COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss **No. SJC-12481**

THIS BRIEF CONTAINS NO IMPOUNDED MATERIAL

SOLOMON CARTER FULLER MENTAL HEALTH CENTER

v.

M.C.

Brief of Aaron Needle, Benjamin Levy, the Western Massachusetts Recovery Learning Community, and the National Association for Rights Protection and Advocacy

Amicus Curiae in Support of the Appellant M.C.

September 13, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

ISSUE PRESENTED

In February 2018, this Court solicited input from interested parties on the following question presented by this case:

> Whether the respondent's due process or equal protection rights were violated when his involuntary commitment hearing took place at the hospital rather than at the courthouse where, he argues, the hospital lacked reliable recording equipment, unauthorized recording devices were substituted, and large portions of the hearing were, as a result, not recorded.

STATEMENT OF INTEREST OF AMICUS CURIAE

Amici are individuals and organizations of individuals who have been subject to civil commitment in the past or realistically contemplate the possibility of civil commitment in the future. They write to inform the court of their perspective about the location of civil commitment hearings from the point of view of those subject to those hearings. Amici, and a majority of respondents to state-wide surveys and focus groups, generally prefer to have civil commitment hearings in courthouses. All amici and all surveyed and interviewed individuals, including those individually preferring to have their hearings held at a hospital, strongly believe that respondents in civil commitment hearings should be

able to choose the venue of the hearing, be it the courthouse or the hospital. Given that Massachusetts statutes permit judicial discretion as to the location of the hearing, the Americans with Disabilities Act requires that respondents be given that choice.

Aaron Needle is a resident of Belmont, Massachusetts, where he works as a security guard at the Rose Art Museum at Brandeis University. His art has been showcased in galleries and other venues around Massachusetts. Mr. Needle was civilly committed to Westborough State Hospital after a hearing in a hospital in the late 1980s. Years later, after another commitment, he challenged the state's assessment of his ability to live in the community and won his freedom in a courtroom hearing. He has not been hospitalized since that time. Although these experiences took place many years ago, they are vivid in his memory to this day. He cares deeply about the issue of where commitment hearings take place.

Benjamin Levy is currently a resident of Worcester Recovery Center and Hospital, Massachusetts. He was first civilly committed to the hospital when it was Worcester State Hospital in 2011, and was civilly committed, always with hearings held at the hospital,

several times after that. Each time Mr. Levy asked to have his hearing take place in an actual courtroom, but his requests were not acknowledged or pursued in any form until 2017. In that year, for the first time, his attorney filed a motion to have the hearing take place in a courtroom, asserting that this was a right guaranteed under the Americans with Disabilities Act. The Hospital dropped its civil commitment petition on the day that oral argument was scheduled on the motion. Mr. Levy has never been the subject of a civil commitment petition since that time. Mr. Levy also cares passionately about his right to be heard in a courtroom.

The Western Massachusetts Recovery Learning Community[1] is an organization operated by people with lived experiences of severe emotional distress and/or psychiatric diagnoses. It provides resources, support, advocacy and hope for those who seek their assistance.

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[1] Recovery Learning Communities are state-funded organizations in Massachusetts operated by individuals who are or have been diagnosed with psychiatric disabilities to provide support, information, referral, training, and advocacy. There are five in Massachusetts corresponding to the five areas into which the Massachusetts Department of Mental Health divides the state for administrative purposes.

They offer Alternatives to Suicide groups, a peer support line, a respite house, and many other support groups, as well as advocating on behalf of people diagnosed with psychiatric disabilities.

The National Association for Rights Protection and Advocacy ("NARPA") is a nationwide organization comprised of people with psychiatric histories and those who advocate on their behalf, including mental health professionals and administrators, and academics. Its fundamental mission for over thirty-five years has been empowerment, self-determination, and equal citizenship for people diagnosed or perceived as psychiatrically or mentally disabled. NARPA's work includes education, training, and legal intervention, monitoring developing trends in mental health law, and identifying systemic issues and alternative strategies in mental health service delivery.

NOTICE

Counsel in this case drafted this brief pro bono, without any charge or reimbursement, on behalf of Aaron Needle, Benjamin Levy, the Western Massachusetts Recovery Learning Community and the National Association for Rights Protection and Advocacy. The

Committee for Public Counsel Service assisted counsel with formatting, copying, and binding the brief, as *amici* were without the means to do so. Neither the Committee for Public Counsel Services (CPCS) nor any of its employees read or commented on this brief in draft or influenced it in any way. CPCS is submitting its own brief in this matter.

SUMMARY OF THE ARGUMENT

The question of whether civil commitment hearings should be held in a hospital room instead of a courtroom is not idiosyncratic to M.C., the appellant in this case. Each year, it is contemplated by thousands of citizens of the Commonwealth. This brief aims, as much as possible, to bring their perspective to this Court: the views of the people who have the most at stake in civil commitment hearings because their liberty hangs in the balance.

Amici include two individuals who have been subject to civil commitment hearings in Massachusetts. They have a strong interest in the impact of hospital hearings on the due process rights and statutory rights of the respondents. Amici organizations are

comprised completely or primarily of individuals potentially subject to civil commitment hearings.

In addition to their individual and group perspectives, 87 people from all over the Commonwealth responded to online (59) and paper (28) surveys. Sixteen people who had experienced or were potentially subject to civil commitment hearings[2] were interviewed in depth through focus groups at the Central Massachusetts and Western Massachusetts Recovery Learning Communities. A description of the survey and focus group process and a copy of the survey are attached as an Addendum to this Brief.

Respondents in civil commitment hearings are diverse people with different life experiences, and do not speak in a monolithic voice. This brief represents an effort to report to the court both the commonalities and divergences in opinions among people who have experienced or potentially may experience civil commitment hearings as to where those hearings should be held.

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[2] People were considered potentially subject to civil commitment hearings if they had a diagnosis of serious mental illness and had either been psychiatrically hospitalized or subject to Section 12 proceedings.

The most important finding from the surveys and focus groups was that people who have been subject to civil commitment hearings in the past greatly prefer to have hearings in the courtroom, and people who have never been subject to civil commitment hearings—those whose hospitalizations were voluntary—generally report that they would prefer to have hearings in the hospital. This may be completely logical: those for whom commitment is an adversarial experience prefer to have hearings in the courtroom. But the reasons people gave for their preferences were more nuanced.

The vast majority (77.55%) of people in the electronic survey preferred to have their commitment hearings in courthouses. Most of those people had been subject to commitment hearings. All but two of the respondents to the paper survey had never been the subject of commitment hearings, and those two preferred hospitals.

Focus group participants were divided in the same way. All focus group participants who had actually experienced civil commitment hearings preferred to have hearings in the courtroom. The focus group participants who said they would prefer a hospital hearing had been voluntarily hospitalized, but had

never experienced a civil commitment hearing. Some focus group participants who had never been hospitalized said they would prefer a choice between the hospital and the courtroom at the time of the petition.

In fact, every focus group member, regardless of his or her personal preference as to venue of the commitment hearing, believed that the respondent should choose the setting. Thus, people who themselves preferred the hospital setting supported the right of others to be heard in a courtroom if that was the individual's desire, and vice-versa.

The reasons given by the majority who preferred to be heard in a courthouse can be grouped into three basic categories. The most frequently cited reason was that having the hearing at the hospital inappropriately medicalized what should be a judicial hearing. The second most common reason was a widespread conviction that the small, drab, informal settings, sometimes located in locked psychiatric units, reflected indifference or contempt for the question of their liberty and freedom—issues of utmost importance to them. The third reason people gave for courtroom preference was that being heard in a

courtroom was a symbol of equality for people with psychiatric disabilities.

The people who preferred to be heard in the hospital had more diverse reasons. Some were concerned about confidentiality; some preferred the convenience of the hospital. One focus group participant had unhappy associations with courtrooms because of past criminal appearances there.

The Americans with Disabilities Act prohibits public entities, including state courts, from excluding individuals from their programs or services on the basis of disability. The State's argument that the venue of the commitment hearing is not part of the "program or service" under Title II is belied by Supreme Court and federal case law and ADA regulations which underscore that "access to courts" for disabled people includes access to the courtrooms generally used by the judicial system for its proceedings. It is clear from survey and focus group responses that the setting of the hearing is strongly related to the appearance of fairness and impartiality, at the very least, and that the formality and neutrality of the courtroom is part of the judicial process.

The State mischaracterizes the nature of M.C.'s claim by treating it as one where M.C. demands to "choose" the location of his hearing, when M.C. himself by his motion to be heard in the courtroom was simply asserting his right not to be excluded from the courtroom, the ordinary and usual place where trials take place. By the same token, M.C. is not requesting a "reasonable modification"[3] when he asks to be treated like other non-disabled litigants who have their trials in courtrooms. Requiring the State to end its practice of involuntarily excluding people with psychiatric disabilities from public courtrooms is requiring it to cease discriminating against people on the basis of disability by holding segregated hearings in hospitals over the objections of respondents. That is **not** the same as asking for a reasonable modification.

M.C. did not ask for a reasonable modification. This brief argues on behalf of people subject to commitment hearings that this Court hold that hospital hearings at the request of the respondent constitute a

[3] Although the State refers to "reasonable accommodations" the correct term under Title II of the Americans with Disabilities Act is "reasonable modifications," see 28 C.F.R. 35.130(b)(7).

reasonable modification to ordinary court procedures. Because the Massachusetts judicial system has shown in the last fifteen years that it is easily able to make this modification, it should be considered 'reasonable' under the ADA.

The State's argument that courts conducting judicial hearings in courtrooms is a 'fundamental alteration' of the courts is absurd, both on its face and because the 'fundamental alteration' argument only applies to requests for reasonable modifications, 28 CFR §35.130(b)(7)(i), and physical alterations, 28 CFR §35.150, and M.C. is not making such a request. The burden of conducting civil commitments in the setting preferred by the respondent is manageable, especially considering the number of continuances granted, and that many people, who are initially the subject of a commitment petition, sign in as voluntary patients.

ARGUMENT

I. Experiences of Individual Amici in Commitment Hearings

A. Aaron Needle's story

Aaron Needle has experience with commitment hearings in both the hospital and the courtroom. Although these experiences were many years ago, they are powerful memories that remain vivid in his recollection. This is his story.

(1) The Hospital Hearing in Mr. Needle's Own Words

> During the late 1980s…I was taken to Newton-Wellesley Hospital and put in their locked psychiatric ward. The psychiatrist I was assigned to, [***], decided for the first time to prescribe me Lithium though I didn't have a history of depression, nor manic depressive illness. I adamantly refused to take the Lithium because of that history, but also due to the fact that it is a strong diuretic and I was concerned about how it would affect my long distance running. In retrospect I believe he mistook my energized athleticism for mania.
> After a couple weeks of my refusing the Lithium the psychiatrist ordered a Rogers committal hearing. It was scheduled to be held very soon in a small conference room that was part of the locked ward I was confined in. I was assigned a public defender with whom I met once to prepare me for the upcoming hearing.
>
> I recall walking into the tight confines of the conference room, now court room, and quickly being seated. The small room was packed with people. The psychiatrist, [***], had seated himself between me and a large American flag that was brought in for the hearing.
> …

> The hospital attorney made a brief statement followed by my public defender uttering a meek protest and Judge Richardson, who had his head down and eyes lowered for the entire hearing suddenly looked up and simultaneously banged his gavel. I know the judge's name because as he was leaving the makeshift courtroom I managed to ask him his name and even to shake his hand as if he had just done me a favor.
>
> That same afternoon I was transported by ambulance to Westborough State Hospital having just been committed there for 3 months for refusing to take a drug prescribed for a disease I didn't have.
>
> I strongly believe that the context, or location of my hearing was a major, if not deciding, factor in its eventual outcome. All the litigants were comfortably in their work environment, whereas I felt like an outsider, unwelcome and extremely nervous. Their comfort and my nervousness in turn affected how we respectively comported ourselves. It also imbued the hearing with a distinctly un-public atmosphere. It was meant to be a public hearing including a public judge and the Department of Mental Health, but being held in a private hospital imbued it with a palpably un-public atmosphere. I also believe that context plays a major role in determining the power dynamic and holding the hearing on their own turf gave them power over me.

Mr. Needle's commitment to Westborough State Hospital ended in his discharge. He lived primarily in the community, although with a few brief hospital stays over the next decade, and was again civilly committed and transferred to Westborough State Hospital in 2001. When the hospital staff told him he would be "discharged" to a house on hospital grounds, Mr. Needle took matters into his own hands for the

first time. He called the Committee for Public Counsel Services, and was assigned an attorney who filed a petition for his discharge pursuant to G.L. c. 123, §9(b). Because such petitions are heard in Superior Court, it was automatically heard in a courthouse rather than a hospital.

(2) The Courtroom Hearing in Mr. Needle's Own Words

> In 2001, as I was approaching the end of a 3 month commitment to Westborough State Hospital the powers that be decided to place me in a halfway house on the hospital grounds for an additional time period. They even convinced my family that it was necessary. I was also told that I had the right to request a hearing to determine my readiness for release back to my home. I requested a hearing and when the appointed day arrived I was driven to Dedham District Courthouse[4] by a couple of orderlies from the ward.
>
> When I arrived the courtroom was full, mine not being the only case on the docket that day. The classical architecture and breadth of the room gave it an ambience of authenticity and dignity. I believe that's why I addressed the judge as 'Your Honor' without having been coached to. And because the witness stand was located right next to the judge I recall thinking that she could be as much of an ally as an opponent. I'd once been in a makeshift hospital's courtroom for a Rogers Hearing and the judge sat opposite me at some distance which felt very adversarial.
>
> In the Dedham courtroom the psychiatrist from Westborough took the stand. While responding to some questions he grinned and laughed audibly. Observing him I really was thinking what a poor impression he was making to the judge and what a

[4] Since the Dedham District Court and the Norfolk Superior Court were in adjacent buildings, Mr. Needle may have been mistaken.

> spectacle he was making of himself to the hundred or more people present. When the judge asked him if he thought I was a danger to myself, or others he stated, "No." I believe that having that opinion heard by all the people assembled amplified the significance and meaning of it. I learned about a week after the hearing that I had won my release.
> I am proud to report that during the subsequent 17 years since being released I haven't been rehospitalized, I've made a full recovery from mental illness, have been steadily employed and not dependent on SSDI, and am a proud to be a contributing member of our society. The public hearing was an important stepping stone to my having a life in public.

B. Benjamin Levy's Story

Benjamin Levy is a graduate of Syracuse University who has worked as an IT specialist. He arrived at Worcester State Hospital in 2011 and moved to the Worcester Recovery Center and Hospital when it opened in 2012. Although he has been involuntarily committed at least six times, and each time asked for a hearing in a courthouse, his requests were ignored. None of Mr. Levy's commitment hearings ever took place in a courthouse.

Mr. Levy eventually became a voluntary patient. For the last several years, he has been given passes to go into the community, independently and unescorted, for hours at a time, nearly every day. The food offered at the Hospital is distasteful to him,

and he regularly ambles down the long lawn of the Worcester Recovery Center, crosses busy Route 9 on foot and goes to the White City Shopping Mall for more appealing fare. He is unaccompanied on his daily passes into the community.

After Mr. Levy filed a three day notice of his intention to leave in 2017, the hospital petitioned for his civil commitment. Because Mr. Levy's daily passes to obtain food more congenial to his tastes continued unabated after the petition, he was astonished when the Worcester Recovery Center and Hospital opposed his motion to have his civil commitment hearing in the Worcester County Courthouse. He wrote his own "Motion for a Change of Venue in the Case Against Me, Benjamin Levy," which reads in part as follows:

> The courtroom at Worcester Recovery Center and Hospital leaves much to be desired in the interest of fairness to defendants. [5]
> The courtroom is too small…The judges sit at a table, where there should be an elevated bench. There is no location in the WRC&H to seat a jury should a jury trial be declared….[6]

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[5] Mr. Levy considers himself the defendant, as opposed to the respondent, in civil commitment proceedings.
[6] Mr. Levy believes that civil commitment hearings should be tried by a jury. Because hospitals are not set up for this contingency, any effort to change the law to permit commitment hearings to be heard by a jury is doomed from its inception.

> The courtroom exists in a building that is access controlled not by the court but by the psychiatric hospital, making it difficult to bring in observers favorable to the defense…The access to the courtroom should directly be controlled by the court, with no filter by the plaintiff[7] nor defendant installed, which is simply not possible at the WRC&H building. …The WRC&H courtroom is supplied by the plaintiffs, not neutrally by the court as if the case would heard in the Worcester District Court building. The defense hereby motions that this case be moved to a courtroom within the Worcester District Court's main Worcester courthouse where other non-hospital cases are heard. This would allow there to be a fresh judge that has not heard too many hospital cases, allow witnesses and observers favorable to me to be present, allow for a jury to be seated, and the court to have court-controlled security, as well as a judge's bench.

Mr. Levy's motion is dated August 14, 2017. Upon receiving it, his Committee for Public Counsel Services attorney moved for a hearing to be held in the courtroom, on the basis that the Massachusetts Equal Rights Act and the Americans with Disabilities Act gave Mr. Levy the right to be heard in a courtroom.[8]

On the day that oral argument was supposed to take place, the hospital dropped its petition to civilly commit Mr. Levy, and no decision was ever issued by the court on his motion to move his hearing

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[7] Mr. Levy considers the hospital to be the plaintiff in a civil commitment proceeding.

[8] In the Matter of Benjamin Levy, No. 1762-MH-0024/25 (filed Worcester District Ct. Aug. 22, 2017).

to a courtroom.[9] Thus, when Mr. Levy was apprised of this Court's solicitation of perspectives on the question of whether civil commitment hearings in hospitals violated the rights of the patient, he was extremely eager to be heard on the issue.

Mr. Levy strongly believes that no fair hearing can take place in hospitals. He believes hearings at the hospital influence the court in ways both overt and subtle. In a subsequent document specifically relating to this case, he states:

> Defendants deserve a fair courtroom, not one that is controlled by the plaintiffs. Patients deserve the right to be heard in a fair environment, not one that is controlled by the hospital that is trying to detain them. Many patients have the right to leave the hospital with 'passes,' so it makes sense that they be transported to public courthouses.
> In summary, there is more wrong with the plaintiff's courtroom than just the recording equipment leading to an [sic] poor record of the proceedings, so the SJC should look towards banning trials at such facilities so patients can get a fair day in court.

Mr. Levy and Mr. Needle are very pleased that the Supreme Judicial Court has taken up this issue and are eager to attend oral argument in this case.

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[9] In the Matter of Benjamin Levy, No. 1762-MH-0024/25 (Worcester Dist. Ct. Sept. 8, 2017)(granting Worcester Hospital and Recovery Center's Motion to Withdraw Commitment Petition filed Sept. 6, 2017).

II. Reasons That People Subject to Commitment Hearings Gave for Preferring Courtroom Settings: Surveys and Focus Groups

Survey respondents and focus group participants were asked about where their commitment hearings had taken place. Focus group participants were interviewed about when their hearings had taken place and whether they had been asked about their preferences regarding the venue of the hearing.

Although some people had their commitment hearings take place in courtrooms, most people had their hearings in hospitals. Most courtroom commitment hearings had taken place over ten years previously. No survey respondent or focus group participant, and neither of the two individual amici, had ever been asked by hospital personnel if they had a preference for venue of the hearing. In the last few years some of them, including Mr. Levy, were asked by their CPCS attorneys about their preferences. Mr. Needle's hearing which freed him was a G.L. c. 123, §9(b) hearing, which is heard in Superior Court, and, to *amici*'s knowledge, always in a courthouse setting. Respondents who had their hearings in courtrooms were simply taken there on the appointed date, with no query as to their preferences. The same was true of

people whose commitment hearings took place at the hospital.

The vast majority of survey respondents and focus group participants who had experience of civil commitment hearings preferred to have those hearings take place in a courtroom. Although each person gave an individually worded response explaining this preference, the responses can be roughly divided into three categories. These categories echo the arguments made by M.C. in this case.

A. Inappropriate Medicalization of a Legal Hearing

> "If they see you in the hospital they'll think you're already there for a reason."

Mike Mansur, Holyoke Focus Group[10]

> "If it's in the hospital, it's going to be in their domain. The judge is going to be outside his realm of expertise, while the doctors are in their realm of expertise. The judge is going to defer to them."

Renee LaPlume, Holyoke Focus Group

M.C.'s concern that the hospital was not "neutral ground," (RA 26, 28, 29, 31) was by far the concern voiced most often by survey respondents and members of the focus group, and is the principal concern of individual amicus Benjamin Levy. The concern breaks

[10] Quotations and names or initials of focus group participants are used with their written permission.

down into two categories: more abstract concerns about subtle distortions in the mindsets of all participants in the hearing leading to implicit bias; and practical observations about how the difference in convenience for hospital staff might affect decisions to petition for commitment and involuntary medication in the first place.

The hospital setting was not considered a neutral or impartial location for a hearing, whereas a courthouse was perceived as a place where neither party had an inherent advantage. Many respondents felt that the outcome was pre-determined because psychiatrists were on their "home turf," so that the setting either implicitly or explicitly influenced the judge's decision. Amicus Aaron Needle, who was initially committed in a hospital setting and won his freedom in a courtroom, attributes the different outcomes to the different settings. Mr. Needle believes that the setting influenced the judge, but also that he himself was influenced by the setting. In a hospital setting, he felt powerless. In the courtroom, he felt more confident that he would be heard, and he believes this confidence carried over into his demeanor and testimony, which in turn helped

to convince the judge to release him. A survey respondent also noted the effect of being in a courtroom on his or her own demeanor: "It was easier for me to think outside the hospital because there was less anger in the way. "

Focus group respondents felt that the hospital was more likely to petition for involuntary commitment when hearings were held at the hospital: "It's easy for the doctors to walk down the hall whereas if the judge holds the hearing in a courtroom, it won't be so easy." (Renee LaPlume). Some survey respondents and focus group participants noted that the convenience for staff is mirrored in the inconvenience for judges. Jaylyn Morin of the Holyoke Focus Group is convinced she was committed because going to the hospital unexpectedly disrupted her judge's routine:

> I believe having it held at the hospital is what led to my commitment…it was held at 11:30 a.m. and the judge had to cover from the courthouse. The first words he said was that he wanted to get this over with because he had paperwork to fill out and he had to go to lunch. If it was at the courthouse, the judge would have felt less rushed and taken it more seriously.

Survey respondents and focus group participants returned again and again to the perceived imbalance of locating the hearing in a hospital when the process is

supposed to be neutral and objective. As Joseph Morse of the Holyoke Focus Group said, "Having your commitment case in the hospital is like having the tort case at the plaintiff's house."

As the State concedes, the very core of the service provided by the state judiciary under Title II of the Americans with Disabilities Act is a "fair and impartial hearing." State Brief at 16. But the setting of the hearing is inextricably interwoven into its fairness and impartiality—or the appearance thereof--because many people subject to civil commitment hearings simply do not believe that a hearing held at the hospital which is petitioning for their commitment can be fair or impartial. This is wholly unlike locating hearings at homeless shelters or churches, State Brief at p. 39, since the shelters and churches are not in an adversarial position to the individuals at those hearings. Nor are civil commitment hearings equivalent to the arraignments at issue in Foley v. Commonwealth, 429 Mass. 496, 498 (1999). Indeed, in Foley, the court was very clear about the distinction between arraignments, which could be held at the facility, and the substantive hearing itself. Id. at 500-501.

Even if the judge is unaffected by his or her surroundings, it is very clear that many respondents believe that they cannot receive a fair civil commitment trial if the hearing is located at the hospital that is seeking to involuntarily detain them. As this court held in Commonwealth v. Howard, 367 Mass. 569 (1975), even if a judge is fair, the proceedings as a whole must have "the appearance of fairness and impartiality necessary to our judicial system. '[J]ustice must satisfy the appearance of justice.'" Id. at 372 (quoting Offut v. United States, 348 U.S. 11, 14 (1954)).

Survey respondents and focus group participants, as well as amicus Aaron Needle, make it clear that the hospital setting feels intimidating for them because it is the hospital's "home turf." Thus, the State's reassurance that its witness, the Solomon Carter Fuller's psychiatrist, did not feel intimidated in her own workplace, State Brief at 37-38, fails completely to address the Foley court's concerns about intimidation of any witness, not to mention the respondent himself or herself. 429 Mass. at 500-501.

M.C. asked only to be heard in the same courthouse as every other litigant. To argue, as the

State does, that he doesn't have the right to "choose" inclusion with non-disabled people runs completely counter to the purposes of the Americans with Disabilities Act.

B. Inferiority of the Hospital "Courtroom" Setting

There is not even a question of "separate but equal" when it comes to hospital hearings because the settings are so markedly inferior. The small drab hospital settings, often used for other purposes than court hearings, deliver a devastating message to respondents in civil commitment hearings about the importance accorded their liberty.

(1) Location and Size of the Hospital "Courtroom"

Many hospital "courtrooms" serve double duty and are configured to enable the functions they serve the rest of the time. The court hearing room at the former Vybra Hospital in Springfield was "the hospital café with some flags put up," according to Jalyn Morin. The degree to which the hearing was held in medical territory was underscored by the fact that the "courtroom" was well known to patients in some cases as the room where they attended treatment team meetings. "The room [at Bay State Hospital in

Springfield] is right in the psych ward. It's where they do their team meetings and everything else." (Mike Mansur) In a number of cases the hospital's "courtroom" is on a locked unit. Therefore, although the State asserts that "there is no uniform quality to a courthouse 'courtroom,'" (State Brief at 15), there is one uniform feature shared by all courtrooms throughout the Commonwealth: they actually *are* courtrooms, full time, as opposed to being temporarily repurposed hospital treatment rooms, conference rooms, or cafeterias.

In addition, many if not all hospital 'courtrooms' lack some of the most important characteristics mentioned in Foley v. Commonwealth: none have a raised dais, all require visitors to sign in and provide information; most do not provide private meeting areas for attorneys and clients, and many are not "outside secured housing areas of the facility." Id. at 499. Nor is there any notification for an interested member of the public to be able to attend a commitment hearing, in the way that a member of the public can simply walk into any courtroom.

In fact, some focus group respondents sincerely believed that the hospitals, not the legal system,

made the decision about where their hearing was to be held. Mike Mansur reported that people had told him that hearings were held in a hospital room because "Bay State doesn't allow you off the floor for anything."

Regardless of the hospital,[11] respondents commented on the small size of the hospital "courtrooms" where their hearings had been held. At Bay State, it was "just a conference room with a table in the middle and chairs going all around. The huge table in the middle takes up most of the room. I've never heard of the public being there for anybody." (Mike Mansur) At Northampton's Cooley Dickinson Hospital, "they took me off the unit to a different wing—it was a room with a desk for the judge, several tables, and chairs in back for visitors." (Survey Respondent)

[11] With the single exception of the Worcester Recovery Center and Hospital, which was built after Commonwealth v. Kirk, 459 Mass. 67 (2011) was decided. Although the Worcester Recovery Center and Hospital's "courtroom" has a sign on the outside that says "Conference Room," it does have a "chambers" for the judge and is more formal than any other hospital "courtroom" in the Commonwealth.

(2) The Formality of the Courtroom Setting vs. the Informality of the Hospital Setting

> "I wanted it to be formal and not me in hospital attire already looking like I belonged there."
>
> Survey Respondent

The survey respondents and focus group participants pointed out that when they were going to a courthouse, the staff permitted them to dress appropriately. As Mike Mansur pointed out, in hospital-based hearings "you can't wear a belt, can't wear shoelaces," but if the same patient was taken to a courthouse, he or she would be allowed to wear those items. Mansur believed that judges seeing patients wearing gowns or without belts or shoes would be influenced, perhaps unconsciously, in their decisions. "Everyone else in the room is dressed up…so you stand out as the crazy one."[12] As one survey respondent put it, "Aside from the humiliation of swearing an oath in a hospital gown and non-skid socks, no robe and not being able to brush my hair or teeth, I was not fully aware of the importance and the fact that I was in a court of law."

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[12] This sentence was begun in the focus group by Mike Mansur and finished by Jaylin Morin.

In addition to the issue of different clothing in the different settings, a survey respondent pointed out that the formality of the courtroom setting underscored all of the negative long-term consequences of loss of liberty from an involuntary civil commitment, as opposed to considering it simply a medical proceeding:

> I feel it is important to have the hearing on neutral ground [because] it is a serious situation with ramifications that effects not only your freedom in the short and medium term, but the outcome becomes part of the searchable public record that can effect employment, education, housing, relationship statuses for the rest of your life. The gravity of the consequences should be reflected in the formal setting and location of the hearing.

Survey Respondent

(3) Absence of the Public and Lack of Transparency

The absence of the public from civil commitment hearings in hospitals was not the most crucial reason that individuals preferred to have their hearings in courthouses, but there was a general concern with lack of transparency, and discouraging public attendance played a part in that perception. Those people who brought it up in focus groups thought it might make

judges comport themselves more formally, and might contribute to transparency of the proceedings.

One striking aspect of both survey and focus group responses was how vividly people remembered and cared about the smallest details of the hearing venue, both physical and logistical. For Aaron Needle, the fact that the witness stand was in a different place in a courtroom than in the hospital conference room was significant. For Benjamin Levy, the elevated dais of the judge supported his belief that the courtroom was a more neutral environment, placing the judge literally and figuratively above the dispute between the doctor and patient.

C. Inequality and Segregation of the Hospital Setting for Legal Hearings

> "All other legal hearings happen in courtrooms, why should civil commitment hearings be any different? In this situation we are more than just patients, we are parties to a legal action. People in criminal proceedings get the courtesy of having their cases in court rather than jail, which is the right thing. Why should people dealing with the mental health system not get the same level of respect and appropriate setting?"

Survey Respondent

> "It is a judicial procedure and should be held in a courtroom. This gives the person the respect they deserve and makes it a formal proceeding that indicates the very serious nature of such a restriction of ones liberty."

Survey Respondent

Many people felt that this issue was a straightforward syllogism: legal hearings take place in courtrooms; a commitment hearing is a legal hearing; therefore, it should take place in a courtroom. These people believed that excluding respondents from courtrooms was a sign of fear or stigma or discrimination that made them "lower than criminals," as one focus group participant noted.

At first blush, the people who disliked the hospital setting because it medicalized the proceeding and the people who wanted their legal proceeding to be heard in a courtroom as a matter of equality might appear to be expressing the same sentiment. However, further exploration at the focus group discussion in Holyoke revealed an important distinction between these two perspectives. The people who pointed to the medicalization of the setting generally believed that the hospital setting undermined their chances of winning the commitment hearing, for a variety of reasons. This was a typical survey comment on the problem with medicalizing civil commitment hearings:

> I think that there is an inherent bias in seeing people in a hospital setting because you are more

> likely to see them as a patient and rule to keep them in that patient role. I also think that public defenders would be more confident and capable of speaking for their clients in a more familiar working environment.
>
> Survey Respondent

The group that objected to hospital hearings on the grounds that they medicalized a judicial hearing did so, for the most part, because they thought it undermined their chances of convincing the judges to rule in their favor. The people who voiced their concerns in terms of the medicalization of the hearing felt that the hospitals preferred the hearing on their own grounds because it made them more likely to win, for a variety of reasons, from the convenience to hospital staff to the effect of the environment on judges, lawyers, and the respondents themselves.

In contrast, the group of comments that fell into the "Inequality" category were more focused on the abstract injury done to individuals with psychiatric disabilities by excluding them from the courthouse, the reinforcement of stigma and stereotyping, and was less sharply focused on pragmatic specifics associated with winning the hearing. In other words, the people who objected to hearings held in the hospital on the grounds of equality and stigmatization would want to

be heard in a courtroom even if they believed their chances of winning the hearing were the same regardless of venue. "Separate" could not possibly be "equal" for them, regardless of the substantive results of the hearings.

Many of these "equality" respondents and participants worried that hospital hearings increase stigma and the sense that separation enhances a sense of psychiatric patients as frightening and uncontrollable. Focus group participants were provided with a copy of the appellate decision in M.C. v. Solomon Carter Fuller Mental Health Center, BMC Appellate Division Docket No. 1701-MH-0021, and some were deeply offended by the trial judge's language about psychiatric patients having seizures on the way to or in the courtroom, M.C. v. Solomon Carter Fuller Mental Health Center, supra at A.150-151. They were taken aback at the "ignorance" reflected in characterizing psychiatric patients as being subject to "seizures." Indeed, the State underscores the stereotypic nature of the judge's remarks by noting that it just reflected his "general opinion that it was best to have civil commitment hearings held at the facility. Judge McKenna made no statement that he

believed *M.C.* was heavily medicated or have [sic] seizures." State Brief at 33, n. 17[emphasis in State brief]

The State misses the point entirely: the judge's individual belief about M.C., supported by individual facts, would *not* be stereotyping, but his generalized assumption that mental patients are subject to "seizures," with no supporting basis in evidence, is the essence of stereotyping. [13] This mistaken assumption is directly related to the judge's conclusion that "[commitment] hearings should not be conducted at a courthouse," A.150. Excluding an entire class of disabled people from public courtrooms based on unsupported assumptions about the nature and consequences of their disability is the essence of discrimination prohibited by the Americans with Disabilities Act.

III. The Minority Views

A. People Who Preferred Hearings in Hospital Settings

> "They lock you up in tiny rooms at the court house. It is humiliating. The transport people are just 'doing their jobs' and can be cocky."

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[13] The Oxford Dictionary defines "stereotype" as "a widely held but fixed and oversimplified image or idea of a particular type of a person or thing." https://en.oxforddictionaries.com/definition/stereotype

Survey Respondent

> "In the courtroom, I was in a locked room in the basement. It was scary….I was handcuffed."

Survey Respondent

About 20% of electronic survey respondents preferred their hearings to take place at hospitals, expressing a variety of concerns: confidentiality; because their experience with transporters was so negative; because they were sick and exhausted and did not want to leave the hospital.

All but two focus group participants who had never actually experienced a commitment hearing said they would prefer a hospital setting (one said she would prefer to choose the setting at the time of the hearing, and the second preferred a courtroom hearing). No focus group participant who had actually experienced a civil commitment hearing preferred a hospital setting. Focus group participants who preferred a hospital setting gave a variety of reasons for this preference, including fear of courtrooms, and worries that a civil commitment case would not be considered important.

One difficulty with some of these responses, especially in the context of the surveys, was that

misunderstandings about the nature and consequences of the venue influenced choices. For example, one survey respondent thought going to the court house meant "more possibility for them to put you in jail. Another survey respondent who preferred hospital hearings said, "I was already in the hospital and having to go to a courthouse and wait my turn and incur additional costs would have been even harder." (Survey Respondent)

B. Other Perspectives

> "First and foremost, I would like the choice. Being treated humanely means to me having my own choice rather than having others make choices for me…"

Jasmine Quinones, Worcester Focus Group

There were some survey responses and focus group participants who either had no preference as to venue, wanted to be given the choice at the time of the hearing, or whose responses (as in the survey response above) were impossible to characterize as preferring either a hospital or court venue.

Two focus group participants believed that the most important attribute of the hearings was the expertise of the assigned lawyer and the impartiality

of the judge, and that these qualities would carry over regardless of setting.

Three focus group participants wanted to make the choice as to venue at the time of the hearing, with additional observations about the benefits and drawbacks of each setting. As S.J. at the Worcester Focus Group said, "I would want the choice… I often feel like so much of my autonomy has been stripped from me…If it were at the hospital, I think there would be an underlying assumption that I needed to be at the hospital." Jasmine Quinones, whose preference was to be given a choice at the time of the petition, worried that going to court would "increase the layers of trauma."

IV. People Subject to Civil Commitment Hearings Unanimously Endorsed Choice of Venue Regardless of their own Individual Preferences

Regardless of their own personal preferences, every participant in both focus groups supported permitting respondents to choose the venue of the hearing. Candace Robbins of the Holyoke focus group said that it would not make a difference to her where the hearing was held, but she believes that "if someone wants to go to a courtroom they should go to a courtroom." A few focus group participants were

concerned that if the choice was left open, hospital staff could implicitly or explicitly coerce respondents to choose hospital settings, while others were clear that the choice needed to be fully informed. In a diverse group of people, the strongest commonality was the importance of choice as an indicator of both respect and sensitivity to the particularly painful and powerless situation that civil commitment respondents face.

V. The ADA Supports Choice of Setting in Civil Commitment Hearings

> "The two hearings were a very long time ago (27 years) & I was very young when they happened, age 18 & 19. I didn't know my rights & didn't know whether the hearings could take place anywhere but a courtroom. So it's really only in reading about some hearings happening at hospitals that I can see the possibility of a bias being created - and I would hope as few biases as possible exist to influence the outcome of a hearing. So it makes sense to me to keep them in a court setting & it also makes sense to provide a client the right to choose a hospital setting if they want it."
>
> Survey Respondent

A. Respondents in Civil Commitment Hearings Have the Right to Have Hearings in the Courtroom under the ADA

Under Title II of the Americans with Disabilities Act, people with disabilities have a right to be free from discrimination on the basis of their disabilities by public entities such as the state court system. 42

U.S.C. §12131 (West 2018). The most basic form of discrimination identified by the ADA is "outright exclusion," 42 U.S.C. §12101(a)(5). The Americans with Disabilities Act requires the state judiciary to treat people with disabilities the same as people without disabilities, and prohibits exclusion from courtrooms on the basis of disability, whether that exclusion arises from architectural barriers, Tennessee v. Lane, 541 U.S. 504 (2004); Layton v. Elder, 143 F.3d 469 (8th Cir. 1998), or communication barriers, Chisholm *v.* McManimon, 275 F.3d 315, 330-331 (3rd Cir. 2001)(deaf person's hearing delayed for days because of lack of interpreters).

The State attempts to sidestep this issue by asserting that the venue of the hearing is peripheral and irrelevant to the "service" provided by the State—a fair and impartial hearing. "Access to courts" is not interpreted in such a restrictive and crabbed manner; in Tennessee v. Lane, supra at 509, George Lane crawled up the stairs to his first hearing, which was presumably "fair and impartial," but the Supreme Court still understood he had been discriminated against under the ADA. Id. at 527 ("many individuals, in many States across this country, were being

excluded from courthouses and court proceedings by reason of their disability"). Two disabled lawyers in Bristol County Court who could not access the courtroom and who had their hearings scheduled in the courthouse parking lot and boiler room were not told that they had no legal claim because the hearings in question were "fair and impartial," regardless of venue; rather, the Commonwealth paid $6 million to renovate Bristol County Courthouses, Demello v. Mulligan, No. 01-CV-11730 (D.Mass. Jan. 20, 2004)(approving settlement), see also Dee McAree, *No Longer Banished to Boiler Room: Two Disabled Attorneys Fight for Access to the Courtroom — and Win*, NAT'L L.J., Jan. 26, 2004, at 6.

Congress also recognized that discrimination can take the form of "overprotective rules and policies," 42 U.S.C. §12101(a)(5),and such policies have been found to violate the ADA regardless of the intentions or motivations of those who created the policy. Dudley v. Hannaford Stores, 333 F.3d 299, 310 (1st Cir. 2003).

The right to be treated the same, and not relegated to separate and/or inferior services because of a disability, is also at the heart of the Americans with Disabilities Act, and is the right asserted by

M.C. here. 28 C.F.R. 35.130(b)(1)(ii); 28 C.F.R. 35.130(b)(1)(iv).

It must be emphatically underscored that M.C. was explicitly ***not*** asking for a reasonable modification. He was asking to go to the courthouse like any other party to litigation. The State can offer a separate service under these circumstances, but cannot force a disabled person to accept it. 28 C.F.R. 35.130(b)(2), 28 C.F.R. 35.130(e)(1).

In a stunning misunderstanding of the ADA, the State characterizes the discriminatory decision by the judge to *exclude* M.C. from the courthouse because of his disability as "ensuring accommodation by changing the location of the service." State Brief at 16-17. This is like characterizing the Montgomery, Alabama bus driver as "ensuring the accommodation" of Rosa Parks "by changing the location of the service" to the back of the bus. The State describes the courthouse as "inaccessible" when the *only* reason it was inaccessible was because of the judge's refusal to allow M.C. to have his hearing there.

It is true that Massachusetts statutes give the judiciary discretion about where to hold hearings, State Brief at 38-39, but that discretion obviously

cannot be constitutionally used to justify wholesale exclusion of a category of litigants from a public courtroom based on their disability. Nor does "judicial discretion" trump the requirements of the Americans with Disabilities Act, which provides that disabled people, just like other litigants in Massachusetts, are entitled to have their legal cases heard in a public courtroom.

In some cases, the hospital may assert the affirmative defense of "direct threat," based upon an individualized assessment of a number of very specific factors as to whether the litigant would represent a direct threat that could not be mitigated by reasonable accommodations, see 28 C.F.R. §35.139; Bragdon v. Abbott, 524 U.S. 624, 648-49 (1998), Boston Housing Authority v. Bridgewaters, 452 Mass. 833, 840 (2009)(identical requirement under the Fair Housing Amendments Act). Solomon Carter Fuller made no such showing in this case. In the absence of an argument that M.C. was a direct threat, the court violated M.C.'s rights under the ADA when he was forced to have his hearing in a separate, segregated, inferior location.

B. Respondents in Massachusetts Civil Commitment Hearings also Have the Right to Choose a Hospital Setting for Their Commitment Hearing as a Reasonable Modification Because of the Judiciary's Practice of Permitting Hearings to be Held in Hospitals

Because of existing Massachusetts statutes and common practice, respondents in state civil commitment hearings also have a right under the Americans with Disabilities Act to request hospital venues for civil commitment hearings as a reasonable modification. If the Massachusetts statutory structure did not grant judges the discretion to hold hearings in hospitals, and if hospital hearings were not already common or widespread, there might be some question about whether honoring a patient's request to have a hearing at the hospital was "reasonable" but because under current practice most hearings are in hospitals, such a request for modification by a respondent would be reasonable.

The State's brief utterly misunderstands the function of reasonable modifications under the ADA. First, as a basic preliminary matter, the disabled person himself or herself has to *request* a reasonable modification. This is because a reasonable modification is a deviation from ordinary practice. M.C.'s request to have a hearing in a courtroom was

not a request to modify ordinary judicial practice; it was a request to cease excluding him from the public courtroom.

Thus, contrary to the assertion of the state brief, holding civil commitment hearings at the courthouse is not an "accommodation" to disabled people. (State Brief at 43)(discussing the cost of the "accommodation" of permitting respondents to have commitment hearings in courthouses). It's what non-disabled people routinely do, and M.C. was not asking for anything but to have the same right of access to a public courtroom for his commitment hearing as other litigants have for their legal hearings.

The correct understanding of "reasonable modification" is a deviation from ordinary practice necessary to ensure equal access to a public entity's program or services. Examples of reasonable modifications include changing the way testimony is heard to accommodate a witness's aphasia, In re McDonough 457 Mass. 512 (2010), or giving additional assistance to a man with a brain injury to prepare for his parole hearing, Crowell v. Massachusetts Parole Board, 477 Mass. 106 (2017).

If a respondent wanted to have a commitment hearing at the hospital for reasons related to his or her disability, it would be a reasonable modification to hold the hearing there, as was the case in Commonwealth v. DeBroskey, 363 Mass. 718 (1973). In this case, cited by the State, the court accommodated the witness's inability to tolerate the heat by taking her testimony in her hospital room.

C. The State's Arguments about the Affirmative Defense of Undue Burden under the ADA have No Basis in Law or Fact

First of all, because M.C. is not requesting a reasonable modification, but simply to be treated like everyone else, the "fundamental alteration" defense is not available to the state. The fundamental alteration defense is available only in cases asking for modifications of existing physical structures, 28 CFR 35.150, and requests for reasonable modifications, see 28 C.F.R. 35.130(b)(7)(i).

Second, even if this defense were available, the argument made by the state that it is a fundamental alteration for the judiciary to hold hearings in courtrooms is absurd on its face ("It would fundamentally alter the services of the judiciary to

hold a hearing in a courthouse," State Brief at 43-44).

To support its argument that hearings in the courthouse would be burdensome, the State cites to 5400 commitment petitions, State Brief at p. 44. In FY 2016, there were 912,757 new case filings. [14] Just as the new case filings do not result in an equal number of trials, so the commitment petitions are often continued and dismissed because the respondent is discharged or asks for voluntary admission. Thus, civil commitment hearings make up quite a small proportion of the case load of the district courts. Since civil commitment cases used to be heard virtually uniformly in court, experience tells us that the courts were able to integrate them into the larger case load. Indeed, the Department of Mental Health anticipates that its employees will routinely transport patients to courthouses for hearings and has regulations covering this activity, 104 CMR 27.08(10)(a)(4).

[14] Annual Report on the State of the Massachusetts Court System 2016, https://www.mass.gov/files/documents/2017/02/zz/fy16-annual-report.pdf

CONCLUSION

Amici respectfully suggest that the court reverse the holding in M.C. v. Solomon Carter Fuller Mental Health Center on the basis that M.C. had a right under Title II of the Americans with Disabilities Act to be heard in a courtroom. Amici underscore that they do not oppose hospital hearings for those who prefer them, but rather support that the venue of civil commitment hearings be left to the informed choice of the respondent.

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ADDENDUM: THE PROCESS OF GATHERING OPINIONS AND NARRATIVES FOR THIS BRIEF

In addition to the experiences of the two individual amici, each of the two organizational amici made an effort to solicit the experiences of their members by posting identical surveys on their websites. The Boston Metro Recovery Learning Community posted the survey on its website. The questions on the survey are reproduced below, as well as the responses as of August 23, 2018. A paper survey with identical questions was used by the Southeast Recovery Learning Community and distributed among peer advocates in Worcester. The total number of survey responses was 87.

A focus group was held with members of the Western Massachusetts Recovery People Learning Community and the Central Massachusetts Recovery Learning Community to get more details about individual members' experiences. Each focus group had eight participants, for a total of sixteen people.

It should be underscored that this survey in no way purports to be "scientific." The goal of the

survey and focus groups was to give voice to any person in Massachusetts who had or might be the subject of a civil commitment hearing[15] and who wanted his or her opinion to be heard by this Court.

By definition, as in all surveys, the responses involved self-selection. Focus group attendees in Holyoke received pizza and small gift cards, and the Worcester attendees received small gift cards, but no other compensation was provided for their time. Every individual quoted in this brief has reviewed and approved the quotations attributed to him or her and the use of his or her name.

It should also be underscored that survey respondents and focus group participants were people who had either experienced civil commitment hearings or might reasonably be subject to such a hearing. All focus group participants had experienced psychiatric hospitalization and/or Section 12 detention. A number of survey respondents and focus group participants never had involuntary commitment hearings because upon being held on a Section 12 or involuntary commitment

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[15] Two survey responses were submitted by parents of people subject to civil commitment hearings, and one was submitted by "a compassionate professional." These responses were not considered in putting together the general statistics cited in this brief.

petition, they signed into hospitals voluntarily. For example, of 25 survey respondents from Southeast Recovery Learning Community, only two had experienced civil commitment hearings. Several Southeast respondents noted on their surveys that they felt their voluntary hospitalization had been coerced and wanted to register an opinion about the venue of civil commitment hearings (those opinions were counted as part of the survey figures).

Participants who came to the focus groups with commitment histories had experiences ranging from thirty years ago to the previous month. There were roughly equivalent numbers of men and women, and an age range from late teens to mid-seventies. Interestingly, most of the people who had been civilly committed more than fifteen years ago had experienced courtroom settings, while people with more recent experiences virtually uniformly had their hearings in hospitals.

TEXT OF SURVEY QUESTIONS:

1. Have you been subjected to a commitment hearing? (By this we mean: Have you yourself been the focus of a commitment hearing that would decide whether or not a psychiatric facility was able to hold you against your will?)

Answers

1. Yes: 44 (74.58%)

2. No: 15 (25.42%)

Paper Surveys

1. Yes: 2

2. No: 26

Focus group participants: 8 experienced civil commitment hearings, 8 did not.

2. If yes, where did the commitment take place?

NOTE: Between the focus group participants and survey respondents, all parts of the Commonwealth were covered. Reponses included Boston, Norwood, Worcester, Barnstable, Westborough, Greenfield, Beverly, Northampton, Bridgewater, Belmont, and Marlborough. Several Massachusetts residents had been committed out of state, in Connecticut, New York, and California. These responses were also included.

3. Did the hearing take place in a courtroom or hospital space?

Hospital: 32 (71.11%)

Courtroom: 11 (24.44%)

Other: 2 (4.44%) (“a room designated as the court room on the same floor but outside the mental health unit”); (“doctor’s office—pink slipped”)

Paper responses

Hospital: 2

Focus group participants

Hospital: 6

Courtroom: 2

4. Where would you have preferred the hearing to take place?

Hospital: 11 (22.45%)

Courtroom: 38 (77.55%)

Paper surveys

Hospital: 2

Courtroom: 0

Personal choice

Focus group

Hospital: 6

Courtroom: 7

Personal choice: 3

CERTIFICATE OF COMPLIANCE WITH RULES OF COURT PURSUANT TO RULE 16(K)

I, Susan Stefan, certify that the Brief of Amicus Curiae complies with the rules of this Court that pertain to the filing of amicus briefs including, but not limited to, M.R.A.P. 16(h) and 20.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that I have served Suleyken D. Walker, Counsel for the State, and Debra Kornbluh, Counsel for M.C., with a copy of this brief by U.S. Postal Service on September __, 2018.

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