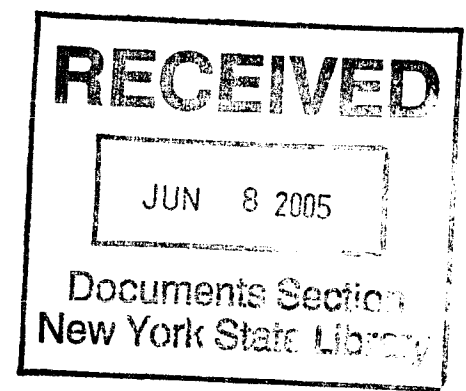


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NEW YORK STATE ASSEMBLY
ASSEMBLY STANDING COMMITTEE ON CHILDREN AND FAMILIES
PUBLIC HEARING
ON THE ESTABLISHMENT OF AN INDEPENDENT
OFFICE OF THE CHILD ADVOCATE



Assembly Hearing Room
250 Broadway
New York, New York

Thursday, May 12, 2005, 10:29 a.m.



Public Hearing on the Establishment of an independent office of the Child Advocate - Bill A 06334

Witness List

Hon. Michael Corriero

Judge of the Court of Claims
New York State Supreme Court

Kevin Ryan, Esq.

Child Advocate
State of New Jersey, Office of the Child Advocate

Jeanne Milstein

Child Advocate
State of Connecticut, Office of the Child Advocate Connecticut

Vincent M. O'Brien, Esq.

Retired
Former Ombudsman for the NYS Office of Children and Family Services

Robert J. Giugliano, Ph.D.

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Professor Gertrud Lenzer

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Brooklyn College of the City University of New York

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Chair of Board; Attorney in Private Practice
Correctional Association of New York

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Director
Juvenile Justice Project
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Ailin Chen

Policy Analyst for Juvenile Justice and Youth Services
Citizens Committee for Children (CCC)

Testimonies

*Testimony of Kevin Ryan, New Jersey Child Advocate
Before the New York Assembly
Children and Families Committee
On Assembly Bill 6334, May 12, 2005*

Good morning and thank you for the opportunity to address you today. My name is Kevin Ryan, and I am the New Jersey state child advocate. I support the establishment of an independent child advocate in New York because I strongly believe our children deserve the zealous, watchful eye of an independent advocate regardless of which side of the River they live on. Children in Connecticut benefit from the zealous and compassionate work of my friend and colleague, Jeanne Milstein, just as they benefit in New Jersey from the work of my office. Surely, New York's children deserve the same attention, care and advocacy.

To speak candidly, the streets of heaven are too crowded with our children. Bold reform of this nature is almost always born in the graveyard. I hope you will make New York an exception and establish a child advocate with the winds of compassion, not outrage or guilt, at your back. Many of you will remember that in January of 2003, seven-year-old Faheem Williams was found dead in a locked Newark basement - due to starvation and a crushing blow to his stomach. His two brothers were found as well – alive, but in horrendous condition. The Williams brothers had been known to our Division of Youth and Family Services since 1998. Despite recent allegations of harm to the children, our child protection agency had closed the children's case without ever locating the boys.

Faheem's death captured enormous public attention, as did the deaths of many children due to suspected abuse and neglect in the succeeding months. Public accounts of the child protection system's grim collapse prodded New Jersey's Legislature to unanimously create by statute an **independent** Office of the Child Advocate, signed into law by former Governor James McGreevey on September 26, 2003.

With a staff of nearly twenty-five from disciplines that include the law, the nonprofit community, social work, journalism and advocacy, and a modest budget of \$2.5 million, New Jersey's Office of the Child Advocate carries out its mission to advance the safety, health and well-being of New Jersey's children. By statute, our office is authorized to investigate, review, monitor and evaluate State agency responses to allegations of child abuse or neglect in New Jersey, and make recommendations for systemic and comprehensive reform. Our jurisdiction extends to all public and private settings in which a child has been placed by a State or county agency or department, including, but not limited to, juvenile detention centers, group homes, foster homes, residential treatment centers and shelters.

We are committed to identifying systemic problems that hinder government or community agencies from achieving comprehensive and positive outcomes for children, and we work each day to champion solutions to those problems and the interests of children. We undertake exhaustive investigations, work to advance policy and best practice innovations, have the ability to hold public hearings, issue subpoenas for records and other information critical to our work, and to sue State government, if necessary. Finally, we have an affirmative obligation to publicly report on our findings – a most powerful tool to effect real change.

This authority and these tools are, of course, invaluable – but our greatest strength is unmistakably rooted in the independence of our office. Without question, my office would not be a resonant voice for real and meaningful change – that which is unaltered by politics or power – without it. You will do well to incubate an office of the child advocate that is deaf to political voices, and accountable squarely to children.

There is no serious debate about whether New York's children would benefit from an independent Office of the Child Advocate. Of course they would, as would children in every state. New York City now has as the leader of its public child welfare system one of the nation's most esteemed reformers, John Mattingly. Children in New York City are all the better for his being here. But let me clear: the need for an independent, watchful child advocate is not predicated on an assumption that only marginal leaders and collapsed systems bear monitoring. Vigilance and advocacy make all systems better for children, which is why strong, confident leaders who want to see their agencies thrive and achieve better outcomes for children and families welcome scrutiny.

New York's child protection system has come far, for sure, and has miles to go. This is heartbreaking, high-stakes work. Families' and children's lives hang in the balance. Child welfare is the most important work of our society, and it must be as transparent an exercise as possible. Accountability is essential. An independent child advocate, uniquely, has the capacity to shine an antiseptic light into dark corners and ensure that our children are served well through public exposition. When they are not, the advocate must have the power to champion and enforce reform.

Just a few months ago, our independence was threatened with the introduction of a well intentioned bill in New Jersey's Legislature to restore the Department of the Public Advocate. Sections of this bill had stripped the Office of the Child Advocate of its independence, creating instead a Division of Child Advocacy that effectively relegated us to an ombudsman-type office with no focus on systemic issues, and little if any power to effect real change. This bill was posted for committee consideration in early March 2005, prompting scores of advocates to testify about the need for our independence – and the importance of our voice. With their help, we were successful in convincing the sponsors that preserving an **independent** voice for children was paramount.

To date, we have released five public reports, including the Jackson Investigation Report (based upon the October 2003 discovery of four severely malnourished boys in Collingswood, NJ), the Arthur Brisbane Child Treatment Center Investigation Report (which, among other findings, outlined the need for a comprehensive child behavioral health system in NJ), an Assessment of the Health Status of a Sampling of Children in Foster Care (which concluded that no real medical safety net exists for children in out of home placement), our Juvenile Justice Report (exposing that thousands of children with mental and behavioral health needs illegally languish in juvenile detention centers awaiting appropriate placement and services), and a 2004 report on twelve child fatalities. Each report required corrective action, and where the State's progress has been wanting, (as it has been very wanting in the continued illegal detention of children with serious emotional disorders) the courts remain an option under serious review by my office currently. Sometimes reform for children occurs when we lock arms with an agency and bound through the door of change together; other times, we have to kick the door open and push the agency through it. Our statute allows us to do both.

So true it is, as Dr. King said, that the moral arc of the universe is long, yet it bends toward justice. This is so, in my view, not merely by divine inclination, but because men and women of vision, influence and resources do the bending. Be those men and women today, and bend the universe toward justice for our children. Give voice to the voiceless and support an independent office of the child advocate for the beautiful children of this Empire State.

***Testimony of Jeanne Milstein, Child Advocate
State of Connecticut
On the Establishment of an Independent Office of The Child Advocate In
New York State - Assembly Bill 6334, May 12, 2005***

Good morning. Thank you for the opportunity to speak to you today. It is an honor and privilege to appear before you as the Child Advocate for the state of Connecticut. I am particularly proud to be here as more than just a neighbor but as a born, raised and educated New Yorker. So this opportunity is near and dear to my heart.

I am proud to be part of a state government that had the wisdom and courage to establish the Office of the Child Advocate. It certainly takes wisdom to recognize the value of independent oversight, and courage for a state to put its very agencies under scrutiny. I do not take my responsibilities, or my authority, lightly. I believe that I am the longest serving Child Advocate in the country (5 years in June). Our office was modeled after Rhode Island, the oldest office in the country.

The OCA in Connecticut was established in 1995 in response to some very tragic and very high profile deaths of children in state care. Faced with the very dilemma New York faces today and New Jersey death with very recently, Connecticut leaders determined that there was a need for an independent oversight of state care and services for children.

The New York Office of Children and Family Services does operate an ombudsman's office and I applaud that. The Connecticut Department of Children and Families also has an ombudsman and I am pleased to report that we often work closely with that office. However, there is a level of authority and credibility that can only be achieved by an agency with clear independence and objectivity. We are also an agency with a very strict mandate to protect the confidentiality of citizens who contact us on behalf of children. That kind of assurance is absolutely necessary to establish the comfort level needed for persons, including potential agency whistle blowers, to report their concerns about the state's care and protection of children.

The mandate of the CT OCA is very broad. (I have included annual reports, fatality and facility investigation reports, and evaluations of the effectiveness of the OCA to my written testimony for you to review.) My office reviews the deaths of children (I chair the state Child Fatality Review Panel that consists of the Chief State's Medical Examiner, Chief State's Attorney, State Police Commissioner, a pediatrician, a child development specialist, and a child welfare professional). We are also obligated to review programs and facilities where children are placed by the state or through state-supported entities; we review the circumstances of children with special health care needs; we educate attorneys representing children; we educate citizens of Connecticut about issues affecting children; and we act as the ombudsman for individual children involved in state systems, frequently intervening on their behalf. We are the voice of Connecticut children to state policy makers and consequently we are engaged in informing children of their special rights and protections under the law. All of this work guides my recommendations for policy and legislative change to better serve children. We do not simply criticize. We review and we make specific recommendations to improve the circumstances of Connecticut's children that will hopefully help prevent tragedies from occurring.

My office gets the most complicated cases in the state. People do not generally call me until all other foreseeable options have been exhausted. The cases we hear often involve children touched by multiple systems. They range from tragic fatalities to profound abuse and neglect. We are committed to being helpful to those who call despite the often-overwhelming problems and issues we uncover. Our assistance may involve helping to get a child out of an emergency room and into a treatment program. It may be helping a parent achieve the right educational plan for a child. It may be going to court to make sure a child is able to remain at a familiar school despite having to live in a shelter. Last year we responded to over 2000 calls in

this way. We opened 890 individual children's cases for full investigations. The larger systems issues take more time and work, but I believe we have gained a lot of ground towards improving the care and protection of children in Connecticut.

We are now 10 years old. We have produced several reports regarding child fatalities, the state of services and supports for children with special health care needs, the conditions at facilities where children in the juvenile justice system are placed and the effectiveness of state – accessed mental health care for children. Each of the reports was preceded by in depth investigations including record reviews, interviews, observations, literature reviews and expert consultation, and exploration of best practices. My investigations always include recommendations for system reform and I believe they have had lasting positive outcomes. Foster children no longer tote their belongings in garbage bags. Children in out-of-home placements and treatment facilities are visited more frequently by their caseworkers. The number of children in out-of-state treatment programs has slowly begun to decrease. Children in our juvenile justice system are finally receiving the attention they have been denied. Support to families with children with special health care needs is becoming a priority of our public agencies. The OCA has worked tirelessly and collaboratively to improve the circumstances of many Connecticut children. Our efforts have not been solely towards a simple "better." Rather I am committed to holding systems and agencies accountable. And by that I mean accountable for the quality of work they do and accountable to Connecticut taxpayers for how their resources are spent. I learned a long time ago that problems couldn't be fixed by simply throwing money at them. We are not afraid to ask the question, what are we getting for the money we are spending? How is this particular child benefiting from the service the state is paying for?

You asked that we talk about some of the problems children are facing. I can speak to these issues because I know that Connecticut's problems are not unique. New York, like most states, is experiencing similar challenges with mental health services for children, adequate foster care and other issues of child welfare. For our state, there are still far too many children essentially warehoused in institutions. We still have not built a community-based infrastructure of mental health services to better support children in their own homes. Too many children are in the juvenile justice system because that is the only place they can get mental health care. There are too many children locked up despite never having committed a crime. There are so many families struggling to keep jobs and pay mortgages while caring for their children who have disabilities or complex medical conditions, without help or hope of resolve. Those families live in fear every day knowing that their children are in a group most at risk for being institutionalized, simply because of the extra care they need. Their potential is overlooked, their futures not invested. In addition, I remain so concerned about the circumstances of children with serious emotional issues and their experience in our public schools.

My vision, and I recommend that you be guided by the same principal, is to do everything we can to help each and every child reach his or her full potential. We must ensure the people who work with children in all venues are educated about valuing children and pursuing the potential of all children. We will continue (as I know you will) to work hard negotiating for better conditions at publicly funded programs. We will continue to build alliances between and among service providers, state agencies and with parents as well. We will give voice to the children. I have just established the Child Advocate's Youth Advisory Board. It is critical to take guidance from the very children and youth we all purport to serve. We will continue to question on a daily basis whether children are better off and whether the systems that exist by law to protect and care for them are further along.

In addition to holding this position, I have the pleasure of working with a small but dedicated and professional team. We have seven professional and two support staff, all with a variety of professional experience. While many Child Advocates work predominantly with attorneys on staff, my office is unique. I have found my staff to be particularly effective due to their experience in advocacy, nursing, social work, clinical social work and public health. Their ability to build partnerships with other professionals has resulted in a vast network of experts in all

areas of child and adolescent issues. An Advisory Committee that is appointed by members of the legislature and the governor also guides me more formally. There are also several standing appointments including a representation from the children's section of the Connecticut Bar Association and Connecticut Psychological Association. They have been consistently forthcoming with guidance that I value deeply.

You asked us to talk about the need for independence of a New York Office of the Child Advocate. Independence is crucial. The offices must be beholden to only the children and not bureaucracies or funding sources. The power to issue subpoenas is also very important. Mine is the only agency in the position to have all the information about a child. It is the disconnect between systems serving children that causes the brunt of negative or inadequate outcomes. It is only when all the providers, teachers, parents, social workers and other adults in a child's life are talking to each other that effective strategies can be developed to improve the circumstances of a child's life. My staff spend a great deal of time bringing people together on behalf of children. The lumbering bureaucratic system needs that kind of facilitation. We are the ambassadors of child welfare. Access to complete information enables us to effectively and comprehensively assess and evaluate situations, and then develop informed findings and recommendations. None of these responsibilities can be taken lightly. There needs to be a balance between making change and understanding the realities of how change is made and sustained.

In terms of the ideal design, you must make sure that all systems that are responsible for protecting and caring for children are included under the oversight of the Child Advocate, not just the child welfare agency. Children's issues cross all systems including health care, education, criminal justice, recreation and safety. Do not limit yourself. It will diminish the effectiveness of the office. I believe that the Connecticut Office of the Child Advocate, modeled on Rhode Island, is a good design for its breadth of oversight and authority. I feel the checks and balances of confidentiality and careful public education are effective tools in improving the care and protection of children without causing more harm to them. A spirit of partnerships is helpful but not at the expense of independence. The focus is the best interest of children and it is only through such an independent oversight agency that a state can ensure it is achieved.

I congratulate the state of New York for taking this step. I believe strongly that all children need this extra level of protection and all of government benefits from the extra focus on accountability. I wish you good will in the endeavor to establish an Office of the Child Advocate. I pledge to be available to assist you in any I can. Thank you for hearing me today.

***Testimony of Vincent O'Brien, Child Advocate
Retired
Former Ombudsman for the NYS Office of Children and Family Services
On Assembly Bill 6334, May 12, 2005***

My name is Vincent O'Brien. I am an attorney admitted to practice in New York State. I was employed for approximately 30 years as an Ombudsman. I began my career in 1973 with the NYS Division for Youth (DFY) and retired from the NYS Office of Children and Family Services (OCFS), formerly DFY, in 2003. My interest in supporting the proposed legislation springs from my experiences during that 30-year period. I would like to emphasize that I have no information as to the operation of the Ombudsman Office in the past two years. I should also clarify that both the OCFS and DFY Ombudsman Office was limited in jurisdiction [more, or less, depending on the time period] to the interests of children placed by the courts in the DFY / OCFS either directly or indirectly. The Ombudsman Office had no jurisdiction in the local DSS operations, local detention services or in the private sector. Jurisdiction of the office did not expand beyond that of incarcerated youth, after the creation of OCFS.

History

The **original** ombudsman program was a federally funded joint creation of the former Division for Youth and the Legal Aid Society of NYC. The program design anticipated the obvious inherent difficulties associated with the concept of internal monitoring. The project's credibility was intrinsically tied to its "independent" character. It had to be credible to both, the outside legal community and the intended recipient of services--the resident youth.

For administrative purposes, the project was housed within the agency's Office of General Counsel. The organizational plan included an Independent Review Board (IRB) to oversee the experiment. The Board, though advisory in nature, had direct access to the Ombudsman staff as well as to the agency Director. Members of the Board received unedited reports from each Ombudsman and met regularly with the ombudspersons and the agency Director. The members of the Board were individuals prominent in the juvenile justice/juvenile rights community. A joint (DFY and Legal Aid) panel selected all staff and Board members.

Initially there were 4 attorney ombudsman and shortly thereafter a 5th (coordinating ombudsperson) was added to the program. The ombudsmen were assigned to geographical locations and visited the State run facilities (training schools and other residences) in their region, on a regular basis.

The project incorporated certain well-defined operational principles. Among these:

- that the youth resident should have the opportunity to meet face to face with an attorney in a private setting;
- that the ombudsman had the right to visit any facility unannounced at any time of night or day;
- that the individual ombudsman had direct access to the director of the agency or the general counsel at anytime;
- that the individual ombudsman's report would be provided unaltered to the director and members of the Board on a monthly basis;
- that ombudsman had the authority to investigate allegations of residents by interviewing staff and residents in an unfettered manner and to access any pertinent records, as well.

In 1974 the federal grant expired. The Director of DFY chose to continue the program, and the staff became civil service employees. Needless to say, much discussion was generated as to

how to best safeguard the credibility and integrity of the now totally in house process. Once again, it was acknowledged that as much independence as possible had to be maintained. The Board continued to meet and advise both the ombudsman staff and the agency administration. Within a short time all connection with the Office of Counsel was eliminated. The program description continued as detailed in the grant documents.

In my opinion, the involvement of that very aggressive and independent Board enabled the unit to take hold. This group functioned in many roles. They proved to be, for example, a sounding board for both sides to the equation, a buffer for the staff, a connection to the resources of the community and advocates for change (among other things). Individuals on the Board visited facilities whenever possible.

For about 10 or so years following the expiration of the federal grant, the unit was administered, for accountability purposes, by various appointees of the Director. My recollection is that there were often difficulties when a difference of opinion arose between an ombudsman and the administrator, as to what was a legal right or what was an acceptable response to an issue. The Board meetings and the Board's services, as expanded through those meetings, always came to the rescue. I think it fair to say that, were it not for the Board, many issues would not have surfaced. In the early 80's, it was this group of private citizens who eventually succeeded in having the Director issue, in regulatory form, the operations of the Ombudsman Office. The regulations promulgated in, I believe, 1983 described in detail the objectives and operational methodology of the unit and the Board itself. Notwithstanding that the regulations were promulgated, I recall:

- from inception, there were always attempts to restrict ombudsman activity or to limit or delay publication of materials;
- an ever present tension between the agency and the supporters of the program (including various community groups in addition to the Board) over just how independent this unit should be;
- frequent philosophical discussions as to whether such an operation would exist (more usefully) outside of the agency;
- Unanimous agreement that by having the unit outside of the agency, the independent contradiction would be resolved. A frequently represented fear, however, was that an outside group might more easily be "closed out" from the realities of institutional life.

Expansion of Focus

Again, as I recall, the initial focus of the federal grant project was the assessment of the conditions in the so-called training schools. Oversight of the training schools had recently been transferred to DFY from the former DSS. With the transfer, DFY inherited pending lawsuits brought in Federal Court, which dealt with confined isolation and the use of psychotropic medication and medical restraint. The administration and staff in some of the training schools were openly hostile to the ombudsmen. The DFY administration, in many ways, welcomed input from the Ombudsman Office and the Board on how to best remedy conditions that were "inherited". As the function expanded to include all of the residential facilities [some of which were previously operated by DFY] the reception was less welcome.

At one point, the role (focus) of the operation grew to include even private facilities for limited purposes (pursuant to a contract with those facilities).

In addition to monitoring, analyzing and reporting with regard to legal rights issues in the facility, the Ombudsman Office provided assistance to individual residents with their individual legal problems. Early on, the ombudsmen also began representing residents in administrative hearings (the first type of which dealt with transfers to secure programs). That particular role was part of an agreement reached in the settlement of another lawsuit.

With the changes in the Juvenile Justice system, the functions of the Office broadened further. As you are aware, the Juvenile Offender Law changed the age for criminal responsibility for serious crimes, and this resulted in young offenders being prosecuted in criminal court. These individuals were sentenced to serve, at least their initial years, in DFY Custody. Although incarcerated within the secure program in the juvenile system, the Juvenile Offender is subject to some of the same rules and procedures governing the adult prisoner. "Good time" and

disciplinary procedures are examples. These youngsters however did not, and I assume do not, have access to the same safeguards as their counterparts in prison. Prisoner's Legal Services, for instance, was never permitted to come into the programs. During my tenure as an Ombudsman, residents were not afforded access to law libraries. To the best of my knowledge, this situation has not changed. The Ombudsman Office was the sole resource for the Juvenile Offender.

In 1991, the DFY terminated the Ombudsman program. All incumbent attorneys were laid off as part of an overall reduction in work force effort. Six months later, one position was restored to the capital district area. I returned to work in that position. The item I occupied was placed within General Counsel's Office. Although the regulations governing the Office of Ombudsman were never withdrawn, the role was largely redefined by the General Counsel at that time. Several functions and methodologies were excluded.

- Unannounced visitation was prohibited.
- Access to the Director and the Board was greatly reduced, at times prohibited.
- For a period of time, I was supervised by a non-attorney, who in turn was supervised by an attorney, who in turn reported to General Counsel.
- The role of the Board was likewise curtailed. In fact the Board was non-functioning for some 5 or 6 years during the mid '90's.

As a result of the gubernatorial election in 1994, the changes in State government resulted in a change in General Counsel. This individual reorganized the ombudsman operation. I began reporting directly to the Counsel (with no interim supervision) and was provided the assistance of one non-attorney. The Office of Children and Family Services was created in the late 90's. Most of the State programs dealing with family, and youth in particular, were brought under its purview. This of course included Child Protective Services. As an aside, CPS had been investigating allegations of abuse in the institutions since its creation in the 80's.

The new agency was created with a mandatory advisory board. Eventually the Commissioner requested members from this board to volunteer service on a subcommittee that would function in lieu of the defunct Independent Review Board. At the point I left in 2003, the members on that committee were struggling with understanding their role. Their ability to foster change or obtain meaningful dialogue was dolefully lacking, despite the best efforts of some of its members.

Since 1991

- The unit was, and I assume continues to be, understaffed.
- There has never been full time support services provided to the unit.
- Ombudsman no longer represent youth in hearings (because of (1) the conflict with Counsel's Office and (2) the shortage of staff).
- Contact with outside agencies and persons were at times restricted and/or effectively excluded by general counsel.
- Offers from legal resources in the community to assist residents in the facilities with legal problems were denied.
- Monthly meetings with the agency's Division of Rehabilitative Services were at times, at least in my opinion, not only non-productive but also abusive in nature.
- A youth's ability to make phone contact could depend on the facility of residence or even who was the staff on duty.
- Lack of staff resources made serious investigations of a complaint virtually impossible by the unit.
- The ability to meet with youth in person, other than during a scheduled visit, disappeared. Scheduled visits to a given facility took place perhaps, no more than once every two years.
- There was no free flow of information with the newly created Board. (Ombudsmen were not even invited to quarterly meetings to which the Board reported "concerns" based on information received from the Ombudsman Office.

For the most part, with regard to allegations of maltreatment in the facility, the role became that of asking the facility to respond to issues raised by youth and to be sure abuse allegations were properly reported. As mentioned above, we visited facilities on a rotational basis revisiting no more than (at best) biannually. It was not uncommon to visit a facility and, in the course of that visit, receive more complaints than had been received in the two years prior to the visit. It was also not uncommon to uncover an issue that had never been raised by the resident, either through written correspondence or telephone contact.

We worked hard to encourage the use of the grievance mechanism. Too often we found that the grievance system (which was mandated by law in the secure facilities and by policy in the others) was not working ...in some cases actually sabotaged.

I hasten to explain that the two-person unit I retired from, notwithstanding my description, provided services to youth not duplicated elsewhere. I always found myself most able to be of assistance in an issue that I could resolve from beginning to end on my own. As a vehicle for systemic change in a timely and meaningful fashion, however, the Ombudsman Office no longer resembled, by any stretch of the imagination, its original design and purpose.

What I witnessed was the gradual and deliberate erosion of the independent nature of the operation. I often felt that the remnants of the office were maintained primarily for "window dressing".

Summary

I would summarize my testimony by saying that I believe:

1. that placed/incarcerated youth continue to need a voice and an advocate, and
2. that the Ombudsman Office within OCFS has been functioning for sometime in an understaffed and compromised manner.

My suggestion, should you succeed in your endeavor to create an Independent Office of the Child Advocate, would include the ability for residents to meet in person with adults, to the extent possible. Many youngsters I encountered were not comfortable communicating on the phone or by mail (assuming they possessed the prerequisite communication skills) for fear of being monitored. I suspect that maintaining an internal unit that reports to the external office would be worth your consideration. Also, whatever the model, if there is to be credibility, there must be a reasonably unimpeded and non-threatening means of access and there must be evidence of follow-up and response.

Addendum

The material sent with the Notice of Public Hearing asked for testimony on specific issues. My testimony was intended to give you an idea of the pitfalls of an internal operation. I am not sure I can answer the more specific questions and be currently accurate. However, two years ago I would have answered the posed questions in this manner:

How often is the office contacted?

Everyday. My recollection is that we received in excess of 60 new contacts/requests for assistance, each month. This was in addition to contacts relating to ongoing issues.

Who is making these contacts?

The contacts were primarily from residents, but a certain percentage came from parents, other relatives and attorneys. Additionally, we would receive requests from field office staff for assistance.

Does the Ombudsman respond to phone calls/letters from the facility?

Absolutely, yes. It is unfortunate that this was the primary means of contact – post 1991. Letters, in particular, generated the need for additional contacts for clarity. This of course tended to stretch the limitations of the office. Phone calls tended to come more consistently from certain facilities and at times when certain staff were on duty. It seemed that all youth did not have equal access. It should be pointed out that even in the best-motivated facilities, there was apparently a lack of resources to place residents, who asked, on the phone.

What types of complaints if any?

Complaints/issues covered a broad spectrum. They included allegations regarding matters affecting: quality of life, religion, food, physical abuse, psychological abuse, visitation issues, failure of the grievance program, unfair sanctions, agency approved disciplinary procedures not being followed, not being given privileges "earned", room confinement, group confinement, need for assistance to obtain counsel, assistance to preserve rights of appeal, assistance in identifying and contacting attorneys who had represented them, assistance with preparation of and filing pro se legal papers, missing property, etc.

What type of outreach is done to bring awareness of the office and its function?

Generally speaking there was a requirement that there be a posting of the service in the facility in an appropriate area. At one point earlier in the history, the unit published a Youth Rights Handbook that contained a description of the Ombudsman Office and other community resources. That publication was taken over by Residential Services. I don't recall what information it ultimately contained but remember finding it to be a much "watered-down" version. The Ombudsman unit produced a one-page description of the Ombudsman program in the latter part of the 90's. This "poster" was distributed to the facilities with the request that it be displayed prominently for residents. I always found it interesting that in the early 90's the child abuse "hotline" number was precluded from any and all publications to reach youth. It had been included in the Youth Rights Handbook, when published by the Ombudsman Unit.

Testimony of Professor Gertrud Lenzer
Director of the Brooklyn College Children's Studies Program and Center
Brooklyn College of the City University of New York

My name is Gertrud Lenzer, and I am the Director of the Brooklyn College Children's Studies Program and Center of The City University of New York. I am also professor of sociology both at Brooklyn College and the Ph.D. Program at the Graduate Center of CUNY. I am very grateful for the opportunity to present testimony today on Bill A.6334, which is designed to establish "an independent Office of the Child Advocate, vested with broad powers to investigate practices within the State's child welfare and justice systems, to better protect children in the State's care." (Bill Summary, A.6334 Memo).

I. Introduction: General Observations

May I observe at the very outset that A.6334, which proposes the creation of an independent Office of the Child Advocate, marks a historic watershed in our concerns and care for the children and young people of New York.

New York joins other states:

1) With this bill, New York, in fact, joins those other states in the Union, which have established independent Offices of the Child Advocate such as our neighboring states of Connecticut, New Jersey, and Rhode Island.

2) Most comprehensive approach to child well-being:

Moreover, the bill represents the most comprehensive and inclusive approach to assuring the well-being of the children in State's care from child welfare to juvenile justice.

3) Principles of accountability and transparency:

The bill for an independent Office of the Child Advocate also provides a major and innovative step in the direction of affirming and institutionalizing the principles of accountability and transparency on the part of all those institutions and organizations -- public and private -- which serve our children and their families.

4) Addresses systemic problems and guarantees individual rights of children:

Last but not least, the Office of the Child Advocate as envisioned in A.6334 will not only be able to address systemic problems within state and local child welfare and juvenile justice programs, it will also provide children themselves in state and local care with an independent advocate to whom they can turn in case of need.

II. Holistic Approach to All Child-centered Services For Which the State has Oversight or Direct Responsibility Ranging From Foster Care, Child Protective Services, Preventive Services to Rehabilitative Facilities:

The implications of the vision of the Members of the Assembly of New York State, who have introduced, sponsored, co-sponsored and multi-sponsored A.6334 are far-reaching and would change the practices of child welfare and juvenile justice, as we know them -- both on the state and local levels. Rather than approaching the problems our children encounter in different institutional settings piecemeal, the Office of the Child Advocate could assess these problems in their interconnectedness and totality. For children in state and local institutional settings cannot neatly be compartmentalized into, for example, children in child welfare and those in juvenile justice systems. Despite the fragmentation of these state and local systems and their isolation from one another, it is the children they are supposed to serve, who move, or are being moved, from one institutional setting to another.

III. Selected Issues Proposed for the Public Hearing

Section 1 addresses specifically the ombudsman office at OCFS:

The first observation here is that this office lacks in independence and ideal staffing. Moreover, it only has a limited range of action, since it only deals with children and young people incarcerated in NY State institutions. The ombudsman functions are limited to these children and do not pertain to any other child-centered services for which OCFS has oversight. In fact, it is important

to observe that OCFS cannot have placed an important value on this ombudsman office for a whole series of reasons such as:

- When the Ombudsman Office was first founded, there were -- according to the information we received -- as many as four ombudsmen. This number has been reduced to one.
- In the early years, ombudsmen visited facilities with children and youth every few weeks. The only remaining ombudsman now can visit these facilities very rarely.
- Originally -- we are told --, this ombudsman office also had oversight over private facilities in which children and young people were placed. This function was eliminated.
- We were also informed that other institutional supports, which would have guaranteed the functioning of the ombudsman office, have been weakened over the years.
- The lack of importance given to this office by OCFS and the General Counsel's Office -- where it is located -- is further and dramatically symbolized by the circumstance that the office and/or the name of the ombudsman in OCFS are not listed in the *Green Book* under New York State Government. (In fact, it took a certain measure of detective skills to locate the office -- once we had accidentally learned of its existence.)

Section 2 addresses the difference between the Ombudsman Office and the proposed independent Office of the Child Advocate:

It is precisely the lack of independence and power in the ombudsman office as well as its limited range of function, which led to the realization that an independent Office of the Child Advocate with subpoena and litigation powers was required to ensure the well-being, protection and rights of all children under state supervision in New York. Such an office can address systemic priorities, oversight over all child-centered services, and it can give the children and young people a voice.

Section 3 can best be addressed by those child advocates from other states who are ready to give testimony.

Section 4 addresses to what extent children and young people placed under state supervision have information about their rights, obligations and any avenues open to them to give expression to their needs. The independent Office of a Child Advocate -- as envisioned in A.6334 -- would provide these opportunities to these children and young people.

IV: Historic Background to the Development of A.6334:

On the occasion of today's Public Hearings, it appears to be appropriate to recall for the record certain events that led more directly to A.6334. In fact, the desirability and potential benefits of the establishment of a New York Office of the Child Advocate were discussed and addressed at a Policy Symposium on "Children and the Law in New York" held on March 11, 2004. The Symposium was organized and convened at the Association of the Bar of the City of New York by the Children's Studies Center of CUNY with a grant from the Carnegie Corporation of New York. Speakers included major representatives and stakeholders from the city and state legislative and judicial branches, from major New York child advocacy organizations as well as the Child Advocates of the states of Connecticut, New Jersey and Rhode Island. Among the speakers also were -- to name only a few -- Dr. Benno Schmidt Jr.; Deputy Mayor Dennis Walcott, Howard Davidson, Director of the American Bar Association Center for Children and the Law in Washington; the New York City Public Advocate, the Honorable Betsy Gotbaum; and members of the New York City Council and the New York State Assembly and Senate.

The Symposium indeed led to a convergence of judgments among the participants to seriously pursue the idea of establishing an independent Office of the Child Advocate in the State of New York. Three months later, in June 2004, Assembly Members and counsel had drafted the bill now before us in all its comprehensive scope and its design to ensure and promote those provisions necessary for the protection and well-being of children in the multiple institutional settings of New York State. Because of the extraordinary consensus achieved by the different stakeholders participating in the Symposium and because of its historic significance, I would like to submit for public record the *Proceedings of the Policy Symposium: Children and the Law in New York*. The full text of the *Proceedings* is also available on the Children's Studies Center website.

I am here today to give testimony to the historic importance of A.6334 -- the comprehensive and extraordinary piece of legislation to establish the Independent Office of the Child Advocate. Its passage would introduce the principles of accountability and transparency as well as promote the well-being and rights of the children and young people of New York in unprecedented ways.

***Testimony of James D. Silbert, Esq.
Chair of Board; Attorney in Private Practice
Correctional Association of New York
On Assembly Bill 6334, May 12, 2005***

Good Morning. My name is Jim Silbert and I am an attorney in private practice here in New York City and I am also Chair of the Board of the Correctional Association, the oldest private prison monitoring organization in New York State. In 1846, the New York State Legislature passed a statute and granted our organization the right to visit and inspect conditions inside New York State prisons and to report our findings to the legislature. We have been doing that for over 160 years. No such authority exists for outsiders to visit and inspect state-run institutions that confine juveniles.

In 1972, after being an attorney with the Juvenile Rights Division of the Legal Aid Society for about 3 years, I was hired by the New York State Division for Youth, the predecessor of the Office of Children & Family Services, to be one of original 4 Ombudsman in New York State, empowered with the authority to go into New York State Training Schools, throughout the state on a daily basis, to speak to children confined in those institutions, to speak to the staff and the administrators of those facilities to learn about the conditions and problems of confinement and to report those findings to the Director of the Division for Youth. I want to speak to you today about my experience as an Ombudsman in 1972 and 1973. I hope that it will aid you in addressing the very important legislation that is the subject matter of this hearing today—The establishment of an Independent Office of the Child Advocate. Attached to my written statement submitted today is a copy of an article that I wrote with one of the other original Ombudsman describing the rights of children confined in N.Y. State Training Schools and our impressions of the Ombudsman program.

When the Ombudsman Program was established in 1972 it was during a period of significant change and, yes, excitement in the area of the rights of children. The U.S. Supreme Court had recently ruled that certain due process rights had to be granted to juveniles who were subject to confinement in training schools. The Court ruled that the deprivation of liberty for a child, no matter how benevolently motivated, was no different than the deprivation of liberty of an adult and thus certain basic due process rights had to be afforded to juveniles. Courts were beginning to define those due process rights. While I was at Legal Aid, before becoming an Ombudsman, I was actively engaged in litigation against the Division for Youth, challenging the conditions of confinement, such as prolonged solitary confinement of both boys and girls as well as the conditions of confinement at Spofford Detention Center in the Bronx, the maximum secure detention center for New York City.

Courageously, in 1972, the Division for Youth established the Ombudsman program. It felt that if it were advised of serious problems within its institutions, it could take steps to correct those problems internally and proactively, without having to do so because of litigation. Each of the Ombudsman was assigned to a certain number of institutions, which were visited daily. I believe I was assigned to 8 institutions, including the most secure facility in the state for juveniles, the institution confining the youngest children, as young as 10 or 11 years old, group homes and forestry camps. Some places I visited once or twice a week, such as the most secure facility, while others I visited once a week or once every other week. We reported to the Director of Division for Youth monthly.

When we started, we started with great expectations and optimism. These juvenile institutions were the most closed of all state institutions—even more closed to outside inspections than state prisons. Superintendents of these facilities treated these facilities as their private fiefdoms. The places were filled with euphemisms. They used to be called 'reform schools', then 'training schools', and now, I think 'residential facilities'; solitary confinement rooms were called 'quiet rooms'. Using sugarcoated words did not change the experience for those who were confined

there. For years, these Superintendents had run these places as they saw fit. They were very reluctant to have any outsiders come into their place, particularly young lawyers who had demonstrated a deep interest and concern for the rights of children. At times, it was clear that the Division for Youth in Albany felt it did not really know what was going on inside these institutions and they wanted us to be their eyes and ears.

We had the right to go into institutions, to speak to kids without interference from the staff or administrators, to speak to staff, but no authority to make them talk to us, investigate complaints, make reports and recommendations. However, even though we were attorneys, we could not commence litigation and had no subpoena power to get records or compel testimony.

When we started, the administrators were generally coldly cordial, the staff generally hostile and the kids generally excited, but confused as to what we were doing. For good reason. "Hey Mr. Ombudsman" as I was called, they would often call out—"can you come here and talk to me?" As you might expect, for minor problems things worked out pretty well. Our recommendations were frequently accepted—we were able to accomplish some positive changes—kids were now permitted to wear personal clothing instead of "State-o's"—the baggy, ill-fitting clothes issued by the state which, ironically, are now a fashion-statement, highly valued and are the hallmark of the dress code of the hip-hop generation. But with major issues, such as solitary confinement, even though detailed regulations were established as a result of the lawsuit I had brought when I was at Legal Aid, the enforcement and implementation of those regulations was a constant struggle. Without subpoena power, our investigations were often hampered. After a while, I felt the kids thought that despite my best efforts to help them and to make changes that very little actually changed. Time for 12 or 13 year is different—a few months can seem like an eternity; a year, a lifetime. Realistically, it takes time for new regulations to get drafted and promulgated. And so, by the time that I left, I felt that no one wanted me on the inside—clearly not the administration, clearly not the staff and more and more, probably not the kids because they could not see many changes.

These are hidden institutions, filled with children who have no voice—the Ombudsman could have been that voice. The Office of the Child Advocate, if fully funded and staffed and if empowered with subpoena power, could be that voice. These institutions now seem more hidden then ever. Today, if you look on the web page for the Office of Children & Family Services you can't even find the names of these state-run facilities, no less the addresses nor the names of the Superintendents or Directors. They have disappeared from the web page—They used to be there in 2002, but they are no longer there—a sad example that the most closed of all institutions, are more closed then ever. Hopefully, the Independent Office of the Child Advocate will be able to open them up.

Thank you.

***Testimony of Mishi Faruquee
Director of the Juvenile Justice Project
Correctional Association of New York
On Assembly Bill 6334, May 12, 2005***

Good morning. My name is Mishi Faruquee. I am the director of the Juvenile Justice Project at the Correctional Association of New York. For over 160 years, the Correctional Association has advocated for more humane and effective criminal justice policies in New York State. The Juvenile Justice Project coordinates the Juvenile Justice Coalition, an alliance of over 50 organizations working to promote a more fair and effective juvenile justice system.

Before I begin my remarks, I would like to thank Assembly Members William Scarborough and Barbara Clark, and the other members of the Children and Families Committee for the opportunity to present this testimony.

I strongly urge the New York State legislature to enact A.6334 sponsored by Assembly member Barbara Clark to establish an independent Office of the Child Advocate in New York State. This bill is vital to protect young people in the care of the State's child welfare and juvenile justice systems. Since our organization is more familiar with the problems facing youth in the juvenile justice system, my testimony will focus on this group of young people. Drawing on letters and interviews of youth who are in or who have been in OCFS custody, my remarks today will address three areas: 1) the problems youth encounter in the OCFS system, 2) the inability of the OCFS ombudsman's office to effectively protect youth in OCFS custody, and 3) the need to establish an independent Office of the Child Advocate in New York.

There are currently nearly 3000 children confined in OCFS juvenile facilities in New York State. Over 95% of youth in OCFS custody are between the ages of 12 and 18, although some youth as young as 10 years old have been sent to OCFS facilities, and some youth may remain in OCFS custody until their 21st birthday. Most youth sent to OCFS facilities were adjudicated as juvenile delinquents – the majority of the youth were convicted of misdemeanor offenses.

Although 60% of youth in OCFS custody are from New York City, only 5 of the 44 facilities are located in the 5 boroughs of New York City. As a result, many children are sent to OCFS institutions that are a great distance from their families and home communities. This distance makes it very difficult for young people to receive visits from family members and to maintain ties with their communities.

Moreover, it is very difficult for youth to make phone calls from the facilities and for outside groups to visit the facilities. In fact, although the Correctional Association has legislative authority to visit adult prisons, we do not have similar access to visit OCFS facilities. Therefore, our knowledge of conditions inside OCFS facilities is based on letters from youth in OCFS custody and conversations with young people after their release.

Problems Faced by Youth in OCFS

Because OCFS facilities are essentially closed institutions, young people confined in them are vulnerable to mistreatment, harassment, and physical abuse. Over the last few years, two youth have suffered severe brain damage after being restrained by staff in OCFS facilities. One mother reported to us that OCFS staff at the Tryon facility assaulted her 16-year-old son breaking his chin and his jaw in two places. His injuries were so serious that he required surgery and his jaw had to be wired shut. When she asked facility officials what happened to her son, she was told that a staff member tripped and fell on him. In an interview with our office, the mother expressed her frustration with the lack of oversight at the facility, "I heard about other children getting injured as well... I meet other parents who have had their child's jaw broken and had to have surgery. .. I don't know how they'd do this, but there should be some sort of thing that oversees [OCFS].

There should be someone that oversees what goes on, make sure that kids are being cared for properly, and they are not abused.” She also expressed her concern that there was no investigation regarding what happened to her son: “If I as a mother had done this to my child, I would have been arrested. My son would have been placed in [foster care]. But [OCFS] says it was accident and nothing happens.”

The most common complaint we hear from youth is that staff members often use excessive force when restraining young people in their charge. One common consequence is that youth often get rug burns on their face, because while restraining young people the staff members push them against the rough carpeted floors in the facility. One young person who spent time at the Louis Gossett facility told me that the youth referred to it as “rug burn city” because it was so common for staff to scrape young people’s faces on the carpet.

Youth in OCFS facilities are also subject to sexual harassment and abuse. One 17-year-old girl described how she was harassed by an OCFS staff person that she had seen as a mentor: “At night time he decided that he wanted to be my spouse. He made me feel uncomfortable but I never mentioned it to anybody ... but I did vent to a friend through a [letter] – come to find I wasn’t the only one that had to deal with this.” As this young woman’s comments indicate, sexual harassment and abuse often goes unreported at OCFS. Last fall, a staff member at the Office Brooklyn Residential Center repeatedly raped a girl over a period of several months. The girl reported the abuse only when a community organization came to the facility to give a presentation on sexual exploitation. Notably, it was only when an outside group spoke with her that this young person felt comfortable enough to come forward. The Brooklyn D.A.’s office is currently prosecuting the staff person responsible.

Lesbian, gay, bisexual and transgender (LGBT) youth, who make up about 10% of the population in OCFS custody, are particularly targeted for harassment. In one letter, a gay young person wrote to our group, “Everybody here is verbally assaulting me... One staff called me a ‘stupid faggot’... this is such a negative atmosphere. I tried to complain, but I got ignored. What did I do to get treated like an animal?” Another letter from a transgender youth stated, “I am in a place where I am being exposed, harassed, sexually harassed and threatened by staff members and residents. Certain staff members [make references] towards me with obscene, vulgar, sexually related comments... I feel abandoned of help. This is the most horrible place I can be.” Despite the growing presence of LGBT youth within OCFS facilities, there is no anti-discrimination policy regarding sexual orientation and gender identity, no comprehensive training for staff on how to deal with homophobia, and no system or policies for how to address commonly encountered problems and incidents.

Failure of the Ombudsman’s Office to Protect Youth

Although OCFS has an ombudsman’s office that is charged with protecting the legal rights of youth in custody, the office does not have sufficient staff to do its job. When the office was established in the early 1970s, there were 5 attorneys on staff who monitored the OCFS youth facilities. Each attorney was in charge of a hub of facilities and made frequent visits. However, OCFS virtually gutted the office by cutting staff in the late 1980s. There is currently one attorney on staff who is responsible for all 44 facilities. Because of this severe understaffing, the ombudsman’s office visits some facilities only once every two years.

In addition to understaffing the ombudsman’s office, OCFS has failed to comply with its own regulations regarding the office. These regulations require the existence of an Independent Review Board comprised of between nine and fifteen members who are knowledgeable about juvenile justice and youth rights.

In addition, the regulations state that one member should be a former resident or a parent of a resident. Currently, there are only four members of this Independent Review Board -- none of whom are a former OCFS resident or parent of a resident. In addition, I spoke to one of the

four members who informed me that the board is inactive and has not met in several years.

Virtually every young person we have spoken with who has spent time at OCFS reported a lack of confidence in the ombudsman program. As one youth told us, "Basically a lot of people wrote to the ombudsman because some staff got out of hand. But the ombudsman never came. Nobody ever saw him. They wrote him and they called him. Nothing happened. It was still the same." In addition, other young people told us that they knew the ombudsman worked for OCFS so there was no point in making a complaint.

Need for an Independent Office of the Child Advocate

New York State needs a Child Advocate Office to safeguard the rights of children in the foster care and juvenile justice systems. As I have discussed, there currently is little or no recourse for youth who are harassed or abused in OCFS custody. The OCFS ombudsman's office, due to understaffing, does not have the capacity to protect the legal and human rights of youth in OCFS custody. In addition, a perceived lack of independence also discourages youth from contacting the ombudsman office.

We urge the New York State Legislature to enact A.6334 to establish an independent Office of the Child Advocate, vested with broad investigative powers, that may conduct the following functions:

- 1) respond to individual complaints from children in the child welfare and juvenile justice systems,
- 2) promote effective coordination of services and system-wide reforms, and
- 3) regularly review youth facilities to ensure safe and humane conditions for youth in state care.

The U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP) recommends that states create an independent office to safeguard youth in out-of-home placements, including foster care, group homes and juvenile facilities. OJJDP recognizes the benefit of these offices: "They can generate early warnings that can alert policymakers and program managers to the need to intervene and resolve problems before they become systemic or result in unlawful practices, public scandal, costly lawsuits or harm to the youth."^[1] OJJDP recommends that these state offices have full independence from the agency which the office investigates and "have sufficient statutory authority to carry out investigations and mandate improvements."^[2]

The ineffectiveness of the existing OCFS ombudsman's office demonstrates the need to create a statewide Child Advocate's Office that has financial and functional autonomy. Because the OCFS ombudsman's office operates out of OCFS, it has suffered from repeated agency cuts and a lack of independence.

One key role of the Child Advocate's Office will be to improve coordination among agencies working with children. Although there is considerable overlap between youth involved in the foster care and juvenile justice systems, there is very little collaboration among these systems. In addition, the juvenile justice system itself is extremely fragmented and inefficient. Thus, a central function of the Office of the Child Advocate's Office would be to make existing bureaucracies work together more effectively for children. In addition, because it will evaluate private placements that receive funding from OCFS, the Office of the Child Advocate will require accountability from city and state agencies for the billions of dollars spent on operating child welfare and juvenile justice institutions.

Finally, it is important to establish a Child Advocate's Office because it will have oversight authority to regularly visit OCFS facilities and monitor the treatment of youth in custody. It is important to note that there are several organizations working to protect the rights of adults

incarcerated in state prisons – the Correctional Association visits state prisons; Prisoner’s Legal Services assists individual prisoners with legal claims; the Prisoner’s Rights Project promotes systemic changes in prison conditions through litigation. Similar to adult prisoners, youth are confined far away from their families and communities, and are vulnerable to mistreatment and abuse. Yet, there are no statewide organizations that monitor conditions of OCFS facilities. Unless the state creates an office with independent oversight of OCFS, abuse inside OCFS facilities inevitably will continue. I would like to close by quoting Oscar Wilde:

The vilest deeds like poison weeds

Bloom well in prison air

It is only what is good in man

That wastes and withers there.

-- Oscar Wilde, The Ballad of Reading Gaol

Thank you for the opportunity to present this testimony. I would be happy to answer any questions that you may have.

[1] Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Bulletin: State Ombudsman Programs, (Washington DC: U.S. Department of Justice, February 2005), p. 2.

[2] Ibid, p.2.