

CHILDREN AND THE LAW IN NEW YORK

A Policy Symposium Proceedings

**The Meeting Hall
Association of the Bar of the City of New York
March 11, 2004**

Gertrud Lenzer

**Children's Studies Center
Brooklyn College
The City University of New York**

CHILDREN AND THE LAW IN NEW YORK

The Brooklyn College Children's Studies Center has organized this policy symposium to provide a child-centered and human rights perspective on the major issues of child welfare, education, health and mental health, and children in the juvenile justice and criminal justice systems in New York and to advance the rights of children in these institutions.

Speakers will include members of the The City University of New York, city and state legislative and judicial branches, major New York child advocacy organizations, and child advocates from the Offices of the Child Advocate of Connecticut, New Jersey and Rhode Island.

"CHILDREN AND THE LAW IN NEW YORK" is funded by a grant from the Carnegie Corporation of New York with additional support and assistance from the City University of New York Office of Academic Affairs and from the Office of the President of Brooklyn College.

Gertrud Lenzer

Director, Brooklyn College Children's Studies Program and Center

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We wish to acknowledge and express our appreciation to the members of our Advisory Committee, who helped support and guide us in this ambitious endeavor: Dr. Benno C. Schmidt, Jr., Chairman, Board of Trustees of The City University of New York; Dr. Louise Mirrer, Executive Vice Chancellor for Academic Affairs of The City University of New York; Vice Chancellor Jay Hershenson, Secretary to the Board of Trustees and Vice Chancellor for University Relations of the City University of New York; Dr. Christoph M. Kimmich, President, Brooklyn College of the City University of New York; Howard Davidson, Esq., Director, American Bar Association Center on Children and the Law, Washington, D.C.; New York; Monica Drinane, Esq., Attorney-in-Charge, Juvenile Rights Division, Legal Aid Society, New York; Dr. Vartan Gregorian, President, Carnegie Corporation of New York; The Honorable Joseph M. Lauria, Administrative Judge, New York City Family Court; Mr. Hank Orenstein, Director, Child Welfare Project, Office of the Public Advocate, New York City; and The Honorable Charles E. Schumer, U.S. Senator, New York State, an honorary member of the Advisory Committee.

Our speakers were of extraordinary caliber, knowledge and range of expertise. We would like to express our deep appreciation for their contributions to the policy symposium: Dr. Benno C. Schmidt, Jr., Chairman, Board of Trustees of The City University of New York; The Honorable Dennis M. Walcott, Deputy Mayor for Policy, Office of the Mayor, New York City; Dr. Louise Mirrer, Executive Vice Chancellor for Academic Affairs of The City University of New York; Dr. Christoph M. Kimmich, President, Brooklyn College of the City University of New York; Ms. Jenelle Grant-Primo, Student, Brooklyn College of the City University of New York; Darla M. Silva, Esq., Deputy Director, Office of Public Policy and Advocacy, United States Fund for UNICEF, Washington, D.C.; Howard Davidson, Esq., Director, American Bar Association Center on Children and the Law, Washington, D.C.; Marcia Robinson Lowry, Esq., President and Executive Director, Children's Rights, Inc., New York; Karen Freedman, Esq., Executive Director, Lawyers for Children, New York (Moderator); Monica Drinane, Esq., Attorney-in-Charge, Juvenile Rights Division, Legal Aid Society, New York; Elisa Hyman, Esq., Deputy Director, Advocates for Children, Inc., New York; The Honorable Clark V. Richardson, Supervisory Judge, Family Court, Bronx County, New York; The Honorable Steven Sanders, Chair, Committee on Education, New York State Assembly; Deborah Seidenberg, Chief of the Family Court Division, New York City Law Department; Ms. Mishi Faruquee, Director, Juvenile Justice Project, Correctional Association of New York; Mr. Andre Holder, Youth Organizer, Juvenile Justice Project, Correctional Association of New York; The Honorable Joseph M. Lauria, Administrative Judge, New York City Family Court (Introduction of luncheon address speaker.); The Honorable Michael A. Corriero, Justice, New York State Supreme Court; Mr. Brian Lehrer, "The Brian Lehrer Show," WNYC Radio, New York (Moderator); Laureen D'Ambra, Esq., Child Advocate, Office of the Child Advocate, State of Rhode Island; The Honorable Jeremiah Jeremiah, Chief Judge, Family Court, State of Rhode Island; Ms. Jeanne Milstein, Child Advocate, Office of the Child Advocate, State of Connecticut; Kevin M. Ryan, Esq., Child Advocate, Office of the Child Advocate, State of New Jersey; The Honorable Yvette D. Clarke, Chair, Fire and Criminal Justice Services Committee, New York City Council; The Honorable Betsy Gotbaum, Public Advocate, City of New York; The Honorable Roger L. Green, Chair, Committee on Children and Families, New York State Assembly; The Honorable Rhoda S. Jacobs, Assistant Speaker, New York State Assembly; and The Honorable Kevin S. Parker, New York State Senate. We would also like to acknowledge the contribution of Mr. Chad Vignola, Esq., General Counsel, New York City Department of Education, Office of the Chancellor, who could not be with us that day but kindly sent in his contribution to the proceedings.

We are extremely fortunate to have the help of many people from The City University of New York and wish to acknowledge their invaluable assistance and support. In particular, we would like to thank Vice Chancellor Jay Hershenson, Vice Chancellor for University Relations and his staff; Mr. Michael Arena, University Director for Media Relations; Mr. Andre Beckles, Photographer; and Mr. Bob Isaacson, Executive Director of CUNY TV and his staff.

Our very capable and helpful colleagues and friends at Brooklyn College provided much assistance. We wish to thank in particular Ms. Irma Kramer, our colleague and faculty member in the Children's Studies Program, for her dedication and significant contributions to this Symposium. She has been a stalwart ally from the early planning stages onward. We would also like to express our thanks to the Office of Publications – Dr. Barbara Heyman, Ms. Elaine Weisenberg, Ms. Patricia Willard, Ms. Lisa Lincoln, and Ms. Lisa Panazzolo; the Office of Research and Sponsored Programs -- Ms. Barbara Naso and her staff; the TV/Radio Department – Mr. George Casturani and his staff; the Mailing Services Department -- Ms. Madonna Charles and her staff; and the Office of Campus Security and Public Safety -- Mr. Donald Wenz and his staff; Dr. Melanie Bush; and Dr. Amy Siskind.

We have many friends of Brooklyn College and from the larger community who have helped us when we most needed them. In particular, we owe a great debt to Dr. Sandy Slipp, Director of OPT Associates, Inc. Her friendship, collegial support and professional advice have sustained us throughout. We would like to record our gratitude to the Honorable Judith L. Kreeger and to the Honorable Sandra Karlan, Family Court, 11th Judicial Circuit, Dade County, Florida. Our thanks also go to Ms. Cindy Brown, Ms. Sara Ann Friedman, and Ms. Anna Lemond.

We believe that our students are some of the best within the City University of New York, and we would like to acknowledge the contributions that they have made to this policy symposium through their volunteer efforts and dedication. Much appreciation goes to Ms. Janet Abed, Ms. Elana Desrivieres, Ms. Janelle Grant-Primo, Ms. Josephine Greco, Ms. Jeanette Gregory, Ms. Carianne Johnson, Ms. Kathy Kim, and Ms. Huan Yuan Zhang.

We would like to thank Mr. Nicholas Marricco and his staff from the Association of the Bar of the City of New York; Ms. Wendy Laurence and the staff at the Algonquin Hotel; and Mrs. Glorieux Dougherty for her expert copy editing skills.

We were fortunate to receive many generous contributions of materials for the policy symposium. We wish to acknowledge and thank the representatives from the following organizations: American Bar Association Center on Children and the Law; Children's Rights, Inc., Committee on Children and Families, New York State Assembly; Juvenile Justice Project, Juvenile Rights Division of the Legal Aid Society; Lawyers for Children; Offices of the Child Advocates from Rhode Island, New Jersey, and Connecticut; the United States Fund for UNICEF.

Our indebtedness goes foremost to Ms. Loretta Chin, Conference Manager and Ms. Sevda Mammadova, Office Manager and Conference Web Master, both of whom dedicated their considerable talents and energies to making this symposium successful. Their commitment to the children of New York and their untiring efforts have been exemplary and are recorded here with much gratitude. We are also grateful for the help that we received from our dedicated student staff members. Many thanks to Ms. Jenelle Grant-Primo, Ms. Olga Tratsevitskaya, Ms. Nusrat Zahan, and Mr. Ali Zinulabdin.

Gertrud Lenzer
Principal Investigator
Children and the Law in New York Policy Symposium
Professor
Brooklyn College and The Graduate Center
Director, Children's Studies Program and Center



The City University of New York

The Chancellor

November 1, 2004

Dear Friends:

On behalf of The City University of New York (CUNY), I am pleased to offer my congratulations to the Brooklyn College Children's Studies Center on its 2004 policy symposium, "Children and the Law in New York." The symposium provided a much-needed occasion for child advocates and policy makers to discuss issues of children's justice from a child-centered perspective. The center's director, Dr. Gertrud Lenzer, and all of the participants are to be commended for their deep commitment to these issues.

In 1991, Brooklyn College was the first academic institution to develop an interdisciplinary liberal arts Children's Studies Program. The program has become a model for other institutions, known for its strong curriculum, innovative pedagogy and research paradigms, and effective advocacy, as demonstrated by the policy symposium.

At CUNY, we know how important education, social resources, and economic stability are to a child's progress. Every day, we work with students who struggle to overcome poverty and educational disadvantages. Their diligence and ambition reaffirm our commitment to working toward the advancement of all New Yorkers. CUNY's 19 colleges and professional schools serve almost 220,000 degree-credit students, and more than 240,000 adult and continuing education students. Working with the city, the state, social welfare agencies, and local communities, we remain dedicated to making real the promise of educational opportunity for all of these students.

As these proceedings make clear, there is a compelling need for such opportunity. The statistics, stories, and questions offered by the symposium's participants indicate the challenge—and importance—of developing each child's potential within complex systems of juvenile justice and welfare. The participants' expertise and extensive experience give their words an urgency that cannot be ignored, and a review of the proceedings will be illuminating.

I am very proud of the exemplary work of the Children's Studies Center, and I am honored that CUNY has supported its activities, including the policy symposium. On behalf of the entire City University community, I offer best wishes for its continued success.

Sincerely,

Matthew Goldstein

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TABLE OF CONTENTS

- i Introduction
Gertrud Lenzer
- ii Acknowledgments
- iv Letter from the Chancellor
Matthew Goldstein

SYMPOSIUM PROCEEDINGS

WELCOMING REMARKS

- 1 Benno C. Schmidt, Jr., Chairman
Board of Trustees of The City University of New York
- 3 The Honorable Dennis M. Walcott, Deputy Mayor for Policy
Office of the Mayor New York City
- 5 Louise Mirrer, Executive Vice-Chancellor
for Academic Affairs of The City University of New York
- 6 Christoph M. Kimmich, President
Brooklyn College of The City University of New York
- 7 Jenelle Grant-Primo
Brooklyn College Student
- 8 Gertrud Lenzer, Professor, Brooklyn College
and the Graduate Center of The City University of New York;
Director, Brooklyn College Children's Studies Program and Center

MORNING SESSION

10 **The Civil and Human Rights of Children:
An International Perspective**

Darla M. Silva, Esq., Deputy Director, Office of Public Policy and Advocacy,
U.S. Fund for UNICEF, Washington, D.C.

14 **Accountability and Oversight: Key Steps Toward Improving
Child Representation and Protection Systems in the United States**

Howard Davidson, J.D. , Director, American Bar Association Center
on Children and the Law, Washington, D.C.

20 **Benevolent Complicity: The Myth of Protecting Children's
Best Interests**

Marcia Robinson Lowry, Esq., President and Executive Director,
Children's Rights, Inc., New York

27 **Advancing the Legal Rights of Children:
Intersections and Collaboration among the Education,
Juvenile Justice, and Child Welfare Systems and the Courts**

Moderator: Karen J. Freedman, Esq., Executive Director, Lawyers for Children,
New York

Monica Drinane, Esq., Attorney-in-Charge, Juvenile Rights Division,
Legal Aid Society, New York

Elisa Hyman, Esq., Deputy Director, Advocates for Children, Inc., New York

The Honorable Clark V. Richardson, Supervisory Judge, Family Court,
Bronx County, New York

The Honorable Steven Sanders, Chair, Committee on Education,
New York State Assembly

Deborah Seidenberg, Esq., Chief of the Family Court Division,
New York City Law Department

**Youth and Adult Partnerships to Change Juvenile Justice Policies
[See Appendix 6]**

Mishi Faruquee, Director, Juvenile Justice Project, Correctional Association of New York

Andre Holder, Youth Organizer, Juvenile Justice Project, Correctional Association of New
York

LUNCHEON ADDRESS

42 A Model Juvenile Justice System for the Twenty-First Century

Introduction by the Honorable Joseph M. Lauria, Administrative Judge,
New York City Family Court

The Honorable Michael A. Corriero, Justice,
New York State Supreme Court

AFTERNOON SESSION: A VOICE FOR CHILDREN

50 Part I: Best Practices in the United States Exploring the Independent Child Advocacy Offices of Rhode Island, New Jersey, and Connecticut: Models for New York?

Moderator: Brian Lehrer, “The Brian Lehrer Show,” WNYC Radio, New York

Laureen D’Ambra, Esq., Child Advocate, Office of the Child Advocate, State of Rhode Island

The Honorable Jeremiah Jeremiah, Jr., Chief Judge, Family Court, State of Rhode Island

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

Kevin M. Ryan, Esq., Child Advocate, Office of the Child Advocate, State of New Jersey

64 Part II: New York Elected Officials Promoting the Rights and Interests of the Children of New York

Moderator: Brian Lehrer, “The Brian Lehrer Show,” WNYC Radio, New York

The Honorable Yvette D. Clarke, Chair, Fire and Criminal Justice Services Committee, New
York City Council

The Honorable Betsy Gotbaum, Public Advocate, City of New York

The Honorable Roger L. Green, Chair, Committee on Children and Families, New York State
Assembly

The Honorable Rhoda S. Jacobs, Assistant Speaker, New York State Assembly

The Honorable Kevin S. Parker, New York State Senate

APPENDICES

- 73 **Appendix 1: Biographical Information**
- 89 **Appendix 2: Advisory Committee**
- 90 **Appendix 3: Contribution by Chad Vignola, Esq., General Counsel, New York City
Department of Education, Office of the Chancellor, “Advancing the Legal Rights of
Children: Intersections and Collaboration among the Education, Juvenile Justice, and
Child Welfare Systems and the Courts**
- 91 **Appendix 4: Office of the Child Advocate: Bill A -11498 - Summary**
- 94 **Appendix 5: Office of the Child Advocate: Bill A -11498 - Text**
- 106 **Appendix 6: New York Juvenile Justice Coalition
Proposals for Reform 2004**
- 108 **Appendix 7: U. N. Convention on the Rights of the Child**
- 125 **Appendix 8: Symposium Photographs**

Welcoming Remarks
Benno C. Schmidt, Jr., Chairman
Board of Trustees of The City University of New York

Gertrud Lenzer

Good morning and welcome to this Policy Symposium, “Children and the Law in New York.” I am Gertrud Lenzer, Director of the Children’s Studies Center at Brooklyn College and Principal Investigator of a grant from the Carnegie Corporation, which has made this symposium possible.

It is a great pleasure and privilege to introduce to you our first speaker, Dr. Benno Schmidt, Jr., the Chairman of the Board of Trustees of The City University of New York (CUNY) since 2003. He serves also as the chairman of Edison Schools, Inc.

Dr. Schmidt looks back on a distinguished career in the academic life of this country. He was named Harlan Fiske Stone Professor of Constitutional Law at Columbia University in 1982, and he is one of the country’s leading scholars of the Constitution, the history of the U.S. Supreme Court, the law of freedom of expression, and the history of race relations in America. He served as the Dean of the Columbia University Law School before joining Yale University as its twentieth president from 1986 to 1992. Dr. Schmidt is also a trustee of the National Humanities Center and a member of the American Academy of Arts and Sciences.

Benno C. Schmidt, Jr.

Deputy Mayor Walcott, President Kimmich, Dr. Mirrer, distinguished judges, public officials, scholars, children’s advocates: I want to welcome you to this important conference, “Children and the Law in New York.” The City University of New York is proud to be a sponsor of this conference. There are many reasons why children—the study of children, research and scholarship into their condition, teaching about them to develop public policy with respect to them, direct action in their interest—must be a central priority of The City University of New York.

Our founding statute requires that our university be responsive to the particular urban

needs of our New York City setting and the truth of the matter is that if New York had not been named the “Big Apple,” it probably would have been named the “City of Children.” New York has more children than any other city in this country, nearly two million. Think of it: We have 515,000 children five years old and younger!

Imagine a city the size of San Francisco comprised of five-year-olds! These children in our great city of children are our hope for the future. But they also present the most urgent challenges to our city, to our sense of justice, and to our hopes for the future, because nearly one in three of our nearly 2 million children in New York live in poverty. One in three—that’s twice the national rate of about one in six children living in poverty.

All of our children need our urgent concern, but these youngsters in poverty present an especially compelling case for our research and teaching, public policy, advocacy, and social concern.

We live in a time in which the key to opportunity and justice for these young people lies not only in their health and safety, but above all in their educational opportunities. The City University of New York must be a central institution in the study of, teaching about, and advocacy for the two million young people who represent our city’s future and our university’s future.

The City University of New York educates more New Yorkers than any other university. We know something about the challenges of higher education for students who come from poverty: We have over 200,000 full-time students and another 200,000 students in various adult education and other programs. Over 40 percent of these students come from the households with incomes lower than \$20,000. More than half are not financially dependent on their parents. Seven percent of our undergraduates last year received welfare benefits. More than one in five students have at least one child; one in ten of our students, at least one child under five. We know at CUNY what it is to work with people who have overcome the terrible burdens of poverty, and, of course, poverty

imposes its burden most drastically and terribly on children, because poverty directly impacts those developmental processes of physical and mental health, well-being, safety, and education that enable children to grow into responsible and fulfilled adults. This is why the study of children is an urgent priority for The City University of New York. This is one reason we are so very proud of Brooklyn College and of the pioneering role of Brooklyn College as the first major research institution in this country to make Children's Studies a major focus of interdisciplinary attention. I wish to salute President Kimmich and his colleagues at the college but most especially, our wonderful colleague Professor Lenzer, who has spearheaded this pioneering work at Brooklyn, which has indeed been the model for Children's Studies programs in other great universities, such as Harvard, Rutgers, and many others that have taken up this important responsibility.

This conference represents a major new effort by our university to focus attention on these compelling issues. I know you will cover a great range of subjects in this conference. Scholarship and public policy share this in common, that both depend on comprehensive, organized information about the subject of concern. So I hope that this conference will ask the following questions:

- Do we know enough about the condition of our children, especially children who are in the hidden recesses of foster care, juvenile justice, alternative schools, and so on?
- Do we have adequate and timely information to develop sound scholarship and public policies and to intervene on their behalf?
- Do children need a special advocate in this city, and in this state? Of course, the children have many advocates; there are many public agencies whose responsibilities include welfare of children. Because of their inevitably compartmentalized state,
- Do we need to develop in New York, as other states have, a special advocacy instrument to focus on the welfare of children?

Finally, I know that The City University's focus will be on the key for these children and their educational opportunities. As we look at the educational statistics in our city, we can see that we have a long, long way to go before we can say that our children have the sort of educational

opportunities they should have. I salute the work of the conference. I congratulate Brooklyn College. I congratulate Professor Lenzer and her colleagues, who have pulled this together, and hope and expect that this conference will shed light on what are, in fact, the most urgent questions of justice and democracy that face our university and our city.

Welcoming Remarks

Dennis M. Walcott, Deputy Mayor for Policy

Office of the Mayor New York City

Gertrud Lenzer

I would like to extend our warm welcome to our next speaker, who is also representing the Office of the Mayor of New York City, Mr. Dennis M. Walcott, The Deputy Mayor for Policy of New York City. The Deputy Mayor has held many important positions in the past. In particular, he was President and Chief Executive Officer of the New York Urban League and the Executive Director of the Harlem Dowling Westside Center for Children and Family Services, as well as citywide appointed representative to the New York City Board of Education.

Dennis M. Walcott

Good morning to all of you. I want to thank you for inviting me to this conference. It is extremely important that we focus on the major issues that impact the well-being of children. As indicated by Dr. Schmidt, in a figure you'll probably hear over and over again in a variety of ways, there are almost 2 million children under the age of eighteen living in New York City. It is important to take the time to highlight how these children fare in systems that should really have as their main mission protecting, securing, educating, and developing our children in New York City. And it's particularly forward-thinking of CUNY and Brooklyn College to take a look at how we approach this from a holistic view and meet the needs and attend to the rights of children.

I want to personally applaud you, Dr. Lenzer, for your work at the Brooklyn College Children's Studies Center and for assembling today's dynamic program. The speakers at this symposium bring a wealth of knowledge, expertise, commitment, and care that are necessary to the relevant discussion of the needs and rights of children. As Mayor Bloomberg has said over and over again, one of the things we have to be able to do is to look at ourselves in the mirror when we wake up in the morning

and feel good about how we treat and educate our children. Obviously I believe in that, but more importantly, this administration, from the mayor on down, has a commitment to do the right thing for our children.

In a number of areas, we've made substantial gains. As you know, the foster care census has dropped from 38,441 in fiscal year 1999 to currently roughly 25,602, and is still going lower. As the population in protective services is declining, the census is shifting to focus a greater proportion of resources on preventive care. The city purchases a range of services to keep children out of foster care and with their families. We provided resources to help 29,800 children in fiscal year 2003 remain with their families, while only 22,671 received preventive services in fiscal year 1999. In my days at Harlem Dowling Children's Services and New York Urban League, I was at the front end of providing preventive services to our children, so I truly do know the value of such services.

The Department of Homeless Services has placed roughly 3,500 families in permanent housing in the last fiscal year—the largest number to date in the agency's history.

The Department of Education has come under mayoral control. While there have been a number of negative stories, one of the positives has been the role of accountability. In the past, when problems arose, people would point in a variety of directions as to who had responsibility and how that responsibility was carried out. Whether one agrees or disagrees with what took place, what we do have now is a system that is under the control of the mayor and we are going to be held accountable. And we're taking a look at standardizing curriculum, tackling school safety issues, dismantling social promotion, developing a comprehensive professional development track, and many other things that will really go to the heart of improving the lives of our children. But we really do have a lot of work to do in education and that should include strengthening our partnership with CUNY.

Let me share with you a quick side story that you will never see in the news, but that is extremely positive as far as education is concerned. Last night, I was in Staten Island with the Chancellor, where he was having one of his educational town hall meetings, and there were over 1,000 people in attendance at this forum, talking about the issues of education—yelling, fussing, and fighting, but more importantly, engaged. A week prior to that, there was a town hall meeting in Brooklyn where there were 1,200 people in attendance, again expressing their viewpoints about education. And in the week prior to that, there was a town hall meeting held in Queens—oversubscribed, with roughly 1,500 people. In all these cases, New Yorkers were out there talking about the issues of education. And if anything, one of the things we are trying to do is to make sure that we get out into the streets and the communities to talk about the changes, but more importantly, to engage the various stakeholders in the lives of their children.

Let me just highlight some of the issues of importance that we really need to address in our educational system. One of the things that I talked about earlier this week in another forum is that we have not achieved parity as far as educational outcomes for children, especially children of color. Anytime you can look and say that only 9 percent of African-American students have graduated with a Regents diploma, that's sinful and shameful. We must do better than that. Equally disturbing is looking at a cohort of third graders in 1999 who tested at level one out of four levels and finding that they were promoted each year. Now as seventh graders, 81.7 percent of those students are still tested out at level one. That means we are failing a large portion of our students and we have to do a better job.

One in three of our children lives in poverty. The number of homeless children rose 40 percent from 1990 to 2000. Only 42.3 percent of children and students in grades three through eight are meeting or exceeding English Language Arts standards and 41.9 percent of those same students in the same grades are meeting or exceeding math standards. About half (53.4 percent) of students entering high school graduate within four years. The needs are even more dramatic when race and ethnicity are factored in. In the class of 2002, the four-

year graduation rates for Blacks were 44.4 percent; for Latinos, 41.2 percent; for Whites, 70.5 percent; and for Asians, 66.9 percent—a significant disparity.

Finally, how can we not be dismayed to hear the latest joblessness data from Community Service Society, which reported that the unemployment rate for Black men is almost 48.2 percent—one of every two? Again, work that has to be done. These are formidable challenges but I believe that we can meet many of them.

Several of you know my interest in and commitment to dealing with the educational advancement of our children, but more than that, I think all of you have an important role to play as we advance our agenda together. So I want to thank the conference committee and all of you for being here today. I want even more to really challenge you to join us in this partnership in improving the lives of our children and making sure that all of our children, when they grow up, can compete in a way that will allow them to be self-sustaining adults. Thank you very much.

Welcoming Remarks

Louise Mirrer, Executive Vice-Chancellor

for Academic Affairs of The City University of New York

Gertrud Lenzer

It is a particular honor and we are delighted to be able to welcome the highest academic officer of the largest public urban university in the country to our Policy Symposium, Dr. Louise Mirrer.

Dr. Mirrer is Executive Vice-Chancellor for Academic Affairs of The City University of New York. Before coming to New York, she served as Vice-Provost for Arts, Sciences, and Engineering at the University of Minnesota—Twin Cities. Her numerous responsibilities at CUNY include the development, planning, and implementation of university policies regarding academic programs and economic development; she also oversees the university's "Flagship Initiative," Honors College, and Teaching Opportunity Program. In addition, Dr. Mirrer still engages actively in the academic life and in scholarly meetings. She publishes widely on language, literature, medieval studies, and women's studies in her fields of Spanish literature and the humanities.

Louise Mirrer

Good morning Deputy Mayor Walcott, Chairman Schmidt, President Kimmich, Professor Lenzer, distinguished guests. I am honored to bring the greetings of the university to this very illustrious gathering.

I was reminded, in preparing to speak this morning, of a quote attributed to a Scythian philosopher who lived around 600BC, a warning he issued to Solon, the Greek lawmaker. He said, "Written laws are like spider's webs, and will, like them, only entangle and hold the poor and weak, while the rich and powerful will easily break through."

You are gathered here today to refute that statement, to consider how to ensure that the weakest, the most vulnerable and helpless of our citizens, our children, are not ensnared in, but are well served by, the law. The issues you'll consider are not simple; the questions are quite

complex, and there are no easy answers. They address some of the most important issues of our time, for issues that focus on the lives of children focus as well on the future of this country. And even if we can't reach consensus on questions such as the definition of family, or the age at which a child becomes an adult, we can all agree that our children must be safe.

We should all promise ourselves that the status of children in the legal and societal context will not come to public attention only when a child dies in foster care, or another child dies because he was never placed in foster care. We can't suddenly wake up to children's rights when we read about two loving families that both claim the same child, or about children giving birth to children, or about functionally illiterate high school graduates. The landscape of children's rights is not dotted with discrete problems nor does it rise up at irregular intervals. Like the Children's Studies Program at Brooklyn College, it encompasses a vast area of concern and the range of issues must be addressed continuously and from a variety of perspectives.

We are proud that Brooklyn College was the first academic institution to develop a program that brings together knowledge about children and youth from the perspectives of the arts, humanities, social and natural sciences, and the law. Today's conference is a natural outgrowth of that program. The illustrious roster of speakers and guests provides validation for the goals of the program and for the conference.

As an educator, I thank you for participating and for sharing your own knowledge and experience. As a mother, I appreciate your attention to an issue that seems, too often, to be on a back burner. And as a citizen, I hope that the work you do today will be a milestone in New York State's efforts to protect its children and youth. Thank you very much.

Welcoming Remarks
Christoph M. Kimmich, President
Brooklyn College of The City University of New York

Gertrud Lenzer

It is now my privilege to introduce to you Dr. Christoph M. Kimmich, who is the President of Brooklyn College of The City University of New York.

Dr. Kimmich, who received his D.Phil. from Oxford University, is a historian of modern Europe with a number of publications on German foreign policy and history. Before coming to CUNY, he taught at Columbia University. After holding the positions of Chair of the Department of History, Provost, and Vice-President of Academic Affairs at Brooklyn College, he was appointed Interim Chancellor of The City University of New York in 1997. Since the year 2000, Dr. Kimmich has served as the President of Brooklyn College. He is also the recipient of a number of prestigious fellowships and awards, including the Guggenheim Fellowship.

Christoph M. Kimmich

Thank you very much and good morning. I join the Chairman of the Board of Trustees of The City University of New York, Benno Schmidt, Deputy Mayor Dennis Walcott, and my colleague, Executive Vice-Chancellor Louise Mirrer, in extending a warm welcome to you at the opening of this path-breaking Policy Symposium. The symposium would not have been possible without the support of generous friends, without the imagination and determination of Professor Lenzer—which can move mountains, and without the contributions of all of you gathered here today representing the law, the judiciary, public agencies, and the academy.

For Brooklyn College, home of the Children's Studies Program that is the driving force behind this symposium, today is a new milestone. In 1991, Brooklyn College was the first academic institution to develop an

interdisciplinary liberal arts Children's Studies Program—a step that was hailed at the time as “pioneering” by the *New York Times*, and rightly so. The program cuts across disciplines. It brings together knowledge and insights about children and youth from infancy to the age of legal majority. It has established itself as a significant component of the college's offerings and, in a tribute to its quality, it has been emulated by other colleges and universities that have followed its lead and set up similar programs.

But the Children's Studies Program at Brooklyn College was innovative not only in developing curriculum and suitable pedagogy. It also established paradigms for research—paradigms in areas relating to children, youth, and families, breaking out of the confines of individual disciplines and taking advantage of fruitful synergies of broad-gauged multidisciplinary approaches.

Not least, however, and that is really the point of today's occasion, the program took on a practical applied bent, committing itself to reaching out to the community and engaging in community involvement. It is this particular aspect, which draws on national and even international perspectives and draws attention to the day-to-day realities of children trapped in the hopelessness of poverty or caught in the trammels of the law that is demonstrated in what we do here today. And what is demonstrated can be translated into action. It is our hope that, as we explore and are enlightened about the topics on the program today, we can develop the kind of momentum that leads to concrete outcomes.

With that hope I extend, on behalf of Brooklyn College, best wishes for a fruitful and productive day.

Welcoming Remarks
Jenelle Grant-Primo
Brooklyn College Student

Jenelle Grant-Primo

Members of the panel, distinguished guests—a pleasant good morning to you. My name is Janelle Grant-Primo. Not only am I a parent and a resident of New York State, but I’m also a minor in Children’s Studies at Brooklyn College of The City University of New York.

It’s my pleasure to welcome you on behalf of the students of Brooklyn College and the CUNY system to this ground-breaking Policy Symposium, “Children and the Law in New York.” It is for the invisible children of this state and particularly of the city that services the largest public school system in the entire country that we are gathered here.

Now, your gathering here is to develop policies and a practical way to address the issues that are facing our children—to begin to make a difference in the lives of the children in the state of New York. If not you, who? And if not now, when?

Thank you.

Welcoming Remarks
Gertrud Lenzer, Professor, Brooklyn College
and the Graduate Center of The City University of New York;
Director, Brooklyn College Children's Studies Program and Center

Gertrud Lenzer

Thank you Dr. Schmidt, Deputy Mayor Walcott, Dr. Mirrer, and Dr. Kimmich for your words of welcome and for introducing the proceedings of today's Policy Symposium devoted to promoting the rights and well-being of the children of New York. Distinguished speakers and guests, colleagues, students of The City University of New York, ladies and gentlemen: On behalf of the Children's Studies Center of Brooklyn College of The City University of New York, I would like to welcome you to this Policy Symposium, which has as its topic "Children and the Law in New York."

Before anything else, words of gratitude are in order. Many people have contributed to bringing this symposium about. In the first instance, the symposium was made possible by a grant from the Carnegie Corporation of New York and by additional support and assistance from the Office of Academic Affairs of The City University of New York and from the Office of the President of Brooklyn College.

In particular, I would like to thank Dr. Benno Schmidt, Chairman of the Board of Trustees of The City University of New York, for his support and encouragement from the very outset of our initiative. There are many colleagues, administrators, members of the judiciary, members of child advocacy sectors as well as of various agencies of city and state government who have helped to make today possible. During these last months, our conference staff, in particular Ms. Loretta Chin and Ms. Sevda Mammadova, have worked with extraordinary commitment and dedication, together with our dedicated student volunteers from the Children's Studies Program at Brooklyn College. Without all of them, this symposium would not have been possible. Last but not least, throughout the long process of bringing this symposium into existence,

Dr. Vartan Gregorian has been on our side with unfailing commitment and loyalty, especially during times when a major goal of this symposium—the exploration of establishing the office of an independent New York State Child Advocate—ran into solid opposition in some quarters of the New York child advocacy community. It is this sentiment that brings me to the substance of today's symposium.

It may appear to be common wisdom that any attempt to promote the interests and well-being of children will always be met with open doors. As is frequently the case, common wisdom can prove to be wrong. What we have come increasingly to realize in the course of our preparations for this meeting is that so many agencies, institutions, organizations, professionals, and volunteers who are working in the best interests of our children and youth are also, and to a not inconsiderable measure, key players in the world of child politics. It has also gradually become evident to us that there prevails in the New York world of child politics an equilibrium of mutual accommodation between the different parts and parties, so much so that, on occasion, benevolence toward children actually has appeared to be resistant to welcoming significant changes on behalf of the children who are the objects of its attention. The resistance I am referring to here is one of the several implicit themes of our symposium, "Children and the Law in New York."

This symposium aims to focus directly on the children and adolescents of New York City and New York State, that is, our children here at home. We have not trained our sights on distant countries in Southeast Asia or Latin America, or on all the children of the United States. As much as these children are equally deserving of our attention, we thought that it might be useful to explore the realities of our children here on local ground in order to arrive at policy conclusions and suggestions specific to New

York, which therefore might have a better chance of being implemented.

Specifically, the Brooklyn College Children's Studies Center has organized this symposium to provide a child-centered and human rights perspective on the principal issues of child welfare, education, and children in the juvenile and criminal justice systems in New York and to advance the rights of the children in these institutions. The goal toward which we have planned this symposium is the provision of a comprehensive view and assessment of the systems of child supervision in New York in their aggregate. In particular, the topics under discussion today are aimed at directing public attention and policies to the human rights and legal needs of those children who are entailed in the current highly fragmented and compartmentalized "system" of institutions in New York.*

Although the individual components of this vast array of child institutions exist, in large measure, separately from one another, the life course of individual children and young people demonstrates with pitiable regularity that once they have entered the system as, say, truants or foster children, they are often embarked on a long journey that will transport them through the entire system of child supervision and juvenile justice. Our Children's Studies symposium wishes to draw attention to the day-to-day realities of many thousands of children, invisible to public view and the media, who are distributed among and whom we find in our civil and criminal courts, in foster care, group homes, detention centers, suspension centers, jails, prisons, and other institutions, including public schools and hospitals.

Today's symposium wishes to focus public attention and policies on the human rights and legal needs of these—our invisible children. We would like to state here that our emphasis on the human rights—the civil, political, social, economic, and cultural rights—of New York's children should not be interpreted as if we are ignoring the fact that these invisible children are in large measure also part of the invisible poor of New York.

Moreover, African-American and Hispanic

children are "overrepresented," as the saying goes, in our systems of public education (especially in New York City), of dropouts and push-outs, of child welfare as well as of juvenile and criminal justice. Particularly, in 2004, which marks the fiftieth anniversary of *Brown v. Board of Education* and with it the recognition that children have substantive rights in our legal system, we need to take notice of the circumstance that as of September 2003, 81 percent of the children and juveniles incarcerated in our thirty-two Office of Children and Families Services (OCFS) institutions in New York State are African-American and Hispanic.

We have many good policies in place in New York in the best interests of our children, but they need to be translated into reality in the sense that they will make a positive difference in the lives of the invisible children of New York. The Presidential Commission on America's Children of 1991 entitled its report "Beyond Rhetoric." In fact, the entire symposium today with all its individual presentations and panel discussions is challenging us to go beyond rhetoric and into action.

In the course of the day, our distinguished speakers will take us from the international developments of the human rights of children and the U.N. Convention on the Rights of the Child over best practices in child institutions in the United States to New York City and New York State and the issues of child welfare, education, and juvenile and criminal justice.

The afternoon session, "A Voice for Children," is devoted to exploring the establishment of an independent New York State Child Advocate and a discussion among elected officials of New York and the ways in which they wish to promote and protect the rights of the children of New York.

*With full acknowledgment of the importance of national and international perspectives, the proposed concentration on the conditions and policy needs of children in New York City and New York State will lead, it is hoped, to better results and will serve as a model for other states.

The Civil and Human Rights of Children: An International Perspective
Darla M. Silva, Esq., Deputy Director,
Office of Public Policy and Advocacy,
United States Fund for UNICEF, Washington, D.C.

Gertrud Lenzer

I would like to introduce to you Darla M. Silva, who is the Deputy Director of the Office of Public Policy and Advocacy at the U.S. Fund for UNICEF in Washington, D.C. She is an active member of the D.C. bar. In the past, she served as the Washington representative of the Women's Commission for Refugee Women and Children. She also served as counsel to Senator Richard J. Durbin (D-IL) on the Senate Judiciary Committee and Governmental Affairs Committee, where her issue portfolio included immigration, civil rights, and civil justice issues. Ms. Silva is a long-time children's advocate and has worked as a children's court attorney in New Mexico representing the state in child abuse and neglect proceedings.

Ms. Silva's presentation, "The Civil and Human Rights of Children: An International Perspective," will introduce the international developments in the human rights of children and, in particular, the U.N. Convention on the Rights of the Child. This human rights treaty on behalf of children has been signed and ratified by 192 countries. In fact, this treaty together with its evolving jurisprudence of the rights of children has been gaining more and more momentum globally to the point that the Draft Constitution of the European Union now specifically includes children's rights.

Darla M. Silva

Good morning. Thank you for inviting me to this important symposium. I'm happy to be here and very honored to be given the opportunity to speak.

I've been asked to speak about the international framework of children's rights so I am going to use my time to address three questions.

1. Why do children need an international human rights framework?

Despite tremendous progress in improving the

lives of children worldwide, there is still a lot of work to be done. At present, millions of children throughout the world forfeit their childhood for a life of poverty, disease, and limited or no education. Many of them face mounting violence, abuse, and exploitation.

In its 2004 Report on the State of the World's Children, UNICEF found that

- More than 10 million children die before the age of five each year and among the biggest killers, measles, malaria, and diarrhea are all preventable or treatable.
- More than half the world's new HIV/AIDS infections occur in people under the age of twenty-five. Currently, 6,000 children and young people are infected every day. And some 14 million children have been orphaned by the disease.
- In the past decade, war has killed more than 2 million children and driven another 20 million from their homes.
- More than 300,000 children in over thirty countries, some as young as eight, have been pressed into service as child soldiers.
- 121 million primary school-age children are out of school worldwide; most of them are girls.
- An estimated 1.2 million children are trafficked every year, and 2 million children, mainly girls, are believed to be exploited through the commercial sex trade.

These statistics portray a grim reality. The struggle of children is not confined to the developing world, as I am sure you are all well aware. While the United States has some of the best programs and laws in the world to protect its children, many of them continue to face considerable adversity.

U.S. children suffer from some of the highest rates of poverty, hunger, and infant mortality in the industrialized world. One in three children in the United States will experience poverty at some point during childhood.

Three children die every day due to abuse and neglect. Nearly three-quarters of all murders of children in industrialized countries occur in the United States. These statistics demonstrate why a framework is needed to protect and promote the human rights of children. Much more can be done in order to safeguard the most physically, politically, and socially vulnerable citizens. Moving beyond the rhetoric to make child protection a reality is a constant challenge. While children are among the heaviest users of public services, they remain the people who are least able to influence the action of governments. Government services such as education, housing, and health care affect children's lives every day, yet children have limited access to key decision makers. They cannot vote and are rarely consulted about program design and implementation.

An international framework increases visibility, promotes action, and provides much-needed accountability. An international framework provides clear goals by which officials at all levels of government, private organizations, and individuals can form domestic policies and programs to better meet the needs of children and their families and communities. This leads me to my next question:

2. What is the international human rights framework for children?

While there are numerous international treaties that address human rights, there is only one specific to children and that is the Convention on the Rights of the Child (CRC).

The Convention on the Rights of the Child is a United Nations agreement that spells out the range of rights that children everywhere are entitled to. It sets basic standards for children's well-being at different stages of their development.

Countries that ratify the Convention agree to be legally bound by its provisions. They report regularly to an expert Committee on the Rights of the Child as to steps they have taken to

comply with the provisions of the Convention.

The CRC is the first universal legally binding code of child rights in history. It brings together in one treaty all the relevant child-rights issues, rather than having them scattered among a number of international treaties.

The CRC contains fifty-four articles, each of which details a different type of right. These rights can be broken down into four broad categories:

- Survival rights include the right to an adequate living standard, shelter, nutrition, and access to medical services.
- Development rights include those things that children require in order to reach their fullest potential. Examples are the right to education, play and leisure, cultural activities, access to information, and freedom of thought, conscience, and religion.
- Protection rights require that children be safeguarded against all forms of abuse, neglect, and exploitation. They cover issues such as special care for refugee children, torture, abuses in the criminal justice system, involvement in armed conflict, child labor, drug abuse, and sexual exploitation.
- Participation rights allow children to take an active role in their communities and nations. These encompass the freedom to express opinions, to have a say in matters affecting their own lives, to join associations, and to assemble peacefully.

The CRC is the most rapidly and widely adopted human rights treaty in history, with 192 states parties. Today, nearly fifteen years after its adoption by the United Nations, the CRC has been formally recognized by every country in the world except two: Somalia and the United States of America. The United States signed the Convention on the Rights of the Child in February 1995, but the executive branch of the U.S. government has not yet submitted the treaty to the U.S. Senate for ratification.

The U.S. Fund for UNICEF has been working in conjunction with numerous U.S.-based organizations including churches, child-rights advocates, and legal organizations on a campaign to push for U.S. ratification of the

CRC. This campaign is being spearheaded by the Child Welfare League of America (CWLA). If anyone is interested in joining us in this effort, please contact CWLA or check our website for information.

The CRC provides a set of goals and a framework for developing policy. It is a catalytic instrument. The real teeth of the Convention are found in the ensuing implementation programs developed by individual governments.

In addition, the CRC establishes a useful framework and sets clear guidelines by which legislators, officials at all levels of government, and private organizations and individuals can form policies and programs to improve the situation of our children.

No international body enforces the Convention, but there is a reporting requirement that prompts governments to assess and report regularly on the condition of children and plans to make needed improvements. This reporting and planning mechanism can serve as a catalyst for change.

The CRC brings much-needed action, transparency, and accountability in improving the lives of children.

3. How has the CRC been used in other countries to improve the lives of children?

In some countries, the CRC has facilitated direct changes in laws, policies, and programs. In others, it has gone further and helped change the way governments and citizens view and prioritize children. Notably, these changes are created not by the treaty itself, but by the people and governments in each individual nation in a manner and time-frame determined by each sovereign government.

- In Rwanda, children have been moved out of adult detention centers where they had been held for alleged war offenses, and have been transferred to special juvenile institutions where they were allotted lawyers to defend them.
- In Belgium and Germany, laws inspired by the Convention extended the national jurisdiction in cases of child prostitution and pornography.
- In Romania, adoption laws were amended, magistrates were trained for juvenile

delinquency and child-abuse cases, and reforms were made to the child protection system.

- In Vietnam, the Ministry of Justice is working with UNICEF and nongovernmental organizations to review the judicial process for juveniles, as well as to train judges, police, and other legal professionals in how to apply the Convention.
- El Salvador, Peru, and Bolivia have all enacted new justice codes for children.

The *Innocenti Digest* article “Independent Institutions Protecting Children’s Rights” goes into detail on the experiences several countries have had with ombudsmen or commissioners for children.

As stated in the article, rights have little relevance if no one knows about them or understands them. Independent human rights institutions for children can play a crucial role in informing children, governments, and the public about children’s rights, how those rights can be enforced, and why those rights are important.

While I am not qualified to say what an ombudsman would or could do for the state of New York and its children, I can briefly highlight what these offices have done in other countries.

In Sweden, the ombudsman worked with local authorities to implement the CRC. When this work began in 1995, 7 percent of municipalities had discussed the CRC: by 1999 that figure was 64 percent. A parliamentary committee has been created as result of pressure from the ombudsman to look at the issue of child abuse.

In Iceland, the ombudsman proposed new measures to reduce child accidents; as a result, the government has launched an experimental project to establish a coordinated register of childhood accidents. A report on child custody produced by the ombudsman persuaded the Prison and Probation Administration to place young sentenced offenders in rehabilitation centers rather than prisons.

In Hungary, a major and highly critical investigation of the rights of children in state-run institutions was undertaken by the Deputy Parliamentary Commissioner. The majority of resulting recommendations were accepted with new construction to improve accommodation,

the introduction of isolation wards for children who are ill, and enhanced training and better supervision of staff.

A final example is from Norway, where the ombudsman established an internet parliament—an interactive website where children can vote on issues that concern them. This has opened up a dialogue between the children and the different national and local authorities.

I believe my time is up and I'm determined to keep you on schedule. Thank you for your attention. I hope this is the beginning of an ongoing dialogue to advance the rights of children both in the United States and around the world.

**Accountability and Oversight: Key Steps Toward Improving
Child Representation and Protection Systems in the United States**
**Howard Davidson, J.D. , Director, American Bar Association Center
on Children and the Law, Washington, D.C.**

Gertrud Lenzer

It is my pleasure now to introduce to you Howard Davidson, the Director of the American Bar Association (ABA) Center on Children and the Law.

Mr. Davidson has been involved with the legal aspects of child protection for almost thirty years. He has directed the ABA Center on Children and the Law since its 1978 establishment. He served as chair of the U.S. Advisory Board on Child Abuse and Neglect. He is the author of many legal articles on child maltreatment. The ABA Center he directs provides training, technical assistance, consultation, and publications for the child welfare legal field, including the monthly *ABA Child Law Practice*.

In his presentation, “Accountability and Oversight: Key Steps Toward Improving Child Representation and Protection Systems in the United States,” we move from the international children’s rights arena to the developments and best practices in the United States with regard to ensuring the rights of children by way of establishing effective systems of accountability and oversight.

Howard Davidson

How can we permit, given our vast resources in America, extremely vulnerable children to appear in our courts without effective, well-trained legal advocates championing their cases? And how we can afford not to have independent, adequately staffed oversight programs to address citizen complaints about the failures of taxpayer-funded systems that are supposed to be aiding troubled families?

How can we let a single child go unrepresented at any stage of child protective, juvenile delinquency, People in Need of Supervision (PINS), foster care placement and permanency review, termination of parental rights, or bitterly contested custody cases? After

all, it’s now a recognized principal of international law—in Article 12 of the Convention on the Rights of the Child—that all children subject to a judicial proceeding have the right to be effectively heard and represented.

Why can’t every state support formal mechanisms for parents, other family members, and children themselves to effectively report child welfare system malfunctions to a place where their anonymity will be protected and their report will trigger a prompt, effective look into how, and why, there may have been these tragic government breakdowns? We can’t afford to wait until there are further front-page stories of how our children and youth agencies have tragically failed. Class-action lawsuits should not be relied on to help identify ongoing child protection process shortcomings. There must be permanent institutional remedies that involve the best possible process for ongoing advocacy for our most vulnerable children.

I want to start these brief remarks by discussing the enhancement of children’s legal representation. New York Supreme Court Judge Suarez wrote in his courageous 2003 decision in *New York County Lawyers Association v. The State and City of New York* that there had been, in this state, a “pusillanimous posturing and procrastination of the executive and legislative branches” that fostered a crisis impairing the judiciary’s ability to function in family cases.

He found that children in the city’s courts were at unreasonable risk of undergoing a process that was neither swift nor deliberate, a process that undermined the justice system itself. The assigned-counsel system he reviewed was, in his opinion and that of others, breaking down. High workloads and ridiculously low pay, especially in critical out-of court advocacy work, were discouraging competent lawyers from continuing to represent child clients, as well as to provide counsel to indigent parents. He could have been talking about virtually any state.

The judge found that New York State's compensation rates were violating the constitutional and statutory right to legal representation. He issued a permanent injunction, directing a rate of \$90 per hour without distinction to in or out-of-court time, until the state legislature acted, which it finally did—after seventeen years of silence—in setting an hourly figure somewhat lower than the judge's \$90 per hour rate.

Why was this pay rate so important? To be minimally adequate, lawyers for children must conduct thorough independent investigations and develop evidence, meet regularly with their clients (not just prior to court hearings), prepare for trials or case negotiations, actively participate at every stage of a case, call witnesses and conduct necessary cross-examination, and keep abreast of the child's case progress. All this takes a lot of time and effort.

Why should it take a judge's order, or a long overdue act of a state legislature, to address the problem of inadequate compensation for indigent individuals in child and family cases? The answer is that we have, in our unique field of law (and not just in New York State), a dirty little secret.

Although we have pockets of highly capable and aggressive—indeed extraordinary—children's legal advocacy, far too many victimized children go through the courts with ineffective and often incompetent assistance to counsel. Most private practitioners experienced in and dedicated to representing children can't make a living doing this work exclusively. And those grossly incompetent lawyers who manage to hang on as leeches in the court-appointment system will never get brought to the attention of the bar for malpractice, but rather may be insanely maintained on appointment lists because of the shortage of available attorneys, or for other even less savory reasons. No wonder we hear so many horror stories about the tragic fates of some of the system-involved children!

I am pleased to have helped the U.S. Department of Health and Human Services provide recent guidance to the states on implementing a 2003 amendment to the federal Child Abuse Prevention and Treatment Act, which says a state risks losing funds from Washington if it permits any lawyer to be appointed by a court to represent a child when

that lawyer has not had adequate training to perform the responsibilities. In both our 1996 ABA standards of practice for lawyers representing children in abuse and neglect cases and in our equivalent 2003 standards for representing children in custody cases, we provided a list of mandatory training topics so judges can insist that all court-appointed attorney training meets requirements according to our standards.

Having excoriated much child representation, let me say how much I admire the nation's first and largest children's law program—the Legal Aid Society's Juvenile Rights Division. In addition, this country needs more specialized legal representation programs like several of those you are fortunate to have in this city. Lawyers for Children, Legal Services for Children, the Children's Law Center, and Advocates for Children of New York, as well as student clinics at New York University and Brooklyn law schools, provide us with exemplary practice in children's legal representation. There is great wisdom here on how to do it right!

Moreover, the New York State Bar has developed, and refined over the years, Law Guardian Representation Standards that are not only among the first of their type nationally, but remain among the most comprehensive in scope and content. I was honored to be present when the city bar, in the early 1960s and years before the landmark U.S. Supreme Court *In re Gault* case, issued a report, "The Role of the Lawyer in Children's Court," principally written by Charlie Schinitzky. That report recommended the routine assignment of counsel to protect children's rights—something that New York was the first state to do. The New York City Bar Association continues to honor Charlie's heritage by, for example, writing last May on behalf of its Council on Children, Committee on Children and the Law, and other subgroups to the speaker of the State Assembly seeking restoration of millions of dollars in child welfare agency funding cuts.

There is so much more to do in affording children the quality of lawyering we would want if our own children had to go through the system. Law guardian standards must be enforced. Chronic failure to abide by them should have consequences. Relevant ethics

opinions need to be issued to better guide legal practice. The state bar's standards should be compared to the three ABA-approved sets of standards that address representation in delinquency, child protection, and custody cases. In cases that may not have specific standards already promulgated by the bar, such as for representing children in adoption and guardianship cases, these should be developed.

You may want to pay special attention to the specific guidance for judges and court administrators included in the ABA child representation standards, which call for some important things:

- Appointing counsel, and notifying him or her immediately, at the very time a court petition is filed, so that child clients can be represented competently at preliminary hearings on the petition. Ideally, court-appointed attorneys for children should be appointed at the very moment the court learns of a child's involuntary removal from the home.
- Having attorney compensation, and the court's policy for full appropriate expense reimbursement, addressed in specific court orders at the time of appointment.
- Providing clear authorization for the child's attorney to access all privileged information related to that child.
- Conducting periodically updated "new developments" training opportunities for panel attorneys, and encouraging all attorneys to attend.
- Creating mentorship programs for lawyers who are new to the court.
- Monitoring constantly to protect against individual lawyers' having excessive caseloads that inhibit their ability to provide competent representation.

In our 2003 custody representation standards we also called for something overlooked in our 1996 abuse/neglect standards, and that is calling on courts to provide lawyers who are representing children with seating and work space at each courthouse that is sufficient to facilitate the work of in-court representation, and that is consistent with "the dignity, importance, independence, and impartiality that they ought to

have." All of these are challenges that your state's Law Guardian Panel programs can, and should, address.

We also need to have local and state bar associations do much more to recruit new lawyers into this area of work, even if some of that work is done initially on a supervised pro bono basis. Since 1978, mobilizing the legal profession around child representation issues has been an important focus of our work at the ABA Center on Children and the Law. It has also been the focus of some statewide bar work across the country, for instance, the exemplary work of the Florida Bar Commission on Children.

In 2003, our center's sponsor, the ABA Young Lawyers Division, began a "One Child One Lawyer" initiative to encourage state and local Young Lawyer bar groups to develop projects that will get younger attorneys involved in child representation. The bar should also encourage additional law schools to enhance their capacity to offer clinical opportunities to students interested in child protection law.

Finally on this issue, I want to say a few words about one of the basic tasks for attorneys advocated by experts in the child representation arena: seeing one's child client within his or her placement environment. As good as the N.Y. State Bar's law guardian standards are, they fail to address the need for attorneys to get out and visit their clients in their placements. Even in our own 1996 ABA standards, although we insist that attorneys "visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child," we failed to specify where those meetings should take place.

Binding attorney standards in Massachusetts require these in-placement visits, both on appointment and as necessary thereafter. And in Michigan, there is now a Supreme Court rule requiring attorneys to visit child clients in their placements every three months. No specialist in this field of law would dispute the fact that one's representation of a child is vastly improved by having this on-site, first-hand contact.

In fact, in 1996 the federal Child Abuse Prevention and Treatment Act was amended to require that states assure that court-appointed representatives for children "obtain first-hand, a

clear understanding of the situation and needs of the child.” How can one do that without being fully compensated for seeing a child in his or her home setting or other placement? Too many children, particularly adolescents in foster care, report that they’ve never seen their court-appointed lawyers.

And as one knowledgeable attorney has said, “the point of visiting a baby is to see their foster care environment, to interact with their foster parents, and to get whatever information can be gleaned.” Even four-years-olds, she indicated, can be somewhat articulate in providing you with useful information.

In summary, children must be given a truly meaningful, not merely symbolic, role in the judicial proceedings that affect them. This requires an investment in public funds that assures court-involved children the quality of lawyering we’d get for our own children if they found themselves involved in the judicial system. Even in the juvenile delinquency system—where courts have had since the 1967 *Gault* decision to improve court-appointed representation—a series of recent ABA Juvenile Justice Center—supported evaluations shows that the scope and quality of lawyering for delinquent children is often abysmal.

As a boy named Jose stated in the introduction to the ABA’s 1995 book on juvenile justice lawyering, *A Call for Justice*: “I’ve been to court three times already and I just want to get it over with. I’m scared and I don’t know if they’re going to send me to jail. I don’t know who my lawyer is. He wasn’t there when the judge called my case.” No surprise. Jose’s public defender had over 500 other cases, and on some days had ten to fifteen case court calendars. This type of thing has to stop!

I want to conclude with a broader child protection system reform proposal that will be echoed by later speakers. We know that, in large part because of inadequate resources, the child protection system is not as professional in operation as it should be, nor is it adequately child-focused. Families with major social, mental health, and substance-abuse problems that result in chronic or sporadic, but cumulatively severe, maltreatment of children may never get the attention that a family receives after a single serious incident of reported abuse. Contracted private service

delivers may fail, with impunity, to provide the monitoring and offer the services that families in the system need. And relatives may be overlooked as appropriate caretakers, despite agency policies and priorities.

Ten years ago I had the opportunity to co-author a book entitled *Establishing Ombudsman Programs for Children and Youth: How Government’s Responsiveness to Its Young Citizens Can Be Improved*. The federal government commissioned us to look at how child protection systems and other government youth-serving programs could be improved through new systems of oversight and monitoring. Given that there are over half a million children in the foster care system, and over 100,000 other youth in juvenile detention or incarcerated in the juvenile justice system, there is a large and important constituency for such oversight and monitoring activities.

In our 1993 book, we identified thirteen children’s ombudsman programs in other nations, including the first one, established in Norway in 1981. Thanks to implementation by over 190 countries of the Convention on the Rights of the Child, there are now many more such national offices. And there are relevant programs in about half the states in the United States.

Programs such as these provide important mechanisms for the receipt and investigation of complaints from citizens, families, and youth themselves related to government services, including child protective services, foster care, adoption, and juvenile justice services. They provide an accountability mechanism by recommending system-wide improvements to benefit children and families, often in the form of annual reports to the legislature, governor, and the public. They are also tasked with the protection of the interests and rights of children and families, both individually and system-wide. And finally, these programs monitor the work of service providers, placement facilities, and the government agencies themselves.

Although our research found fewer than ten states with child-focused ombudsman offices, and even fewer that concentrated on child protection system complaint investigation, today we know of at least twenty-seven states with some form of a children’s ombudsman program. You are fortunate to have one of these in your

state. There should be more.

A 1998 report of the ABA's Juvenile Justice Center has endorsed development of ombudsman programs for youth in juvenile justice institutions. It found that juvenile justice ombudsman programs provide an ongoing independent assessment of facility deficiencies through addressing complaints from institutionalized youth and proposing institutional improvements and alternatives. Although the 1992 reauthorization of the federal Juvenile Justice and Delinquency Prevention Act created a special federal challenge grant program for states that did such innovative things as creating ombudsman offices, sadly only three states appear to have established such programs through this federal grant incentive—Tennessee, Connecticut, and Georgia.

You have one extremely relevant child welfare ombudsman program right here in the city. It is located within the office of the world's only elected ombudswoman. New York City's C-PLAN, or Child Planning and Advocacy Now Project, was established in 1995. Its staff provides individual case advocacy for families experiencing problems with the child welfare system, including the Administration for Children's Services and the voluntary agencies with which it contracts.

These complaints are then documented, and the resulting data analyzed to track and call attention to problematic trends in the delivery of New York City's child welfare services. C-PLAN has a Coordinating Council made up of representatives from the city, state, and federal governments, parent and child advocates, and constituent representatives. The Coordinating Council both supports and evaluates project goals and serves as advisor to the underlying project, providing ongoing consultation on both case advocacy and implementation of systematic reform.

It is critical that such programs, often called Offices of the Child Advocate or Children's Ombudsman Offices, be adequately funded; that they have authority to quickly access information, otherwise considered confidential, held by public and private children's services agencies; and that these programs exist not just in urban communities but also on a statewide basis. Many are independent and autonomous, but some actually

function from within the children's service delivery agency.

It is also important to have legislation, or executive or administrative orders, that specify, among other things:

- 1) the purpose of the office;
- 2) the structure of the office including how the director is appointed and how long the term of services will be; and
- 3) the scope of the office's powers and duties, including whom it reports to; its subpoena, litigation, or license revocation authority; whether system-reform commendations are required as a part of its periodic reports; and how confidentiality, liability, and indemnification issues will be addressed.

Some of these programs provide or help secure direct legal assistance for children and youth, help resolve or even mediate parent-agency and interagency disputes, investigate alleged violations of law and agency regulations, or routinely respond to institutional abuse allegations.

Others also provide publicized toll-free complaint-reporting lines for use by children in care, as well as the general public, to convey problems, and many work to influence public-policy change at the agency and legislative levels. The annual budgets for these programs appear to range from around a half million to two and a half million dollars a year, with staff sizes ranging from around five to as many as fifty. I am unaware that there has ever been an independent evaluation of the work of these programs, and I would recommend that if one is created statewide for New York, or for parts of the state, it be funded to commission an independent evaluation.

Ten years ago, I wrote that the creation and support of the child protection ombudsman offices in every state was absolutely essential. Government, when it intervenes with families pursuant to its public-safety or parents-patriae authority, must adequately fulfill the promises it makes to agency clients and the public as a whole.

All citizens should expect child protection agencies to provide protection, child welfare agencies to assure the welfare of those children over whom they have custody, and juvenile justice agencies to dispense justice to those

youth who have been deprived of their liberty. Enhancement of the mechanisms of accountability and oversight will take a commitment from the public and political leaders to put more precious financial resources into both the court-appointed child representation system and the creation and growth of independent child advocate or ombudsman offices.

Both of these individual and institutional approaches are effective means of providing key checks and balances on the process that we rely on to protect children from serious abuse and neglect. Commitments, action plans, and other concrete steps to help fulfill the promise that government makes when it intrudes into lives of our most vulnerable children and families must follow up today's presentations. The organized bar must be a key player in those activities. At the ABA, a Steering Committee on the Unmet Legal Needs of Children was created in 1992 to coordinate such efforts. The model for this was actually a Massachusetts effort of the 1980s that teamed the governor's office and the state bar in an Unmet Legal Needs of Children Task Force.

I've offered you a lot of challenges this morning! I wish you success, and offer you our support in your efforts.

Benevolent Complicity: The Myth of Protecting Children's Best Interests
Marcia Robinson Lowry, Esq., President and Executive Director,
Children's Rights, Inc., New York

Gertrud Lenzer

Our next speaker, Marcia Robinson Lowry, is a champion of the rights of children in New York and the country at large. In her presentation, "Benevolent Complicity: The Myth of Protecting Children's Best Interests," she will discuss the obstacles that prevent the best interests of children from being implemented and realized.

Marcia Robinson Lowry is the founder and Executive Director of Children's Rights, Inc. Since 1995, Children's Rights has been an advocate for abused and neglected children in failing foster care systems. As a national nonprofit organization, Children's Rights works to protect America's most vulnerable children using policy, public education, and the power of the courts.

We have invited her to speak here today because she has been a recognized leader for over thirty years in creating new law and obtaining sweeping court-ordered decrees that serve as models for reforming child welfare systems.

Prior to founding Children's Rights, Ms. Lowry spent over twenty years leading the Children's Rights Projects at the New York City Civil Liberties Union and then at the national American Civil Liberties Union. In 2000, Nina Bernstein highlighted Ms. Lowry's work in New York City with the publication of *The Lost Children of Wilder: An Epic Struggle to Change Foster Care*. This book explores the background and aftermath of the landmark 1973 Wilder lawsuit Ms. Lowry filed against the City of New York's foster care system.

Most recently, Ms. Lowry and Children's Rights have been involved in the dramatic reform plans for the child welfare system in New Jersey in response to their class-action suit.

She is currently involved in litigation and monitoring settlements in Connecticut; the District of Columbia; Kansas City, Missouri; the

State of New Mexico; the state of Tennessee; and Milwaukee County, Wisconsin.

Marcia Robinson Lowry, Esq.

Good morning. I'm very pleased to be invited to speak here. I'm very pleased to follow Howard Davidson, who is trying to put us out of business by his recommendations here, but I agree with him that class-action litigation shouldn't be the only accountability device for children, and the more states that have really serious ombudsman programs, the more we'll be able to concentrate on the ones that do not. I'm also very pleased to know that this conference has a specific focus, which is the importance of an independent ombudsperson for children in the State of New York, and I also appreciate the emphasis that Dr. Schmidt put on information, and Howard Davidson as well. We know that the systems that are set up to provide services for children are often fragmented, duplicative, and hard to access, and have very large caseloads.

The reason that Children's Rights brings the lawsuits we do is because the accountability in systems is very, very often lacking, and there is a veneer on most systems of commitment to the best interests of children. In system after system, and I'll talk a little more specifically about New York, we find that it is business as usual. Even well-meaning people—and there are many, many well-meaning and hard-working people in children's systems—are not able to really serve the interests of children, and often institutional interests get in the way of truly advocating aggressively for children. We bring lawsuits against government because the government systems are unaccountable. We all know that poor children are dependent on government systems, often for their lives.

What's going on now in the state of New Jersey is a very good example. New Jersey, unfortunately, makes other systems look good. As you all know, the body of a starved and

beaten child, seven-year-old Faheem Williams, was discovered in a basement in a home almost a year ago now, and that was a child who had been neglected by the child welfare system. Only last August, the Jackson children were discovered in Collinwood, New Jersey—boys who had been adopted through the child welfare system who were starved, almost to the point of death. Certainly their growth and development have been irreparably stunted. That system is a system that itself had been starved of funds for a very long time and when we did discovery in the lawsuit, we found that the rate of abuse in certain sections of the state was as high as 17 percent for children in foster care—17 percent. The government was spending money on a system in which almost one in five children was being abused in foster care. The lawsuit has been settled and the reason, in large part, was that there had been a major class-action lawsuit that had been filed and had been proceeding, and the state was defending itself on the grounds that it had many reforms under way.

That lawsuit was settled, in large measure, because of information. In the course of a federal lawsuit, plaintiffs are entitled to gather information about an agency, and of course the state was not very happy about that and so they took the best protective step they could, which was not to fix the system, but in fact to get a court order barring public release of the information that was gathered in the lawsuit. Nothing interests the media more than information they are told they can't have, and so several newspapers got a court order releasing the information. It was quite sensational, but it also received a lot of attention because the state sought to suppress it.

The same thing happened in New York in the Marisol lawsuit in the late 1990s, in which the Giuliani administration sought to bar the release of a neutral report on how many children were functioning in New York City, which was overruled by the court, and that information, which I don't think otherwise would have been played that way, was in fact page-one news in the *New York Times* because the *New York Times* had to go to court to get it. Information is critical and although there are many organizations and entities in New York and in other systems as well that work on the behalf of children, one has to realize that it is just a fact of

life and it is just a reality that organizations often, although they work hard for children, have competing institutional interests. Even those who work within the system, who know full well what's wrong with it and what needs to be done to change it, depend on the cooperation of the system in order to function and this sometimes makes their voice less independent than children need.

That's why I'm extremely supportive of the issue that is the focus of the agenda today, which is the creation of a statewide independent ombudsman for children. There is such an ombudsman in New Jersey, with whom we, as plaintiff's lawyers in a lawsuit, work very closely. Both roles are needed—that system is so bad. But what the ombudsman is able to do in New Jersey, and you'll hear more about it, is quite extraordinary and quite important.

In New York, we have one of the largest child welfare systems in the country, and one that has an extraordinary expenditure of funds but an extraordinary lack of accountability. I think that if there were some specific formula one could use to determine the amount of money spent versus the degree of accountability, we would find an enormous gap in New York City. New York City is also very interesting because it is a privatized system. We don't say that in New York—that it has been a system dependent on voluntary agencies basically since its inception, whereas other systems are just now starting to discuss privatization. New York has been privatized, as you all know, basically since the 1950s, since it became a strong system. Little has actually changed for children in New York in any fundamental way.

There's a lot of talk about neighborhood-based services and I actually, early in my career, worked for an abandoned-child welfare agency that was called Special Services for Children. I worked for a commissioner, who was at that time considered a reform commissioner. That was Barbara Bloom and when I worked as an assistant to Barbara Bloom, one of the issues she was most interested in was neighborhood-based services. She had started to try to figure out how to do that and she had developed, I remember, this little thing called a zip-code study. This involved trying to place children in their neighborhoods, which is now being hailed as a new idea in this administration. For all of our

concerns and interests in neighborhood-based services in New York City, the latest data I was able to obtain show that only 23 percent of the children in foster care placement in New York are placed within the zip code of origin in which they were raised. I suppose that's hard to figure out, but only 23 percent, at this point, are placed within the area of birth origin.

The other thing that I remember that was very important to the administration when I worked for Barbara Bloom, which was a very long time ago, was that the Child Welfare System, since it has a public mandate and a big budget, should work with other systems providing services in the city. That was a big concern and one of her main agenda items. Well, I'm sure you are going to hear from people today who are going to talk again about the need to work with other systems and how it is not happening in New York City. In fact, just to reflect on that for a moment, there was this fantasy piece written in the *New York Times* a couple of years ago, and I will just read it very quickly to you because this is truly a fantasy: "The blue carpeting is thick enough to sooth the weariest step. No matter what language is spoken, there are interpreters to translate and explain. The banks of telephones are free, like the childcare, all day buffet, and the kindness of strangers. Even more important to many of those gathering here under the row upon row of banners is the presence of every relevant federal, state and city agency. They are not only neatly labeled and well staffed, but eager to cut through rules and red tape to speed financial help to those in need. And the story focuses on a particular mother who is pregnant and has a toddler and is without money and afraid of being evicted, and in addition to getting the assistance she needs, she also gets a massage. The headline on that story was "A Welfare State That Works and a Possible Model for the Future." Well, do any of you know places like that? No. And this was in fact the family center that was set up in the wake of 9/11, and obviously that was a time of great tragedy and need in the city, but we can do that if we want to. We did it then; we're not doing it now.

As you all know very well, poor children have multiple needs: housing, health care, mental health care for themselves or family members, substance abuse care for themselves

or family members, financial support, certainly education, and sometimes foster care for children who can't be protected in their own homes. This city spends huge amounts on those systems separately and on some of those needs within the systems. These services are often duplicative, sometimes conflicting. Families often get fed up or worn down, and families at the edge of a crisis often go over the edge, in full view of many different agencies. One of the things that I'd really like to know is how many different agencies are involved with how many families on the edge of crisis. Another is how much money has been spent on particular families unnecessarily and uselessly when, if there had been a more focused effort, a child who goes into foster care would need not go into foster care.

I think it is important for you to hear about a specific case. I had represented the mother when she was a teenager, and I then represented her son, who was in foster care. This was a woman who had a hard life, as many people do, and had become drug-addicted when she was pregnant. She was determined to get off drugs, and wanted a drug-rehab program that was residential to which she and her child could go. Nothing was available to her.

The child was taken from her, and she says appropriately. She was desperate to get the child back—did everything she could, went into a program, became clean. Nobody helped her; she did it on her own and then she tried to get her child back from foster care. As proof that she was clean, she was quite willing to take random drug testing. She had another child, was raising the child, and Administration for Children's Services (ACS) was not taking the child. Her case went into court. She was represented by a legal services person, and her child was represented by a law guardian. The child was in foster care for two years without legal custody. Legal custody had lapsed. The mother kept trying to get the child back, but she couldn't until she called me. And the child was of course abused in foster care. The child is now home with the mother, doing well. We don't usually do damage actions but since the child was already home, we did file a damage action and got a nice annuity for the child. That shouldn't be happening. A lot of service systems touched this woman, including the court

system, including lawyers, and it took something going over the top, basically.

That's why I think you need a state ombudsman system. We need to do something different in New York. We need to challenge some of our long-standing assumptions, and we need to realize that being polite about some of the outrages that children continue to suffer while agencies and organizations continue largely as they always have is cowardly and inhuman. We need to ask questions, demand concrete answers from independent sources, and disregard our mother's (or at least my mother's) admonition: "If you don't have anything good to say, don't say anything at all."

I have worked in child welfare systems around the country and I will say that one of the things that marks this in my mind, and this transcends administrations, is that I have never seen a system so outraged at criticism, so willing to close out strong critics, so resistant to airing its problems, and so able to create conspiracies of silence as that in New York City. Not only do we need a statewide ombudsman, we also need one with subpoena powers and real strength to investigate and find out what's going on, as the New Jersey ombudsman's office does, because if you can't get information through a Freedom of Information request, you won't get it if it looks like you might be critical.

These are some of the things that go on in New York City. We are spending huge amounts of money on these systems. You just heard from Dennis Walcott that the amount of money we're spending on preventive services in New York City has increased. Do we know how effective those preventive services are? Would you like to know what the caseloads are for people in ACS who are responsible for oversight of the preventive services program? The caseloads now, and they have been going up every year, are 200 families. So what kind of accountability are we getting from the preventive services agencies? Do we need preventive services? Without a doubt. Do we need effective preventive services? Much more important. Are these services effective? Who knows? The number of children in placement in New York City is declining and that's one of the main things we hear about as to how foster care is getting better in New York City. Is that good? Is that bad? Who knows? Do we have any

information on that? No we don't, except to say that only 23 percent of the children are placed in their own zip-codes of origin. Many systems around the country are lowering their foster care populations. Why? Because they don't want to spend the money. I'm not saying that's what's going on in New York, but lowering the population of children in foster care can be good or can be bad. We need to know and we don't know.

But certainly, shortly before the death of Elizabeth Izquierdo, a little girl brutally abused by her mother in 1995, which led to the reorganization of ACS, there was a memo from the Bronx field office of ACS that was called the "two for one" memo. The memo, from the director of the field office, said that for every case you open, you must close two. I'm not suggesting that there is anything that cynical going on in ACS now, but populations can decline for a lot of reasons.

And we need to know that the foster care population in New York City is declining for a good reason, for a reason that we would be proud of—not just because we want to show that the population is declining.

For children in foster care in New York now, almost one in five is in institutional placement. That number is rising. We have a report that my office did along with the Juvenile Rights Division of the Legal Aid Society and Lawyers for Children, called "Time Running Out: Teens in Foster Care." It shows that too many children are in congregate care and that is not good for children. We also know that many of the children in congregate care, which also costs more, are children who do not need to be in congregate care. They could be home with relatives, with their parents, or in foster homes. The great re-entry into foster care within a year of discharge per family has been going up for the last three years. Does that raise any suspicions? Who's paying attention? What's being done about it? What kind of misery to children does that represent? We have fewer children in the system, yes? So we should be doing a better job for them. But the percentage of children with two or more transfers from one facility to another is going up. Why? Who's paying attention? Who's doing something for those children? Most significantly, the average length of stay for all children in care in New

York City is one of the highest in the country and it is not improving. The average length of care for children in foster care in New York City is 49.5 months; the average nationally is 33 months. The length of stay before adoption, just for children who are getting adopted, is getting worse—64.3 months. For those children reunified with parents, only 49 percent were reunified within twelve months of entry. The national median is 68 percent and the number in New York City has declined by 10 percent since 1999.

What's going on here? Are things OK or are we just looking at some local statistics that look OK but have to be examined? The data in child welfare are very, very tricky. Why aren't we measuring outcomes for children? Why aren't we doing analysis to determine whether children's lives are better? There were reviews that were done during the Marisol litigation, which Children's Rights brought along with Lawyers for Children. There were independent reviews of safety factors and permanency factors, and then there was a subset, which showed that New York City was doing pretty badly. And then there was a subsequent review that was done by the state agency, Office of Children and Family Services (OCFS). Has there been such a review since that time, since there was litigation? No, there hasn't been. We have questions to ask here and why aren't more facts being studied? Why are we not protecting the rights of children? Why is the only remedy now in New York class-action litigation, which of course is always a remedy? But the point is right, as Howard Davidson said, "There ought to be other remedies to both getting the information, and to analyze the information, and understand what's going on." We need independent information about what's happening to children. We need to understand why this is happening. We need to have independent people who are able to stand up and say, "Look at this. It's not right. Here are the causes. What are we going to do to fix it?"

A recent study of children in foster care from the Government Accounting Office covered 50 percent of all children in care nationwide, including New York, and found that 12 percent of children in foster care received no routine health care, 34 percent received no immunizations, 32 percent continue to have at

least one unmet health need, and 78 percent were at high risk for HIV but only 9 percent were tested. What are we doing about that? Who knows about that? Who's complaining about that? Who's speaking for children system-wide? The federal government is not. It spends an enormous amount of money on child welfare systems and it does very little to monitor them, to ensure accountability. The state certainly does not. The state children's agency, the Office of Children and Family Services, has never demanded accountability from New York City and that's not going to start now. In fact, they had to do some monitoring as a result of the Marisol lawsuit and they were extremely nervous about it and haven't done it since.

Look at what we're doing to the children who are in foster care. What are the outcomes for children? What are the components of these services systems? What kind of outcomes are we measuring? What are the caseloads? There should be, in our view, national standards, and there surely should be standards in New York State for how agencies operate. Are there minimum caseload standards? No. We know that we have read and heard that caseloads in Administration for Children's Services have been down. Well, what caseloads are those? Child Protective Services (CPS) only. What are the caseloads for workers who actually deal with the children? We have no minimum standards for workers in the contract agencies, which provide the vast majority of care. For workers in the city agency that monitors the care provided by the contract agencies, the caseload is fifty-four on average, and usually averages are much higher when you look at all the people who are actually carrying cases. For adoption case management, caseloads are sixty-one. How many children who have graduated from the foster care system—I talk about education, for which there are no linkages—graduate from the school system, after the government spends money on their care, with a high school diploma? Who knows? Nobody knows that. How many of them even graduate with a GED? Who knows? We don't know that. What are the outcomes for many children who graduate from this system even today? Movement into the juvenile justice system, movement into the prison system, high rates of mental health problems, unemployment or underemployment.

Eighteen percent of the youth in the study about graduates in the foster care systems have been arrested at least once since discharge, and 27 percent of the males and 10 percent of the females spent time in jail. These youngsters are more likely to be victimized in the twelve to eighteen months following discharge. Twenty-five percent of the males and 15 percent of the females experienced serious physical violence, and 13 percent of the females experienced sexual assault or rape. We can't rely on the good intentions and the mission statements of those who are supposed to protect children but who also have institutional interests at work.

Class-action lawsuits are one answer, but there are others. Information is almost as important as litigation. Individual oversight is not being provided, for the most part by the courts, not because the people who work for the courts aren't dedicated and hard-working, but because once again the courts are being starved for resources. The dockets of the judges and referees are very, very high and the dockets of the lawyers who represent these youngsters in court, and are certainly struggling to do the best job they can—and I certainly agree with Howard about that—are too high for them to be able to provide the kind of aggressive advocacy in each case. It's also the case that if you are too aggressive on one case, you may see retribution extracted in another case.

We must realize now that poor children will not be protected just because we care about children—not when it costs money, not when it's hard work, not when there's no real political payoff, and not when there are no voting constituencies or big donors to politicians who will care about it. States will do a better job for children only if they have to. There are three things that I think are really necessary: There must be minimum standards for relevant areas of child welfare, including minimum standards for New York, in particular those that apply to contract agencies: Workforce standards, minimum training, a real information system.

Do you know how much money is spent? This is one of the things that drives me crazy. No one gets annoyed about it or excited about it but me, I think. Do you know how much money has been spent in New York State on the "Connections" computer information system, which is not up, for foster care? They have

spent over \$500 million and there is not a system they can plug in on foster care. New York City is still using its old system, which "Connections" was designed to supplement. Why is nobody outraged about this? Over \$500 million. Think of what that could be used for and it hasn't even produced a computer information system that works.

So there must be minimum standards. There must be accountability and visibility. There must be quality review. Every year, there ought to be a report published that analyzes what is actually happening to children. How many children have had to move more than three times? How many children had to return home only to get reentered care? How many children lost an opportunity for adoption? How many children could have gone home to a parent, a caring parent, if only the parent had gotten some support with housing, or jobs, or daycare? What's really happening to our children? There are ways to find out. We're not doing it. There must be an independent fatality review panel. You would think that the most serious thing that happens to children is that they get killed. Well, the only fatality review that is done in New York is by the agency that is responsible for protecting children. We don't even know how many children who were previously involved with the child welfare system died. There are data from two different sources, and the data differ. ACS says that the deaths from 2000 to 2002 were twenty-two, thirty-two, twenty-five. The Office of the Public Advocate, which also looked at these data, said that the numbers were forty-eight, fifty-two, and forty-six. Now, you know, it's only a difference of twenty dead children but that seems to me to be significant. I took another look at ACS's fatality review report last night and there is very little real information in there about how, if at all, the systems fail the children who did die. We need to know that. We need to know whether there are things that have to be corrected or whether the system is really working as best it can under the circumstances, and we can feel relatively comfortable about that.

A document that is being prepared by the agency that is being monitored, even though it has some independent people on its panel, understandably is not going to be as critical as something that is entirely independent. Many,

many states and cities have independent review processes. New York City does not, and that's an issue that I think is important and one that we are supporting, and we hope that there is going to be some response.

Finally, we need an independent office of child advocacy, with subpoena powers, with access to information, with no other involvement in the system so nothing else to lose, with no concern about any kind of retaliation. We do not have people in New York City that one would expect to be speaking out on this actually doing so. Academics, when you talk to them, know very well that there are problems in our provision of children's services, but will tell you, "I'm not going to be able to get students for my class or for my master's program if I speak out."

People are concerned. Where is the union? The union caseloads are high. Where are the private agencies? The private agencies want their rates raised; they don't want the city getting mad at them. We need some entity that is truly independent, that will not be punished if it speaks out freely. We need to open the New York City system to that kind of scrutiny and pay attention to what is learned. If the system won't publicly evaluate itself, and it's hard to expect it to do that, then something must. Or it is highly likely that we will be visiting these issues again after the tragic death of another child.

Advancing the Legal Rights of Children: Intersections and Collaboration among the Education, Juvenile Justice, and Child Welfare Systems and the Courts

Moderator: Karen Freedman, Esq.,

Executive Director, Lawyers
for Children, New York

Monica Drinane, Esq., Attorney-in-Charge,
Juvenile Rights Division, Legal Aid Society,
New York

Elisa Hyman, Esq., Deputy Director,
Advocates for Children, Inc., New York

The Honorable Clark V. Richardson,
Supervisory Judge, Family Court, Bronx
County, New York

The Honorable Steven Sanders, Chair,
Committee on Education, New York State
Assembly

Deborah Seidenberg, Chief of the Family
Court Division, New York City Law
Department

Karen Freedman: Good morning. My name is Karen Freedman. I'm the Executive Director at Lawyers for Children and I've been asked by Professor Lenzer to moderate this panel. What I'd like to do first is to explain to you briefly what the format is that we'd like to follow here because so many of the people in this room are already obviously and clearly by their presence here, and by their work, committed to this area of law, committed to children and children's rights and the issues that face children in this city and throughout the country.

We'd like to make this panel more of an open discussion as much as that can happen in a setting like this and what I will do is to introduce all of the panelists to you as we begin, pose a question to each one of them, then ask the other panelists if they'd like to respond to that same question. At the end, if we have time—

and I'm going to try to manage so that we do have a few minutes—we can open up to questions from the floor and you can also address the panelists.

So I'm going to start from right to left. In structuring this panel, we went alphabetically because everyone is equal, has equally critical things to say on the topic of how the many systems that children interact with can work together, should work together, sometimes do, and so many times don't work together. Monica Drinane, who is going to be our first speaker, is the Attorney-in-Charge of the Legal Aid Society's Juvenile Rights Division. The Juvenile Rights Division represents children throughout the five boroughs of New York City in delinquency, "People in Need of Supervision" (PINS), abuse, neglect, foster care, and termination of parental rights proceedings. Next to Monica is Elisa Hyman, the Deputy Director at Advocates for Children, a not-for-profit organization whose mission is to improve access to quality public education in New York City. Advocates for Children focuses on children who are most at risk for school failure due to discrimination based on disability, poverty, immigration status, involvement in the juvenile justice and foster care systems, and exposure to family violence.

On my left is the Honorable Clark V. Richardson, the Supervising Judge at the Bronx Family Court. He presides over its Domestic Violence and Child Abuse Project. He chairs and maintains an ongoing collaborative network of court personnel and child-development specialists within the court.

Next to Judge Richardson is Assemblyman Steven Sanders, who is Chairman of the Committee on Education. He was first elected to the Assembly in 1978. He represents a district on Manhattan's East Side. Mr. Sanders was named Chairman of the Committee on Education by Speaker Sheldon Silver, in January 1995.

Next to Assemblyman Sanders is Deborah

Seidenberg, the Chief of the Family Court Division of the New York City Law Department. The work of the Family Court Division encompasses two distinct types of practice: the prosecution of youth crime and the collection of delinquent child support.

You will also note that Chad Vignola was scheduled to be a member of the panel. He is not able to appear today but many of us have worked with him over the past fifteen years and we have a tremendous amount of respect for the work he has done and we hope to bring some of those issues to the surface even in his absence.¹

So I'll ask Monica to begin and I'm also reminding the panelists that each of us has between five and seven minutes to speak if we are going to have the dialogue that we hope to have.

The question I would like to pose to Monica asks "How do the educational issues manifest themselves from the perspective of a child who is involved in the juvenile justice or child welfare system and what solutions do you see to the problems these children face?"

Monica Drinane: And I, of course, in true lawyerly mode, am going to respond by saying to Karen that I want to flip the question. Karen is asking the question of how educational issues are manifested in court-involved youth. I want to flip the question to look at how the failures in education of our youth are the cause of court involvement because I do think the critical piece we need to focus on is that we have an educational system that has failed a large majority of the youngsters attending that system. I want to pick up on what Deputy Mayor Walcott was saying this morning and also what Marcia Lowry was raising about the importance of data. I was struck by Mr. Walcott's comments that only 9 percent of minority children get Regents diplomas. The reason I was so struck by that is because in my experience with the Juvenile Rights Division in representing children, and looking at the children who are coming into the court system, especially in the area of juvenile justice, and the children who are being placed in state facilities of the Office of Children and Family Services

(OCFS), and the children who are being remanded when they come into the court system often because of education-related issues, over 90 percent of those children are minority children. They are coming from, I would say, a select group of failing schools that are failing the majority of the children attending those schools, and those children are exhibiting the results of that failure.

I think—and I say this as a former educator, because prior to my law school career I was a teacher—one of the things that I am very much aware of is that in terms of education, one of the keys to successful learning is continuity, and one of the things that we see very often in terms of the children caught in the juvenile justice system and the children in the child protective system is that they share a common experience of frequent transitions, and those frequent transitions continue to disrupt the learning model and the learning system that these children are experiencing. I really think that in order to improve our clients' educational success, we need to really be directed toward systemic breakdowns at these transition points.

I want to give you some examples of how I see our clients as disadvantaged as a result of ending up in the court system and having been part of an educational and often a foster care system that has not addressed their needs. One of the areas I want to talk about is that children who come into the court system and come in through the door that is labeled "delinquency" are often the very same children that a month or two earlier might have come in through door labeled "neglected children," or another door labeled "PINS children," children who are considered "People In Need of Supervision," and that oftentimes it's families that need assistance and educational systems that need assistance.

In particular, I'm very concerned about children who are placed with state agencies through the Office of Children and Family Services, who suffer disruption and the lack of continuity in their education. If they are placed out of the school system that they are currently in, they go to a system that does not give them the necessary credits to meet educational

¹ See Appendix 3

requirements, so that when they come back into the school system, they have often lost a year or more of credits they would need to continue, so we are disrupting whatever fragile educational accreditation and system they have been in. Oftentimes, if children start in a community school, they come back and are overage for the grade that they can go into, which creates a greater likelihood that they will not be in the same school, that they will not graduate. Most of the alternative programs created to address the needs of our client population require as many as ten credits for admission and our clients who are coming back into the system from OCFS often have zero credits. No schools will take them and address their needs.

Another disruption in education for these children occurs when clients of ours come into the Family Court system and are remanded to the Department of Juvenile Justice. Many of our clients, and I think that Elisa will support this, are children who have special education needs and they are remanded into a system where they cannot receive special education services. They're rarely given the opportunity to take the citywide exams required for promotion. So we are disrupting special education plans that have been terribly difficult to get into place, and then we are also denying these children the opportunity, even if they are successfully participating in a program, to be promoted, so again we are not providing the continuity that we should be.

Another thing I would like to focus on is that oftentimes, for children who come in under the delinquency heading, there is a tendency on the part of the court system to use the Alternatives to Detention program instead of having the children stay in the school system. I think that we, and I include myself and the advocates in the system, fail to look at the schools and to realize that one of the reasons that children will end up in the Alternatives to Detention Program or going into remand is because of truancy. Oftentimes, these are failing schools where over 90 percent of the children are exhibiting patterns of truancy but these schools actually could not, if the children stopped being truant, accommodate the number of children who are registered for their programs.

This is another area where the use of this

Alternatives to Detentions program, which obviously we would support to the extent that at least these children are not going to be remanded because of educational issues, is not really getting at the underlying problem in terms of why these schools are failing. Why is there so much truancy? What do we need to do to correct the education system and to have the education system talking with the court system? We should not just hand a problem to the court system. One thing that we have to look at very seriously is the Department of Education's initiative to have safe schools. I want to say that for all of our clients—the child protective clients, the PINS clients, the delinquency clients—going to a safe school is something that children want as much as the mayor may want it, the teachers want it, the parents want it. But in making the school safe, the answer cannot be to criminalize the children who are going to the school and then bringing them into another system, the court system, and saying to the court system, "Now it's your problem. It's your responsibility to do something with this child because this other system has failed this child." I'll stop at that point and you can continue the dialogue.

Karen Freedman: Does anyone on the panel want to respond specifically to any of the issues that Monica is raising? I do think that sequentially, the questions will be interwoven but is there anything you'd like to raise now?

Judge Richardson: Well, a couple of things that Monica indicated I really think are very important. It's not just the fact that the Department of Education has failed our children and it's a question not just of their behavior academically in school, which was of primary concern, but also the real issue we see because that is what gets into court—the attendance issue—and you can't put that entirely on the Department of Education. The attendance issue is more of a community issue, it's a parental issue and it's a community issue. What's going on that this child is not getting himself or herself to school? You can't necessarily blame that on the Department of Education. You can give some responsibility in notating it and then perhaps reaching out to try to figure out what's going on. So let's get this child into school. But

that's also parental responsibility and that's also community responsibility to find out what's going on with that child.

So, I wanted to shift a little bit of the focus off the Department of Education or at least broaden it a little bit to include other people. No one system is going to deal with it. And I absolutely agree with you about the safe-schools program that has been initiated. It sounds wonderful and it sounds like it's going to make the schools safe, but it's really nothing more than taking what are problem children to the Board of Education and dumping them in Family Court. Now I disagree with part of it. Some of these children have committed violations of the law. They come to school with a gun. Well, I'm sorry, that belongs with us anyway, but they've set up this program and what boggles my mind is that no one ever spoke to a single person in the Family Court to see if they could handle this. No one said, "What are you going to do with these children once we send them to you?" No one said "Do you have the resources to be able to: one, identify the issues; and two, deal with them?" So now I'm seeing all of these children, standing before me—Uh, hello? So we need to have some sort of cooperation and collaboration because we can get some very good ideas from the Department of Education before this happens.

Karen Freedman: That's a perfect segue to Elisa Hyman's question, which involves essentially the issue of problem children in the schools, and what I'd like to ask you is what you see as productive and nonproductive responses to students who are unable to succeed in school for a variety of reasons.

Elisa Hyman: I guess that I would like to start by recognizing the fact that the schools are very underresourced and they are under siege right now, particularly with the No Child Left Behind Act, to meet certain statistical requirements and they're measured on graduation rates and how many children perform at a certain level on tests. This has not been productive. Generally, while of course we need standards and they are very important, the schools are not prepared to address the standards in a productive manner. And so, what we've been seeing—I think it

started in New York City, and definitely has increased over the last five years—is that schools are tending to exclude and segregate children they perceive as problem children with behavioral difficulties. And I have to say from our perspective at Advocates for Children, we see this starting at an extremely young age, and that's basically where the pipelines to the court system starts. Monica mentioned something that is a huge issue and it's somewhat of a pink elephant in the room whenever you are talking about court-involved youth, that the research generally shows that 40 to 70 percent of court-involved youth have identified or unidentified special education needs.

In New York City, there has been a specific study, but even just looking at the registers of children who attend Passages Academy—which is the Department of Education's program for secure and nonsecure detention, alternative detention—it ranges anywhere from 30 to 35 percent just based on a statistical snapshot on any given day. And so, the fact is that most of the children who end up in the court system from the special education system are coming from a very small number of segregated special education programs designed for "children who are classified as emotionally disturbed." You may have heard of those programs in the city—the name is Size Seven, or Ms. Two, now changed to Ratios. Looking at educational services we see an overwhelming issue because it is such a massive problem. It's actually somewhat of a targeted issue and a fixable problem when you're talking about the pipeline of children coming from the school system into the court system because we know where those children are. We know where they're coming from and to the extent that those children are in certain segregated programs, departments are already spending anywhere from \$30,000 to \$40,000 per year per child just to sort of warehouse those children in those segregated special education settings.

I'm working on a report on graduation rates for students with disabilities and I did a mock-up of the graduation rates for students classified as emotionally disturbed. The most generous figure was .5 percent of students exiting every year who are classified as emotionally disturbed, graduating with any type of diploma. That to me is a key place we really need to focus on and

where it's reasonable to target those children. It's not such an unimaginable situation.

The second thing that has been going on in the city that has really had an impact on court-involved children is a general push-out problem, which some of you may be reading about. My office actually had some litigation about it, where the schools had been responding by pushing out high school students that they perceived were too old, or were not earning enough credits to graduate in four years. And some of these schools were pushing out 1,000 to 1,500 children per year. Our court-involved youth were told that they had to attend school but we were unable to enroll them in a high school. So we have been working with the Department of Education. They have taken certain steps to put in new procedures: more constructive exit conferences where they are making meaningful transitions, really assessing what's going on with those children. They're very new, but this is a first step in dealing with the lack of access.

We increased suspension rates and referrals to Family Court. I think that's something that we'll be talking about later as well. We do not believe that this is a really constructive solution. Most of the court-involved children that we see are significantly delayed academically. Some of them are five, six, seven years delayed in reading and math and they are cognitively capable of learning or may even have high-average potential. Yet they are regularly referred to education programs that don't meet their needs and told that if they don't go there, they'll be truant and end up getting remanded because they're not going to a school where they basically are not able to engage. Sending them to detention doesn't help because the detention school is incredibly underresourced. They see about 4,000 children a year and they're funded probably for less than a quarter of that. They don't provide special education services there. They don't provide curriculum that has anything to do with the school's services that the child is getting in his or her community school or the school that they have to return to, and in detention, they don't have any junior high school classes whatsoever. I think they recycle a ninth-grade curriculum. So any child sent to detention for any length of time has an incredibly interrupted education, as Monica

mentioned.

The Department of Education has developed an incredibly large set of shadow programs and alternative programs like "New Beginnings" and "The Education Center" that are not true alternative programs in that they do not afford children the opportunity to earn credits toward a diploma and they do not generally have special education services. A lot of these children have learning needs. So we've seen in looking at the GED services that the department runs, in the last five to six years, they've gone from 18,000 students to 28,000 students yet there's only 3,000 to 3,500 GED diplomas a year. So the GED is not a great alternative for most of these students. The State Education Department put out a report and analysis of these alternative GED programs and found that a majority of these children had special education needs or unidentified disabilities, yet the department does not offer any special education services in their GED programs.

So I guess, to just sort of wrap up, obviously, systemically, there is a lot of work that has to be done, but there are some very obvious targeted places where we can catch the children who are starting at the pipeline at certain places in the school system. We can improve the educational services to those children and improve the administrative way in which they are processed and catch them before they fall through the cracks.

I think that we are able, if we do that, to address a lot of these issues for a significant number of court-involved youth. I think the department has started some initiatives system-wide to address the issues. They are opening some new schools for older students as a partial response to the push-out problem. They are trying to break up some of the large high schools into smaller schools, which is a very productive response. I think that they're trying to build greater collaboration with mental health services in the community and that is also a productive response. But one thing they're unwilling to do, which is my final word on this topic, is to do a better job of training teachers and administrators how to do effective behavior management and intervention in the school system. In order to be certified teachers, they do not have to take behavior management classes, and so when we get school suspensions, we see, oftentimes, that

it was the initial response of the adult to the child in the school that kind of precipitated the conflict, as opposed to defusing it and providing appropriate intervention.

Karen Freedman: Any panel responses? Yes, Assemblyman Sanders.

Assemblyman Sanders: First of all, I want to accept the challenge that has been offered by Monica and Elisa and agree that I think a lot of this and maybe most of this is about education and I think that the comments that both of them made in terms of the critique of the public education system, or at least some of the manifestations of it in recent years, are altogether accurate. May I have more than seven minutes? Maybe seven minutes and twenty seconds.

Karen Freedman: Yes, we'll give you the extra twenty seconds.

Assemblyman Sanders: The only comment that I want to make with respect to Elisa's I think very well constructed observations is that there's a certain dichotomy here that, especially when we're dealing with special ed, we have to come to grips with, not only as a community of public education and public educators, but as a community of concerned citizens. And the dichotomy is that, on the one hand, there are people who strenuously advocated what has been referred to as mainstreaming children with special education needs—getting them back into the traditional classrooms—rather than segregating these youngsters into special private placements or special placements in the public education system. So, on the one hand, there's the impulse toward mainstreaming—sounds like the right thing to do and it's certainly cheaper. We know that for the youngster who is receiving services in the classroom, the cost is less than for a private placement.

But on the other hand—and this is where the dichotomy is—I think we also know from experience that youngsters who have legitimate and real special education needs are sometimes better served in a specialized environment, and ultimately, we have to come to grips with this. Do we want to mainstream? Do we want to

push everybody back into the classroom? What is really the definition of the “least restrictive environment” that was first raised in Public Law 94-142? Is the least restrictive environment in fact the environment that is the most so called normal—getting an education with your peers—or is it the place where maybe you get the most specialized education? So there is that interesting byplay about where we want to be placing most children with special needs.

The final point I want to make, which I think Elisa raised in a very knowledgeable way, is that this new phenomenon called push-outs is a very serious issue and the root of the issue, I believe, which maybe I'll discuss a little bit more in my own presentation, is the fact that we are now so standards-based in our evaluation of students. New York State, in fact, brags that it is number one in the nation in terms of having the highest standards. We have the highest graduation standards from high school. We now require five exit exams. But the reason the push-out phenomenon, in my judgment, has become a real issue is that when you push a child out, that child is counseled out, is told “It doesn't look like you're going to be able to pass those five exams. You know, it's probably better if you enroll in a GED program. And that's your better path toward some kind of piece of paper that enables you to go forward.” That practice then enables the school district to evade the statistical onslaught against them because these children are not counted as dropouts and they're not counted as people who have failed to pass the exams. The school district is able to say “Look at our numbers. We're doing great. So many of our children are passing our exams. Our drop-out rate is low. We must be doing the right thing.” And yet there's this whole cadre, a subset of push-outs who are not counted as dropouts and are not counted as having failed the exams and it artificially makes the students look better. That's a problem.

Karen Freedman: That absolutely is a problem and it's interesting that the term *push-out* is used because I think, as Judge Richardson will address in a moment, there are young people being pushed out of so many systems—out of families, out of schools, out of a myriad of different so-called helping systems throughout the community. Many of these children are

going to end up before Judge Richardson and I'd like him to talk a little bit about the evidence that he may see of the courts' being asked to handle the problems of children and families that could be more productively directed to other government or nongovernment entities.

Judge Richardson: Well, you've rephrased the question a little bit from the way you originally posed it to me, which takes a lot of fire out of it, unfortunately. But I was thinking that that's the best way to approach the question, which as originally posed asked whether I found that the courts were now being asked to do things that were probably in the province of somebody else, some other governmental agency or some other individual. The only answer that came to me was really no immediate help whatsoever and the answer was yes and no. I think that the only way to understand that is to understand it in a certain context, in the context of the Family Court and what the Family Court does and has done and is in the process of doing.

The Family Court, like every other court in the judicial system, is a court of law and, historically and traditionally, what happens in a court of law is that those folks who have a dispute, be it two individuals or be it the state and an individual, those entities if they cannot resolve their dispute themselves come to the court either through arrest or through civil litigation of some sort, and the court hears both sides, listens to the evidence, rules on the evidence, and makes a determination. End of discussion.

As a matter of ultimate dispute resolution, the courts are very simple in that sense. I don't do anything. I sit back. I listen to what you present to me. I decide, "Did it happen? Did it not happen?" And we go on from there. That of course leads to a system, being very isolated and restrictive from all other agencies that are dealing with the people who are standing in front of you—a mother and a father, a custody case, an ACS, a neglect case, a law guardian, what have you—domestic violence issues, whatever issues are coming up.

As you can imagine, this is not a traditional adjudicatory system, not the best model for dealing with the children in the families as they appear in Family Court because

everything that comes into the Family Court is of a crucial and fundamental nature to that family and isn't really a legal issue. What we see and what's going on are not legal issues. There is a legal element, but in essence that really, if you are looking at it in a totality of circumstances, a holistic way, is just a predicate for what is going on. The system has never really been designed to find out what the underlying issues are that brought the people into the system to begin with. You decide the basic issue, the legal issue, and you're off and running. The child is placed in foster care. The child goes home. The case is dismissed. You have an order of protection. Whatever it happens to be never really gets to the underlying issues, which are not legal issues as to why the children need family services and the court in the first place. Since we know that that does not necessarily work very well in a system that is basically supposed to be dealing with the family and the children that come before it, we have over the last few years been trying seriously to address that issue.

So, under the guidance and the vision of our Chief Judge of the Court of Appeals, Judith Kaye, and with the very enthusiastic direction of our Administrative Judge of the City, Judge Lauria, whom we will be hearing from later, we have gotten into not being an adjudicatory court, but becoming what Judge Kaye likes to call a problem-solving court. To do that, you have to go beyond the legalities, once they're decided, and find out what the problem is, which may not be evident, and then decide how best you are going to deal with that problem and those issues, and make the best disposition you can for that child or that family. Now, in order to make that kind of disposition, it is absolutely imperative that we have the information and the resources and the knowledge of everything else that is going on with that family unit. And that means what's going on in school. That means what's going on in the home. That means what's going on in the community. That means what the mental health issues are. It means what the medical issues are.

Now, of course conditionally, because we have been fairly isolated as a legal proposition in a court of law, we do not have those connections and collaboration with all those other institutions and agencies that are going to give us the

information we need to make those decisions. But that is exactly what we are working on establishing now: making the connections with the hospitals, making the connections with the service providers, and making the connections with the institutions that we've already worked with such as the Administration for Children's Services (ACS) and the Department of Education to try to find out what we can in order to issue the kinds of orders that are actually going to be meaningful in getting to the issues that are presented.

If I'm to fashion a disposition that's in the child's best interest, I've got to know what's going on within the school setting. I've got to know what's going on with the Department of Education. Now the Department of Education and the Family Court are two separate entities. I have no control over the Department of Education and the Department of Education has no control over me, but we are now working together. We have a Board of Ed. A Department of Education liaison is now stationed in the same building and has immediate access to the information we want. We can get that so I have a better idea of what I'm dealing with. I want to see the Individualized Education Plan (IEP). One of the problems I'm finding is that I'm being told that this child does not have an individualized plan. I say, well, excuse me, it is a mandate that every child in the system have an IEP and it's supposed to be reviewed and assessed and redone, if necessary, within a certain time period. More frequently if it's a child that is in special ed. Why am I being told by the Department of Education that there is no IEP?

So now, I'm issuing a short order to the Department of Education directing that they prepare an IEP within a certain amount of time. Now I have an idea of, or at least start thinking about, what school or house he's going to, what disabilities he may have, what cognitive problems might exist, and other things I would not know otherwise—a domestic violence, article 10, neglect and abuse, juvenile delinquencies, mental health issues. We're not talking psychosis; we're not talking neurosis. We're asking how do these individuals view one another? How do they view themselves? How do they view the world? How do they interact with all of the kinds of the things that we all

interact with on a daily basis? Is the way they do that functional or is it detrimental to them?

I need to have access to good mental health information. I don't necessarily have it. I'm constantly scrounging around looking for, in my view, a good psychologist who's going to be able to deal with those kinds of things and give me a good assessment of what's happening here. I say psychologist as opposed to psychiatrist because unlike a lot of people, I think that there's a world of difference between the two. They see things very differently; they analyze things very differently.

A psychiatrist is much more medically oriented and that's fine. There are cases that need that medical expertise. Psychologists are not necessarily medically oriented and see things differently, the way most of us do who try to see things in the world. I need to have those mental health experts at my disposal, which I don't have. So now I'm ordering somebody else to go and get me a mental health study. Why should I? You know, this isn't something that I should necessarily be doing. This is something that should be done automatically and brought to me so that I have this information and so that I can make a determination as to what's going on.

As far as infants and toddlers are concerned, the assistance of child developmentalists is absolutely crucial to my determination of what's going to happen to that three-year-old if I'm going to go through this dramatic step of removing a toddler from his home and placing him in foster care. What kind of foster home might be best for this child? This is something that the assessor should be doing. But I find myself now in a position of having to bring the case back to assess the kind of foster home it is so that I can make sure that the child is in the appropriate foster home.

If you have a child who unfortunately was thrown out of a window and has four broken limbs, what you need is a foster home with no other children and a foster parent who is very sensitive to touching and tactile issues.

The child can't move so he needs a foster parent who knows enough to go to the child so that the attachment process to another human being can start and continue. But, that's not something I should be figuring out for myself. It should be brought to me. I shouldn't have to order the child removed from a foster home

because the child, who is six, speaks only English and the foster parent speaks only Spanish. Does this make any sense to me? Absolutely not. So, who's job am I doing now? It is the assessor's responsibility to make sure there is an appropriate foster home.

I am doing a lot of other people's work but once you start becoming a problem-solving court, you take it on yourself. You assume the obligation of doing those things for the clients that you are serving, so I can't easily say anymore, "It's not my job. It's somebody else's job." I do think it ends up being mine, which is fine by me too.

Karen Freedman: Thank you. It's very interesting that you raise the issue of "What's my job?" because very often when this issue comes up, the issue of resources comes right along with it. Whenever you have a task to do, you need the resources to accomplish that task and so that's why I can return to Assemblyman Sanders and ask him to talk a little bit about the impact of the Campaign for Fiscal Equity lawsuit on educational policy and how his work regarding this issue will impact the education of children in New York City and the resources that are available to the city.

Assemblyman Sanders: Thank you very much, Karen. I decided to take those extra twenty seconds that you granted me by just observing two things very quickly. Number one: I always love being in this room because it gives any discussion a sort of sense of importance and a sense of urgency. But I would make one recommendation: At some point, these portraits need to be changed a little. I think you know what I mean. I have a couple of suggestions about how we could do that. We have a Chief Judge and a U.S. Senator, both of whom are lawyers and I think are certainly worthy of the kind of acknowledgement these portraits provide.

Whenever I try to list the five or six most important things in public education as to how we need to be investing in new resources, I always end up with sixteen, seventeen, eighteen, nineteen. It is very difficult to quantify or even qualify what is needed in our public education system to make it as good as it ought to be.

But I would say a few things. Number one: We do recognize that this is the fiftieth anniversary of *Brown v. Board of Education* and that's important because the acknowledgement fifty years ago that public education was a right for every citizen of this state is just as important today as it was fifty years ago and the great challenge today, of course, is that our urban public education systems have become de facto segregated, and we know in New York City, as a prime example based on the Campaign for Fiscal Equity's successful lawsuit, that there is underfunding of our urban public education system. But I have to pose this question as I try to answer the other questions.

It was generally recognized forty to fifty years ago, certainly when I went to public schools in New York City – P.S. 40, J.H.S. 104, Seward Park High School, City College – that our public education system in New York City was the finest in the nation – the best, anywhere in the whole country. And this country was considered to have the finest public education system in the world. So the rhetorical question that Roger Green (Assemblyman Green, who is Chairman of the Assembly Committee on Children and Families) and I pose all the time is, "Was the system forty years ago as good as we thought it was?" Was it? And if it was, what has happened in those forty years that we are justifiably so troubled? Well, I would suggest a number of things and then, toward the end, I'll talk about what I think we need to do in terms of the Campaign for Fiscal Equity. But first of all, I think the answer is it was not as good as we thought it was forty or fifty years ago, and it is not just about public education today.

In terms of the changes that have occurred in the city and in this country over the last two generations. I think we have to understand what has happened in these forty to fifty years. There have been a lot of societal changes for sure. When I was a youngster going to public school, we did not have to deal with the drugs, we did not have to deal with the violence seemingly all around us, we did not have to deal with easy availability of guns. Society has changed in those forty to fifty years. Maybe the public schools have not been able to keep pace with some of the changes that have occurred out there, which then enter the portals of the schoolhouse every day.

Youngsters growing up now are products of not only a society that is much different than it was forty to fifty years ago, but to some extent a breakdown of the family. There is no longer what we took for granted forty to fifty years ago in terms of the family structure. The schools are now asked to deal with some of the problems of the youngsters coming from one-parent households or one or two-parent households where neither parent is around between the hours of three through six because either one has to work full-time or two have to work full-time, or one has to work two or three jobs to make ends meet. Schools have to try to make up for that. In the last thirty or forty years, I think we can also say during this time of great upheaval society-wise, we have to be honest.

Look at the impact of the decentralization law that was put into effect in 1970, and the lack of accountability and a kind of disparateness that the system had. Nobody was really accountable. There were loci of accountability here and there but not cohesive, not tied together. And we have changed that. As Roger Green and I both know, in changing that, we're going to a more centralized system. We have to be mindful of the mistakes of the last thirty years of decentralization, but also be mindful of what caused the decentralization to come about in the first place. Parents and communities must be empowered. They must be a part of the system.

What else has happened the last couple of decades is a technology explosion. During the last twenty-five years, the world has changed technologically and the schools have not kept pace. Pencils and chalk and bound books are no longer the way the way the world works, no longer the way schools should be run.

Finally, there are higher expectations than there ever were before. Certainly, when I graduated from high school, such higher expectations were not there. So the Campaign for Fiscal Equity lawsuit finally decided by the Court of Appeals last June certified what we have known all along: that with all this, there has also been disinvestment in the school system. We never quite recovered from the New York City fiscal crises in the mid-1970s and then the various recessions that occurred in the late 1980s and the early 1990s.

To deal with all of these changes in

society, the schools have to have more counselors and on-site school-based drug programs and health programs. That we know is necessary. We have not kept pace with the needs of society. We have not kept pace with the technological needs. And just one final note about the Campaign for Fiscal Equity: We need a lot more money in the public school system. In order to have a technologically sound school building, a place where real teaching and real learning can take place, we need a building that is equipped for that. All the best intentions in the world and the best accountability won't build a new school building that costs money.

We need to have smaller classes. Small class size is an investment in early child education, beginning in Pre-K. It has proven to be educationally sound for all the intuitive reasons that I don't have to go into, and there have actually been very credible studies confirming its value. When we invest in Pre-K for four-year-olds and full-day kindergarten, these youngsters do better in school, and do better in life. They will be less likely to become juvenile delinquents. They will be less likely to be dropouts or push-outs. They will be less likely to need interventions or special education. Early investment pays off—we know that a youngster who gets a high school diploma is much less likely to be involved in the courts of the criminal justice system.

My last note is that the courts in the Court of Appeals decision on the Campaign for Fiscal Equity told the legislature that we have to do a couple of things and we must do them by July 30th. We have to make sure first and foremost that New York City schools are adequately funded. Right now New York City receives about \$2,500 less per student in state and local resources than the statewide average. This translates into \$2.5 billion, and that is just to reach average. New York City has above-average needs. The court said we have to ensure that we put into place a system of adequate funding, and that system has to be a little more transparent. People are to understand how the money is being spent, where it is being spent. It has to be a system that is financially sustainable, so we don't lurch from year to year and fiscal crisis to fiscal crisis in terms of our funding of public schools.

Finally, two most important notes. Final

most important note number one is that the court said to us that the system has to be accountable, meaning that it cannot be just about deserving more money; it has to be about money that is received and that translates into academic success. In other words, we have to present a plan where we can show that the investment will work and the children will in fact learn, not just that we're spending more money. Final most important note number two is that the court imposed a deadline.

The court said that if we do not do it by July 30th, the legislature and the governor together will devise a plan for us. We should not have to get to that point; we have until July 30. This is a crossroads, but it is an enormous opportunity to put into place both a system of governance so that the decisions are made well and the resources needed to build that building, reduce that class size, pay teachers a salary that is commensurate with what that they could receive if they went to Westchester or Long Island, places to which we lose some of our best teachers. All of that does require money. At least we need our fair share, but we also need to make sure that the money is invested in ways that we know will work. That is what Roger Green and I will be preoccupied with for the next four months.

Karen Freedman: Thank you. Is there any response from the panel before we go on? OK. Unrespondable. We are waiting for you. Now that we know what the assemblyman is working on, we are counting on his success to bring the resources back to the city. I would like to ask Deborah, "In what specific ways do you believe that the education of our city's children can be enhanced by greater collaboration now between the child welfare system, the juvenile justice system, and the court system?"

Deborah Seidenberg: I guess I'd start by following up on something that Judge Richardson said when he posed the question "Whose job is it?" I think we can accept that it's everybody's job. It's the job of the person who is presenting a case in Family Court against juveniles. It's the job of the court system. It's the job of the law guardians, the people who are representing the children, and it's the job of the

Department of Education to make sure that we all work toward the goal of prevention of juvenile crime and assisting youth in becoming more civic-minded. And so, I'm going to talk a little bit about some ideas I have about doing this – some things that we've done and many, many more that can be done.

First, I found the comment that Darla Silva made this morning very thoughtful when she said "Rarely do we ask the children," and I think that is so true and I'm sort of reminded of another issue that I think is very true about schools, that children do better in school when they go to school. How do we know this? Statistics show that the "bad" children—those who are in detention or in juvenile delinquency cases—do better in school than their counterparts who are out in the community. Now, does that mean that children should be in detention? No. But it does mean that when you get them to school, even when you get them to go because they're in detention, they have to go and they do better.

So I think the first thing is that we all need to put our heads together and say "How are we going to get these children to go to school?" That's also related to something that Marcia Lowry said this morning when she talked about the zip-coding that was done by her then-commissioner at ACS. And the reason I think we all recognize that such an important idea as looking at the neighborhoods from which the varied populations are coming is that when you have limited resources and you need to target at-risk youth, it helps you in figuring out who those at-risk youth are and then targeting some of the right children in some of the right neighborhoods and giving your resources to the right places. So a lot of city agencies, as we know, are now using these mapping programs—the Police Department, the Department of Juvenile justice, ACS... And I think what you see if you put the maps on top of one another is that many of the same neighborhoods are bringing us some issues that we all need to be concerned about and deal with.

So, how do we do it? I'll tell you quickly. We were fortunate enough to get a federal grant, a firearms grant, which involves, of course, prosecuting those youth who are found in possession of firearms, but the really important piece that is relevant here today is that

part of it was going out to the community to target at-risk youth. And so it made us come up with the question “How do we figure out with very limited resources who our at-risk youth are?” And what we did—and this is why we are so impressed by what Ms. Silva said this morning about asking the children—is we went to an obvious place, an easy place.

We went to a detention facility where children were already in trouble and we gave them a ten-point quiz about gun crime and firearms and the children told us where we needed to go. I guess the message is that we need to remember to listen to the children and I’m thinking and trying to figure out how we’re going to get these children to go to school. I almost feel like taking the maps of those three agencies, figuring out those neighborhoods, going to those neighborhoods and a couple of the schools, and surveying a hundred children who are not going to school and asking them why.

And I bet we would find out more about why they’re not going to school than many of us know as we sit here now. We think we know but I wonder what that would show us. Would it make us decide that it’s everybody’s job to try to get them to go?

The children in the detention facility basically told us that they knew so much about the system already. We gave them examples about having a gun in their car and their friend gets it and gave them various scenarios about what to do and the children said, “Oh, that’s car ... case,” and they probably knew more about the law than many of us here know. And they said to us—and these are fifteen-year-olds—“You need to go to children who are much younger than us.” They actually said, “I could’ve learned that in sixth grade or seventh grade. That’s when that could have been helpful to me.” And frankly, they were so helpful, and so interested in directing us to the right population, that I guess the message is that we need to get out—not that we’re not doing it, but we need to make sure that we listen to the children because they helped us focus our very limited resources on going to the right schools and hitting what we at least believe is the right age group and where I think we can still make a difference and I think that was very very helpful.

Another program is out there and it works

and I think that we could really expand on it. This is the concept of the youth courts. We are working with one office in Queens that’s run out of the 105th precinct. It involves children who are diverted from the juvenile justice system for low level incidents. Those reports are going through the youth officer and children are chosen to be involved in the youth court. The people who sit on the court and act as the prosecutor and the judge are all children from the community—sometimes graduates of the program and oftentimes, children from the local high schools. Think about a program in school that was called a civics course. Students in every precinct in the city took this course at their local high schools. The whole course involves children playing the judge, playing the lawyer, playing all these parts, and getting to know more about the system.

Why? Because again, as Judge Richardson said, “It works both ways. Knowledge is power.” The judges need information in order to give them the power and the ability to make the right decisions. The children need to know what they’re facing and what’s out there in the world in order for them to make the right decisions as well. So I think, to really sum up about how the education of the rest of these children could be enhanced by greater collaboration with all of us, we must ask the children—and Monica and people who represent some of these children are in a better position to do so and I’m sure they do it—what they need. We must figure out together how to get them to go to school, because if we can’t do that, we’re falling short. Monica said that the school is so often the cause of court involvement. I think that while it may not always be the cause of court involvement, the school issue is often the nail in the coffin because once the child is in court, we have to be able to fix that piece in order to help him or her. I would agree that we need to do it in a better way. So, I guess that really concludes my comments and I just hope that we can all really work together to do this.

Karen Freedman: Thank you. We’re way beyond our time frame already but because the idea was to make this a real discussion, I would like to open up the discussion to questions or comments from the floor. I believe there is a microphone here, and invite any of you to bring

your questions to the panel.

Audience Member: I'll speak loudly rather than use the microphone. This is in response to Judge Richardson in his findings comment because I see that it's connected. You mentioned getting to the underlying problems and really, you're a social worker in a court system in a certain way, looking into the family system, the child community. That's not the intent of the system, but going to Ms. Hyman with the schools—they are almost the precursors of the other system because they are dealing with the behavioral problems. One has to respond to them and I think your point about helping the staffs and the school learn behavioral management...

Karen Freedman: Can I just ask you to sum up using the microphone because otherwise it won't be recorded in the tape that's being made.

Audience Member: OK. Regarding the recommendation for behavioral-management training, that's an excellent idea. I don't see how it works nowadays. With the restructure of the Department of Education, with so much of the training focus on the academics and the curriculum, the people/personnel side has really been marginalized. But, even beyond that—it kind of circles back to the judge's comment—is for the staff to be aware that a punitive response is not always the appropriate response. What's the underlying cause?

One of the things that we at an institute, which is my affiliation, are working on is looking at the role of loss and grief and anger in the lives of children and that is often not a mental health problem, but it's an environmental problem that is getting them in a lot of trouble.

Judge Richardson: Loss and grief are mental health issues.

Audience Member: I agree but that is not quite enough.

Judge Richardson: No, it's not. And I made the distinction earlier. I can't agree more that we need to have more training in the Department of Education. What I'm seeing on a daily basis

are the children who are being brought in because of some sort of altercation with the school safety agent and I'm listening to the testimony and one by one by one by one they're getting lost because what I see is, although I do not necessarily condone the child's behavior, I certainly am not seeing what the school safety agent did under the circumstances as appropriate. So, the child wouldn't remove his hat in school. Why did he need to end up in a fistfight? I mean, who's the adult here? I can understand it from the child, but I don't understand it from the adult.

Elisa Hyman: I just want to add one thing. A professor at NYU, named Jay Gottlieb, did a pilot program in District 4, before the reorganization, and he provided some very basic team-building behavior-management training using his graduate students. He did a study based on this pilot and found that behavior incidents had been significantly reduced and test scores were up. This is not an expensive program. In fact, my office—even though we do a lot of litigation with the department, we also do collaborations—was then trying to raise money so we could hire him to go into another school district to try to replicate this and to do it at the high school level. Basic team-building strategies—allowing the safety agents and the teachers and the administrators to work together in case conference and to develop strategies and problem-solve—would not be very expensive and I think would have significant impact on these issues.

Monica Drinane: If I could just add because I do think that one of the things that is really important—and I think was the focus of this panel and I would hope would be one of the outcomes of this day-long symposium—is that systems talk with understanding to one another. That means understanding the children we're involved with and that's an education and training issue for all of us in terms of the characterization of behavior as "bad" because I am seeing this child in a detention center when it is normal acting-out adolescent response to what is sometimes inappropriate adult response to sometimes an overwhelmed adult action. I think that often-times, teachers do not feel supported, or do not have appropriate training, just as

school safety officers are not getting appropriate training on how to deal with large groups of adolescents. And so I think that systems must talk to each other and must have ongoing communication. While we do spend a lot of time listening to children, I think that we also have to acknowledge that it is we the adults who are responsible for insuring good outcomes for these children.

Karen Freedman: I think we have time for one more question.

Audience Member: I'm hearing this underlying assumption that young people move from system to system, that there's either a family system for them or an institutional system. In fact, in the city, we have thousands of young people who are homeless and they have obviously needs and rights that need to be addressed as well and it's disturbing to me that it's this population that is consistently left out of the mix. So, I'd like to just hear from the panel about what their thoughts are. I'm talking about unaccompanied minors—not about young people within homeless families.

Elisa Hyman: Well, actually, we advocates just started a program to target the educational needs of homeless youth. There was a lot of work done in New York City in the early 1990s to address the needs of homeless youth, at least with regard to their school programs, and the Department of Education at that time was very serious about it. They convened working groups and were focusing on the needs of children, but I think that because there's so much turnover in the department, this issue has somewhat gone by the wayside. I do think that it's an incredibly important issue and we are starting to focus on that again.

Assemblyman Sanders: I certainly agree with that. Clearly for transient students who move from school to school, from school district to school district, almost every year and sometimes several times in one year it is very difficult because obviously there is a continuity issue. Different schools are teaching different things at different times of the school year. There isn't one unified curriculum or syllabus so that every

fourth grader in the state or even in the city is learning the same thing.

So obviously we're going to have youngsters who are moving from school to school and they are at an enormous disadvantage. At the very least, what we have to do is to ensure that when a youngster moves from one school to another school, or one district to another district, the records of that youngster are transferred. Amazingly, some years ago youngsters leaving a DFY facility, after having stayed for a year or two or more, were sort of dropped into some school district and even the records of the education they received while part of the juvenile justice system were not shared with the district. Nor was the information from the district where the youngsters were before placement shared.

At least now we're doing a better job of sharing the information about what these children have experienced, what they need, but there is going to continue to be a certain degree of disconnect when you're dealing with youngsters who keep moving from school to school and that's going to continue to be a difficult problem.

Monica Drinane: I really think that data are important in making judgments about whether this system is improving. My experience suggests that the situation the assemblyman was just describing continues to be a real issue in terms of children coming out of the state placements and also children who do not get back into school and actually become part of the homeless population in the city and—unfortunately and too often—the adult criminal justice population.

Elisa Hyman: I'm sorry. I know we're running out of time but I just want to add something. We've been talking about children who move around in transient populations; we assume that they have to change schools every time they move or go into shelter and actually that's not true. Many children have the legal right to stay in their school whether they're in the foster care system or they go into the homeless shelter and they may have the right to transportation. I think strengthening the transportation rights and making sure those

rights are enforced could at least address the problem of school transfers for homeless youth and children in the foster care system.

Karen Freedman: I want to conclude by thanking the panelists here as well as Professor Lenzer because I think that despite the frustrations that all of us who care so much about children feel, the purposeful, constructive dialogue that begins in a room like this can and will continue and I thank you all for being part of that dialogue and part of that work.

Luncheon Address: A Model Juvenile Justice System for the Twenty-First Century

Introduction by the Honorable Joseph M. Lauria,
Administrative Judge, New York City Family Court

The Honorable Michael A. Corriero, Justice,
New York State Supreme Court

Hon. Lauria: I hope that you are enjoying your lunch. My name is Joe Lauria and I've had the privilege for the last four years of being the Administrative Judge of the New York City Family Court. Before introducing our speaker, I just wanted to take the opportunity to applaud Professor Lenzer and her staff.

What started out as a very small idea almost a year ago has evolved into this wonderful exchange of ideas and so I've been given what I think is the easiest task I can remember and that is to introduce someone who is already so well known for his work with issues concerning our youth for the last twenty-five years. I met the judge in Queens when he was presiding in the Youth Bar of Criminal Court and doing very, very creative things, even that long ago.

Since that time, he has continued what can only be referred to as an illustrious career as a jurist in Criminal Court and Supreme Court, and since 1990, a judge of the Court of Claims in New York.

His participation and leadership in legal, governmental, and community organizations has brought him countless awards and recognition from places as far-ranging as Sierra Leone, Tel Aviv and Australia. It is my privilege and my honor to present my friend and colleague and a mentor on these issues that we're discussing, the Honorable Michael A. Corriero.

Hon. Corriero: You know I often feel, when I'm called on to speak on issues of juvenile justice, like the son whose mother couldn't wake him to go to school because we're talking about a lot of school issues today and it kind of brought this to mind.

A mother tried to wake her son to go to school and he pulled the covers over his head.

"But son, it's time to go to school." He says "I'm not going to school." She says "Why, are you sick?" "No, I'm sick of school. I'm never going again." "Son, you have to go to school." "No, why should I go? They hate me. They call me names. They make fun of me. Why should I go?" "Son, there are two very good reasons why you should go. Number one, you're forty-five years old and number two, you're the principal."

And often, when I go around to speak about juvenile justice issues, I feel a sense of hostility in some places and you have to get over that initial reaction. I don't feel it today because this morning was just a wonderful morning for me. I had the opportunity to be here with you all morning. It was just wonderful. Thank you very much.

I appreciate this opportunity because this is such an important topic for us. I had the occasion to travel to Ireland in 1994 and 1995, and in researching what I was going to say about the judges of Ireland, I discovered a wonderful thought by the Minister of Justice of Ireland, Ms. Geegan Quinn. And for me, she kind of encapsulated the issue of what a juvenile justice system should be about. She said, "What is needed is a judicial and social welfare system able to operate with a maximum flexibility to determine cause as accurately as it deals with effect, and empowered to intervene appropriately." To me, that kind of sums up what a juvenile justice system should be able to accomplish in our society.

James Hillman, the author of a wonderful book called *The Soul's Code*, about the development of human personality, tells of an

ancient African tradition where the elders of the village would look at a child as it was born into the world and ask the question “What is this child’s destiny?” And the challenge was to watch that child as it grew, as it interacted with other members of the village, to determine what that child’s best attributes were—how that child could best contribute to the village and then how they could nurture that child’s talents. That was the challenge as they saw it. And how far have we traveled from that simple agrarian notion that the responsibility of raising the next generation is perhaps the most important responsibility of any society?

The juvenile justice system can play a role—although not the only role—in helping children find their place in our society. For the last fifteen years or so, the landscape of juvenile justice has changed dramatically in the United States. In the last ten years of the twentieth century, practically every state has readdressed the issue of how we are going to deal with violent juveniles under eighteen years of age. The most common proposal for reform of the juvenile justice system was to try more children in the adult courts where they presumably would be subject to more serious imprisonment, felonization, and criminalization. I think that’s the wrong approach and let me tell you why I think that’s the wrong approach, and I have to give you some background within the legal context of the child welfare system. I preside over a special court here in Manhattan, which we call the Youth Bar, and the Youth Bar has a responsibility of presiding over the cases of all the thirteen-fourteen-and fifteen-year-old children who are being prosecuted as adults because they are accused of the most serious and violent crimes in our state—murder, robbery, kidnapping, assault, rape, sodomy, burglary; any crime involving a significant element of violence. It wasn’t always that way. Prior to 1978, the cases of all children under sixteen years of age, regardless of the severity of their crime, were prosecuted exclusively in the Juvenile Court, or Family Court as we call it, where they faced placement of no more than five years, or until they reached the age of twenty-one.

This proved to be a mistake. New York should have had a safety valve written into the law that would have permitted us to push out of

the Family Court, the Juvenile Court, the cases of those children whose crimes were so serious or whose backgrounds were so horrendous or who were chronic delinquents and couldn’t be dealt with in the more socially ameliorative environment of Family Court. Such a safety valve would push those cases out, transfer them to the adult court, where presumably, children could face a more significant punishment. We didn’t do that. We didn’t have that in place.

In 1978, a young man by the name of Willie Bosket, not yet sixteen, murdered two people on a New York City subway. And 1978 coincided with the gubernatorial election. Each candidate was very concerned about how he was being perceived by the public in terms of strength and posture with respect to crime. When the public became aware of Willie Bosket, they reacted: “He can only be accused of murder? Murdered two people, and he can only be placed for five years, or until he reaches the age of twenty-one? What are we doing? This is scandalous. We have to fix this.”

And so we revisited the way in which we dealt with children who violated the law. What New York should have done, as the majority of states were doing at that time, was to adopt a transfer-up system, which would have given the judges that kind of safety valve. Instead, New York automatically took the cases of children as young as thirteen who are accused of murder and children as young as fourteen and fifteen accused of robbery in the first degree, robbery in the second degree, and assault in the first degree and we moved those children from the jurisdiction of the Juvenile Court and into the Adult Court. We said that they would now face mandatory imprisonment and, on conviction, would suffer the incursion of a felony on their record for the rest of their lives—regardless of their individuality, regardless of whether they had ever been in trouble before, regardless of their potential. And so since 1978, the cases of children as young as thirteen, fourteen, and fifteen were coming into Adult Court.

In 1992, we decided that it would be a good idea, at least on an experimental basis, to set up a special block that would hear the cases of these children in one place, before one judge, so that we could develop some continuity, so that we could address some of the issues that these very young children were presenting to the Adult

Court, an Adult Court that was not designed to deal with the issues of young children. We established the Youth Bar and since 1992 I've had the responsibility of resolving the cases of all the children in Manhattan who are accused of serious crimes and have been indicted, and have been prosecuted. How do I do that? Now, I keep asking myself that question. Some day, I'll find out.

How many of you have seen the movie *A Bronx Tale*? Those of you who haven't, that's your assignment. I won't ruin it for you, but the movie *A Bronx Tale* was a pretty popular film in the early nineties and it was about about a young boy. His nickname was Steve, and he was growing up in an Italian-American neighborhood in the South Bronx, in the late 1950s, early 1960s. There's a pivotal scene in the movie in which Steve, this fifteen-year-old boy, is walking through the streets of his neighborhood one day when a car packed full of his friends pulls up to the curb. "Hey, Steve, come on. Get into the car." He squeezes into the car, squeezes into the back seat, a friend on each side, and he looks down at his feet and sees a box of molotov cocktails. His friend in the front seat brandishes a gun and he realizes that they are on their way to an adjoining neighborhood to settle a score.

In the movie, you can see him talking to himself: "I don't want to be here. I don't want to do this. What's my father going to think?" But he knows he can't tell his friend "Hey, guys, stop the car. Let me out. I don't want any part of this." Why? Because he feels that he'll lose their respect. He'll lose their friendship. He'll lose face in the community. And just then, when all seems lost for Steve, the car is cut off by another car, and the other protagonist in the movie, Sonny, a local wise guy, a gangster who took a paternal interest in Steve, reaches into the car and pulls Steve out. His friends drive on to tragedy.

Now I like to think that what we try to do in Youth Bar is to metaphorically reach into that car and pull the children like Steve out of the car, the children who are in turmoil because of peer pressure, can't extricate themselves from a situation that perhaps they didn't initiate, who don't yet have the self-confidence or maturity to say "Stop, I can't do this. This might jeopardize my career. This might jeopardize my future.

Someday I'm going to grow up to be a teacher. Some day I'm going to grow up to be a social worker. Some day, I might even grow up to be a judge." Now the prosecutors, they think there are fewer of those children in the car than I do. The defense attorneys think there are more of them in that car. I have to strike the balance. I have to determine who, in effect, is going to go through life with a felony conviction or who will receive the legal equivalent of a second chance. I do this by exercising my discretion in granting them what we call "equal offender treatment." I have to make this decision, a decision that is life-affecting for many of these children. How many of you have ever been fourteen? Well, of course we all were.

But to be defined for the rest of your life by an act that you did at fourteen—that's what the law is about. That's part of my quarrel with the law. We in America, we in New York in particular, had the idea that we always prize the future of the most vulnerable among us and have always tried to protect that. We now view children and, from a public policy point of view, define children no longer as children, but as adults—and on no more sophisticated a basis than their being accused of a particular crime and reaching a threshold age. So what we're trying to do in the Youth Bar is to develop a process or system of looking at these children to make a determination of which children we think we can give a second chance to and which not.

Let me give you a quick idea of who the children are. Let me tell you about Loretta, a fourteen-year-old African-American girl. She's riding on a subway with a girlfriend who's a little bigger than she is and a little tougher than she is. And they're sitting across the way from a group of women. One of the group has these beautiful earrings on, these round gold earrings, and her ears were apparently pierced because the earrings went through her ears. And the girl with Loretta said to Loretta, "Loretta, look at those earrings. They're beautiful. I like them. I want them." She got up, and Loretta got up with her. They crossed over the subway. They hovered over this little girl. The bully said "Give me the earrings." The girl said "I'm not going to give you the earrings." "Give me those earrings." The little girl got up and tried to walk away but she was blocked from doing so by

Loretta, who was standing next to the bully. She sat back down. The bully said "Give me those earrings." The girl refused. The bully reached down and ripped the earrings out of her ears.

The train pulled into the Fourteenth Street subway station. Loretta and the bully came out of the train. There happened to be a New York City Police officer standing there as the doors opened. He immediately sized up the situation and arrested both Loretta and the bully. Loretta and the bully are charged as juvenile offenders facing robbery in the second degree for causing the taking of property, for causing physical injury. Loretta and the bully now face mandatory imprisonment of one to three years, maximum period of imprisonment of two and a third to seven years, and upon conviction, a felony record.

I'm told that Loretta, this fourteen-year-old girl, is very talented, attending one of our schools for the performing arts, and that she has never been in trouble before. So I tell one of the program representatives who comes to our court, lobbying for children, to interview Loretta. Tell me what you think of Loretta. A few days later, the program representative comes back and says "Judge Corriero, I spoke to Loretta. I asked Loretta a typical social worker question. I said, "Loretta, if you could change three things in your life, what would you change?" And she said that she would change her country, she would change her family, and she would change her sex. She said her country because she believed that America was a racist society; her family because her mother was a crack addict and she never knew who her father was; and her sex because she felt that young women were vulnerable to physical and sexual abuse. What can I do?

What can I do to make Loretta feel hope? I can tell her "Loretta, don't you realize you have talent? You have the talent to change the circumstances of your life." How do I make Loretta believe that? How do I inspire Loretta? How do I work with Loretta within the confines of the law, which promotes incarceration and the criminalization of children—a law that gives me no legitimate statutory alternatives other than imprisonment or probation? And probation is often an illusion in this state because there is no special probation unit in the Adult Court for juvenile offenders. They often become

enmeshed in a much larger system, a system that doesn't recognize the developmental differences of children. That is so important in dealing with them.

So what are the sociological precepts that we accept as given when we are working with children? Number one is that children by their nature are malleable. And by that I mean that children have the capacity to change. They have the capacity to grow. How do you explain the obvious to someone who doesn't immediately grasp it? To me, this is a given. Children are unfinished. That's what we mean by immature. Nevertheless, these children are lumped together, classified, and as I said defined as adults because of the public policy that we've encountered, which encourages locking children up, decreasing judicial discretion, and increasing the criminalization of children. So what are we trying to do? Children's malleability means that they are less committed to their misconduct and more susceptible to positive influence by those having responsibility for them. Children learn appropriate behavior by the reactions of those responsible for them. I represent the law to these children. And if I come across as biased, passive, prejudiced, arrogant, angry, then that's their impression of the law. Still, it's my responsibility to make it very clear that the consequences of what they did are quite significant. Very often parents or grandparents who come to court have no idea of the consequences of violating the juvenile offender law, as we call it.

Probably one of the most dangerous occupations in New York is food delivery. I can't tell you how many children are falling for the crime of robbing a delivery person and you know that one of the unique characteristics of juvenile crime is its juvenile nature. The children always get caught. They get caught eating the pizza. They get caught eating the Chinese food. They call up from their homes and they order it, not realizing that there is caller ID in the restaurant. One of the other characteristics of juvenile crime is this group nature. Probably the most important aspect of juvenile crime that distinguishes it from adult crime is that children do things in groups. It very often is the group setting that determines the motive of the crime. It is not that I need that piece of pizza, not that I need that jacket, not

that I need that \$5.00 that you won't give me unless I threaten or intimidate you. It's "What are my friends going to think unless I'm down with them in this situation?" So the reaction is very important. I'm very tough. I'm very stern. You may not believe that but I'm very tough, very stern in the beginning because the consequences here are so enormous, life-altering, destiny-affecting for many of these children. And unless they understand that, and appreciate that, they're going to have difficulties.

The third principle is that discipline, to be effective, must be swift, yet measured to the offense. When we discipline our children, we do it from the point of view of educating them, right? Not punishing them, but socializing them, right? Not out of retribution. And yet all of the laws that require the mandatory prosecution emphasize retribution and punishment. We have to deal with this. We have to deal with it in the context of an Adult Court that was never set up for children as young as fourteen and fifteen years of age.

Judge Richardson talked about mental health issues, and these are so important. A seven-year-old girl answers a knock on the door to her project apartment. It's her estranged father. "Go get your mother." The little girl goes into the kitchen. "Mommy, Daddy is at the door." The mother goes to the door. The father picks up a can of gasoline that he was hiding, douses the mother from head to toe with gasoline, lights the mother on fire. She survives, but is horribly disfigured. Eight years later, this girl is in front of me, and for what? For putting a gun to somebody's head and saying "Give me your money or I'll blow your brains out." Who comes down to lobby me for this little girl? The very prosecutor who prosecuted the father for attempting to murder the mother, and remembered this little girl in his office, and he said to the mother, who was still horribly disfigured, "You know, you really have to get counseling, not only for yourself, but for your daughter. In a way she feels responsible for what happened to you. She went to get you to bring you to her father. You really have to address this issue." But of course the mother was overwhelmed by what had happened to her. She was a poor woman and didn't get the help she needed.

A six-year-old girl is walking down the street holding her mother's hand. The estranged father comes across the street, accuses the mother of having an affair with his best friend, takes out a switchblade knife, slashes the mother across the face, stabs her in the chest, into the heart. The mother falls to the ground dead, still holding this little girl's hand. Eight years later, this little girl is in front of me for slashing the face of a rival girlfriend over a book. How do I know about these things? I read about them in the probation report. I see what has happened to them. I see they have not gotten the attention they need. Now they are before me and what options do I have? Do I send them to prison, a mandatory sentence of imprisonment? Or do I grant them probation? Sometimes those options are not enough.

What we try to do in Youth Bar is to give us some time, some room to assess the individuality of these children. I try to look into them as well as at them. Debbie also said "Listen to the children." In order to listen to the children, you have to speak to the children. And so, I invite them to speak to me—but not about their case. I want to see how they cock their heads. I want to see their eyes, how they look at me. I want to take their measure. These children may not be as sophisticated when it comes to covering their tracks, but they learn very quickly on the streets. Who's a cop? Who isn't a cop? Some of these children are making \$500. a day selling drugs. What do I have to offer to compete with that? And they do it very well and they've learned the whole routine. They put a stash in a building and the building has a back way out in case somebody gets into that building. In my neighborhood, they sell firecrackers the very same way, so—maybe that was the tradition—not that I sold them.

I grew up in Manhattan's Little Italy in much of the 1950s in a neighborhood that was ethnically homogeneous. I have to say that my experience in that has in many ways informed the way in which that I deal with these children. So what I try to do is to give them some advice, after quickly ordering an investigation, and usually I order a 390 examination. It's a very superficial report with respect to these children. I make an assessment of their involvement in a crime and if I think there's suitable placement, I'll place them in an alternative incarceration

program. I'll defer the sentence. I think it was Judge Cardoza—he's probably in this very building—who talked about this. Is he an activist judge? With some trepidation, I broke some podium today... concerning that concept.

I like to think of myself as a problem-solving judge. And if you want to call that an activist judge, I'll take the moniker. What we try to do is, if we think they're worth the investment, we'll place them in an alternative incarceration program and we'll monitor their performance over six months to a year, giving them an opportunity to prove that they've learned from this experience.

And since 1992, we've seen, I would say, approximately 1,500 juvenile offenders, thirteen-, fourteen-, fifteen-year-olds and thousands of their co-defendants, regardless of age, because as we say, they do not do things alone. And we have their co-defendants. Sometimes they are sixteen, seventeen, or eighteen years of age and since 1992 we've placed approximately 65 percent of the children that we've seen in alternative incarceration programs and ultimately granted them what we call "youthful offender treatment." Now 65 percent is an interesting number. Of the children that we've placed in these ATI programs, about 17 percent get rearrested. Now 17 percent is too much but when you look at the recidivism rate for the children we have to send off to the Offices of Children and Family Services, 60 to 80 percent are rearrested in the first six months of their release. The recidivism rate conservatively for adults is 35 percent to 40 percent.

But I have no illusions because during the course of the year, I see every one of these children every three to four weeks. You don't just put a child in a program and forget about him or her. Every week somebody from my chambers calls that program's social worker. "How's Johnny doing? How's Mary doing? Keeping their curfew? Do they go to school every day? Are they respecting you? Staying out of trouble?" And every three or four weeks they appear in my court for a progress report but I already know what they're doing and if they're not doing what they're supposed to do, I won't wait for a jury date. I'll advance the case because we don't want things to get so far out of hand that I have no option but to remand the child.

We've been doing this since 1992 and as I said, 65 percent of these children are placed in these programs. Now, what does that mean? 65 percent. It means that 65 percent of these children should have been in Joe Lauria's court, in Judge Richardson's court, in the first place, where they could have gotten the appropriate attention, the more sophisticated attention, and they could have been placed in organizations, in groups, that would have a funding stream. The only way I get private organizations paid is finding some kind of a back door. I take the fifth on this, Joe, but I get them through the back door of the Juvenile Court, the Family Court. For me, that's the way that I get the organizations that I want them in paid because they have no financials. So what does this mean? It means that the Adult Court is not the place for these children.

That brings me to my suggestions for a modern juvenile justice system. First is that we need to develop a statutory system of prosecution that identifies with precision the most dangerous, the most violent, and the most chronic juvenile—with precision. What kind of a system is that? In my view, it is the transfer-up, the waiver system. Give the judges of the Juvenile Court, the Family Court, the first opportunity to look at children under sixteen years of age who are accused of serious crimes—give them the first opportunity in a due-process hearing to determine whether a child is susceptible to the most social-serviced orientation of the Family Court.

This means also that I have nothing but respect for the judges of the Family Court and the institution itself, and that's where we have a problem because if I am correct that these children shouldn't be in the Adult Court, we have to reinvest in the Family Court. We have to reinvest in the viability of such an important institution. You know, the Family Court judges have seen the children I see. They see them when they're neglected or crack-addicted. They see them when they're a little older when they're persons in need of supervision, and a little bit older than that when they're stealing their first hub cap or they're truants. The Family Court judges know who the children are who should be there and shouldn't be there, and I think we have to respect their judgment, we have to respect the institution, and we have to reinvest.

In every state in the nation it has been easier to prosecute children in the Adult Court. Our previous examples show this. Fourteen-year-old Loretta is accused of robbery in the first degree, of forcefully taking property or displaying a dangerous instrument or a weapon. You call up from the house, you order Chinese food, the guy comes to the door, you're there with your friends, one of the guys takes out a box cutter and threatens the food-delivery person. That is robbery in the first degree. And every one of the people with that young man who took out the box cutter is charged. In New York, you're faced with one to three, three and a third to ten. In Texas, you could go to jail for forty years. Justice by geography is what we're facing here. If you look at all of the states, you realize that there is no one juvenile justice system in this country. There really is no one juvenile justice system in this state. It's an amalgamation of institutions. There really are fifty-one different juvenile justice systems in America.

I think there is a grand design that truly reflects the developmental differences of children and that would make a better system of dealing with children in finding an appropriate place for them in our society, a place consistent with who they really are. Number one, we must roll back, we must repeal, all of the laws that require the automatic prosecution of children as young as thirteen, twelve-years-old in the Adult Court and place them in transfer-up systems.

Number two, we need to understand that punishment should be imposed not only for retribution but as an opportunity to educate these children. Here is a fourteen-year-old accused of a crime of robbery in the first degree. I have no choice because of his record in the Family Court, because he's chronically delinquent. I send him off to an alternative, to the Office of Children and Family Services—two to six years. You know, if I gave every child that came before me, with the exception of murder, the maximum sentence for robbery in the first degree, for example, three and a third to ten, every child would be back with us by the age of twenty-one and conceivably as early as seventeen, eighteen years of age. That's with the maximum sentence. Of course, Judge Corriero is considered the toughest judge in New York. If you give everybody the maximum,

across the board, without exercising any discretion, without caring about the individuality of the child, what happens? They're back. They're back before they're twenty-one and they're back with a felony conviction. Now we have to ask ourselves "Who's waiting to hire these children? What lessons have they learned in prison and how safe are we, as a society, from children who have been foreclosed from meaningful participation in our society?"

You can't drive a taxicab in New York with a felony conviction. You can't work for the Transit Authority with a felony conviction. You can't live—if you're under eighteen years of age—you can't live with your family in publicly funded housing. I have one boy who's out in the streets at three o'clock in the morning and his dad said "Let's put him in jail." I said "Well, that sounds good to me. What's he doing out at three o'clock in the morning?" "They won't let me keep him at home so I sent him to my sister's and she locked him out." I said "Why?" "Because the housing authority won't permit me to keep my own son, because he was convicted of the crime."

So, one, make sure that when we send these children off, the priority is education and that punishment has to, to some degree, take into account the concept of retribution. You know, what about the little girl who slashed the other girl's face? The other little girl is walking around with a scar for the rest of her life. We have to deal with that. We have to address that issue. Someone has to pay, in a sense, because that little girl also has to feel that justice was done and that we in the Adult Court did not give her another injury by the way in which we dealt with her case. It's a very sensitive balancing that we have to engage in.

Number three, whatever system we adopt, there has to be flexibility written into the system—flexibility to the extent that when a child comes along who we think can benefit from an alternative incarceration, then we should, as judges, be able to accomplish that. We should, as judges, be able to respond appropriately. This means no mandatory sentences. If you don't trust your judges, get better judges. Don't elect them and then tie their hands behind their back and say, "You have to give this child one to three. You have to give this child two to six." Eliminate mandatory

sentences. Trust your judges. We're supposed to be good judges.

Number four, and it's an overarching principle, I think is important and that is there for those children who at fourteen or fifteen years of age did something so serious that their records don't permit us to give them youthful offender treatment, there has to be a mechanism down the line to decriminalize those children who can demonstrate by their behavior after a significant period of time that they have learned their lesson.

What about the fourteen-year-old who commits the crime of robbery and I sentence him off and deny him youthful offender treatment? He's now walking around with a felony conviction. He's out of jail, eighteen years of age, struggling to find a job. Finally, he gets a job down on Wall Street as a messenger. The guy that he's working for loves him because he's responsible. He works hard because he doesn't want to lose this job. And his boss brings him along, kind of educates him. Six years go by. Eight years go by. He now marries. The person who originally hired him wants to do more for him because he's responsible. Why, why can't we have a mechanism that would permit that child to come back and say, "Judge, I've demonstrated that in the last ten years that I've led a good life and I have an opportunity to be a broker, but I can't be a broker because at the age of fourteen, I committed this robbery and I have a felony conviction over my head." Why, why can't we deal with that? Why can't we address that? What does it cost? What does it cost society to deal with children in the way that we have been dealing with them, which is the idea of prosecuting our children as adults in criminal cases?

Boys Town, Father Flanagan, Spencer Tracy—some of you young people may not know who Tracy was, but he played Father Flanagan and he's trying to borrow money to furnish his orphanage. This is in 1936, 1937. And he went to a businessman friend, and the idea was that he wanted to show this businessman that this would be a good investment. So he says to this businessman friend, "I need \$100." That's what he needed to furnish the orphanage. And the businessman says "Why should I rush to give you \$100 to

take care of these children who will only come back and rob me?" He says "No. I have it on good authority that every American boy that becomes a good American citizen is worth \$10,000 to the state." So this man says "Invest \$100 and I'm getting the benefits of a kid who's saving the state \$10,000?" Well, what must that figure be today?

A professor at Vanderbilt University, Mark Cohen, said "What is the savings or the costs to society to prevent an at-risk child from becoming a juvenile delinquent or an adult criminal?" And he estimated it at \$2 million; \$2 million as a cost to society to maintain that child in incarceration intermittently over his life; \$2 million in welfare, \$2 million in health costs, \$2 million in the lost taxes that that person doesn't contribute to our society. So economically, aside from the humanity, it doesn't make sense to prosecute children as adults.

Finally, what do we need to do to change the system? You know, when one of the speakers was talking about not being polite as a characteristic of the Ombudsperson, I was thinking of "Italian Delight," which is an artichoke. There are a lot of leaves in the artichoke, separate leaves but connected to one solid heart, a heart that is thorny and tough and at times prickly. And that's what we need. We have to have an Ombudsman behave like an artichoke. Thank you all very much.

A Voice for Children
Part I: Best Practices in the United States
Exploring the Independent Child Advocacy Offices of Rhode Island,
New Jersey, and Connecticut: Models for New York?

Moderator: Brian Lehrer, “The Brian Lehrer Show,” WNYC Radio, New York

Laureen D’Ambra, Esq., Child Advocate, Office of the Child Advocate, State of Rhode Island

The Honorable Jeremiah Jeremiah, Jr. Chief Judge, Family Court, State of Rhode Island

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

Kevin M. Ryan, Esq., Child Advocate, Office of the Child Advocate, State of New Jersey

Gertrud Lenzer: Brian Lehrer is host of “The Brian Lehrer Show,” WNYC’s highly acclaimed daily call-in program covering issues in the news and culture, weekdays from 10 A.M. to noon on WNYC New York public radio. *Time* magazine has called Lehrer’s show “New York City’s most informative and thoughtful talk show.” The *Daily News* calls it “The sane alternative to talk radio.” And guests have ranged from political figures such as Hillary Clinton and Governor George Pataki to authors and entertainers such as Alice Walker and Al Franken to junior high school students and homeless people. Lehrer is also an award-winning author and documentary producer. He won the Associated Press New York Broadcasters “Best Interview” Award for both 2000 and 2001.

NPR’s “On the Media,” when hosted by Brian Lehrer, was named Best Weekly Show by the Public Radio News Directors in 1999. He currently moderates major public-forum series, including The Nation vs. The Economist series

and the Harper’s Forum series. Today he has agreed to devote his superb talents to further the interests of New York’s children.

I have listened to him often and with great admiration, and somehow I fancied myself to have “discovered” his fabulous news program. In connection with our symposium, however, I came to realize that virtually everyone to whom I mentioned that Brian Lehrer was going to moderate this symposium told me that he or she was “his fan” and admired his talk show.

I am presenting to you Mr. Lehrer and I put this afternoon’s proceedings in the hands of a master journalist.

Brian Lehrer: Thank you Dr. Lenzer. You’re entirely too kind, but I am very, very happy to be here. It’s good to see so many people here spend a full day talking about such difficult issues, such wrenching issues for people who work in the field. I personally know people in the field, and I know how wrenching these issues are. People have to come home and decompress after dealing with the kinds of issues that you are involved with, and then to come to a whole-day symposium like this on top it takes an additional commitment. And I realize that these issues are so tough in part because they cannot be addressed in a vacuum. You can’t just take child welfare out of the rest of life and the world and public policy and deal with it on its own.

It necessarily implies solving problems of poverty, and education, and employment, and family life, and public health, and immigration, and criminal justice, and just about everything else that you can think of—really.

So, in this session, we begin with the realization that New York is surrounded by states that have an office invariably described as Ombudsman or Public Advocate for Children, or something to that effect—an office that New York does not have, and Professor Lenzer set this up so that some of us here in New York can

get an idea of what the nature of the Advocate or the Ombudsperson is in some of our neighboring states. And, of course, being advocates, they would say that this would be a good and what the state of the art is in this kind of work. And, of course, we'll take some questions from any of you as we go along. So, let me introduce our panelists. Jeanne Milstein is Connecticut's Child Advocate, appointed by Governor Rowland and confirmed by the General Assembly. Jeanne Milstein has dedicated her career to advocating for the state's children and youth, guided by the adage: "If you're not outraged, you're not paying attention." Your words?

Jeanne Milstein: No, not my words.

Brian Lehrer: Not your words. Anonymous? Anonymous came up with the best quotes, didn't she? Ms. Milstein brings to her post a passionate concern for children, unquestioned integrity, and unwavering tenacity. Prior to her appointment as Child Advocate, Ms. Milstein was Director of Government Relations for the Department of Children and Families, and Legislative Director of the Connecticut Commission for Children.

Kevin Ryan is also with us. He was appointed New Jersey's first Child Advocate by Governor James McGreevey just last September. He is a 1989 graduate of Catholic University of America and a 1992 J.D. graduate of Georgetown Law Center. Mr. Ryan worked as an advocate for children at Covenant House from 1992 to 2002. On his graduation from law school in 1992, he founded the Legal Services Program for homeless teenagers at Covenant House in New York City's Times Square and the South Bronx. And in 1997, he founded the Youth Advocacy Center at the charity's Newark and Atlantic City locations. We are delighted to have Kevin Ryan taking time from what is a very busy schedule, and fortunately or unfortunately, a very media-rich schedule these days, in the state of New Jersey, to be here.

Laureen D'Ambra has been practicing law in the state of Rhode Island since 1980. She has extensive experience in federal and state courts handling child abuse cases, termination of parental rights matters, child custody issues,

juvenile and constitutional law issues, and class action litigation on behalf of children.

Since 1989, Laureen D'Ambra has been the Child Advocate for the state of Rhode Island. Her office has been recognized as a model Ombudsman office by the ABA Center on Children and the Law, among many other things.

Jeremiah Jeremiah, Jr., was appointed Chief Judge of Rhode Island Family Court in 1987, after having served as an Associate Justice of the court since 1986. Chief Judge Jeremiah has been active in civic and professional affairs for over forty years. He has been a member of numerous boards and committees dedicated to the improvement of justice for Rhode Island's children and families. Chief Judge Jeremiah has created various innovative and user-friendly programs as well, including the highly successful Rhode Island Family and Juvenile Drug Court, which was instituted in December 1999 under his leadership, as well as the state's first school-located Truancy Courts in 2000.

So, as you can see, we have a very distinguished and very committed panel here this afternoon. Please welcome them.

Ms. Milstein, let me start with you because just before we began the session, you were saying something very interesting to me about the difference between an Advocate and an Ombudsperson and especially in a state where we don't have those positions, I thought it would be interesting to describe what one is and the other is.

Jeanne Milstein: Thank you very much. I think one of the beauties of having an Office of the Child Advocate that goes beyond Ombudsman is the ability to not only go to court on behalf of children, but to intervene in court, to initiate lawsuits. We have subpoena power so that gives us tremendous power. But we also have an ability to advocate, and not only for individual children. This is very different from Ombudsman work, which is, I think, more mediation and navigation through systems. We advocate before the legislature and we do a lot of systemic kinds of change in my office. Having said that, it's the Ombudsman work in our office that really drives our priorities. It drives our priorities in the legislature, the kind of institutional change we need to see, the kind of

systemic change we need to see. And that's based on all of the calls we get every single year and where we see the huge increases. I mean all of our investigations—I've just initiated a lawsuit—all of that comes from the Ombudsman work. But it's the extra teeth, I think, in the advocacy area that...

Brian Lehrer: Talk about your job. How do you spend your time? What actually takes up your time?

Jeanne Milstein: Well, it depends on the day. Right now it is legislative session time so a lot of time is spent over at the capitol trying to get some of these laws changed.

What I do first thing in the morning is to get a sense of what some of the calls are. For example, how did I get involved in the juvenile justice issue? I got a call from—all the calls that come to the office are confidential—from a doctor, who was in hysterics on a Monday morning. A child, fourteen-year-old-girl, whom he had been treating for years for a chronic illness—I think it was asthma or diabetes—came to her doctor's appointment in shackles and handcuffs and he was sure she has never committed a crime. "Do something." Every phone call, it's "Do something." We did go back to see what we needed to do here for this particular child, but then we look further. This is how we got into the whole juvenile justice area. We are arresting status offenders and detention is often the only safe place for them because we don't have enough emergency foster care, we don't have enough emergency group homes, we don't have enough services and supports for families. The safe place is jail. This girl ends up in detention. So that's how one day might start. We sort of take it from there. A lot of work.

Brian Lehrer: A lot of putting out fires.

Jeanne Milstein: Putting out fires, and then also being proactive. What do we need to do to change the situation for these children. Another issue related to that is the fact that in Connecticut, which is the wealthiest state in the country, we have four of the poorest cities in the nation. We have a population of three million,

which is a neighborhood in New York City. We have the best endowed child welfare agency in the country, yet we send 492 children out of state, mostly children with mental health and developmental disabilities. That's something that I'm working on now.

Brian Lehrer: Kevin Ryan, since you're the first Child Advocate in New Jersey and you started the office so recently, maybe everybody would be interested to hear how you started up and how you launched something like this as a startup to have an impact that the previous structure didn't have.

Kevin Ryan: Well, I think there are two documents that we try to draw textual inspiration from, unconsciously perhaps and sometimes thoughtfully. It's the 100th birthday of Dr. Seuss this month, so indulge me for a moment. The first of these is "Horton Hears a Who," which is the story of an elephant named Horton, with enhanced auditory abilities, who can hear the neighborhood of the Who's living on this very small petal. Nobody else in the jungle can hear them, whatsoever, and they ridicule Horton because Horton, when he figures out that the Who's, these microscopic people, live on this petal, begins to be very protective and to spend a lot of time and attention protecting them and nurturing that petal. That seems bizarre to everyone, to the kangaroos and the monkeys and the village. They are so distracted by his advocacy and his nurture for the Who's that they decide he's crazy and they decide to disabuse him of the petal.

So the kangaroos and the monkeys steal it and they give it to the evil eagle who flies through the night and disposes of it in a field of millions of petals. Horton then relentlessly treks through the village, and begins one by one to go through the petals and to find finally, I think it was in the three millionth endeavor, the petal where the Who's are. They've been wracked by being flown through the night by the eagle and then thrust into the field and they're hurting. Their buildings are falling apart. Some of them are injured and Horton, when he is continuing to advocate for them, is arrested and ridiculed. The village decides also to boil the petal. This is what the kangaroos and the monkeys and the

eagles decide to do.

And Horton says, at last, you know, to the Who's, "And you very small persons will not have to die if you make yourselves heard! So come now and try!" This is Dr. Seuss, after all. Well, it's Dr. Seuss on a happy day because clearly in *The Lorax* he was having a bad day, but it's Dr. Seuss on a good day and the Who's do muster a collective yelp. And the kangaroos, and the monkeys, and the eagle, and of course Horton, hear the Who's. And when everybody realizes that the rose petal is not this inanimate weed, but is humanity, is personhood, is folks who are vulnerable and in need, the village's response is transformed.

Their response is nurture and protection and advocacy and care. I think that teaches us the lesson that advocacy is about public exposition. It's about putting a face on the vulnerable and telling their stories and recognizing that repair and reform never happen in silence.

And quickly, the second document for textual inspiration is the International Declaration of Human Rights, which just celebrated its 55th anniversary. Just as Dr. Seuss is celebrating his 100th birthday. The declaration was formed when images of Nuremberg seared in the public imagination.

And among its important declarations is that we are all connected by a common set of needs and ambitions, and aspirations, and capacities that form the human condition. And that connectedness among us has a fundamentally important corollary. The fact that we all need—children need, adults need, seniors need—to be loved, and want to love, need to be fed and want to feed, those needs mean that governments that act counter to our common need require great effort, great opposition, great intentionalism. It's why, frankly, in the United States, the failure to serve tens of thousands of needy communities and to be responsive to the needs of adolescents has led to a boom in the construction of detention and secure facilities for children and older adults. Our point here is that it requires work by the institutions that are responsible for serving children and families to counter the needs of children and families, to marginalize, frankly, the right to talk about the problems of children and families.

We have to begin by believing in simply

talking about suffering, painting the picture of Faheem Williams starved and brutalized and mummified in a basement. To talk about the Jackson children, starved for twelve years and largely ignored by the public system. If we commit to do that, we are well on the way to fixing these systems because that information scintillates in the human spirit an outrage and a desire for reform.

Brian Lehrer: So the *International Declaration of Human Rights*, and *Horton Hears a Who*. I would love to see your bookshelf.

Kevin Ryan: They're both on it.

Brian Lehrer: But Kevin, take me one more step and tell me why you and this office can fulfill the promise of those concepts that you were just throwing out, those lofty concepts. It is better than the structure that came before you, but certainly the state would have in some way articulated the importance of protecting children.

Kevin Ryan: With all due respect to the state, and I've met wonderful people in government and I've worked side by side with them. I'm not so sure that there is in fact an impulse that's well nurtured in government to tell the stories of suffering, of systems that don't serve children and families well. And I think that it remains to be seen how effective we will be at doing that. While our aspirations are in fact large, I think our work will speak for itself over time and our work, frankly, should be judged not just by the stories we tell, but by the solutions we champion. So, it's not for me to say whether we've been effective or will be effective. It is for me to say that we've committed to do investigative work because we think telling the truth has a lot to do with making it better.

Brian Lehrer: Laureen D'Ambra, do you want to pick it up from there? And maybe to the extent that you know the nature of your colleagues here, and offices, talk about Rhode Island's in particular and what it was set up statutorily to do, and if you think that different states approach this same work in a different way.

Laureen D'Ambra: Well, thank you Brian. Before I answer that question, I just want to join everyone here in thanking Dr. Lenzer and the Carnegie Foundation and all of the staff that made this whole symposium, this wonderful symposium, come together today and I hope that through our discussion here with my fellow Advocates that the question Dr. Schmidt asked, "Do children in New York need an Advocate?" will be answered.

What I'd like to do is to give you a little overview of the Rhode Island office and to answer your question Brian. We're one of the first children's Ombudsman offices in the country. We were actually created in 1980 and our jurisdiction is extremely broad. Not only are we child welfare focused but juvenile justice issues are also under my jurisdiction, and foster care, residential programs, also child care in Rhode Island. Basically any issue, jurisdictionally our child welfare agencies are involved with, we are involved with. So our jurisdiction is extremely broad. The legislature created our office in 1980 in response to two horrific child-death cases.

I've had the pleasure and honor of visiting other states. I helped create the Connecticut Child Advocate's office in 1995. I've visited Georgia and Delaware and spoken to their legislature and helped create their offices. Unfortunately, it's always been in response to some horrific child-death case, some issue that's been in the media that has made policymakers say What can we do about this horrible situation? How can we improve children's services? How can we provide a safety net, added protection, for children in state care?

In Rhode Island, the Office of the Child Advocate (OCA) was created to do exactly that, knowing that this is a population of very vulnerable children. Very often they do not have parents. They don't have lobbyists at the state house. They don't have a vote. They don't have a voice. This issue was clearly articulated throughout this morning's presentations. They are "invisible children" as one of the speakers, I think, identified them. And, the reason we're distinguished and that Rhode Island, thanks to Howard Davidson, has been designated a model Ombudsman office is that we are a legal office. It is required by state statute that I be an attorney in order to be the Child Advocate. We may not

but by state statute "shall" initiate court action when the legal rights of children have been violated. And we do it as a last resort. Certainly as Kevin has said we try to communicate, we try to collectively yell, we try to advocate. But when all else fails, we can take that next step. We can go to court if we have to, and can focus on protecting the legal rights of children. And how we do this is to look at the macro, if you will, the larger picture, system issues that affect many children. We work very closely with our CASA office and court-appointed guardians who are individually involved in some of the cases. But what we also focus on are budget issues, system issues, legislative issues, and legal issues that affect many children.

I know that you have a copy of our enabling statute and you also have a copy of our Ombudsman survey that we put together—well, this is the second one we've done. We try to update it. New Jersey is not in here, yet, but will be. But there are twenty-seven states that have some type of Ombudsman office and there has been a growing trend across the country because more and more states, more and more policymakers and legislators, are recognizing the need to have an office to look out for the rights of this population of children. One of the things I always focus on in questions asked by legislators—and I would strongly recommend this to New York in creating a Child Advocate's office—is that there be an independent office and that there be safeguards within the statute to protect this office's independence.

For example, it is required in Rhode Island that as I told you, I have to be an attorney, practicing at least three years by statute. There's a search committee that is defined by statute, a twelve-person search committee that is very diverse and includes community involvement. Three to five names are submitted to the governor and then the appointment is subject to Senate confirmation. In addition to the selection process, there's a five-year-term for the Advocate because very often—I think this is what Kevin was alluding to, and he hasn't been there for very long as Child Advocate—there is a growing trend to "shoot the messenger." People don't always want to hear what we have to say even though it's true and even though we have all the data and information to back it up. It's easier to go after the office or to go after the

Child Advocate sometimes, rather than to focus on what we can do to improve services in the state.

We do have complete access to all confidential information involving any child in the Department of Children, Youth, and Families (DCYF) care. Marcia Lowry, in her presentation today, addressed the issue of data and having the information readily available. That is absolutely crucial. We have the power to subpoena records and witnesses. We do, by statute, child-death investigations, involving children who are in state care or somehow involved in DCYF. So that's a crucial component of your statute (New York draft).

We're also fortunate enough—this I did through negotiations with DCYF rather than statute—to be tied in to our state computer system. We have a Rhode Island Children's Information System (RICHIST), which is what we call all of our state child-abuse reporting logs that are in there and it is DCYF's own computer system. We actually have our own computer in our OCA office that allows us to access information directly, and that has been a tremendous help. We have a population of one million in our state, so obviously, we're tiny in comparison to the city of New York itself, never mind your state. In Rhode Island, we have about 2,500 children at any given time who are in some type of out-of-home care. We have about 7,000 children involved with either our child welfare agency or juvenile justice system or children who are receiving mental health services, which is also under OCA jurisdiction.

I mentioned to you that we have a fatality-review process. I know someone this morning also identified the issue of child-fatality reviews. The importance of our OCA ability to do this—Connecticut OCA actually has a very good fatality-review process and they do a lot of fatality-reviews—is that it provides an independent review. I guess in New York you have your own agency that's doing child fatalities, and it should. But having an independent review—not only our office, but independent professionals and community members that participate in the process—gives credibility to the entire process and makes legislators and policymakers want to implement many of the recommendations. We've been very successful in having a lot of our

recommendations become law. They were introduced as legislation and became law, and we've had extremely distinguished panel members who have participated in the fatalities-review process. Chief Judge Jeremiah was on the first child-fatality panel that I did as Child Advocate almost fifteen years ago. He was part of a very distinguished group and you are going to hear from the Chief Judge, but he's certainly been a very strong advocate and has done a lot of wonderful things in the Rhode Island Family Court. We've been able to have a very good working relationship with him and with the court.

The other thing that OCA does is class-action litigation, and as I already told, that's why we've been distinguished by the ABA: because we have that ability to bring lawsuits. Sometimes, unfortunately, that's the only thing that works. And Marcia Lowry has been out there fighting the good fight with regard to class-action litigation. One of the suits we've been involved with, and we received a wonderful decision from the Federal Court in January, has been our night-to-night placement suit. In fact, one of the cases that I cited continuously before the court was the New York City case involving your child welfare system, the Doe case. I don't know if any of you are familiar with the night-to-night practice, but it is the same practice you had in New York, as part of that litigation and the New York court found it is an unconstitutional practice. But in our lawsuit, we have a wonderful consent decree that was court-ordered. It had all the requirements of what had to happen to end the night-to-night practice in Rhode Island. The department decided to file a motion to dismiss our suit and argued that we didn't have jurisdiction even though our statute is very clear that we must file suits. They tried to argue that we could file suit in state court but not federal court, which in and of itself is an equal-protection argument. They spent one year in litigation on whether we had standing, after they entered into the consent decree.

Fortunately the federal court disagreed strenuously, and upheld our jurisdiction. And since then, the department has agreed to comply with the consent decree and that's because we have a new governor. Night-to-night placement was actually a political issue in the gubernatorial campaign. Believe it or not, night-to-night

placement of children in state care was a political issue and Governor Caruchi committed as a campaign pledge that he was going to eliminate it and it was one of the first things he did as governor. In fact, he's been successful in doing it. I met with him, just on the issue of night-to-night, five times and he told the department, "You need to have a plan. You need to do certain things," which were things we were recommending and had been recommending for a very long time, but we had the clout of the governor to finally say "Enough is enough: you will do this."

I'm assuming everyone knows what night-to-night is because of your own involvement with it. It's a practice of placing children in different placements overnight because of a shortage of placements. The child goes from one placement to another placement until a permanent placement can be found. It's horrendous, it's unconstitutional, and in Rhode Island it was very expensive because we were paying overtime for our social workers to basically baby-sit children as part of the night-to-night practice. We could not convince the department to stop this practice until we went to court and they were found in contempt. We also had a motion to have a special master appointed in this case.

The only other thing I'll focus on at this point—because I know Brian probably has more questions—is our OCA ability to monitor children's placements. Now again we're a tiny state compared with most of the counties and the cities and the other states that are represented here, but we have over 102 different sites of group homes, residential programs, or shelters in the state of Rhode Island. My staff visits all of these placements at least once a year. And crucial to those site visits is the fact that we talk to the children. We get their input. Again, as someone said this morning, talk to the children and they'll tell you exactly what's going on in a program. When we know there's a problem and we attempt to do troubleshooting, the children will tune in to exactly what is going on. We look at health and safety issues, and then in 99 percent of the cases we're able to work with our State Department, DCYF, and the Agency for a "Corrective Action Plan." And that's been very successful because they know that if we have to, and we did on occasion, we could actually go to

court and try to close a program. We have had to go to Family Court to do this.

But most of the time, we're able to really look at problems and ask Is there a staffing issue? Is there a resource issue? Do we have the wrong mixture of children, if you will, if there are very young children with older children? Why are these problems happening? That data collection and our access to information give us the ability to really target our placement system. We found that with night-to-night, we had a shortage of placements for females. Or, if we're looking at a particular program, we can focus on issues like restraints. We worked on legislation that became law regarding the least restrictive use of punishment, and that restraints should not be used unless absolutely necessary. In fact, we worked closely with Connecticut to draft a statute similar to theirs in creating ours.

But there are red flags that we'll see when we go to different placements and review records, talk to children, talk with staff, and figure out what corrective action can be taken and how we can address a problem. My staff consists of six full-time equivalents (FTE). We have me, an attorney by statute, one other full-time attorney, one part-time attorney, two investigators, and a secretary. We've tried to do a lot of creative funding as well. We have Victims of Crime Act funding—a VOCA grant. We've been able to get money from the Rhode Island Bar Association. We have a juvenile justice handbook that is—I hope—being printed as we speak. A private foundation gave us money to create it. You have in your packet, a copy of the "Kid's Rights" brochure that we've just developed. The Rhode Island Commission on Justice funded the printing. That booklet has been distributed throughout the state for all children in terms of "What are my rights as a teen living in Rhode Island?" So we try to be out there and provide as much advocacy and information as possible regarding children's issues.

Brian Lehrer: Thank you. Thank you for a terrific presentation. And I think that alone communicates some of the best practices out there. That's just fabulous. Chief Judge Jeremiah, could you talk some about how the bench and Ms. D'Ambra's office interact and maybe even

talk a little about the courtroom experience, where there is a separate advocate for a child who may not be an official party to a case?

Chief Judge Jeremiah: Sure. Of course you could hear Laurie, and you know Laurie is very important to us in Rhode Island. And I wonder how many children she has saved during her tenure in office and I know that it's many, many, many. First, our Family Court was the first unified Family Court in the country, formed about forty-five years ago. And when I heard Judge Richardson talk about the changes in the Family Court, it's so true. When I became the Chief Judge, they said to me, "Are we a court or are we a social service agency?" And my answer was "Both."

And we had to change the thoughts of the judges who were sitting at that particular time to say "You know, we're not a court. We're here to help children. We're here to rehabilitate children and put them back into society as good citizens." And that's our mission. In Rhode Island, we have a lot of specialty courts—Truancy Court, Family Drug Court. We could go on and on with what we're trying to do with the problems. For instance, with truancy, we send a magistrate or a judge into a school. We actually have a court session in the school, involving the teacher, the parent, the guidance counselor, and so forth.

I was on the first committee to choose a Child Advocate—a committee formed by statute. The governor has representatives; the Senate; the House; a doctor has to be on it; and citizens have to be on it. And we interview all the candidates and we chose Laurie to be the Child Advocate.

And let me tell you, one of the first problems that I had was that we had a home where we were sending boys who were sexually abused and one of the boys made a complaint that he was being abused there. We asked the facility to do an investigation and naturally they did their own investigation and came back and said "There's no problem at all." And we asked the Department of Children, Youth, and Families—because once we adjudicate a child in my court, the child goes to that department for rehabilitation—and they said "Oh, there's no problem."

We called Laurie, the Child Advocate, and she went out with her powers to subpoena and interview and found that there was a very, very serious problem and many of the children were being sexually abused by people who were working at that home. The home was closed.

And what happened to Laurie that some senator who had played Santa Claus to this home for many years proposed legislation to abolish the Office of the Child Advocate. And the people of the state laughed at the senator. He didn't get reelected; he was defeated overwhelmingly.

So then I heard one of the speakers talking about a doctor calling. There was another case where a doctor called Laurie on the phone and said "Hey, this judge in the Family Court, I don't know what he's thinking. He wants the child returned to the parents. This child's been severely abused by the parents. I don't know what he's thinking." Laurie got involved and she saw that the judge had gotten a preliminary report showing that the child had not been abused and that this report had not been followed by any other reports. She went down to talk to this judge and said "Judge, you're wrong. And this judge, being me, was wrong, and the child was not returned to the parents, but it was through her efforts.

Night-to-night is another problem. She went through the night-to-night problem. Well, we went through two administrations. Laurie, I think, has been through five administrations, and I think she's been through six directors of DCYF. She's survived. In fact, we sent one to Connecticut. He didn't last too long. And I think we sent one to Texas too but that was OK.

But night-to-night was a problem. We had a Republican judge. I mention this because the present judge is Republican too. For eight years, this governor, who was a friend, couldn't solve the problem with night-to-night. And Laurie became his enemy, really became his enemy. He didn't reappoint her; she was a holdover. And she was winning. In every stage of the game she would win in the federal court. So finally he decided he was going to replace Laurie. And he made a comment to Laurie in his office, "Isn't your appointment up?" He formed a committee, of which I was chairman. He had representatives on the committee and he directed me through one of my administrators

that the statute requires that we submit three names to the governor. We knew that if we submitted three names, her name wouldn't be there and she wouldn't be appointed. We interviewed about twelve candidates and we took a vote to see what names we would send to the governor. We only found one person to be qualified and we sent that name to the governor. Laurie wasn't reappointed but she was still a holdover. She was doing the job of saving the children of the state of Rhode Island. And this governor, who was a friend, was more concerned about giving \$13 million to people who are running dogs at the dog track than giving money to children who needed it for rehabilitation.

Well, thank God, the next governor came and within two months we solved the problem with night-to-night. All that was needed was some common sense—for people to sit down and recognize Laurie's ability to solve a problem. In fact, I have to say that this governor thinks so highly of Laurie that he just appointed her an Associate Judge of my Family Court. We look forward to working with her.

But her office has to be independent—that's the key. It has to be independent because if you're doing your job, you will be criticized. For instance, I'm criticized when I do something that they don't like. If I'm not waiving a child because I think he can be rehabilitated, I'll be written up in the paper—"Why isn't this child sent to the adult court?" The favorite is "Why isn't the child in the ACI?"

A lot of people think that if a child does something wrong he should be locked up. Forget rehabilitation; they're not concerned about that. And so what we're saying is that the office has to be independent. A Child Advocate has to be able to do what is necessary to protect the children of the state. And Laurie has that ability, and I can't praise her enough.

She's just done a great job, which saved many children, taking abused children out of their homes. We took children who were being transported back and forth every night—back to some home, back to DCYF to sit around all day doing nothing. Laurie goes up and speaks on the budget. She asks for more support for DCYF than the director of DCYF himself. The governor says "I'm going to cut your budget \$2 million" and the director says "OK." Then she

goes up and explains to the legislature, which is looking at the budget, what's necessary, what has to be done and how to save our children.

So I just have to tell you that an Office of the Child Advocate is important to any state, because you need someone there to protect the children. Now, the court can do that, but we don't have the ability to go out and look at a facility where there's something being committed that's not correct. The Advocate has that ability. We can go up and speak but she represents all of the children when she goes up and speaks on the budget. Again, it's so important to have that position.

Brian Lehrer: Is she ever a pain in your neck?

Chief Judge Jeremiah: Yes, but you know, the thing is that she can be a pain in the neck, but if you understand the person, and you understand what he or she is trying to do, you respect that person. I think that's very important to understand.

Brian Lehrer: Jeanne Milstein, you're not a lawyer, right?

Jeanne Milstein: No, I'm not.

Brian Lehrer: Does it matter? You know, Laurie was talking about the importance of the office's being lawyered. She talked about some of the things that she, as a lawyer, can do in that position. How do you get around that?

Jeanne Milstein: Actually, of course I don't think you have to be a lawyer to be in this position. I think it's a multidimension approach. We have experts in the Office of Children's Mental Health. That's a huge issue. In fact, the attorney general and I just initiated an investigation on children's mental health in Connecticut.

I still have all those powers where I can intervene in court, where I can initiate lawsuits, and we've done that; as Laurie said, it's a last resort. I mean, we try to work these problems out.

We try to mediate. We try, and if that can't be done, a lawsuit is filed on behalf of a child who has been heinously abused and then denied

all kinds of services.

Just as an aside: One of our remedies, a lot of talk this morning was about mental health, is to have every staff person in the Department of Children and Families, which is also the Children's Mental Health agency, trained in trauma, because they are just missing it in so many cases with these children.

I would like to put in one little plug for political strategy as we try to sell what we do, because often people say "Oh, you just blame and criticize." If you look at any of our fatality investigations, our facility investigations, they are all on our website, you'll see that the bulk of the report is about coming forward with recommendations that we believe, if implemented, will help hold these public systems who are responsible for caring for children more accountable. So accountable is the word. We're also called the watchdogs of children.

In this political environment, we prefer to think of ourselves as the auditors for children, who are holding the systems accountable. And we're looking at the \$604 million budget in the state, whose population is three million. How are we investing that money? Let's fund programs that we can prove are working instead of just throwing money out there, and then next year, throwing more money out. You show us that you can do a good job, and you get the money. It's worked in terms of how we keep going, in terms of our credibility, I think.

Brian Lehrer: For either of you, do your offices have the independence in the sense that Laurie was describing that hers does? Kevin, you want to take that?

Kevin Ryan: Sure. We do. I think I would be lying if I didn't tell you that it has been a difficult four and a half months as we try to help others understand what it means for us to be independent.

Brian Lehrer: I think you're appointed by the governor, which is, again, if I understand your story about a commission that is appointed and then independently selects you, a different structure.

Kevin Ryan: I'm appointed by the governor, but my term is not co-terminus with the governor's so I have a term of five years, which leaps through political administrations. But I worked for the governor before I took this job so that makes the transition much more challenging, because there are expectations, perhaps, in the political administration, and then among members of the advocacy community, about what real independence means. I had interesting role models for this job—my folks. My father, who spent his life as a nurse and as an emergency medical technician, really spent most of his time comforting the afflicted. And my mother, who was a rabble-rouser education advocate from the start, spent most of her life afflicting the comfortable. So I had good role models who have helped me, and I have a great group of folks whom I'm working with in the office. There are about fifteen of us, but you know, every day we're trying to understand why there is such reticence or resistance from the administration or from the departments or the divisions that serve children and families. And it's very consoling to hear these folks say up here that "This is the work."

The work is not necessarily being appreciated and making friends. And, we're speaking truth to power and not necessarily having that well received. That really has been our experience in just four and a half months. I've never burned so many bridges so quickly in my life, and that's a worry. I have four years to go!

Brian Lehrer: Jeanne, you want to talk about that also?

Jeanne Milstein: Something very interesting happened in Connecticut. I'm the third Child Advocate. The first Child Advocate became the Child Welfare Commissioner. The second Child Advocate became a judge.

But regarding the second Child Advocate, there was a big, big story after she became a judge that the governor's office allegedly tried to silence her. All these documents appeared, and one of the senators who actually created the office held hearings on this whole issue. So my independence is set in stone. I of course give the administration a heads-up when something is happening, but that phone has never rung back

and I think because of that situation, my position is more independent than may have been wanted.

Brian Lehrer: I wonder, before we take some questions from the audience, because this time is going so quickly, if you could each talk a little bit about—well, Judge Jeremiah said an interesting thing. How did you put it—that you’re half a court and half a social service agency?

Chief Judge Jeremiah: That’s right.

Brian Lehrer: And in a way that is true for the Child Advocate’s offices too. It seems to me that in a way you’re an advocate for the abused and neglected children of the world, but then when it comes to the criminal justice aspect, you’re also an advocate for the perpetrator children of the world. Are those two very different? Is it difficult to cross those lines?

Kevin Ryan: It’s not, Brian, because there is no such thing as a juvenile justice child or a child welfare child or a mental health child. These are the same children and it largely depends on whom they acted out with—that’s how they landed in the place they landed. In New Jersey, we’re at this place where the child welfare system is under extraordinary scrutiny because of Marcia’s extraordinary work. There wouldn’t be reform in New Jersey without Marcia Lowry, no matter how many children died. Marcia Lowry made that change happen.

That said, the juvenile justice system is largely unscrutinized. We went to the Camden County Detention Center last week. There are six children sleeping in an eight-by-ten cell. There are ninety-seven children there this morning in a building that houses thirty-seven children. There’s no CNN coverage of this. There’s no *New York Times* front-page story on this but it really is a scandal and I think the work of the Advocate’s office is to be zealous in telling those children’s stories publicly and forcing those systems to serve the children better. There are children in the Camden County and other detention centers in New Jersey who have committed very serious acts of violence, but most of those children are there for violation

of probation or because they were truant or they violated a curfew or they ticked off their parents—and they’re sharing, six of them, a cell, with children who are charged with, in some instances, double murder. And those children are meeting role models in there. That is so life-altering for those children, and we think in our office that we have got to be zealous advocates for them and really force the system to do better by them.

Brian Lehrer: Laureen, do you want to address that?

Laureen D’Ambra: I agree with Kevin. I think that many of the youth who are in our training school in Rhode Island, our incarcerated facility, are the failures of the child welfare system.

There is a very high correlation between children who have been abused and neglected or children who have been exposed to violence and children who are in our juvenile justice system.

We also have an overrepresentation of minority children, as was stated this morning by one of the speakers. We do have a lawsuit, however, in Rhode Island. We have a lawsuit that predated the existence of the Child Advocate’s office regarding our training school and we have a special master who has been appointed to it. The ACLU prison project is representing the children and we’re not technically a party to the lawsuit but we go to and actively participate in all of the meetings. The state is now looking at the issues of overcrowding and building a new facility, so I think they’re very much part of the whole system that we look at and that’s why in Rhode Island when our DCYF agency was first created in 1980, it was the first time we put all children’s services into one big monolithic state department, recognizing that this was a way of being able to better coordinate all services for children.

I just want to add, in relation to the independence of the office issue, that the state of Michigan had this very issue. They had an Ombudsman, Richard Burrup, who was a colleague and traveled across the country to speak about the importance of Ombudsman

offices and really did a fabulous job there. He too had worked for the governor before he was appointed, and he issued some rather scathing reports as Michigan's Ombudsman. I remember when I was first appointed, I would go home and my husband say "Are you sure? Did you make up some of this stuff? How could this possibly be true?" And the facts are true. In Michigan, Burrup was just doing his job and had the facts out there and the recommendations to improve the system.

As soon as the governor was reelected, one of the first things that happened was that Richard Burrup was fired. So, when you're creating your office, I can't emphasize enough the need to make sure that whoever your Child Advocate or your Ombudsperson is, he or she should not serve at the pleasure of the governor, because, if that's the case, you might as well not even have an office. Someone should not have to keep worrying about having a job tomorrow because of doing his or her job today.

Brian Lehrer: Judge, do you want to say something?

Chief Judge Jeremiah: That's so true. With all due respect to the panelists, I think that if you are appointed to the position and subject to reappointment, you're going to think about some of the things you do. For instance, you're not going to file a motion to cite the state or the department in contempt, where they would be fined because they don't comply with a court order, because you are going to be costing the state government a lot of money if the judge actually finds them in contempt. And you kind of respond—I know I would. I know that if I were appointed Child Advocate and I were sort of concerned, I would say "Gee, I don't know. Maybe I should talk to the governor about this and work it out." Maybe you can. But what happens if you can't? What happens if he says "Hey, I don't have the money to do that and I'm not going to do it." I mean, that's one of the problems we had. And I say, Laurie would have been replaced had the governor had the ability to replace her and she was doing an outstanding job. It just bothers me. It should be—the independence is so important, I think, in creating that office.

Jeanne Milstein: In Connecticut, I'm also appointed through a panel with at least three names.

Brian Lehrer: Well, we do want to open this up to questions and comments. I could continue for another two hours, if you would, but you're the folks in the field.

Jeanne Milstein: Can I talk about one other thing too, very quickly? The partnership with the media has been extraordinary for us and I know it was because of our work that we were able to shut down a correctional facility for girls last year where the conditions were absolutely deplorable. And we kept saying "Look what we're seeing." It's like Laureen said, "No one has ever disputed a fact finding or a recommendation." The power of the media is so important in just telling the stories of these children and who they really are. You know, failed child protection cases, that's exactly what we see in the juvenile justice system. When children are really young, we kind of feel sorry for them. We look at them as victims. The moment they become adolescents and open their mouths, we want to punish them and we want to manage their behavior.

Telling the stories of these children who are locked up because they skipped school, or are strip-searched and shackled because they skipped school, or are runaways because they are sexually abused is really important.

Kevin Ryan: I think that we have done a little preaching to the choir today and I'm thinking if I were mayor and sitting in this audience right now, I might know all I need to know about why I don't want an Office of the Child Advocate for New York City. I think that the pitch for people who are not as invested in the work as we are is that there really is not a corollary financial investment the government makes in a system where the measures of accountability are so elusive. It's largely because these systems are trapped in various federal and state confidentiality laws. I think that the arc of reform is almost inevitably in every state that you either have litigation, the likes of which Rhode Island has and Marcia has pioneered, or you have a child's death like Elisa Izquierdo in 1995 or Faheem Williams in New Jersey, or the

deaths in Washington D.C. in 1992.

New York has this extraordinary opportunity now to not be another jurisdiction that waits to bear reform on the shoulders of a dead child. And New York can say that we want more accountability of these systems because we want to gauge how our children are faring. We want to know if these systems are keeping children safe and making families strong, and without that spotlight, without that commitment to an institutionalized tool that can subpoena, and can litigate and investigate and publicly report and is mandated to do that, these systems are not by nature going to do that by themselves.

Brian Lehrer: So let me play devil's advocate for a minute as the mayor who does not want this office. With the changes that Scarpetta and a lot of people supporting Scarpetta were able to make in those first years of the Administration for Children's Services—things that are better than in New Jersey—with all of that, of what has come to light recently there and on the road to systemic and sustainable reform without this additional piece of bureaucracy, you might say.

Kevin Ryan: Well, God save us from the day that the current New Jersey Child Welfare System is the standard for another child welfare system in the nation. But, you know what? Marcia has been a very thoughtful teacher in this regard and when I say to her "Well, the New York City system, Marcia, is better than the New Jersey system," she will agree to that but she challenges me, "How do you know that? What empiricism supports your view that the New York City system is better? What happens to children when they leave the New York City foster care system? Why does it take sixty-four months for a child to go from placement to adoption? Why does it take so long for a child to move from placement to permanency in the New York City child welfare system?"

And while I have not been a part of this New York City system for five years, those are very troubling questions. When systems are investing as they are in New York City, over a billion and a half dollars in a public construction that's designed to keep children safe and families strong and you don't know if it's doing either, seems to me that the taxpayers of this city

should be very worried.

Brian Lehrer: But how do they not know? You've all been talking about how your work and your advocacy is so data driven, especially at the policy level. They have a lot of data in New York, right?

Kevin Ryan: Actually, they don't report a lot. You know, our offices have subpoena power so there's a lot of data that we make available. The Rhode Island system, for example, from my understanding is relying on the work of the Child Advocate to drive public reporting of data.

Jeanne Milstein: They don't measure outcomes. That's the problem. As I've said earlier, the money gets thrown out there and we have no idea if it's doing any good. So while there's a commitment to permanency and so on and all these dollars are spent, sixty-four months shows that that's...

Brian Lehrer: So, how do you measure success?

Jeanne Milstein: You do evaluations of programs. I think it should be required for all. We now require evaluations of everything, including independent evaluations of children who have been in residential care for more than six months. We warehouse these children at the cost of—in our training school, our correctional facility for boys in Connecticut—\$325,000 per child, per year. Imagine what you could do with that money—get the child's mother a good apartment and some twenty-four hour help. You could probably do that for \$100,000 and we'd have better outcomes. I know that.

Kevin Ryan: And Brian, honestly, if the *New York Times* decided that it was going to put Leslie Kaufman and a few other reporters on a nonstop child welfare beat and said cover everything that comes out of ACS for the next two months, in two months this city would be much more committed to an independent Child Advocate.

Brian Lehrer: That's because there would be just so much outrage from the stories.

Kevin Ryan: Exactly. It's happening. It's just not being revealed.

Chief Judge Jeremiah: Brian, if something horrendous happens to a child in my city, and we find that the problem may have been neglect in taking care of that child, then I would say "Well, I guess that we need a Child Advocate to protect us" and that's what I would call on.

Brian Lehrer: Right, and we all know that the stories are there; they just don't make the news.

Audience Member: I think we do know what the outcomes are but we have chosen to ignore the outcomes because if you go into Riker's Island today and find out how many of those people in Riker's Island have histories with the foster care system, the numbers would be astounding. If you go to the streets of New York City today and talk to homeless children and you find out that 60 percent of them have bumped up against the foster care system—I mean, these are the outcomes we have chosen to ignore. So it's not a question of "Is New York City doing a better job than New Jersey?" It is that we have chosen again to close our eyes. We haven't seen some of the horror stories that Kevin has come up against in his tenure in New Jersey so far. Also, a lot of our horror stories have to do with older adolescents and really, frankly, a lot of people just don't care about that population.

Brian Lehrer: So why would a Child Advocate make that so much better if they're having trouble even measuring the outcomes of their work?

Audience Member: I think that telling the story is the key. I think that once you begin to tell the story, it's really hard to ignore.

Laureen D'Ambra: If I may respond. I think the issue for your mayor is "Why wouldn't you want a Child Advocate's office?" It's an opportunity to provide the checks and balances; to provide accountability; to have an independent office that allows access for families, for children, for providers, for professionals; to be able to call when there is an issue and to have us be able to respond and

troubleshoot.

And the other issue—and I think that Dr. Lenzer has alluded to this a little bit—I have seen, whether I go south or north, or to different legislatures, is the fear that "Well, gee, aren't we already doing that? Are you going to take business away from our CASA Office or our Advocacy Office or the Ombudsman that we have?" My response to that, unfortunately, is that there's plenty of business to go around and I think that what we do, and should be doing, is to complement each other.

Howard Davidson discusses this in his book on different Ombudsman offices. He actually focuses on the internal Ombudsman offices that child welfare agencies will have, as well as the independent offices like ours, and he recommends both. There is nothing wrong with there being an internal complaint office, if you will, within your child welfare agency. And the Ombudsman office that you already have that is doing detention cases, that's exactly what it should be doing and what an office like ours would do; we basically complement what's being done.

A question was asked about having a Child Advocate or an Ombudsman Office just for New York City. Chicago has an Office of Public Guardian and that's been a very effective model. That may be something to look at as well, if creating a statewide office is too overreaching. At least start with something within the City of New York.

Brian Lehrer: I see another hand, yes.

Audience Member: Does the legislature in New Jersey allocate funding?

Brian Lehrer: That's a good question.

Kevin Ryan: They do. We have an interesting story to tell about this. We have a \$2 million appropriation and we expected that it was going to be a \$3 million appropriation. On the Friday after we publicly released our findings in the Jackson investigation, we discovered that it was back to a \$2 million appropriation. Those \$2 million are precious resources and we will steward them well, but all change is political, all criticism is political, all advocacy is political.

A Voice for Children

Part II: New York Elected Officials

Promoting the Rights and Interests of the Children of New York

Moderator: Brian Lehrer, “The Brian Lehrer Show,” WNYC Radio, New York

The Honorable Yvette D. Clarke, Chair, Fire and Criminal Justice Services Committee, New York City Council

The Honorable Betsy Gotbaum, Public Advocate, City of New York

The Honorable Roger L. Green, Chair, Committee on Children and Families, New York State Assembly

The Honorable Rhoda S. Jacobs, Assistant Speaker, New York State Assembly

The Honorable Kevin S. Parker, New York State Senate

Brian Lehrer: We are very happy to have so many leaders from state and city government joining us here this afternoon, and I am going to skip lengthy introductions in this case because I think you know who most of these people are. It is enough to say that each of them, besides being in government, has a particular interest in issues pertaining to children and families. So we have State Senator Kevin Parker, from Flatbush; Rhoda S. Jacobs, who is the Assistant Speaker, also from Flatbush—there is a Flatbush contingent over here; the New York City Public Advocate, Betsy Gotbaum; another member of the Brooklyn delegation, Assemblymember Roger L. Green, more downtown Brooklyn—and Yvette D. Clarke. It’s all Brooklyn, and Flatbush too. I think only Roger Green was here for most of the day, so let me inform the rest of you how I’m supposed to put you on the spot right away, which is that much of the conference today has been dedicated to discussing the idea

of creating an Office of the Child Advocate (OCA) in the New York City or New York State child welfare and juvenile justice systems, and so after having just heard from three people who hold that job in our neighboring states—New Jersey, Connecticut, and Rhode Island—the question is: Is this good for New York? Is this politically feasible in New York? Let’s start on a local level. Councilwoman Clarke, is this something the City Council might look into?

Council Member Clarke: Certainly, I think this is something that the City Council would embrace. There is no doubt that when we look at the challenges facing our families—be it from the reinvention of our Department of Education to a purview that comes under my jurisdiction as the Chair of the Committee on Fire and Criminal Justice Services, which is the Family Court—we recognize that there is a crisis that requires specific attention, attention that unfortunately becomes diffused in the discussion of specific needs around the city. I have yet to see in my tenure a real family-based focus on these issues. They are all compartmentalized, when in fact every one of these issues, from our children’s education to their health and development, is tied to the stability of families. So, indeed, I think that this is a concept whose time has come in the City of New York, and I would certainly advocate it. I think you’d get a resounding yes from the New York City Council.

Brian Lehrer: Let me follow up and ask you if there is a rough consensus—since the changes after the Elisa Izquierdo case, the creation of the Administration for Children’s Services in its current form—that things have been getting better in the city. Why is this a good way for us to spend our money?

Council Member Clarke: When you focus on the health and well-being of children, you begin

to really open your eyes to all of the various components that go into healthy living. That means parental education. That means general health-care concerns. That means education and employment—the bedrock of development in our society. So now that we focus—unfortunately, after a very tragic occurrence—on prevention to some degree, I still find that our system is reactionary, that, you know, it creates a ripe climate for sort of switching the paradigm from which we view the development of children and, by extension, their families.

Brian Lehrer: Betsy Gotbaum, you are the Public Advocate of New York City and you are independent, that is, you are elected by the people so you are not appointed by the mayor or the council or anything like that. Much of what we heard earlier in the day was about how important it is that the Office of the Child Advocate be independent, but also that it have powers that your office does not necessarily have—subpoena powers, litigation powers, and powers to get confidential records.

These are some of the things that we've been hearing from the other states. Do you think this advocate rule could come under your office, or does it have to be created as an independent entity?

Public Advocate Gotbaum: Well, I don't want to sound self-serving, but I think advocacy is something that we certainly try to do and I think part of the problem is that the Office of the Public Advocate doesn't have those powers, the power to subpoena, the power to get full access to agency records and agency visits. I can give many examples of cases where we have wanted to do that and we haven't been able to. I totally believe in a strong, independent Children's Advocate. It would be easy, I think, to have it in our office, given that you make sure that the office has these powers. But, there is one thing that this office needs—and I feel very strongly about this. It should have budget that's independent from the mayor. As you all may remember, when the mayor was out to get rid of this office, to get rid of me, he cut my budget, and I was very definitely hamstrung.

So I think that the idea of an independent budget is something that this particular endeavor

we're talking about—the establishment of an OCA, whether it's in the Public Advocate's Office or elsewhere—should definitely be looked at. Such an endeavor needs an independent budget line that cannot be touched. I always say that's what the Public Advocate's Office should have. I'm not asking for \$20 million; I'm just saying that it needs the appropriate amount of money to function as it should function. Yes, of course, I would love to have the Child Advocate in the Office of Public Advocate.

Brian Lehrer: What about at the state level? Let me go to Rhoda Jacobs first, since you are the Assistant Speaker. Have you and Speaker Silver ever talked about this?

Assembly Member Jacobs: Let me start by saying that for ten or almost twelve years, I chaired the Assembly Social Services Committee. In shorthand, our jurisdiction was largely Medicaid and welfare, and welfare means children. By and large, everybody gives lip service to keeping families together, the sanctity of the family, how much we care about our children, but there was not a year that there was not a basic political and budgetary attack on exactly those children, by way of attempts to balance the budget at their expense. We're still seeing it. The current proposed budget does the same thing. I came here today with the idea of hiding behind Roger Green. The reason I say this is that Roger, on the state level, has been through the years an advocate for every kind of innovative and thoughtful proposal.

Have I spoken to the Speaker about this? No, but I think it is an issue, and the time has certainly come, and the bottom line should be that—Betsy hit it—you need a budget, you need a guaranteed budget, you need an independent budget. It was on my watch (holds up report *Too Much, Too Little, Too Late*) that the failed computer systems were put in and I always say "Who's got the contract?" No matter what happens, I say, "Who's got the contract?" and that was a big question with this. At the time, we got the state program up and going, we had terrible devastation in the city. Once the state people left, we had people, children falling out of the computer, falling out of the system,

getting lost, because the system was in such disarray that I remember people being cut off for months at a time. So my roundabout answer to your question about talking to the Speaker is no. But I'm sure that between Roger and myself, and other members, this is an idea whose time has come, even in a rotten fiscal year.

Brian Lehrer: Assemblyman Green, I'll let her hide behind you. Do you want to talk about this?

Assembly Member Green: Two months after I became Chair of the Committee on Children and Families, the Elisa Izquierdo case came forward, and I actually sponsored the legislation for Elisa's law. From there we turned to address some other issues of the child welfare system, and the federal government began conceptualizing a law called the ASFA law, The Adoption of Safe Families Act. It was at that point that we felt we needed to begin to look at the establishment of an independent Ombudsman, and we did in fact introduce a bill in the state legislature that would establish such an office with subpoena powers. That bill was also linked to some legislation that looked at a way to refinance the child welfare system in the state of New York. The bill we introduced did not only focus on the foster care system, but was supposed to look at the adoption system and the juvenile justice system, and was in fact modeled on the agency that had been established in the New York State Office of Mental Retardation and Developmental Disabilities.

The governor opposed it—absolutely opposed it, so what you have heard here earlier from other states is what we were also faced with. I'm sorry that I have to bear the bad news, but I don't think it's likely that in the current political climate such a bill would be enacted into law. I think that in New York we may be faced with some additional problems, problems that are in part related to race and class. When you talk about this silent issue in New York, part of the problem is that the systems that are supposed to provide protection for the development of children are systems that in the present are now predominantly occupied by our children of color, and as a result such systems tend to become marginalized. When we

introduced the bill for the Independent Ombudsman's Office for the Children and Family Services, we actually introduced it on a national holiday, Dr. King's birthday, because we thought it was a human rights issue. We introduced it also at the same time that we called for increased fees for 18B attorneys because we thought that that was also a human rights issue, that you couldn't have a system in which children and families weren't receiving adequate representation. It was a contradiction of certain fundamental civil rights and human rights.

And I think we also introduced this bill on Dr. King's birthday to send out a signal that we needed a broad coalition, a coalition of conscience across racial and ethnic lines, because these children have been forgotten. So obviously, just let me say again that in the current political climate, I think it's not likely that we can get this bill enacted into law, but given the energy that I've heard in this room today, if in fact we were again to organize a coalition of conscience to engage and confront the powers that be, I think that in time we could get this enacted into law.

Brian Lehrer: Could you talk a little more about the Ombudsman as it exists at the state level? Why is that not enough at the state level? Why do you need the Child Advocate?

Assembly Member Green: The problem is that there is an ombudsman's office in what used to be called the Division for Youth, which is the system that has oversight and custodial care for children who are in the juvenile justice system. This office is attached to the Office of Children and Family Services, which is run by the executive branch, and is historically underfunded and understaffed so they can't do the work they are supposed to do. We also put up a compromise bill for a Commission on Quality and Care for Children in Foster Care that had an advocacy office and again was supposed to review staffing ratios and to intervene in cases where there were problems within the foster care system, particularly in poverty care, and we put up \$500,000 in appropriations to run that office, and it hasn't been expended yet.

What I am saying is that that is why I

appreciate the fact that the organizers of this event really began this discussion to talk about the U.N. Convention on the Rights of the Child because I think this conference speaks to the main mission of that convention, which is a concept called “the principle of first call”—namely that governments have the responsibility to give children a first call regardless of whether interest rates are up or down, or whether there is a surplus economy or a deficit economy. Children should receive the first call from government, and what we have historically fought in Albany and sometimes in City Hall are governments that tend to marginalize the issues that directly affect children, and this tendency becomes even more pronounced, I’m sorry to say, when issues of race and class are present.

Brian Lehrer: Talk about oppressed minorities—Republicans in the New York State Assembly and the Democrats of the New York State Senate can definitely count as among the voiceless. But Senator Parker, do you want to talk about your relationship to this issue a little bit? [Laughter] Not that issue, the child welfare issue—especially as you are a relatively recent member of the Senate.

Senator Parker: First I want to thank Dr. Lenzer and Loretta Chin, and the folks of Brooklyn College, which is in my district, by the way, for their vision and their foresight in pulling this together, this critically important conference, and I’m honored to be here and in attendance among folks who are experts and I’m sitting here the whole time saying, “Why am I here?” I did some research. I prepared, you know, really deep detailed notes for this speech, and I lost them on the way in. But I’m glad that Roger Green found those notes and read them for me today.

Being fairly newly elected, I find myself agreeing with Assemblyman Green that we deal with a political climate in Albany that is in fact resistant to helping people, especially children. I guess that I’m new and stupid enough not to know that I shouldn’t attack the governor, but the governor, you know, has been our enemy in this matter for eight years. This is the man who zeroed out universal Pre-K last year. He also asked for a 50 percent cut from the Department

of Education and a 50 percent cut for SUNY and CUNY, tried to raise the tuition of CUNY and SUNY at the rate of 41 percent, and then not only cut the Tuition Assistance Plan (TAP) and opportunity programs but also created a scheme that would hold students’ TAP awards until after they graduate. So we’re not dealing with a governor who—forget the idea of compassion—even has a real sense of his own economic development plan. He brings in semi-conductor companies, and Simultech, and nanotechnology firms, and then proceeds to cut higher education. So where are we going to find workers for new companies, if we’re not educating them now? And improving the skills of the workers who are already here? We’re not in fact preparing children down the line for what they’re going to work at when the time comes.

Even more, implicit in the arguments about upstate/downstate is the assumption that the 1.1 million children in public schools in the city of New York are all Black and Latino, and so there is additional reason not to care. But let me say as I end that today represents a good start; it is the beginning of what we need to do. There needs to be a collaboration between the academy and legislators, between communities, organizations, nonprofits, concerned parents, and people of good conscience everywhere around the state. Everything everyone here has said about the Office of the Child Advocate, I support. I would certainly work with my colleagues in the Senate, in both parties, to make sure that we can pass something like this, but it will get done only if we really rise from the bottom up and put pressure on both the governor and on our colleagues around the state, because this is not a New York City issue, this is a statewide issue. It would affect children and families around the state of New York, and again I look forward to joining all of you to engage in this project.

Brian Lehrer: You found the other set of notes. That was interesting. However, Rhoda Jacobs, Senator Parker inadvertently raises one of the obstacles, even for people who support the idea of the Child Advocate: that there are so many demands on the budget. In these fiscal times, in a year when the CFE question is so front and center in terms of what to spend on children, could this go forward at the same time

and is it even the right place to put energy at this particular time?

Assembly Member Jacobs: Let me explain that. I think what you're hearing from the Assembly is that the answer doesn't lie solely in the establishment of an Ombudsman's Office, but that everything that affects children, whether it's budgetary or policy, has to be addressed. Establishing this office is not enough unless it includes in its purpose the coordination of efforts in all the other related areas. We always bemoan the fact that it's a bad budget year. This year, it really is because we're in the fine company of about forty-nine other states. We come down to fiscal policy, where we have to decide where we're going to take our resources from and where we are going to prioritize in putting those same resources. No matter whether it's a year of fiscal constraint or not, it comes out to the same thing: Where are we going to get the money? That means, what are our tax policies going to be? Are we going to offer a knee-jerk response and say "tax-cuts!" when tax cuts by and large benefit those who don't need them and do not have to put their tax-cut money back into the economy, which is what lower-income people do have to do? Or are we going to develop and adhere to a sounder, more equitable fiscal policy in terms of where we get our resources? And then, where are we going to prioritize? We have this upstate/downstate conflict that often comes down to this: Where are we going to put our resources? In this connection, keep in mind, by the way, that one of the major economic developments of upstate happens to be prisons, and most of the people up there come from down here. We could say, well, we could find the money in a year like this if we did something about reforming the Rockefeller Drug Laws, which, by the way, probably have the greatest effect on the children of New York City.

Brian Lehrer: Wouldn't that also cost money though because the incarceration would be replaced with more treatment and so on?

Assembly Member Jacobs: Any one of us can tell you, if anybody takes a look at the numbers, that the prevention modalities are much cheaper.

Assembly Member Green: I think that is right. It's a question of priorities and this is what we have fought for so long in Albany. I sometimes even have some strong criticisms of my own party in terms of positions that are taken on issues related to social justice. There are a number of things that we could do to provide additional services to protect children, to establish this office, but the only way that it will come about is if the voices of the people here at this meeting are heard. That is the only way it will occur. I would like to say that there is some hope here too. One of the things that I've found as Chair of the Committee on Children and Families is that this is one of the areas where you can arrive at bipartisan agreement and a broad-based coalition. Republicans and Democrats would stop playing "gotcha" politics if, in fact, they were confronted and engaged by a broad-based coalition. We have had some significant victories. I think we can win this one. But, as our colleagues from other states have articulated, "you've got to put the face of children out there and spell out this case in a way that resonates with the general public. Otherwise, we'll continue with what is basically a conspiracy of silence when it comes to the kinds of reforms we need to protect and defend the children, not only in the child welfare system, but in the juvenile justice system, the mental health systems, and other systems throughout the state.

Brian Lehrer: Council Member Clarke, I wasn't here but I heard that Deputy Mayor Dennis Walcott, at one of the sessions this morning, embraced the idea of a Child Advocate at the New York City level. So if I got that right, it seems to me that there's a possibility for a political critical mass in New York City—that he in fact speaks for the mayor and that if the City Council would be interested in something like this, perhaps the time is right at the city level.

Council Member Clarke: That's wonderful to hear because I just left a budget hearing on health where certainly one would not get that impression based on the fact that the city is prepared to cut money that targets infant mortality. When you look at the budgetary priorities of this administration, they are not family- and children-friendly. I would have

hoped that there would have been at least some pressure put on the deputy mayor about whether in fact he is in favor of this office and would he be willing to allocate resources to it because we are all well acquainted with unfunded mandates and the havoc wreaked when one says one thing and does something else.

I have not seen anything in this year's budget that indicates that this is a priority of the administration. Perhaps, again, it's an issue whose time has come and perhaps our deputy mayor will take this invitation back to the mayor and make it happen. I know that I have a number of colleagues who would be very interested in helping to make this a reality, but my experience has been that we have not truly invested in securing the futures of our children, not by any stretch of the imagination.

Brian Lehrer: I do want to open this up to people from the audience. Professor Lenzer?

Dr. Lenzer: This morning, Marcia Robinson Lowry spoke, among other things, about the costliness of the child welfare system, both on the state and on the city level, and in addition to that she talked about the nonexistence of any systems of accountability. In other words, if you talk about budgetary problems—even if we set aside for the moment the rights of children totally and focus only on the budgetary responsibilities of OCFS and ACS alone—my question to the legislators is this: What systems of accountability do we have in the city and the state of New York as far as ACS is concerned or as far as OCFS is concerned? I have not been able to find anything. There are some citizens' committees that are very well meaning, but they have no authority to demand accountability and transparency.

Public Advocate Gotbaum: From my perspective, there is no oversight over ACS, and although many advocates and organizations try very hard, there is also no subpoena power. It's very hard to get records. It's very hard to make unannounced visits. In fact, I have found that since I've been in the office we have had to work very hard to establish a positive relationship to try to get information and try to be helpful. So I believe there is no oversight and

it's not formally mandated that we are supposed to have oversight insofar as we look to the state to send down accounts of children's statistics for us to analyze. We make all these suggestions, but there is no way of enforcing them. So, to go back to what I said earlier, there needs to be more oversight. There must be more accountability, and accountability comes only with oversight.

Council Member Clarke: There is a vehicle within the City Council. We do have oversight and subpoena powers. I think the challenge that we've been facing in the City Council is that, while we do have these powers, there often is not the cooperation that is required to make them effective. In addition, the Administration for Children's Services and the Human Resources Administration are huge bureaucracies that have vestiges of some of the worst practices that could ever exist. People tinker at the edges of dealing with them, and because they tinker at the edges, not much is changed.

Our challenge is to reinvent those entities. They are often driven by the fact that they rely so heavily on federal mandates and federal funding that they are simply trying to meet those mandates and that funding without examining the implications of what those matching dollars mean in terms of innovation and the execution of their core mission. So they end up simply pursuing the dollars without making sure that those dollars are effective. There are no performance measures. We're dealing with a very antiquated system.

Assembly Member Green: When the governor first came into office, he proposed a bill that was in fact enacted into law. It created a block grant for the child welfare system, for Children and Family Services. For about three to four years, we were the only state in the union that had a block grant for Children and Family Services.

I know that some of the people in this room may remember this. It created complete havoc in the child welfare system, the child protective systems, the adoption/foster care system, and family preservation. So finally, again as a result of the efforts of a coalition, there was a major mobilization to repeal the

block grant and as a result of that, two years ago, as part of a reform of the financing for Children and Family Services, we put requirements for measurements and outcomes into the budget. Again, even though we could stipulate this formulation, there is no assurance that it's going to be implemented.

This is again important for us this year, after the Elisa Izquierdo incident. One of the things that we know, based on empirical evidence, is that close to 70 percent of the children who are placed in foster care or removed from home come from homes whose family members include substance abusers. Consequently, when the Welfare Reform Act came into existence, thanks to Rhoda, because she was Chair of Social Services at the time, we decided to take a huge chunk of Temporary Assistance for Needy Families and insert those resources into programs that would be directed toward families whose members were substance abusers and who may also have children. I worked with Judge Kaye to create what's called the Drug-Court System, which has been enormously successful. We created programs for intensive case management so that people could go for recovery and then perhaps reconnect with their families. It was called Preventive Services. And a number of these groups have in fact done performance-based assessments and outcomes evaluations, really exemplary instances of best practices in the field. So this year, what we're trying to do is again to incorporate language for performance-based analysis and best practices into the legislation for the budget that we're currently negotiating. I'm hopeful that we're going to get this done.

But I'm going to say it again: We've been most successful when we've had the support of a broad-based coalition advocating those issues. In the absence of that, we have not been that successful.

Child Advocate D'Ambra: I've had the opportunity to travel to other states and work with other legislators. Money has always been an issue. There is never going to be a time when you just have an extra pot of money that you can direct toward creating a Child Advocate Office. This means that there really has to be an explicitly declared priority. You might even have to dedicate a percentage of your child

welfare budget to create this office.

I guess what really struck me at the beginning of today was the welcome spoken by a student from Brooklyn College. She asked the question of all of us here today, "If not me, who? If not now, when?" And that would also be my question to all of you.

Senator Parker: Of course money is always a problem. I think that's why we have always said that this is a political matter. Part of what we need all of you to do is again to work in partnerships so that we can create the political environment in which this does become a priority. After all, a budget is not only a document of numbers. It's also a document of values. When you look at budgets you see what people want to do and what they don't want to do. It's only by putting pressure on the political system that values are going to change. Sitting here today you have five elected officials who believe that we are the ones and that the time is now; but we also have to recognize that we need not only each other, but also our colleagues in city government, our colleagues in the state legislature, our colleagues in the academy and in nonprofit organizations—we need all of us to really put some pressure on the system. I've learned that it is the squeaky wheel that gets the grease. So we've demonstrated that there is a crying need for this initiative and that there will be consequences and repercussions if nothing happens. We can get a bill introduced, but getting it passed is going to be a matter of our ability to organize from the ground up.

Brian Lehrer: Did you want to add something to the Senator's statement?

Assemblyman Green: One of the things you are hearing from my colleagues, both in city government and at the state legislature, is that when it comes to the issue of the rights of the child, when it comes to providing protection for children, what is needed is a perspective that recognizes that the most important social organization for the protection of the rights of the child is the family. If we were to have a Child Ombudsman's office that didn't recognize that and systems that don't recognize that, we would be hustling backward.

What we are also concerned about is the relationship between an Ombudsman's office and institutional systems that should in fact uplift and protect families. Families are the first line of defense for children and should be treated as such. As an African-American, I am intimately aware of ongoing struggles related to the social history of tribal slavery and of how our children were separated from their families. We are deeply and naturally concerned about systems that take children out of homes. And we are very sensitive to the interconnection between other social and historical issues and the dissolution of family structure.

We have recently been reminded that 50 percent of all African-American males in New York City are unemployed. How do you preserve families if 50 percent of the men of a very large group in the city are unemployed? There's a neighborhood in my district—I was going to call the Public Advocate about this—the Fort Greene houses, where the unemployment rate is 78 percent. 68 percent in the Farragut houses, and this figure can probably be replicated in other public housing areas, not only throughout the city, but throughout the country. And so we're faced not only with the problem of trying to create procedural law and protocols, for I do think that we need offices like an independent Ombudsman to maintain vigilance over the system. But how do we connect this concern with other issues that we must address if in fact we're going to have a human rights agenda for children and families? Dr. King believed that full employment was a human rights issue also. And when you look again at the dissolution of our families and the despair that drives people into substance abuse, these matters are in part related to the fact that people don't have meaningful lives, meaningful employment, with living wages.

Council Member Clarke: I couldn't concur more. When we talk about the preservation of families, we are talking about the protection of children, and vice versa. We cannot separate the two. People will start saying "Well, where is the money?" The money exists. Right now, it is simply allocated to the wrong priorities.

When you look at every agency or system that has an influence on a family, you see that many are doing things that contradict the efforts

of others. I can look at what's happening in Family Court, and ACS's role there, then I can compare it with what is happening in the Department of Education in terms of putting police officers in schools. And then I can compare both of these with the various entities that we use to try to keep order within our society. If we took a small piece of each of those to create something like an independent Office of the Child Advocate, those entities would continue to run as agencies and we would have the allocation that is required. But we have to have the political will to do that. The resources already exist. We're not talking about finding a new funding stream here. We're talking about getting rid of a dysfunctional system, which is no longer relevant to today's society: we are talking about taking existing resources and applying them to a new practice and a new paradigm for the development of children and families. That's simply what we are talking about. [Applause]

Brian Lehrer: Well, with that we've come to the end of our time. Dr. Lenzer, since this has been your baby and you've done such a wonderful job of putting it together, do you want to say a word to close the conference?

Dr. Lenzer: First of all, I would like to thank Mr. Lehrer for agreeing to moderate this afternoon's panel. I'd like to thank all our speakers and I would like to thank the audience for coming and participating in a long and, I hope for you, a very interesting day. To wind up here, I would just like to ask you if any of you are interested in participating in further initiatives. Many people here today expressed such an interest. Please be in touch. There is also a sheet in your folder for signing up to be in touch. I think this has not been a conference simply to elevate the spirits for a single day, but actually as I said this morning, its purpose has been to move from rhetoric to action. So again, many thanks for coming and I would like to tell you that we have a small reception across the street in the beautiful old Hotel Algonquin and you are all invited. I think we have one more speaker.

Loretta Chin: We want to have a proper

closing. Irma Kramer will close off this wonderful day.

Irma Kramer: Good afternoon everyone. I thank you all for participating in this very long but beautiful and inspirational day. I really don't want to let this occasion pass without recognition of the untiring efforts of Dr. Gertrud Lenzer in putting together this symposium. [Applause]

Dr. Lenzer has developed the Children's Studies Program at Brooklyn College—the first interdisciplinary program of its kind in the United States.

Her mission in this connection began in 1985, with the introduction of the first course in the Sociology of Children, and moved on from there to the creation of the Children's Studies Center and ultimately to this symposium. She has shown sensitivity, perseverance, and dedication toward increasing the knowledge of the subject and understanding and improving the human rights of children in the community and around the world. Her forward-thinking approach in this area of the human rights of children will only lead us to greater awareness, understanding, and expansion of these rights.

All of us owe a great deal to Dr. Lenzer. She has, as a horticulturist would do, tilled the soil, planted the seeds, watered, weeded, not slept, and almost single-handedly brought this symposium to fruition. As a token of recognition, please accept the fruits of our garden and this is just the first of the crop.

Dr. Lenzer: I promise you that I did not plan this part of the day.

And I have one postscript and it is directed to Assemblyman Green and to Councilwoman Clarke. It is that I do not believe that there is conflict when it comes to the rights of children, as between children and families. The U.N. Convention on the Rights of the Child states unequivocally that families have the first responsibility for children and that only to the extent that families cannot take care of their children is it the state's responsibility to assist these families, so that they can discharge their responsibilities, and only in the event and to the extent that this is not possible should the state

intervene and assume care of the children. So there is in principle no conflict at all between the needs of the family and the needs of children; on the contrary, the Convention on the Rights of the Child stresses the unbreakable links between them. So I hope you are to move forward in the direction of promoting the rights and interests of children and their families. We also hope that we moved forward in the direction of exploring the establishment of an independent New York State Child Advocate's Office. As we heard from Kevin Ryan, the Child Advocate of the state of New Jersey, it has only taken \$2 million to begin employing an entire staff of mandated Child Advocates in New Jersey. We have heard from our elected officials today that we need to find the political will to create such an institution of oversight and accountability in New York State in order to make certain that the rights and interests of our children and their families are well served.

Appendix 1: Biographical Information

The Honorable Yvette D. Clarke, Chair, Fire and Criminal Justice Services Committee, New York City Council

YVETTE D. CLARKE was elected to the New York City Council in 2001 as the representative for the 40th District in Brooklyn. She succeeded her pioneering mother, the former City Councilmember Una S. T. Clarke. Born and raised in Brooklyn, Ms. Clarke attended public schools in the borough, which gave her the opportunity to develop lasting friendships with other children from Central Brooklyn's ethnically diverse neighborhoods and communities.

She has emerged as a voice of calm reason and a true consensus leader at the City Council. Councilmember Clarke has distinguished herself as a strong negotiator who always seeks the interests of her district and its residents. She has also stood up against practices she believes are unfair, that unjustly target disadvantaged communities across the city, and was one of the most vocal opponents of the closure of firehouses, which she felt placed at-risk communities in jeopardy.

A champion of women's rights who favors involving youths in the decision-making process, Ms. Clarke has instituted an HIV/AIDS Task Force in her district that focuses on combating the negative impact of this disease among residents. Recognizing other pressing problems in her district, she has also put in place a Sanitation Task Force and a Youth Task Force, and she has sought to involve the clergy in all her efforts at community empowerment by organizing them into an Ad Hoc Clergy Committee.

Councilmember Clarke emerged from her public school days a popular honor student, earning a scholarship to Oberlin College in Ohio. Bright, articulate, and hard-working, Ms. Clarke soon won a Congressional internship in 1983 while still attending college. Before being elected to the 40th City Council District in Brooklyn, Ms. Clarke was Director of Business Development for the Bronx Overall Economic

Development Corporation. As the first director of the Bronx portion of the New York City Empowerment Zone, she was on the front line of the rebuilding process, especially in the South Bronx.

Ms. Clarke brings her formidable organizational, managerial, and all-round legislative and business skills to the job. She has a consultative but firm and decisive leadership style.

The Honorable Michael A. Corriero, Justice, New York State Supreme Court

MICHAEL A. CORRIERO was appointed to the Court of Claims in June 1990. Since 1992, he has presided over Manhattan's Youth Part, a court set aside within the adult court system to deal exclusively with the cases of thirteen-, fourteen-, and fifteen-year-olds who are charged with the most serious and violent crimes.

He was previously appointed to New York State Supreme Court (1989—1990) and also served as a judge of the Criminal Court of the City of New York (1980—1989). He lectured on criminal justice as an Adjunct Professor at Pace University (1976—1994) and was an Assistant District Attorney for New York County (1969—1973). He subsequently specialized as a private practitioner in all phases of criminal law (1973—1980). Judge Corriero was also Assistant General Counsel to the Society of European Songwriters, Authors, and Composers, a Legislative Assistant, and an Associate at Schiffmacher, Rochford, and Cullen.

His legal writings include "The Involvement and Protection of Children in Truth and Justice - Seeking Process: The Special Court for Sierra Leone," *The New York Law School Journal of Human Rights* (Spring 2003 Edition); "South African Paper-Proposals for a Youth Justice Act," *NYSBA Crim. Just. J.* (Spring 1999 Edition); "Sentencing Children Tried and Convicted as Adults," *NYSBA Crim. Just. J.* (Spring 1999 Edition); "The Youth Part and Juvenile Justice," *N.Y.L.J.* (Feb. 4, 1997, at 1);

"Youth Parts: Constructive Response to the Challenge of Youth Crime," *N.Y.L.J.* (Oct. 26, 1990, at 1); and "A Fresh Look at the Fashionable Fifth," *3 King's County Crim. Bar Assoc. J.* (June 1987).

Judge Corriero was Chairperson of the Committee on Juvenile Justice, Association of the Bar of the City of New York State Bar Association; Committee on Children and the Law; a member of the American Bar Association's Criminal Justice Section; a trustee of Big Brothers, Big Sisters of New York; a member of the Advisory Committee of Citizens for Children; a member of the Professional Committee of ELEM (Youth at Risk in Israel); and a board member of Transfiguration Grammar School Education Association.

Judge Corriero is the recipient of numerous honors and awards, including the Howard A. Levine Award for Outstanding Work in the area of children and the law (New York State Bar Association, 1999); Livingston Hall Juvenile Justice Award (American Bar Association, 1997); Outstanding Service on Behalf of Youth Award (ELEM, 1996); Conrad B. Mattox, Jr., Commonwealth Debate Winner (University of Richmond, 1996); Charles A. Rapallo Award (Colombian Lawyers Association, 1994).

He delivered presentations on juvenile justice issues at institutions such as Tel Aviv University (ELEM, 1998) and the MacArthur Foundation in Washington, D.C. (1997). In November 1997, the United Nations invited Judge Corriero to join a team of international juvenile justice experts to advise South African law officials on the creation of a juvenile justice system.

In April 2002, Judge Corriero traveled to Sierra Leone, Africa, on a mission sponsored by the Ford Foundation and the Human Rights Committee of the Association of the Bar. The purpose of the mission was to assist the Sierra Leone Bar Association in rebuilding its capacity to effectively function after a ten-year civil war. One of the significant issues confronting the association and the Sierra Leone government was the reintegration into society of the numerous child soldiers who fought in the war.

In October 2002, Judge Corriero addressed the International Association of

Youth and Family Judges at their sixteenth World Congress in Melbourne, Australia.

Judge Corriero has testified at state and city legislative hearings on juvenile justice issues, delivered numerous addresses, and participated in many state and national panel discussions.

Judge Corriero is an alumnus of St. John's University School of Law (1967) and St. John's University (1964).

Laureen D'Ambra, Esq., Child Advocate, Office of the Child Advocate, State of Rhode Island

LAUREEN D'AMBRA has been practicing law in the state of Rhode Island since 1980. She has extensive experience in federal and state courts, handling child-abuse cases, termination-of-parental-rights matters, child-custody issues, juvenile and constitutional law issues, and class-action litigation on behalf of children.

Since 1989, Ms. D'Ambra has been the Child Advocate for the state of Rhode Island. Her office has been recognized as a model ombudsman office by the ABA Center on Child and the Law. In 1988, she was appellate counsel for the Department of Children, Youth and Families and served as their legal counsel from 1980 to 1988. In 1992, she was named one of twenty young lawyers in the country making a difference by *Barrister Magazine*, a publication of the American Bar Association, Young Lawyers Division. Since 1995, Ms. D'Ambra has been an adjunct professor in the master program of Rhode Island College of Social Work teaching Social Work and the Law. She has made presentations at national conferences throughout the country and authored numerous articles on legal topics affecting children and families. She earned undergraduate and J.D. degrees from Suffolk University.

Howard Davidson, J.D., Director, American Bar Association Center on Children and the Law, Washington, D.C.

HOWARD DAVIDSON, J.D., has for almost thirty years been involved with the legal improvement of government child protection programs. He has directed, for the American

Bar Association, the Washington, D.C.—based ABA Center on Children and the Law since its establishment in 1978.

Davidson served as both Chair and Vice-Chair of the United States Advisory Board on Child Abuse and Neglect. He is a founding board member of the National Center for Missing and Exploited Children. His many books and published writings cover a wide range of legal issues affecting children in the court system, including *Legal Rights of Children*, *Children's Rights in America*, *Establishing Ombudsman Programs for Children and Youth*, *The Impact of Domestic Violence on Children*, and legal commentaries for the American Psychiatric Press book *Family Violence: A Clinical and Legal Guide*.

His most recently published articles include “The Legal Aspects of Corporal Punishment in the Home”; a chapter of the seminal book *The Battered Child*, entitled “The Courts and Child Maltreatment”; an analysis of the Convention on the Rights of the Child provisions addressing child abuse and neglect; “Child Protection Policy and Practice at Century’s End”, for the Millennium Issue of the *Family Law Quarterly*; and a chapter entitled “What Will It Take to Bring Child-Focused Law, Policy, and Research into the 21st Century” for the book *Children, Social Science, and the Law* (2002).

The center that Davidson directs works on improving court systems serving children and on enhancing legal responses to child abuse and neglect, child sexual exploitation, foster care, adoption, legal representation of children, child and adolescent health barriers, and other child welfare-related concerns. It engages in extensive research, program consultation, and legal education activity. It produces the monthly *ABA Child Law Practice* periodical, publishes the *Child CourtWorks* newsletter on judicial reforms in child protection cases, and co-edits the quarterly *Children’s Legal Rights Journal*. Its major activities include operation of the federally supported National Child welfare Resource Center on Legal and Judicial Issues and a program on adolescent health law issues as part of a federal “Partners in Program Planning for Adolescent Health” initiative.

A 1970 graduate of the Boston College Law School, Davidson spent five years during

the 1970s exclusively representing children while an attorney with Greater Boston Legal Services. He is a resident of Silver Spring, Maryland, and the father of a thirteen-year-old adopted son and two grown daughters.

**Monica Drinane, Esq., Attorney-in-Charge,
Juvenile Rights Division, Legal Aid Society,
New York**

MONICA DRINANE, ESQ., was appointed the Attorney-in-Charge of the Juvenile Rights Division (JRD) of the Legal Aid Society on July 1, 1998. She began her Legal Aid career in 1981 in the Criminal Appeals Bureau and transferred to JRD four years later. She was the Deputy Attorney-in-Charge of JRD from September of 1997 until July 1998. Before that, she served as Attorney-in-Charge of the Division's Manhattan and Bronx offices and as an Assistant Attorney-in-Charge of the Brooklyn office.

Monica Drinane is a graduate of NYU Law School, where she was a Root-Tilden Scholar. She worked as a law clerk at Greater Boston Legal Services and at MFY Legal Services. She has been active in pro bono work, assisting in a Family Community Negotiations Project at Columbia's Business School, training mental health professionals in child protective proceedings, and working with the NYC Policy Cadet Corps in its Community Partnership. She served on the Judiciary Committee of the Association of the Bar of the City of New York and is now Chair of the Family Court and Family Law Committee.

**Mishi Faruquee, Director, Juvenile Justice
Project, Correctional Association of
New York**

MISHI FARUQUEE is the director of the Juvenile Justice Project at the Correctional Association of New York. She has worked at the Correctional Association for almost six years. She has also worked at the DC Prisoners Legal Services Project and at the Fifth Avenue Committee, a community-development organization in Brooklyn. She holds a master’s degree in urban policy from the New School for Social Research and a master’s degree in modern history from Oxford

University. She completed her undergraduate studies at Swarthmore College.

**Karen J. Freedman, Esq., Executive Director,
Lawyers for Children, New York**

KAREN J. FREEDMAN is a founder and executive director of Lawyers for Children, Inc., New York (February 1984 to present). She oversees and supervises a staff of thirty-two attorneys and social workers who provide free legal and social-work advocacy on behalf of children before the courts in cases of abuse, neglect, termination of parental rights, foster care, and custody proceedings. Ms. Freedman also develops impact litigation, community outreach, and legislative education projects, and organizes and directs special projects for sexually abused children in foster care and GLBTQ youth in foster care when a parent has been the victim of domestic violence.

From October 1981 to March 1983, Ms. Freedman served as a staff attorney for the Legal Aid Society, Juvenile Rights Division, New York, New York. Her previous experience includes working for the Law Circuit, the N.A.A.C.P. Legal Defense and Education Fund, Inc., New York, and the Oregon Legal Services Corporation, Portland, Oregon.

Ms. Freedman is also a member of several advisory boards, including Family Advocacy Center, Kathryn A. McDonald Education Project, Family Court Advisory Council, and New York University School of Law. She got her J.D. from New York University School of Law in June 1980 and her B.A. from Wesleyan University, Middletown, Connecticut.

**The Honorable Betsy Gotbaum, Public
Advocate, City of New York**

BETSY GOTBAUM has had a distinguished career in the public and private sectors over the past three decades. She has worked as advisor to three mayors; financial executive developing capital for start-up entrepreneurial firms; commissioner of the Department of Parks & Recreation; and president of the prestigious New-York Historical Society. In all her jobs, Betsy has been known for using nontraditional

methods to turn troubled institutions into success stories.

To the role of Public Advocate for the City of New York, Betsy's first elective office, she brings her success in all major sectors of the New York City working world. Through her extensive experience in management and through collaboration with nonprofits and business and government agencies, she is reshaping the image of the office into the primary place New Yorkers can turn with problems related to government.

Since Betsy's inauguration as Public Advocate in January 2002, her leadership has paved the way for municipal reform in education, school construction, prevention of crime against women, and the fight against hunger. Additionally, each week she helps solve hundreds of city-service complaints made by residents and business owners.

A native New Yorker, Betsy attended Barnard College and received her B.A. from George Washington University in 1961.

After graduation, she moved to Recife, Brazil, where she taught high school English and mastered Spanish and Portuguese. She returned to New York several years later and earned a Master's Degree in Education at Columbia University's Teacher's College. Betsy began her career in government serving Mayor John Lindsay as District Manager for the Chelsea Clinton Neighborhood, Assistant for Women's Issues, and Assistant for Education. She worked closely with Lindsay on budgetary, legislative, and political issues. Betsy continued her work in education with Mayor Abraham Beame, managing a training program for school security officers.

In the late 1970s, Betsy was recruited to run the New York Police Foundation. At the Police Foundation, she developed an innovative city-wide health screening and work-site hypertension program with the NYPD and facilitated an intensive training program for 911 operators. She also secured the safety of police officers through the purchase of life-saving bullet-proof vests for every officer in the city.

With her experience from the Police Foundation, Betsy went on to run the National Alliance against Violence, where she created a program with the NYPD and other police

departments across the country to protect neighborhoods and schools from handgun violence.

In 1990, newly elected Mayor David Dinkins appointed Betsy the first female New York City Commissioner of Parks & Recreation. There she ran recreational programs and special events that attracted millions to city parks; supervised maintenance of 26,000 acres of parkland throughout the five boroughs; and managed swimming pools, playgrounds, tennis courts, and other recreational facilities.

At the beginning of Betsy's tenure at Parks, her budget was cut radically. She responded by doing more with less and adopting business-sector management techniques to raise efficiency and morale of park workers. She expanded her workforce through an innovative welfare-to-work training program. Betsy also identified new sources of revenue to close the budget gap. She established the City Parks Foundation, which brought in millions of dollars to pay for park restoration, maintenance, and recreation programs. In the summer of 1991, the foundation kept city pools open when a shortage of funding threatened to close them for the season. A \$6.5 million grant from the Lila Acheson Wallace/Reader's Digest Fund supported five years of intensive work to restore woodlands in all five boroughs of the city.

Betsy believed it was her responsibility to represent all her constituencies. During her tenure at Parks, she created a toll-free Parks hotline. She also successfully argued for a change in city policy to allow the Gay Men's Health Crisis (GMHC) and other organizations the use of Central Park for fund-raising events. That action meant more participants than ever before could participate in GMHC's AIDS Walk, resulting in a significant increase in proceeds for people with HIV/AIDS.

In June 1994, Betsy Gotbaum became president of the New-York Historical Society, New York's oldest museum and one of the country's most extensive research libraries. When she took over, the society was closed to the public and on the verge of bankruptcy after years of mismanagement. Over the next few years, Betsy rescued the institution from financial collapse and reopened its doors to New Yorkers. She renovated the entire landmark building and reorganized the institution,

recalling its collections from warehouses. In November 2000, she opened the innovative Henry Luce III Center for the Study of American Culture. She also instituted exhibitions, and educational and public programs for a diverse and ever-increasing audience, and left the society with a \$33 million endowment. Betsy resigned from the Historical Society to run for Public Advocate in 2001.

Throughout her career, Betsy has shown commitment to community service. She has served on the boards of innumerable not-for-profit organizations, including the Community Service Society; the Valley Recreation and Youth Development Program in Harlem, Goodwill Industries, and the Municipal Arts Society. Her best-known talent is her ability to raise funds to support the projects and organizations that are meaningful to her. After September 11, Betsy raised \$1 million for volunteer ambulance companies whose equipment was destroyed when the World Trade Center collapsed. She also secured funding to purchase bullet-proof vests for Israeli EMT workers.

She is married to labor leader Victor Gotbaum, and has one daughter, four stepchildren, and two grandsons.

Jenelle Grant-Primo Brooklyn College Student

JENELLE GRANT-PRIMO is a lower senior at Brooklyn College, of the City University of New York (CUNY), where her major is Psychology with a minor in Children's Studies.

For seven years prior to her academic career at Brooklyn College, she was a teacher. First for two years in her native country of Guyana, SA and for five years in two parochial schools in Brooklyn.

Upon completion of her undergraduate degree, Jenelle hopes to continue her education at the graduate level in the CUNY system in the field of school psychology. The mother of twenty-month-old Jasmine, Jenelle is also a youth worker at her local church.

**The Honorable Roger L. Green, Chair,
Committee on Children and Families, New
York State Assembly**

ROGER L. GREEN, a Democrat, represents the 57th Assembly District—downtown Brooklyn, which includes parts of Fort Greene, Clinton Hill, Prospect Heights, Flatbush, parts of Park Slope and Bedford-Stuyvesant.

Mr. Green was born June 23, 1949, in Brooklyn. He was educated in the New York City public school system and received an athletic scholarship to Wilberforce University in Ohio. Mr. Green later attended Southern Illinois University, where he obtained his Bachelor of Science degree in 1973.

After graduation and his return to Brooklyn in 1973, he became involved in local politics. He joined several civil rights groups and community organizations concerned with the elimination of racism and social injustice. Eventually he was elected to the Assembly, taking office on January 15, 1981, after a historic political race that required him to win an unprecedented three primary runoffs.

Assemblyman Green is currently the Chairman of the New York State Black, Puerto Rican and Hispanic Legislative Caucus; Chairman of the New York State Standing Committee on Children and Families; Co-Chair of the Joint Budget Conference Sub-Committee on Human Services; and a committee member on Banks, Codes, Labor, and Ways and Means.

Since being sworn into office in 1981, Assemblyman Green has been responsible for authoring and co-sponsoring numerous laws that are intended to benefit the people of the state of New York and children and youth in particular.

During his freshman year, he co-authored the enactment of the Supplemental Tuition Assistance Program. This legislation, which is known as STAP, provides \$64 million of financial assistance to poor and working-class students attending undergraduate colleges in New York State.

Assemblyman Green is also the co-author of the New York State Prenatal Care legislation that was signed into law by Governor Mario Cuomo in 1986. This legislation was designed to prevent the tragic rise in infant deaths in New York State by providing comprehensive

preventive health services to expectant mothers who are uninsured. As a result of Assemblyman Green's concern for troubled and at-risk youth, he served as the prime sponsor and author of the legislation that created a children's psychiatric hospital for the borough of Brooklyn.

In 1987, Assemblyman Green authored, and had signed into law, the creation of the New York State Martin Luther King Institute on Nonviolence. This state-chartered institute has responsibility for developing programs that will promote the work of Dr. Martin Luther King, Jr., the study of civil rights, social history, and the study and practice of nonviolence. Since its creation, the institute has trained more than 1,000 high school and college-age students in the study and practice of nonviolent social change through its Ella Baker Academy. It has also assisted Assemblyman Green in holding a series of hearings entitled "Violence as a Public Health Issue," which focused public attention on the culture of violence that has hit hardest the children of New York State.

Assemblyman Green, who has been called an architect for economic and social change, has also been responsible for creating a number of budget amendments that have served as a catalyst for the creation of community-based institutions that now serve the people of Central Brooklyn. Among the institutions that have been originated under Assemblyman Green's leadership are the following:

- The Latimer-Woods Economic Development Association. This institution was originated by Assemblyman Green and provides training and economic-development opportunities in high technology and future growth industries for the youth of Central Brooklyn. It is the chief sponsor of a new business incubator located in the Metro-Tech Center of Downtown Brooklyn, which houses offices for minority businesses that are seeking growth in high-tech industries.
- The Jackie Robinson Center for Physical Culture. This comprehensive youth organization is located in eighteen public schools and serves more than 4,000 students in Central Brooklyn. It offers a wide range of services, including education enrichment, athletics, recreation, performing arts, and violence

prevention. The Jackie Robinson Center for Physical Culture has as its main mission providing opportunities for the youth of Central Brooklyn that will prevent delinquency and encourage socially responsible human growth.

- The Center for Law and Social Justice. This advocacy group is affiliated with Medgar Evers College. It was created so that the students of Medgar Evers College and the residents of Central Brooklyn could address topical issues concerning the ongoing struggle for social and economic justice.

During the fall of 1994, Assemblyman Green achieved another major milestone when the New York City public school system opened up a new public school that had been proposed and designed by his office. The new school is called the Benjamin Banneker Academy for Community Development. As a reflection of Assemblyman Green's vision for educational reform, this school offers students quality education in math, science, technology, and urban culture. It also exposes students to the career themes of architecture, engineering, medicine, and mass communications. As of 2001, 98.7 percent of the students had passed the Math Science regents and 99.2 percent had passed the English Language Regents.

Assemblyman Green is married to Coraminita Mahr and is the father of two children, a son, Khalid, and a daughter, Imani. He spends his spare time writing poetry and writing essays that explore, among other things, the commonalities between diverse people and cultures and the physical, mental and spiritual well-being of the world's children.

Andre Holder, Youth Organizer, Juvenile Justice Project, Correctional Association of New York

ANDRE HOLDER, age 21, has been organizing for three-and-a-half years. He is currently the Youth Organizer for the Juvenile Justice Project at the Correctional Association of New York.

Elisa Hyman, Esq., Deputy Director, Advocates for Children, Inc., New York

ELISA HYMAN, Esq., is the Deputy Director of Advocates for Children (AFC) of New York, a not-for-profit organization with the mission of improving access to quality public education in New York City. AFC focuses on children who are most at risk of school failure due to discrimination based on disability, poverty, immigration status, involvement in the juvenile justice and foster care systems, and exposure to family violence.

Ms. Hyman handles impact litigation in state and federal courts, supervises AFC's attorneys, represents parents and children in the full range of school-related legal matters in administrative and court proceedings, conducts education policy analysis, works on program development and fund-raising, and trains professionals on education law. Prior to coming to AFC, she was the Assistant General Counsel for Safe Horizon (1995 to 1998) and an associate in the litigation department of White & Case (1991 to 1995).

The Honorable Rhoda S. Jacobs, Assistant Speaker, New York State Assembly

RHODA S. JACOBS, Democrat of Flatbush, Brooklyn, was first elected to the Assembly in 1978. After having served as Chair of the Social Services Committee for twelve years, she was appointed head of the Majority Program Committee, named Assistant Speaker Pro Tempore in 2001, and in 2003 appointed by the Speaker to serve in the prestigious role of Assistant Speaker.

Throughout her tenure in office, Ms. Jacobs has been at the forefront of significant issues in health care, Medicaid, welfare reform, job development, consumer education, and protection in banking, insurance, and public utilities.

Her cutting-edge legislation has served as a national model for preventive measures in women's and children's health care. Assemblywoman Jacobs brought child vaccinations into the spotlight as she worked to pass some of the most comprehensive vaccination legislation in the country, including vaccination for hepatitis B and chicken pox. She

is responsible for passing the first law in New York State mandating insurance coverage for mammography screenings for women and promoting better working conditions and more health-care benefits for working women. Assistant Speaker Jacobs continues to be an outspoken advocate of quality day-care programs and providing quality health care and educational opportunities for women, children, immigrants, and working families.

**The Honorable Jeremiah S. Jeremiah, Jr.,
Chief Judge, Family Court, State of Rhode
Island**

JEREMIAH S. JEREMIAH, JR., was appointed Chief Judge of the Rhode Island Family Court in 1987 after having served as an Associate Justice of the court since 1986. As Chief Judge, Jeremiah oversees eleven associate justices, one general magistrate, six magistrates, and 180 employees. For twenty-five years prior to his appointment to the bench, Chief Judge Jeremiah was an attorney in private practice. His service to the public began in 1963 when Jeremiah was appointed assistant city solicitor in Cranston, Rhode Island, being promoted to city solicitor in 1978 and serving in that position until 1984. From 1984 until 1986, Jeremiah served as Executive Counsel to the governor of the state of Rhode Island, the lead attorney position in the executive branch.

Chief Judge Jeremiah has been active in civic and professional affairs for over forty years. He has been a member of numerous boards and committees dedicated to the improvement of justice for Rhode Island's children and families.

In May 2003 he was presented with an Honorary Doctor of Laws Degree from Rhode Island College; and in December 2000 he received the U.S. Department of Justice, Office of Justice Programs, Certificate of Appreciation for outstanding service and dedication to the young people and their families of Rhode Island. The recipient of many honors and awards including the Jack and Ruth Eckerd Achievement for Youth Award, Jeremiah was recently recognized by the Urban League of Rhode Island with their Community Service Award and by Caritas, Inc., for his dedication

and commitment to adolescent substance-abuse prevention in Rhode Island. In May 2002, Children's Friend and Service bestowed on Jeremiah its Michelle Norris Memorial Award for his outstanding support of their work with vulnerable children and families.

Chief Judge Jeremiah is an inductee of the Cranston, Rhode Island, Hall of Fame and was named the 2001 Armenian of the Year by the Armenian Masonic Degree Team of Rhode Island. He has also been awarded the Casey Medal for Meritorious Journalism from the Casey Journalism Center on Children and Families by the University of Maryland.

Chief Judge Jeremiah has created various innovative and user-friendly programs in the Family Court to better serve the public. The highly successful Rhode Island Family and Juvenile Drug Court was instituted in December 1999 under Jeremiah's leadership, as well as the state's first school-located Truancy Courts, in 2000. He was the motivating force behind the initial regional conference of drug court practitioners in New England. In addition to being a delegate to the State Congress of Drug Court Associations, he currently serves as president of the New England Association of Drug Court Professionals; and is a member of the Board of Directors, National Association of Drug Court Professionals. He was also elected the first president of the National Truancy Prevention Association.

Jeremiah has initiated court-mandated case-management systems for the domestic-relations and child protection dockets. Other noteworthy projects include the establishment of a domestic violence court, juvenile victim/offender mediation, supervised child/parent visitation, the adoption registry, and juvenile hearing boards. Formerly a member of the Board of Trustees of the National Council of Juvenile and Family Court Judges, he is presently serving on several of its committees. Chief Judge Jeremiah also serves on the Rhode Island Governor's Justice Commission and the governor's Juvenile Justice Advisory Council.

Born in 1935, Jeremiah received his B.A. in 1957 as well as his J.D. in 1961 from Boston University. Jeremiah was in the U.S. Army Reserve from 1957 to 1967, serving as artillery officer and battalion adjutant. He is a recipient of the Department of the Army, Commander's

Award for Public Service. A lifelong resident of Cranston, Rhode Island, until his recent move, Jeremiah was married to the late Jane Penelope for thirty-seven years with whom he had three daughters. Recently he married Theresa, and the couple now make their home in Warren, Rhode Island, where he enjoys his family and four grandchildren.

**Christoph M. Kimmich, President,
Brooklyn College of
The City University of New York**

CHRISTOPH M. KIMMICH studied at Haverford College (B.A., 1961) and Oxford University (D. Phil., 1964). He trained as a historian of modern Europe and was elected to Phi Beta Kappa.

He came to Brooklyn College in 1973 after eight years of teaching at Columbia University. President Kimmich is a member of the Department of History, also at the CUNY Graduate Center. He served as chairman of the Department of History from 1980 to 1984, when he was appointed Associate Provost; he became Acting Provost in 1988 and Provost the following year. Dr. Kimmich was appointed Interim Chancellor of The City University of New York in November 1997 and served until September 1999. He was appointed President of Brooklyn College, effective February 2000.

Dr. Kimmich has written several books on German foreign policy in the period between the two world wars as well as articles on this subject and on other subjects in German history. He has lectured here and abroad.

Dr. Kimmich has been awarded, among others, a Fulbright Scholarship, an International Affairs Fellowship, and a Guggenheim Fellowship. He spent the academic year 1974 to 1975 at the Council on Foreign Relations in New York, and the academic year 1983 to 1984 as a Visitor at the Institute for Advanced Study at Princeton.

He is listed in *Who's Who in America, Directory of American Scholars, and Contemporary Authors*.

**The Honorable Joseph M. Lauria,
Administrative Judge,
New York City Family Court**

JOSEPH M. LAURIA

Professional Experience:

October 1999 to present, Administrative Judge of New York City Family Court

July 1998 to October 1999, Supervising Judge of the Family Court, City of New York, Kings and Richmond Counties

June 1989—July 1998, Judge of the Family Court, City of New York, Queens County

February 1980—June 1989, Solo practitioner of Criminal and Family Law

February 1978 to February 1980, Office of the District Attorney, Queens County, Chief of the Criminal Court and Family Court Bureaus, Chief of Training

September 1972 to February 1978, Office of the District Attorney, Kings County

Senior Homicide Trial Assistant District Attorney.

Education:

J.D., New York Law School/Southern Methodist University Law School, 1972

Military Experience:

U.S. Marine Corps Veteran

Professional Affiliations:

Chair, New York City Family Court Advisory Council

Lead Judge, New York City Family Court, National Council of Juvenile and Family Court Judges

Faculty, National Council of Juvenile and Family Court Judges Member, New York State Family Violence Task Force

- Member, New York State Permanent Judicial Commission on Justice for Children
- Member, Family Court Advisory and Rules Committee
- Member, Statewide Law Guardian Advisory
- Member, PEACE/NYC Statewide Advisory Board
- Member, National Advisory Board, Adolescent Development, Safety and Justice, Vera Institute of Justice, Inc.

**Brian Lehrer, "The Brian Lehrer Show,"
WNYC Radio, New York**

BRIAN LEHRER is host of "The Brian Lehrer Show," WNYC's highly acclaimed daily call-in program, covering issues in the news and culture weekdays from 10 A.M. to noon on WNYC New York Public Radio at fm93.9 and am820.

Time magazine has called Lehrer's show "New York City's most thoughtful and informative talk show." The *Daily News* called it "the sane alternative in talk radio." Guests have ranged from political figures such as Hillary Clinton and George Pataki to authors and entertainers such as Alice Walker and Al Franken to junior high school students and homeless people.

Lehrer has hosted the program, originally called "On the Line," since its inception in 1989. Before that, he was an anchor and reporter for the NBC Radio Network for seven years.

He is also an award-winning author and documentary producer. Lehrer won the Associated Press New York Broadcasters "Best Interview" Award for both 2000 and 2001. The 2001 award was for his moderating the only Bloomberg-Badillo primary debate on New York radio.

NPR's "On the Media," when hosted by Lehrer, was named "Best Weekly Show" by the Public Radio News Directors in 1999. Also among his awards are the New York Press Club's "Heart of New York Award," for his documentary on new immigrants, and a New York Public Library award for his book *The Korean Americans*.

Lehrer was a questioner in the WABC-TV New York City mayoral debates in 1997 and 2001. He has appeared on television as a commentator on New York One and CNNfm and hosted television programs on WNYC-TV from 1990 to 1995 under the series names "New York Hotline" and "Dialogue with Brian Lehrer," and on 13-WNET-TV from 1996 to 1998 under the series name "Thirteen on the Line."

His op-ed pieces have appeared in publications including the *New York Times*, the *New York Sun*, *Newsday*, and the *Daily News*, and on *Slate.com*.

He currently moderates several major public

forum series, including The Nation vs. The Economist series and the Harper's Forum series.

Lehrer holds master's degrees in public health from Columbia University and journalism from the Ohio State University and a bachelor's in music and mass communications from the State University of New York at Albany.

Lehrer lives in Manhattan with his wife and two sons.

**Gertrud Lenzer, Professor,
Brooklyn College and the Graduate Center of
The City University of New York;
Director, Brooklyn College
Children's Studies Program and Center**

GERTRUD LENZER is professor of sociology at Brooklyn College and a member of the doctoral faculty in sociology at the Graduate School and University Center of The City University of New York. She is the author of *Auguste Comte and Positivism: The Essential Writings*, generally considered the standard edition in English of selections from the works of the founder of modern sociology and positivism. She is co-author of *The Death of a Democracy* and co-editor of *Sociology and Religion*. Her articles have been published in *Partisan Review*, *Social Science Quarterly*, and the *New York Times Book Review*. She is also chair and organizer of the distinguished Charles R. Lawrence II Memorial Lecture Series of the Department of Sociology at Brooklyn College since 1989.

In 1991, Dr. Lenzer founded Sociology of Children as a new field and a section of the American Sociological Association and was designated its founding chair. In the same year, she founded the interdisciplinary field and program of Children's Studies. She is also the director of the Children's Studies Center at The City University of New York, which was established in the spring of 1997. She has published widely on the U.N. Convention on the Rights of the Child and on Children's Studies. She received the national 1997 Lewis Hine Award in Honor of Outstanding Service on Behalf of Children and Youth of the National Child Labor Committee.

Dr. Lenzer has been the recipient of a number of prestigious awards and fellowships from the American Council of Learned

Societies, the Rockefeller Foundation, the National Humanities Center, and the Institute for Advanced Study, where she was a visiting fellow. The Policy Symposium, "Children and the Law in New York," is funded by a grant from the Carnegie Corporation of New York, of which she is the principal investigator.

Marcia Robinson Lowry, Esq., President and Executive Director, Children's Rights, Inc., New York

MARCIA ROBINSON LOWRY, Esq., is the founder and Executive Director of Children's Rights, Inc. Since 1995, Children's Rights has advocated for abused and neglected children in a failing foster care system. As a national nonprofit organization, Children's Rights works to protect America's most vulnerable children using policy, public education, and the power of the courts. For thirty years, Ms. Lowry has been a recognized leader in creating new law and obtaining sweeping court-ordered decrees that serve as a model for reforming child welfare systems. Ms. Lowry, as reported by the *New York Times*, has a "reputation as a relentless litigator for children." Prior to founding Children's Rights, Ms. Lowry spent over twenty years leading the Children's Rights Projects at the New York Civil Liberties Union and then at the national American Civil Liberties Union. In 2000, Nina Bernstein highlighted Ms. Lowry's work in New York City with the publication of *The Lost Children of Wilder: An Epic Struggle to Change Foster Care*. This book explores the background and aftermath of the landmark 1973 Wilder lawsuit Ms. Lowry filed against the City of New York's foster care system. An HBO movie based on this book is currently in development.

At a recent press conference to announce a settlement of a Children's Rights class-action lawsuit with the State of New Jersey, Children's Rights and Ms. Lowry were praised by Governor Jim McGreevey for their work.

She is currently involved in litigation and monitoring settlements in the state of Connecticut; the District of Columbia; Kansas City, Missouri; the state of New Mexico; the state of New York; New York City, New York;

Pennsylvania; the state of Tennessee; and Milwaukee County and the state of Wisconsin.

Ms. Lowry received her B.S. in journalism from Northwestern University and her J.D. from New York University School of Law. She has been admitted to practice in New York State; before the U.S. District Courts for the Southern and Eastern Districts of New York and the Eastern District of Kentucky; before the Court of Appeals for the Second, Third, Fifth, Sixth, and Tenth Circuits and for the District of Columbia; and the Supreme Court of the United States.

Ms. Lowry has many years of experience speaking before groups around the country. Among the groups she has addressed are the American Bar Association's National Conference on Children and the Law; the Child Welfare Legal Services Seminar; Florida State Department; Casey Journalism Center (Baltimore, MD); National Association of Counsel for Children's Law Conference; the National Council for Crime and Delinquency; Child Welfare League of America; the National Symposium on Child Victimization; National Association for Family-Based Services; and the ABA Invitational Symposium on Civil and Criminal Liability in Child Welfare Work. Ms. Lowry has testified as an expert witness at all levels of government and been honored for her work on behalf of justice for our children.

Ms. Lowry has published in the *New York Law Journal*, the *Family Law Quarterly*, and the *New York University Law Review*.

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

JEANNE MILSTEIN is Connecticut's Child Advocate. Appointed by Governor John G. Rowland and confirmed by the General Assembly, she is a strong public voice when children in need have no one to speak on their behalf.

The Office of the Child Advocate (OCA) oversees the protection and care of Connecticut's most vulnerable and youngest citizens and advocates for their well-being.

Jeanne Milstein has dedicated her career to advocating for the state's children and youth. Guided by the adage that "if you are not

outraged, you are not paying attention," she brings to her post a passionate concern for children, unquestioned integrity, and unwavering tenacity.

Her voice is a beacon of hope that speaks frequently on issues ranging from conditions at the state's juvenile correctional facilities to the quality of child protection and the delivery of children's mental health services.

Prior to her appointment as Child Advocate, Ms. Milstein was Director of Government Relations for the Department of Children and Families and Legislative Director for the Connecticut Commission for Children. Earlier she was responsible for child care in the Connecticut Department of Human Resources and served as Executive Director of the Women's Center of Southeastern Connecticut and Legislative Director of the Permanent Commission on the Status of Women.

A resident of West Hartford, Ms. Milstein graduated with a B.S. degree from Cornell University.

Louise Mirrer, Executive Vice-Chancellor for Academic Affairs of the City University of New York

LOUISE MIRRER is Executive Vice-Chancellor for Academic Affairs at The City University of New York. She previously served as Vice-Provost for Arts, Sciences and Engineering at the University of Minnesota—Twin Cities, where she held joint appointments as Professor in the Departments of Spanish and Portuguese and Comparative Literature. She also chaired the Department of Spanish and Portuguese. Prior to her appointment at the University of Minnesota, Dr. Mirrer was a member of the faculty at Fordham University in New York and Chair of Fordham's Division of Humanities. Dr. Mirrer has also been visiting professor at the University of California—Los Angeles.

Dr. Mirrer's responsibilities include the development, planning, and implementation of university policies regarding academic programs and economic development, and the development of grant proposals and fund-raising for special university-wide programs.

She oversees the university's "Flagship

Initiative," Honors College and Teaching Opportunity Program, and represents CUNY on the board of the New York Structural Biology Center. She also oversees the Office of Institutional Research and Analysis and the area of Instructional Technology. In the current fiscal year, the Office of Academic Affairs has already been awarded more than \$80 million in grants and contracts.

Outside the university, Dr. Mirrer has continued to serve on committees of the Modern Language Association and the International Association of Hispanists; on the Visiting Advisors Board of the Salzburg Seminar; the College Board; the Society for Medieval Feminist Scholarship; and the editorial boards of several publications in the areas of language and medieval studies. She has published widely on language, literature, medieval studies, and women's studies, both books and articles in Spanish and English, and has delivered papers at scholarly meetings in the United States and abroad. Her most recent book is *Women, Jews, and Muslims in the Texts of Reconquest Castile* (University of Michigan Press, 1996), a "deconstruction" of the medieval Castilian canon using contemporary theories of gender and race.

Dr. Mirrer holds a double Ph.D. in Spanish and Humanities and an M.A. in Spanish from Stanford University. She holds the Diploma in Linguistics from Cambridge University (England). Her baccalaureate is from the University of Pennsylvania, where she graduated magna cum laude with honors in Spanish. She is married and has three children.

The Honorable Kevin S. Parker, New York State Senate

KEVIN S. PARKER is committed to restoring the quality of life in Flatbush, Brooklyn. It's the reason he is running for state senate in the newly created 21st District.

Raised in Brooklyn, New York, Parker has lived in the Flatbush community for over twenty-seven years. A product of the New York City public school system, he attended P.S. 193, Andres Hudde J.H.S. 240, and Midwood High School.

Parker's professional background reflects a

wide range of public service and commitment to a better New York. As the Special Assistant to New York State Comptroller H. Carl McCall, he currently is responsible for intergovernmental relations in New York City and is the liaison between the comptroller and city, state, and federal elected officials, as well as liaison to unions, community-based organizations, and constituents. In this capacity, he tracks city legislation and monitors City Council activities for the comptroller.

As Lead Advance for Hillary Rodham Clinton during her 2000 U.S. Senate campaign, Parker organized political events; provided outreach to elected officials, unions, and local groups; and coordinated security and press while working closely with Mrs. Clinton.

Parker also has served as a New York City Urban Fellow, where he worked as Special Assistant to Manhattan Borough President Ruth Messinger. Additionally, he was Legislative Aide to New York City Council Member Una Clarke and Special Assistant to Assemblyman Nick Perry. As Project Manager with the New York State Urban Development Corporation, he financed women- and minority-owned businesses and promoted community business redevelopment.

Parker's leadership in civic organizations reflects his commitment to his community. He is currently the chairperson of Community Board 17's Education Committee. He is a member of the Community Service Society's Associates program and the Children's Defense Fund's Community Crusade for Children. Most recently, Parker was a member of the Coro Foundation's Leadership New York XI class, where he examined public policy, budget and infrastructure, race relations, education, and health care issues.

Parker's commitment to education has taken him into the classroom as a professor of both African-American Studies and Political Science at several colleges including Baruch College—CUNY, SUNY - Old Westbury, John Jay College—CUNY, Medgar Evers College—CUNY, City College, and Long Island University Brooklyn Campus. Overall, he has done most of his teaching at Brooklyn College—CUNY, where he was also a faculty advisor to student organizations and activities. He also has taught graduate courses at Brooklyn College's Center for Worker Education.

Parker received a B.S. in public service from Penn State University, where he organized students to fight racism and encourage diversity at the university. He holds a master's of science degree from the New School for Social Research Graduate School of Management and Urban Policy, and currently is pursuing a doctoral degree in political science at the City University of New York Graduate School and University Center.

Parker anticipates using his leadership skills, vision, and activism to benefit the residents he seeks to represent in the New York State Senate.

**The Honorable Clark V. Richardson, J.D.,
Supervisory Judge, Family Court, Bronx
County, New York**

The Honorable Clark V. Richardson, J.D., is Supervising Judge at Bronx Family Court and presides over its Domestic Violence and Child Abuse Project. He was the liaison for and has worked closely with the New York State Permanent Judicial Commission on Justice for Children on the *Babies Can't Wait Project*, and chairs and maintains an ongoing collaborative network of court personnel and child development specialists with the Court.

**Kevin M Ryan, Esq., Child Advocate, Office
of the Child Advocate, State of New Jersey**

Kevin Ryan was appointed the State's first Child Advocate by Governor James E. McGreevey on September 26, 2003, and sworn into office by Justice James Zazalli of the New Jersey Supreme Court on November 13, 2003. He is a 1989 graduate of Catholic University of America and a 1992 JD graduate of Georgetown Law Center. He earned his LL.M. (Masters of Law) from NYU Law School in 2000, where he focused on public interest law and children's constitutional rights. Ryan worked as an advocate for children at Covenant House from 1992 to 2002. Upon his graduation from law school in 1992, he founded a legal services program for homeless teenagers at Covenant House in New York City's Times Square and the South Bronx. In 1997, he founded The Youth Advocacy Center at the charity's Newark

and Atlantic City locations. The center provides direct legal aid (immigration, housing and family law matters) to approximately 500 youth every year and champions public policy solutions to the problems that confront the child welfare, public health and juvenile justice systems. In 1999, Ryan co-drafted and championed the implementation of the New Jersey Homeless Youth Act and in 2000 wrote expansions in public health insurance coverage for foster children in the Family Care Act. In 1998 and 1999, he championed protections in the federal juvenile crime bill to keep non-violent status offending children (such as runaways and truant) out of secure detention with adult offenders. Harvard Law School recognized his work in 2000 by naming him a Wasserstein Fellow. Ryan has also taught law at Fordham Law School (1995-2002) and Seton Hall Law School (1994-2002), focusing on Poverty Law, Children's Rights and Constitutional Law. In January 2002, Governor McGreevey named Ryan chief of staff at the Department of Human Services until October of that year when he was named deputy chief of operations in the Governor's Office, focusing on children's issues. Ryan lives with his wife Clare and their five children, ages 3 to 12, in Fair Haven, New Jersey.

**The Honorable Steven Sanders, Chair,
Committee on Education, New York State
Assembly**

STEVEN SANDERS (D, Manhattan, 74th Assembly District), Chairman of the Committee on Education, was first elected to the Assembly on February 14, 1978 and represents a district on Manhattan's East Side. Mr. Sanders, a lifelong resident of New York City, graduated from City College in 1973 with a degree in government. Before his election to the State Assembly, he served as president of the Stuyvesant Town Tenants Association.

Mr. Sanders was named Chairman of the Committee on Education by Assembly Speaker Sheldon Silver in January 1995. Much of his work involves vigilant advocacy for equitable funding for school districts and educational reforms that support bolstering educational quality in the classroom. He helped negotiate an

agreement with Mayor Bloomberg in June 2002 to dramatically restructure the governance of New York City's Board of Education, and he sponsored with Speaker Sheldon Silver comprehensive legislation to give the Mayor accountability for the school system. The legislation also provided for the process to replace the local school boards with new district education councils.

Since becoming Chairman of the Education Committee, Mr. Sanders's leadership has helped secure a nearly \$5 billion increase in funding to school districts statewide, of which approximately \$2 billion has gone to New York City.

Among his accomplishments in the area of improving our public schools are enactment of universal pre-kindergarten programming, a phase-in of reduced class sizes in grades K-3 and achieving a substantial increase in the State's share of education costs. Current educational priorities include passage of the Dignity for All Students Act, to address discrimination, harassment and bullying in schools; enhanced guidance counselor and mentoring services; and revising the state education aid formulas as per the decision in the CFE case, to ensure that New York City and other high-needs school districts receive adequate and equitable funding in the state budget.

**Benno C. Schmidt, Jr.
Chairman, Board of Trustees of
The City University of New York**

BENNO C. SCHMIDT, JR., B.A. J.D., was appointed by Governor George Pataki in April 2003 Chairman of the Board of Trustees of The City University of New York. Previously he served as Vice-Chairman on his appointment in August 1999. Since 1992, Dr. Schmidt has been the chairman of Edison Schools, Inc., a private company that enters into partnerships with public education authorities to create innovative and world-class public schools.

Before joining Edison Schools, Inc., he served as Yale University's twentieth president, where he was best known nationally for his defense of freedom of expression and the academic values of liberal education. During his

tenure at Yale, which began in 1986, Dr. Schmidt launched one of the largest building programs in Yale's history; he became Yale's most successful fund-raiser; he fashioned a model partnership between the university and the city of New Haven and helped build a number of new interdisciplinary programs, especially in environmental science, molecular biology, and international studies. During his presidency, Yale's endowment grew from \$1.7 billion to nearly \$3 billion, the highest rate of growth of any private university during that time.

Before joining Yale, Dr. Schmidt was the Dean of Columbia University Law School, where he joined the faculty in 1969 and became, four years later, one of the youngest tenured professors in Columbia's history. He was named Harlan Fiske Stone Professor of Constitutional Law in 1982. He is one of the country's leading scholars of the Constitution, the history of the U.S. Supreme Court, the law of freedom of expression, and the history of race relations in America. Dr. Schmidt served as law clerk to Supreme Court Chief Justice Earl Warren. Dr. Schmidt received both his college and law degrees from Yale University. He is a trustee of the National Humanities Center and a member of the American Academy of Arts and Sciences. He was also Chairman of Mayor Giuliani's Task Force on The City University of New York.

Deborah Seidenberg, Esq., Chief of the Family Court Division, New York City Law Department

DEBORAH SEIDENBERG is currently the Chief of the Family Court Division of the New York City Law Department. The work of the Family Court Division encompasses two distinct types of practice: the prosecution of youth crime and the collection of delinquent child support. Both areas address the health, safety and welfare of children within the City of New York. As the Chief of the second largest division within the Law Department, Ms. Seidenberg is responsible for the oversight of some 15,000 cases annually. Prior to her work with the City Law Department, she was in private practice where she focused primarily on criminal defense and appellate cases. Previously, Ms. Seidenberg was an

Assistant District Attorney in the Bronx District Attorney's Office where she served as the Deputy Bureau Chief/Acting Bureau Chief of the Sex Crimes and Juvenile Offense Bureau. In addition, Ms. Seidenberg is an adjunct Professor at Baruch College in Manhattan; has lectured for the American Prosecutors Research Institute; was involved in a Task Force to help facilitate changes in the foster-care system; and drafted legislation aimed at improving laws affecting victims of sex crimes and child abuse. She graduated from Albany Law School earning a Juris Doctor in May 1983. She was raised in Brooklyn, where she attended New York City Public Schools, and presently lives in the Bronx.

Darla M. Silva, Esq., Deputy Director, Office of Public Policy and Advocacy, U.S. Fund for UNICEF, Washington, D.C.

DARLA M. SILVA, Esq., is the Deputy Director of the Office of Public Policy and Advocacy at the U.S. Fund for UNICEF in Washington, D.C. Prior to joining the U.S. Fund, she worked for the Women's Commission for Refugee Women and Children as its Washington representative. The Women's Commission is a New York-based advocacy organization working to improve the lives of refugee women and children around the world. Ms. Silva also served as counsel to Senator Richard J. Durbin (D-IL) on the Senate Judiciary Committee and the Governmental Affairs Committee, where her issue portfolio included immigration, civil rights, and civil justice issues. Ms. Silva is a long-time children's advocate and has worked as a children's court attorney in New Mexico representing the state in child abuse and neglect proceedings. Ms. Silva is a cum laude graduate of Boston University, where she received a B.A. in political science in 1989. She received her law degree from the University of New Mexico in 1992. She is an active member of the D.C. Bar. She currently lives in Takoma Park, Maryland, with her husband, William New, and their two-year-old son, Alexander Silva New.

**The Honorable Dennis M. Walcott, Deputy
Mayor for Policy, Office of the Mayor,
New York City**

DENNIS M. WALCOTT is the Deputy Mayor for Policy. Prior to his appointment, he was the President and Chief Executive Officer of the New York Urban League since 1990. Before joining the New York Urban League, Walcott was for five years the Executive Director of the Harlem Dowling Westside Center for Children and Family Services.

A former citywide appointed representative to the New York City Board of Education, Walcott also has served as a trustee and temporary President of Community Board District 5 after Board 5 was suspended by former Chancellor Rudy Crew. Walcott has been a strong proponent of educational standards and fairness in the allocation of educational services and resources to public schools. Until recently, he was a member of Carver Bank's Board of Directors. A product of the New York City public school system, he received a Masters of Social Work from Fordham University and a Masters of Education from the University of Bridgeport. He and his wife, Denise, have four children, all of whom have either graduated from or attend New York City public schools.

Appendix 2: Advisory Committee

ADVISORY COMMITTEE

Benno C. Schmidt, Jr.

Chairman, Board of Trustees of The City University of New York

Louise Mirrer

Executive Vice Chancellor for Academic Affairs of The City University of New York

Jay Hershenson

Secretary to the Board of Trustees and Vice Chancellor for University Relations of The City University of New York

Christoph M. Kimmich

President, Brooklyn College of The City University of New York

Howard Davidson, Esq.

Director, American Bar Association Center for Children and the Law

Monica Drinane, Esq.

Attorney-in-Charge, Juvenile Rights Division, Legal Aid Society, New York

Vartan Gregorian

President, Carnegie Corporation of New York

The Honorable Joseph M. Lauria

Administrative Judge, New York City Family Court

Hank Orenstein

Director, Child Welfare Project, Office of the Public Advocate, New York City

The Honorable Charles E. Schumer

*U.S. Senator, New York State
Honorary Member of the Symposium Advisory Committee*

**Appendix 3: Contribution by Chad Vignola, Esq., General
Counsel, New York City Department of Education, Office of the Chancellor, “Advancing
the Legal Rights of Children: Intersections and Collaboration among the Education,
Juvenile Justice, and Child Welfare
Systems and the Courts**

The education of our children could be greatly enhanced if we simply devised a better process and range of program options for children reentering school from the criminal justice system. Children leaving the criminal justice system often have had significantly disrupted education and may be seeking to reenter problematic schooling situations in midyear. Behavioral issues also may not have been attended to constructively at the school previously.

In terms of process, we have seen the excellent success of the CASES program, which seeks to transition children from incarcerated settings back into the school environment. But this is just for one borough and does not cover the range of issues for all children. Each year, upstate prisons alone send back approximately 1,000 children to New York City schools. We are now in the process of working with the state system to devise a process for early notification so that educational planning and transition can occur in an effort to reintroduce the critical role of the school into a troubled child’s life. In like fashion, we need to have an orderly process for students leaving our own city prisons. It is not a new issue but one that merely requires better data sharing, coordination, and monitoring follow-up.

In following up, we need to expand the range of options for children with special issues. Many of these students are “overage” or significantly behind in their schooling. Specialized programs with supports to keep the students in school and on track for academic success must be created since merely returning students to large, anonymous high schools may not be best for the children.

Likewise, many children in incarcerated settings may have substance-abuse issues that have gone untreated. Substance-abuse treatment options should be accessed in appropriate educational settings.

In short, resources are necessary to create the process—early notification and transition planning—and

programs that recognize the special and challenging needs of these students.

Appendix 4: Office of the Child Advocate

Bill A -11498 - Summary

A11498 Summary:

SAME AS No same as

SPONSOR RULES COM Clark

COSPNSR Perry

MLTSPNSR

Ren Art 50 & SS1000 - 1003 to be Art 60 & 2000 - 2003, add Art 51 SS1004 -

1013, Exec L; rpld Art 6 Title 1-A, Soc Serv L

Creates the office of the child advocate to oversee the administration of state services provided to children; repeals certain provisions of social services law relating to the state commission on the quality of foster care.

A11498 Actions:

06/11/2004 referred to children and families

06/17/2004 reported referred to codes

A11498 Votes:**A11498 Memo:**

TITLE OF BILL: An act to amend the executive law, in relation to creating the office of the child advocate; and repealing certain provisions of the social services law relating to the state commission on the quality of foster care

PURPOSE OR GENERAL IDEA OF BILL:

This bill would establish an independent Office of the Child Advocate, vested with broad powers to investigate practices within the State's child welfare and juvenile justice systems, to better protect children in the State's care.

SUMMARY OF SPECIFIC PROVISIONS:

Section one would establish the Office of the Child Advocate within state government, headed by the Child Advocate. A newly established Commission on Children would be authorized to appoint a Child Advocate. The appointment would be made jointly by the chair and vice-chair from a list of three candidates.

The Child Advocate would hold office for a five-year term, and could be removed if the chair

and vice-chair jointly determine that the Child Advocate has abused his or her powers and duties or failed to carry out such duties. The Child Advocate would be authorized to appoint assistants and staff as deemed necessary.

The Child Advocate would act independently of the Executive Department and any other state agency. Its duties would include:

1) evaluating the delivery of services to children and families by the Office of Children and Family Services (OCFS)

2) periodically reviewing procedures established by OCFS and investigating circumstances related to the death or serious injury of any child who has received services from OCFS or any local child protective service (CPS) or department of social services (DSS)

3) reviewing complaints related to actions of OCFS, making referrals and investigating complaints

4) periodically reviewing the facilities and procedures of any institution or residence where a child has been placed

5) recommending changes in state policies and regulations concerning children with the ability to monitor any corrective action plan initiated in response to the Child Advocate's findings

6) taking all possible actions to secure and ensure the legal, civil and special rights of children

7) taking steps to make the Child Advocate's presence in New York State widely known for children regarding their rights in foster care, detention centers, training schools, jails or prisons, and methods of enforcement, and

8) establishing a 24-hour toll-free hotline to receive and respond to calls referring problems to the Child Advocate.

The Child Advocate would be authorized to access confidential records relating to the fulfillment of his or her duties, issue subpoenas, and apply for and accept grants.

The Child Advocate would create and disseminate materials for all youth in foster care and juvenile justice facilities or programs

explaining services the Office can offer and how youth can contact the Office. All youth placed in foster care would have access to a toll-free hotline of the Office and be permitted to make calls in a setting where the youth's conversations are not monitored. Any such calls made would not count against any limit on phone calls placed by the youth according to the rules of the facility.

The Child Advocate would be authorized to commence a civil action against the State, or any subdivision and private entity providing out-of-home residential services to children. Any judgment for compensation as a result of such civil action would be considered the estate of the child, to be held by the Office of the Child Advocate, and deposited in a trust account for the child.

The Commission on Children would be established to meet three times a year with the Child Advocate to review and assess:

- 1) patterns of treatment and services for children
- 2) policy implications of the findings of investigations, and
- 3) necessary systemic improvements.

The Commission would consist of six members, experienced in child welfare, juvenile justice or child care. Any matter put to vote by the Commission would require an affirmative vote of the majority of the members, and no vote could be taken until all members are appointed.

Section two would repeal the Commission on the Quality of Foster Care.

Section three provides for an effective date on April 1, 2005.

EFFECTS OF PRESENT LAW WHICH THIS BILL WOULD ALTER: Current law does not provide for any office that performs the functions that would be performed by the Office of the Child Advocate. The Commission on the Quality of Foster Care, established in Title 1-A of Article 6 of the Social Services Law, is currently authorized to: investigate complaints brought to the Commission's attention; obtain copies of preliminary and final reports and fatality reports from OCFS; and notify OCFS of its investigations and make a report of its

findings. The Office of the Child Advocate would replace this Commission as the primary means of investigating practices within state and local child welfare and juvenile justice systems.

JUSTIFICATION: This bill would establish an independent Office of the Advocate, similar to offices that currently exist in numerous states including New Jersey, Connecticut and Rhode Island. This office is necessary to address some of the systemic problems within state and local child welfare and juvenile justice programs that exist not only in New York, but in many parts of the country. Some highly publicized cases, such as the New Jersey foster family in which four foster children nearly starved to death, have brought national attention to these issues. Unfortunately, New York is not immune to the crisis of children becoming the victims of further abuse or neglect once they are removed from their homes and taken into the State's care.

Therefore, it is crucial that in order to provide our State's most vulnerable children with the care they need to develop into healthy adults, New York should create this office with the exclusive purpose of protecting children's well-being.

Recently, there have been several incidents reported that point to serious flaws within New York's child welfare systems. Earlier this year, it was discovered that New York City's Administration for Children's Services (ACS) allowed over 100 HIV-positive foster youth in its care to be subjected to medical experiments involving the use of potentially dangerous medications. It is unclear at this point exactly what was done to investigate or resolve this gross mistreatment of infants in care. With the establishment of the Office of the Child Advocate, this situation could be thoroughly investigated, and a proper report and action could be taken to ensure that these children would be placed in a safe and caring home and would not be the victims Marcia Robinson Lowry of Children's Rights, Inc., presented a speech entitled "Benevolent Complicity: The Myth of Protecting Children's Best Interests," at a symposium hosted by the Bar Association of New York City on March 11, 2004 defending the need for an Office of Child Advocate in New York State. According to an excerpt from her remarks, "there was a recent study of children in

foster care from the Government Accounting Office which covered 50% of all children in care nationwide, including New York, and it found that 12% of children in foster care had received no routine health care, 34% have received no immunizations, 32% continue to have at least one unmet health need, 78% were high risk for HIV, but only 9% were tested.

"There should be, in our view, national standards, and there sure should be standards in New York State for how agencies operate. We have no minimum standards for workers in the contract agencies, which provide the vast majority of care. For workers in the city agency that monitor the care provided by the contract agencies, the caseload is 54 average and usually averages are much higher when you look at all the people who are actually carrying cases."

Beyond the need to address these grave issues, an Office of Child Advocate is necessary because children who are removed from their homes - whether due to abuse and neglect by their parents, or due to behavioral misconduct in the community - experience an extremely disruptive and emotionally painful period in their lives. Therefore, it is essential that the State provide these children with a supportive, nurturing environment once they are placed in care, whether it be in a foster home, group home, residential facility or other type of placement setting. In acting as an independent advocate for children and in offering a means through which both children and adults could report abuses in the system, the Office of the Child Advocate would serve as a beacon, casting light upon the treatment and protection of New York's children taken into custody by the State.

PRIOR LEGISLATIVE HISTORY: New bill.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS: To be determined.

EFFECTIVE DATE: April 1, 2005.

Appendix 5: Office of the Child Advocate
Bill A -11498 - Text

STATE OF NEW YORK

11498

IN ASSEMBLY

June 11, 2004

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Clark) read once and referred to the Committee on Children and Families

AN ACT to amend the executive law, in relation to creating the office of the child advocate; and repealing certain provisions of the social services law relating to the state commission on the quality of foster care

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 50 and sections 1000 through 1003 of the executive

2 law are renumbered article 60 and sections 2000 through 2003 and a new

3 article 51 is added to read as follows:

4 ARTICLE 51

5 OFFICE OF THE CHILD ADVOCATE

6 SECTION 1004. OFFICE OF THE CHILD ADVOCATE.

7 1005. APPOINTMENT AND TERM.

8 1006. ORGANIZATIONAL STRUCTURE.

9 1007. DUTIES OF THE CHILD ADVOCATE.

10 1008. RIGHTS AND POWERS OF THE CHILD ADVOCATE.

11 1009. ACCESS TO THE CHILD ADVOCATE.

12 1010. CONFIDENTIALITY OF INFORMATION.

13 1011. REPRESENTATION OF CHILD.

14 1012. INDEMNIFICATION FROM LIABILITY.

15 1013. COMMISSION ON CHILDREN ESTABLISHED.

16 S 1004. OFFICE OF THE CHILD ADVOCATE. THERE SHALL BE WITHIN THE STATE
17 GOVERNMENT AN OFFICE OF THE CHILD ADVOCATE. THE HEAD OF THE OFFICE SHALL
18 BE THE CHILD ADVOCATE, APPOINTED PURSUANT TO SECTION ONE THOUSAND FIVE
19 OF THIS ARTICLE.

20 S 1005. APPOINTMENT AND TERM. THE COMMISSION ON CHILDREN, AS ESTAB-
21 LISHED BY SECTION ONE THOUSAND THIRTEEN OF THIS ARTICLE, SHALL APPOINT A
22 PERSON, QUALIFIED BY TRAINING AND EXPERIENCE TO PERFORM THE DUTIES OF
23 THE OFFICE AS SET FORTH IN THIS ARTICLE, AS THE CHILD ADVOCATE FOR THE
24 STATE OF NEW YORK. THE APPOINTMENT SHALL BE MADE JOINTLY BY THE CHAIR-
25 PERSON AND VICE-CHAIRPERSON OF THE COMMISSION FROM A LIST OF THREE
26 CANDIDATES APPROVED BY THE COMMISSION. THE PERSON APPOINTED TO THE POSI-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets

{ } is old law to be omitted.

LBD18237-01-4

A. 11498

2

1 TION OF THE CHILD ADVOCATE SHALL HOLD SUCH OFFICE FOR A TERM OF FIVE
2 YEARS AND SHALL CONTINUE TO HOLD THE OFFICE UNTIL HIS OR HER SUCCESSOR
3 IS APPOINTED, PROVIDED THAT THE CHILD ADVOCATE MAY BE REMOVED FROM SUCH

4 POSITION IF THE CHAIRPERSON AND VICE-CHAIRPERSON JOINTLY DETERMINE THAT
5 THE CHILD ADVOCATE HAS ABUSED HIS OR HER POWERS AND DUTIES UNDER THIS
6 ARTICLE OR THAT THE CHILD ADVOCATE HAS WILLFULLY FAILED TO CARRY OUT THE
7 DUTIES REQUIRED BY THIS ARTICLE.

8 S 1006. ORGANIZATIONAL STRUCTURE. 1. THE CHILD ADVOCATE MAY APPOINT
9 ASSISTANTS AS MAY BE DEEMED NECESSARY WHOSE POWERS AND DUTIES SHALL BE
10 SIMILAR TO THOSE DESIGNATED TO THE CHILD ADVOCATE BY LAW AND ANY OTHER
11 STAFF AS THE CHILD ADVOCATE MAY DEEM NECESSARY. THE DUTIES OF THE
12 ASSISTANTS AND OTHER STAFF MEMBERS SHALL BE PERFORMED UNDER AND AT THE
13 ADVICE AND DIRECTION OF THE CHILD ADVOCATE.

14 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE CHILD ADVOCATE
15 SHALL ACT INDEPENDENTLY OF THE EXECUTIVE DEPARTMENT AND ANY OTHER STATE
16 AGENCY OR OFFICE IN THE PERFORMANCE OF HIS OR HER DUTIES.

17 S 1007. DUTIES OF THE CHILD ADVOCATE. 1. THE CHILD ADVOCATE SHALL:

18 (A) EVALUATE THE DELIVERY OF SERVICES TO CHILDREN AND FAMILIES BY THE
19 OFFICE OF CHILDREN AND FAMILY SERVICES AND THOSE ENTITIES THAT ARE REGU-
20 LATED OR OVERSEEN BY, OR RECEIVE FUNDING FROM, THE OFFICE OF CHILDREN
21 AND FAMILY SERVICES;

22 (B) PERIODICALLY REVIEW THE PROCEDURES ESTABLISHED BY THE OFFICE OF
23 CHILDREN AND FAMILY SERVICES TO CARRY OUT THE PROVISIONS OF ARTICLE
24 NINETEEN-G OF THE EXECUTIVE LAW AND ARTICLE SIX OF THE SOCIAL SERVICES
25 LAW, WITH A VIEW TOWARD THE RIGHTS OF CHILDREN, AND TO INVESTIGATE IN
26 ACCORDANCE WITH THE ESTABLISHED RULES AND PROCEDURES ADOPTED BY THE
27 CHILD ADVOCATE, THE CIRCUMSTANCES RELATING TO THE DEATH OR SERIOUS INJU-
28 RY OF ANY CHILD WHO HAS RECEIVED SERVICES FROM THE OFFICE OF CHILDREN
29 AND FAMILY SERVICES OR ANY LOCAL OFFICE OF CHILD PROTECTIVE SERVICES OR

30 DEPARTMENT OF SOCIAL SERVICES;

31 (C) REVIEW COMPLAINTS OF PERSONS CONCERNING THE ACTIONS OF THE OFFICE
32 OF CHILDREN AND FAMILY SERVICES AND THOSE ENTITIES THAT ARE REGULATED OR
33 OVERSEEN BY, OR RECEIVE FUNDING FROM, THE OFFICE OF CHILDREN AND FAMILY
34 SERVICES; MAKE APPROPRIATE REFERRALS AND INVESTIGATE THOSE COMPLAINTS
35 WHERE THE CHILD ADVOCATE DETERMINES THAT A CHILD OR FAMILY MAY BE IN
36 NEED OF ASSISTANCE FROM THE CHILD ADVOCATE OR THAT A SYSTEMIC ISSUE IN
37 THE STATE'S PROVISION OF SERVICES TO CHILDREN IS RAISED BY THE
38 COMPLAINT;

39 (D) PERIODICALLY REVIEW THE FACILITIES AND PROCEDURES OF ANY INSTI-
40 TUTIONS OR RESIDENCES, PUBLIC AND PRIVATE, WHERE A CHILD HAS BEEN PLACED
41 BY THE LOCAL DEPARTMENT OF SOCIAL SERVICES, THE FAMILY COURT OR THE
42 OFFICE OF CHILDREN AND FAMILY SERVICES;

43 (E) RECOMMEND CHANGES IN STATE POLICIES AND REGULATIONS CONCERNING
44 CHILDREN INCLUDING, BUT NOT LIMITED TO, CHANGES IN THE SYSTEMS THAT
45 PROVIDE FOR JUVENILE JUSTICE, CHILD PROTECTIVE SERVICES, FOSTER CARE,
46 AND CHILD CARE. IF THE CHILD ADVOCATE IDENTIFIES A SYSTEMIC PROBLEM IN
47 HOW THE STATE, THROUGH ITS AGENCIES OR CONTRACT SERVICES, OR ANY LOCALI-
48 TY, THROUGH ITS AGENCIES OR CONTRACT SERVICES, PROTECTS CHILDREN, THE
49 CHILD ADVOCATE SHALL PROVIDE ITS FINDINGS AND RECOMMENDATIONS TO THE
50 AGENCY AFFECTED BY THE FINDINGS AND RECOMMENDATIONS AND MAKE THOSE FIND-
51 INGS AND RECOMMENDATIONS AVAILABLE TO THE PUBLIC. THE AGENCY SHALL HAVE
52 SIXTY DAYS FROM THE RECEIPT OF THE FINDINGS AND RECOMMENDATIONS TO
53 DEVELOP A CORRECTIVE ACTION PLAN AND SUBMIT THE PLAN TO THE CHILD ADVO-
54 CATE FOR APPROVAL. THE CHILD ADVOCATE SHALL MONITOR THE AGENCY'S IMPE-
55 MENTATION OF THE PLAN, AND, IF THE AGENCY FAILS TO PROMPTLY IMPLEMENT

1 THE PLAN, THE CHILD ADVOCATE SHALL TAKE SUCH ACTION AS HE OR SHE DEEMS
2 NECESSARY;

3 (F) TAKE ALL POSSIBLE ACTIONS INCLUDING, BUT NOT LIMITED TO, CONDUCT-
4 ING PROGRAMS OF PUBLIC EDUCATION, UNDERTAKING LEGISLATIVE ADVOCACY AND
5 MAKING PROPOSALS FOR ADMINISTRATIVE CORRECTION OR SYSTEMIC REFORM AND
6 FORMAL LEGAL ACTION, IN ORDER TO SECURE AND ENSURE THE LEGAL, CIVIL AND
7 SPECIAL RIGHTS OF CHILDREN;

8 (G) TAKE THE APPROPRIATE STEPS TO MAKE THE EXISTENCE AND AVAILABILITY
9 OF THE CHILD ADVOCATE WIDELY KNOWN, BY APPROPRIATE AND ACTIVE MEANS, TO
10 CHILDREN AND ADULTS;

11 (H) CREATE INFORMATIONAL MATERIALS FOR CHILDREN REGARDING THE RIGHTS
12 OF CHILDREN WHEN THEY ARE IN FOSTER CARE, DETENTION CENTERS, TRAINING
13 SCHOOLS, JAILS, OR PRISONS AND THE METHODS AND ASSISTANCE AVAILABLE TO
14 ENFORCE THOSE RIGHTS; AND

15 (I) ESTABLISH AND MAINTAIN A TWENTY-FOUR HOUR TOLL-FREE HOTLINE TO
16 RECEIVE AND RESPOND TO CALLS FROM ADULTS AND CHILDREN REFERRING PROBLEMS
17 TO THE CHILD ADVOCATE.

18 2. THE CHILD ADVOCATE MAY:

19 (A) INVESTIGATE, REVIEW, MONITOR OR EVALUATE ANY STATE OR LOCAL AGENCY
20 RESPONSE TO, OR DISPOSITION OF, AN ALLEGATION OF CHILD ABUSE OR NEGLECT;

21 (B) INSPECT AND REVIEW THE OPERATIONS, POLICIES AND PROCEDURES OF
22 JUVENILE DETENTION FACILITIES, FOSTER HOMES, GROUP HOMES, RESIDENTIAL
23 TREATMENT FACILITIES, STATE TRAINING SCHOOLS, SHELTERS FOR THE CARE OF

24 ABUSED OR NEGLECTED CHILDREN, SHELTERS FOR THE CARE OF PERSONS IN NEED
25 OF SUPERVISION, SHELTERS FOR THE CARE OF HOMELESS YOUTH, OR INDEPENDENT
26 LIVING ARRANGEMENTS OPERATED BY OR APPROVED FOR PAYMENT BY THE OFFICE OF
27 CHILDREN AND FAMILY SERVICES, AND ANY OTHER PUBLIC OR PRIVATE RESIDEN-
28 TIAL SETTING IN WHICH A CHILD HAS BEEN PLACED BY A STATE OR LOCAL
29 DEPARTMENT OR OFFICE;

30 (C) REVIEW, MONITOR, AND REPORT ON THE PERFORMANCE OF STATE-FUNDED
31 PRIVATE ENTITIES CHARGED WITH THE CARE AND SUPERVISION OF CHILDREN BY
32 CONDUCTING RESEARCH AUDITS OR OTHER STUDIES OF CASE RECORDS, POLICIES,
33 PROCEDURES AND PROTOCOLS, AND CONDUCTING INTERVIEWS WITH STAFF AND CHILD
34 RESIDENTS AS DEEMED NECESSARY BY THE CHILD ADVOCATE TO ASSESS THE
35 PERFORMANCE OF THE ENTITIES;

36 (D) HOLD PUBLIC HEARINGS ON THE SUBJECT OF AN INVESTIGATION OR STUDY
37 UNDERWAY BY THE OFFICE, AND RECEIVE TESTIMONY FROM AGENCY AND PROGRAM
38 REPRESENTATIVES, THE PUBLIC AND OTHER INTERESTED PARTIES, AS THE CHILD
39 ADVOCATE DEEMS APPROPRIATE;

40 (E) ENTER INTO CONTRACTS WITH ANY PERSON, FIRM, CORPORATION, OR EDUCA-
41 TIONAL INSTITUTION IN ORDER TO INVITE EXPERT RESEARCH TO ASSIST THE
42 CHILD ADVOCATE IN ASSESSING, EVALUATING, REVIEWING AND IMPROVING THE
43 DELIVERY OF SERVICES TO CHILDREN AND FAMILIES IN NEW YORK; AND

44 (F) ENTER INTO CONTRACTS WITH ANY FIRM OR CORPORATION TO ASSIST THE
45 CHILD ADVOCATE IN THE PURSUIT OF FORMAL LEGAL ACTION PURSUANT TO PARA-
46 GRAPH (F) OF SUBDIVISION ONE OF THIS SECTION.

47 S 1008. RIGHTS AND POWERS OF THE CHILD ADVOCATE. 1. NOTWITHSTANDING
48 ANY OTHER PROVISION OF LAW, THE CHILD ADVOCATE SHALL HAVE ACCESS TO,
49 INCLUDING THE RIGHT TO INSPECT AND COPY, ANY RECORDS NECESSARY TO CARRY

50 OUT THE DUTIES OF THE CHILD ADVOCATE AS OUTLINED IN THIS ARTICLE. SUCH
51 ACCESS SHALL INCLUDE, BUT NOT BE LIMITED TO, ACCESS TO RECORDS MAIN-
52 TAINED BY THE STATEWIDE CENTRAL REGISTRY OF CHILD ABUSE AND MALTREATMENT
53 AND RECORDS OF LOCAL CHILD PROTECTIVE SERVICES MAINTAINED PURSUANT TO
54 TITLE SIX OF ARTICLE SIX OF THE SOCIAL SERVICES LAW, RECORDS OF LOCAL
55 AND REGIONAL FATALITY REVIEW TEAMS, AND RECORDS MAINTAINED PURSUANT TO
56 SECTIONS THREE HUNDRED SEVENTY-TWO AND FOUR HUNDRED NINE-F OF THE SOCIAL

A. 11498

4

1 SERVICES LAW. THE CHILD ADVOCATE SHALL HAVE ACCESS TO INDIVIDUALLY IDEN-
2 TIFIABLE HEALTH INFORMATION TO THE EXTENT THAT THE CHILD ADVOCATE DETER-
3 MINES NECESSARY TO FULFILL THE REQUIREMENTS OF THIS ARTICLE. THE OFFICE
4 OF THE CHILD ADVOCATE SHALL BE DEEMED A GOVERNMENTAL AUTHORITY AUTHOR-
5 IZED TO RECEIVE REPORTS OF CHILD ABUSE OR NEGLECT FOR THE PURPOSE OF
6 COMPLYING WITH 45 CFR S 164.512 AND OTHER FEDERAL RULES AND REGULATIONS
7 GOVERNING ACCESS TO INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION. IF THE
8 CHILD ADVOCATE IS DENIED ACCESS TO ANY RECORDS NECESSARY TO CARRY OUT
9 SUCH RESPONSIBILITIES, HE OR SHE MAY ISSUE A SUBPOENA FOR THE PRODUCTION
10 OF SUCH RECORDS AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION.

11 2. IN PERFORMANCE OF HIS OR HER DUTIES UNDER THIS ARTICLE, THE CHILD
12 ADVOCATE MAY COMMUNICATE PRIVATELY WITH ANY CHILD OR PERSON WHO HAS
13 RECEIVED, IS RECEIVING OR SHOULD HAVE RECEIVED SERVICES FROM THE OFFICE
14 OF CHILDREN AND FAMILY SERVICES OR ANY OTHER ENTITY THAT IS REGULATED OR
15 OVERSEEN BY, OR RECEIVES FUNDING FROM, THE OFFICE OF CHILDREN AND FAMILY
16 SERVICES.

17 3. THE CHILD ADVOCATE MAY ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE AND
18 TESTIMONY OF WITNESSES OR THE PRODUCTION OF BOOKS, PAPERS AND OTHER
19 DOCUMENTS AND TO ADMINISTER OATHS TO WITNESSES IN ANY MANNER UNDER HIS
20 OR HER INVESTIGATION. IF ANY PERSON TO WHOM SUCH SUBPOENA IS ISSUED
21 FAILS TO APPEAR OR, HAVING APPEARED, REFUSES TO GIVE TESTIMONY OR FAILS
22 TO PRODUCE THE EVIDENCE REQUIRED, THE CHILD ADVOCATE MAY APPLY TO THE
23 SUPREME COURT WHICH SHALL HAVE JURISDICTION TO ORDER SUCH PERSON TO
24 APPEAR AND GIVE TESTIMONY OR TO PRODUCE SUCH EVIDENCE, AS THE CASE MAY
25 BE.

26 4. THE CHILD ADVOCATE MAY APPLY FOR AND ACCEPT GRANTS, GIFTS AND
27 REQUESTS OF FUNDS FROM OTHER STATES, FEDERAL AND INTERSTATE AGENCIES AND
28 INDEPENDENT AUTHORITIES AND PRIVATE FIRMS, INDIVIDUALS AND FOUNDATIONS,
29 FOR THE PURPOSE OF CARRYING OUT HIS OR HER RESPONSIBILITIES. THE FUNDS
30 SHALL BE EXPENDED IN ACCORDANCE WITH THE PROVISIONS OF SUCH GRANT, GIFT
31 OR BEQUEST.

32 S 1009. ACCESS TO THE CHILD ADVOCATE. 1. THE CHILD ADVOCATE SHALL
33 CREATE AND DISSEMINATE MATERIALS FOR ALL YOUTH IN FOSTER CARE AND JUVENILE
34 JUSTICE FACILITIES OR PROGRAMS DETAILING THE SERVICES THAT THE
35 CHILD ADVOCATE CAN OFFER SUCH YOUTH AND HOW SUCH YOUTH CAN CONTACT THE
36 OFFICE OF THE CHILD ADVOCATE.

37 2. ALL YOUTH PLACED IN FOSTER CARE OR A FACILITY OPERATED BY THE DIVISION
38 OF REHABILITATIVE SERVICES SHALL BE PERMITTED ACCESS TO A TELEPHONE
39 TO CALL THE TOLL FREE HOTLINE OF THE OFFICE OF THE CHILD ADVOCATE UPON
40 THE YOUTH'S REQUEST. SUCH YOUTH SHALL BE PERMITTED TO COMPLETE ANY PHONE
41 CALL TO THE TOLL FREE HOTLINE AND ANY SUBSEQUENT PHONE CALLS WITH THE
42 OFFICE OF THE CHILD ADVOCATE IN A PRIVATE SETTING IN WHICH THE YOUTH'S

43 CONVERSATIONS ARE NOT MONITORED. ANY CALLS PLACED BY A YOUTH TO THE
44 OFFICE OF THE CHILD ADVOCATE SHALL NOT COUNT AGAINST ANY LIMIT ON PHONE
45 CALLS PLACED ON THE YOUTH PURSUANT TO THE RULES OF THE FACILITY IN WHICH
46 HE OR SHE RESIDES.

47 S 1010. CONFIDENTIALITY OF INFORMATION. 1. ALL RECORDS OF THE CHILD
48 ADVOCATE PERTAINING TO THE FULFILLMENT OF THE CHILD ADVOCATE'S DUTIES
49 UNDER THIS ARTICLE AND ALL CONFIDENTIAL RECORDS OBTAINED BY THE CHILD
50 ADVOCATE SHALL BE CONFIDENTIAL. PROVIDED, HOWEVER, THAT INFORMATION
51 CONTAINED IN THOSE RECORDS MAY BE DISCLOSED PUBLICLY IN SUCH A MANNER
52 THAT WOULD NOT IDENTIFY THE INDIVIDUALS FROM WHOM SUCH INFORMATION WAS
53 OBTAINED. SUCH CONFIDENTIAL RECORDS SHALL BE AVAILABLE TO PERSONS
54 APPROVED, UPON APPLICATION FOR GOOD CAUSE, BY THE FAMILY COURT.

55 2. NO STATE OR LOCAL DEPARTMENT OR OFFICE OR PRIVATE ENTITY SHALL
56 DISCHARGE, OR IN ANY MANNER DISCRIMINATE OR RETALIATE AGAINST, ANY

A. 11498

5

1 EMPLOYEE WHO IN GOOD FAITH MAKES A COMPLAINT TO THE CHILD ADVOCATE OR
2 COOPERATES WITH THE OFFICE OF THE CHILD ADVOCATE IN AN INVESTIGATION. NO
3 EMPLOYEE OF ANY STATE OR LOCAL DEPARTMENT OR OFFICE OR OF ANY PRIVATE
4 ENTITY SHALL RETALIATE AGAINST ANY CHILD WHO MAKES A COMPLAINT TO THE
5 CHILD ADVOCATE OR WHO COOPERATES WITH THE OFFICE OF THE CHILD ADVOCATE
6 IN AN INVESTIGATION.

7 S 1011. REPRESENTATION OF CHILD. 1. IN ADDITION TO THE DUTIES SET
8 FORTH IN SECTION ONE THOUSAND SEVEN OF THIS ARTICLE, THE CHILD ADVOCATE,
9 OR HIS OR DESIGNEE, SHALL HAVE THE POWER TO COMMENCE A CIVIL ACTION

10 AGAINST THE STATE, ANY SUBDIVISION OF THE STATE AND ANY PRIVATE ENTITY
11 PROVIDING OUT-OF-HOME RESIDENTIAL SERVICES TO CHILDREN ON BEHALF OF ANY
12 CHILD WHOSE CARE AND CUSTODY OR CUSTODY AND GUARDIANSHIP HAS BEEN
13 ASSIGNED TO ANY AGENCY OR DEPARTMENT UNDER THE OVERSIGHT OF THE OFFICE
14 OF CHILDREN AND FAMILY SERVICES.

15 2. ANY JUDGMENT FOR COMPENSATION OR ORDER FOR SETTLEMENT OF THE CLAIM
16 FOR COMPENSATION ENTERED BY THE COURT PURSUANT TO SUBDIVISION ONE OF
17 THIS SECTION SHALL BE CONSIDERED AS THE ESTATE OF THE CHILD FOR WHOSE
18 BENEFIT THE JUDGMENT OR ORDER IS ENTERED, TO BE HELD BY THE OFFICE OF
19 THE CHILD ADVOCATE AS GUARDIAN OF SUCH COMPENSATION, AND SHALL BE DEPOS-
20 ITED INTO A TRUST ACCOUNT ESTABLISHED BY THE OFFICE FOR THE PURPOSE OF
21 DISTRIBUTING SUCH FUNDS TO SUCH CHILD IN ACCORDANCE WITH THE PLAN
22 ADOPTED BY THE COURT ISSUING THE JUDGMENT.

23 S 1012. INDEMNIFICATION FROM LIABILITY. THE STATE OF NEW YORK SHALL
24 PROTECT AND HOLD HARMLESS ANY ATTORNEY, DIRECTOR, INVESTIGATOR, SOCIAL
25 WORKER OR OTHER PERSON EMPLOYED BY THE OFFICE OF THE CHILD ADVOCATE AND
26 ANY VOLUNTEER APPOINTED BY THE CHILD ADVOCATE FROM FINANCIAL LOSS AND
27 EXPENSE, INCLUDING LEGAL FEES AND COSTS, IF ANY, ARISING OUT OF ANY
28 CLAIM, DEMAND OR SUIT FOR DAMAGES RESULTING FROM ACTS OR OMISSIONS
29 COMMITTED IN THE DISCHARGE OF HIS OR HER DUTIES WITHIN THE SCOPE OF HIS
30 OR HER EMPLOYMENT OR APPOINTMENT WHICH MAY CONSTITUTE NEGLIGENCE BUT
31 WHICH ACTS ARE NOT WANTON, MALICIOUS OR GROSSLY NEGLIGENT AS DETERMINED
32 BY A COURT OF COMPETENT JURISDICTION.

33 S 1013. COMMISSION ON CHILDREN ESTABLISHED. 1. THERE IS ESTABLISHED A
34 COMMISSION ON CHILDREN WHICH SHALL MEET THREE TIMES A YEAR WITH THE
35 CHILD ADVOCATE AND HIS OR HER STAFF TO REVIEW AND ASSESS THE FOLLOWING:

36 (A) PATTERNS OF TREATMENT AND SERVICES FOR CHILDREN;

37 (B) POLICY IMPLICATIONS OF THE FINDINGS OF PARAGRAPH (A) OF THIS
38 SUBDIVISION; AND

39 (C) NECESSARY SYSTEMIC IMPROVEMENTS.

40 2. SUCH ADVISORY COMMITTEE SHALL CONSIST OF SIX MEMBERS, ALL OF WHOM
41 HAVE EXPERIENCE IN THE FIELD OF CHILD WELFARE, JUVENILE JUSTICE, OR
42 CHILD CARE. ONE MEMBER SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF
43 THE SENATE, ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE
44 SENATE, ONE MEMBER SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY,
45 ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY,
46 AND THE REMAINING TWO MEMBERS SHALL BE APPOINTED BY THE GOVERNOR. OF THE
47 TWO MEMBERS APPOINTED BY THE GOVERNOR, ONE SHALL BE A MEMBER OF THE SAME
48 POLITICAL PARTY AS THE TEMPORARY PRESIDENT OF THE SENATE AND THE OTHER
49 SHALL BE A MEMBER OF THE SAME POLITICAL PARTY AS THE MINORITY LEADER OF
50 THE SENATE. THE TERM OF OFFICE FOR EACH MEMBER SHALL BE SIX YEARS AND
51 VACANCIES IN THE MEMBERSHIP OF THE COMMISSION OCCURRING FOR ANY CAUSE
52 SHALL BE FILLED FOR THE BALANCE OF THE UNEXPIRED TERM IN THE SAME MANNER
53 AS THE ORIGINAL APPOINTMENT OF THE MEMBER WHOSE OFFICE BECAME VACANT.

54 3. THE CHAIRPERSON AND VICE-CHAIRPERSON OF THE COMMISSION SHALL BE
55 ELECTED BY A MAJORITY OF THE MEMBERS OF THE COMMISSION TO SERVE A TWO
56 YEAR TERM. THE CHAIRPERSON SHALL BE A MEMBER OF A DIFFERENT POLITICAL

A. 11498

6

1 PARTY THAN THE CHAIRPERSON OF THE COMMISSION DURING THE PRECEDING TERM.

2 THE CHAIRPERSON AND VICE-CHAIRPERSON SHALL EACH BE A MEMBER OF A DIFFER-

3 ENT POLITICAL PARTY AS SUCH TERM IS DEFINED IN THE ELECTION LAW.
4 ANY MATTER UPON WHICH THE COMMISSION MUST ACT BY A VOTE OF THE
5 MEMBERSHIP MUST BE BY AN AFFIRMATIVE VOTE OF THE MAJORITY OF THE MEMBERS
6 OF THE COMMISSION. NO SUCH VOTE MAY BE TAKEN UNTIL ALL MEMBERS OF THE
7 ORIGINAL COMMISSION ARE APPOINTED; THEREAFTER, EACH MEMBER SHALL CONTIN-
8 UE TO SERVE UNTIL A SUCCESSOR IS APPOINTED IN THE MANNER PROVIDED IN
9 THIS SECTION. EACH MEMBER OF THE COMMISSION SHALL BE ENTITLED ONLY TO
10 THE ACTUAL AND NECESSARY EXPENSES INCURRED BY HIM OR HER IN THE PERFORM-
11 ANCE OF HIS OR HER DUTIES UNDER THIS ARTICLE.

12 S 2. Title 1-A of article six of the social services law is REPEALED.

13 S 3. This act shall take effect on April 1, 2005.

.SO DOC A 11498 *END* BTXT 2003

Appendix 6: New York Juvenile Justice Coalition

Proposals for Reform 2004

[Due to technical difficulties, the proceedings from this session could not be transcribed accurately. These are materials submitted by Mishi Faruquee and Andre Holder.]

Expand funding for alternatives to jail for court-involved youth.

The Governor's proposed budget contains a \$56 million "Detention Block Grant" for New York City and local counties to cover some of the costs of operating local youth detention centers. Significantly, by proposing a block grant, the Executive Budget cuts funding for youth jails by \$11 million statewide and calls on local counties to use alternatives to detention and reduce the time young people stay in jail while they await trial or sentencing. *The Legislature should support the Governor's proposed detention block grant to reduce youth incarceration. However, in order for this proposal to be successful, the budget must set aside specific funding for community-based alternatives to detention for young people.* Alternative-to-detention programs cost less than detention (e.g. in New York City, it costs \$131,000 to lock up one youth in secure detention for a year while it costs only \$9,000 to \$12,000 a year to send a youth to a community alternative). In addition, research shows that alternatives to jail are also much more effective in reducing recidivism and addressing the needs of young people, their families, and the larger community.

Support the plan to close 290 beds in OCFS juvenile facilities.

The proposed budget includes a plan to cut 290 beds from Office of Children and Family Services (OCFS) youth facilities at a savings of \$17 million. As a part of the plan, the state will put back \$6 million of those savings in community-based alternative-to-incarceration programs.

Increase \$1 million in funding for aftercare services.

In 2002, over 2,300 children were released from the state's juvenile prisons. Yet, OCFS spends only \$1 million to run its statewide aftercare program. Youth who were once incarcerated

face many obstacles once they are released – they often come home to troubled families and have a hard time getting back in school and finding a job. In fact, over 80% of boys and 45% of girls who leave OCFS facilities are rearrested within 36 months. The state must double the funding for the OCFS aftercare program to create partnerships with community organizations that will help young people successfully return to their homes and neighborhoods when they are released from state facilities.

Add \$10 million to the Governor's budget for Summer Youth Jobs.

The best way to stop youth crime is to give low-income young people jobs that interest them and offer decent pay. The Governor's budget is on the right track by including \$15 million for the Summer Youth Employment Program, which will give summer jobs to low-income youth from across the state. However, this amount is \$10 million less than last year's budget. We urge the Legislature to restore \$10 million to the budget for Summer Youth Jobs so that 60,000 teens will have jobs this summer.

Oppose legislation that increases punishments for sexually exploited youth.

Proposed legislation to increase penalties for juvenile prostitution (Assembly bill #A331 sponsored by Nettie Mayersohn and Senate bill #S00240 sponsored by Dale Voelker) is misguided and counterproductive. The purpose of this bill is to change the law so that young people who are arrested for "loitering for the purpose of prostitution" may be prosecuted and held in jail. Most sexually exploited children have experienced poverty, violence, family dysfunction, and sexual abuse. Rather than punish youth involved in prostitution, the state must fund community-based programs that give sexually exploited young people a safe and

supportive alternative to the streets.

Allocate funding to create housing programs for sexually exploited youth.

Many sexually exploited young people are homeless and have no safe place to escape life on the streets. Law enforcement officials who work with sexually exploited youth also report that there is no safe place to take a young person once they have been rescued from the streets. Programs in San Francisco and Atlanta have shown that a range of services – such as community outreach, preventive services, short-term safe houses, and long-term housing – are critical tools to help young people leave the streets and put them on the road to healing their lives.

Support Assembly bill #A10250 to protect the rights of LGBT youth in the juvenile justice system.

It is estimated that up to ten percent of the youth who are currently incarcerated in OCFS facilities identify as lesbian, gay, bisexual, or transgender (LGBT). Despite the growing presence of LGBT youth within OCFS facilities, there is no anti-discrimination policy regarding sexual orientation and gender identity and no comprehensive training for staff on how to deal with homophobia and the specific issues that LGBT youth face. *The Dignity for All Youth Act (Assembly bill #A10250 sponsored by Roger Green) would prohibit all discrimination and harassment in OCFS facilities including harassment based on sexual orientation or gender identity.* The bill would also require OCFS to provide staff training to raise awareness and sensitivity and to enable staff to respond appropriately to incidents involving harassment of LGBT youth in state facilities.

Improve oversight of OCFS youth facilities to safeguard incarcerated youth from harassment and abuse.

Young people held in OCFS are vulnerable to beatings and other forms of physical and verbal abuse. As reported in a recent *Poughkeepsie Journal* article, a 14-year-old boy was recently paralyzed and brain damaged as a result of physical abuse at the hands of staff while he was

incarcerated. Because OCFS facilities are extremely closed institutions, it is important to have outside officials check on the facilities and make sure that young people are not mistreated or abused while in custody. The agency does have an ombudsman's office to which young people may report grievances. However, because of budget cuts, the ombudsman's office currently only has ONE attorney on staff to investigate allegations and monitor facilities. Because of this serious understaffing, the ombudsman's office is only able to visit each OCFS facility once every two years. We urge the Legislature to increase funding for the ombudsman's office by \$500,000 so that it can increase its staffing and better protect the safety of youth in OCFS facilities.

Appendix 7: U.N. Convention on the Rights of the Child

Convention on the Rights of the Child

**Adopted and opened for signature, ratification and accession by General Assembly
resolution 44/25 of 20 November 1989**

Entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,
Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,
Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,
Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,
Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,
Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,
Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,
Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, 'Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,
Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,
Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,
Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,
Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information

would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29 General comment on its implementation

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings. 3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law and in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first

election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

- (a) Within two years of the entry into force of the Convention for the State Party concerned;
- (b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the

Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.