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Mandated Reporter Commission  
Boston, MA

Re: written comments regarding proposed changes  
to the mandatory reporting law

by email

Dear Commission Members:

I was pleased to appear before the commission at last week's hearings in opposition to the proposed changes to the mandatory reporting law. I gave an individual case summary I thought highly relevant to the issues at the center of the commission's deliberations. It covered three colleagues' and my opposition to DCF's adoption goal at a lengthy and bruising care and protection trial earlier this year.

In addition to the considerable strengths of the permanent caretakers we proposed to the Court (the grandparents), our defense was that the Department's case rested on that subset of systemic racism now increasingly perceived as implicit bias. We alleged in this case the same bias which many others also appearing before the commission asserted widely ravages vulnerable minority and poor populations in and beyond this state.

The grandparents are Black, working class immigrants of limited education. The five-year old child has several special needs. The Department maintained the grandparents lacked the capacity to understand his diagnoses or needs, the services therefor, or their critical necessity. It asserted, in fact, that they did not believe in and were dismissive of these things, and were likely to discontinue the latter should they receive custody.

Over the course of a 16-day trial, five special needs providers and many other professionals gave detailed testimony for the Department. Some 20 witnesses in all testified for the various parties. All the providers had spent considerable time with the grandparents in the course of the child's sessions. In our opinions their respective testimony was marked by superficial impressions formed at those sessions of the grandparents' purported limitations in capacities and outlooks. All the providers were white and from stable, professional class backgrounds.

The Department's myriad written exhibits repeated and significantly expanded upon such themes and testimony. Pursuant to practice standards and shared strategy, my colleagues and I filed a motion *in limine* to exclude certain passages within these materials as inadmissible under the rules of evidence. We had found the exhibits to be bursting with extraordinarily uninformed and biased assumptions, opinions, interpretations, and conclusions of the kind described above. This protracted effort to exclude implicit bias ran to 105 pages. That is unheard of as such filings go!

Of these serious and important objections, many were allowed by the Court, thereby excluding the passages in question from the evidence. While it is not possible to make a conclusory assessment of a trial and issues of this magnitude and importance which all parties would deem fair and accurate, the Court did find for the grandparents! I submit that at minimum this is consistent with a strong basis for the grandparents' implicit bias case theory.

The relevance I see in this case is the intensity and scope with which it checks all the boxes warned of by commission witness after witness. It evokes the several urgent warnings by our own Supreme Judicial Court over the past year of implicit bias in the judicial system as a whole. And it calls to mind so many of the directly related issues brought to the fore by the unprecedented and continuing national events of 2020. If DCF itself and the various evidence-based professions represented by its witnesses are susceptible to being so adversely affected by implicit bias, what does that say about the likely performance of an expanded mandated reporter field under the commission's proposed changes?!

In the name of protecting children, removal of the current bar against the potential conflating of poverty or disability with neglect would, in my opinion, go in the wrong and opposite direction from broad current initiatives to address systemic racism. It would dramatically increase the reach and impact of implicit bias in the state intervention field. The proposed expansion of the pool of mandated reporters and lowering of the reasonable cause standard to mere suspicion would do the same.

In a letter to the editor in today's Boston Globe by retired Boston Municipal Court judge Raymond Dougan, the judge noted the well-documented frequency of police traffic stops of largely Black motorists for minor infractions. He further noted the common use of such stops as an opportune pretext to conduct random searches for guns or drugs. The judge observed that searches of this character turn up evidence of more serious crimes only some 2 percent of the time. Yet collateral consequences routinely include widespread alienation and many traumatizing escalations, some of them catastrophic.

I find the reported consequences of such law enforcement methods analogous to another distinct form of harm foreseen for the very same populations. That would be the harm foretold by many witnesses from what could be considered a similarly scattershot investigatory escalation secondary to the mandatory reporting changes under consideration by the commission. And, like with the use and abuse of minor traffic stops, such an expansive new approach would not even result in significant findings of theretofore undetected abuse or neglect. That has been the consensus of many knowledgeable and qualified witnesses to the commission.

Reasonable people can argue that much of the fear and anxiety created within disproportionately targeted populations by care and protection work are unfortunate but inevitable byproducts of the child protection imperative. Be that as it may, and even putting aside the issue of disproportionality, I do not believe anyone wants or would be indifferent to damage to vulnerable innocents on an even broader scale. Yet these proposed changes might well foster something on the order of localized, Orwellian "1984s" where expanded reporting is prevalent and its consequences fraught with ignorance, malice, and new levels of fear and alienation. Resilient, appropriate families could be gravely harmed. And families that are getting by, but barely, could very well be pushed over the edge. These two grandparents in particular, in their present state of simultaneous relief, joy and "shellshock", would surely understand.

Sincerely,

James Taff