetic spelling). I got him. He
20 never got a hold of me at all, ever.
21 I've tried to -- I read through that
22 whole list and I didn't think he did
23 any of that. Absolutely none of it.

24 Getting a hold of him was

1 absolutely the most hardest thing in
2 life. If I had ten minutes with him
3 to even converse of anything that
4 was going on, any concerns, any
5 addresses, anything, it was a lot.
6 It was -- ten minutes was a lot.

7 I would go in and say, you
8 know, I don't think, you know, this
9 should be the way it is. And
10 custody was every other weekend, he
11 would get her overnights. She's six
12 months old. There was no real need
13 to have her overnight. It was
14 really taking -- really throwing her
15 sleep habits, her -- just all--
16 everything off guard, and everything
17 like that. And he was like, well,
18 no. That's normal. They get every
19 other weekend and then they get one
20 day a week. And I'm like, she's six
21 months old. What are you going to
22 do one day a week? You know,
23 there's really nothing you can do.
24 You have a four year old other

1 daughter, you know. There's not --
2 you know, there's really nothing.
3 At this point there's no reason to
4 take her on a week day, bring her
5 back at 7. She comes back dead
6 tired. She goes to sleep around
7 7:30, 8, give or take some nights,
8 you know. Nope. They definitely
9 get that. That -- it doesn't
10 matter.

11 His -- his attorney was
12 Susan Mallory (phonetic spelling).
13 Anything she said went. Anything.
14 He wants this, go ahead and give it
15 to him. He wants this, go ahead and
16 give it to him. No matter how many
17 times I said "no," he would argue
18 with me and say, you're going to
19 lose. And I go, then, well, then,
20 let me lose. Finally, at the end, I
21 was just so tired of saying "yes,"
22 "yes," you know, thinking he's
23 helping me, he's helping me, you
24 know, he's the -- in the end it's

1 going to come out okay, you know.
2 It's her father. I've got to be a
3 little so-so on everything. He won
4 everything. Everything he asked for
5 he got. Anything I said was, like,
6 you're being ridiculous. You're an
7 over protected mom. You have the
8 new mommy syndrome; quote, "new
9 mommy syndrome."

10 MR. GRADESS: And who is
11 it that said that?

12 MS. SOTO: Actually, he
13 didn't, my first lawyer said that.
14 It was Spence Paul (phonetic
15 spelling). But he actually did more
16 paperwork. Like if I said, let's --
17 his mom lives in the Bronx. He had
18 a previous thing that he had sent
19 his other daughter to the Bronx for,
20 like, 5 months. Couldn't deal with
21 it, whatever. So I was like, you
22 know, I had visited the place, you
23 know. You know, it's New York City.
24 You're going to see roaches. You're

1 going to see rodents, and stuff like
2 that. It's a two bedroom house. It
3 had six people in it. I mean, it
4 was just over crowded, too much was
5 in there. I mean, it just -- it
6 wasn't where I wanted to have my
7 daughter at 5, 6 months old. So, to
8 say it's not -- you know, I don't
9 keep her in that environment,
10 whether it's my family, whether it's
11 anybody's family, I prefer to keep
12 myself out of it, so I don't take
13 her, so I don't expect anybody else
14 to put her in that situation.

15 He insisted. We took this
16 to court. They were like -- I said
17 it to the law guardian, everything.
18 I was like, you know, I've been
19 there. I spent the night there. I
20 had to sleep on a one couch person
21 or one -- just a regular, one person
22 couch, because there was -- he had
23 an air mattress and there were
24 rodents all over. And I was like,

1 all right, you know, I don't want
2 her there. A playpen's not going to
3 keep her -- you know, it's not going
4 to keep her from anything. I mean,
5 she can get bit. I don't care, you
6 know, call me over protective, new
7 mom, whatever.

8 He -- they assist Susan --
9 as soon as Susan said, well, that's
10 her grandmother and blah, blah,
11 blah. There's rodents everywhere's
12 (sic) in New York City. I don't see
13 the problem. And they were like,
14 oh, yep. That's okay. She can go
15 wherever.

16 So, I mean, it's -- it's,
17 basically -- was so one sided.
18 Everything -- anything she said
19 went. There was something -- he
20 doesn't live in this county, he
21 lives in Montgomery County --

22 MR. GRADESS: Who's the
23 "he?"

24 MS. SOTO: Carlos Torez

1 (phonetic spelling).

2 MR. GRADESS: That's -- I
3 mean, you're using a lot of --

4 MS. SOTO: The father.

5 MR. GRADESS: Okay. Can
6 I -- you might say "the father" or
7 "the lawyer" --

8 MS. SOTO: I'm sorry.
9 Okay.

10 MR. GRADESS: -- or "the
11 indian chief," whatever the case may
12 be.

13 MS. ANDREU: She's the
14 Assistant D.A.

15 MS. SOTO: She is the
16 Assistant D.A. I think the --
17 anything she said just went.
18 Anything.

19 The father, my daughter's
20 father, lives in Montgomery County,
21 so it was just -- everything was
22 just like, oh, he's doing a lot of
23 driving, doing all these efforts.
24 He -- he stated that he wanted every

1 Thursday out of every month. He --
2 he gets -- the father gets every
3 other weekend, all overnights, until
4 Sunday, and then he gets every
5 Tuesday. And then he wanted every
6 Thursday. And I was like, are you
7 kidding me? He's going to get more
8 time than I do. I work. I'm a
9 working mother. I, you know, bust
10 my butt. I earn my money. I do
11 what I need to do to make sure she's
12 taken care of. I mean, everything.
13 I want to -- I want to get home and
14 have her. I want to see her. I
15 mean, she's my first. He has
16 another one. And not to say the
17 other one's more important than the
18 other, but she's the only one I
19 have. So, when I come home, I come
20 home to her.

21 And they're like -- and
22 I'm like, no, no, no. And he's
23 like -- he's like, he's not even
24 going to leave the county. He's

1 only going to have her for two
2 hours. He doesn't take her away
3 from you. And I'm like, no. She's
4 fine. She has other people to play
5 with. She's at -- you know, she's
6 with my mother, she's with her
7 cousins. I mean, it's a house with
8 kids. And she's interacting. She's
9 doing great.

10 And at this point he was
11 taking her and she would scream;
12 like, she would not want to go with
13 him. And previous to this, like,
14 she would through her arms out to
15 him when she used to go to him.

16 When I made this point,
17 and he was like, well, you need a
18 witness. My lawyer would say, you
19 need a witness. And I'm like, if --
20 he picks her up on Tuesdays and on
21 Fridays. When he picks her up it's
22 2 -- 2:30 in the afternoon; two to
23 three o'clock, or whatever time he
24 can pick her up. And she screams

1 like -- she screams, like, to the
2 point we're, like, she's scared.
3 Like she's -- she just -- she's
4 like, no, no, no, no (demonstrating
5 throughout). And she screams.
6 She's flaring her arms. She's
7 throwing herself out. I mean, at
8 this point, out of, like, the twelve
9 nieces that I have seen and have
10 had, they would prefer to go to
11 their parents before going to their
12 aunts, their uncles, their
13 grandmothers. You know, they'd run
14 to their arms. And they're like,
15 well, you need a witness. And it
16 can't be somebody -- it can't be a
17 family member.

18 Quite frankly, that's all
19 I have around here. He didn't give
20 me any ideas. My lawyer didn't give
21 me any ideas of who I could turn to;
22 who may I contact. I mean, try to
23 talk to somebody. Nothing. I mean,
24 even asked him, can't you get, like,

1 a psychologist, any type -- any
2 person that could go in there and
3 just, like, just see it just once,
4 just to see how she reacts and say
5 that it's -- you know, something's
6 not right. And he was like, nope.
7 You can't do that. You need a --
8 you need a witness. So, I mean, at
9 two o'clock in the afternoon, on a
10 weekday, it's the toughest thing to
11 do, to get somebody to say, oh, I'll
12 take off work and, you know, go
13 watch that for you. Nobody does
14 that. I mean --

15 MR. GRADESS: Did you ever
16 suggest to him that he get the
17 witness?

18 MS. SOTO: He -- he
19 wouldn't. He would just -- he was
20 so quick in -- I mean, our
21 conversations were never longer than
22 5 minutes. And he's like, no. You
23 need to find a witness. I mean,
24 nothing. I -- I was doing all the

1 work. I -- I mean, I was the one
2 who contacted Rebecca Thillet, who
3 gave me to you guys. And at the
4 point you guys weren't able because
5 it was in the middle of a -- well, I
6 was in the middle of the court
7 proceedings, so the legal advice was
8 a no, no or -- or something along
9 the lines of that. So, no. I was
10 the one trying -- I would just state
11 my case to everybody I knew to see
12 if anybody would just come up with a
13 person who might know somebody, who
14 might know somebody who's going to
15 give me some sort of name, voice,
16 anything, that's going to help me
17 out here.

18 No. He -- he wouldn't.
19 He -- I -- when I had asked for,
20 like, a psychologist, or anything
21 like that, it was somebody along
22 here or somebody that I had
23 contacted here who had contacted --
24 said, you know, he can ask the

1 County for a little more money to
2 get somebody to witness this or to
3 even, like, evaluate her in this
4 state. And he was like, no. You
5 need a witness. And that's all he
6 kept telling me. He was, I need a
7 witness. I need to find a witness
8 to witness this. I have racked my
9 brains out to the fullest, because
10 at this point I'm still working on
11 getting somebody to come see this.

12 I mean, a live in Carlyle.
13 It's just been the toughest thing --

14 MS. HATHAWAY: Do you have
15 a close friend who knows what's
16 going on, or a neighbor?

17 MS. SOTO: No. I mean, to
18 be honest, it's -- it's who you know
19 and how they're ranked in this
20 County, of who you get to step into
21 that courtroom, that's going to look
22 good enough, that's going to tell
23 you the truth and they're going to
24 believe it.

1 I live in Carlyle. It's a
2 really tough -- our neighbors aren't
3 the best people to even really
4 associate with. I mean, it's --
5 it's a lot of -- it's a lot of who
6 you know and -- and what you know
7 and how you go about it. And,
8 quite, frankly, those people aren't
9 the people I want stepping in a
10 courtroom and saying they will
11 represent me, because they're not --

12 MS. HATHAWAY: Do you have
13 a former teacher that you might know
14 or -- or somebody from -- a minister
15 or someone in the church area or --

16 MS. SOTO: I don't. I --
17 see, I haven't contacted any people
18 like that. I wasn't even -- I've
19 always -- I don't want to, like,
20 inconvenience anybody. But, like,
21 at this point I've --

22 MR. GRADESS: Are you
23 still represented by the same
24 lawyer?

1 MS. SOTO: Yes, at this
2 moment. I am looking into somebody
3 else. But until I can get somebody
4 else, I --

5 MR. GRADESS: So, you're
6 characterizing a relationship with
7 this lawyer where everything you've
8 asked for has not been delivered --

9 MS. SOTO: Yes.

10 MR. GRADESS: He's put the
11 burden on you?

12 MS. SOTO: Yes.

13 MR. GRADESS: And you've
14 not had any communication with him?

15 MS. SOTO: None. I mean,
16 I haven't -- like, the last -- when
17 it all finished, I had -- like,
18 everybody received a letter to say,
19 you know, the final -- how
20 everything ended. And I called and
21 I was like, I never received one.
22 And he's like, all right. I'll get
23 it to you. It took him a month to
24 get me the paper. A month. I can

1 literally -- could have droven (sic)
2 to his house and picked it up myself
3 within a day, and it took him a
4 month to get it to me.

5 I had just got it right
6 before Easter. I believe my case
7 had ended, like, the beginning of
8 March, ending in February, at most.

9 MR. GRADESS: So, they've
10 further -- court purposes you have a
11 final order, custody's been
12 ordered --

13 MS. SOTO: Finally. Yes.

14 MR. GRADESS: Okay.

15 MS. SOTO: Not to my
16 satisfaction. He's -- when I even
17 said no to, like, the four
18 Thursdays, he was like -- he was
19 like, what are you doing? You don't
20 lose any time. And I'm like, I
21 don't care. She's fine where she's
22 at. Two hours out of a day is not
23 going to kill him. He's not going
24 to gain anything --

1 MS. HATHAWAY: How old is
2 she?

3 MS. SOTO: She's fifteen
4 months old now. And it's -- and --
5 I mean, it's been bad, but she
6 doesn't want to go with him. And
7 everything -- I've been trying
8 everything. And I think it's now,
9 where everything's kind of working
10 its way through that. I'm actually
11 getting some people to respond to me
12 and I'm getting a little bit more
13 help --

14 MR. KING: What about --
15 have you thought about videotaping
16 it?

17 MS. SOTO: I've videotaped
18 everything and he said nothing. I
19 mean, he's -- I go, what if I
20 videotape? He goes, no. You need a
21 witness. Just like that. Like dead
22 set with the tone and everything, he
23 was like, no. You need a witness.

24 I have a videotape --

1 MR. KING: Have you
2 videotaped --

3 MR. GRADESS: You have the
4 videotapes?

5 MS. SOTO: I have
6 videotapes --

7 MR. KING: Of the baby --

8 MS. SOTO: Screaming. I
9 have it once. Because it was --
10 because I had to miss work purposely
11 just to get this. I had to miss
12 work just to purposely get this.

13 I've -- I mean, I've run
14 out of time at work. I've -- you
15 know, I've gotten, you're running
16 out of time, you know, stuff like
17 that. But I -- I still -- I called
18 in. I've videotaped. I -- he goes,
19 no. You need a witness. You need a
20 witness.

21 MS. HATHAWAY: But he
22 doesn't tell you what kind of
23 witness --

24 MS. SOTO: No. He has not

1 told me anything. He hasn't even
2 given me a name, a number, a person,
3 nothing. No idea. Nothing.

4 MS. ANDREU: Can C.S.S.I.,
5 -- (inaudible) --

6 MS. SOTO: I've had --
7 I've taken her -- I've gotten her
8 back, like, so -- so, like, with a
9 diaper rash, to the point where,
10 like, she was bleeding. It was like
11 raw skin. And I -- I -- I get her
12 back on a Sunday. So, taking her on
13 a Sunday to, like, her family
14 doctor, which has all the records
15 from everything, it's tough. And at
16 this point I didn't have her
17 insurance. It had just dropped.
18 So, I waited for the next day to
19 take her to the clinic.

20 I took her to the clinic.
21 They had written down everything. I
22 had told them that. Oh, well, if it
23 happens one more time, then we can
24 do something. That's -- that's how

1 it's been taken care of. I mean --

2 MS. HATHAWAY: I mean,
3 you've got documentation, they tell
4 you it has to happen one more
5 time --

6 MS. SOTO: Yeah. He
7 goes -- he goes -- you -- yeah.
8 Everything's -- you need
9 documentation --

10 MR. GRADESS: Who's the
11 "he" in that sentence?

12 MS. SOTO: The lawyer. My
13 lawyer. He goes, you need
14 documentation. You need -- I mean,
15 you need witnesses. You need -- you
16 need proof.

17 I mean, her hair's been
18 cut from the moment he's received
19 her, from the moment -- her father,
20 my baby's father, has received her,
21 her hair has been cut. I was -- I
22 was just floored because you don't
23 cut a baby's hair. For what reason?
24 Not -- he's -- I've brought in

1 pictures of her from when she was
2 born, to now. How -- you know, her
3 hair -- she has, like, 5 strands
4 that come to here (indicating), 2
5 strands that come to here
6 (indicating), and the rest comes to
7 here (indicating).

8 Now, her hair out here is
9 like this (indicating). She has
10 wavy hair. So, the fact that my
11 daughter looks like a clown if I
12 don't do her hair or do her
13 pigtails -- I used to do her
14 pigtails to come all the way back, I
15 can't even do that. I have to brush
16 the hair forward and brush the long
17 pieces out of her eyes. I mean, I
18 can't prove that. I've brought in
19 pictures, I've videotaped, they said
20 that's means nothing because Susan
21 Mallory says, I don't see any
22 evidence in that. How can she proof
23 that. And as soon as Susan Mallory
24 said that, my lawyer said, I

1 couldn't prove this. This is -- you
2 can't prove this --

3 MR KING: I mean, that's a
4 -- that's a private conversation
5 between Susan Mallory and -- and --
6 your lawyer?

7 MS. SOTO: Yep.

8 MR. KING: I mean, it's
9 never been brought up in court?

10 MS. SOTO: Nope. Until
11 the very end, until the last -- our
12 last court date that we went in, the
13 last time I went into court.

14 And the only reason it was
15 brought up was because I leaned over
16 to him and go, I want the hair
17 cutting brought up. I want it
18 brought up. I want him not able to
19 cut her hair unless it's agreed
20 upon. And he goes -- he stands up,
21 rolls his eyes and goes, you know,
22 we weren't even going to bring this
23 up, but she what's this brought up.
24 And that's how it was even brought

1 up.

2 And even the Judge is
3 like, well, that should never have
4 happened. Her hair should never be
5 cut unless it's agreed upon. So,
6 apparently, the Judge thought it was
7 more important than my lawyer. I
8 mean, he just didn't want to bring
9 up anything that was going to
10 cause -- I was like -- I mean, she
11 doesn't even want to go there.
12 Like, my daughter doesn't even want
13 to go with him anymore. What about,
14 you know, psychological evaluations?
15 What about this? What about -- I've
16 brought up everything that anybody's
17 ever brought up to me to him and
18 he's like, no.

19 MS. BANKS: No
20 psychological evaluation?

21 MS. SOTO: Just -- I mean,
22 just for anything. Just to bring up
23 anything. I was -- I don't know. I
24 don't know the law. I don't -- I've

1 never done this. This was my first
2 time, so. Anything anybody had ever
3 brought up to me; well, you know, in
4 a case like this, why don't they
5 bring up this? And why don't they
6 try this? And why don't they -- you
7 know, why isn't he bringing up --
8 why isn't my lawyer bringing up
9 anything? Nothing. He was just
10 like, no --

11 MS. HATHAWAY: How long
12 have you had him?

13 MS. SOTO: Probably since
14 -- probably a little bit less than a
15 year. I don't -- not very long. I
16 mean, he wanted to end it really
17 fast. The only reason, I think,
18 that it even dragged on that long
19 was because of, you know, they had
20 to keep adjourning it for whatever
21 reason and whatever reason and
22 whatever reason; very pointless
23 reasons. He just -- he just wanted
24 it done and over with --

1 MS. BURKE: Did -- did he
2 explain to you for the reasons for
3 the adjournments?

4 MS. SOTO: No. Actually,
5 like, half this stuff wasn't even
6 explained to me. I was just like,
7 okay. And he's like, all right.
8 Well, I'll talk to you later. And
9 that was it. It was just left at
10 that, always. Always. We'd walk
11 out of court and he goes, well, I'll
12 discuss it later.

13 MS. BURKE: Did he discuss
14 it later?

15 MS. SOTO: No.

16 MS. HATHAWAY: Later never
17 comes.

18 MS. SOTO: No. If I got a
19 hold of -- I used to have to leave,
20 like, 7 or 8 messages on his
21 answering machine just for him to
22 give me a 5 minute phone call back.
23 What did you want? I'd ask my
24 question. No. Okay. That's it.

1 You know, at this point I
2 don't know how many questions I was
3 supposed to ask, how to ask. I
4 mean, I -- I even remember going --
5 you know, looking for him; missing
6 another day of work, looking for
7 him, saying, I -- I had a few
8 questions to ask, I couldn't get a
9 hold of you by phone. And I asked
10 where he lived. Total runaround.
11 Finally, found where he lives. And
12 I was, like, well, you know -- he
13 goes, well, I don't have time. I
14 have to get back to court. And I'm
15 like, but I've been calling you and
16 you just don't answer my questions
17 or you don't -- you don't even
18 respond to my calls. And he's like,
19 well -- well, we'll have to meet up
20 at another time or another place.
21 And I go, well, we can meet up at
22 your office whenever you -- whenever
23 you want, whenever you're free. And
24 he goes -- he goes, well, no. My

1 office is here. And I was like,
2 well, where do you want to meet up?
3 At his -- you know, we were at his
4 house, in front of -- you know, in
5 his driveway. He's like, no. My
6 office is here. Then he goes, we
7 can meet up somewhere's else. We
8 can meet up at the -- at the
9 courthouse. And I'm like, all
10 right. Fine. Just tell me when.

11 And when he did, he made
12 me wait there for two and a half
13 hours. I was waiting in the
14 courthouse. I had missed another
15 day of work. Sat in the courthouse
16 for two and a half hours.
17 Everything. And I swear to God
18 he -- he talked to me for 10
19 minutes, for literally 10 minutes.
20 And he was like, well, I've got to
21 get back. I have another -- I have
22 another case, blah, blah, blah,
23 blah, blah. That was it.

24 I mean, I -- I honestly

1 didn't gain any knowledge from him.
2 I didn't learn anything from him. I
3 didn't come out with anything. My
4 daughter's actually in a worse
5 situation than she started in,
6 having him. I mean, he didn't do
7 anything on this, what -- honestly,
8 nothing. I mean, he represented me
9 as a file, he didn't represent me a
10 person, nor a client. He didn't
11 take my daughter into consideration,
12 which is my consideration. He was
13 -- he was actually treating me like
14 I was a 12 year old delinquent
15 around the street, or something, you
16 know. And to be treated like that,
17 I'd rather -- I'd rather look
18 elsewhere, rather -- I'd rather work
19 three jobs and pay whoever I had to
20 pay, do whatever I need to do,
21 but --

22 MR. GRADESS: So right now
23 that case it closed, he doesn't
24 represent you, and you're looking to

1 modify these conditions?

2 MS. SOTO: Yes.

3 MR. GRADESS: And do I
4 understand from something that you
5 said, that you've actually been in
6 touch with our office?

7 MS. SOTO: Rebecca Thillet
8 had -- she said you guys were coming
9 in town, or whatever. I had
10 contacted you guys, and it was in
11 the middle of the court case, so it
12 was -- you guys are unable to give
13 me so much legal advise, or
14 whatever? And -- and not -- and you
15 were like -- I -- I don't know who
16 it was. I can't remember the name
17 because --

18 MR. GRADESS: Okay.

19 MS. SOTO: -- it's so long
20 ago --

21 MR. GRADESS: And are you
22 working with Catholic Charities now?

23 MS. SOTO: No. I was --
24 actually, Karla had called me and

1 said that this was going on, if I'd
2 come in and speak about this? And I
3 was like, yeah. That's fine.

4 It -- actually, it's been
5 her who's actually been getting me,
6 like, oh, we'll try this person or
7 this community group, they might be
8 able to help you. They might be
9 able to do this for you. I mean,
10 she's the only one that actually
11 helped me, honestly, like, with
12 everything.

13 MR. GRADESS: Well, we'll
14 -- we'll take a look at that and get
15 in touch with you, okay?

16 MS. SOTO: Uh-huh.

17 MR. KING: And I would
18 suggest that if your baby ever comes
19 back, you know, in the manner that
20 she shouldn't come back, you
21 shouldn't wait to go to the doctors,
22 you should go to the emergency room.

23 MS. SOTO: Uh-huh.

24 MS. HATHAWAY: Yeah.

1 MR. KING: Take her right
2 to the emergency --

3 MS. HATHAWAY: Right
4 away --

5 MR. KING: -- right when
6 she comes in. Of course, first of
7 all, what happens in the emergency
8 room, the time is set.

9 MS. SOTO: Uh-huh.

10 MR. KING: They'll take
11 care of that baby quick and you'll
12 have the records quick. And if you
13 need to go to someone for some
14 assistant, like, you've got, like,
15 hot documents.

16 MS. SOTO: Uh-huh.

17 MR. KING: You know, I
18 would also recommend any time --

19 MS. HATHAWAY: Yeah.

20 MR. KING: -- that that
21 child comes back and -- and feel
22 that, you shouldn't wait. Because
23 then they'll say that, oh, you knew
24 that the baby was sick. Well, why

1 didn't you go to the emergency? So,
2 you know, you're damned if you do,
3 you're damned if you don't --

4 MS. SOTO: Right.

5 MR. KING: If that baby
6 comes back, you say -- don't wait.

7 MS. SOTO: Like, I have
8 been recently. I have been just
9 trying to be on the things and
10 everything like that because I've
11 been videotaping everything, I've
12 been -- I videotaped her leaving and
13 screaming. I've -- I videotaped her
14 coming back and being burned. I
15 mean, it's not burned, but to us, in
16 Spanish, it's burned. (Spanish
17 terminology), it's burned. But
18 it's -- with a diaper rash. Just
19 like a lack of -- lack of care.
20 It's not being changed. It's -- I
21 mean, her diaper's to the point
22 where you can just --

23 MR. KING: Ring it --

24 MS. SOTO: -- ring it like

1 a -- like a washcloth
2 and (demonstrating throughout) --

3 MS. HATHAWAY: Since she's
4 been, you know, crying and carrying
5 on to go with him, while you're
6 getting her ready or while she's in
7 his presence, before that, how has
8 she been? Does she go to him? How
9 does she act in the meantime, before
10 she get's to the problem of actually
11 having to go into his arms or
12 whatever?

13 MS. SOTO: To -- like, my
14 mom's the one who exchanges her most
15 of the time. I've only witnessed
16 it, maybe, a couple of times; that I
17 have not gone into work and given
18 her to him. But my mom explains to
19 me, as -- as soon as she gets her
20 coat on and her sneakers on, because
21 she's usually in her socks and
22 playing around with my other niece,
23 to the point where she starts
24 putting on her shoes and putting on

1 her jacket, my daughter's kicking
2 off her shoes, going no, no, no
3 (demonstrating). And then when he
4 knocks on the door and --

5 MS. HATHAWAY: So, he's
6 not even there yet?

7 MS. SOTO: No, no. It
8 will be like --

9 MS. HATHAWAY: She knows
10 that she has to leave --

11 MS. SOTO: -- yeah. It
12 will be him pulling in, my mom would
13 be getting her jacket on, he'd knock
14 on the door -- you can see him. We
15 have a window at the top of our door
16 so you can see them. As my mom
17 opens the door, it's not willingly,
18 but just because she has to, being,
19 you know, courteous, to not be in
20 the middle on conflict, she'll open
21 the door and say, go ahead. Come
22 in. I'm just getting her jacket on.
23 And she'll be like, no, no. And
24 she'll run, no, mama. No, mama,

1 mama. And -- she calls my mom
2 "mama." And she just -- and my
3 mom's like -- my mom literally just
4 has to force her to get her jacket
5 on, give her to him, as she throws
6 herself out of his arms, like, no,
7 no, no, mama. No, no, no. Waiving
8 her arms, just like throwing herself
9 at my mom

10 MS. HATHAWAY: So, she
11 actually begins this the minute your
12 mom starts --

13 MS. SOTO: Mom starts
14 putting on her jacket. Yes.

15 MS. HATHAWAY: So, she has
16 sense enough to know that she's
17 going to be leaving --

18 MS. SOTO: Yes.

19 MS. HATHAWAY: Well, there
20 has to be something going on
21 there --

22 MS. SOTO: There's -- yes.
23 There's been times that I've -- when
24 I've gotten her ready, let's go

1 bye-bye. She said, no. No. And
2 I'm like, you're going with me.
3 You're going with me. I literally
4 have to take her with me, out the
5 door, and show her that there's
6 nobody there. And then she just
7 relaxes, I sit her in the car, and
8 she's fine.

9 MS. HATHAWAY: And this
10 has been going on approximately how
11 long?

12 MS. SOTO: About two
13 months. Like, before -- beforehand,
14 like she's -- like, I had given her
15 to him and she had actually thrown
16 out her arms to him, like, you know,
17 I know you, you know, you're fine.
18 Now, she does -- she screams. She
19 screams. She's like no --

20 MS. HATHAWAY: Like, she
21 doesn't have to see him -- every
22 time you put the --

23 (Multiple conversations.)

24 MS. SOTO: Yes. It's

1 already so routine --

2 MS. HATHAWAY: -- that she
3 doesn't want to go --

4 MS. SOTO: -- yes. She's
5 already so use to it, that it's
6 routine. That it's the middle of
7 the day, she knows it's. You know,
8 whatever cartoons on all the time,
9 she knows that she's getting her
10 jacket on for that time. And she's
11 like, no, no, no, no --

12 MR. KING: Why wouldn't
13 your lawyer accept your mom as a
14 witness?

15 MS. SOTO: Because she's
16 my mother.

17 (Multiple conversations.)

18 MS. BANKS: But if you --
19 if you had a neighbor or somebody,
20 they could still say, well, you paid
21 her off. I mean, how can you prove
22 that you have an un-bias witness --

23 MS. GRADESS: I know
24 you're trying this case, let's --

1 MR. KING: You know, I
2 mean, I -- I just wanted to know --

3 MR. GRADESS: We'll talk.

4 MR. KING: Yeah.

5 MS. SOTO: He said no
6 relatives. He goes -- he goes, you
7 need a non-relative person who's
8 going to go into court and say they
9 saw this. You need a witness that
10 is a non-relative, that -- that was
11 his biggest thing. Non-relative.

12 And quite honestly, that's
13 all I really have. That's who
14 watches my daughter because I trust
15 them. That's who, you know -- you
16 know, who I -- mom, hold this money,
17 because I trust her, you know what I
18 mean? It's just people who I trust.
19 And that's my surroundings. That's
20 my mother. That's my family. It's
21 my sister. It's -- you know, it's
22 my brother-in-law or it's --

23 MR. GRADESS: It's
24 perfectly understandable.

1 MS. SOTO: I mean, I'm 23
2 years old and, you know, family's
3 the biggest thing I have. And they
4 prove me right every time and --

5 MS. HATHAWAY: Your
6 brother-in-law's not a relative.

7 MS. SOTO: Married? Even
8 if they're married? No? Oh, then I
9 didn't know that. You see, he
10 doesn't tell me any of that. I --
11 he's relative. He's -- you now,
12 he's married into the family, that's
13 how I thought of it as.

14 UNKNOWN SPEAKER: Is there
15 a law guardian in this case?

16 MR. SOTO: Jean Garney
17 (phonetic spelling).

18 UNKNOWN SPEAKER: What's
19 your experience with the law
20 guardian?

21 MS. SOTO: I have actually
22 tried contacting her, never got her
23 to contact me back. Numerous times.
24 Even to state that she -- my

1 daughter doesn't even want to go
2 with her father anymore. Never got
3 a hold of me. Never contacted me
4 back.

5 When we were in the court
6 and I -- and I mentioned, like, the
7 whole, you know -- my daughter's
8 father's mother, the whole Bronx
9 thing, and everything like that, as
10 soon as Susan Mallory said, well,
11 that is her grandmother and you
12 know, they -- and as soon as she
13 just said, well, it's her
14 grandmother. The -- the law
15 guardian was like, well, I don't see
16 a problem. You're going to find
17 rodents any where you go. Was like
18 that. You're just a juvenile, you
19 know. They talked to me like I was
20 a juvenile, which was absolutely
21 irritating more than anything. I'm
22 not a juvenile. I have a kid.
23 I'm -- I'm responsible enough.
24 Whether you believe me or not, I'm

1 here. I'm fighting for my daughter.
2 I'm doing what I need to do. I'm
3 working. I'm -- you know,
4 everything I have is -- I've -- I've
5 earned. Everything I've done I've
6 earned. And to talk to me like I'm
7 a juvenile, I'm -- they -- that's
8 all they've done, is talk to me like
9 I'm a juvenile. So, I mean, I --
10 everything -- I've gone to work and
11 I've asked people who have gone
12 through, like, a custody hearing,
13 you know -- I've -- and they'll be
14 like, mention this, mention this,
15 mention this. I -- everything I've
16 mentioned, they have just shot down,
17 just totally shot down. Like, why
18 are you going to bring this into the
19 case? Or why even bother? It's not
20 going to work. This is not enough
21 evidence. This, this and this.
22 Just -- they totally just --
23 everything was just, like, shot
24 right through. I mean, anything

1 Susan Mallory said, well, she knows.
2 She knows better. She -- she -- she
3 knows this person, so I think
4 they're all right. That's how --
5 exactly how it went.

6 I mean, to have her, like
7 -- he said, like, to have -- like,
8 my daughter's father said, I want
9 her every Thursday. And he already
10 has her every Tuesday, but he said
11 he wants her every Thursday because
12 he lives in Montgomery County. I
13 won't even take her out of Schoharie
14 County, I'll visit her at a friend's
15 house; I'll pick her up and have her
16 at a friend's house for two hour, a
17 Thursday, from -- from 3 5. From 3
18 to 5:30 they had put on the paper,
19 on the court paper. I had said,
20 wait. I get out of work at 5. I
21 mean, I get out of work at 4, I get
22 home by 5. Why can't I just pick
23 her up on the way? Because it's in
24 Central Bridge. So, if you go on

1 I-88 from Albany you pick her up and
2 you go home. No. You don't get out
3 at 4, you get out at 4:30. So, you
4 get home at 5:30. They were telling
5 me what time I got out of work.
6 This is how -- I was like, are you
7 telling me what time I get out of
8 work? I know what time I get out of
9 work. I get out at 4, so that means
10 I get home by 5. So, if I go I-88
11 and pick her up, that's exact
12 timing. That's me not missing any
13 time with my daughter. Instead,
14 they were like, no. You get out at
15 5:30, he has her until 5:30.

16 That's what they were
17 throwing at me. And I was like,
18 well, you know what, I don't agree
19 to any of this. I don't want any of
20 this. And my lawyer goes to me,
21 well, you're going to lose. And I
22 go, well, you know what, then, fine,
23 let me lose this time. You've lost
24 everything else for me, let me lose

1 this time.

2 And now it comes that he
3 has two floating days out of the
4 month that he gets to do that. He's
5 used those floating days, it's been,
6 maybe, I don't know, two months,
7 he's used those floating days one
8 time. One time. And that's when
9 he's like -- he got in an argument
10 and he didn't want to -- he didn't
11 want to -- he didn't want -- he's
12 like, I'll pick her up. And that's
13 when he uses those floating days.
14 So, he's -- everything he's doing is
15 out of spite, out of just -- he
16 doesn't -- a kid knows when you love
17 them. A kid -- you can see it in
18 somebody's eyes. A mother's heart
19 doesn't deny anything. It doesn't
20 lie. When something is wrong you
21 feel it. You know when your kid
22 isn't right. You just know. I
23 mean, whether you're a mother,
24 you're a father, whether you cared,

1 you know. You know. You know when
2 something isn't right. You know
3 when they don't feel right. You
4 know when they're sad. You know
5 when they're sick. Doesn't matter
6 how new of a mother or father you
7 are, you just know.

8 And, I mean, I could come
9 out with anything and they're like,
10 you have the new mommy syndrome.
11 You just don't know. You just --
12 you're -- you're guessing. You're
13 going on what you believe, and
14 everything like that. And they
15 just -- they didn't want to believe
16 me. They don't want to take my
17 word. They didn't want to -- they
18 didn't even want to try. They
19 didn't want to try anything. They
20 just didn't want to try to prove
21 anything. They didn't want to go
22 any further, they just wanted to
23 leave it there. That's where it is.
24 Leave it there.

1 So, I think I've spoken my
2 case to everybody. I think -- I
3 walk by and says, oh, how's
4 everything? Well, no. I said
5 everything. And I just try to get
6 somebody who's going to know
7 somebody, who's going to maybe shoot
8 out a name or a number or something
9 that's going to help me out --

10 MR. GRADESS: Well, I'm
11 going to confirm for you, I'm going
12 to look at this file, it will be
13 open in our office, and I'll be in
14 touch with you.

15 MS. SOTO: Thank you.

16 Any questions?

17 MR. GRADESS: Anybody
18 else?

19 Thank you very much for
20 coming.

21 MS. SOTO: Thank you for
22 having me. I appreciate it.

23 MR. KING: I'll tell you
24 how important you are, you made me

1 miss my train.

2 MS. SOTO: I'm sorry.

3 (Laughter)

4 MR. KING: I knew it was
5 important enough for me to hear you
6 and --

7 MS. SOTO: Thank you.

8 MR. KING: -- and, you
9 know, we're just -- it's not only
10 we're going to fight for what we
11 need to fight for, but we're going
12 to pray for you.

13 MS. HATHAWAY: Don't give
14 up.

15 MS. SOTO: Thank you.

16 Thank you.

17 MR. KING: You're a good
18 mom.

19 MS. SOTO: I try.

20 MR. KING: A very good
21 mom, all right.

22 MR. GRADESS: We like new
23 mothers where we come from.

24 MS. SOTO: Thank you.

1 Thank you.

2 MS. HATHAWAY: Don't give
3 up now, you've come too far.

4 MS. SOTO: Thank you.

5 MR. GRADESS: All right.
6 Thank you.

7 Is there any -- since we
8 have no more witnesses, if there are
9 any statements for the record,
10 otherwise we'll close this hearing?

11 All right. We stand
12 adjourned.

13 (Whereupon, the Fact
14 Finding Hearing named in the
15 above-entitled caption was concluded
16 at 7:07 p.m.)

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STATE OF NEW YORK)

COUNTY OF ALBANY)

I, Joan L. Burleigh, a Notary Public in the State of New York, do hereby certify that the foregoing hearing was taken before me, in the cause, at the time and place, and in the presence of counsel, as stated in the caption hereto, at Page 1 hereto; that the foregoing typewritten transcription consisting of pages number 1 to 453, inclusive, is a true record of my stenographic notes of the testimony of said witnesses and of all proceedings had at the session of which said hearing was taken.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal, this the 9th day of May, 2004.

Joan L. Burleigh, Notary Public,
State of New York
County of Albany
My commission expires: 4-5-07
Number: 5010542

