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Child Abuse Evidence: New Perspectives from Law, Medicine, Psychology & Statistics: Opening Remarks, November 6, 2015

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Michigan Supreme Court

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OPENING REMARKS—NOVEMBER 6, 2015

Justice Bridget McCormack, Michigan Supreme Court

I had to run for office a few years ago and in that process I often had to tell people what I believed about the criminal justice system. I said many times what you all already know: that our system is the best in the world. And that while it has its faults, it has the great promise of being able to hold those responsible for wrongdoing accountable while providing process that ensures that innocent people did not get caught up in it wrongfully. And that it has both the foundational principles and the flexibility to stop and recognize when and where it could do better. In other words, an invitation for scrutiny and improvement is baked into its architecture. It is exactly this quality that gives it strength.

Because I spent a good deal of my career representing those who were wrongfully convicted, I know a little bit about when and where this system, the best system in the world, falls short. Most acutely, it is still a system largely dependent on humans—and humans err. Not just in law, but also, it turns out, even in science and in medicine.

Doctors and hospitals have been comfortable for some time with risk management and error reduction. The medical profession has sophisticated processes for managing errors and for learning from them and reducing them. The example set in healthcare is helpful. If we are comfortable assessing errors in medicine, we should probably get comfortable assessing error where law and medicine overlap. This seems to me to simply be part of what it means to be a professional.

But I want to acknowledge that the temperature is extremely high with respect to this specific area of risk management. And I find that easy to understand. For what is worse than the idea that a child could be harmed by a person charged with keeping her safe? Perhaps only the combination of having your child injured and at the same time being wrongfully accused of being the cause of her injury and losing her as a result. Or maybe it is the other way around in ordered horrors. I do not think it matters. The point is, I understand this conversation today is happening on a big open nerve.

That is all understandable, given the stakes and the seriousness of this enterprise. And given the difficulty around this subject, I

want to commend this large public conversation about it. I generally believe that when topics are difficult to talk about, we probably need to talk about them more, and to listen more, even to those with whom we think we might disagree. My guess is that the advocates who find themselves on different sides of the issues on the table here today have more in common than not. Protecting children is a shared goal, and that alone should have more of us talking to each other more often. Likewise punishing the guilty, and not the innocent, is a shared goal.