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MISCHIEF AND MAYHEM: A SYMPOSIUM ON LEGAL ISSUES AFFECTING YOUTH IN THE CHILD WELFARE AND JUVENILE JUSTICE SYSTEMS.

FEBRUARY 21, 2008

MS. HEATHER SQUATRIGLIA: - to all of you who made the, the early morning trek to be here. So I just wanted to give you some background material about the *Cardozo Journal of Law and Gender*, which is sponsoring this event. It's published three times a year. It's exclusively by the Cardozo students and it features articles on gender, family, youth, and recent issues have included articles on domestic violence, human trafficking, the legal implications of reproductive technology, juvenile justice issues, and we're really, we're really excited that Cardozo has this journal and we just really want to make sure that it continues on and on and on after we leave.

The Journal also has the distinction of being the nation's only publisher of gender-related annotated, legal bibliography, which we're very proud of and we work very hard on every year, and it's also available on - - and we have copies of it available at the desk if you want to check it out, which we hope you do.

So you guys didn't come to hear me talk so I'm going to make this very brief. I want to thank you all for being here so early in the morning and just some housekeeping things. If you need anything, just catch a staff person. You can ask, also, the security people. They're very nice. Non-gender bathrooms are on the second floor, the fourth floor and the seventh floor, in the library and right now I'd like to introduce our Dean—the Dean of the Cardozo School of Law, Dean David Rudenstine. Thank you.

MR. DAVID RUDENSTINE: I don't need this. Thank you. I just really am here to say a few words - - first thing I want to do is welcome all of our guests who are here and thank you all for coming and participating. - - on the journal, for organizing this. This—an effort like this requires a lot of time, a lot of patience and I want to - - them for pulling it off - -. I actually don't usually like the overly warmhearted and welcoming comments - - warmhearted and empty-headed and has nothing good to say and I actually don't have a lot to

say on this subject. It's not the field of my scholarly interest but my - - that I want to be here - - because the issues of family and gender are, are, are - - going to continue to be that way for a long time - -.

And the individuals who are involved with - - articulating concerns - - advocating for changes in legislature—these are strong-willed - - courageous individuals - - who are hoping to find these issues - - from law school are also - -. I wanted to say that to our students - - having the courage of their convictions, right out front and center on issues that are, from a political point of view, - - issues - -. They will not always be that way. If you look back over 200 years - -.

MS. SQUATRIGLIA: I don't actually need this either but I feel better standing behind the podium. So thank you to our Dean. Now we're going to have some opening remarks from Jody Marksamer who is a staff attorney and director of the National Center for Lesbian Rights Youth Project. I am ecstatic that Jody was able to be here with us today. He is an incredible advocate and has done some really amazing things, which I'm sure that he can talk about better than I can, so Jody Marksamer. Thank you.

MR. JODY MARKSAMER: Thank you Heather. Yeah, I don't want to stand behind this because you won't be able to see me. If that's okay.

FEMALE VOICE 1: Yeah.

MR. MARKSAMER: Great, well I'm really excited to be here today and I think I may be just the person that the dean is talking about—my issues as wedge issues and that's the first time I've heard that. But I'm very excited to be here today to speak to you about lesbian, gay, bisexual, transgender, LGBT, youth and the child welfare and - - justice systems. You, like the dean, may be asking yourself, why would a symposium on the legal issues of youth in these systems, have a keynote address and an afternoon panel that focuses specifically on LGBT youth when there are so many intractable problems that young people in these systems face every day.

In the next twenty minutes, I will propose many answers to this question, as well as argue that not only should symposiums like today's focus attention on LGBT youth, but in order for any reform effort to truly be successful, these efforts must understand the needs of LGBT youth and pay specific attention to ensuring that LGBT youth are at the table and will benefit from their work.

During this past decade, LGBT youth have become increasingly visible in our families, communities and schools. A significant number of these youth are in the custody of the child welfare system and juvenile justice agencies across the country, yet these public systems that are responsible for their care and well-being, have historically been unresponsive to their needs and slow to even acknowledge that LGBT youth are in these systems at all, let alone that they are in urgent need of competent care.

Increasingly, through training, policy development and other system reform efforts, advocates around the country are calling attention to the experiences of LGBT youth in state custody. And finally, people are starting to listen. While efforts to address problems that LGBT youth experience in these systems are not new, even just five years ago this would've been a very different symposium. So how did we get here today?

The story begins 25 years ago. A time when LGBT people had very limited legal protections and LGBT youth were almost completely invisible. At this time, there were a few concerned child welfare professionals who were outraged by the inability of the child welfare system to protect and support the few youth who were out as well as the youth who were perceived to be lesbian and gay. Since current programs weren't protecting lesbian and gay youth, these advocates created specific programs that would.

These efforts led to the development of the nation's first group home for gay youth - GLASS, Gay and Lesbian Adolescent Social Services, based in Los Angeles, California and founded by Theresa DeCrescenzo in 1984. Three years later, Gary Mallen [phonetic] developed specialized child welfare services for gay youth in New York City, including a residential program at Green Chimneys Children's Services. Today, these are two of the largest programs in the country providing specialized services for LGBT foster youth.

Over the next decade, the visibility of gay and lesbian youth in general, greatly increased, and a small but growing number of child welfare professionals, mostly from the urban centers on the east and west coasts, were bringing more attention to the needs of lesbian and gay foster youth. Also during this time, Mallen and others published a handful of academic articles and books about providing social work services to lesbian and gay youth. And in 1994, a joint task force in New York City released a first of its kind report publicly acknowledging that gay and lesbian youth were misunderstood, neglected, and in some cases, discriminated against by the City's child welfare system.

It wasn't until the turn of the century that transgender youth came into the picture, and advocates' focus expanded beyond foster care and into the

juvenile justice system. In 2001, the Urban Justice Center's Lesbian and Gay Youth Project released *Justice For All*, a groundbreaking report on LGBT youth in the juvenile system in New York City. Through interviews with LGBT youth and juvenile justice professionals, *Justice For All* painted a bleak picture for these young people. LGBT youth were not safe, were not receiving competent services and juvenile professionals did not know what to do.

In the words of one legal aid attorney, "I don't know how to help." Many of the people interviewed for this report said that they had never given any thought to the fact that their clients might not all be heterosexual and those who said that they had worked with LGBT clients often equated LGBT youth with sexual offenders. The *Justice For All* report posed many recommendations, including the creation of a task force to further evaluate the system and the implementation of training and policies, and it is only now, in the last year or so and after a litigation settlement, that the city has finally started to implement some of the report's most overarching and powerful recommendations.

Also, in 2001, LAMBDA Legal and a coalition of youth advocates published a report with recommendations based on the findings from their survey of 14 states, asking about the state's LGBT-related foster care policies and services. What emerged from this survey was a picture of nationwide neglect of LGBT youth in foster care. For example, out of the 14 states surveyed, which included both New York and California, not one of the state foster care agencies maintained policies prohibiting discrimination on the basis of sexual orientation. None required training for foster parents or foster care staff on sensitivity to LGBT youth, and only a handful of local jurisdictions even offered limited, optional training. And what I found most shocking in this report is that one of the child welfare officials surveyed said that her state had no need for policies, training and programs to protect LGBT youth because there simply were none in her state's foster care system. It's a little hard to believe.

The release of these two reports helps to bring the attention of LGBT advocates to the dire situation of LGBT youth in state custody and the great need for education. It was clear to us that the lack of leadership and professional guidance in this area not only made LGBT youth invisible, but also left a vacuum that was being filled by harmful and discriminatory practices based on individual, personal biases and misinformation, rather than informed evidence-based practices.

In 2002, Legal Services for Children, a San Francisco Bay area organization and the National Center for Lesbian Rights launched the *Model Standards Project*, with the goal of addressing the lack of professional guidance in this area, through the development and dissemination of model professional standards based on the knowledge and practical experience of experts in the field. The *Model Standards Project* grew out of our direct experiences working with LGBT youth and their families, as well as inquiries about—from LGBT youth across the country who shared distressing and discriminatory experiences that they had had in state custody, and from concerned providers who sought guidance on how to best respond to these situations.

Through focus groups, interviews and a national advisory committee, we developed a draft set of standards of care, which we piloted in workshops and trainings nationally. These model standards became the basis for the Child Welfare League of America's *Best Practice Guidelines for Serving LGBT Youth in Out-of-Home Care*. The CWLA's *Best Practice Guidelines*, published in 2006, empower agencies to look at their programs as a whole, and incorporate appropriate supports for LGBT youth and their families, throughout the entire range of services that they provide. At the same time, Child Welfare League of America and LAMBDA Legal, led by Rudy Estrada, who you will hear from later today, started the *Fostering Transitions Project*, with the goal of dispelling the myth that LGBT youth do not exist in the foster care system.

One of the priorities of this project was to provide an opportunity, through a series of listening forums across the country, for LGBT youth and care, as well as the adults who work with them, to share their real-life experiences and create a picture of what it is like for young people in this system. In 2006, CWLA published the stories and ideas shared during the listening forums in a report entitled *Out of the Margins*, as a follow-up to their *In the Margins* report.

Out of the Margins demonstrated that there was consensus around the country that LGBT youth in foster care deserve more attention to their needs. *Fostering Transitions* also assembled a network of what now includes more than 100 child welfare professionals and LGBT youth who share resources, discuss programmatic challenges and opportunities, and collaborate on local, state and national child welfare policy issues related to LGBT youth. This network has been an invaluable resource.

Today, more and more LGBT youth are coming out and demanding change and fair treatment. This has led to an increased awareness of the failures and

problems of these systems for LGBT youth and has also created an urgency to respond. In addition to these two national projects, which I just described, advocates and attorneys from across the country are now working together to use traditional legal approaches, including bringing litigation and advocating for legislation and innovative, multi-disciplinary strategies that collaboratively work with a range of service providers and administrators, in order to increase the capacity of child welfare and juvenile justice systems to support and protect the LGBT young people in their charge.

Through these many efforts, we have literally trained thousands of people - social workers, lawyers, judges, foster parents, administrators, probation officers, group home staff, on working with LGBT youth. This includes mandatory trainings in states such as Utah and Virginia. This focus on training has hoped to dispel stereotypes, myths and fears about who LGBT youth are, for those who are holding bias, has helped answer questions for those who are lacking information, and has made it okay for people even just to talk about sexual orientation and gender identity in these contexts.

Second, we have developed and disseminated thousands of resources and tools to providers across the country. These materials provide both basic information and step-by-step guidance on how to improve delivery of services to LGBT youth. In addition to the *Best Practice Guidelines* and the *Margins* report, CWLA has published an entire journal issue on LGBT youth and NCLR has supported the creation of a DVD of LGBT youth digital stories. And we have distributed more than 2,000 copies of this DVD packaged with a CD of 25 training tools and resources. We have also created fact sheets on the legal rights of LGBT youth, Know Your Rights pamphlets and Model Nondiscrimination Policies.

LAMBDA Legal has developed a comprehensive toolbox of helpful resources in their *Getting Down To Basics toolkit*. And advocates in New York and other cities have created numerous training curricula and other tools that speak to the specific needs of their local systems. Third, we have developed strong collaborations that serve as a bridge between the different system players. This has greatly increased our effectiveness and our ability to understand the complex ways that LGBT youth interact with these systems. It has also increased the credibility of our work with administrators and policy makers.

Organizations such as the Child Welfare League of America, the Correctional Association of New York, the Juvenile Justice Project of Louisiana, Wisconsin's Children's Services and Lawyers For Children, just to name a few, now have specific projects that focus on LGBT youth in state custody.

LGBT youth issues are not the center of their mission, but this is important to these organizations. In addition, the cities of New York and Philadelphia have established internal LGBT policy coordinators in their city child welfare systems.

Fourth, we have developed a large network of advocates and providers who are invested in supporting LGBT youth in state custody. What this means is that we can easily connect with each other to share resources and successes, as well as to get help or to provide technical assistance if someone is facing a roadblock. In addition to the *National Fostering Transitions Network* I mentioned earlier, there are numerous state and local task forces focused on LGBT youth in state custody, throughout the country, including a few in New York City that I'm sure you will hear more about this morning and this afternoon. Providers also know that there are many people they can reach out to if they're looking to make changes in how their systems deliver services to LGBT youth and can easily find what it is they're looking for.

Fifth, we have developed LGBT-supportive policies and passed legislation that prohibits harassment and discrimination based on sexual orientation and gender identity. In 2001, when LAMBDA Legal released its *In the Margins* report, none of the states surveyed had protective policies or laws. Today, Illinois, Hawaii, Massachusetts and Connecticut all have comprehensive statewide LGBT nondiscrimination policies and practice manuals. Texas and Arizona have regulations that address LGBT youth in foster care and numerous city and county systems, including New York City, have also developed policies and practice manuals.

In 2003, California passed a law prohibiting discrimination in foster care, based on actual or perceived sexual orientation and gender identity. And just this past year, California passed a similar law regarding their state juvenile justice facilities. And right now, advocates in New York are working to pass similar protections and I'm sure you will be hearing more about this very shortly.

Finally, we have brought four successful lawsuits, which not only have greatly increased the understanding of the parameters of the rights of LGBT youth, these successes have also created a fear of liability for systems, if they do not follow the law. The first lawsuit was brought in 2003, Dovie Bell [phonetic] by the Sylvia Rivera [phonetic] Law Project, and in this case the court held that ACS, the New York City foster care services, was legally required to accommodate Ms. Doe's—Ms. Doe, a transgender girl's medical condition of

gender identity disorder and allow her to dress in female clothing in her all-boys group home.

The second lawsuit was brought in 2006 in federal court by the ACLU, against the Hawaii Youth Correctional Facility. The court, in this case, found the facility had violated the constitutional rights of the LGBT plaintiffs by not preventing harassment, by not keeping them safe, and by isolating LGBT youth in response to the harassment and assault that they were experiencing.

The third case was brought by LAMBDA Legal and the Sylvia Rivera Law Project. This was a case that has since settled, so there is no legal decision. But it was a case against a juvenile justice system in New York, based on the lack of appropriate healthcare for a transgender girl, who had entered the system receiving transgender-related healthcare—hormones and when she got in the system, the system refused to provide her hormones even though she had a prescription for them and through a settlement, their policy changes and, and—as well as monetary payout.

And the final case, Mariah Ell [phonetic] is also out of New York, and involves a young person—a transgender young person in the foster care system and it also involves access to transgender healthcare and this case is still pending. And some of the lawyers that are here are very much involved in that case. Um—so you will have an opportunity today to hear much more about some of this work that I mentioned. I just wanted to lay some of that groundwork.

But, there are, there are more, there is much more than just these types of quantifiable changes that have occurred over these last five years. There has also been an overall cultural shift in these systems. This is no longer just an LGBT issue. Ensuring safety and competent care for LGBT youth in state custody has become a child welfare issue, a safety issue, an issue of basic human rights and dignity. This cultural shift did not happen overnight and cannot be credited to any one person or organization. Rather, it was through a gradual shift in understanding based on the shared acknowledgement that what is good for LGBT youth is good for all youth.

Better-trained providers, increased safety, nondiscrimination policies and more focus on individualized needs that benefits all young people and helps to ensure that these systems are meeting their overall legal responsibilities. There has been a gradual shift in understanding based on the shared acknowledgement that homophobia and intolerance for difference is bad for all youth, not just LGBT youth. Environments where harassment based on sexual

orientation or gender identity are tolerated, teach disrespect and fear of difference, neither or which are good for anybody.

The gradual shift in understanding, based on shared acknowledgment that LGBT youth have the same needs for support, acceptance, validation, as all young people. This is not about special rights or special treatment. And finally, there has been a gradual shift in the understanding based on the shared acknowledgement that ensuring safety and fairness for LGBT youth has always been a legal responsibility of foster care and juvenile justice agencies, they just haven't always been aware of it.

With the recent legal developments I just described, these systems are now aware that they could face liability if they continue to ignore LGBT youth and it could end up costing them lots of money. For too long, LGBT young people in the child welfare and juvenile justice systems have been overlooked, ignored and mistreated. In order to ensure that these systems are living up to their legal requirements, those who support broader changes in the juvenile justice system must advocate to improve conditions for LGBT youth and those who support the rights of LGBT youth must understand that they must address the many problems that all youth encounter when in the custody of the state.

So in conclusion, to get back to the question I posed at the beginning of this talk. How could this symposium pay so much attention to LGBT youth, when there are so many intractable problems that youth face in the child welfare and juvenile justice system every day? I answer this question with another question. How could it not? Thank you.

MS. SQUATRIGLIA: We need another chair for Nancy. Thank you very much. Okay, so we're going to move on to the first panel that we have today which is a discussion of the juvenile justice system, overall—it's processes, how it works, the practitioners who work in it and in various — some very specific areas. We have, um—I have to say, probably the most amazing practitioners in the city of New York. Some among them are here today. So we'll start with Jackie Deane who works as an advocate for young people in the New York City juvenile and criminal justice systems. She's been doing it for a very long time and I have seen trainings that she's done and she's absolutely amazing.

So we have Jackie and we're happy to have [her] here. We have Leslie Abbey who is the executive director of the New York City Administration for Children's Services Juvenile Justice Initiative, which I understand is very new, and we're very, very excited that Leslie's here to talk to us about that.

We have Mishi Faruquee and I have to say, I didn't introduce myself. My name is Heather Squatriglia and as a person with a difficult last name, I want to apologize to Mishi that we spelled your name incorrectly on your placard—or it's spelled incorrectly in the program. One or the other. So I apologize for that. And Mishi is with the Correctional Association of New York. She runs the Juvenile Justice—or, she's the director of the Juvenile Justice Project there and we're happy to have her.

And Nancy Ginsburg is an attorney and director of the Adolescent Intervention and Diversion team of the Legal Aid Society and, I have to say, I love Nancy and I'm really happy she's here. So without me talking any longer, let's just turn it over to our panel.

MS. JACKIE DEANE: Okay, unfortunately, what I don't have much of today is a voice so I'm very glad to have this microphone and hopefully between that and the water I'll be able to give you my remarks, which I've been given the task of giving you guys an overview of the juvenile justice system this morning, which is a rather daunting task given both my time constraints and my voice, but luckily there are a lot of other people here today who will be able to fill in some of the gaps that I may not get to.

So the first question, I think, is—first of all, can everybody hear me? Okay good. The first question is, who are the juveniles that we're talking about, in New York City's juvenile justice system? And the first issue we need to get to there is the age issue. And of course that's something every state has to deal with is to decide what age kids are going to be prosecuted, either as juveniles or as adults, in their justice systems. And New York, I'm very sorry to say, is in the—I think most embarrassing, at this point—position of being one of only two states in the country to have set the age—and this is mandatory age for adult prosecution—at sixteen.

Okay, that is the lowest age in the country and the only other state that joins us in that age, at this point, is North Carolina. We did have the company of Connecticut, until recently when that state saw the light and raised their age, just in the past year or so, to the age of eighteen. And given that this is a somewhat small group, I'm going to just ask you guys to do a little participation exercise with me, 'cause I really don't feel comfortable even talking about this without spending a few minutes on what exactly that means. So if people could just call out, for the next couple of seconds, some of the things that sixteen and seventeen-year-olds are not allowed to do in our New York City society. Just yell out.

MALE VOICE 1: Drive.

MS. DEANE: Okay. Keep going. There's more, right? Vote, buy cigarettes, what else? Drink.

FEMALE VOICE 1: Sign a contract.

MS. DEANE: Okay, sign a contract, right. Join the military, get married, for those people who are allowed to get married.

MS. SQUATRIGLIA: Sixteen-year-olds can't even - -.

MS. DEANE: Okay. Alright, so when we think about that long list and we think a little bit more about why our society here, at least in New York, has made those decisions, it has something to do with concepts of the difference in adolescents, in terms of their decision making capability, their ability to foresee risks and long-term consequences, their susceptibility of peer influence on young people and, you know, many other issues that I think we all know very well anecdotally.

Certainly, parents of teenagers know very well, anecdotally and has recently been documented now in scientific literature, because there's now a lot of research about the adolescent brain that actually shows that the parts of our brain that control rational thought and the skills that I just mentioned, are not fully developed until people are in their early twenties. So my apologies to any of you who are in that category. I always feel that can sound a little insulting but that is what the literature says and I think it is significant when we're talking about who we're going to prosecute as adults, in a criminal justice system.

So in New York, once a young person turns sixteen, if they are charged with a crime that occurs on or after the day of their birthday, they must go to the adult criminal justice system, regardless of the nature of that crime. And again, I think it's something that we are, you know, starting to look at a little bit in New York. North Carolina is looking at it as well and I think the somewhat interesting issue for us in New York and I'm sure this is something that Nancy Ginsburg in particular will be talking about today, is that one of the ironies of our system is that sometimes those sixteen and seventeen-year-olds are in fact better off being prosecuted as adults, in New York City, than they would be if they were prosecuted in family court.

And that, I think, is an equally disturbing fact to our low age range and one that we have to consider in terms of our advocacy efforts to bring those young people into the family court system. And as I tell you a little bit more about how family court works, I think you'll understand why that happens, but it's particularly true when we're talking about sixteen and seventeen-year-olds charged with low-level offences as adults and what would happen to them if they were in family court. So the other end of the age range is really no better.

We begin our juvenile court jurisdiction in New York, at seven, which is extremely frightening for me. I have an eight-year-old and as she turned seven, it really brought this fact home to me in a very different way. And we're going to talk more about, you know, why that is so frightening, again, given the way our system is currently functioning. But—so we have a system that includes kids from seven, up until the age of sixteen.

The other thing I think we need to mention, when we're talking about which kids are in our system, is the issue of race and ethnicity of the kids prosecuted in New York City. And once again, I think New York City is in a very embarrassing and really, in this case, just deplorable state of affairs, because we have system where ninety-three some-odd percent of the young people who are arrested are children of color—African American and Latino. And when we talk about which of those kids not only are arrested but then get locked up and sent away, the percent becomes even higher, and there's not much room to go from 93%.

So the next question is, what are they charged with—the kids who are brought into family court? And the legal definition for that is basically any crime under the New York Penal Code. When I say crime, that's actually a term of - -, because crime includes felonies and misdemeanors under the penal law, does not include what are known as violations, which are considered offences but not crimes. And some of the most common that you may have heard of are things like disorderly conduct or harassment. Those are considered violations, under the penal law, which do not constitute a misdemeanor and do not constitute a criminal conviction in the same way in adult court.

So fortunately, juveniles cannot be charged with those very low-level offences, only with misdemeanors and felonies. Of course that's still a pretty big category of crimes and the practical impact of that, in terms of what crimes we actually see in family court, which I think this is often a surprise to people who aren't familiar with the way the system currently functions, is that a substantial number of kids are brought into family court on low-level and nonviolent crimes under the penal law.

And I think the result of that is that what we have happening right now in New York City, is a criminalization of childhood and what I mean by that is that if we look at the acts that a lot of these young people are committing, and we look at the penal law—and I like to say that, you know, if I were to carry a penal law around with me during the day, and follow my eight-year-old—I also have an almost six-year-old, so he's getting close to that age of seven, too. If I followed them around every minute of every day, I could arrest them several times over for things that would be misdemeanors, under the penal law, okay?

Every time my daughter hits her younger brother that would be attempted assault, even if she didn't mean to—I'm sorry, even if she didn't actually succeed in hurting him, she meant to and that's enough for a misdemeanor, under the penal law. Every time she took something that didn't belong to her that would be petty larceny another misdemeanor, under the penal law. Any time she damaged property, that would be criminal mischief, another misdemeanor, under the penal law. So the question isn't, are kids seven, up to fifteen, committing acts that would be crimes, under the penal law. They are. That's what kids do. That's the definition of being a child. You make mistakes and some of those mistakes happen to add up to crimes, under the penal law.

So the question is, who decides what to do when that happens? Is it their parent or is it the police? And what is particularly upsetting about the state of affairs in New York City is that it's not that childhood is criminalized for all of our children, it's that it's criminalized for the children of color, in the lowest income neighborhoods of New York City, because in those communities and in those schools, the people who are making the decisions are the police.

The police are overwhelmingly present in the neighborhoods and the police are overwhelmingly present in their schools, where the young people walk through metal detectors to come into school and where the people patrolling the hallways and dealing with the situation of a young person who's hanging out and not going to class on time, or wearing a hat or a coat in a building where that's not the Board of Ed rules, is a New York City officer, a.k.a., School Safety Officer. And so that encounter, which, in a white, middle-class, upper middle-class school, would be a simple, "Go to class," turns into an escalating conflict where the young person gets arrested and that safety officer is the complainant.

Many of our cases in family court arise out of school fights, minor property thefts, minor property destruction that occurs in schools, that our dealt with by an arrest, instead of a trip to the principal's office, a stay after school and write, "I'm sorry," 500 times on the blackboard, or clean up the graffiti, or sit down and meet with your parent and the parent of the other boy that you had the fight with. And we know that this is the way that these incidents would be dealt with if these were white, middle-class or upper middle-class students, in schools where these incidents happened.

So that answers the question of, what are they charged with? So then that leaves us with, where do they find themselves? What is the system like that these young people are going into, again, for the wrong reasons and disproportionately children of color from poor communities? So again, the first question is, what is the legal definition of this system? The legal definition sounds pretty good in some ways. It's considered a civil system. It's not a criminal system and so the upside of that is that no matter what happens to you in family court, even if you're sent away from home, you are not given a criminal conviction and you do not have a criminal record that follows you around for the rest of your life. So that is a very significant benefit.

Unfortunately, what that kind of difference in the system has led to is a little bit of a mask of what's actually going on there. The fact that this is a civil system means that we use all civil terminology, so all of the same concepts and procedures that exists in adult court, many of them exist in family court, but you won't find them called the same things. I like to refer to family court as the land of euphemisms, because we call defendants respondents and guilty pleas admissions and criminal complaints petitions, and in fact, we don't even have a word for acquittal, it's just, the charges are dismissed, which tells you something about the acquittal rate, which I'm going to be talking about in a minute.

But what I think this all actually functions as is a wolf in sheep's clothing, because what we have, in fact, is an extremely punitive system in family court, but it's masked under this euphemistic, civil terminology to suggest that something different is going on. And, in fact, this is a system that's very punitive, although the ostensible goal is not to punish and stigmatize young people but to rehabilitate them and to serve their needs and their best interest.

So when we look at family court and we say, well what are the differences between the adult system, besides this terminology? Well the biggest and most obvious is that we don't have jury trials in family court, there is no,

unfortunately, no right to a jury trial in family court and as I mentioned, one of the things that that means is the conviction rate is much higher and I can tell you from personal experience I switched over after a few years from working in the family court to the adult criminal system, at Legal Aid and suddenly, my acquittal rate went from under 50% to almost 100% and I certainly didn't become a better lawyer overnight. So it was really the juries that made the huge difference there.

Interestingly enough, though, we do have a lot more trials in family court than in adult court. In part because the incentives to plea bargain are actually much lower in family court than they are in adult court, and so for any of you thinking about defense work, it's a great place to get trial experience because you'll get a lot of it.

The second big difference is there is no right to bail for juveniles. Kids are either in detention or they're out at home with their families. But what's disturbing is that they're in for things that they would never be in detention for in adult court. For example, they're in because they're truant from school, or they're in detention because they violate their curfew, or they're in detention because their parent is overwhelmed, or maybe a little fed up at dealing with this teenager who's been a problem and they've been given no other options to turn to get help, which is again, a big issue for parents in the communities that our clients come from.

When clients' parents have tried to get help before their child's been arrested, they are generally told to go file a PINS [phonetic] petition against them in family court, so just bring them into the system in another way and, you know, that would be a whole other panel for us to start talking about all the problems with PINS petitions, but suffice it to say it's not a very good solution.

In terms of the process that a case makes its way through in family court, there are really three key stages or components. One is the initial appearance, which is again, our euphemism for the arraignment. That's where a young person receives the charges against him and the judge makes an initial decision whether to detain him or her or not.

The second is our euphemism for the trial: a fact-finding hearing, which I can assure you is no more a fact-finding hearing than any other trial is. The prosecution has the same burden of proof beyond a reasonable doubt, that they have in adult court and here, the question is: can they prove beyond a reasonable doubt that the respondent committed an act, which, if committed by an adult, would be a crime? Which is just the statute's fancy way of saying

that to determine the elements of the crime, we look at the same penal law that adults are charged with, but we're not calling them crimes because this is family court and it's a civil proceeding. We're calling them delinquent acts and findings.

And then the third and, from our clients' perspective, most important stage, is the disposition, and that is where the court decides, assuming there's been a finding and, again, there will be in most cases, what should happen to that young person. And at this stage, the standard is by a preponderance of the evidence, what is the least restrictive alternative, which is consistent with both the needs and best interests of the respondent, and the need for protection of the community? And of course, here is where things get very different from criminal court. In adult court, you know, we've all heard the phrase, the punishment fits the crime, and that's very much the way adult court in New York functions. The punishment is all about what crime have you been found to have committed, what level felony is it and what prior felony history do you have, and that will define a very narrow range of options for the judge.

In family court, the punishment almost has nothing to do with the crime, because when you're asking the question of what are the needs and best interests of the respondent, the crime that they've committed is almost irrelevant to that question. And basically, everything else about the young person's life is relevant and here's where our clients often get into difficulty. Because from the court's perspective, there are a lot of other areas in their life that aren't going so well: school attendance, school behavior, supervision in the home and many other issues that our clients' families often have to deal with, again, that are related to the poor quality of schools that they attend and often, the inadequacy of the placements our clients are given in those schools and the lack of resources that the parents have available to them.

And so it's that dispositional standard that often results in many of our clients being sent away from home on very minor offences: graffiti, trespass, attempted assault, all of the low-level misdemeanors I mentioned before. One thing I want to just close on before I pass off to Leslie Abbey who I'm sure is going to talk to you more about disposition and actually some exciting new alternatives that we have in New York.

But my call to arms recently has been to try to get people and figure out a way in particular to get judges to remember one part of the Family Court Act that has always existed but has seemed to have been forgotten and somehow buried under the dust in family court, and that is Section 352.1 and that is at the beginning of the section regarding disposition in family court. There is a key

finding that the court has to make, even before it gets to the issue of what disposition is appropriate. And what that section says is that if, upon the conclusion of the dispositional hearing, the court determines that the respondent does not require supervision, treatment or confinement, the petition shall be dismissed.

Okay now that section, on its—at face value, tells us something important obviously. It tells us that there's actually a two-part finding that the court needs to make in order to adjudicate a young person as a delinquent. The first is that fact-finding, that he committed an act, which if committed by an adult, would be a crime. But the second is that there is a need for treatment, supervision or confinement and that second finding has to be made in order for there to be a delinquency adjudication.

But I think the even more significant part of that requirement is what the flipside suggests and that is the idea that just because a young person has committed a delinquent act, it does not necessarily mean that he is need of treatment, supervision or confinement. And this goes back to the issue of criminalization of childhood, right? That is a clear recognition by the framers of the Family Court Act that kids can do these things and not necessarily—and even be found to have done them by a court, and not necessarily be in need of any court intervention. Because why did they do it? Because they are kids and kids make mistakes and so I can tell you that in my now over twenty years of doing this work, I have never seen a judge not make that finding. Meaning, I've never seen a judge believe that Section 2, Subsection 2 applies.

And that is a huge problem, 'cause that's right there in the statute, so I think one of the things that we, as advocates, need to do is find a way to remind judges, more than we have or in a better way than we have, that that section exists and there must be some kids out there in family court in New York City who that applies to and we should be getting some cases dismissed at the dispositional stage.

MS. LESLIE ABBEY: Hi, I'm Leslie. Can you hear me? Is this one? Yes, okay. I'm Leslie Abbey, Executive Director of the Juvenile Justice Initiative at the Administration for Children's Services. ACS is the child protective agency in New York City and JJI is really the first foray, sort of, of ACS, directly and squarely into the juvenile justice world. It was launched in February of '07, so we're new although starting to not be that new. And it's a nine million dollar initiative by ACS, designed to provide intensive evidence-based services that are home-based, to youth involved in the juvenile justice system.

The goals of JJI are to reduce the number of delinquent youth in residential placement, to shorten lengths of stay for youth that are in residential placement, to reduce recidivism among kids who are involved in the juvenile justice system, and also to improve individual and family functioning of the kids who are a part of our program.

JJI has two arms to it. We have what's called an alternative to placement program. Along the lines of the euphemisms—when kids are sentenced or at the end of their delinquency case—into an institution—into a correctional facility, the euphemism in family court is that they are placed, they are placed in a placement facility. So in the criminal world, a program that takes those kids out and keeps them in the community would be called an alternative to incarceration. In family court it's called an alternative to placement program. So we are an ATP.

We are providing, in our ATP, again, these intensive, home-based services to kids who otherwise, if not for JJI, would be placed in a facility. We also have an aftercare program. We are providing intensive services to kids who are coming home from some of the facilities. The placement facilities are divided into a sort of two-tier system, and generally speaking, the agency that runs the systems is the New York State Office of Children and Family Services, OCFS. OCFS does run some of their own facilities—placement facilities.

These are fairly, highly secured facilities, generally way upstate, with barbed wire and jumpsuits and so forth. Those are sort of the most secured kind of facility that the kids in the juvenile justice system can go to. They also contract with private non-profits generally, who are New York City-based and run, what are called residential treatment centers, which are campus-like facilities in Westchester and Long Island. So some of the kids can go there.

JJI is providing after-care for the first time, to the kids coming home from those privately operated facilities. That's never happened before. It's never been done by a government agency. One question I get all the time is why ACS—we're the Child Protective Agency—why are we stepping into the juvenile justice world? There's a number of reasons for that. For a long time, under the leadership of Commissioner Mattingly [phonetic] at ACS, Children's Services has been determined to reduce the population of youth that are in congregate care, which are like, these facilities.

The residential treatment centers that I discussed—some of the kids there are in the foster care system and some are in the delinquency system and ACS has been working to reduce the kids that are in those institutions, as a whole. So

the delinquency kids are just a part of that population. We also had started looking at the outcomes of the kids at those facilities, which again, was driving the reduction of the use of congregate care for kids in the foster care system. Because frankly, the outcomes for a lot of those kids are fairly horrible.

The really only study that's been done for kids coming out of placement, was done a few years ago, and it found that 80% of the boys coming out of placement, within three years, were rearrested. So four out of five kids. Four out of five boys coming out and about 50% of the girls were rearrested within three years. Pretty dismal outcomes, and for a very, very high cost. Right now the residential treatment centers cost approximately \$125 to \$150,000 per child, per year. So for that cost, we were getting four out of five boys getting rearrested within three years.

Also, through a quirk in the social services law for those privately-operated placements, while OCFS, the state agency sort of controls the actual contract for those kids, ACS actually foots 100% of the bill for those placements. Weird, quirky law. So Children's Services, even though we weren't actually holding onto the contract, was paying this \$125 to \$150,000 per kid, per year, for the delinquency placements, and again, seeing these very dismal outcomes. So taking all that into consideration, the agency felt like it could do better and could use its money much more effectively.

So it created JJI and was able to get this nine million dollar investment basically, to kind of put forward as a way to eventually save the costs of—those placement costs.

At full scale, JJI, the alternative to placement program, will serve about 400 youth per year, citywide and the aftercare program will be serving about 150 youth, citywide. And what JJI uses are what's called evidence-based therapeutic modalities in the home. Let me just step back. I'll just give you the logistics of how a child comes into JJI and basically at the dispositional phase, the judges, as we know, have to make a determination whether or not the child will stay in the community or go into placement and, as part of that determination, the judge receives various different reports from the Department of Probation, from the mental health service that the court operates.

For the youth that are recommended, at the end of those reports, for placement away from home, those youths and that paperwork basically comes to the JJI office and we do an assessment of those kids and decide whether or not we can accept them into our program. And for the most part, we have eligibility

criteria but they're, they're—we do, I mean, other than the kids—let me stop. Other than the kids who are not placement-bound, we do accept a lot of the kids that we see. So if the kids are accepted into JJI, they then go before the judge and the judge has to decide whether or not they can come into JJI and if the judge agrees then the child goes on to probation and gets JJI services as part of probation.

The three modalities that we're using, which are evidence-based, which means that they have been developed and proven to reduce recidivism in this population, are really a series of a bit of alphabet soup. We have FFT, MST and MTFC. FFT stands for functional family therapy. MST stands for multi-systemic therapy and MST—I'm sorry, MTFC is multi-dimensional treatment foster care. And what these three modalities do, and really, what works with this population is to provide services directly into the home and to provide most of the services actually to the caregivers of these youth.

We are essentially teaching and supporting parents as they learn how to better supervise and better monitor their kids. And the goal from day one, of all these modalities, is to get out of the home and to teach the families to better coexist and teach the caregivers to better supervise the kids without the presence of an agency in their home for the foreseeable future. So while a traditional program that provides services to these families might—for example, on truancy issues, have a therapist or a caseworker who calls the school themselves, checks in, sees if the kid is going, then talks to the kid and says, "You have to go to school. I'm going to be calling your guidance counselor next week to see if you're there."

FFT, MST and MTFC teach the parents how to do that. We make the links for the parents. If the parents have never been to the school, we bring them to the school. We have families, um—we've actually had parents come and sit in on the first period of their class with their kids, to make sure that they're getting to school on time and getting to that first class period. Drug testing—we teach parents how to drug test their own kids. So at the beginning of JJI involvement, we're doing it, we're doing it side-by-side with the parents, but we actually will show the parents how to collect urine and how to figure out whether or not their kid is on drugs or not, so that when we're out of the home, they are able to do that without us being there.

So that's JJI in a nutshell. The aftercare program, I'll just mention, is providing FFT to families where youth are coming home from those private placements and, what's important about the aftercare program is that in addition to providing the aftercare services, we have also shortened the length

of stay for the youth in those facilities. So when the youth do go to the private placements, until JJI came around, the average length of stay for those kids was about fourteen months in the private placement away from home. And we are, as best we can, shortening that length of stay to seven months.

It's been shown that after about that length of time there's really diminishing returns for the family and, in fact, the break in the relationship between parent and child can be very disruptive and very harmful to the family, when the kid actually does come home after fourteen months. So we have been working as best we can, to shorten the length of stay for those kids, to seven months. Um, - - JJI. Thank you.

MS. MISHI FARUQEE: Hi, my name's Mishi Faruquee and I'm the director of the Juvenile Justice Project at the Correctional Association of New York and for those of you who don't know about the Correctional Association, our name is very misleading 'cause it sounds like we're part of the prison system, but we're actually trying to shut down the prison system. So the Correctional Association is a non-profit advocacy organization and we advocate for, for changes in the criminal justice system and in the juvenile justice system.

And our organization was actually founded in 1844, so it's one of the oldest criminal justice organizations in the country, and in 1846 the New York State Legislature gave the Association the authority to visit all prisons in New York State. So we have the ability to go into all adult prisons and monitor conditions of confinement inside adult prisons. Unfortunately, we don't have the same access to youth facilities in New York. So that's, that's been a long, longstanding issues that we don't have access to youth facilities.

What I'm supposed to talk about today is conditions of confinement for young people in New York State. Before I do that though, I just want to tell you a little bit about some of the other issues we work on just to give you a review of who we are. My project, the Juvenile Justice Project, coordinates the Juvenile Justice Coalition, which is a coalition of organizations that are working to change the juvenile justice system, and so our coalition has six sort of core areas that we're working on, alternatives to incarceration, lesbian, gay, bisexual, transgender youth in the juvenile justice system. Thanks to the work of, you know, Jody and people like the Urban Justice Center, the coalition has really made it one of its priority areas.

The issue of sexually exploited young people—so the issue of young people who are being arrested and charged with prostitution, who are under the age of – – to legally consent to sex, yet are being incarcerated on prostitution charges

and we're working to change that in New York State. We've been working very hard on legislation called the Safe Harbor Act, to stop young people from being prosecuted on prostitution charges, and that legislation has been an ongoing battle to get it passed. It's still pending in Albany.

Then we have another working group that's focusing on educational issues for young people in the court system and then we're starting a new task force to look at the issue that Jackie, you know, described, the issue of the huge racial disparities in the juvenile justice system in New York. So that's one of our real, you know, fundamental interests in the project is reducing the racial disparities. And then the other issue that we work on is conditions of confinement and so that's what I'm going to talk about today.

So as Jackie described, when we're talking about the juvenile justice system, we're talking about young people who are under sixteen at the time of arrest. And so in New York State, you can either be charged, um—and Nancy will talk more about this, but you can be charged for certain serious crimes as a juvenile offender, even if you're under sixteen, or you can be charged as a juvenile delinquent in family court. If you are ultimately—adjudicated is the euphemism for convicted—if you're ultimately adjudicated in family court or if you're convicted in adult court, if you're under sixteen you'll be—and if you are sentenced—what's the euphemism for sentenced? If you're placed in a state facility you'll go to a facility that's operated, as Leslie said, by the New York State Office of Children and Family Services.

And so New York State—the New York State Office of Children's and Family Services has—currently they have thirty-one residential facilities, and, in addition—as Leslie was describing, there's a, you know, hosts of private agencies that have contracts with OCFS and take young people. And so for a long time there was—we'd, you know, describe these facilities really, as a black hole, so when young people were sentenced and sent away to these facilities, there was complete—you know, there was—the system was so closed that we had no sense, you know, you know, what happens to these young people when they were in the facilities. There was really no transparency, on accountability and no oversight of these facilities.

The previous commissioner, John Johnson—and Jackie and I were actually in a meeting with him. We were able to meet with him in Albany and the meeting was just—I mean, we had traveled, you know, all—you know, it's a long trip to go up there and, you know, we caught this meeting with him and he—we probably were in there for maybe twenty minutes. And he sat there the whole time with his arms crossed and talked about himself in the third

person and we were talking to him about conditions for LGBT youth and he said—you know, we were concerned about abuse of LGBT youth, harassment, discrimination and he just said, “Abuse doesn’t happen on John Johnson’s watch,” and that was the end of the meeting, pretty much.

And, you know, and that was, you know, one meeting that—I had been working, I’ve been working at the Correctional Association, on the Juvenile Justice Project for seven years and we’ve been trying to get a meeting with him for years and years and years and then after that, we had that twenty-minute meeting and it was, you know, it was just really striking how closed the system was. We had, for a long time, been really concerned about the lack of oversight for, you know, for adult prisons that, you know, there is, there is some, there is some mechanisms in place to oversee conditions inside the adult prisons.

As I mentioned, the Correctional Association can go and visit any prison in New York State and we regularly do, do, and do that, regularly visit facilities. There’s Prisoner’s Legal Services, which can represent individual inmates on specific complaints they have inside the facilities. There’s a Prisoner’s Rights Project at the Legal Aid Society that works on class-action, sort of larger litigation. So there, there has, you know, there, there has been some oversight of adult facilities, but there, traditionally, has been no oversight of the youth facilities and that’s been a real concern, a real concern of ours and a concern of a lot of organizations working with young people. So when a young person was sentenced, really, there was nobody watching to see what was happening to that young person.

OCFS had at one point, you know, a staffed ombudsman’s office of five—you know, they started an ombudsman’s office in the early ‘80s where they had five staff attorneys. During the Pataki administration, while John Johnson was commissioner, they reduced the staff for the ombudsman’s office to one person. So there was one person who was responsible for overseeing thirty-one residential facilities for young people and that one person was supposed to go in and regularly visit the facilities and address individual complaints of young people inside the facilities.

Obviously, that one person, you know, wasn’t a superhero and wasn’t able to, you know—so that one person was able to get to each facility once every two years. So we, we were really concerned that what was happening to these young people and all that reports that we got from young people after they were released from OCFS was, you know, was, you know, we got reports of very, you know, serious incidents of abuse.

One of the most common, common complaints we got from young people is the overuse of restraints. And a restraint basically is when a staff person—if a young person is acting up, you know, they're talking back or, you know, in whatever way they're not sort of listening to the orders of an adult staff person, the staff would physically restrain a young person by taking them—basically taking them down to the—on the floor, in a face-down position in what's called a prone restraint and sometimes holding them, you know, holding their arms behind their back.

And in 2006—November 2006, a young boy by the name of Darrell Thomson [phonetic]—he was fifteen years old, at the Trion [phonetic] Facility in upstate New York. And as Leslie said, most of these OCFS facilities are very far from the city and the vast majority of the young people in these facilities are from New York City. Darrell Thomson was from the Bronx, he was fifteen years old. He was very thin, you know, he was a skinny kid. He—from, you know, all—we actually know young people who knew him and told us that he was not at all like, a young person prone to fighting. He had a mouth on him.

He was talking back to some staff people—two very large staff people, they, they, applied a restraint, they took him down, you know, both of them put pressure on his back as they took, as they were—had him on the floor, as his face was down on the floor and he died. And this wasn't the first death inside an OCFS facility, and this was November 2006 right after, um Spitzer, Elliot Spitzer had just been elected. So he had not come into office yet, he was still the governor-elect.

But for us this was a real call to action for the Juvenile Justice Coalition. For people who've been concerned for a long time about the lack of oversight inside of OCFS facilities. So November 2006, the coalition and—you know, we, we, you know, we had a letter that many organizations signed on, you know, really urging the new governor to really look at what was happening inside of OCFS facilities and really address immediately, the lack of oversight.

And so one of the things that we recommended was that OCFS, immediately, you know, staff up its ombudsman's office to the initial—you know, to what it had been prior to the Pataki administration. And we also recommended that OCFS reconvene an independent review board. Before the Pataki administration, there had been an independent review board of people outside of the agency that would regularly meet and review reports from the ombudsman's office about allegations of abuse and all allegations that young

people—all complaints that young people had in the facilities and sort of monitor how the ombudsman's office was working.

And that independent review board had also, you know, been completely gutted and actually hadn't met in fifteen years. So there was one ombudsman and no independent review board when, when Pataki took office — I mean, sorry, when Spitzer took office in January of last year. The good news is that one of the—I think probably the best thing that Elliot Spitzer did as governor, was appoint Gladys Carrion to be the new commissioner of the Office of Children's and Family Services.

And Gladys Carrion is the most extraordinary commissioner like, I think I will ever have the opportunity to meet and work with. She immediately, immediately recognized that, um—as Jackie was describing, she immediately recognized that we had a completely broken juvenile justice system in New York State. You know, she had the immediate responsibility of looking at what was happening inside of her facilities, but she also saw the big picture and she - - what was going on here?

Why do we have a system that is more punitive—you know, that treats young people more punitively, you know, as we heard, than young people who are going into the adult system. Why are young people being placed in juvenile facilities for a year, on marijuana possession or on graffiti and, you know, all the things that Jackie had talked about—all the misdemeanor charges that Jackie had described.

So she immediately recognized that there—she had a really big, big problem on her hands when it came to the juvenile justice system in New York State.

So she recognized that this would really have to be a priority for her. So one of the first things that she did was hire a new director of the ombudsman's office and in addition to that director, put in funding in the budget to hire ten staff people for the ombudsman's office. So now there's eight staff attorneys as well as a director and a full time assistant—a full time administrative assistant in the office.

So there are ten people in the office, where there was one, and the ten people in the ombudsman's office have responsibility for a certain geographic hub of facilities. So they can go and regularly visit those facilities. So some of them are based in Buffalo—that was one, you know, some based in New York City,

some based in—all over the state. So they can go regularly visit the facilities that are close to them and they are regularly monitoring facilities.

The other thing that they're doing now, which they never did before is whenever there's an unusual incident report, which is referred to as a UIR, whenever there's an unusual incident report of any young person being hurt, you know, any injury, any fight, immediately, the next day the ombudsman's office will call up that facility, talk to that young person and find out what his or her—you know, what his or her side of the story is, immediately, and that never happened before.

The other thing that's happened is that the commissioner has reconvened the independent review board so she actually has appointed—the, the statute requires that there be twelve to fifteen members. She invited, she invited twenty-two people to be on the board, thinking that some people would say no, 'cause they were too busy but everybody said yes, so there's actually a board of twenty-two, rather than fifteen. And that board is meeting every two months and is getting regular reports from the ombudsman's office and so I'm actually on the board and, you know, we are getting regular reports of everything that's happening in the facilities, all of the allegations of abuse and there are still very, very serious allegations of abuse happening in the facilities, but those allegations are being investigated immediately.

The other thing that has happened is that OCFS has really made reducing restraints a priority issue, so one of the things that they did was when Gladys Carrion came into her position, is they immediately revised the policy on when a staff person can apply a restraint on a young person. So initially, before the change in policy there was like, seven different—there are seven different areas or seven different sort of situations in which a staff person can apply a restraint, and some of them are very, very vague.

You know, basically, failure to obey a direct order, you know, anything that would interfere with the functioning of the facility. It was very vague, so the policy has been narrowed so that there are many fewer situations—there are just fewer situations in which a staff person can actually restrain a youth.

But more importantly than that the commissioner has recognized that there really has to be a cultural shift within the facilities and really—they really need to retrain their staff on what they see their role is. One of the things that they — Gladys Carrion has said—you know, coming in, she immediately recognized how there was a real—how the facilities had really become to look like adult prisons and there was a real sort of correctional, correctional kind of

correctional sort of ideology among the staff. They really saw themselves as correctional officers. They did not see themselves as youth workers. They didn't see themselves as helping these young people address issues that brought them into the system, and helping them, helping them become—helping them develop into adults.

And so there wasn't at all a youth development focus in the facility, so they're really trying to really change the staff's thinking about what their job is, which is a very, very hard thing to do. And they're already getting a lot of pushback from the staff. When I was at the last independent review board meeting was at the Trion facility where Darrell Thomson had died, over a year ago and the, the, director at the facility immediately said to us—he wasn't there for the meeting but he was just there to sort of greet us and give us a few words in the beginning, and he immediately said to us, you know, "Give us time. Things—it's going to take us time. It's going to take time for things to change here. We still have a lot of problems. We still have a lot of incidents. We just had four incidents yesterday. We still overuse restraints."

So, there's—you know, there's still—the restraints are still happening in the facilities, there are still people getting injured, getting their jaw broken, getting black eyes. It's still happening, but there really are the—the commissioner and her staff are really trying to change that, and one of the ways that they're trying to do that is they're implementing something called the sanctuary model and I'm not that familiar with it, but my understanding is that what they're really trying to do is they're trying to get the staff to recognize the trauma that some of these young people have experienced before coming into these facilities.

So many of these young people have experienced abuse or neglect. So many of these young people have been, not only, maybe been adjudicated of committing crimes, but have been victims of crimes themselves, and so many of these young people have experienced very, very severe trauma and so they're really trying to get staff to understand that and to really—for staff to really think about how they address people, how they can really deescalate situations before they come to the point of needing to apply a restraint on a young person.

So, so this is, you know, this is all to say—this is, you know, this—there are a lot of things happening. There are a lot of changes happening in OCFS, which is just one part of the juvenile justice system. You know, I think, you know, as—the juvenile justice initiative that Leslie described, I think, is such a huge, huge, huge change for New York City, because it's a recognition that it's not, it's not a young person that necessarily needs to be fixed, it's not a young

person that is necessarily the one—you know, that's the source of a problem, that young people exist in the context of a family and that family exists in the context of a community.

And you have to address the family issues. You have to address what's happening to that young person in their neighborhood. And before, we would just treat young people as the problem and we'd just send them away to these OCFS facilities. You'd think that they could be fixed when obviously, you know, we were seeing terrible results with the 80%—almost 80% recidivism rate.

So OCFS has recognized that and the, the biggest recognition of that—and this, I feel, is the most exciting thing that's happened is that they have announced that they're going to close six facilities and so OCFS has—there's a requirement that when you announce a closure of any state youth facility or adult prison, you have to give one year notice. So on January 11th, Commissioner Carrion announced that they're going to close six youth facilities and so, hopefully, January 11th, 2009, these facilities will actually be closed.

Unfortunately though—not surprisingly, there's already been a lot of pushback about these proposed closures. The unions are, the unions are up in arms. The districts where, you know, where these facilities are located—the legislators are, you know, very concerned about the loss of jobs in their districts, and so there are a lot—they're—OCFS is receiving a lot of resistance from these proposed closures and so one of the things that our coalition has been trying to do is to try to really shore up OCFS and shore up the governor's proposal to close the facilities.

It's hard though, you know, because the unions and upstate legislators—they really are able to put a lot of pressure on, on the legislature, around this issue and so it's not at all clear whether or not OCFS is going to be successful in closing these facilities. We're hopeful that they will be and we're hopeful that—you know, we're going to try all that we can do to make sure that it happens.

But it's not easy, because these facilities have been a way to provide jobs in these rural communities upstate that have lost a lot of jobs, you know, because of closure of family farms and closure of industries upstate. And so these have—this has become the economic development upstate, and Gladys Carrion has said, you know, not on the backs of New York City's children.

So—but it's not going to be an easy battle, but that's something that the Juvenile Justice Coalition and the Correctional Association are—you know, we're really going to be pushing over the next year to make sure that these facilities do close January 11, 2009 and that they stay closed and then more importantly, that the money—the cost savings from the closure of these facilities will be reinvested in New York City communities where the young people going into the juvenile justice system are coming from, so that these programs will—this money will go into programs like the Juvenile Justice Initiative and other alternatives to incarceration programs, as well as programs that work with young people who haven't yet entered the court system, to really try to prevent the criminalization that we've, that Jackie and, you know, we've been talking about today.

So if anybody wants more information about the Juvenile Justice Coalition, I'd be happy to talk to you after the panel and we really want everybody's help in making sure that these reforms that are starting to happen—to really see them carried out. Thank you.

MS. NANCY GINSBURG: Hi. My name is Nancy Ginsburg and I run the adolescent practice in the Adult Criminal Division of the Legal Aid Society in New York. And we initially started just representing thirteen, fourteen and fifteen-year-olds who are called juvenile offenders in the adult system and we branched out to start representing sixteen, seventeen and eighteen-year-olds, although those are the minority of our caseload because those older teenagers look very much like the younger teenagers.

The thirteen, fourteen and fifteen-year-olds are all charged. The only way you get to graduate to criminal court before your sixteenth birthday is if you're charged with a violent felony, which is defined in the penal law, in layman's terms, as using a weapon—kind of everything in the first degree—all the crimes in the first degree and a few in the second.

So robbery in the first degree, robbery in the second degree if you cause physical injury, and then every other in the first degree. Rape in the first degree, arson in the first degree, kidnapping, all kind of the big sexy crimes. That's how the kids end up in criminal court except, in reality, the vast, vast majority of the kids—about 90% of the kids—maybe a little bit over 90% of the kids who are in criminal court before their sixteenth birthday, are there for robberies, and that is mostly because kids really like stuff and they can't afford it and so they think it's really fun to go out and take it from other people.

And so the vast majority of our cases are, "I took an iPod, I took a cell phone, I took a Sidekick. I took an iPod, I took a cell phone, I took a Sidekick." That's kind of like—oh, and then there are the Chinese delivery guy cases. They love those cases. They just love to take food and money, mostly food, and then they usually sit down and eat it when the police show up.

So the problem really, with kids is that they're really, really bad criminals, and so even though we do have the right to a jury trial, we very, very rarely exercise that right because most of our kids are caught on the scene, with the goods and then confess immediately upon seeing anyone who's wearing a police uniform.

And so we usually end up at criminal court arraignment with a full written confession with every detail implicating every kid they were with and/or adult, and lots of physical evidence on them. So they almost always have the phone, iPod or Sidekick on them, or they were observed dropping it in the garbage, or handing it off to their friend who ran faster than they did.

And so they're very, very hard cases to try, which is not to say that we don't go to trial on some of our cases. We do go to trial in some of our cases, and I think Jackie was being somewhat generous to the family court acquittal rate of around 50%.

MS. DEANE: [Interposing] - - less than 50%.

MS. GINSBURG: [Interposing] Oh, well it's part of-

MS. DEANE: [Interposing] - - low.

MS. GINSBURG: It's really much, much less than 50%. I would say it might be in the single digits. It's very, very, very hard to get a dismissal. In family court, you're in front of judges who hear 100 cases a day. They are really jaded and they are really tired. They work much harder than the Supreme Court judges who don't see trials that often. In truth, in the adult system, the number of cases that actually go to trial is less than 5% of the entire caseload in the adult system, whereas in family court, everything goes to trial because if you're charged with a felony in family court, you're facing eighteen months.

So there's very little room to negotiate. It's eighteen months upstate or nothing and—or, you know, probation, which, in the scheme of things is considered nothing because nobody ever gets dismissals. Back in the day,

people actually got conditional discharges and adjournments and contemplation of dismissal. Those are very rare terms ever to be heard in family court.

Now, you know, the whole issue of what is supervision is, I guess, probably a topic for another panel, because it is a gross exaggeration to say that these kids are actually being supervised after they're placed in probation. Probation officers have lots and lots of kids on their caseloads, even when they say they've reduced the caseloads.

The truth is that, you know, these kids are just out there and the probation officers—some of them do the best they can and lots of them don't and nobody knows what these kids are doing and they're in failing schools and they're in school programs that don't meet their needs and they should be receiving Special Ed Services, but they're not and the probation officers don't know what to do about that. Or they shouldn't be in Special Ed and they've been forced into Special Ed and the probation officers don't know what to do about that.

Probation officers generally don't know what to do about school at all and so all they know how to track is attendance. So if you're not going to school because you can't read, nobody pays—nobody says, "Are you not going to school because you have no idea what's going on?" They just say, "You're not going to school and the alternative is, we're going to incarcerate you," which is kind of a ridiculous response. But that is the system response.

Now in the adult system, it's totally different, because when you are young and you show up in the adult system, everyone's looking at you like, "Oh my God, you're so little." And like, there is a lot of that. The kid walks into court and everyone says, "Oh my God, you're so little," even the judges who specialize in kids. Sometimes we get a really skinny kid and he walks in, he looks like he's never shaved, 'cause some of our kids actually haven't, and the judge is like, "I can't deal with this." Because when you're fourteen, you're just on the beginning scale of the humongous scale that the adult court judges see.

They're used to seeing people who are somewhat accomplished in their criminal activity and they come in with nice, big, fat rap sheets and they've done lots of things to merit the judge's attention. But a kid who's coming in on a robbery committed by four kids, just to steal someone's cell phone—as long as that person wasn't white and famous and it didn't happen in Soho, the judge is more likely to say, "Okay, maybe we'll look at who you are."

And really the whole goal of our specialized unit is to make the judge pay attention to the child and not the crime, because the crimes, for the most part, are concocted in five seconds by a group of kids after they've smoked six blunts among the four of them. I mean, that's just the reality and the truth is that everything that is important about these kids is their life and who they're living with and what's happened to them and why they ended up making those decisions.

But that whole decision-making process of—you know, the judges are always saying, "Why did you do that, young man?" and the kids always—almost always, without exception say, "I don't know," because they really don't know, right? They were high and someone had something that they didn't and they wanted it, so they took it and that's it. Some of these kids, they never would've even done it if they hadn't been with that specific constellation of kids, because almost every robbery is committed with a group of kids.

It's very unusual to see a kid who acts alone. Those are kind of like, the red flag cases when you see like, a kid running around the city robbing people by himself. But for the most part, it's a group of kids and it's one kid who's kind of a little bit more thoughtful about how he's going to possess property that he can't afford and he will say to the other kids, "Let's go get that kid's cell phone," and like, the fourth kid, who never would've done it or maybe, wasn't brave enough to do it or wanted to do it but wouldn't have initiated something like that, will just kind of go along for the ride.

The problem, the way the law is written, is that all four kids are held equally responsible for that act, if they participate in any way. So if the fourth kid blocks the person's path of egress, then that fourth kid is charged equally as the kid who actually said, "I have a gun. Give me your phone." Now the, "I have a gun. Give me your phone," is a very popular thing for these kids and is often how they show up in criminal court, because kids really like to act tough and so they say, "I have a gun," even though they don't have a gun.

They don't have anything, just their small pea brain and they say, "I have a gun," and all of a sudden everyone ends up in criminal court and their parents are all screaming and crying—"My kid's only fourteen. Why are they in criminal court?" and we have to say, "If you say you have a gun, that is the same as having a gun. That's the way the law is written.

But for kids, this is a very unfortunate reality because that whole thing about brain development—it's really true. Kids are unbelievably thoughtless and now it's nice that we have the science behind it so we can actually say to the

judges, "Oh look, the science supports that kids don't think before they act." But really, it's not if you have a teenager, anyone who has been a teenager, which I would argue is everyone who's sitting on the bench and all the prosecutors, can think back to one, maybe more, stupid things that they did between the ages of thirteen and twenty-one.

I mean, seriously, think about all the times you could've been arrested during that period of time, and how your life would be very, very different and you might not be sitting in this room, had you been caught. That's just the reality, and so we spend lots and lots of time saying, "Oh yeah, you know, that kid is charged with that crime and he said he had a gun, or he did have a knife, or he picked up a rock or whatever he did," but we don't really want to talk about that. That was one moment in time. It was a snapshot in his life. It was two seconds of bad thinking on his part, but look at everything else that has come before.

And what we found when we started doing these cases systematically in criminal court, is that all of these kids look just like the family court kids. Many of them are family court kids. They have concurrent child protective cases and they have concurrent delinquency cases. 30% of our kids have been or are currently in foster care. Almost all of our kids have substance abuse problems. Well, it depends really, how you define problem, but the reality is that kids love to smoke. They just love drugs, right? They love—particularly kids—love weed. They love it. They just cannot give it up and the truth is that if you went to any high school in this city, you would find all the kids really love drugs.

You could go into Dalton and probably arrest every single person in that school. Any private school in this city—really, you could arrest the vast majority of those kids, if you went to—they just happen to have very large apartments where they can have house parties and they're not forced to smoke on the corner like our kids are 'cause they don't have money and there are eighteen people—family members, extended family members living in the house and they're not going to get high there, although some of them do, with their extended families, but for the most part, our kids end up on the street 'cause they don't have some place inside to go and so they get arrested for that.

It's just that the kids who end up in adult court take that extra step to do something else after they get high, so we're not dealing with the kids in family court who are just getting high in the corner. Although, the sixteen to eighteen-year-olds are getting arrested for exactly the same things that the family court kids are. Now this whole raising the age thing, it is very, very

complicated in New York because in New York we have what's called youthful offender adjudication for kids who are charged in the criminal system. And so if you are thirteen to fifteen—now, thirteen, that's kind of like an - - age, because the thirteen-year-olds can only be prosecuted for homicides and there are very, very, very few homicides at all, in that entire juvenile offender population. I would say in a year, maybe citywide, maybe there are two or three, tops. Kids just tend not to end up being charged with murder. They tend not to commit murder and often when they are, it's of an abusive family member, so those cases are often very messy and complicated for lots of reasons.

The juvenile offenders are exposed to a shorter criminal incarceration range than the adults. Adults meaning sixteen and up. So on B felony, let's say a robbery in the first degree, the most popular charge, those kids are facing a maximum of three and a third to ten years, which is still a whopping period of time given that these kids have only been alive for fourteen years and are facing a maximum of ten. On the backend that's a lot of years. When they hear these numbers, after they went out and got their iPod phone or Sidekick, the blood starts to drain out of their face because they had no expectation that they would be facing this kind of punishment when they thought it would be cool to have an iPod.

The sixteen to eighteen-year-olds face adult sentences, so if you're charged with a robbery in the first degree, you're looking at a five-year minimum with a twenty-five-year maximum. A lot of, lot of time. Now the saving grace in New York is that there's youthful offender adjudication in which a judge can essentially replace a conviction—a criminal conviction with this adjudication, which means that you can be sixteen years old, have a knife, go up to someone, steal their pocketbook, run away, end up criminally charged and a judge can say—after let's say there's a plea, or you're found guilty after trial, a judge can say, I'm replacing your conviction with a youthful offender adjudication and what that means is that you do not suffer the collateral consequences of a criminal conviction, which are many: financial aid, housing, immigration, deportation—on and on and on.

So it's obviously very, very important. It's a big goal of ours to get our kids youthful offender adjudication. Now there is—you can—for the younger kids, you can remove their cases, we can apply for removal from criminal court to family court, but this is very, very dicey because we don't like our kids to go to family court because our kids, because they're charged with the most serious crimes, will likely get placed, although we don't call it that.

We don't engage in the game of euphemisms that we get to hide behind—oh, we're criminal defense lawyers, so we say incarcerated and we use all the adult terms because the reality is that's what's happening to these kids and the judges always say, "Well, it's called placement here," and we say, "Yeah, whatever," because they are being incarcerated because the thirteen to fifteen-year-olds are placed, incarcerated in secure, OCFS facilities and the thirteen to fifteen-year-olds in family court are incarcerated in limited secure facilities.

During the Pataki years, once they wrapped all those facilities in multiple rounds of barbed wire, there's very little difference between the limited secure and the secure, secure, except there's more security in the actual building in the secure—there's just more hardware. That's kind of how we explain to the kids. The doors lock behind you, there are more bars on every window. It just feels more secure, but it's all the same. If you are up near Albany and you're from the Bronx or you're from Bed-Stuy, it doesn't matter to you if you're in a limited secure facility or a secure facility.

When I first started in family court, the kids would call up from these facilities and they'd be like, "I can't be here. It's too quiet." It's just—it's so foreign and the staff from these facilities are not from here. They're mostly white, although that's starting to change a little and the cultural differences between them and our kids from the Dominican Republic and Puerto Rico and these big, African-American, southern families that come from the Bronx—the come from the—initially came from the South. The cultural differences are vast and they don't even know how to talk to our kids, how to approach them. They don't know what they read, they don't know what music they listen to and when they do know, they really don't like it very much and so there are all of these problems that complicate the process.

The problem really—well, there are lots of problems with approaching the raise the age process in New York. If you're sixteen and you're smoking weed on the corner and you end up in criminal court, you are going to be put through the system, you're going to spend twenty-four hours in central booking. In the precinct in central booking you're going to see a judge and you're going to be released and your case is going to be over. If it's your first offense, you are very likely to get a marijuana ACD, which means don't do anything for the next year and this case will be dismissed, which is the appropriate response, I would argue, for a sixteen-year-old smoking weed on the corner. Not, "Do you go to school? Does your mother take care of you?"

Of course, it's very nice to be concerned for kids in New York, and I do think that people should be concerned about kids in New York, I just don't think that

the courts are an appropriate place for that concern to take place because that concern usually ends up in incarceration and that is not how we should be taking care of our kids, which is a great thing about JJI because ACS, which is the Child Protective Agency, they're the ones who should be saying, okay, you got dragged into the criminal system and now we're going to see if we can push you out by giving you the services we probably should've given you—sorry ACS—a long time ago because lots and lots of kids just fall through the system, right?

Lots of—most—the reality is that this is who these kids are. Most of these kids are born to single mothers who had them when they were fifteen, fourteen, sixteen years old and so by the time the kids turns fourteen or fifteen, they are now twenty-eight or twenty-nine or thirty and they are tired. They want their own life. Lots of these moms are very frustrated and they feel like they've spent their whole life, which they have, raising their kids and they want their turn. They want, they want—they didn't finish high school, they want a chance to finish high school and so lots of these moms need training, they need help, they need some kind of guidance in how they can, along with their kids, get themselves on track.

They're not earning the kind of money they need to earn to support their families. They don't have the skills they need to make their households run. It's like we have a whole generation, now multiple generations of kids raising kids and you'll see, if you sit in any courtroom where there are kids coming through, the kids—the defendants—the respondents—whatever you want to call them—many of them are walking in with strollers, right? And then they're starting the process all over again.

So lots of these parents are doing what they can with the skills that they have, but the skills are very limited and so if you can send people into their home and say, look, I know you're really, really frustrated with your child—because these kids, trust me, are very frustrating. You say, "Okay, now you've been charged with a crime and you have to be in at 6:00 and you have to stop smoking weed." Are you kidding? They don't even know—forget it. It's just not happening, so lots of these—the families have to be retrained into how to be families and not be at war with each other, because the kids often don't respect their mothers and it goes on and on and on.

I mean, the vast majority of the kids are boys who are growing up without fathers and they're really, really pissed off about that alone, let alone the 400 other things that have happened to them along the way—the multiple foster care placements, the abuse and neglect that happened to them. When you talk

about the trauma that these kids have seen or have experienced themselves, it's pretty massive. Like, really pretty massive when you do real social histories on these kids it's what they've seen happen to their mothers. Lots of these kids come from abusive households where they've watched their mothers get beaten and their mothers often enter multiple relationships where there is violence and so that violence is visited upon their mothers and then it's visited upon those kids.

The most important thing that we try to do in adult court is deconstruct the kid's life and to take the emphasis off of the crime, because there's nothing you can do about the crime. The crime happened and so what should be the response? Should a judge take a chance on a child and say, I'm going to give you a second chance. I'm going to put you into an alternative to incarceration program and let you try to learn these skills. We're going to try and get your family some of this help so that all of you can learn how to become productive or, we're just going to send you upstate, basically.

Part of the reason why the judges in criminal court are less likely to incarcerate is because they know what a conviction can do. The problem with it being civil, in family court is you get—there's a finding, you get sent upstate and you can still go on with your life. But a criminal court judge knows that if they give you a criminal conviction and you're incarcerated, they basically take 90% of your life options away by doing that, so that, in a way, is what complicates many, many aspects of these issues. I know. We could go on forever and ever about this, but I'm not going to.

MR. MARKSAMER: I want to thank all the panelists and do we have couple minutes for questions? Yes, I'd like to open up the floor to any questions. Yes?

FEMALE VOICE 1: --.

FEMALE VOICE 2: Yeah, yes. There's 400 slots and I think right now—actually, the census of kids getting placed is going down, so the closures of the facilities was certainly much directed by the inclination of the commissioner, but also by the fact that the universe is shrinking, to a degree and those facilities were being underutilized. Right now—I don't know statewide. I do know in the private placements that there is somewhere on the order of 1,000 to 1,500 kids placed each year.

FEMALE VOICE 3: Yeah, and statewide—well, from New York—yeah, statewide, in the OCFS facilities is around 2,000.

MS. ABBEY: I just wanted to say, following some of these other comments, that at JJI 80% of the kids that we're serving have either had a history of, or at the time of enrollment in JJI, current involvement with ACS. Four out of five of the families that we're working with have been known to ACS prior to enrollment in JJI, which just further substantiates some of the things that my colleagues have said.

MS. DEANE: I just want to say—'cause Leslie's being too modest to mention it, but there was a wonderful, huge article on the front page of the metro section yesterday featuring JJI and one of the kids who was involved in it. It'd be great to get that out to folks here and it's also just worth noting that that was a kid who actually did get placed and then, because JJI was never given the referral for his case when it should've been and the case was brought back to court and then he was released to JJI and is now doing really well.

FEMALE VOICE 2: - -.

FEMALE VOICE 1: It's interesting. Depending who you ask—because Spafford is still open but what happened was the city temporarily closed it and when they reopened it—they just closed it for a few months and renovated it and when they reopened it in 1999 they changed the name from Spafford to Bridges, so if you ask people at the Department of Juvenile Justice if Spafford is closed they'll say it's closed because now it has a new name and now it's Bridges.

But for people who don't know about Spafford, Spafford is one of the three secure detention centers in New York City that's run by the Department of Juvenile Justice. It's a pretrial detention facility and it's the intake facility, so when young people are first arrested, if a police officer can't get in touch with the parent they can take them directly to Spafford as a police admission or if a judge remands a young person to detention pending trial, they'll first go to Spafford. If they're sentenced to go to OCFS, they'll go to Spafford while they're awaiting placement in an OCFS facility.

For a long time, Spafford was the one detention center in New York City and there was a longstanding effort to have Spafford shut down, so New York City had actually promised, during the Dinkins administration, to close Spafford and replace it with two smaller facilities and what happened was when Giuliani was arrested—I wish Giuliani was arrested—when Giuliani was elected they

were, you know, the process that we described of more and more young people getting arrested for misdemeanors and non-violent charges—more and more young people were getting detained in these detention—at Spafford and soon, what happened was that during the Giuliani administration, they did open the two new facilities that were supposed to replace Spafford but they quickly filled those two facilities and they said they needed the jail space so they kept Spafford open—or they closed it, as I said, temporarily renovated and then reopened it.

So then where we had one detention center pre-Giuliani, during the Giuliani administration we then had three that were quickly, almost filled up during his administration and so at the end of his administration they made a proposal to build 200 new detention beds and they were going to put a wing at Crossroads, one of the new facilities and a wing at Horizons, a hundred-bed wing at each of those facilities. They were going to spend sixty-five million dollars to build those 200 new beds. So what happened was, luckily, that plan—there was a big organizing campaign to stop that construction plan and then that plan was eventually cancelled and the city didn't build those 200 beds, but we still have three secure detention centers open in New York City, where we used to have one. So one of the—our goals—we're hoping that with—the city has started to reduce its use of detention.

It's happening slowly and they have created some new alternative to detention programs that, eventually, we will see Spafford closed and that there will be just the two new facilities, Crossroads and Horizons. And I just want to point out the names. I mean, Crossroads, Horizons, Bridges. You know, it's really Orwellian, the names that we give to these jails, and again, they're not called jails, with the euphemism; they're called detention centers. But yeah, Spafford is alive and well right now and we really would like to see it closed.

FEMALE VOICE: - -. So while we're setting up, if you just want to take a brief break and get some coffee, whatever but stay close 'cause we want to get to lunch.

MS. SQUATRIGLIA: There are specific issues that are important and don't get a lot of attention so first off, we have Karen Gutheil—Karen Fisher Gutheil who is a Cardozo alumna and is a staff attorney at the Special Litigation and Law Reform Unit at the Juvenile Rights Practice of Legal Aid. We have Cara Chambers who also works at the Legal Aid Society. She's a supervising attorney for the Kathryn A. McDonald Education Advocacy Project at the Legal Aid Society. And then we have Mia Lewis who is at now, the American

Civil Liberties Union. Okay. 'Cause when I met you I thought you were at Human Rights - -.

MS. MIA LEWIS: I was.

MS. SQUATRIGLIA: So now she is at the ACLU and you're going to talk about—she's the staff attorney in the Women's Rights Project at the ACLU and she does incredible work on behalf of women and girls who are in the criminal justice system and she's going to talk about that today. So thank you very much for being here and let's start.

MS. KAREN FISHER GUTHEIL: Good afternoon everybody. I thought I would start out just by giving you some numbers and giving you an idea about Legal Aid's Juvenile Rights Practice. Legal Aid's Juvenile Rights Practice provides representation as attorneys for children who appear in family court in all of the boroughs in New York City on what we call child protective cases. These are the abuse and neglect proceedings and termination of parental rights proceedings, as well as representation for children who are charged with delinquencies as well as PINS petitions, which was referred to earlier this morning—Person in Need of Supervision.

Last year we represented approximately 29,000 children. That gives you an idea. Approximately 4,000 of them were charged with juvenile delinquencies. In addition to representing individual children in the family court, the Juvenile Rights Practice Special Litigation and Law Reform Unit pursue impact litigation and other law reform initiatives. We collaborate with colleagues in the civil practice—the criminal practice as well as other JRP units such as Cara's unit, the Education and Advocacy Project.

So we initiate class-action lawsuits and other litigation that's really aid at system-wide abuses. Most of the abuses we hear about from our attorneys in the burrow trial offices as well as from our membership in coalitions such as the Juvenile Justice Coalition, that Mishi runs. We also review state and city budgets. We analyze and comment on child welfare, juvenile delinquency, PINS and other bills introduced in the state assembly and Senate.

We also draft legislation and work to get it passed. One of the things that I—or the thing that I really want to focus on today is not the affirmative litigation but is the legislative advocacy and to talk about steps that we take in order to try to get specific pieces of legislation passed.

I cannot emphasize enough how the people at the top of a state or city agency can influence what's going on at levels of that agency and also in the court. Mishi alluded to this earlier when she spoke about Gladys Carrion who Governor Spitzer appointed as Commissioner of the Office of Children and Family Services. Gladys Carrion is a former—well she is an attorney by training and worked for Legal Services many years ago and before she became commissioner she also ran a maternity residence in part of the child welfare system.

So she understood, in a way that many people who have preceded her in that job, that these are indeed children who wind up in the juvenile justice system and referred to them as children and not residents. That has been a sea change and so the advocacy steps that we, at the Juvenile Rights Practice and as part of the Juvenile Justice Coalition, had taken in the past, it was primarily adversarial.

You heard Mishi talking about how it took seven years to get a meeting with the then commissioner, John Johnson. Part of what Gladys Carrion did within months of being named commissioner, was reach out to all of the advocates and say, "I want to meet with you. I want to hear about what's going on." So once the area of communication—lines of communication were open, we were able to advocate in a much different way, whereas before, it would've probably, and it was in many instances, focused on, okay, this needs to be a lawsuit. How are we going to bring it? It became a dialogue about how we can make changes and that's very, very important to know and to understand in terms of legislative strategy.

So I'd like to talk about two different bills that we tried to get passed last year, one of which we were successful with and one of which we were not. The first one was what we refer to as the Caseload Cap bill. Juvenile Rights Practice attorneys are assigned to represent every single child who is the subject of an abuse or neglect petition or a PINS petition or a delinquency petition, unless there's a conflict of interest somewhere. So when you have four kids who are accused in concert, on a delinquency petition, obviously, we can't represent all four of them. We're representing one of them.

But when a case comes in of abuse and neglect, we are assigned the entire family, the entire—all of the children. Parents are represented by individual counsel, and unless there's a conflict in between siblings, and you can have a case where you're representing one or two children, or up to ten—it depends on the case—we represent all of those children. So we were representing—

individual staff attorneys were representing, and still are, on an average of 220 children at one time, which is wrong for obvious reasons.

So one of the things that we decided to do was to try to get legislation passed that would limit the number of children that an attorney for a child could represent, in New York State. So the first thing you have to try to do is get your piece of legislation introduced by a powerful legislator, 'cause otherwise it doesn't go anywhere. You have to find a legislator who sits on an appropriate committee; you need Senate sponsorship as well as assembly sponsorship.

So what we did was we were able to get the legislation sponsored by the respective heads of the judiciary committee in the assembly, as well as the Senate. Something to understand is that the Juvenile Rights Practice is funded by the office court administration and the money comes out of the judiciary budget, so the heads of the judiciary committees were the ones that we really needed to have on our side.

The next thing you need to do is decide who you need to tell and when to tell them. So because our funder is the Office of Court Administration, we needed to tell them. Now depending upon who your—whether it's a bill—in this case it was a bill about getting more money and so our funder was somebody that we needed to talk to. You need to figure out who your adversaries might be and when you want to talk to them, because, in our case, the funder could have been someone that we worked with to try to plead our case to the legislature. As it turned out, they became our adversary and so we spoke to them about it but we spoke to them about it as the legislation was going to be introduced and then it became adversarial later on.

We talked to other people who provided this kind of representation. New York State has some other institutional providers but children are often represented by solo practitioners in many parts of the state and many of them, as it turned out, were not on board with trying to limit the number of cases that an individual attorney could represent.

We also—the other thing you want to do is identify additional allies. In our case it was law school clinics, it was state and city bar committees and other children's advocates. The other thing that's really important is to understand your political landscape. Had Eliot Spitzer not been the governor, I don't know if this legislation would ultimately have been signed, but we knew that he probably would be in favor of this, and so as soon as the legislation was introduced, we contacted him.

He had already had a record of being interested in children's issues so it's very, very important for you to understand who the players are, who the powerful people are and where they stand on this. The next thing you need to do is to try to set up a good vote, or a unanimous vote in the best of all possible worlds. So you want to contact individual legislators. New York State is very, very different depending upon what community you're in.

The numbers in New York City, of the kids in family court are very, very different than in very small communities upstate, although in places like Rochester and Buffalo, other urban—big, urban areas, some of the institutional providers had exactly the same problems, but we needed to contact those people to get in touch with their local legislators, so that when it came to a vote, they were going to be onboard with this.

You want to try to keep legislation in the news. For those of you who have paid attention to this, there's been an enormous influx of cases coming into the family court system. There's a little girl named Nixzmary Brown who, in January of 2006, was killed. The trial is actually—I'm sure you're all aware of this, because the trial's going on in Brooklyn right now. But what it did was to put an enormous focus onto family court and so there were stories about Nixzmary Brown and family court and the crisis in family court and we were able to get our story told through some of those stories.

The other thing is, if you can afford it, is to enlist the help of a lobbyist, because the lobbyist is going to be somebody who has the knowledge and the connections—in our case, Albany—to let us know who the important players are and how to get your legislation on the agenda, 'cause that's the other thing you have to do is to make sure that people are going to vote on it.

Ultimately, you also have to know when to compromise. The original bill said that if you were an attorney for a child and were currently representing 125 children, you could refuse to accept the next assignment and that if you were an attorney for a child and were representing 150 children, you had to say no. Okay.

The head of the judiciary committee on the assembly side—once our funder, the Office of Court Administration realized that this was starting to move forward in a pretty unprecedented way, said whoa, we're not going to agree to this and because they are also a player in this, what we wound up with was a bill that was amended to say that the Office of Court Administration was required to submit a report to the legislature by November of this year and that by April of—I'm sorry, by November of 2007, and that by April of 2008, the

Office of Court Administration had to promulgate rules around how—that had to include how many children an attorney for a child, could represent.

So a lot of people within our organization, and others, were very angry about this because there wasn't a firm number. On the other hand, we also realized that we were not going to get the bill passed with a firm number and so we had to weigh the advantages and the disadvantages. The advantages were that they had to ultimately come up with a number that we could advocate and say, no, this was wrong. It made them pay attention to it. It made them acknowledge the fact that it was unconscionable for attorneys who had to represent as many children as came in and so that was better than us standing on principle and saying, okay, it's all over with, and we'd be back to square one.

So what has happened since that time—and so the legislation passed. There were a lot of nail biting days because, if you remember, the Senate essentially said—well, it was really Joseph Bruno, who's head of the Senate, and Eliot Spitzer had some problems, shall we say, and the Senate essentially said, alright, we're walking out.

At that point, our legislation had been passed by the assembly but not by the Senate and thankfully, we had the congestion pricing issue and the Senate had to come back for one day in August and our lobbyist in Albany helped us get in on the agenda for that one day in August and after the congestion pricing debate, this came up for a vote and they passed it, and then ultimately, Governor Spitzer signed it.

So that's a success story. On the juvenile delinquency side, and Mishi talked about this earlier—there's a bill that did not get passed, called the Safe Harbor for Exploited Children Act. The idea of it is to decriminalize prostitution charges against young people. Right now, in family court you can be charged with juvenile delinquency if—for prostitution charges and we're seeing kids that come in at eleven, twelve, thirteen. They're victims.

They're sexually exploited children and so rather than punish them and submit them to all of the punishment for—yeah, exactly—rather than place them in an upstate facility and not give them any services whatsoever, how about this? How about decriminalizing it, how about turning it into—or substituting a Person In Need of Supervision petition and how about creating safe houses for these young people? How about focusing on the rehabilitation end of it? Okay.

So we held roundtables in Albany and we followed all of these legislative advocacy steps. There is an organization called GEMS, G-E-M-S, which stands for Girls Employment and Mentoring Services, for clients ages thirteen to twenty-one, that provides preventive and transitional services to girls at risk who are involved in this sexual exploitation. They've made a very moving video. This video was shown to legislators. We got an upstate, Republican senator to sponsor this bill on the Senate side and on the assembly side—let me backtrack a minute. Safe Harbor Act was introduced in 2005, 2006, 2007. There were newspaper articles, both in New York City and New York State and at the end of the legislative session last summer, we had a Senate bill and an assembly bill that were essentially the same except for one word.

The Senate bill said that a family court judge may substitute a Person In Need of Supervision petition and the assembly version said a family court judge shall, okay? The may was a result of push—where do you get pushback from in a bill like this? It sounds right. It sounds horrible to criminalize and lock up a thirteen-year-old girl who's been victimized and set up as a prostitute—DA's offices, Corporation Counsel's office, prosecutors and so, unhappily, on that day in August where the Caseload Cap bill got put on the agenda, the Safe Harbor Act did not, and so nothing was passed.

Now the other thing to understand about the legislature is that the bills that don't get passed one year, do not automatically show up on anybody's agenda the following year. You have to reintroduce. You have to start all over again and that's what we in the coalition are in the process of trying to get done again. So we were so close. And so sometimes there are outside influences that you just can't do anything about. Had the Senate not walked off—if there had been a few more days, there might've been an opportunity to broker some sort of a deal, but for one word, nothing.

The other thing is—and this is going back to who's on the top of the food chain, if you will—is that there's another bill called the Safety Act that we have been trying to get passed for a number of years and it has to do with kids who are in the juvenile justice system, placed in OCFS facilities who are lesbian, gay, bisexual, transgender.

This is a bill that, unlike other bills—both Caseload Cap and Safe Harbor Act require money attached, okay? For obvious reasons you've got to have the safe houses. You've got to figure out if individual attorneys for children can't represent as many children then you kind of have to pay some other people more money, or the same institution more money to hire more attorneys.

Safety Act. No funding necessary. It was essentially about training people in these facilities about LGBT youth, right? Years and years and years—assembly would introduce it every year—never any interest on the Senate side, for a lot of different reasons. Commissioner Carrion comes in and we start—one of the things that’s on the agenda to talk to her about are these issues and, guess what? She’s open to this. There’s ongoing dialogue with her. Things are already changing in this area and so a bill that we had been pushing for a very long time and coming up against a brick wall—there may not be a need at this point to push for that legislation, because the person at the top is saying, hey, that’s a good idea. These are children that we need to pay attention to, in a different way.

So it’s important to understand what the various tools are. And the other thing that I will say is that I think that this is a very good time for kids both in child welfare and in the juvenile justice system. I think there’s a real change in this country. Hopefully—everything is crossed—we’re going to elect a president in this country in November who’s going to have a very different attitude towards civil rights in general and kids, most particularly.

So I am optimistic. I couldn’t stay in this job if I weren’t optimistic. But I urge all of you, as Mishy said earlier—if you’re interested in doing work with us or work with the coalition, to join in the fight and advocate for these kids who hopefully will be sitting here one day and talking to a Cardozo class ten years from now. Thank you.

MS. CARA CHAMBERS: Well I’m ready to go storm the capitol building - -. I’m going to move into an entirely separate topic. My name is Cara Chambers. I work at the Education Advocacy Project at the Legal Aid Society. I work closely with Karen on some issues and I’ll go into detail a little bit about the components of the work that we do at the Education Advocacy Project.

But first I want to start by talking about the educational needs of children who are involved in child protective cases because it’s something that’s often overlooked, to the great detriment of the children and families that are involved in this system. As Cara mentioned, Legal Aid represents about 29,000 children every year and about 22,000 of those are children who are involved in the child protective proceedings, so these are children who are victims of abuse and neglect or alleged to have been abused and neglected.

A strikingly high number of these children present with some type of educational deficit or disability. Abuse and neglect itself puts children at great risk for school failure, then when you factor in the fact that many of these

children are placed in foster care, moved from home to home and consequently from school to school and experience a number of disruptions in their schooling, it puts them at great risk for being held over multiple times, for dropping out or for falling behind in their academics.

There are studies that show that every time a child changes schools, they fall four months behind. I have a client who's sixteen years old and she's been in ten different foster homes and ten different schools. It's not surprising to me that she's reading on a third-grade level and is still an eighth grader, as a sixteen-year-old. So these are the types of challenges that these kids face.

Studies show that somewhere between—somewhere around 50% of kids who are involved in child protective cases have some type of delay in cognition, speech and language development or behavioral and emotional development. And some studies have found even higher numbers of young children who require early intervention services, so the children birth to three where early childhood development is taking place at a very rapid pace.

So what we're looking at here is a huge overlap between the child welfare population and the special education population and we're dealing with two big bureaucracies who often don't connect well together. The child welfare personnel don't understand how the education system works and the education system doesn't necessarily understand how the child welfare system works.

The Education Advocacy Project at the Legal Aid Society—our goal is to bridge that gap and help connect the two systems in a way that facilitates service delivery—educational service delivery to children who are involved in child welfare cases, particularly to children who have disabilities.

Many of our clients at Legal Aid are entitled to services through the Early Intervention Program, which is a federally funded program that serves children birth to age three who have developmental delays and disabilities. Similarly, many of our clients who are preschool and school age are entitled to services through the Individuals With Disabilities Education Act, or IDEA, which is a federal law that guarantees children with disabilities a free, appropriate, public education.

But unfortunately, a lot of child welfare professionals, parents, foster parents don't know about the rights that they have under the IDEA and if they do know about them, don't know how to go about accessing them. So consequently, the needs of—the educational needs of children in the child welfare system who

have developmental delays often end up going—these needs often end up going unidentified or unmet.

The consequences for this are dire, not only in terms of the child's academic development but also in terms of the child's chances to end up in a stable, permanent home, and let me explain what I mean by that. Parents and foster parents alike may find it extremely difficult to care for a child that has special needs, and particularly when a child isn't receiving the educational services they need in school, it can be a tremendous source of stress on a family.

If someone can come in and advocate to make sure that a child is getting appropriate services in the school setting, it alleviates a huge source of stress for the family and makes it much easier for a parent or a foster parent or a kinship—a relative to make a long-term commitment to a child and to envision—you know, this is a child who I can see having a lifetime relationship with this child. So the early intervention and special education services are very closely intertwined with family stability and permanency for children who are involved in the foster care system.

So the Education Advocacy Project attempts to bridge this gap between the child welfare and the special education systems, through three strategies. The first is through direct advocacy, the second is through training and the third is through systemic advocacy, and I'll talk first about the direct advocacy piece, because this is what people traditionally think of as what a lawyer's role should be.

Through our direct advocacy services, what we generally do is take on representation of individual clients who are having difficulty accessing the services they're entitled to under federal and state education laws, particularly the IDEA—the Individuals With Disabilities Education Act. Since the project was founded in 2001, we've provided direct advocacy services on over 1,700 child welfare cases and we've provided consultations on thousands of additional cases as well.

Our clients range in age from birth up to twenty-one and approximately a third of our cases are for children under the age of five and these are children who—many of these children are kids who, with intensive services, can be brought up to speed and can acquire the skills that they need in order to be successful in kindergarten. So we see a huge impact when we work with the younger kids in particular.

The children that we work with have a wide range of disabilities. Some of them present with mild learning disabilities, speech and language delays and others present with more severe disabilities like Autism, cerebral palsy, shaken baby syndrome, traumatic brain injury—the whole gamut. And particularly with the children that have more severe disabilities, we find that their needs have often gone unidentified or unaddressed for many years.

When we step into a case what we do is we will sit down and interview the child and the caretaker to find out a little bit about what the child's needs are and review the child's school records and we'll typically visit the child's school to see how the child is functioning in his or her current setting. After we've done all of that information gathering, we'll come up with a case plan and an advocacy plan for the types of services that we think the child will need going forward, in order to make—in order to achieve his or her potential.

Sometimes that involves working to secure new school placements or additional services. Sometimes it involves working through the public school system and sometimes it involves trying to get our children—our clients connected to private services that are paid for by the Department of Education and if need be, what we can do if informal advocacy doesn't result in the end that we want is, we can represent a child at an impartial hearing in order to enforce the child's rights under the Individuals With Disabilities Education Act.

So just by way of illustration, we had a client a while back named Mark who was a six-year-old boy with Autism who was non-verbal. He was living in kinship foster care with his three siblings and his grandparents and Mark—because he couldn't communicate his needs very well, he tantrumed a lot. So his grandmother would come into my office crying and covered in bite marks and scratches from this six-year-old child who was big for his age, tantruming because he couldn't express what he wanted or what he needed.

We stepped in and did a school visit and just by going into the school, found out that this child was mandated to be receiving—was entitled to be receiving speech and language therapy four times a week. He wasn't getting it at all because of a shortage in speech and language therapists at the school. We were able to set up private speech and language therapy services for this child, outside of the school setting.

We were able to negotiate with the Department of Education so that they would pay for those services and would pay for the grandparents and the child to be transported to and from the site where the services were going to be

provided. Once there, the private therapist worked with the family to develop a communication booklet for the child. While he couldn't express himself verbally, he could express himself by pointing to pictures and objects, so they developed a communication booklet for him that he was able to carry with him at home.

They worked with the grandparents to label items in their household with different picture symbols, they taught the grandparents techniques about how to manage his tantrums and some of his more difficult behaviors and that really made a remarkable difference for this child and for this family, to the point that the grandparents really felt competent and capable of keeping that child in their care. Whereas at one point before, they were really considering whether they would have to place him in a residential facility.

That's just an illustration of how individual advocacy can make a very profound difference, not just for a child's educational development but also for stability and family—family stability and permanency.

Individual advocacy is a very necessary and effective tool but it's not the only tool that we have in our belt. One of the other tools that we use a lot with the Education Advocacy Project is training. Our hope is that eventually the Legal Aid Society and ACS and caseworkers are going to step out of the picture and this family is going to be able to function on its own.

So what we've done in recent years is we've really focused on training parents and foster parents, in hopes that they will become lifelong—knowledgeable, lifelong advocates for the children in their care. You know, the law's a very powerful tool but only if you know what it says, and there aren't a lot of laypeople who are going to go out and read the IDEA and read the regulations. You can barely get law students to sit down and read regulations most of the time. Nobody wants to do that, so the challenge is to make it comprehensible and to make it understandable to a layperson and that's what we attempt to do in our trainings.

We also provide trainings for foster care caseworkers, for casa [phonetic], for parents, attorneys and for judges—other parties who come into contact with these kids, in hopes of expanding the universe of people who understand how these two systems work and can access the educational services for kids who they come into contact with.

The third tool that we use at the Education Advocacy Project is systemic advocacy. When we start to notice trends or problems that keep recurring on a global basis, we have been able to take steps to address them on a system wide basis and our systemic advocacy has definitely resulted in changes that have had good results for Legal Aid's clients. Our efforts in this area include attempts to influence legislation, regulations and also city policies that have a particular impact on children who are in foster care.

After the Individuals With Disabilities Education Act was reauthorized in 2004, the federal government and then New York State went through months and months and months of developing regulations to implement the new legislation and the Education Advocacy Project played a key role in commenting on those proposed regulations. There aren't a lot of people out there who understand how these two systems intersect and what the consequences of certain laws are for children in foster care.

So we found that we were actually able to provide a very unique perspective and a unique voice to both the Federal Education Department and the State Education Department on some of these issues. And while, not all of our comments were incorporated into the federal regulations, some of them actually were and I think it resulted in changes that made a big difference for our clients, with respect to establishing timelines for the transfer of records when a child with special needs changes schools, in terms of clarifying the process for who consents to special education services for a child who's in foster care, whether it's the birth parent or the foster parent or the child welfare agency.

So those are some of the issues where we were able to step in and play a clarifying role and make some positive changes to the regulations that I think will have a good effect on our clients long-term.

On the city level, the city is in the process right now of updating its Standard Operating Procedures manual for special education and what this is, is a manual that goes out to every school psychologist, every special education administrator in the city and it describes the steps, in lay terms, that the system is supposed to follow. And there are segments in that book that pertain to children in foster care or who have involvement in the child welfare system, and those segments of the book needed a lot of work.

And because we had built up good relationships with people at the Department of Education, they approached us and they approached the Administration for Children's Services Education Unit and a couple of other organizations

throughout the city and invited us to make comments on the Standard Operating Procedures manual, and we did so. In fact, we rewrote the entire thing. I don't know how much of it they're going to adopt because it's still in the process of being revised, but I'm hopeful that they will take a lot of our suggestions and recommendations, which will, in the end, make it easier for some of our clients to get the services that they need.

We work with Karen's unit at the Legal Aid Society on proposing legislation at times, when necessary. There is some legislation that we have tried for the past couple of years to get passed, which hasn't gone anywhere yet but we're hoping it goes somewhere this fall as well, and it is legislation that would allow a family court judge to appoint a limited guardian for educational decision making.

There are certain circumstances where a parent or a—where a birth parent is not able to make sound, appropriate educational decisions on behalf of their child, and in those cases there needs to be a mechanism where someone else can step into that role. You know, for example—and just to give you a little bit more background information—the special education laws are very protective of parent's rights in general, and children—the special education services are voluntary, so if a parent doesn't consent to them, a child won't get them.

One of the most extreme examples I've seen—we had a client with very special needs who had significant developmental delays. It was an infant who had been born with some very significant delays and the birth parent was struggling with mental illness and basically would appear in family court and say, "I don't know why I'm here. That's not my child. I don't have a child. I've never given birth to a child before. I don't know why,—” and so when you approached this woman to ask for her consent to special education services for this child who desperately needed them, she said, “No, why would I consent to services for this stranger I've never met before?”

So in circumstances like that, there needs to be a law. There needs to be a mechanism for overriding a parent's refusal to consent for services and this legislation that we're hoping goes through this term, would do that. So that's something that we're working on going forward. But I think that it's important to remember—just to sum up—it's important to remember that, as attorneys, you have a lot of weapons in your arsenal. It's not just that you're going to be filing lawsuits and doing individual advocacy, but you also need to look at the other things that you can do with your legal training and your legal background.

Training other people is a very powerful way that you can have an influence on children's lives and systemic advocacy is also very powerful as well. And with that, I will turn things over to Mia. Thank you.

MS. MIA LEWIS: So bear with me, I'm experimenting with a paperless conference presentation method. My name is Mia Lewis, I'm an attorney with the ACLU Women's Rights Project. A lot of people don't know that the ACLU has a Women's Rights Project. It was actually founded in 1972 by Ruth Bader Ginsburg and there are about eight of us there now and we work in various practice areas - violence against women, economic injustice against women, etc and I do the criminal and juvenile justice work at the Women's Rights Project.

In late 2006, we released this report, which is called *Custody and Control*. This is my dog-eared version and it's available if you're interested, at ACLU.org/custodyandcontrol and it is the product of about a year of research into conditions in youth prisons in New York State. So this feels like a bit of a homecoming for me because since the release of the report—so that happened in like, the fall of 2006 and then we did about six months worth of advocacy around it and then since then I've actually been working in other states.

We're working up a kid's case in Texas and in December filed an adult women prisoners case in New Jersey, so it's great to be kind of back in this mix and getting a bit of an update on what's been happening. Another report that you might be interested in, that the ACLU produced was one called *Criminalizing the Classroom* and it talks about some of the school discipline issues that you've been hearing about and that's also available on the ACLU website.

I'm going to try to keep it short because it's 1:03 now and this panel apparently was supposed to end at 1:00, and I don't have that much—too much to say. What I thought I'd do is talk about the *Custody and Control* report and to talk about some updates to it. Actually, as you've heard, Commissioner Carrion has done some terrific things with the agency and so after kind of giving her a few months to get settled in, we went back and took a look at what has changed and the results are kind of mixed. There have been some things you've heard about that are very encouraging and then other things that are quite discouraging.

The *Custody and Control* report looked at the two highest security youth prisons in New York State where girls are held. They are called Lansing [phonetic], which is a limited secure facility and as you heard Nancy say in the

first panel, there's not too much difference between a limited secure youth prison and a secure youth prison and truly, Lansing is actually—as I'll mention in a second, by objective measures, the most brutal youth prison in the system.

And then there's Trion, which is a secure youth prison that holds boys and girls. So we looked at those and the report talks about some of the systemic failures that you've heard about that lead to kids being in prison when they shouldn't be. It talks about the disproportionate confinement of kids of color. It talks about girls and their particular paths that they take. Mostly, when we talk about juvenile justice we end up talking about boys. They predominate in all juvenile justice systems, although more so in some than in others. New York is about kind of midway between other states.

Of the states that we've worked in—it's actually surprising, it tends to be the more liberal—generally politically liberal states where a lot of girls get locked up, so in Hawaii it's like, a third of kids in the system are girls, whereas in Texas it's like, 10%. And then most of the report talks about the various kinds of abuse and neglect that the kids are subjected to when they're locked up and, of course, educational neglect is among those and physical, sexual and psychological abuse are also happening.

One of the things that—if you talked to like, old prison litigators who've been doing this for like, thirty or forty years, what they'll tell you is that—okay, after my—this whole kind of, you know, long career of trying to improve the lives of prisoners or children in prison, I've concluded that the best thing to do is to just keep kids out of prison, because prisons are inherently abusive environments and youth prisons are just as inherently abusive, if not more so, because kids are so much more vulnerable than grownups, to all the various kinds of abuse that happen.

And so some of the really encouraging things that are happening in New York are some of the things that you've heard about. The ACS initiative to try to divert kids from the prison is terrific and the closure of youth prisons is a really terrific thing and the general—if you see a decrease in the kid prison population, that's terrific news because there's pretty much no worse thing that you can do for a child than to put that child in prison.

I wanted to focus on just a couple of issues and again, I'll try to keep it quick. One is the use of force against children, that Mishi talked about a little bit and the other is strip-searches of children. In 2006, our findings were kind of predictable—things that happened in other states, too, so physical force was being used a lot, a lot, especially in the girls' facilities. And it was happening

in response to very minor things—talking back, not moving when the kid was told to move, moving when the kid didn't have permission to move—things like that.

And Mishi described this procedure that they use. They're trained to do some kind of facedown restraint that's supposed to be kind of safe, but that's not what they use. What will happen is that two large adults, or more, will kind of tackle a kid from behind and throw them on their face and of course, kids get hurt that way. There are, of course, specific problems when you do that to girls. It tends to be male staff in the facilities. The vast majority of girls have experienced really severe sexual abuse before coming in to the facilities.

I just got through—one of the things about New York that we talked about in the report was how closed they were, and you heard about how, under the last commissioner, it was just, as Mishi described it, a black hole. It truly was. It's funny, doing work in Texas, I found the opposite to be true, and you wouldn't think that that would be the trend. But in Texas, I've gone down there three times and have been given carte blanche to go into their juvi prisons, to talk to whatever kid I want—you know, whatever duration. I've been recording interviews—it's been—they've been actually very, very open to having fact-finding done.

So I've talked to maybe 100 girls, lately, in the Texas juvi system and I would say 99 out of 100 will talk about the sexual abuse that they've experienced. So it's almost universal in the experience of these kids and, of course, it has something to do with—you know, their families malfunctioning, the systems, all of the safeguards not being in place for them and then ending up in this terrible situation in prison.

So when you take a kid like that and throw them on their face and have an adult kind of lying on top of them—this is very re-traumatizing for them, and as Mishi described, it can sometimes be fatal. There's the boy who died at Trion in November 2006 and every few years a kid dies because they're brutalizing children in this way. So what we found when we looked at the numbers in the Lansing and Trion facilities was that, even by OCFS standards—OCFS is the juvenile agency in New York—the girls were getting restrained a lot. They were astronomical numbers. The range for the years between 2004 and 2006 was about 35 to over 100 of these facedown restraints per month, with an average of about sixty-five, when they only had about eighty girls in the facility.

So you're talking about a couple of these restraints happening every single day. So kids who've already experienced violence, been victims of violence, were seeing more violence and being the victims of more violence in this institution. This is really extraordinary, especially when you realize that in national law and to some extent domestic law and standards say you can't put your hands on a kid unless it's an emergency, unless the child is an imminent threat to self or others and you've tried everything else to try to deal with the situation, short of violence and that has failed.

As Mishi described, part of it was the policy. The policy was really broad and just, you know, it gave—there were a couple of provisions that gave a lot of discretion to individual guards about when they were going to put their hands on children. And what we found when we looked at the agency's records was that in fact, it was these two very broad grounds that guards were using to justify the very, very excessive use of force that they were perpetrating.

So the policy changed and that was a good thing. The policy has become much more narrow. So we went back in the fall—this past fall, to see, okay, well, the policy has changed, things seem to be coming up roses in the agency—what's happening to the children? Are things really changing? And we found that things at Lansing—at the facility that we were most concerned about in 2006—things there have gotten worse. The range of the use of physical force against children has gone—is now between sixty-one and ninety-five per month. That's an average—you know, two to three times per day that kids are getting tackled and sat on by adults, when there are only fifty-eight girls in the facility, on average, in 2007. That's a lot. That's a lot by any standard.

To give you some perspective, I visited some of the juvenile facilities in Missouri, which is, you know, known for having a relatively good system. There are definitely problems with that system, too but most facilities there will have one of these restraints—one instance of use of force, maybe every six months, maybe every year. The most recent numbers that we got, when we did this check in the fall of last year, showed—the figures at Lansing and Trion, the girls facilities, are high even by OCFS standards. So a lot of the facilities seem to be doing okay, at least in terms of their reported numbers. Many of them were in the single digits.

There was a kind of small second tier of facilities. A few facilities that were like, in the teens to the twenties, and then far above either of those groups of youth prisons, was Lansing and Trion. When we checked in with parents and with workers at the facilities that we have contact with, we found out that the

problems are still there. The haphazard educational services, abuse and neglect in various forms—those are still happening, and so it's terrific to hear about all these great things that are happening in the agency and the point when it matters most, of course, is the point when it hits the ground. When the children's experience starts to change and starts to improve.

The other issue that I'll just touch on briefly is strip-searches. One of the things we talked about in the report is strip-searching and you can imagine, given this population of kids, that strip-searches are very problematic. I just wanted to—this is how they conduct a strip-search at OCFS. The girl has to take off all her clothes and then there is a visual examination of her mouth, nose and ears. She has to run her finger through her hair and the staff visually examines her hair. She has to lift her arms to expose her armpits and be visually examined. Her hands, between fingers, bottom of feet, in between toes are examined.

She must lift her breasts to expose that area to visual examination. She has to separate body folds or creases to expose those areas to visual examination. She has to remove any sanitary articles from body or clothing, like tampons or sanitary napkin. She has to squat and cough deeply to dislodge any articles concealed in the anus or vagina. She has to bend over and spread her buttocks to expose the anus and vagina to visual examination and then the worker searches each article of her clothing.

So that's what they do to children who have been sexually abused in the past, when they strip-search them. And we know that strip-searches happen routinely. They'll happen—say, you know, bi-weekly, monthly, when they do searches of the units and what the girls reported to us when we did this research was that any time something came up missing—a key, a pencil, a crochet needle, all the girls in a unit would get strip-searched. So that's something that we knew to be problematic. We know it to be a violation of international law and domestic standards. International law says you can't subject children in institutions to degrading treatment, you can't subject them to excessive security measures, you can't subject them to things that are going to hurt their mental health and even actually, standards that apply to adult prisoners.

So you can't strip-search people without some measure of individualized suspicion, right? You have to believe that this person in particular has a weapon or has drugs and of course, they never find these things on the kids. These girls aren't like, making shanks or anything like that. If they find something it'll be like, a note that was passed by another girl. And so there's a

certain amount of good, feminist kind of criminological literature that talks about strip-searches as a kind of overlooked instance of sexual assault.

Sometimes—this happened in the Texas system. There was a big kind of scandal when it was discovered that workers had sexually assaulted kids and the thing about that is that it's kind—well, it's a sexy issue and it helps a system to isolate the problem to a couple of bad apples. But this kind of sexual assault; state-sponsored, state-approved sexual assault that uses the power of the state is happening all the time and it's happening to these girls.

In terms of the status of strip-searches happening—whether they're happening now. I haven't heard of any change and given the reports that we have on other aspects of the system, I would imagine that that's still happening, so those are—you know, the use of force and strip-searches are two issues that probably should be looked at a little bit more and so I just wanted to highlight those for you today, but thank you very much for your time. I know we've gone over and it's terrific to have the chance to talk to you guys.

FEMALE VOICE 1: - -.

MS. LEWIS: The other panelists may have more insight into that. I think you're probably right. One issue that's kind of institutional is that there are typically fewer re-entry services available to girls, so one factor may be that boys are getting more help in readjusting to community life than the girls are getting, but it's definitely true. That's something we've seen with adult prisoners as well is that there's a certain amount of prestige associated with being in prison.

If you're a guy it means you're tough, but for a woman—I mean, this is something that's kind of well-developed in the feminist criminology is that there's an incredible shame attached to having been in the system and even to the extent that involvement is kind of pathologized. There must be something wrong with you. You must be mentally ill if you're in the system. But I don't have specific information for you about kids in New York.

MS. GUTHEIL: Re-entry is problematic on a lot of different levels, whether you're coming out of the city—the Department of Juvenile Justice facility or if you're coming out of an OCFS placement and one of the things that Leslie spoke about this morning was that there's an aftercare part of the Juvenile Justice Initiative. It's difficult on a lot of different levels.

We actually have a pending lawsuit, which is public knowledge, and I can't—it's public knowledge that the lawsuit has been filed. I can't get into the particulars of it other than to say that it is against the state and city Departments of Education because what happens to the kids when they come out of these facilities, getting them back into school, what was the level of schooling they were receiving, now where do they go? So that's being—that's one issue is the education piece.

There needs to be more work done with families. I mean, the thing of it is that's interesting is that if you're in foster care and the goal is for you to reunite with your family, a lot of the work—there are two prongs, right? When a child is in foster care there's work done with that individual child, but the foster care agency is also tasked to provide services and work with the family so that when reunification occurs there's been some work done and that includes regular visitation and perhaps family counseling.

That doesn't happen in the juvenile justice system, even though, as Leslie spoke about this morning, work needs to be done and there may be problems in the family that sort of pushed the child into the juvenile justice system. There needs to be work done with the family. Maybe it's family counseling, but there's no—there's never been a mechanism and if you have a child whose family lives in Brooklyn and he's incarcerated seven hours upstate, you know, what—a telephone call?

You know, how does that work? So there are a myriad of those problems and it's one of the reasons Commissioner Carrion wants to close those upstate facilities is to try to figure out a way to keep those kids, if they cannot be with their families, with community-based services, in facilities like the Missouri model, which is closer to a foster care model where they are physically closer to their parents so that there can be some therapy going on and visitation going on so that there's a transition. It's a huge issue.

MS. SQUATRIGLIA: Thank you very much. So for the panelists and journal people, there's going to be a lunch upstairs at 1:30 so you have some time to take a little break or whatever. It's in Room 211, so all you need to do is just go to the elevator bank here, 'cause I'm lazy. Take one floor up and it'll be right when you get off.

Also, the panel this afternoon is going to be specifically focused on LGBTQ issues and then we have an equally stellar group this afternoon as we did this morning, so please encourage all of your fellow students to attend.

* * *

MS. HEATHER SQUATRIGLIA: As you may or may not know I am Heather Squatriglia and I am the Symposium Editor for the *Journal of Law and Gender* and I wanted to welcome you all here today for the third and final panel that we're having today on our symposium, which is going to focus on the specific legal issues affecting LGBTQ youth in out-of-home care, which is in the juvenile justice system and in the child welfare system in New York City. That's how we divide it up, so I just wanted to take a moment to—oh, also, I need to thank Cathy Perifmos [phonetic] and Esther Klein who have been the most amazing two assistants ever and they did a great job in helping us pull this even off, so I just wanted to thank them.

And so I'll take a moment to introduce our panelists who we're really, really blessed to have. These are some of the most amazing people in the world. So I want to first introduce Rudy Estrada who has the distinction of being the first ever LGBT coordinator for our ACS, which is the Administration of Children's Services. And also we have Michael Jakowski [phonetic] who works with gay and lesbian youth in the foster care system and he is with FCO family of services.

Flor Bermudez works with Lambda Legal. She is the Youth in Out-of-Home Care attorney there. DeAvery Irons works at the Correctional Association and she works specifically with LGBT youth issues. Jody Marksamer, whom we know from the earlier session, is our keynote speaker and is a staff attorney and director of the National Center for Lesbian Rights Youth Project. So I'm going to turn it over to our very distinguished panelists, and thank you all for coming.

MR. RUDY ESTRADA: Well I'm going to start off and thank you Heather, for inviting us and thank you all for being here today. I always really enjoy talking to groups of law students because I like to think of myself when I was in law school and how desperate I was to hear about cool jobs and different types of work that might be out there, and I think all of us here on this panel have really cool jobs, so I hope that for those of you here who are lost—since you might walk away learning about our organizations and maybe even coming to one of our organizations, at some point, to work.

We're going to broaden our focus here, on this panel, to talk more than just about the legal rights of LGBT young people in out-of-home care. And we're going to talk more generally about what happens when LGBTQ young people end up in a state system or in any form of out-of-home care, 'cause there are lots of legal and public policy implications that arise when that happens. So we're going to sort of run the gamut. We have on the panel lawyers and non-

lawyers, so you're going to hear from a number of different perspectives about what some of the issues are.

I'm going to talk specifically about the foster care system and specifically about the New York City foster care system and my co-panelists, I think, will speak more broadly and some will speak more nationally about what some of the issues are in out-of-home care and we're going to talk - - about foster care, sometimes also called the child welfare system.

When I say foster care I usually say foster care as shorthand for out-of-home care in the child welfare system, but I don't necessarily mean foster family care. I mean, also congregate care or group homes or residential care facilities. There are all sorts of placements that are—sort of fall under the umbrella of foster care. But other people on the panel will be talking about juvenile justice issues and homelessness issues as well.

So as Heather said, I work for the New York City Administration for Children's Services and as she said, I have the distinction and the responsibility of being the first ever LGBTQ coordinator. It's really a brand new position and I'm going to tell you more about it.

My position is just one of 6,000 in a gigantic city agency that serves about 17,000 young people who are currently in our foster care system here in New York City. And about 38,000 young people who are in our preventive services, which means that they're typically at home and intensive services are being provided by Children's Services in order to maintain that placement at home.

So I have the sort of awesome responsibility of looking across the range of services that we provide and trying to build some capacity here to protect and serve LGBT young people, and I'm going to, again, tell you more about exactly what that means. I'm sure you all have the same question that I'm frequently asked which is, how many of these kids in New York City are LGBTQ? And that, in some ways, is like a Zen riddle. It's like, the sound of one hand clapping or—there's really no way to answer it, and there are a variety of reasons why there's no way to answer that question. And some of them are obvious, you know, not all young people self-identify as LGBT. Not all young people are out and sometimes really little kids are subjected to abuse or neglect on the basis of the perception that they are gay or lesbian or transgender, well before they have any sort of identification with any of those terms.

So I—the short answer to that question is, I have no idea how many of the young people in our current system of care are LGBT and in fact, there's really no data that I'm aware of, from anywhere around the country that would tell us definitively what the quantitative numbers of these young people are. There was one study done in 2005 by the Chapin Hall Center for Youth at the University of Chicago called the Midwest Evaluation of Adult Functioning of Former Foster Youth, which found that, based upon self-reporting, that about 14% of the youth that they talked to, identified as something other than heterosexual.

So right there, that's one of the only numbers I've seen recently. This is a report from 2005. In my mind, that's disproportional because that number, I believe, represents something higher than the percentage of LGBT young people that are not in out-of-home care. But again, we really have no way of knowing. But we—I personally believe that the actual numbers of these young people in our out-of-home systems of care is actually much higher. And I believe that LGBT young people are disproportionately over-represented in out-of-home systems of care, in the foster care system, the juvenile justice system and in the homelessness systems of care.

For example, we know that about one-third of all lesbian and gay youth are subjected to physical violence or harassment by their family members, as a result of coming out or being found out as being LGBT or Q. We also know, based upon sort of an old study, that about 25% of gay, male youth—the study only looked at gay, male youth—that 25% were forced to leave home as a result of coming out or being found out.

So we do know that LGBT young people are disproportionately overexposed to abuse and neglect within their families and abuse and neglect are the leading causes for a young person to come into the foster care system. But unfortunately, we do know that a lot of these young people never end up in foster care and instead, end up on the streets or sometimes in some of the other systems of care. And frequently these young people will cross all the systems of care at different times of their lives. They might start out in foster care and end up in a juvenile detention center, then may be homeless and may cycle right back through again.

And also, if you look at the population of young people who age out of our foster care system every year, who have not been returned home to their families, which is really the ultimate goal of the foster care system is to rehabilitate families. But we know that a large number of young people are

never reunified with their families of origin and spend their entire childhoods in foster care.

When you look at the demographics of the kids or the young people who age out, not having been reunified and not having been adopted, that—we see a disproportionate number of LGBT young people in that group, and for some of the same reasons why we see them in foster care in general. But at the tail end of their experiences in foster care, I believe that what we have left there are young people for whom the system has written off as either not adoptable, unlovable, families would never take this young person back, and so the numbers of LGBT young people in foster care, although we'll never know them, I believe as we get further on through the system toward the tail end before aging out, we see a very high number and percentage of LGBT young people.

So here in New York City, for a long time we have known that we have LGBT young people in our system of care. We've known that, there have been lots of really good books written on the subject, we have specialized service providers that have been providing care for these young people and services to these young people. Michael Jakowski, in fact, will be able to tell you more about what some of those services look like. But we, historically had done very little, as a city agency to address the needs of these young people.

So one of the more exciting recent developments at Children's Services was the creation of a strategic plan to improve services to LGBTQ youth. In fact, the strategic plan uses both Q's because it addresses both young people who might be questioning and young people who might identify as queer. So our strategic plan to improve services to LGBTQ youth was adopted by our Commissioner of Children's Services, John Maddingly, in 2006. That plan was developed in partnership with people from within Children's Services as well as people and representatives from the many agencies that ACS contracts with to provide child welfare services.

So together, we came up with a plan and a function of that plan—or a component of that plan was that Children's Services would hire a coordinator to carry out the plan, and that's where I come in. The plan itself is rather sweeping and sort of daunting—I'll be honest, because I'm just one person. Even though I have a very nice blueprint, it really does call for changes across the board from the front door, child protection investigations, all the way through to looking at issues related to the young people aging out of foster care and how well-prepared they are—how well-prepared LGBT young people are to face life as an adult without the foster care system.

So I have the honor of carrying out this plan as part of my job but my job goes, I believe, much further. And this plan itself, as I said—it didn't come out of thin air, it was the result of advocacy and efforts on the part of lots of people in the community as well as consciousness raising efforts and projects from within Children's Services and the outside. But historically, the external pressure that we have faced and what sort of led to the creation and adoption of this plan, has taken the form of litigation. So I'm going to talk more specifically about some of the key pieces of litigation that have occurred in New York City that sort of contributed to where we're at today.

The first lawsuit that I want to mention is *Joel A. v. Giuliani* which is a case that was brought in the Second Circuit on behalf of LGBT young people who are—who were, at that time, in New York City's foster care system. The case was brought in the mid to late 1990s and it was a subclass of the *Matersole A. v. Giuliani* lawsuit that some of you may remember. It was a big class-action lawsuit that resulted in lots and lots of changes in the Administration for Children's Services.

But what people don't remember—don't know is that a subclass of the *Matersole* class, was a group of LGBT young people who alleged that they were harmed and injured in our foster care system. The two cases were consolidated and eventually they settled out of court. So there isn't any written case law that I can point you to. There isn't a citation. In fact, any of the case—the published case law on this case or on the *Matersole* case really has to do with whether the consolidation of the two cases and the ultimate settlement was fair.

Joel A. triggered some really key changes back in the 1990s within Children's Services, following the settlement. One of the first changes that resulted was that Children's Services developed an external/internal task force to sort of come together on a monthly basis and talk about what are some of the salient issues, what are some of the gaps and barriers, and how, as a group, could this task force maybe sort of begin to fill those gaps and address the barriers?

That group called itself the ACS LGBTQ Action Group and amazingly, that group is still in existence today, many, many years later. And I have the privilege and the honor of facilitating the monthly meetings of that group. It met for many years and then sort of disbanded and came together again in 2003 and has been meeting every month since then.

And there were other changes as a result of that as well—as a result of the settlement of that lawsuit, including some training initiatives and things that—

early stage educational efforts to begin to raise awareness about the needs of these kids.

So the next case that I think is worth mentioning—and there may have been other ones along the way. In fact, frequently, cases are brought in the trial court that we don't know about or don't ever result in any published case law or don't get any media attention, but the next sort of key case that got a lot of media attention, even though it was a trial court case, so there isn't published case law, is the *Doe v. Bell* case.

This is a case involving a young person who was in foster care who was entitled to a degree of privacy, which is why the case was brought as a Doe. In 2003, a trial court judge in New York City ruled in favor of Doe. Doe, herself, is a transgender girl who was housed in a male group home—an ACS group home—a male group home, and forbidden from wearing female clothing while she was in the group home. The case was really a landmark decision for a number of reasons but it's really the reasoning that the judge used in that case that I think really caught the attention of people around the country that really has some important implications.

The judge in that case found that Doe was a child diagnosed with gender identity disorder and that gender identity disorder, or GID, is a diagnosable, medical condition and that the ACS group home that she was housed in is a public housing accommodation, according to the New York human rights law and that, and that as such, Doe was entitled to a reasonable accommodation for her disability, her disability being GID. The reasonable accommodation being that she be allowed to wear female clothing in her group home.

So she won her case and was able to wear female clothing, but it's interesting logic that frankly, some transgender advocates have taken issue with. This idea that a transgender identity would somehow—I'm getting the two-minute warning—would get treated as a disability in this way.

So enough about that case. The last case I want to mention is a case that's currently—we're awaiting a decision from the First Department Appellate Division here in New York. It's a case known as, *In the matter of Mariah Lopez* and Mariah Lopez is a transgender female who, while in foster care, requested sex reassignment surgery. It actually was recommended by her treating physicians. But sex reassignment surgery is not covered by New York State Medicaid, so the only way to get the surgery paid for would be for city tax levy to be used to pay for the surgery and the court ordered that Children's Services pay for it, despite the fact that it's not covered.

Children's Services, my employer, appealed and we're currently awaiting a decision on that case and I think that's going to be a really key ruling in that case and I know people around the country are really watching that court and want to see what's going to happen in that decision. Because as some of you may know, sex reassignment surgery or lots of forms of healthcare that transgender people might seek, are not covered by state Medicaid plans and so, here in New York that is the case, so there is an obstacle and the only way around it as far as her advocates were concerned was to file lawsuits.

So here in New York City, having heeded all the lawsuits and all the sort of consciousness that's occurring, we're now engaged in a historic effort to really begin to address some of these issues and to really build the capacity of our internal structures and our partner agencies that we contract with to really begin to better protect and support LGBT young people who end up in our system of care.

We're doing that in a number of different ways and I think the best thing to do, given my lack of time here, is to maybe fill in some of the blanks when I circle back, but just to give you some of the key highlights—we're looking at expanding the range of services and supports that are available to LGBT young people so that not every LGBT young person is routed to one of the specialized service providers like SCO or Green Chimneys, because we know that lots of LGBT people would do just as well in foster family care. They don't need to be in a group home with LGBT young people, they can be in a mainstream group home or in a foster family care or back at home with their parents if the right services and supports are put in place.

So we're looking at building those supports and services. We're tightening up some of the contractual languages that we're holding our partner agencies to, to ensure that they're adhering to some of the principals and supports that we expect of them, in terms of supporting LGBT young people. We're providing lots of training. Part of my job is to provide training to our private agencies around sexual orientation and gender identity and how to support these young people.

I'm doing lots of technical assistance and consultation of individual cases of foster kids in care. Those cases tend to come to me. That's sort of what we hope will happen at least, that people will know that there is somebody inside ACS that they can turn to and ask the questions that they have about these young people and to find the right services and supports.

So we've got a long way to go but we're to what I think is a really terrific start, but it's really—in part because of the many community partners, including people on the panel here today and perhaps some of you who are helping us do this. So together, we're really working together to build the capacity of our local system in hopes that somebody the New York City system and what we're doing here might serve as a model for other systems of care around the country. So I'm going to turn it over now to my co-panelist and would ask that you all hold your questions that you may have for us until the end, but we're going to each go through and then maybe circle back and fill in some pieces, so thank you.

MR. MIKE JAKOWSKI: Hi, I'm Mike Jakowski and I'm with SCL Family of Services and SCL was established in 1897 and we deliver services to more than 30,000 people a year, here in New York City. We have programs in four boroughs in New York City. Every burrow except for Manhattan, so we have—we also have programs in Nassau County and Suffolk County. Our service populations include adolescents. We also provide preventative services in the home and also through community based centers.

We currently run two special ed schools. We also have programs for developmentally disabled persons. We have homeless services, both family shelters and adolescent shelters and we also provide early childhood education through our groundbreaking Baby and Me program where we actually have the parents interact with the babies and we can also teach the parents how to parent, basically.

My program is known as the GLBTQ program and again, the Q really stands for questioning because we really feel adolescent—one of the major tasks of adolescents is to come to terms with—you know, your sexual identity, sexual orientation. So we really feel strongly about having this Q allows an adolescent who's maybe trying to figure out where they fall in the spectrum to have the freedom to not force themselves into a category before they really feel comfortable doing so.

My program was established in 2001 as really a direct response to that *Joel A. v. Giuliani* lawsuit, 'cause before then ACS really didn't have a system—any specialized programs for gay and lesbian youth. It was kind of haphazard. Basically, what had happened is they had sent some gay youth to Green Chimneys, the other agency that has programs specifically for gay youth, and this is back in the late nineties—mid to late nineties, and they found, gee, these gay kids were safe at Green Chimneys, so they would send another gay kid and

another gay kid. Before long, the whole program kind of turned into a gay program without any kind of thought of doing it.

And so after this *Joel A. v. Giuliani* lawsuit, ACS kind of figured like, we really need to look into establishing something in a more thoughtful way so they put out a request for proposals and my agency was awarded twenty-four and Green Chimneys was awarded a couple more beds so I think currently, there are about seventy-five beds in the whole city specifically for gay and lesbian youth.

My program—we have a twelve-bed group home, a six-bed group home and we have six, two-bed apartments. Last summer, we added a couple more apartments, so we have a total of thirty youth in my program right now. And again, like I said, a lot of researchers were finding out a lot of the homeless youth were kind of running away from child welfare placements, so this was another impetus for establishing these programs because here we had this system that was supposed to keep kids safe and the kids felt safer on the streets than they did in these programs.

Since then there has been a lot of thought going into this and making all placements, not just these gay identified placements but kind of making sure all placements in the foster care system are safe for gay kids.

In terms of the kids who are placed with us, they all have open ACS cases. Either they come into care because of abuse and neglect—they could be a voluntary case like the parent voluntarily surrenders the kid to care. Oftentimes we have kids with PINS petitions. They're persons in need of supervision and again, typically, they're truant from school, they might be staying out late, so they're beyond the control of the parents. The parent will petition the court and typically what happens is that the court will place the child within a congregate care setting for a year and after the year they're supposed to go home. We're finding that very rarely works very well.

We also get youth placed with us through OCFS, the Office of Children and Family Services here in New York State. Typically, these are youth that have been adjudicated and the kids that we typically get will have—be convicted of shoplifting, prostitution, assault, so they will spend some time in a locked facility upstate and then towards the end of their sentence they'll get placed in one of our group homes and then at the end of their sentence they're placed home with the parent. If the parent is not deemed suitable or can provide supervision for the youth then we'll work to open up an ACS case for the youth.

And for the youth who don't have an ACS case, oftentimes we will refer them to our agency's shelter programs for adolescents, known as the Independent Ends programs. One interesting thing is oftentimes the OCFS-placed kids have much stricter kind of placement parameters than the ACS kids and it really makes it hard for these youths because a lot of times the ACS kids can break curfew, they can do a lot of things. Even though we have a program structure, oftentimes it's not followed and so these OCFS kids will follow their friends out into the street and what happens is that OCFS will say, well it's not working out and they'll get remanded back into a locked placement.

So that's one kind of—for the youth, we find they have a really hard time negotiating that difference in behavioral expectations. In terms of our services, we have a full range of case management services. Really, the goal of our program is to reunite the youth with their families. If we deem that's not going to happen then we really look to reunite the youth with another suitable adult. It could be a family friend, another relative, but the real goal that the city has charged us with is to move these kids out of foster care as soon as possible.

So along with case management, we have direct care staff in our homes. We have about a three-to-one—three youth to one staff staffing ration and it's really—especially in the group homes, it's the direct care staff that really take on the role as a parent. They really are there to deal with all the incidents. They really are the ones that the youth will really talk to and open up to and they really have the hardest job in the program because they really have—they deal with all the acting out behaviors. But they really have their pulse on what's going on with the kids.

We also have program-based medical services. We have a part-time medical doctor; we have a nurse, a medical escort. We also have linkages with community specialty providers to provide care for HIV-positive youth or dermatology. Whatever the kids need. We also have substance abuse counselors that will work with the youth. We have a whole range of clinical services, including a psychiatrist that we contract with and a psychologist. We have an in-house therapist, because what we find oftentimes, to send our youth out to access these clinical services doesn't work very well, so what we try to do is try to bring the services to the youth and we find that that works a lot better.

We also have a family therapist that, again, will meet at the parent's home with the youth and with their family, because, again, we used to give referrals to these families and, you know, they would never make it to these services. So again, our whole focus has been to bring the services to the family instead of

giving these referrals. And we also contract with individual therapists that aren't based in the group home, so in case—'cause a lot of kids feel more comfortable talking to somebody outside the home. So they feel the confidentiality is greater. So for the kids that can manage that, we can refer them to an outside provider for therapy.

We also have independent living services. We provide workshops on fourteen different independent living skills. We also—but also, our direct care staff has a lot of independent living training also, so they'll work with the kids on how to find a job and actually take youth to go and find a job and so forth.

We also have a new program called SCO Works and so what we were finding is that a lot of these employment programs would go and help the youth create a resume. Well that's not what our youth really needed help with; they needed somebody that would hire them. So what we did, we decided to talk to employers and say, well if you'll have this kid work for you, we'll pay their salary, and so the thought was, you know, we'll pay their salary for twelve weeks and then once the youth is trained, if they're doing a good job, hopefully the employer will hire them.

And so that has actually worked out really well. So the money that we spent on this program goes right to the youth. They get great, you know, on-the-job training and something they can actually put on their resume when it comes time to write it. So that's been really helpful. And part of this SCO Works program—we have a collaboration with FECS [phonetic], which is a mental health provider in the community that can hook kids up with educational resources while they also participate in the internship program.

We also offered social and recreational offerings, from dancing classes to acting classes to, you know, really tailor it to the interests of the young person and this also combines with our substance abuse program, to kind of tailor an individual program for each youth.

We also have linkages with community programs—with the Gay and Lesbian Community Center, their Youth Enrichment services which, again, is a—yes, offers a range of services and activities including creative arts activities, leadership training and peer education, safe schools. They also run a summer camp for gay, lesbian and transgender teens. We also have linkages with Hetrick-Martin Institute, which also has a whole array of after school services for gay and lesbian youth.

Hetrick-Martin also runs the Harvey Milk School, which has been a real educational resource for our youth. We also collaborate with Ken Lord [phonetic] Community Health Center. They're a health outreach to teens program and again, they have done a great deal of providing health workshops for our youth.

And we also work quite a bit with the Peter Cicchino Youth Project through the Urban Justice Center and they have really been helpful in helping our kids deal with changing names and so forth. We also deal with the Sylvia Rivera Law Project which specializes in working with transgender youth and helping them negotiate name changes, and also any kind of discrimination that they might face in helping get some legal advocacy on their behalf.

So that's kind of a brief overview of what we provide our youth and again, you know, the whole goal is to really get these youth connected to family and get them connected to community and that's our ultimate goal. So I'll turn it over to Flor.

MS. FLOR BERMUDEZ: Thank you.

MR. JAKOWSKI: Sure.

MS. FLOR BERMUDEZ: So I think I am going to now take it a little bit to the national level. Lambda Legal does a lot of work nationally, so I want to explain a little bit about what we do. I want to talk both about litigation and non-litigation strategies that we've used and I think I passed a *Getting Down to Basics Toolkit* that's a colorful folder you may have and that includes some of the resources that Lambda Legal has produced.

I was first wanted to introduce Lambda Legal. It's a national organization that works for the full recognition of the civil rights of lesbians, gay men, bisexual transgender people and those with HIV. We have five offices across the United States and we primarily do civil rights litigation, also education and policy work.

The *Youth and Out-of-Home Care Project* focuses on the out-of-home care, which has come to be a term of art but includes child - - for juvenile justice and - - care. So what we try to do is to increase the capacity of youth - - organizations like I said, not just through litigation but also through education, training and policy work and we do it at a national level.

So I wanted to explain some of the projects that we've done in the last few years and give you a picture of how all of this work has progressed nationally. So in the late 1990s, Lambda Legal did a survey of many of the child welfare systems in fourteen cities across the United States just to find out if there were any policies protecting LGBTQ youth, if they were acknowledging there was LGBTQ youth in the systems and if there was anything to help them.

Unfortunately, the results at that time were not encouraging. Out of all the fourteen states, none had anti-discrimination policies protecting LGBTQ youth. They also didn't have adequate systems of support for LGBTQ youth. They were not including gender identity or sexual orientation in their non-discrimination requirements, they were not training foster parents or foster care staff around sensitivity of sexual orientation and gender identity issues, so it really gave us a picture of a great need for increased awareness and increased training.

So Rudy's position and all of these programs were not existing eight years ago, across the United States. So all of these findings were published in a publication from Lambda Legal called *Youth in the Margins: A Report on the Unmet Needs of Lesbian, Gay, Bisexual, Transgender Adolescents in Foster Care*. And, you know, the publication of these findings really created an interest of practitioners to say wow, we really need to do something about this, especially because of the high prevalence that Rudy was talking about—you know, almost 40% of LGBTQ homeless youth identifying as LGBTQ.

So there was a high percentage of LGBTQ kids in the system and at the same time there was nothing to protect them. There were no systems to support them, there was no awareness and even no recognition. One child welfare official said, "Well no, in Montana there is no gays in the system," so this really led the way to all of the work that has happened the last couple of years and one of the things that Lambda Legal did, along with the Child Welfare League of America, in 2003 and 2004 we organized listening forums across the United States where child welfare professionals, youth who were in care at some point, foster parents got together and just talked about the issues faced by LGBTQ youth.

And in those forums, LGBTQ youth said how frustrating it was to be in the system. Also expressed a desire that at some point they felt so classed within the system, not accepted, they felt they couldn't come out to their caseworkers, they felt they wouldn't be accepted by the foster families, and they also felt unsafe. They felt that if they were going to be in a group home and someone harassed them because of their sexual orientation, even when they reported the

harassment, they would be told, “Well if you weren’t gay you wouldn’t be getting beaten up.” So these gave the reality what, you know—LGBT youth were going through in the foster care system.

Another problem that we identified was that many of these service providers are run by faith-based organizations and many of the LGBTQ youth were being sent to reparative therapies or conversion therapies, or they were forced to go to religious services or change their orientation. They were being called sinners, etc, and this created like, severe problems for the young people. So this reality really caused practitioners to be more concerned and there were many organizations and many advocates that started doing initiatives to improve these conditions.

So one of the things that we identified as a great need was the need for - - training among staff from the child welfare agencies and I think, throughout the years, there have been many initiatives and many organizations have done publications, best practice guidelines that are now being used and disseminated among child welfare systems of care, to train more people. Is it enough? Not yet, but I think at this point there’s variations of—some systems are doing very well, some systems are not doing very well yet, but I think it’s a work in progress and as some cities and some agencies do very well, others can learn about what other agencies are doing.

So I think one of the two projects that Lambda Legal is working now in the upcoming years—since we identified that training was very important and sensitivity of social workers and caseworkers was very important, we are currently working on two new initiatives. One is an initiative to survey schools of social work to see how well they are preparing social workers to come out to the field and be child welfare professionals that are already taught about sensitivity and how to work with LGBTQ youth.

So we are going to work with the National Association of Social Workers as well as with the Council on Social Work Education, to do two things. One is survey the schools of social work and then publish best practices within the schools of social work—what should they be teaching social work students and how should they prepare them to come out in the field? The other project that we are doing is to do a Train the Trainers program with the National Association of Social Workers, which will aim to train about sixty to 100 master trainers who will then go to the respective local cities and states and train service providers in LGBT competence. So these are the two newest projects of Lambda Legal, on the non-litigation side.

On the litigation side I wanted to talk briefly about the rights of young people in state custody and I'm just going to do it very brief. I'm going to say that, of course youth in the child welfare system, juvenile justice systems and homeless systems of care, have the right to equal protection under the law and what that means is that they must be treated equally in the provision of placement and services and must be protected from harassment on an equal basis - - other youth.

Child welfare and juvenile justice professionals, when they violate a youth First Amendment Rights, - - require them to hide his or her sexual orientation or gender identity in order to receive services or if they refuse to allow transgender or gender - - youth to expose their gender through their attire, chosen names and pronouns and so this is very important. If a young person wants to express their sexual orientation, gender identity or expression in a certain way and the child welfare agency is prohibiting it -- is punishing it, they are violating the young person's freedom of expression.

Another important right is the First Amendment right to religious freedom and their right to be free from religious indoctrination and this addresses the problem that I spoke about before about young people being forced into religious practices or religious families.

The other really important right is the right to safety and this poses an affirmative duty on the state to protect the youth from harm and this includes mental, psychological, physical, as well as sexual harm. So the state has a duty to protect the young people. If they're aware that they're in danger and they do nothing, they will be held liable in court.

So some of the litigation that Lambda has been involved with—I'm going to talk about our 2003 case. Lambda Legal settled a lawsuit challenging a government-funded, faith-based Georgia foster care agency that trained its staff to send gay and lesbian youth in state custody to conversion therapy, in order to change their sexual orientation and that refused to employ staff for government-funded jobs who did not share the agency's religious beliefs. As part of the settlement, the Georgia Department of Human Resources added to its policies, an explicit prohibition against discrimination on the basis of sexual orientation and the provision of services.

So basically, this was a service provider that was faith-based and was sending kids to reparative therapy, was refusing to hire people who wanted to defend LGBTQ young people and stand by them and after the settlement the state

agency had to adhere to the non-discrimination policies and stop doing it anymore.

Another case I want to talk about is the 2006 case where Lambda Legal and the Sylvia Rivera Law Project represented a transgender young woman that was in the custody of OCFS. She was abruptly terminated from her physician-prescribed feminizing hormones; she was placed in a male facility and disciplined for expressing her female gender identity. The case settled out of court with a favorable agreement that included monetary damages for our client's physical and psychological damages and a commitment by OCFS to work with LGBTQ advocates to continue to improve OCFS that will lead to support and protect transgender young people in care. - - Johnson.

This case has really had a really good follow-up and I think someone else will talk about this. OCFS has now LGBT working group and we have, as recent as last week, revised guidelines and policies that include provisions such as calling the transgender—or any young person by their chosen name and pronoun. They include non-discrimination policies across the board and so I think OCFS, inspired by this lawsuit, has really taken things seriously and are making substantive changes to their policies. And going forward, I think things will be very different for kids in detention facilities.

The last thing I want to talk about is some of the changes that we've seen recently and I want to say that many, many things—things have changed in many states and some of the examples I want to give are California. Thanks to all the advocates for many groups, now there is a Foster Care Non-Discrimination Act that makes it unlawful for a county child welfare department's group home facilities and foster family agencies to discriminate on a number of basis including actual or perceived sexual orientation, gender identity or HIV status.

There's a similar law in California that protects youth in the juvenile justice system and as recent as January of 2008, the Texas Department of Family and Protective Services implemented a bill of rights of children and youth in foster care, establishing their rights to fair treatment regardless of sexual orientation or gender identity. So I think we are seeing more and more progress in at least its anti-discrimination policies and laws being in place. Enforcement is still an issue, advocacy is still an issue, but I think now that they're on the books it's going to be easier for advocates to enforce them and to make them happen. That's it.

MS. DEEVERY IRONS: Hello. I'm having like, weird law school flashbacks. Like, I remember being very cold in all my law school classes. You know, sitting here looking out like, at all these bright, young students is making me think I should've been nicer to my professors, but—sorry.

So my name is DeAvery, I'm the Juvenile Justice Project associate at the Correctional Association of New York. My colleague, Mishi, earlier this morning, gave a wonderful description of who we are and what we do. I see a couple of new faces so I'll just say that the Correctional Association is a non-profit, criminal justice reform organization founded in 1844, so we've got you beat, Mike. But we do work on the rights of incarcerated women, we do state prison monitoring in adult prisons, we coordinate the *Drop the Rock Coalition*, a coalition against the Rockefeller drug laws and we, of course, have a *Juvenile Justice Project*.

Through that *Juvenile Justice Project*, we coordinate the *New York Juvenile Justice Coalition*, which is an alliance of organizations that are working to reform and shrink the use of detainment incarceration of New York State and New York City young people. So that's kind of, in a brief nutshell where I work and what I do. And as - - said, it's a really cool job. You guys should all look forward to getting like, really excellent juvenile justice or child welfare non-profit jobs, once you graduate. But you can't have mine, just so you know.

So I just wanted briefly, to start out by contextualizing—I obviously do Juvenile Justice stuff and there's a lot of talk about, you know, conditions of confinement for LGBT young people but I also want to make sure that we pay attention to risk factors that are faced by LGBT young people that lead them—or, you know, specifically lead them into the juvenile justice system in ways that heterosexual youths may not be led into the system. And some of them—I'll just kind of briefly go over some numbers that people have given us. Like, we all read the same reports or something.

So as like, Rudy pointed out 25% of gay men—or gay young men are forced to leave home because of their sexual orientation. It's like 30% of LGBTQ young people report being harassed or abused or neglected by their own families and I think it's important to look at this in the idea of safeguards. As a society, we feel that we have set up certain safeguards that are supposed to turn young people into productive adults and the first safety net is the family. So if you have numbers like this of people saying, "I was forced to leave home or if I was allowed to stay home I was neglected or abused," you know, that's the first failure of a very important safety net in a young person's life.

And so then you think okay then what is next to catch a young person that may be, you know, struggling to come to terms with their sexual identity or sexual orientation or gender identity or you know, may just be struggling and feeling neglected by society? So then that's where you kind of get into like, government and, you know, we have schools so we think a young person should be safe in school because a school is made up of teachers and administrators that love them and care about them and want to make sure they do okay.

But then you get reports back from LGBT young people in school and 70% of them report stating that they were called names because of their sexual orientation or gender identity, while in school. 46% reported that they were harassed on a daily basis. 23% reported being called names by school staff, so it's not even just peers, it's adults. And then you start to wonder why you get numbers like LGBT high school students are three times more likely to report carrying a weapon to school and, you know, it's not because they're gangsters, it's because they don't feel safe.

And then you look at what's the next level of safety? If the school is failing it's like, okay, the school's failing, the young person's going to have behavioral difficulties and so they're going to possibly end up in a foster care home or in a congregate care home and then when you hear some of my colleagues talk about historically how across the country, systems have not been responsive to the needs of LGBT young people—not placing them appropriately, not prescribing and continuing to prescribe hormones when necessary, you start to realize, okay, this is another opportunity that we have, that we've missed.

And so what is the final safety net, which isn't a safety net at all it's more like an abyss? It's the juvenile justice system. And so once a young person starts to explain—or once the numbers start coming out like, I believe Flor said or Mike said—you know, 40% of youth—oh, it was Flor—40% of youth who are homeless identify as LGBTQ. You look at the idea that LGBT youth are four times more likely to report making a suicide attempt that required attention and so you realize that the juvenile justice system might be the last space for young people and ideally, it's supposed to be second opportunity space where you know, we've messed up or you've messed up so we're going to give you some services and we're going to make sure that you're put back on the right path.

But that is almost certainly not the case in New York State, although I'm hopeful, as Flor is hopeful, that it is changing. But it's the idea that when we have young people in a system, what can we do with them, what can we do for

them? And a lot of stories that I've heard personally or that advocates have heard about physical violence, verbal assaults, physical aggression—you're holding your ear, does that mean I'm not speaking loud enough?

FEMALE VOICE 1: Yes.

MS. IRONS: Okay, sorry. That's better. I can hear myself. So reports of verbal assault, verbal aggression, physical, sexual abuse, on the part of—not just peers but also staff, so it's essentially adult-sanctioned abuse of young people in facilities. You hear stories of young people being inappropriately segregated, either people believing the hyper sexualizing, sexual offender idea that all LGBT young people are—if they're in trouble it's because they have committed some type of sex offence against someone else, so we have to protect other youth in the facilities.

Or it's the idea of, we can't control the other youth in the facilities and we're not going to do anything to work with them so we're just going to isolate LGBT young people, to keep them safe, and not really getting at the root causes of what's going on and homophobia and heterosexism.

And then you also look at—you know, the system has had a lot of difficulty dealing with transgender issues like not being able to understand that—well, it's still not quite there yet, but the idea that a young person should be allowed to live and express their identity as who they are and to live in a space that's safe for them and that's in line with their gender identity. So I'll come back to that point in a few minutes.

So I just kind of wanted to make sure that everything was contextualized and so that, you know, LGBT — people don't like to talk about incarcerated youth or court-involved youth, to begin with. It's like, this idea of, you know, these are just the bad kids and the super predators and why do we worry about them? And then when you start trying to get people to talk about LGBT young people or LGBT court-involved youth they're like, you know, we really don't want to touch that one because we have no idea what to do. You know, it's just something that everyone wants to ignore.

So some of the things that we're trying to do—I want to talk about some of the state and city level advocacy that we're doing at the *Juvenile Justice Coalition* and I also want to talk about some of the things that OCFS has actually taken the initiative in, you know, just light years ahead, from what I understand, they were just a couple of years ago.

So the first thing. If you were here for the last session, Karen Gutheil stole like, half of my speech, but I'm not going to hold it against her. She discussed briefly, The Safety Act: The Safe, Fair and Equal Treatment for Youth Act, which was a policy—or which was a bill that, if passed, would've required OCFS to promulgate a non-discrimination policy and that policy would've said that no one in OCFS can discriminate on the basis of sexual orientation and gender identity and it would've also required the consistent and effective and competent training of their staff on how to work and provide proper services for LGBT young people.

The Safety Act, unfortunately, was not passed. It passed the Assembly but there was no partner bill in the Senate so it did not become law. However, due to some amazing changes in OCFS, we've actually decided not to continue advocating on behalf of that bill this year because of a wonderful woman named Gladys Carrion, who is the OCFS Commissioner.

For those of you who weren't here earlier, she started, I think, a little over a year ago and myself, Mishi, our executive director, Bog Gangy, and one of our co-workers met with her and we were going over some of our concerns about the directions that OCFS needed to take and one of those concerns was the treatment of incarcerated LGBT young people. And she took it to heart and was like, "I'm going to start a working group. I'm going to,"—thank you—"I'm going to do all these things," and she actually did them. She created an OCFS working group and not just an internal group that's just comprised of OCFS staff, but a group of advocates—you know, inviting advocates to the table to get input on issues.

And that group has come up and has been hammering out a policy that will, hopefully be released in mid-March and it will be a comprehensive policy that will - - what Flor talked about—the name issue, so that a young person can go—any young person can go by whatever name they choose. They put like, a safety caveat on there but I think that should be fine. And it's also, you know, the automatic approval to wear whatever undergarments a young person feels is in line with their gender identity.

They're creating a mechanism by which a young person can, I guess, petition or request to have outer garments match their gender identity but they've created a panel that is composed of mental health providers and staff people and it's a little around—you have to—little roundabout way. But a young person can request to this panel to be able to wear appropriate clothing and the young person can also request to be put in a facility that—a unit in a facility

that they would be safe in and feel they can live in line with their gender identity.

There would be a unit for trans-girls at the Red Hook [phonetic] facility in Brooklyn and a unit for trans-boys at the Trion Girls Facility. A little crossed, but that's alright. We'll take what we can get. You can't win all the battles. So we're hoping that the non-discrimination policy will come out next month and in addition to that, they have a—in 2006 they released a list of guidelines commonly known as the *Mallen Guidelines*. They were somewhat problematic in some ways but they're using their new comprehensive policy to revamp those guidelines and fix the problems that I won't go into 'cause it's too short a time and I think Jody's actually going to kick me if I go over.

MR. JODY MARKSAMER: - - five minutes.

MS. IRONS: I have five minutes. So they're going to change their operating guidelines and it's also going to effect how they do their staff training. It all comes down to staff, in the end. If staff can't create a safe environment for young people, then it's not going to happen. So that's where OCFS is and we're really excited that in the future it's going to be a completely different ballpark and we want Gladys Carrion to be commissioner forever.

MALE VOICE 1: President of the world.

MS. IRONS: Exactly. That's right. At the *Juvenile Justice Coalition*, we've kind of shifted some of our legislative priorities because of what OCFS is doing. Looking at—you know, we've done some city level advocacy for years. The Department of Juvenile Justice, the city agency that runs pretrial detention facilities in New York City, had been working on a non-discrimination policy and I mean literally, for years working on a non-discrimination policy.

We got the city council, last February, to hold a hearing and miraculously, after years of working on this policy, like four days before the hearing, they released it and we were able to report it out to the committee. So part of what we've been doing for the past year is really trying to follow-up on that and making sure that they're implementing the policy.

There was another hearing in November—kind of—the city council—the Juvenile Justice Committee trying to follow-up and seeing if DJJ was coming through with what they said they were going to come through. It's been a little discouraging because they have been promising to train staff for a long time

and that hasn't really been happening, so that's a major concern of ours, on a city level—the treatment of young people in pretrial detention.

State level: I'm not going to steal too much of Jody's thunder, but we were inspired—very much inspired by California. At the end of last year they passed a bill of rights—well we call it out-of-home youth or-

MR. MARKSAMER: [Interposing] - -.

MS. IRONS: -Youth in care. So we have modeled a bill of rights that we're proposing—we modeled and drafted a Bill of Rights, based on the California Bill, making it somewhat more New York-specific. As we were doing this we found out that a Bill of Rights actually passed the Assembly last year so we've kind of gone back to the drawing board and are now working with the Assembly to get them to implement some more LGBT-specific clauses in the Bill of Rights that passed. They are hesitant to make OCFS do a policy change, however, it's the idea that OCFS is already doing these policy changes, so why can't we, in this bill of rights, ensure that they're enumerated?

So the clauses that we really want to see in, are specifically dealing with trans-youth. The idea is making sure that young people know and it's prominently posted that when they go into a facility, they can choose their name and that they can wear appropriate undergarments and that there is a mechanism by which they can get their other rights respected, if that's necessary.

So that's kind of where we're going. If there are any interested law students, when we're trying to do advocacy around this, you can call me and email me. I'd love to have you and I'd love to have LexisNexis access again, 'cause I really, really miss it. So that's the bill of rights and hopefully that's something that we'll be able to get introduced in the next year or so.

I just want to briefly talk about some of the stuff we're doing to—you can do a lot of advocacy work but it's also a lot about how can you directly impact the lives of youth—court-involved youth. So what we did about a year and a half ago—we have two youth leadership programs at the *Juvenile Justice Project*. The first one was a program called *Each One Teach One* that takes a wide look at the juvenile justice system in training young people.

About a year and a half ago we did a spin-off of that and it's called *Safe Passages for LGBT Youth*. This youth leadership program takes in young people kind of on a semester basis and we train them to become advocates and

organizers around the treatment of incarcerated and court-involved LGBT young people. So we teach them about the juvenile justice system, we teach them about how to actually advocate for legislation, we teach them how legislation happens and then once they go through our program, they work with us and they do legislative advocacy. We do advocacy days in Albany every year.

Previously, around The Safety Act—we don't really know what's going to happen this year or next year but it might be the bill of rights or something similar. And then they also do city level advocacy with us. We're appearing at city council hearings, but what is really interesting about *Safe Passages* and what some of the young people are doing in the program is that we do peer trainings—peer anti-discrimination training so we go into—we've been working a lot with alternative-to-detention programs, alternative-to-incarceration programs and we go in and do like, a ninety-minute anti-discrimination—what we call a Respect Workshop on young people and just trying to get them to draw the conclusions like, you understand that sexism is wrong and you understand that racism is wrong, so we also need to understand that homophobia and transphobia are wrong.

We don't have any delusions that, in ninety minutes you can stop young people from using the f-word and being homophobic but we're trying to do like, this two-tiered approach where, in addition to working with young people, the LGBT working group of the coalition has been training ATD staff and offering our services to anyone else who could possibly use them, so it's the idea of, you go in and you do a training with young people, but the staff—you've also given the tools and the understanding so that they can reinforce and—you know, if they can create this culture and then when a young person steps out of line and starts violating another young person's rights, there's recourse and it's understood, in the environment, that this is wrong.

So that's kind of where we are with that and eventually, our goal is to be able to go in and work with young people in detention facilities throughout New York City and OCFS facilities as well. DJJ has told us that they want to initially train their management and then their frontline staff and then eventually we may be able to come in and work with young people. By that point I may be too old but I hope not. That's a major goal that we have, to not only do like, the legislative advocacy but also do the educational work with young people. So I think that's where I'm going to cut it off and I'm going to pass it to Jody. Thank you.

MR. MARKSAMER: Great. Thank you. Hi, my name is Jody Marksamer and I'm a staff attorney and the Youth Project Director at the National Center for Lesbian Rights. NCLR was founded in 1977 as a National Legal Resource Organization that does public policy work, impact litigation, education and other types of work out in the community to advocate for lesbian, gay, bisexual, transgender people and their families.

And today I am going to focus my talk on transgender youth and some of the specific issues that transgender youth experience as they're going through these—as they're going through the juvenile justice system, in particular and some of the work that NCLR is doing to help address these problems.

So I'm going to start with the story about Destiny, a sixteen-year-old transgender girl and we'll go from there. But before, actually, I go into the story, I'm going to provide a little bit of groundwork and foundation for transgender youth in general and how do they end up in the system and what are some of the risk factors? Because many transgender young people find themselves facing rejection, harassment, physical abuse in their families, their homes, their communities, and their schools, because of their gender. Just like the lesbian, gay and bisexual youth.

The abuse is often so intense that they run away from home, drop out of school or enter the child welfare system. As a result of family rejection or abuse, a disproportionate number of transgender and gender non-conforming youth are homeless. I don't have a lot of statistics like the earlier panelists because, in most cases, studies did not even include transgender youth and they didn't disaggregate transgender youth if they did, so I'm just speaking from a level of understanding.

And so transgender youth who are homeless, like all homeless youth, are at high risk for arrest. Without income, these youth are forced to engage in criminalized activity such as theft, petty drug dealing or sex work and these activities increase their likelihood of both arrest and assault. Also, police target transgender youth just because of who they are.

In addition to gender-based harassment in schools, transgender youth often encounter teachers and school administrators who refuse to recognize their chosen name and pronoun and prohibit them from wearing clothing that fits their gender identity and fail to provide them with access to a safe bathroom and locker room. Because of these policies or practices, transgender students who express their gender identity are disciplined or even kicked out of school for such things as violating school dress codes or using the wrong bathroom.

And just this past week in California, a gender non-conforming young person, fifteen years old, was shot in the head in school by a fourteen-year-old boy. Larry King was his name and if you're interested in finding out more information about this horrible event, there's a website, rememberinglawrenceking.org, and there are lots of vigils going on around the county.

So the risks are real. Lawrence was dressing in—wearing jewelry and nail polish and makeup and that's some of the reasoning that some of his friends are saying was behind the—behind the act—behind the murder.

So all of these factors also increase the risk of arrest for transgender youth and also make it more likely that, once arrested, transgender youth will be held in a locked detention facility during the course of their delinquency proceedings. And then, if adjudicated, will then be incarcerated in a locked facility rather than allowed to return home and participate in community-based treatment programs.

And for many of these youths in the system, their gender identity is relevant both to why they were arrested and then also to their needs once they are in the courtroom. Unfortunately, however, the current reality is that lawyers, judges and other juvenile justice professionals are typically unprepared to ask the right questions, provide supportive services or meet the needs of transgender youth and too often, the juvenile justice system is outwardly hostile and unapologetically punitive towards these youths.

In addition to individual bias and lack of understanding of gender and sexuality, other factors such as a shortage of programs and services that can competently serve transgender youth, cause transgender youth to be placed in high security correctional facilities rather than back with their families or in community-based treatment settings that are more appropriate for their needs.

In these high security settings, staff members subject transgender youth to intensive gender and sexuality policing, literally forcing gender conformity on them, in the guise of treatment plans. Because of the juvenile delinquency system's conflation of gender difference with inappropriate sexual behaviors, transgender youth also are often criminalized and punished simply for being themselves.

The experiences of Destiny, a sixteen-year-old transgender girl, are illustrative of these problems. Destiny first became involved with the juvenile court when she was twelve. Over the next four years, Destiny was in and out of court for various property offences. Not unlike many other court-involved transgender youth, many of the offences for which Destiny was arrested had some underlying connection to her transgender identity, including shoplifting women's clothing and shoes, breaking into a neighbor's house to steal women's jewelry and fighting back at school. She had no record of violent offences or sexually-assaultive behavior.

The court and her defense attorney did not know what to do with her and they refused outright to respect her identity. Everyone used male pronouns and her male name and she was ordered to have numerous sexual predator evaluations for no reason other than her gender difference. When Destiny was fifteen, the court decided to send her to TMAX, the state's highest security juvenile facility for boys because no other less secure program would accept her because she was a transgender girl.

Her defense attorney made little attempt to find her a more appropriate placement despite the recommendation from probation that she should be placed in a non-secure group home. Destiny had problems at TMAX as soon as she arrived. The first thing they did was cut off her long hair and give her a boy's short buzz cut. This was incredibly traumatic for her. She was immediately targeted by the other youth there and within a few days had already been physically and sexually assaulted. Staff members did nothing to stop these and future assaults and some of the staff members even harassed and mistreated her themselves.

Staff also punished Destiny for crossing her legs, walking in a certain manner, clicking her tongue, or just expressing her gender in any way at all. Although Destiny testified at a review hearing about this abuse, her defense attorney, in direct contradiction to her, told the court that he thought Destiny was making a big deal out of nothing and that he believed that this young man, and I mean man, has a lot to learn at TMAX. This is her defense attorney.

The court didn't do anything to protect her either; no surprise since her defense attorney didn't ask them to. And they made—the court made no inquiry into Destiny's allegations of abuse. Instead, the court just sent her back to TMAX indefinitely, where she continued to be harassed and mistreated until she aged out of the system.

Destiny's story is just one example of how the juvenile delinquency system mistreats transgender youth. Destiny's attorney failed her, she was sent to an inappropriate placement where she wasn't safe or respected and no one she encountered demonstrated any competency in working with transgender youth. Every day in cities throughout the United States, transgender youth face similar fates in the hands of juvenile courts. Without a zealous advocate, a culturally competent judiciary and the availability of appropriate programming, juvenile justice professionals' unaddressed bias and general lack of understanding regarding transgender youth will cause these youth to spiral deeper and deeper into the juvenile justice system.

Since 2004, the National Center for Lesbian Rights has expanded our focus on transgender juvenile justice issues in an attempt to keep transgender youth out of these systems and ensure those that end up in juvenile courts and facilities are treated with dignity and respect. But just addressing gender identity-based mistreatment is not enough because this transgender bias only accounts for a portion of the problems that transgender youth encounter in the juvenile court. Many of the problems that transgender youth experience, like poor representation, unsafe conditions, lack of diversion programs, disproportionate minority confinement, are not necessarily consequences of these youth's transgender identity, but instead result from poor general conditions for all youth in the system or are due to the racism or criminalization of youth in our society.

Many transgender youth that come into the delinquency system, similar to youth who are not transgender, are youth of color, from impoverished communities that are over-policed. To adequately address the challenges that transgender youth in delinquency face, requires not only understanding and responding to the reality of these youth's lives but also joining forces with efforts to challenge the general inequities and failures in the juvenile justice system for any youth who comes in contact with it.

With this in mind, NCLR has focused our juvenile justice work in three areas. The first area is prevention, diversion and decreased use of detention. The best way to prevent transgender youth from mistreatment in the juvenile justice system is to keep them out of the system in the first place, so that's where we're starting from. And in order to do this, we are partnering with JDAI, the *Juvenile Detention Alternatives Initiative* of the Annie E. Casey Foundation.

We are looking at—we've just started a one-year study, funded by the foundation, as part of their general JDAI initiative, in order to address and find out the numbers of LGBT youth that are entering juvenile halls in their four, their four main sights. JDAI has eighty different jurisdictions that are working

on detention reform and they are being very successful at eliminating the inappropriate, unnecessary use of secured detention and then also at improving conditions in secured detention facilities. They've also been very successful at decreasing disproportionate minority confinement as well as meeting the specific needs of girls in the system.

And so just starting this year, JDAI will start to incorporate LGBT youth into their—all their site-based work and their eighty jurisdictions and we are working with them to conduct a statistically-valid, quantitative study to document the numbers of LGBT youth in detention facilities and the experiences they have there. We don't have numbers. JDAI wants numbers and we're making a survey that will get us some of those numbers.

The second focus area that we have is in zealous defense and respectful courtroom culture. Unfortunately, many young people do not receive effective representation because their defenders lack necessary resources, have enormous caseloads, lack specialized training and face other systemic barriers that prevent even the most dedicated lawyers from meeting their clients' needs. And since 1999, the National Juvenile Defender Center has been the leading national organization working to ensure that all children in delinquency courts receive high-quality representation.

For transgender youth who are not diverted from the system, their first line of defense, literally, is their defense attorney. In order to ensure that defense attorneys are prepared to zealously defend all youth, including transgender youth and protect their due process and other important legal rights during every stage of juvenile delinquency proceedings, we have joined forces with Legal Services for Children and the National Juvenile Defender Center to introduce *The Equity Project*, a multi-year collaboration addressing the failures of the juvenile delinquency court to treat transgender, as well as lesbian, gay and bisexual youth, with fairness and respect.

The *Equity Project* is studying attitudes and practices at each of the juvenile court decision-making points, from arrest to post disposition, and is formulating recommendations to ensure that LGBT young people have well-trained juvenile defenders who zealously represent them at every stage of their case and are prepared to uphold their due process and other constitutional rights.

At this time we are conducting surveys and interviews of defenders, judges, prosecutors, detention staff, probation and other juvenile justice professionals.

We are also conducting focus groups of LGBT youth and we have a national advisory committee of juvenile justice experts.

Over the last two years we've trained more than 2,500 juvenile justice professionals. We've established a list serve and a comprehensive website and with the help of the advisory committee, we've created a resource CD for defenders, with over 100 different documents to help them to be better prepared to defend their LGBT clients and to institute systemic policy changes in their jurisdictions. And I have a couple of copies of this resource CD if anybody's interested.

We also provide technical assistance to defense attorneys from across the country and I'm going to tell a quick story about a young person that—an attorney that I assisted in Philadelphia who works for Equality Pennsylvania and she was representing a transgender girl in juvenile hall and the girl wanted access to—she wanted to start hormone blockers and so we strategized on how she should go forward and just a couple of weeks ago, she received an order from the court and this order is actually based on some of the model policy materials that I shared with her and the best practice guidelines and then she drafted an order and gave it to the judge and I'll just read parts of it.

“The Mazzoni Center shall provide this youth with all recommended transition-related treatments in accordance with the medical and mental health assessments performed by Mazzoni healthcare providers on a past date and memorialized in the report provided to the court and attached hereto. These treatments shall include puberty-delaying hormone therapy and transgender supportive counseling. The City of Philadelphia Department of Human Services shall provide transportation for this youth to the Mazzoni Center for such medical treatments.”

Then this youth also is being transferred to a facility in Utah for treatment so this next piece addresses that. “So upon transfer to her new facility, this facility shall provide the youth with all transition-related treatments recommended by Mazzoni Center, in accordance with the medical and mental health assessments performed by Mazzoni Center.”

Also, the City of Philadelphia gave the authorized consent for this healthcare and they've completed all the necessary forms, including the medical releases and the consent forms to permit the administration of this medication for this young person. They also ordered the juvenile hall to refer to this youth by her preferred name and by her female pronoun and that all written documentation

should include the youth's preferred name and her legal name should be as an also known as.

And her new placement in Utah shall permit her to dress and present in a manner that is consistent with her gender identity and shall not require her to have a male haircut. And finally, the order addresses privacy and searches and it says that the new facility shall provide her with safety and privacy when using the shower and bathroom and when dressing and undressing and that she shall not be physically searched for the purpose of determining her physical anatomy.

And so this is a court order issued by a judge just a couple of weeks ago and I'm not familiar with any other orders of this sort and it's pretty remarkable to hear how easy this was and if you could just think about how different this youth's experience is, than Destiny's experience was. So if Destiny had an attorney who did any of these things and had a judge that knew about transgender issues or was open to learning about them, things may've been very different for her. And here, for this youth, the things that her advocate thought she needed and that she wanted, she was able to get.

So I'm going to just quickly touch base on the last area of focus that we're doing which is on conditions of confinement and we're publishing a guide for congregate care facilities specifically for working with transgender and gender non-conforming youth and this should be finished and published and out within the next month or so.

Also, SB518, the bill that we keep mentioning in different ways, which is the *Safety and Protection Act in Juvenile Justice in California*, which created a bill of rights for young people—all young people in the juvenile justice system in California. It also requires that young people are told about their rights and that it creates an ombud's program and creates some oversight.

And this is something that I worked on with our Equality California organization and it includes a non-discrimination provision but all the other rights are related to the right to safety, the right to access educational services, the right to clean water and access to the toilet and things of that nature, which are things that all young people were not getting at the facility, including LGBT young people.

And so I'm going to conclude with that and just say that much work needs to be done to achieve the systemic changes that are needed to address the juvenile

delinquency system's failure of law policy and representation for transgender youth. NCLR is working really hard on that, working with National Juvenile Defender Center, Legal Services for Children, Juvenile Detention Alternatives Initiative and we feel hopeful that things are going to change and just this recent order is, I think—is just evidence that it will. So thank you very much.

MR. JAKOWSKI: Heather, you told us we shouldn't worry about time, but I want to make an invitation to any of you to ask questions. You know now, we're long-winded. But you also feel free to get up and leave at any point if you need to and we'll just, I guess, talk until Heather says shut up.

MS. SQUATRIGLIA: - -.

MR. ESTRADA: Well we talked a lot and so we just want to make sure if you have questions, we'd like to give you an opportunity to ask them. Yeah?

FEMALE VOICE 1: - -.

MR. JAKOWSKI: Well, in terms of the work that I'm doing—really, the work—the strategic plan and the creation of my position really pre-dates, kind of her ascension. But I—you know, the context within which we're doing this work is altered when you have somebody like her, who's out in front. She did not personally endorse my position or the strategic plan, but it's a big help, I think, in the long run.

FEMALE VOICE 1: - -.

MS. IRONS: It's complicated. Actually, it's a very simple issue but a large part of it is the bill, as we drafted it and recommended it, includes rights for transgender youth, so rights on the - - gender identity, and it is remarkably difficult. I don't know if it's actually ever happened.

FEMALE VOICE 1: - -.

MS. IRONS: I'm sorry. I do, I talk really fast. I'm so sorry. This is like, actually a lot slower and—no, I was just saying it's difficult because the bill, as we support it, includes a clause for the protection of rights based on that gender identity and it's remarkably difficult in New York State to get anything passed that has any relation to gender identity. I don't know if it's actually ever been done, so if we try to take that bill to the Senate, it's just—you might as well not even try.

In the Senate, there was a bill, Dignity For All Youth Act, that was, in some ways, like a sibling bill but it wasn't like, a partner bill, but it would've accomplished some of the things, but that also has had—that's sponsored by Senator Tom Dwain [phonetic], and that has had no success either. So part of it is transgender rights, part of it is—you know, I think it's just an idea of not really understanding the needs and like, why do you need a Safety Act? People think of it more as special rights as opposed to just ensuring human rights.

MR. MARKSAMER: I also wanted to respond in terms of our experience with SB518 in California. So both our Assembly and our Senate are democratically controlled and so we're able to get through a lot of legislation that other places that don't have that are not able to do. But with this bill, because it was sponsored by an LGBT organization and even though only one provision in it was specifically related to LGBT youth, not one Republican voted for the bill, which is consistent along their lines of voting for LGBT bills.

But there were other juvenile justice bills that created some rights, that restructured the juvenile justice system, some pretty large changes, adding to the mission of the juvenile justice system to include family connection and Republicans voted for all those bills. So it was very clear that the issue is related to sexual orientation and gender identity.

But what was also interesting is that the Log Cabin Republicans were our only opposition to the bill. So they opposed the bill for juvenile justice reasons and not because of LGBT reasons and so they - - the only letter to the governor saying, you shouldn't sign this, which is quite fascinating.

MALE VOICE 1: - -.

MR. MARKSAMER: Yeah, we were really concerned that he was not going to sign the bill. We were like, pretty sure that he wasn't. And he has doesn't sign—he has not signed any of the marriage legislation, but this year that was the only—there were eleven bills that were LGBT-related and that was the only bill that he didn't sign. So we passed a lot of legislation in California and a lot of LGBT-related legislation and Schwarzenegger does have some pretty strong values about LGBT rights, so he's a compassionate conservative. I don't know what the right term is. A socially liberal?

MR. ESTRADA: Can I just—I want to add to that. I sort of feel like part of—some of the confusion that people have around the rights of LGBT young people in state custody is that they think that the state has to have a specific non-discrimination law and that if a state does not have a non-discrimination law that's LGBT-inclusive, that somehow then, LGBT young people in state custody are left unprotected.

This is an issue Jody and I have written fairly extensively about. We have copies of a law review article that we wrote a couple of years ago that was published by Temple Law School where we really try to lay out the case for how LGBT young people are covered and protected by the Constitution, not by some state law or by a policy set by a child welfare agency or a juvenile justice system. Irrespective of where the young persons lands, the Federal Constitution and the right to safety—I want to really underline—Flor sort of touched on it—the right to safety, in my mind, is really the source of all of the most important rights.

The First Amendment rights are really critical as well, but the Fourteenth Amendment and the due process liberty interest that flows from the Fourteenth Amendment and that should—I see some heads nodding 'cause it might remind some of you of the marriage litigation and other privacy rights, the reproductive rights. I mean, a lot of that stuff flows from that clause and including the right to safety. And the right to safety is not to be sneezed at in the state context. Young people in any of these systems of care are guaranteed, at a minimum, the right—an affirmative right to safety. So if a young person is harmed or discriminated against or harassed or sent to forms of services that are hurtful or harmful, they can-

MR. MARKSAMER: [Interposing] Or isolated.

MR. ESTRADA: -or isolated, they're—I mean, read the article. There's lots of different ways that we've played this out, that this right would kick in and I think-

MR. MARKSAMER: [Interposing] And the federal court in Hawaii agreed completely with our theories.

MR. ESTRADA: Right and so did the *Rodriguez* court generally—I mean, the *Rodriguez* case settled out of court. I was one of the attorneys on that case. It was the case brought here in New York State against OCFS. That was a Fourteenth Amendment—you know, an allegation of a deprivation of that

right, so it really—I think there’s a lot of focus on state laws, state policies, city law, city—but really, when you start talking about custody, there’s sort of an interesting dynamic that occurs where young people who are in state custody actually have these great affirmative rights that they would not have if they were at home with their parents.

So for example, a young person at home with their parent who wanted—whose parents wanted to send them to a conversion therapist—that young person could not file a federal case claiming a deprivation of their liberty interests. Their parents have that right. You take that child out of the parental home; you put that child in state custody—totally different scenario.

So really, it’s like, by pushing the envelope on some of these state custody issues, we’ve actually been able to sort of trigger and support some of the public policy work that’s going on in all the other systems: the educational system, the healthcare system.

So that’s the beauty of this work is that it’s sort of—it’s fostered and created an environment whereby these rights have really been developed and we’re sort of supporting one another. So in the marriage context or the reproductive rights context, we’re really seeing an evolution of that right and all of its implications.

FEMALE VOICE 2: - -.

MS. BERMUDEZ: There are some across the country. San Francisco has some; Detroit has the Ruth Ellis Center who is—that’s a homeless shelter for LGBT youth. There are not that many. I think I could count them on both hands and the problem in some of these cities that do have them is that they’re overcrowded and there’s such demand. There’s Green Chimneys, where there’s a long waiting list.

FEMALE VOICE 2: - -.

MR. MARKSAMER: So the National Gay and Lesbian Taskforce recently issued a really long report on homelessness and LGBT youth and it goes into pretty great detail in a number of different jurisdictions, about what are the issues, what do they see as some of the problems and also the National Alliance and Homelessness? Is that-

MS. BERMUDEZ: [Interposing] To End Homelessness.

MR. MARKSAMER: National Alliance to End Homelessness has convened an advisory group to address the issues of LGBT youth and their inability to access appropriate services through homeless shelters. It's not something the legal organizations have really taken a lead on because, as Rudy had said before, that custody piece really triggers the extension of constitutional rights and without that, you're really stuck in with state law and more likely, with state tort-like claims for, you know, negligence or wrongful injury or something.

MR. ESTRADA: 'Cause generally, homeless kids are not in state custody, so they don't have that same Fourteenth Amendment, due process liberty interest and safety.

MR. JAKOWSKI: I was going to say, with our agency, before my programs were established, we were a pretty traditional child welfare agency. We—you know, there were gay kids in the agency but we didn't have any specialized programs and there's been like, a real shift in our agency, since we've made a commitment to working with gay, lesbian and transgender youth.

I do a training each month for new employees and it's interesting 'cause a lot of our group homes now have become safe places for gay and transgender youth. And it really comes down to having the administration behind you and having them say yeah, this is something we're going to do. So it doesn't really have to be a gay agency that's going to do this but I think any mainstream agency that decides they really want to make a difference and service these youth, it can be done, given the example of our agency.

MR. ESTRADA: There are actually—there are a lot more than two in New York City these days. They are developing—you know, they're showing up in church basements around the city, not necessarily an ideal scenario but we are seeing—you know, they're in every borough now, specifically intended for these kids.

I sit on a coalition of homeless service providers in New York City and it's funny because it's not an LGBT-specific group but the conversation almost always comes back to serving LGBT youth because all of the mainstream agencies—Covenant House, which is a 300-bed, giant homeless shelter for young people in New York City—even they acknowledge—and they're doing all this work around transgender kids.

Historically, that has not been a safe place for LGBT young people, which is why places like Sylvia's Place and Rachel's Place have opened up, because Covenant House was not safe. But we're seeing a lot of changes and I think it's really important, you know, as sort of—there's like, a community trust issue. You know, we're sort of trusting that those mainstream, larger organizations are really going to heed the message and heed the work that's being done by the LGBT-specific organizations and really begin to carve out their own capacity. Because even though we have, now, a fairly large number of specialized homeless shelters here, they're woefully under capacity, in terms of—you know, they don't have the beds that they need to really serve the population.

FEMALE VOICE 3: - -.

MR. ESTRADA: That's a really good question and it's a really good question because it's actually part of the work that we're doing right now. We're dusting off an old statute that's been on the books—I don't know, probably as long as the Correctional Association has been around—that says that destitute minors fall within the responsibility of my agency. And that statute's grown very dusty, moldy, been sort of buried in the books, nobody's been looking at it, but we're resurrecting it and we're trying to sort of figure out what does that mean?

And what it does mean is that, for a young person up until the age of eighteen—to be a minor, you have to be under the age of eighteen. If a young person is a minor and is destitute, according to the statute, which defines destitute as being unaccompanied and unsupported by a parent or guardian—that we have a legal obligation. So historically, we have—when destitute minors or homeless young people come to our shelters, we generally say, “Go to Covenant House, go to Green Chimneys, go to Sylvia's Place, go to one of the shelters,” but as of like, literally the last month, we have begun to take in those kids and so we've seen a dramatic explosion of destitute minors coming into our system of care.

We're trying to figure out what we're going to do with them. A disproportionate, overrepresentation of them are LGBTQ, so it's a really timely question. We're actually hammering out a protocol right now around, what is our obligation? When these kids present at our shelter, is it okay and is it legal for us to say, “Go somewhere else?” I believe that the answer is a definitive no—that we have an obligation and we must start serving these kids.

MS. BERMUDEZ: I just want to add to that that I think that the tricky age is like, fourteen to eighteen because many—states vary—it varies from state to state. But if a young person is younger than eighteen and goes to a youth - - center, they cannot get permanent housing there. They eventually would be referred to a child welfare agency and eventually they will open up a case and figure out why this young person is out in the street. And eventually they'll try to reunite them with their family of origin. So below the age of eighteen, the youth shelters are really transitional. You know, seventy-two hours—a couple of days, and eventually, they'll get to foster care.

MR. ESTRADA: Well that's where we're heading. We're nowhere near there and whether we'll open a case or how we'll open the case—whether we'll take the case to court or whether we can just serve that youth, is really the question. If we open a case and treat it as a foster care case then some of the reunification mandates and that kind of stuff will kick in, but we are sort of, of the belief that we don't have to go that route, that we can open our shelters and provide service and a bed and care for these young people without having to do that and that's up to the age of eighteen.

And of course, if a young person comes in at seventeen years and 364 days of age, they could stay with us until they're twenty-one, conceivably. So there is a real incentive to come in before the age of eighteen and unfortunately a lot of destitute young people are over the age of eighteen and for them, we're not a safety net, unfortunately.

FEMALE VOICE 2: - - .

MR. ESTRADA: Thank you all. You guys have been really great.

MS. SQUATRIGLIA: So thank you so much - - .