

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Inquiry into youth justice centres in Victoria

Melbourne — 22 March 2017

Members

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Witnesses

Mr Vincent Schiraldi; and

Ms Julie Edwards, chief executive officer, Jesuit Social Services.

The CHAIR — I am going to reopen proceedings at this point so that we can start, and I welcome Mr Schiraldi and Ms Edwards. Thank you very much for taking the time to appear this evening. Mr Schiraldi, I understand you are appearing and, Ms Edwards, you are offering support rather than giving evidence. Welcome to you both. I will not reintroduce the panel, because I understand you have been here earlier and you understand who was who. All evidence taken at this hearing is protected by parliamentary privilege; therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by this privilege. I would invite you to briefly address the committee. We are asking people to speak for 5 to 10 minutes, and then we will go to questions if that suits you.

Mr SCHIRALDI — Thank you very much. My name is Vincent Schiraldi. I am a senior research fellow at the Harvard Kennedy school of government. Relevant experience I have had in this field is that I ran the Washington, DC, juvenile justice system under mayors Anthony Williams and Adrian Fenti — under two mayors — and I ran the probation department in New York City, which was the adult and juvenile probation department, under Mayor Bloomberg, primarily, and for a short while under Mayor de Blasio.

I am going to talk a little about the history of some juvenile justice issues in the United States, and I am going to focus a bit of my time on what went on when I was in New York, because I think it is kind of relevant to the experience you are all having. I have been here a week now, so I do not claim to be an expert on what is happening here, but I do have some impressions, and I will share them with you for what they are worth. You can take them with a grain of salt because I do not pretend to be an expert on what is happening in Victoria.

The United States went through a great change in our juvenile justice system in the 1980s and 1990s, particularly 1990s. The system was formed in 1899 — that is, the first juvenile court, actually; the first juvenile training school or reform school was opened in the 1840s. But the system did not change all that dramatically. There was some due process for kids added in the 1960s, but in the 1980s and 1990s there was a big change. Crime had become a very salient issue in the body politic in the US in a way that it had not been prior to that, and part of that became a crackdown on juveniles, so there was a major increase in the number of kids that were locked up in our juvenile facilities. There was a spike in juvenile crime in the early 90s and a very substantial increase in the number of kids locked up in the United States in juvenile facilities but also in adult prisons. So every state during the 1990s changed their laws to make it easier to incarcerate juveniles with adults and to try juveniles as adults, and the number of kids in juvenile facilities peaked at about 109 000 in 1999.

There was a pair of researchers, John Dilulio the most prominent among them, who led the charge on this from a research standpoint and dubbed America's children a 'rising tide of juvenile superpredators' — very scary language, some of which found its way actually into legislation. So the federal legislation in 1996 was called the Violent Youth Predator Act of 1996. This affected both parties. Bill Clinton was as vocal a cheerleader for this as was Newt Gingrich, both of whom have since recanted pretty substantially. Bill Clinton, in his autobiography, talked about how criminal justice and juvenile justice policies got out of control, and Newt Gingrich has openly and very vocally called for an end to mass incarceration in the United States. So it has been a pretty substantial shift, and a bipartisan one, in the US since the 90s and particularly for juveniles.

Over the last few years there has been a 15 per cent decline in adult incarceration in America, but juvenile incarceration has now dropped to 53 000, which is still a huge number by your standards but, as you can see, less than half of its peak in 1999. That data is only current as of 2013. Because there are 50 states and the District of Columbia, the justice department has to survey each state. Actually we are always several years behind on how much incarceration we have, so the numbers are only current as of 2013. We expect it will be very substantially more when we get the 2015 data. It is a two-year survey.

Ms PATTEN — Increase or decrease?

Mr SCHIRALDI — Decrease. We suspect it will be much lower than 53 000 just because we know the data from some of the bigger states.

In this time period — 2001–2013 is the best time period we have data for — there was a 53 per cent decline in that time period and 48 states had double-digit declines. The five largest states — California, Texas, Florida, New York and Illinois — had two-thirds declines.

Ms SYMES — Can I just clarify something on that point? Thank you for appearing today and taking some time out of your schedule. I just spent some time in New York at the Red Hook community centre —

Mr SCHIRALDI — You did? Great.

Ms SYMES — and things like that. We have got a neighbourhood justice system here in Victoria that is actually based on that model. But one of the things that struck me in the US was the incarceration of juveniles for truancy and really low-level offences. So when you talk about the decline, are the states having the same phenomena that we are having where overall juvenile crime is reducing but more serious crime in a smaller cohort is increasing? Are you having the same experience?

Mr SCHIRALDI — So juvenile crime peaked in 1994 in the US. Since then there has been an 80 per cent decline in juvenile homicides and a 68 per cent decline in violent crime by juveniles. So it has been a pretty serious and long-term overall decline. It has been actually more of a decline in the more violent crime categories. You may be getting ready to ask me why, and I am going to stop you because nobody really has a terrific answer for that. For part of it the economy has improved. For part of it the economy declined. There was a crash in 2008, and it did not really affect crime, which was sort of weird.

I once saw a bar chart of lead in the air — because you know in the US we get a lot of lead out of gasoline — and lead is absolutely associated with violent crime. Somebody had delayed the chart by 21 years, so they overlaid juvenile crime with lead 21 years later and found that the charts almost identically matched one another. As lead dropped, crime by 20-year-olds dropped.

Ms PATTEN — Didn't I see one on abortion law reform as well?

Mr SCHIRALDI — So that is a very controversial subject, but yes. Not just abortions but really births by teenage parents —

Ms PATTEN — Birth control.

Mr SCHIRALDI — and part of that is abortion. Some believe part of it is better birth control and better education, but in any case there has been a substantial decline in births of kids to kids. All of these have people who would contradict them, and some people would say that we do have better programs now. We have more evidence-based programs; some people lay that claim. My suspicion is that it is probably a combination of a bunch of things, and it would not surprise me if fewer single-parent births, particularly to teenagers, is part of it.

Ms EDWARDS — Can I just make one comment, which is that what Vincent is describing is actually pretty much an international trend around youth justice. It is pretty much going down everywhere, and there is some interest in that and why that might be.

Some people are also positing the hypothesis around social media et cetera and people staying more at home and connecting that way. Of course we also know that there is a side of that that can help people connect in a way that is not helpful, but it is an international trend and Victoria is following that. We have this small group of people who are offending in a bad way, but overall the crime rate keeps going down.

The CHAIR — Mr Schiraldi, did we distract you from the presentation?

Mr SCHIRALDI — I will keep going; it is great. So I arrived in New York in 2010 to run the probation department after running the juvenile system in Washington, DC. There were approximately 30 000 people on probation. About 2500 of them were kids; the rest were adults. I do not know what probation is like here, but in the US it has become much more law enforcement oriented. So think 1000 people with guns and flak jackets, not 1000 social workers. I still carry my badge; all my staff have badges. It is a little different to that. There is certainly a cop-social worker mix, but as with anything else you find that some people are more cop-like and some people are more social worker-like.

There had been a series of atrocities in New York State facilities just prior to my arrival. We have a very state-county division in the US. The state ran what we call the training schools, youth prisons, reformatories — whatever word you want to use for them — and there had been a series of kids who had died in custody from what we call prone restraints, which are a way of taking a kid down where the staff member would land on the kid and the kid's sternum got crushed and they suffocated, twice. That got immediate coverage of it, kind of like what you are going through now with respect to several of the facilities. The justice department did an investigation, and then Governor Paterson formed a statewide commission kind of like your royal commission.

The results of both of them came out just before I started. The justice department decided to sue, and the commission came out with findings that were hair-raising — kids getting their teeth knocked out and bones broken for trivial matters, excessive use of restraints, handcuffing and shackling, excessive use of solitary confinement and kids being locked in for long periods of time. It really shocked the state.

The other thing that was in effect in New York, which is in effect in some other places, is that every time a county sent a kid to state custody they paid half of the costs of sending the kid to state custody. So New York City had reduced, by the time I got there, the number of kids in locked custody by two-thirds, but what was happening was that the state was in a very difficult financial situation. So the budget people at the state level were adding more costs to the cost for a kid, and simultaneously the state was not closing the facilities even though the population was declining, because the unions were pushing back very hard and also these were mostly in rural upstate areas where the employment base had essentially left. There were a lot of rustbelt towns, and there were no other good jobs up there. So between the union and the local elected officials it was extremely difficult to close the facilities, and one of the previous governors had cut a deal with the union so there was a law that was passed that said you had to give a year's notice every time you wanted to close a facility.

So as soon as the department head would give a year's notice there would be all this organising that would go on to combat the closure of the facility. I went up once to the town of Ogdensburg, which was so far from New York City on the Canadian border that you could not even write the word Ogdensburg without lapsing over into Canada. They wanted to close that one because that was the most expensive and most distant one. I do not think the dog catcher was left in Ogdensburg that day. Everybody from Ogdensburg came to protest the closure of that facility, so you can imagine the kind of pressure that folks were under.

Mayor Bloomberg was very frustrated by all of this. The recidivism rates topped 70 per cent. The cost per kid was rising every year. We were actually paying more for the one-third of kids we used to have than we were paying when there were three times as many kids. We were paying \$12 million. It grew to \$250 000 per kid per year. I think you guys are \$500 000 per kid per year. I think you are \$1400 — —

Ms PATTEN — \$291 000, I think, was the last figure I got.

Mr SCHIRALDI — \$291 000? I thought it was \$1400 a day, but I guess I am wrong. So you are in the neighbourhood of us. So it grew to \$250 000. Every time we sent a kid we paid \$125 000, so we were actually paying more for one-third of the kids.

So the mayor got angry and he sued, which was not going to go anywhere. It is pretty clear that the cities cannot sue states, so we decided to ask the governor to give us all the kids. We had 500 kids at the time in state custody; we asked for all 500 kids to be returned to New York and to give us the money that was being spent by the state on them. So that would be their half that they would give to us instead of us giving them our half. The governor agreed.

By this time it was Governor Cuomo. Governor Cuomo had been the prior Attorney-General of New York. He had to defend the state against the federal law suit, so he was actually pretty aware of what was going on in the juvenile system. After he got elected — he got elected in November, and then you start in January in the US, with about a month and a half interim period — he went and visited a facility that was completely empty of children, but fully staffed. Staff were doing in-service trainings. They were doing perimeter checks. I do not know what they were checking for, whether they thought people were going to break into the facility, but they were just running that facility. It was about as clear as could be that at a certain point the facility stopped running for any purpose other than for staff.

I say this in part because I know you are getting ready to build a very big facility. I have asked everybody I met with this week how the number 224 was arrived at, and I have yet to meet a person who can give me that answer. You are going to have staff for a 224-bed facility long after every single one of you no longer is employed in this job, so I would just urge you to make damn sure that at \$291 000 — is that what you said?

Ms PATTEN — It is \$291 000 a year.

Mr SCHIRALDI — At \$219 000 per kid, per year, 224 is the right number, because we bureaucrats do not like to give our budgets back to you elected officials. So once you give us that money you can pretty much kiss

it goodbye in perpetuity for the rest of all of your careers. And nobody can tell me how that number was arrived at. Are there kids in your system who any reasonable person — left, right, forget about it for a second — thinks could be serviced less expensively and more safely in a community-based setting? Eighty per cent of your kids are pre-trial; they are in remand. That is outrageous. That is scandalous.

The average used to be 30 per cent in Victoria. How is it that you are letting your justice system get away with being that lazy and sloppy, and you are going to go out and build beds for them?

Ms SPRINGLE — It is true.

Mr SCHIRALDI — What we did at this point was the mayor said, 'I want all the kids back'. So we said, 'Okay'. All of us bureaucrats got in a room, including the judges, the prosecutors, the defence attorneys, the cops, the education system, probation, the child welfare system. We got in a room like this. We got a bunch of consultants to help us out. The John Jay College, the Annie E. Casey Foundation and the Vera Institute of Justice were all consulted, consulted, consulted. We got all the data, and we sort of looked each other in the eye and said, 'All right, who needs to be incarcerated? What kinds of kids do we all think need to be incarcerated?'

To be sure, there was some arguing between the defence attorneys and the prosecutors, right? So it was not like we just all agreed in 10 seconds, but basically we came up with a grid that showed risk down one side — we got a new risk assessment instrument. We picked the best one that our people thought was the best one in the country, and we all picked it consensually. We came up with four categories of offence behaviour: high, medium, low. The kids who were the high-risk, high-severity kids were the ones everybody said we thought should be the ones who are incarcerated. The low-risk, low-severity ones, we said, 'Let's get them out of our system as quickly as we can and divert them away, because we're only going to make them worse and we're just going to waste resources on them'. Then the kids in the middle would be the ones who would be on various levels of probation, but they would also be in rigorous community-based programs with efforts made to turn the kids' lives around.

So once you have a grid like that, you know who the population of your system was for the last three to five years and you know how many 12-year-olds there are living in your city, so you know how many 17-year-olds there are going to be five years from now, and you know how many seven-year-olds there are in your city, so you know how many 17-year-olds there will be 10 years from now. So the rest of it became a pretty easy forecasting process. We were not just forecasting bed needs; we were forecasting everything needs. We were forecasting how many rigorous community-based programs we needed and how many probation officers we needed, because we knew there were going to be this many kids on high-level probation and the case loads would be, you know, 10 to 1, medium level, low level. Then it is just a math problem at that point. How many kids did we estimate would be violated on probation because they screwed up? Again, we had historical data, and when we looked at the historical data the department was a little embarrassed by that. We said, 'That's pretty ridiculous. That's too many violations. We want to cut that by 10 per cent' — not an outrageous number because you do not want to start making stuff up — because once you have built the facility you have built the facility. You cannot just change the number of beds.

So we struggled with this, but once we came up with the conclusion we came back to our elected officials, which in our case was both the city council and the state legislature and the mayor and the governor, because we had to please four branches of government, because this was a deal that was being cut by the city and state and money was attached to it. So the state people were in there with us coming up with these estimates, then the grid that I just described was codified into state law. We could not just throw the grid out; we had to live by that grid. It is not a mandatory sentencing grid. It only defines what probation would do, and we could change it and amend it if we wanted to, but there was some level of process because our elected officials wanted to have a piece of that action. They did not want to be in there making the grid, but they did not want us to just change it willy-nilly once we had convinced them it was the way we were going to go.

So we did that. Thankfully it did not pass the first year. It passed the second year, so we had almost a year and a half to work it all through. The whole process was consensual. At the end of that process then we had a data-driven instrument that we can keep using, so every once in a while we have to report back to the city council on how it is going. This allows us to do some pretty incredible things because every few months we can look back at the grid and say, 'Are we departing from what we thought we should do? Are we overriding the grid and putting kids into placement that we originally did not think, and are we doing that for good reasons or bad reasons?'

Because sometimes you could be doing it because the grid was wrong — we had got it wrong and needed to change the grid. And we found some of that, but we also found that there were a lot of kids that got kicked up into the system because of problems like social problems rather than criminal behaviour or risk. Examples of that were girls who were in the sex trade, so girls who were lap dancing and being prostitutes. That freaked the judges out. They were not particularly dangerous. They were not mugging people or anything like that, but that freaked the judges out because they did not want the girls to come to harm so they would put them in detention.

The CHAIR — What sort of ages were these girls?

Mr SCHIRALDI — You know, teenage girls — 15, 16, 17. Very developmentally disabled kids, very mentally ill kids and kids without tenable homes, so even if you were not very dangerous or at high risk and you had no really stable home to go to — your father was in prison, your mother was on drugs — even if you were not risky you might get locked up because your parents were not able to care for you or take care of you.

And everybody was at the table. It was not just probation making it up, because we really wanted consensus around it all, because if I make up a program and you are the judge and you do not like the program, well, you are not going to use the program. So the judges were there, the prosecutors were there. It was hugely important. Every meeting I sat next to the prosecutor because I knew if he was not happy at the end of the meeting, I was not going to be happy, and that is the deal I just had to cut.

Then as we found these populations we would develop more programs — for example, for the kids from untenable homes we developed the detention foster care model. So there were these people and we just paid their salary — ‘You don’t have to do anything today, but if I have a kid, I’m putting them in your house, not because he is dangerous but because he — —

Ms SYMES — What did you call that?

Mr SCHIRALDI — Detention foster care. So that person was just paid a full-time salary and every once in a while we would deposit one or two kids in their house, and their job would be to watch that kid. Those kids were not super dangerous or anything like that, but they really did not have a place to go. For the very mentally ill kids and the very developmentally disabled kids, the three departments put money into a pot — developmental disabilities, mental health and probation. We put money into a pot and had flexible funding and then we would jointly case manage the kid’s case.

So now we have a really developmentally disabled kid who has committed a crime — not that bad a crime, but a crime — and he is not navigating the system because he is unable to navigate the system. He misses court appearances, does not show up at the probation meetings, so we would just case manage that jointly, and maybe the person who is going to see the kid is the developmental disability social worker rather than probation. Then he will just provide reports to us, and he will get the kid to come to court.

Ms CROZIER — How many of these kids were state care kids? Here in Victoria there are about 45 per cent in youth justice that are under child protection.

Mr SCHIRALDI — About two-thirds of the kids had some child welfare involvement at some point in their lives, and about a third were actually in foster care when they committed their crime.

Ms EDWARDS — Actually it is the same. We have 48 per cent, but there is another whatever percentage that brings it up to just under 65 per cent, meaning having current or prior involvement with child protection.

Mr SCHIRALDI — So that is kind of it. We transferred 500 kids down from the state to the city because we had a better continuum of care. Only 160 of the 500 ever went into residential programming. We contracted the whole thing out; the city chose not to run any of the facilities. Forty of the facilities were locked — two 20-bed facilities; 40 beds were locked — and they were all contracted to the private non-profits. All the rest were what we called staff-secure programming, so staffed well enough so kids could not frivolously run out of them, and generally they ranged from six to 12 beds.

Ms EDWARDS — In a house in the community.

Mr SCHIRALDI — Yes, just in neighbourhood houses. And they were all, you know, well-connected community programs like Catholic social services or Jewish family services or Good Shepherd. They were all

pretty well connected so they had the problem of siting the facilities — it was not on the city; it was their problem — and they had advisory boards or people from the neighbourhoods. We had a couple of problems where we could not site the facilities so we put them someplace else, but by and large they took care of that problem.

Ms PATTEN — Obviously a KPI on the — —

Mr SCHIRALDI — I am sorry, just one last point, and then I will stop the testimony part. So we moved them all down. We had 160 instead of 500, so we dropped by two-thirds again, and juvenile crime has dropped by 53 per cent over the four years that this has happened so far. This year's data is not in yet.

Ms PATTEN — Great. That probably just leads perfectly into my question, which was around KPIs of things like recidivism rates. I am assuming that your recidivism rates also declined?

Mr SCHIRALDI — The data is not in yet. It is still too early, still too much of a process — you know, a system and process — so I do not know. But I know juvenile crime dropped by half.

Mr MULINO — I have just I guess an overarching kind of question. My sense is that what you are suggesting is a system with a better range of services and basically trying to find the best services to match individual children but then having a data-driven system where you can evaluate what is working and what is not and to adjust.

Mr SCHIRALDI — I would add two things. Yes, I am suggesting that. Another thing is to really make a hard decision as to who you want locked up as a group, like all y'all — elected officials and appointed officials — so that you know who you want locked up, and to scrupulously examine the population and make sure that that is really all who are being locked up. Usually people say, 'We want the worst of the worst locked up — the violent kids, the dangerous kids', but when you look in your facilities — and I do not know if you have yet; I do not know if you have done an analysis of your population — often when we do them in various different states we find that absolutely there are some really dangerous and risky kids, and then there are a whole bunch of kids who should not in any million years be anywhere near those dangerous and risky kids and who are just being made worse by association with them.

Mr MULINO — I have just one follow-up in light of that overarching approach. I suppose when you look at what is happening here — and I suppose there are different perspectives on what is happening here — my sense is that most people would agree that the overall crime rate is dropping for juveniles, but we have this very small cohort and it has been getting worse over some period of time where this very small cohort is committing quite a lot of crimes, and the severity of those crimes is getting worse. In Victoria I think it is fair to say that we have been trying to develop programs like diversionary programs, dual-track and more flexible programs for that larger bulk of offenders, but the system is struggling to cope with that small cohort committing worse and worse crimes. I suspect you probably would not rule out putting those kinds of offenders in facilities that are secure.

Mr SCHIRALDI — No, that is right.

Mr MULINO — But it is a matter of trying to figure out who or what people are in that cohort and making sure it is targeted.

Mr SCHIRALDI — And the number might be 224.

Ms EDWARDS — And the nature of those facilities.

Mr SCHIRALDI — Yes, I will get to that, but even before we get to that, the number might be 224 — I do not know. Somebody needs to kick those tyres hard, though, before you spend that money, because you will not spend it for a long time.

Mr MULINO — Yes, but more at the principal level.

Mr SCHIRALDI — So if there are serious violent kids, if that is what makes up 100 per cent or even 80 per cent of who you have got locked up, then you have the right number. But I just have not seen it. Nobody has told me that. I keep hearing about individual cases — this kid that did some horrible thing, stole a car and hurt

people. Everybody keeps telling me the same stories over and over again, but data is not the plural of anecdote if you just keep piling on anecdotes. Somebody should give you guys the data before you spend the money.

Julie just pointed out that I did not really talk about the nature of the facilities, because I wanted to emphasise this screening process before I got to the nature of the facilities. Once you get down to that core of the worst of the worst — you know, the dangerous and the violent kids — there are ways to make these facilities decent and humane. They do not have to be prisons. I generally think smaller is better if you are going to do that. Even if you are going to have 200 kids locked up, do it in five 40-bed facilities rather than one 200-bed facility, or ten 20s or something like that. We did this in DC. We got the number down to 60, which for us I thought could be lower. I thought it could have been 40. I tried to get the mayor to let me build a 40-bed facility but he made me build a 60-bed facility, but I was closing a 200-bed facility so I took the deal and ran with it. Then we completely retrained the staff and really redefined their jobs.

I heard you guys talking to the woman that was here before. I forget who asked the question about what could be done to keep the staff safer. We made the staff's job not be guards. Of course they had to have a correctional officer component to what they did, but the job of everybody who worked for me — this was when I was in DC because that is when I ran the facilities — was to help turn the kids' lives around.

Ms PATTEN — What were they trained as?

Mr SCHIRALDI — They all came in as guards. They came in as correctional officers. I actually changed the name to youth development officers. We took them offline. I took one unit offline a month for 10 months, so I was pulling one unit out, and I sent them to full-time training for a month just on how to do group therapy with the kids, how to de-escalate so that they did not resort to isolation and shackling right away, and how to work as a team.

When you used to come to work, if you came to work for me prior to this, you would come in and find out what unit you were working on that day. So you and her could work great together, but you might not see her for six months and you would not know the kids. So you just got shot out to wherever you were. Partly that was because — and I heard a lot of folks were on disability — it was such an awful place to work that staff were doing an enormous number of things that any of us would do if we were stuck in that environment but that from a distance come off as very dysfunctional and manipulative. So some of the staff were not really sick but they were going out on disability, but they were stressed out. If you had to stay an extra 15 minutes, you got an hour of overtime, so nobody was ever 14 minutes late; everybody was always 16 minutes late. It was a game. I will be 16 minutes late for you, and then tomorrow you will be 16 minutes late for me so that we can all reap the benefits of overtime.

There was a lot of worse stuff. Staff were having sex with the kids. Staff were sexually pressuring one another. I mean, it had gotten bedlam-like. So new women who came on to work for me would find out that if they did not put out for their supervisors, they might find themselves in compromising positions with a bunch of kids in the facility and no help would be forthcoming. Staff were selling drugs to the kids. Kids were testing positive in my facility that did not test positive when they came into the facility. Staff were locking the kids down for so long that often they would urinate or defecate in their cells. Rats and cockroaches were crawling up on the kids at night and biting them.

It was crazy. And in that environment you cannot do therapy. You cannot be worried about 'I'm going to run a group on dignity and respect today' if you are afraid somebody is going to punch you in the back of the head. So it took an enormous amount of work to change that culture, but we had to make the staff feel safe first, because absent that, they are going to absolutely do what they need to do to survive. Some of that is violent, and some of that is just withdrawing. Some of that is just, 'I'm not touching this. I'm going to back off'. I bet some of that happened when you had those riots. It is really hard to get that many kids up on a roof if staff are engaged the way they are supposed to be engaged.

I am not blaming staff. I do not know what happened that day. You do not know what happened. You are never going to know what happened that day. But my staff had really withdrawn over time. They really were demonising the kids. It was so interesting to me because when I came in I had never worked in government before. I was in non-profits before that. I was like Julie; I had an equivalent kind of job. I thought the staff were going to be hateful, loathsome people because I knew about the things that had been done — they had been issued an inspector-general report, just like the stuff you guys are seeing and reading — and they really were

not. They were afraid. Many of them were nice people. I went to their houses for barbecues. I mean, they were kind of the good guys, but they were either doing or, for the most part, acquiescing to some pretty bad stuff. Most of them were not beating the kids up, most of them were not having sex with the kids or selling them drugs, but they all knew who was. They all knew who was doing those things, which I thought made them culpable, but you cannot indict everybody. I did not think this was going to be a thing I did, but I got a really good investigative unit early on. I got a retired cop, who was just a super-decent guy, and he said he was down for the fight, because it was a fight, and nobody would tell on each other.

One of my staff members beat two kids bloody — and this guy was a big, literal football player — in front of dozens of kids and staff because he was sending a message. Then he cuffed the kids and dragged them through mud and deposited them in the infirmary. Of the dozens of people watching, the two kids said what happened — they told the nurses — and then one staff member told me what happened, and that one staff member got harassed so much over the next year, which it took for the due process to run out as I was trying to discipline these guys and fire them, that I had to put him on desk duty. I transferred him several times, but he was not safe in any of the places I had, so I had to put him on desk duty.

Then a year later, when the thing finally came to arbitration, the nurses were fine, but they did not see it; they could just testify that the bruising was consistent with the kids' stories. The kids were terrible; they did not really want to testify to begin with, so they came off very shaky, and the one staff member was so frightened that he could not come off great either. He came off as not believable. Then a half-dozen people testified to the good character of this guy, who was essentially a facility enforcer. He was the kind of goon squad that used to come to your rescue because the system never did, so the people viewed him as their saviour because it was such a chaotic environment. I do not know exactly what is happening in your facilities, but I bet some level of dysfunction like this is happening in your places.

Ms SPRINGLE — Just going back to you talking about a classification system that could be implemented in terms of where kids should be placed, just so I have got it clear in my head, are you talking about through the judiciary system?

Mr SCHIRALDI — Yes.

Ms SPRINGLE — So it would require perhaps in our case legislative reform around classifications of offences?

Mr SCHIRALDI — That is a good question. I was the commissioner of probation, so in every case probation made a recommendation. We filed a presentence report to the courts. So this grid was going to guide my recommendations. We very specifically said it would not tie the judges' hands, because I do not know if you know a lot of judges, but they do not like to have their hands tied. So I was the probation commissioner. 'All we do with you, your honour, is make a recommendation'. But we knew that 80 per cent of the time they followed our recommendations, and they knew that too. So basically all this did was change what we recommended to them, and then by and large they followed it.

One of the other interesting things about the grid is that it allows us to chart staff and judges by how much they deviate from the system, so I could see from every single one of my staff who made recommendations how often they went up, how often they went down, whether they tended to go up for black kids and down for white kids — so I could do this by race — and I had some hard conversations with a lot of my staff.

I could also do that by judge, because we had the data on every judge's disposition, so I could see if the judges were overriding or underriding and, if overriding, if they were overriding in a racially disparate manner. Why that is important is that all of the relevant judicial factors are built into the grid. Risk and severity are built in. Now, there are individual circumstances, to be sure, but if you start to see patterns, then it raises questions. It is not an indictment, but it raises questions. I never raised those questions with the specific judges. As probation commissioner what I did with that information was I talked to the presiding judge, because you do not want to tread on a judge's toes like that, but then she did her job, and so over time there was more and more adherence to the grid — never 100 per cent, we never expect 100 per cent.

Ms SPRINGLE — Was that a vastly different system to what you had?

Mr SCHIRALDI — Yes. It was the wild, wild west before that. Everybody was just making it up.

Ms SPRINGLE — This is probably quite a broad question — the answer might be too big for this forum — but are you able to briefly step through the transition from the prior system to the system that you ended up with?

Mr SCHIRALDI — Sure. So what happened was that we assembled this committee. Mayor Bloomberg said in December — I cannot remember; it was 2013 maybe — ‘I want all the kids back’, so we all said, ‘Oh boy, if we get all the kids back, what are we going to do?’. And there was some fear that that 500 number would grow if we took them all back into the city for a couple of reasons. The state system was so bad that we felt the judges might be reluctant to put kids in it, so if we brought the kids closer to home and in better facilities, we have got judges who might actually put more kids in. Then we would have been screwed because we only had enough money for the 500 kids, so if they had put 600 kids in it, then it was going to come out of our pocket. So from a physical standpoint our budget people were like, ‘This had better not be more than 500’. So we wanted some to manage that.

Anyway, we all got in a room and we started to figure out, ‘What are we going to do? We’ve got the consultants. We’ve got the data’. We were looking at the data, and we came up with this grid idea. Sorry, I drifted a little. What was your —

Ms SPRINGLE — It was just around the transition from the existing system to the new one.

Mr SCHIRALDI — The transition, right. So we took the time to come up with the idea, massage it, adjust it, come to consensus around it. Let us say somewhere around halfway through that happened, and then we stopped because the legislature and governor had to pass the bill. So this happened in December. We started meeting, I do not know, somewhere in the summer, but the first legislative session ended in March, and they did not pass it. We are still going because the mayor and the governor are committed to doing it; they are going to bring it back up next year. So next year they bring it back up. We have already got the grid, we are all set, we are all ready to go, and the legislation gets heard from January through March. It passes at the end of March, beginning of April. The start date is set for September.

In between March and September, two tracks occurred. One was that the administration for children’s services, which was going to contract for all the residential programs, issued the RFPs. Those organisations hired their staff and started training their staff, so they were all ready to receive kids. Meanwhile on my side of the aisle we had the grid and we had agreed on a continuum of programs. We already had some programs, but we about doubled the number of programs that we had because the various actors — the prosecutors, the judges, the cops — had different programmatic ideas that they thought we should do, so we went out and contracted for all of those programs. This is important for you guys: the mayor gave us the money up-front for that. So there was some period of time where we had to have a budget increase just to get those programs started before all the kids came.

So for about six months we were contracting for programs and staff were getting hired and trained. So now we have this grid, we expanded the continuum and we put a big binder together for every judge, every prosecutor and every defence attorney in New York City who was working with kids. New York City is made up of five counties or boroughs, and each of those boroughs has their own little knot of decision-makers. You do not want to treat the ones from Staten Island like the ones from Manhattan; you want to all respect that. So we had that centralised process, but then we had to do it five times over with all the different players in all the boroughs. We went and gave them this bench book, which had the grid. It had all the data and research on the risk assessment instrument. It had all the program descriptions and any research that had been done on any of those programs, and then we trained, trained, trained the judges, the prosecutors and the defence attorneys so that everybody was ready by the time it all came. Yes, it was wild.

Ms SPRINGLE — Wow!

Mr SCHIRALDI — Actually, though, as the implementation of a change went, it was pretty cool. I was pretty happy to be involved with it. We have a very short report called the dispositional form steering committee. It is eight pages, and it has the grid in it, it has the continuum, it has all the —

Ms SPRINGLE — That would be amazing. Thank you so much.

Ms PATTEN — That would be really useful.

Mr SCHIRALDI — I will send you guys that.

The CHAIR — That would be terrific, thank you.

The CHAIR — On that note, unless there are any further questions, I might close the hearing. Thank you so much for coming this evening and for your testimony.

Mr SCHIRALDI — Sure thing. Thank you.

The CHAIR — You will be provided with a transcript within a few weeks for proofreading. Thank you.

Mr SCHIRALDI — Great. Thank you very much.

Committee adjourned.