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THE SPECIAL COMMISSION ON THE FUTURE  
OF THE NEW YORK STATE COURTS  
PUBLIC HEARING

Wednesday, June 13, 2007

Empire State Plaza  
Albany, New York  
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1                   CHAIRMAN DUNNE: Good morning, everybody, let's  
2 get started if we can. We've got a long and hopefully  
3 productive day ahead of us. Make sure you're in the right  
4 hearing room. We are from the Special Commission on the  
5 Future of the New York State Courts. We're here to take  
6 testimony on people's experiences and views with the  
7 state's town and village justice courts. If you've seen  
8 it you know that we have a very full schedule today. So  
9 much so in fact I don't think we've actually got any real  
10 breaks factored in other than lunch. And that too may get  
11 eaten away, no pun intended. So what we're going to do is  
12 follow I'm afraid a very strict schedule. We have  
13 20-minute slots scheduled.

14                   We will ask people to come up, present their  
15 testimony and hopefully in each case we'll have time for  
16 questions and answers as well. But after 20 minutes we  
17 will cut ourselves and you off. So just be prepared. We  
18 will have to be rather ruthless about that I'm afraid.

19                   Anyone who wants to is invited, of course, to  
20 submit additional written testimony if you would like. We  
21 also have a web site which I believe you can submit papers  
22 to if you want to add to your testimony here today. We  
23 will introduce ourselves in a minute for the record.

24                   And, please, when you do testify, please bear in  
25 mind that we have stenographers taking down your remarks

1 and be mindful of that in how fast you speak. Since we  
2 will be hard-pressed to take breaks given the schedule you  
3 may see commission members come and go from time to time  
4 for telephone calls and personal needs. Don't be  
5 offended, we are creating a record for our own use and the  
6 use of the rest of the commission members as well.

7 Let me just introduce ourselves briefly. My  
8 name is Carey Dunne, I'm a private practitioner in New  
9 York City at the firm of Davis, Polk & Wardwell. I'm the  
10 chair of the commission. Starting from my left and going  
11 around. Eve.

12 MS. EVE BURTON, ESQ.: I'm Eve Burton, I'm the  
13 general counsel for Hearst Corporation, the owner of the  
14 Albany Times Union, so I have a special love of the city.

15 HON. DAVID OTIS FULLER, JR.: Dave Fuller, a  
16 village justice in Tuckahoe and the president of the New  
17 York State Magistrates Association.

18 HON. TERENCE WOLFE: Terry Wolfe, I'm a town  
19 justice in the Town of Walworth, Wayne County.

20 HON. MILTON MOLLEN: Milton Mollen, private  
21 practice with the firm of Feinstein.

22 HON. SEYMOUR W. BOYERS: Seymour Boyers, a  
23 partner in Gair, Gair, Conason, Steigman & Mackauf, former  
24 Associate Justice of the Appellate Division, Second  
25 Department.

1 HON. EVELYN FRAZEE: I'm Evelyn Frazee and I'm a  
2 Supreme Court Justice in Rochester.

3 HON. ELAINE JACKSON STACK: I'm Elaine Jackson  
4 Stack, I'm a Supreme Court Justice sitting in Nassau  
5 County.

6 MR. GARY S. BROWN, ESQ: I'm Gary Brown, I'm an  
7 attorney from Westchester County, director of the County  
8 Department of Consumer Protection, former Executive  
9 Director, Fund for Modern Courts.

10 MR. DANIEL L. FELDMAN, ESQ.: I'm Dan Feldman,  
11 Executive Director of the New York State Trial Lawyers  
12 Association.

13 HON. JAMES J. LACK: I'm James Lack, judge of  
14 the Court of Claims.

15 CHAIRMAN DUNNE: Without further ado, I would  
16 like to start the testimony. The first two people up  
17 together are Ron Younkings and Paul Toomey, both employed  
18 by the Office of Court Administration. And could each of  
19 you when you step up not only identify yourselves, but  
20 identify what organization or affiliation you have.

21 MR. RON YOUNKINS: Good morning, I'm Ron  
22 Younkings, I'm the Chief of Operations of the Office of  
23 Court Administration. And I'm joined today by Paul  
24 Toomey, who is the director of the Office of Court  
25 Administration's newly created office of Justice Courts

1 Support. In addition, Paul Toomey is a sitting town  
2 justice in the Town of Sand Lake in Rensselaer County.

3 Judge Toomey and I today are going to give you  
4 an update on the court system's action plan for the  
5 justice courts. The action plan was released last  
6 November. And this represents a historic change in the  
7 relationship between the state judiciary and the local  
8 justice court system. In very broad strokes the plan  
9 brings new collaboration between the state judiciary and  
10 the local justice courts in four areas.

11 First, of court operations. Second, fiscal  
12 practices. Third, training. And then finally in court  
13 security. In each of these areas we're going to be  
14 providing new resources and support for these courts.  
15 This is by far the most comprehensive and aggressive steps  
16 that the state judiciary has ever taken to assist and to  
17 work with local governments and their justice courts.

18 The action plan was devised to provide immediate  
19 assistance and resources to the justice courts. There are  
20 a few legislative proposals in the action plan that are  
21 intended to maximize support to localities and the courts.  
22 But essentially the court was designed to work within the  
23 existing legal structure.

24 One of the first things that we've done in  
25 implementing the plan is to try to learn more about these

1 courts. Historically have not been involved with these  
2 courts on a day-to-day basis. And the nature of this new  
3 collaboration, the nature of the support and resources  
4 that we'll be providing under the plan require that we  
5 have a much better understanding and much greater detail  
6 of how these courts operate and what their needs are.

7           Toward that end we have undertaken a survey of  
8 the justice courts and the judges seeking information on a  
9 whole range of topics including the hours of operations,  
10 staffing levels, status of automation in the courts, use  
11 of court interpreting services, their practice with regard  
12 to recording of proceedings and so forth. Thus far we've  
13 gotten responses from 80 percent of the courts. Which if  
14 we were a sampling entity that would be fabulous, but  
15 we're looking for 100 percent. We're looking for a  
16 comprehensive inventory of what is going on in these  
17 courts, so we're going to continue until we get to that  
18 point. But we have received responses from 80 percent of  
19 the courts. We're in the process of compiling that  
20 information now. And it's really I think the first time  
21 that we have a really comprehensive view of what's  
22 happening on the ground out in our courts and I think it  
23 it's going to be very helpful as we move forward in  
24 implementing the plan.

25           Another first step that we've taken in

1 implementing the plan is to seek funding, kind of as a  
2 down payment on paying for this plan. We requested \$10  
3 million in the judiciary budget for the current fiscal  
4 year and we're very pleased that the entire amount was  
5 approved. As we move forward in flushing out the details  
6 of the plan we expect that we will be making similar or  
7 perhaps more likely even larger requests in the years to  
8 come.

9 What we would like to do now is just go through  
10 each of the four areas that I mentioned briefly and just  
11 tell you where we are with regard to implementation. I  
12 want to talk first about court operations. As the State  
13 Comptroller found in an audit last year and as the  
14 justices in these courts know, the many reporting and case  
15 management obligations in these courts impose duties that  
16 really depend heavily upon technology. Our survey  
17 indicates that the justice courts vary widely with respect  
18 to levels of automation. Some of the courts have  
19 state-of-the-art systems. A few of the courts, the  
20 preliminary results of the survey indicate about a hundred  
21 courts have no computers at all. Most courts are probably  
22 in the middle someplace.

23 But it's clear in this day and age every court  
24 anywhere needs to have modern technology. And for that  
25 reason the action plan provided that for the first time

1 the state judiciary would take responsibility for  
2 providing technology to the justice courts. And we would  
3 be providing that directly to them at no cost to local  
4 government. That includes computers, printers, fax  
5 machines, as well as the case management software.

6 Simple provision of this hardware and software  
7 is going to be more efficient, be done on a system-wide  
8 basis, and obviously is going to save local taxpayers  
9 money. It will also allow for the integration of the  
10 justice courts into the state computer systems in a way  
11 that's going to allow localities to improve local cash  
12 flow by keeping the local portion of revenues that will  
13 allow rather than to remit the money to Albany and have a  
14 portion of it reimbursed later. Given the number and the  
15 location of the justice courts this is a major undertaking  
16 logistically, but absolutely crucial I think to  
17 modernizing the system.

18 And as we further analyze the results of the  
19 survey we will be finalizing our plan with respect to how  
20 to move forward in this very complex area. And a  
21 substantial amount of the money that we're requesting for  
22 the current fiscal year will be devoted to start the  
23 process of taking over the responsibility of upgrading the  
24 technology in the justice courts.

25 More immediately on the automation fund, we're

1 very pleased that within the next month for the first time  
2 we are going to integrate the justice courts into the  
3 state judiciary e-mail system. This is going to transform  
4 our communication with these courts, enabling us for the  
5 first time to communicate very easily and effectively with  
6 the vast number of courts that are out there. And much of  
7 what we're doing in the action plan is really about  
8 bringing these courts into the fabric of the state  
9 judiciary, and I think this more effective means of  
10 communication is really going to play a key part in that  
11 effort.

12 Another major operational change is that for the  
13 first time justice court proceedings are required by a  
14 newly issued rule of the Chief Judge to be recorded.  
15 Again, our survey gives us some hint of what's going on  
16 out there. It was perhaps a larger number of courts are  
17 currently recording their proceedings than I had  
18 personally thought, but still it's not the majority of the  
19 proceedings, and there's a lot of work to be done with  
20 respect to implementing this recommendation.

21 Again, we're going to be doing this at no cost  
22 to local governments. We are assuming the cost of  
23 providing recording devices. We have been testing  
24 recording devices in selected courts and are about ready  
25 to begin the roll out of this equipment within the next

1 couple of months. It's a very important part of our  
2 initiative.

3 Another area in operations that's been a great  
4 concern is the issue of incorporating interpreting  
5 services. Again, the survey is giving us some sense of  
6 what the need is out there and how the need is being met.  
7 Preliminary responses on the survey indicate that just  
8 last year over 25 languages -- interpreting services were  
9 provided for over 25 languages in the justice courts.  
10 Again, given the number of courts and the distances,  
11 meeting this need is very difficult in the justice courts.

12 Next month we're going to begin a pilot to test  
13 one way which the state judiciary could be helpful in  
14 assisting in this regard. And that's with the use of  
15 remote interpreters. Under this model staff interpreters  
16 employed by the state judiciary will be made available to  
17 interpret remotely by telephone in certain selected  
18 courts. We think this might be a very good model. We've  
19 been using this in a number of our state paid courts to  
20 very good effect. And we think given the unique  
21 circumstances with the large number of courts and the  
22 distances, this might be one way of meeting this very  
23 important need.

24 Other areas with respect to operations which we  
25 will be working on are creation of a justice court

1 operation's manual, development to standardized court  
2 forms, and very importantly ensuring access for the  
3 disabled.

4 The next major area I want to talk briefly about  
5 is financial practice and control. Very important area  
6 given the amount of money that the justice courts collect  
7 each year, it's in excess of \$200 million. Funds that are  
8 important both to local and state budgets and must be  
9 managed very carefully. One of the things that we will be  
10 doing is phasing in acceptance of credit card payments in  
11 all the justice courts. This is going to dramatically  
12 improve cash flow by increasing the payments while at the  
13 same time reducing cost by generating payment reminders.  
14 It's also going to make the courts more secure by reducing  
15 the amount of cash in the courts.

16 The responses to our survey indicate that less  
17 than 15 percent of the justice courts now accept credit  
18 cards. But many of the courts indicated that they were  
19 very interested in doing this but that the local  
20 government didn't want to pay the transaction fees. We  
21 anticipated that in the action plan. The action plan  
22 provided that we would implement this without cost to the  
23 local governments. And we have been working with our  
24 partners in state government to achieve that objective,  
25 and hope over the next couple of months will be able to

1 resolve the remaining issues and move forward with that  
2 initiative.

3 Also with regard to financial practices the  
4 Office of Court Administration has increased its audit  
5 staff so that we can devote a number of people  
6 specifically to audits of the justice courts. The primary  
7 oversight fiscally for the justice courts is the  
8 responsibility of the State Comptroller. But where the  
9 financial concerns implicate on court practices there's  
10 also a role for the Office of Court Administration, and  
11 toward that end we are increasing our staff to allow us to  
12 have a more regular audit cycle for the justice courts.  
13 We have also -- I believe it was just last week -- Chief  
14 Administrative Judge Pfau wrote a letter to local  
15 governments requesting a copy of the audits that they  
16 perform on their justice courts.

17 Finally, with regard to fiscal matters, in  
18 conjunction with the Office of the State Comptroller and  
19 others are busy promulgating a Fiscal Controls Best  
20 Practices manual for the courts that will address all  
21 aspects of justice court financial transactions including  
22 collection of money, security, transportation of money and  
23 the auditing of funds.

24 The next broad area that I wanted to discuss is  
25 court security and facilities. For the last decade courts

1 across the nation have been the targets of an increased  
2 number of attacks by disgruntled litigants and others.  
3 And as the recent incident in Sloatsburg makes clear the  
4 justice courts are not immune from that trend. But the  
5 fact remains that security in the justice courts generally  
6 is inadequate. Most of the courts there is no screening  
7 at the entrances, there are no officers present during the  
8 proceeding, in many cases no bench to separate the judge  
9 from the litigants.

10 Again, logistically this is going to be a very  
11 difficult issue to address given the number of the courts  
12 and also the fact that many of these courts, as you know,  
13 are sharing spaces with other government entities that use  
14 it for entirely different purposes making it very  
15 difficult, for example, to have a dedicated bench. Given  
16 those realities we decided the best solution would be to  
17 provide financial assistance to the localities and to give  
18 them a great deal of flexibility with regard to what  
19 measures to take with our assistance.

20 A lot of the funding that I mentioned before  
21 that's in the current year is going to be earmarked to  
22 address this need. In the past, beginning in 1999, we  
23 established with legislation the Justice Court Assistance  
24 Program, or JCAP program, which in the past was primarily  
25 devoted to providing grants to local governments to assist

1           them with automation. But under the action plan we are  
2           now assuming direct responsibility for automation leaving  
3           the JCAP monies to be used for other purposes. And we  
4           have decided that they should be used primarily to address  
5           security and facilities issues.

6                       We have also substantially increased the amount  
7           of funds available. The JCAP program had been for many  
8           years half a million dollars, more recently a million. In  
9           the current year the amount of money in the JCAP program  
10          is \$5 million. Again, to be devoted primarily to  
11          addressing security and physical security issues in the  
12          courts.

13                      We have also asked the Legislature to increase  
14          the amount of money that we can give each branch. It had  
15          been limited to \$20,000, we have asked the Legislature to  
16          increase that to 30. That bill has passed in both houses.  
17          And these funds will be available for local governments to  
18          address issues with regard to entry to the courthouses,  
19          building a more secure bench or whatever the particular  
20          needs of the locality are.

21                      In addition, we're in the process of conducting  
22          security assessments of every justice court. We have, in  
23          addition, made our OCA staff architects available to the  
24          local courts to help them design and work with our  
25          security people to come up with solutions as to what

1 physical changes to make to better ensure safety in these  
2 courts. And then the JCAP funds that I have talked about  
3 would be available for them to implement those changes.  
4 We're now in the process of accepting the applications for  
5 JCAP grants for this year.

6 The final area we want to discuss is the area of  
7 training. I will ask Judge Toomey to talk about what we  
8 are doing in that regard.

9 HON. PAUL TOOMEY: I would like to take the  
10 first moments to explain my journey here. I was a law  
11 clerk -- confidential law clerk -- for seven years to a  
12 trial judge, and four years at the Appellate Division,  
13 Third Department. In 1999 I got the opportunity to go  
14 with the resource center as Supervising Counsel to serve  
15 as law clerk to the 2000 judges statewide.

16 Having never thought about being a town or  
17 village judge at that point in my career, I was so  
18 impressed by the dedication and the community-oriented  
19 nature of the judges that I was dealing with at the  
20 resource center that I decided to run for town judge  
21 because of my meeting them. And I'm now serving my second  
22 term in Sand Lake, Rensselaer County.

23 I also served for three years on the executive  
24 board of the New York State Magistrates Association. I  
25 served at the resource center for approximately seven

1 years and then we had the opportunity to work together on  
2 this action plan.

3 This action plan, as I see it, is an integration  
4 of the town and village courts and the judges into the  
5 model that the state already has for its state paid  
6 judges. Meaning operations would be through Judge  
7 Plumadore for the courts outside of New York City.  
8 Support would come through the Central Office in New York,  
9 and education and training, which I'm going to talk about,  
10 will now be administered through the Judicial Institute in  
11 White Plains.

12 There certainly has been a lot of discussion  
13 about the education and training of both our attorney and  
14 non-attorney judges. Our first course of action in  
15 regards to the basic program for those newly-elected  
16 non-attorney judges will be an overhaul of the basic  
17 program. And the basic program in the past consisted of  
18 three weekends, a Friday and a Saturday, during late  
19 November and early December, and then the judges were able  
20 to sit on January 1st. We'll push back our training  
21 starting November 2007 into the three weekends in December  
22 which will give us an opportunity as we're developing  
23 materials for the judges to get to them prior to them  
24 coming to their first session with us. So they will have  
25 an at-home study period post-election, a pre-meeting with

1 us.

2 Then when we meet with them for the first  
3 in-house training session we will change our course from  
4 what we've done in the past to understanding that these  
5 judges need to know, cradle to grave, what they're going  
6 to be doing. So we will be showing them a criminal  
7 proceeding, a civil proceeding and then breaking it back  
8 down and walking them through that. Understanding that  
9 we're going to be able to fill in in subsequent training a  
10 lot of materials.

11 After that training they will go back and then  
12 sometime in early spring we will bring those judges and  
13 those judges only back as a group that went through the  
14 basic training and they will sit as a group, understanding  
15 that the more senior judges who have different issues will  
16 meet in our advanced training, which I'll talk about in a  
17 second. But these judges have their own issues very  
18 specific to their group of non-attorney judges that have  
19 only been on the bench for two or three months and they  
20 will be able to speak freely with us. We will have a game  
21 plan for them and then deal with any of the issues that  
22 they may have.

23 The discussion right now is for how many years  
24 following their election will we do that. Will it be  
25 two-, three- or four years, bring those judges back as a

1 group. The advanced training that we do right now for all  
2 judges, attorney judges and non-attorney judges consist of  
3 a part one and a part two program. Six hours each.  
4 There's a curriculum committee that meets to determine  
5 what the curriculum will be for the next year.

6 The rules as set forth now require that all  
7 judges complete either part one or part two and then they  
8 can have elective credits for the other six credits to  
9 meet their twelve. We're going to be vastly expanding  
10 what we're offering, not only the part one and the part  
11 two, but through the Judicial Institute we will be having  
12 the on-line training. The judges are calling for more  
13 mock proceedings. So in our first crack at this in  
14 Potsdam in July we will be doing a mock preliminary  
15 hearing. That will be a regular course of business as we  
16 move on, that these judges will be involved in mock  
17 proceedings where we can get them up in front of the class  
18 doing the proceedings and having much more hands-on  
19 training.

20 Also, we've reached out to the Bar Association,  
21 the New York Bar Association and all the local Bar  
22 Associations, to see what involvement they may wish to  
23 have in our instruction. They have experts in certain  
24 fields that will be able to help us to a certain degree.  
25 We are also looking to do more training at the local level

1 at the respective county Magistrates Association meetings.  
2 So we can do it right in their county.

3 One of the ways we've done that in the past is  
4 by a satellite program in coordination with the State  
5 Comptroller's office. We've done that once per year for  
6 the past four or five years. I was just told that our May  
7 program we had 640 participants who were able to leave  
8 their homes, go to a local site, have an update on the  
9 recent change in the DWI law and be home, and they got two  
10 hours of instruction. We plan on raising that to at least  
11 four and possibly up to six per year.

12 We'll also have dual tracking for those elective  
13 classes that we're talking about. So you could have an  
14 advanced course or you could have an intermediate course  
15 so the judge, himself or herself, can decide whether they  
16 want to attend this particular type of training or go to  
17 this training. So there will be a lot more offered. And  
18 there will be more internet-based discussion groups.  
19 We're revamping our web site and we'll have much more  
20 information. All the training materials will be on line.  
21 They'll be able to watch a video of the proceeding.

22 As many of you know that have been out there in  
23 the field, these courts meet not on a regular basis, and  
24 certainly an issue like a preliminary hearing, although we  
25 may do a very good job of training in 2006, one of our

1 town or village judges may not have a preliminary hearing  
2 for some 12 or 18 months. So when that is presented to  
3 them, although we did a fabulous training some 12 or 18  
4 months ago, the judge is somewhat lost. And now they'll  
5 be able to click on our web site and just watch our  
6 training on that preliminary hearing. I think that's it.

7 MR. RON YOUNKINS: Those are some of the  
8 highlights of the action. We've spared you some of the  
9 details, but I think this is some of the main things that  
10 we're doing. We're very excited about this plan. If you  
11 have any questions, we would be pleased to answer them.

12 CHAIRMAN DUNNE: Thank you. Are there  
13 questions? Ms. Burton.

14 MS. EVE BURTON, ESQ.: In terms of training, I  
15 fundamentally see the civil cases as different from the  
16 criminal cases, so my question is twofold. First of all,  
17 numerically how many criminal cases do these justices hear  
18 across the state, including what would be considered  
19 criminal and quasi criminal? And what is the training  
20 plan in relation to that to the extent that that remains  
21 in their jurisdiction? That's a fairly significant high  
22 stakes game for the people who are subject to those  
23 proceedings. And so some of the questions of logistics  
24 may be less important than some of the constitutional  
25 concerns. So how have we thought about that in terms of

1 the difference in those two bodies of law and the numbers  
2 of cases generally?

3 MR. RON YOUNKINS: I'm not aware of the  
4 breakdowns of civil and criminal, are you?

5 HON. PAUL TOOMEY: Not --

6 MS. EVE BURTON, ESQ.: Percentage wise?

7 MR. RON YOUNKINS: We can get you that  
8 information.

9 MS. EVE BURTON, ESQ.: Right. But generally  
10 speaking for purposes of just today, do you have any sense  
11 of the majority --

12 HON. PAUL TOOMEY: From my years at the resource  
13 center and my years on the bench I would think that we  
14 deal with 60 to 65 probably criminal, that's including the  
15 vehicle and traffic. If we take that out -- because  
16 that's the largest portion of our cases.

17 In regards to training, there's no question that  
18 that is paramount to the Office of Court Administration as  
19 we train these judges. As I tell the judges when I teach  
20 basic, "Somebody's liberty is not something you can give  
21 back to them. So you have to be very careful in dealing  
22 with people's liberty." And so it will be first and  
23 foremost -- when I mentioned taking a case today was  
24 criminal first, we will walk them through criminal and all  
25 the aspects of the criminal case and deal with that at a

1 greater degree than we deal with civil initially, to be  
2 able to get them through their initial years on the bench.

3 CHAIRMAN DUNNE: Judge Stack.

4 HON. ELAINE JACKSON STACK: In terms of your  
5 judges who are not newly elected and non-attorney judges  
6 what is there that will convince them they should or must  
7 take the advanced or intermediate courses?

8 HON. PAUL TOOMEY: There's a requirement that  
9 all judges, once they're elected, once they're seated, on  
10 a yearly basis have to take twelve credits. For all the  
11 judges. Is that your question?

12 HON. ELAINE JACKSON STACK: And is there some  
13 limitation to how many of those credits they can take on  
14 line versus how many they can take in person?

15 HON. PAUL TOOMEY: Presently, the requirement is  
16 that they complete either part one or part two, the six-  
17 hour program. And then the other six hours they can  
18 complete through an elected process.

19 HON. ELAINE JACKSON STACK: I meant -- you  
20 indicated that there was material that's going to be on  
21 line. Can they take those six credits at home?

22 HON. PAUL TOOMEY: Yes, they will be able to  
23 take those credits at home. And our hope is that they  
24 don't stop at twelve. Many of the judges that I speak to  
25 describe that they're on their 23rd hour and I ask what

1 they're doing for their 24th. But, yes, they will be able  
2 to take it at home. And the Judicial Institute right now  
3 is working with a federal grant for a web site that we'll  
4 be able to track everything that they do in regards to  
5 their training.

6 HON. ELAINE JACKSON STACK: And my final  
7 question is what standards or factors are considered -- is  
8 there a passing to evaluate that they've successfully  
9 taken and learned the material?

10 HON. PAUL TOOMEY: The non-attorney judges as it  
11 stands now have to take a test and pass it on either part  
12 one or part two. But that as we move forward -- the  
13 testing issue as we move forward is part of the greater  
14 discussion of how we're going to deliver the product that  
15 we're delivering. So presently that's how it's done, but  
16 everything is up for discussion as we move forward.

17 MR. RON YOUNKINS: We are rethinking the testing  
18 as we're rethinking the basic training. The next part is  
19 to rethink the testing in a way that makes sense in light  
20 of everything, of the training.

21 CHAIRMAN DUNNE: Judge Boyers.

22 HON. SEYMOUR W. BOYERS: Mr. Younkings, you have  
23 indicated that you're integrating in effect the town and  
24 village system into the fabric of the judicial system as  
25 it presently stands. What types of supervision have OCA

1 thought about implementing in the action plan?

2 MR. RON YOUNKINS: Another part of the action  
3 plan that Judge Toomey alluded to was the oversight  
4 through Judge Plumadore's office, the Deputy Chief  
5 Administrative Judge for the courts outside of New York  
6 City. Under him are a number of -- for each of the  
7 districts -- are supervising judges who were appointed  
8 specifically to supervise the justice courts. They were  
9 appointed in January of this year. And for some of the  
10 larger districts, for example the Fourth Judicial  
11 District, encompasses quite a large geographic area, as  
12 well as a large number of courts, there are actually three  
13 supervising judges for the justice courts. So we do have  
14 for the first time supervising judges to work with these  
15 courts. One of their first assignments is to get out,  
16 ride the circuit and to get to know the judges and the  
17 courts and to be actively involved in the operations and  
18 oversight of those courts.

19 CHAIRMAN DUNNE: Judge Lack.

20 HON. JAMES J. LACK: What is the training  
21 distinction between non-attorney judges and attorney  
22 judges?

23 HON. PAUL TOOMEY: Right now the non-attorney  
24 judges have to take the basic, the attorney judges do not.  
25 And once they complete that course and there's an advanced

1 program that they have to complete there is no difference.  
2 Right now they take part one or part two. It's geared  
3 towards all the judges. As we move forward, however, as I  
4 suggested, we may have courses for more advanced and  
5 intermediate elective training. So a judge may need  
6 training on sentencing, another judge may want to take a  
7 constitutional class regarding local ordinances. But we  
8 will allow the judges to make the decision at what level  
9 they believe they want on any particular subject.

10 HON. JAMES J. LACK: Can an attorney judge  
11 substitute any normal CLE credits that he or she might  
12 take in lieu of doing anything through OCA or the Judicial  
13 Institute?

14 HON. PAUL TOOMEY: They would have to ask for  
15 permission. And there's a committee set up to look at any  
16 and all of their requests now. We get requests many times  
17 on substantive criminal law, procedural criminal law that  
18 clearly are applicable in their job as a town or village  
19 judge. We've had requests for surrogate court practice  
20 and we just don't see that as being anything that should  
21 get credit.

22 HON. JAMES J. LACK: Thank you.

23 CHAIRMAN DUNNE: Judge Mollen and Gary Brown.

24 HON. MILTON MOLLEN: I understood your initial  
25 presentation, that toward the end you referred to the

1 advanced courses and you indicated, at least to some  
2 extent, it's optional for the judges, non-attorney or  
3 attorney, whether they wish to take those courses. Do you  
4 think it's the wisest thing to have it optional; because  
5 sometimes it's possible that persons who need it most are  
6 not aware of it. And would it not be more appropriate  
7 that it be required that they all take these advanced  
8 courses?

9 HON. PAUL TOOMEY: I apologize, Judge, if I  
10 indicated that. They are all required to take twelve  
11 credits per year every year that they sit upon the bench  
12 and are advanced. Now, they can break that down to six  
13 credits that's required in part one or part two and then  
14 six elective credits. But every single judge in the state  
15 is required to take twelve credits every year that they're  
16 seated.

17 CHAIRMAN DUNNE: Gary Brown.

18 MR. GARY S. BROWN, ESQ.: I have two questions.  
19 The first is about security. Last week I was one of a  
20 group of commissioners that toured town and village courts  
21 in Erie and Niagara Counties and we saw a couple of  
22 scenarios where courts had obtained the magnetometer  
23 through a JCAP grant, but the machine was sitting in a box  
24 in the closet because there was no personnel trained to  
25 use it. So my question is how are you going to address

1 that?

2 MR. RON YOUNKINS: That's a very difficult issue  
3 in that we have not -- in fact, the JCAP legislation  
4 provides that the monies are to be used to be purchasing  
5 goods but not for the payment of staff. So that's a  
6 difficult issue. And a couple thoughts about that.  
7 Number one, we are trying to make sure that before we  
8 purchase or give money for the purchase of magnetometers  
9 there's in fact a commitment to staff it. And we will do  
10 the training for the staff. But at this point it's a  
11 commitment by the local government to provide the  
12 staffing. But there have been suggestions that we -- and  
13 we have been looking at perhaps other ways of addressing  
14 this. But right now it is a local commitment.

15 MR. GARY S. BROWN, ESQ.: The second question  
16 was about recording of proceedings. Will all proceedings  
17 be recorded?

18 MR. RON YOUNKINS: We are going to give some  
19 guidance on that. Probably not in the form of a rule, but  
20 we will probably issue some kind of guidance to the  
21 justice courts. Just like in state paid courts, not  
22 everything that happens in a preliminary conference  
23 typically would not be on the record. But I would think  
24 that as a practical matter -- these are, you know, tape  
25 machines. I would think that in many cases somebody

1 would -- just the judge or clerk would put it on at the  
2 beginning of the session and just leave it on.

3 But there are certain things that would happen,  
4 just as they do in state paid court, that are not required  
5 to be recorded. And we will give some kind of guidance on  
6 that. But, again, I think the practice in most cases is  
7 it's just left on.

8 CHAIRMAN DUNNE: Any other questions? Judge  
9 Frazee.

10 HON. EVELYN FRAZEE: One quick question. What  
11 happens if the judges don't take the training? I don't  
12 know if you ever had that experience, but what happens if  
13 they don't take the training, is there some kind of  
14 repercussion?

15 HON. PAUL TOOMEY: We're not aware of many  
16 instances where the judges don't take the training. But  
17 we would reach out to that judge and find out why and then  
18 attempt to work with that judge. Because right now we do  
19 have some training that we can do by CD. If not, it  
20 clearly becomes a disciplinary matter for the Commission  
21 on Judicial Conduct.

22 CHAIRMAN DUNNE: Judge Fuller.

23 HON. DAVID OTIS FULLER, JR.: Thank you. I just  
24 wanted to confirm for the commission, I understand that  
25 when you have these recording devices that if the village

1 or town court already has its own stenographer they may  
2 continue with the stenographers if they wanted to?

3 MR. RON YOUNKINS: Yes, right. The requirement  
4 is that the proceeding be on the record, but not that it  
5 be recorded. If they want to continue to use a court  
6 reporter, that's fine.

7 HON. DAVID OTIS FULLER, JR.: And then have you  
8 met with any resistance to the action plan at all?

9 MR. RON YOUNKINS: I would say no. I mean,  
10 obviously there's certain aspects of the plan I think are  
11 being embraced more enthusiastically than others, but I  
12 think that generally the reaction has been very good.  
13 We've met, I guess it was last October, at the annual  
14 meeting of the State Magistrates Association and -- for  
15 example, on the recording we kind of anticipated that  
16 there might be resistance on the recording. And at the  
17 end of our session one of the questions was, "When can you  
18 install the device?"

19 And interesting, in terms of the responses on  
20 the survey, we have a place for comments and many of the  
21 judges wrote I went out and bought a recorder myself at  
22 Wal-Mart, so if you can get me something better... I think  
23 one of the things is the judges realize that it really  
24 helps them, and this is something -- actually, the  
25 Commission on Judicial Conduct had made this point, where

1           there are accusations about something that happened, in  
2           most cases where there's a record it helps the judge. And  
3           I think that message has gotten out to the judges. It's  
4           good, have it on the record. And it's not just good in  
5           terms of the process in terms of appeals, but it's good in  
6           terms of any accusations about what happened in the  
7           courtroom. So we were very pleased with the reaction on  
8           that.

9                   HON. DAVID OTIS FULLER, JR.: When do you expect  
10           the action plan to be fully in place?

11                   MR. RON YOUNKINS: This is a long-term  
12           relationship. This is going to go on for a long time.

13                   HON. DAVID OTIS FULLER, JR.: At least the first  
14           stage?

15                   MR. RON YOUNKINS: Well, I think it's going to  
16           be implemented in stages. I mean, for example, let's talk  
17           about the assumption of responsibility for providing  
18           computers. What we're talking about there is we have been  
19           providing money through the JCAP program over years to  
20           provide computers. So many of the courts have perfectly  
21           fine computers now. And one of the questions we asked is  
22           how many computers do you have, how old are they? A lot  
23           of the courts have fairly new computers. What we want to  
24           do is integrate the justice courts into the same kind of  
25           system we have in the state paid courts, which is over a

1 four- or five-year time period -- after five years you get  
2 a new computer. So we're going to have to work the  
3 justice courts into that. For those justice courts that  
4 just got computers last year, you know, it's going to be  
5 another four years before we go out and replace those.

6 So for that piece of it it's going to be many  
7 years. For the recording piece we want to start rolling  
8 out -- now that we've tested the device and seem happy  
9 with this one particular device, and seems easy to use and  
10 reliable, we're in the process of purchasing a hundred.  
11 We want to get that hundred out in the first set of courts  
12 within the next couple of months and then we'll just  
13 continue incrementally, but fairly expeditiously on that.  
14 So the court recording I would hope that within nine  
15 months that piece will be done. So it really depends on  
16 the various pieces. Working with the courts in terms of  
17 physical upgrades on security, again that's going to be  
18 ongoing. A many-year process. This is really a long-term  
19 relationship. This first year has really been in part our  
20 getting to know the system better. I think the survey has  
21 been very helpful to give us the facts that we need to  
22 figure out exactly what we should be doing. And I think  
23 we're ready now to start taking a couple of concrete  
24 steps. We've talked about a few of them today with the  
25 recording devices, the remote interpreting. Judge Toomey

1 mentioned we're in the process of revamping our web site.  
2 We're probably going to roll that out within a month or  
3 two making it much more accessible and user friendly. A  
4 wealth of information there.

5 We just renegotiated our basic contract with  
6 West. And included in that, additional resources for the  
7 justice courts, both on line and also a book collection.  
8 We're going to be giving to every judge in the justice  
9 courts a little collection of books that they can have.  
10 It's the first time we've done something like that. It's  
11 a whole range of things like that we're ready to do. It's  
12 really hard to say when the whole thing is going to be  
13 implemented. There's so many pieces here. But our  
14 objective is to implement it as quickly as possible to do  
15 what we can now. And, again, this is going to be a  
16 long-term relationship and we're in it for the long haul.

17 CHAIRMAN DUNNE: We're going to have to move on  
18 to the next witness I'm afraid. Thank you very much.

19 Is Justice Bogle here? Good morning.

20 HON. ROBERT BOGLE: Good morning.

21 CHAIRMAN DUNNE: Good morning.

22 HON. ROBERT BOGLE: Honorable chairperson and  
23 members of this commission, it's an honor and a privilege  
24 to have an opportunity to speak with you today concerning  
25 the important issues that are affecting the town and

1 village courts in the State of New York.

2 As you're aware, the village and town courts,  
3 which in the past have been referred to as the magistrate  
4 or justice courts, and also the courts closest to the  
5 people, are the longest continuous courts in the State of  
6 New York. They date back to the colonial days of the  
7 Dutch and English settlers. And our major concern has  
8 always been, both then and now, to assist in a greater  
9 quality of life for the residents of the State of New  
10 York. As an organization, the magistrates association,  
11 and as town and village judges, I believe that most of us,  
12 if not all of us, have taken that responsibility seriously  
13 and always strive to do the best that they can in that  
14 position.

15 In terms of my background, I've been a  
16 practicing attorney now for 24 years. I am currently the  
17 village justice of Valley Stream. With a population of  
18 40,000 it is the third largest village in the State of New  
19 York. And I've had that position since 1986. I've served  
20 as president of the Nassau County Magistrates Association  
21 and the New York State Magistrates Association. I was  
22 honored last year by receiving the title of Magistrate of  
23 the Year.

24 I've been involved in the educational program  
25 through the Office of Court Administration and continuing

1 legal education for magistrates for the last 15 years.  
2 I'm currently a member of the New York State Advisory  
3 Committee on Judicial Ethics. I'm a former law clerk to  
4 the supervising judge of the criminal courts in Nassau  
5 County. I'm currently the director of the county court  
6 law department.

7 I'm also the co-author of *Village, Town and*  
8 *District Courts in New York*. *Village, Town and District*  
9 *Courts*, which is published by West, is now in its 11th  
10 edition. It's a volume written by myself, Maryrita  
11 Dobiell, who is here today as well, and Judge Morris who  
12 serves from the Rochester area. It's a one-volume set.  
13 It's in its 11th edition, and most village and town courts  
14 have this. It includes citations and basic information  
15 that give it a practical approach in terms of how to  
16 function as a judge, whether you're a lawyer or  
17 non-lawyer. I have also written McKinney's volumes on  
18 some Criminal Procedure Law, a four-volume set on forms,  
19 and also the treatise on Criminal Procedure Law which is a  
20 four-volume set. I'm on volume two and it's wearing me  
21 out, but we're getting it done.

22 Basically, to make a longer story short, I think  
23 the continued professional success of the village and town  
24 courts depends essentially on five factors.

25 First one is the New York State Resource Center

1 where village and town courts, attorneys or non-attorneys  
2 alike, will have a chance to answer questions which  
3 they've had for quite a few years, toll free, and discuss  
4 their issues and concerns with the resource center. There  
5 are lawyers available. I know that they are also  
6 available on weekends as well, if there is arraignments  
7 that take place on the weekend, which is always a concern  
8 for most of the judges. They basically are kind of like  
9 our law department. It's a statewide operation. The more  
10 attorneys that are employed by the staff, the better I  
11 think for all the village and town judges in the State of  
12 New York.

13 I think it might be interesting to note that in  
14 the *New York Times* article, which highlighted a great many  
15 problems I think it was in Franklin County or Essex  
16 County, a county up in the Adirondack area, most of the  
17 problems that were highlighted were in the 1980s. The  
18 resource center came into existence, I believe, in the  
19 early 1990s, like 1992. So, those problems took place  
20 long before a resource center existed to make that  
21 available. I don't think you would see the same problem  
22 in the 1990s now that this particular aspect is available  
23 to village and town judges.

24 The second is the availability, of course, of  
25 the Advisory Committee on Judicial Ethics. This board

1 handles judges of all courts concerning ethical problems  
2 and ethical questions of conflict of interest and a  
3 variety of other issues.

4 Village and town courts are elected every  
5 four years. So, issues concerning elections are probably  
6 more of a greater concern to the village and town judges  
7 as opposed to judges who are in Supreme Court with their  
8 14-year terms or County Court judges with 10-year terms.  
9 You'll find that they also use the resource center rather  
10 liberally because of the issues of elections as well as  
11 other conflicts of interest that come into play.

12 Education is clearly the key to a fair and  
13 successful judicial system. The current education system  
14 for lawyer and non-lawyer judges -- as former president of  
15 the magistrates I've spoken to my fellow judges and no  
16 question that increasing educational availability to all  
17 of us is definitely an asset of quite an advantage.

18 I've lectured, like I said. I've gone to  
19 Potsdam and lectured. I've gone to Syracuse and lectured.  
20 And I find that many, many, overwhelmingly, the number of  
21 village and town justices, whether they be attorneys or  
22 non-attorneys, are very intelligent, can pick up  
23 information relatively quickly. We have quite a few town  
24 and village judges who are college professors as well as  
25 other individuals who are major players in their own

1 particular businesses throughout the state. And I found  
2 that all of them in many situations have been very useful  
3 and really function on a high level in terms of village  
4 and town courts.

5 One thing that this committee I don't think has  
6 addressed so far, but is of equal significance -- and as  
7 you're going around the state I'm sure you're seeing it --  
8 is the clerks. The clerks are a key concern for any type  
9 of functional professionalism in the village and town  
10 courts. As president of the magistrates association and  
11 to this day I still advocate required education for the  
12 court clerks. This is key as village and town judges are  
13 part-time positions. In many courts the clerk is not a  
14 part-timer. He or she is a full-timer and is there  
15 available day in and day out when people come in and pay  
16 their parking tickets or ask a question, when is court.  
17 And they are also the ones with the knowledge and  
18 experience.

19 And I know that one thing in the action plan  
20 that was included is we would like to have a mandatory law  
21 in the State of New York that requires municipalities to  
22 have a clerk. Some judges in the really small communities  
23 don't have any clerks. It's not often you run into that,  
24 but that is a real serious problem. So, definitely  
25 mandatory clerks and educating them is a key factor. They

1 take education now. A lot of times they'll travel around  
2 the state at their own expense and it's really  
3 unfortunate. And some of them go on and become judges  
4 themselves. So, it is really key that clerks receive a  
5 substantial amount of education and that it's required as  
6 such and taken care of accordingly.

7 In terms of the other two areas -- as I said, it  
8 is a five-prong professionalism in my opinion -- are more  
9 watchdog issues. One is regular audits from the  
10 appropriate office, whether it's an Office of Court  
11 Administration or comptroller's office. And also the  
12 judicial conduct commission is a valid and serious  
13 watchdog for those of us in the village and town courts.  
14 I know that their staff has been increased recently. We  
15 in the village and town courts welcome that. And one of  
16 the things that's important about increasing the staff at  
17 the judicial conduct commission is I know individuals who  
18 have been under investigation and it didn't pan out. The  
19 charges were dropped. With a larger staff resolutions can  
20 be reached quicker. So, I think it's a very positive  
21 aspect to increase the staff at the judicial conduct  
22 commission.

23 One thing you might be interested in -- and one  
24 of my other fellow village judges, Judge VanDerWater, will  
25 be testifying later today -- is that if you look at the

1 ratio nationally, it's my understanding -- he'll give more  
2 details, but if you look at the ratio nationally -- not  
3 nationally, statewide, in terms of lawyer/non-lawyer  
4 judges and discipline, if we just say hypothetically  
5 45 percent of the judges in the New York State are  
6 non-lawyer, then in the end 45 percent of the disciplinary  
7 proceedings are non-lawyer judges. It's not like there's  
8 45 percent non-lawyers judges and they account for  
9 80 percent of the disciplinary action. They account for  
10 the exact percentage of violations that reflect their  
11 population, so it matches their population. So, in my  
12 opinion, if 25 percent of the judges in New York State  
13 were non-lawyer judges, the way things work out they would  
14 be 25 percent of the disciplinary actions by the judicial  
15 conduct commission. It matches their percentage. So,  
16 this myth that non-lawyer judges out there are just not  
17 doing what they're doing and they're constantly being  
18 disciplined, it's a complete match in the ratio. There's  
19 no difference. So, I think that that reflects exactly  
20 what it indeed does reflect.

21 Concerning the action plan, I can tell you that  
22 I was involved in the action plan. I was a member of the  
23 committee that reviewed it. And generally the magistrates  
24 and the magistrates association always endorse the spirit  
25 and concept set forth in the action plan and of course we

1 know this is something that is an ongoing project and will  
2 go over several years. And as indicated by the prior  
3 speakers, I have not run into any town or village judge  
4 who is against or has voiced any objection at all to the  
5 action plan. I think it has been a very positive  
6 response.

7 I can say that there's obviously concern about  
8 lawyer and non-lawyer judges and I want to just start with  
9 something very general. In terms of population, the  
10 overwhelming majority of citizens in the State of New York  
11 are currently served by attorney judges. Obviously, all  
12 the New York City courts are lawyers, the district courts  
13 are lawyers, but in the town and village courts, and this  
14 is reflected in the action plan, of the 10 most populous  
15 counties outside of New York City, the 10 most populous  
16 counties, 80 percent, maybe even a little bit more than  
17 that by now, of the village and town judges are attorneys  
18 anyway. You go to my county, Nassau County, every village  
19 judge is a lawyer. Suffolk I believe might be the same,  
20 Westchester. I know if you go to Monroe and Erie County  
21 you would probably find the same percentages. The  
22 counties, just quickly, are Albany, Dutchess, Erie,  
23 Monroe, Nassau, Onondaga, Orange, Rockland, Suffolk and  
24 Westchester. Those are the counties.

25 Now, in the vast majority of those counties that

1 have very small populations, they are serviced by a vast  
2 majority of non-lawyer judges. And like I've said, I've  
3 seen this both as an educator and as president of the  
4 magistrates association when I traveled around the state,  
5 but I have found that many of these courts are small  
6 courts. They sometimes meet really only about once a  
7 month. And if they have a case that's of concern, that's  
8 of interest, they do have that time element to find out  
9 exactly what to do. If they know a preliminary hearing is  
10 coming up, they have plenty of time to prepare for that  
11 preliminary hearing. If it's going to be a particularly  
12 dicy plea bargaining situation where they want to  
13 negotiate, they have plenty of time to do the research, to  
14 contact the resource center, get that independent  
15 information that they need. They have the time. That's  
16 what I found. The smaller courts have a little more  
17 luxury of handling their calendars differently.

18 On my calendar, if you go to my court in Valley  
19 Stream -- I have court tonight. I have 322 cases on my  
20 calendar. And I'll get them done. I'll get them done by  
21 eleven o'clock, believe me, but basically you can do that  
22 as an attorney and as the experience, but in these courts  
23 you're talking four or five cases a month, and some of  
24 them are rather easily disposed. Some of them might be  
25 civil cases which are a different matter altogether.

1 I know that there is concern about the concept  
2 of trials, jury trials particularly, with non-lawyer  
3 judges. And all I can tell you is that once again in this  
4 area it doesn't happen a lot. In my 21 years as a village  
5 justice we're talking about three jury trials total. I  
6 know others who have been sitting on the bench for  
7 26 years, 27 years. They've had maybe four, five jury  
8 trials altogether. If there's a concern about that -- and  
9 I'll tell you right now, lawyers who generally don't  
10 practice criminal law who are village and town judges have  
11 the same concerns probably as a non-lawyer judge would.  
12 Where I am on Long Island in the North Shore there's some  
13 very affluent communities and we have some attorneys who  
14 practice more contract law in New York. They'll come out  
15 and handle a speeding case and it's a whole different  
16 world for them. So, they have to be trained and educated,  
17 too, in terms of trial practice and CPL. So, whether  
18 you're a lawyer or non-lawyer judge you have these  
19 concerns, I believe.

20 If it's really that much of a problem, there are  
21 provisions in the CPL right now that might be of an  
22 advantage to move a case to a court where there is a  
23 lawyer judge; CPL 170.15(3), the incapacitation of a  
24 judge. For whatever reasons the judge determines  
25 incapacitation, it could be moved to another court where

1           there may be a lawyer judge and also might be also moved  
2           up to indictable status under CPL 170.25. So, there's  
3           some provisions in the law available there, which the  
4           resource center would know and make available to any judge  
5           who would call up and inquire.

6                     The other question I have to inform you is about  
7           lawyers running for office for village or town judge.  
8           Basically, interestingly enough, in a lot of communities a  
9           lawyer might run for judge, a non-lawyer might run for  
10          judge. And sometimes the non-lawyer judge really does  
11          win. And that's part of the democratic process that we  
12          have. And that's something that we have to keep in the  
13          back of our minds, but I'll tell you, the conflicts  
14          really, really concern me. I think the way the conflicts  
15          are set up in terms of the judicial code really  
16          discourages lawyers from running for positions of village  
17          and town judge. And I'll tell you a classic example. And  
18          when I was president I tried to get something going with  
19          this, but it just didn't happen.

20                     If you're a village or town judge, well, first  
21          of all, obviously you can't appear in your county in any  
22          other village or town court. So, if you're a fellow, say,  
23          in a moderate population in Upstate New York and your  
24          practice is DWIs or traffic or maybe a small civil action,  
25          there goes your practice. You can't appear in any other

1 village or town court in that county. So, a village or  
2 town judge is going to make like 3 or 4,000 a year.  
3 You're not going to give up all that practice to do that,  
4 as much as what a great honor it is to serve your  
5 community as a village or town judge. So, that's one  
6 problem that you have, but secondly, which is of interest,  
7 even if you are the type of individual who's willing to do  
8 that, not only is there a conflict for you, but you've  
9 imposed a conflict on your entire family.

10 We had a judge down in Nassau County who sat  
11 once a month in a very small court. His daughter  
12 practiced law up in Binghamton. The daughter was young.  
13 She was taking a lot of appointments and she wanted to  
14 take some appointments in Surrogate and Supreme. A  
15 Supreme Court Justice said, I would like to appoint you to  
16 this or to that, in terms of, you know, in a competency or  
17 whatever. And she goes, I can't. And the Supreme Court  
18 judge said why. And she goes, well, my dad's a judge.  
19 And he goes, your dad's not a judge. I looked you up in  
20 the book. She goes, no, he's a village judge, a village  
21 judge in Nassau County, 260 miles away, but she couldn't  
22 take an appointment in Supreme or County because of the  
23 situation, because her father is a village judge 300 miles  
24 away in Long Island. And that's the way it's set up. And  
25 the same thing with, you know, a brother or a sister. It

1 prohibits family members -- not in the same county,  
2 anywhere in the State of New York -- from accepting an  
3 appointment. So, this judge that I'm talking about quit  
4 his village judgeship because he wanted to make sure that  
5 his daughter had a good practice up there. And we lost a  
6 very good village judge because of this rule.

7 Now, I prepared a memo when I was president and  
8 sent it to Judge Lippman and Judge Kaye. And I didn't say  
9 let's change the rule. All I said was let's open  
10 discussion on it. And I received a letter a week later  
11 saying no. So, that was the answer. It wasn't let's see.  
12 The answer was no. But that's one of the things that --  
13 sometimes the answer is no and there it was, but that's  
14 one of the things you have to keep in mind. These are  
15 things that we have to address in terms of assisting.  
16 It's Rule 36, I believe, Rule 36.

17 And there is a lot of provisions in there that  
18 are very commendable and very good. I think the rule was  
19 really written for full-time judges in the state who had  
20 family members who also were in the same courthouse, but  
21 interestingly enough with that rule is that you can still  
22 get 18-b appointments and still get Family Court  
23 appointments, which to be honest with you in terms of the  
24 judicial system is probably the less desirable ones and  
25 the ones they have harder times filling. So, if they're

1 allowed to get appointments to 18-b and they're allowed to  
2 get appoints in Family Court, why can't they receive  
3 appointments in Surrogate, why they receive appointments  
4 in Supreme. It's like, well, we'll do it here, but we  
5 won't do it there. The rule doesn't seem to even have a  
6 consistency to it. So, that's another thing I think you  
7 should seriously address and question as time goes on.

8 I think that as a general rule, it was discussed  
9 earlier, the interpreters. We in the magistrates have  
10 been lobbying for the last couple years to increase the  
11 fees for interpreters. Right now the state reimburses the  
12 village \$25 for an interpreter. We would love to have  
13 interpreters in my court. On Long Island we have  
14 individuals who speak Middle Eastern, many Hispanics. We  
15 are trying to increase that fee from 25 to \$200. And it  
16 might work itself out this year, but it's still difficult  
17 as such. It saves us from going back to our village  
18 boards or town boards and ask them questions as to that.

19 One last thing I just want to bring up is that  
20 please give the action plan its due. Please let the  
21 action plan grow and give it its day. My only concern  
22 here is that generally commissions are formed when there's  
23 a problem in the beginning or when you're reviewing  
24 something. And this commission is kind of reviewing  
25 something while we're already in the middle of something.

1 And what I'm trying to say, basically, is when the 9/11  
2 commission, to give an analogy, reviewed everything, they  
3 submitted proposals and they were given a chance to  
4 breathe. We didn't have a 9/12 commission the next day  
5 and continue reviewing it as such. So, I just ask you,  
6 give the action plan a chance. I think it's going to make  
7 a great deal of difference to those us in the village and  
8 town courts. And, as I said, we have a great tradition of  
9 serving the State of New York and we hope to continue in  
10 that capacity both lawyer and non-lawyer alike. Thank  
11 you.

12 CHAIRMAN DUNNE: I'll take one question. We  
13 have one minute.

14 MR. DANIEL L. FELDMAN, ESQ.: Assuming it were a  
15 good idea to require that town and village justices be  
16 attorneys -- and I'm not saying it is a good idea, but  
17 assuming it were, in your experience around the state, I'm  
18 wondering if you might think it impossible, given conflict  
19 rules, given the philosophy of attorneys, to find  
20 attorneys to be village justices in some of these locales?

21 HON. ROBERT BOGLE: It is going to be  
22 impossible. It is definitely going to be. There is a  
23 number of townships who, first of all, the townships have  
24 very few people, number one, and, number two, the fact  
25 that you're in a situation where the attorneys have

1 conflicts and they just don't want to do it because of  
2 that. So, there is no question that you're going to have  
3 empty seats scattered throughout the State of New York  
4 because of that.

5 CHAIRMAN DUNNE: Thank you. Thanks for your  
6 time.

7 HON. ROBERT BOGLE: Thank you.

8 CHAIRMAN DUNNE: Just for those of you who are  
9 new in the audience, we have a very strict schedule. So,  
10 even though we might appear rude, we're going to stick to  
11 20 minutes per speaker. Hopefully each speaker will allow  
12 some time for questions.

13 HON. ROBERT BOGLE: I'm sorry about that. I  
14 didn't realize that. You could have jumped in, really.

15 CHAIRMAN DUNNE: It was very interesting. Is  
16 Barbara Bartoletti in the audience? Thank you.

17 MS. BARBARA BARTOLETTI: Good morning. Thank  
18 you for this opportunity to comment before the Special  
19 Commission on the Future of New York State Courts on  
20 issues pertaining to the town and village courts. My name  
21 is Barbara Bartoletti and I am legislative director for  
22 the New York State League of Women Voters. We are the  
23 oldest and largest non-partisan voter education and  
24 advocacy organization in New York State with 60 local  
25 leagues statewide.

1            Court reform issues have been high priorities  
2            for the league for decades. We have positions on court  
3            restructuring, judicial selection, judicial discipline,  
4            Grand Jury procedures, and more recently the issue of  
5            judicial pay raises. Our grassroots activity from the  
6            local to the state to the national level, along with our  
7            league court-watching programs, have included the justice  
8            courts for many years. Before I begin I would also like  
9            to thank the commission through you, Judge Judith Kaye,  
10           for bringing attention and new energy to the issues  
11           affecting the structure and the operation of our courts.

12           In some respects our view of the justice courts  
13           is old news. In 1957, fully half a century ago, the  
14           league concluded that judges must be lawyers. And in 1961  
15           we called for abolishing town and village courts in favor  
16           of consolidated district courts. Some non-attorney judges  
17           are excellent and some attorney judges lack temperament  
18           for the bench, but on balance, modern justice standards  
19           call for judges who are educated in the law. The public  
20           cannot be confident in the fairness and accuracy of court  
21           proceedings unless judges are at least as well trained as  
22           the prosecutors, defenders and other lawyers in their  
23           courts. And many non-attorney judges may be very  
24           ill-prepared to decide today's complex legal issues.

25           Teachers must have master's degrees and surgeons

1 must have medical degrees. A judge's education should be  
2 equally if not more important. Undoubtedly, most judges  
3 are diligent, regardless of their educational status, but  
4 after 50 years of inaction on the status of the justice  
5 courts, it is time to take a fresh look at the system. We  
6 begin our fresh look not with philosophy but with  
7 pragmatism about what goes on in the court.

8 Each judge justice court is a hub of activity  
9 for many agencies in all levels of government --  
10 prosecutors, defenders, corrections, probation, police,  
11 the comptroller, the judiciary, and more. The resulting  
12 web of complex and often high-stakes interaction require  
13 that justice courts be properly funded and operated with  
14 proper facilities, security and administrative backup. If  
15 this is not the case, problems will begin in the justice  
16 courts and soon affect all the agencies involved.

17 We have concluded that there are far too many  
18 justice courts, nearly 1300 in most towns and villages of  
19 every size, for every court to operate efficiently, much  
20 less interact efficiently with these other agencies.  
21 Justice courts are a patchwork ranging from dignified to  
22 dangerous as demonstrated by the recent shooting in the  
23 Sloatsburg court. Thankfully, nobody died in that  
24 situation, but tragedy could be just around the corner.

25 The twenty-first century is a very different

1 world. Security needs have changed dramatically from the  
2 day when justice courts were established. We must ensure  
3 that the people who access our courts are as protected as  
4 are our legislators here in Albany. The truth is that  
5 most justice courts outside the state's population centers  
6 look and act little different than they did in the  
7 nineteenth century, and the modern world has left them far  
8 behind. In economic terms most town and justice courts  
9 are too small to justify the great expense of bringing all  
10 of these courts into the twenty-first century.

11 We see two structural problems with the justice  
12 courts and neither turns on the qualifications of judges.  
13 The first problem is that local funding hamstrings court  
14 operations, not because localities do not care, but  
15 because many localities have neither the incentives nor  
16 the resources to function better. Local control may be a  
17 sacred cow, but it should not have control over the way  
18 justice is implemented. We can't expect justice to be  
19 done well if judges make as little as \$5 a day and we  
20 cannot expect courts to be safe without major and costly  
21 changes to infrastructure.

22 The second problem we see is that there are too  
23 many justice courts to make these improvements feasible.  
24 A magnetometer, bench and computer system each costs the  
25 same regardless of how often or how rarely it is used.

1 Justice courts need a seed change. It's time to stop  
2 thinking about the courts as local and start thinking of  
3 them as part of the state judicial system. Justice is a  
4 state function. Justice courts are the face of the state  
5 judiciary. Their cases are every bit as important as  
6 cases heard in city courts and district courts and it's  
7 time for New York to have one unified court system. Local  
8 control of justice courts must end.

9 If most justice court cases involve local  
10 residents, perhaps the access to justice benefit of the  
11 local courts might justify having a court around every  
12 corner, but that's not the case. Most cases are traffic  
13 and low level criminal cases involving residents from  
14 other towns and other counties. So, most litigants  
15 already travel to so-called local courts. Anyone who has  
16 gotten a traffic ticket on their way to Rochester or  
17 Buffalo and has to return to somewhere between Rochester  
18 and Utica to attend a local court knows of that  
19 experience. That being so, it's time to consolidate  
20 justice courts. The smallest justice courts should be  
21 abolished, smaller justice courts merged, and large  
22 justice courts upgraded.

23 Most villages and towns can share courts and  
24 manage the politics by sharing revenues based upon where  
25 offenses are charged. There is no longer any logic to

1 town and villages with separate courts in the same  
2 building or across the street. The result would be a more  
3 nimble court system structured efficiently so taxpayers  
4 can afford the investments that modern justice requires.  
5 Justice courts would stay accessible and important parts  
6 of their communities, but gone would be the waste and  
7 danger associated with the current system.

8 With fewer justice courts, agencies interacting  
9 with them can do so more efficiently, court training and  
10 oversight can be more effective, and we can afford to make  
11 every justice court safe. The result would be a system  
12 that, the league hopes, voters and the legislature will  
13 recognize to be a workable solution that doesn't  
14 compromise our basic values. The results would be a  
15 system in which every court would be worthy of being  
16 called a court with the dignity and professionalism the  
17 name justice court implies.

18 My final comment would go to the  
19 attorney/non-attorney divide. Whether the district courts  
20 or justice courts or some third alternative, the league  
21 continues to believe that judges should be lawyers so that  
22 every litigant faces substantially the same administration  
23 of justice. It is wrong that litigants in a small city  
24 rely on appearing before a lawyer judge but litigants just  
25 over the town line cannot. Having fewer courts, by

1           whatever name we call them, would help attract more  
2           lawyers to judicial service in rural areas and make it  
3           more feasible to shift to an attorney only system, but if  
4           we retain non-attorney judges, fewer courts would mean  
5           more efficient training and supervision, more experience  
6           with relatively infrequent jury trials and motions and  
7           thus a higher quality of justice. If New York retains  
8           non-attorney judges, it becomes more important to reduce  
9           the number of courts so that experience and wise  
10          governance together can help them do the very best on  
11          behalf of their community.

12                        Thank you again for giving me the opportunity to  
13          address your commission on this important issue. Thank  
14          you very much.

15                   CHAIRMAN DUNNE: Thank you. Questions?

16                   HON. DAVID OTIS FULLER, JR.: Yes. Thank you.  
17          I just want to make sure. You're advocating consolidated  
18          justice courts or district courts? Which is the thing  
19          you're --

20                   MS. BARBARA BARTOLETTI: Consolidated village  
21          courts.

22                   HON. DAVID OTIS FULLER, JR.: Not district  
23          courts?

24                   MS. BARBARA BARTOLETTI: No.

25                   HON. DAVID OTIS FULLER, JR.: And they are going

1 to remain on a 24/7 basis for arraignments the way they  
2 are now?

3 MS. BARBARA BARTOLETTI: I think that would  
4 probably have to happen. I'm not the legal expert here,  
5 but I assume that would have to happen, yes. And I might  
6 tell you, Lenore Banks, who I think some of you may be  
7 familiar with, who sits on most of our judicial  
8 commissions, is out of the country today. So, I'm filling  
9 in for her. So, I do not want to pass myself off as the  
10 expert she would be on this issue, but to the extent I can  
11 answer your question, I'm certainly willing to do so.

12 HON. DAVID OTIS FULLER, JR.: Do you have any  
13 examples of some of the complex issues that you feel  
14 should not be handled by non-attorneys judges?

15 MS. BARBARA BARTOLETTI: That are now being  
16 handled?

17 HON. DAVID OTIS FULLER, JR.: That should not be  
18 handled.

19 MS. BARBARA BARTOLETTI: That should not be  
20 handled?

21 HON. DAVID OTIS FULLER, JR.: Right.

22 MS. BARBARA BARTOLETTI: I think there are  
23 probably some civil cases that shouldn't be done by  
24 non-attorney judges. And I think there are probably more  
25 complex, I guess would you call them, criminal, other than

1 the arraignment for people who might be petit theft. I  
2 think as you get up the ladder of the more complex  
3 criminal issues I think you also run into those problems.

4 HON. DAVID OTIS FULLER, JR.: Do you have any  
5 examples of any complex issues that you think  
6 non-attorneys can handle?

7 MS. BARBARA BARTOLETTI: I'm sure Lenore would,  
8 but I can't think of anything.

9 MS. EVE BURTON, ESQ.: Why don't you ask her to  
10 supplement the record. You make very important points and  
11 I think it would be useful to know specifics.

12 MS. BARBARA BARTOLETTI: Absolutely we can do  
13 that for you. Thank you.

14 CHAIRMAN DUNNE: Do you have a question, Judge  
15 Wolfe?

16 HON. TERENCE WOLFE: In your visits and court  
17 watches have you visited any traffic adjudication bureaus?

18 MS. BARBARA BARTOLETTI: Some of our local  
19 leagues probably have, particularly upstate. I, as  
20 legislative director, don't get out to do much of the  
21 court watching, but I'm sure we have in some of the  
22 upstate communities. I would assume that. We have been  
23 doing it for a very long time. We do it a lot in domestic  
24 violence courts and I think probably in many of the  
25 communities they do it in the traffic. Do I have personal

1 experience in that? No.

2 HON. TERENCE WOLFE: I would be interested to  
3 know whether you thought justice was better served in an  
4 adjudication bureau, which is a consolidation, than it  
5 would be in an individual court with a non-attorney judge.

6 MS. BARBARA BARTOLETTI: Off the top of my head  
7 I would say yes, we would think it would, but I can  
8 certainly get you more input on that issue also.

9 CHAIRMAN DUNNE: Eve Burton.

10 MS. EVE BURTON, ESQ.: Yes. I wanted to ask  
11 whether or not it would be possible to have the league put  
12 forth something into the record about what their position  
13 would be in terms of different types of cases, in terms of  
14 something like traffic violations. Is there any  
15 difference in the league's position in a traffic violation  
16 case as opposed to, say, a jury trial case or even any  
17 kind of criminal case? And I'm wondering if we can just  
18 get a little more granular in the types of cases.

19 I'm very interested in your perspective because  
20 we get an awful lot of people who feel very strongly  
21 lobbying in the other direction and I think some of the  
22 issues you raise are very, very important. And what I  
23 would like to do is just see whether or not there are any  
24 ways to, if you will, split the baby in term of the types  
25 of cases, the jurisdiction that could be given to a

1 broader other court, however we want to define it, or  
2 whether or not the league's position is no cases should be  
3 heard and all consolidations should occur for every case.

4 MS. BARBARA BARTOLETTI: Okay. I'm sure we can  
5 do that for you. Thank you.

6 CHAIRMAN DUNNE: Dan Feldman.

7 MR. DANIEL L. FELDMAN, ESQ.: On the question of  
8 reducing the number of village courts versus  
9 accessibility, a number of our members were on the North  
10 Country tour. I was not on that one, but I'm wondering  
11 whether -- and based on what I heard, maybe somebody who  
12 was on that trip could follow up. I got the impression  
13 that, although as you point out a substantial percentage  
14 of people who appear before those courts are not from the  
15 area, nonetheless a significant percentage are local  
16 people who an arraignment may have to take place at any  
17 hour and so forth. Some of the distances involved in that  
18 part of the state are very considerable. And I'm  
19 wondering how you put together the desire for reduction in  
20 the number with a desire to retain the kind of  
21 accessibility that those courts now provide, and even now  
22 some of the distances are substantial.

23 MS. BARBARA BARTOLETTI: You're talking about  
24 for the purposes of arraignment or even traffic court,  
25 those types of things?

1 MR. DANIEL L. FELDMAN, ESQ.: Local basis.

2 MS. BARBARA BARTOLETTI: Local basis. On the  
3 broader scheme I think justice demands that we really do  
4 have very appropriate, safe courts on the one hand and  
5 accessibility, as you point out, on the other. And I've  
6 traveled to the North Country. There is three or four  
7 leagues up there that I travel to in the off session and I  
8 know travel can be a problem, but when you're talking  
9 about accessibility, you're talking about accessibility  
10 for the people appearing before the courts, not the  
11 defendant who gets carted around by police and by  
12 sheriffs, et cetera.

13 MR. DANIEL L. FELDMAN, ESQ.: That too, because  
14 the problem is that one element of justice, obviously, is  
15 the ability to not be -- not, you know, wait tremendous  
16 amounts of time for your case to get at least arraigned.  
17 So, I think that is relevant.

18 MS. BARBARA BARTOLETTI: I think there's a real  
19 delicate balance between balancing the efficiency and  
20 superior makeup of the court so that we assure that  
21 justice is good, along with having access.

22 Now, I'm assuming that whether there are  
23 attorney or non-attorney judges, that these people are  
24 able to access a court within a 24-hour to 35-, 36-hour  
25 period of time. I know judges -- I've lived next door to

1 one for many, many years. I know they get up in the  
2 middle of the night often if there is a case that demands  
3 their attention, usually someone they have to get lockup  
4 for somewhere along the line, but I think there is a way  
5 and I think the action plan goes to most of it about  
6 having both consolidation and assuring rapid access if  
7 that is necessary, but I don't think we should be  
8 compromising. Right now I think we are compromising an  
9 awful lot on one side and not getting an awful lot of  
10 better efficiency to allow for that. So, I think we do  
11 have to look at consolidation and balance the efficiency  
12 along with the consolidation.

13 CHAIRMAN DUNNE: Judge Lack.

14 HON. JAMES J. LACK: The last time OCA proposed  
15 a change in the manner of how state-paid courts are  
16 composed in terms of times, changing quarter judges to a  
17 half or three-quarter judges to the full, it took  
18 three years from the time that they first proposed the  
19 change for it politically to go through the legislature  
20 with a thousand different changes that took place. Does  
21 the league have a methodology about how you would  
22 consolidate the courts?

23 I mean, we have towns and we have villages that  
24 have the ability to have town and village courts. They  
25 are known geographical entities. So, what would the

1 league suggest to do to reorganize the composition of  
2 these courts and how they exist? What would be the  
3 political boundaries that courts would be established for,  
4 since they wouldn't be district courts, as you just said,  
5 but we would still maintain some type of local court  
6 system, albeit on a state-controlled basis? What would be  
7 the geographical access and how would these courts be  
8 established?

9 MS. BARBARA BARTOLETTI: Well, the boundaries  
10 right now I assume are town boundaries and villages within  
11 them.

12 HON. JAMES J. LACK: But you're talking about  
13 1300 of them are too many and you want to consolidate them  
14 down. How would you do that?

15 MS. BARBARA BARTOLETTI: We haven't seen  
16 legislation to do this yet. And, as you know, the  
17 political system here is maybe diligent but certainly is  
18 protracted. So, I think what we would look at is any  
19 proposal that OCA came out with to do that. And I assume  
20 all these folks are OCA folks. I know David Marcus is.

21 HON. JAMES J. LACK: You would like OCA to  
22 propose that?

23 MS. BARBARA BARTOLETTI: Well, I would assume  
24 that they have a fairly good handle, along with this  
25 commission, but certainly if this is something that the

1 commission -- they have an action plan and the commission,  
2 Judge Judith Kaye and your commission. I assume that  
3 there have been some proposals. We would take a look at  
4 those. We would propose that the courts be consolidated  
5 in whatever provides for efficiency and also for access.  
6 Again, it's a balancing, but we do think something needs  
7 to be done and we would be looking at both the proposal  
8 that comes out of this commission and a proposal that  
9 might come out of OCA and see if we can get a bill before  
10 the legislature and get it done.

11 CHAIRMAN DUNNE: We will move to the next  
12 witness. Thank you very much.

13 MS. BARBARA BARTOLETTI: Thank you very much.

14 CHAIRMAN DUNNE: Is Judge Brian Herman present?

15 HON. BRIAN J. HERMAN: Good morning.

16 CHAIRMAN DUNNE: Good morning.

17 HON. BRIAN J. HERMAN: Esteemed members of the  
18 Special Commission on the Future of the New York State  
19 Courts, my name is Brian Herman, I'm a town justice and a  
20 practicing attorney for over 23 years. I was in private  
21 practice for 18 years in New York City. And since 2001 I  
22 have maintained a small law firm in rural Columbia County.

23 In 2005 the people of Copague, New York,  
24 bestowed upon me the honor of being elected as their town  
25 justice. Throughout my legal career I have appeared in

1 dozens of local towns and village courts, city courts and  
2 district courts on Long Island, as well as the various  
3 trial level courts for the Unified Court System.

4 I am testifying before your Committee today to  
5 ask that the commission take special heed to the Unified  
6 Court System's mission statement which is "To promote the  
7 rule of law and to serve the public by providing just and  
8 timely resolution of all matters before the Court."

9 It is my experience that the level of  
10 jurisprudence administered in town and village courts is  
11 so varied and at times so arbitrary that a litigant cannot  
12 possibly be assured that they will be afforded a  
13 resolution of their matter in accordance with the goals of  
14 the Unified Court System's mission statement.

15 While some local courts are run at a high level  
16 of professionalism, I must sadly report that based upon my  
17 anecdotal observations that it is more likely than not  
18 that proceedings in the local courts will be conducted  
19 without any consideration of fulfilling the mission  
20 statement of the Unified Court System.

21 The first part of the mission of the Unified  
22 Court System is promoting the rule of law. With so many  
23 local courts run by lay judges who have either a very  
24 narrow understanding of the law or a down-right ignorance  
25 of the law, I cannot see how the rule of law can be

1 promoted. Many judges do not know what the rules of law  
2 are. This can only be addressed by raising the  
3 qualifications which any person must possess whom is to  
4 preside as a judge in a New York State court.

5 A legal education is a must. The professional  
6 training that attorneys must achieve, as well as the  
7 experienced and practicing attorney benefits from set the  
8 foundation for at least aspiring to promote the rule of  
9 law. I believe the public expects this knowledge,  
10 training and professionalism from their judges. It is  
11 almost ludicrous that to practice as an attorney in New  
12 York State requires rigorous achievements of admission to  
13 the bar while the only requirement to be a town or village  
14 justice is local residency, 18 years of age and an absence  
15 of a felony conviction.

16 Logic dictates that in order for a person to be  
17 qualified to sit as a judge in New York State that person  
18 should have a law degree, and have at least five years of  
19 experience as a practicing attorney. A law degree  
20 requirement is a standard for all other courts, so I ask  
21 why should it be different for local justices? Surely an  
22 unqualified judge sitting in a town or village court can  
23 do as much damage to individuals and society as a whole as  
24 an unqualified judge sitting in any other court in New  
25 York State.

1           The next part of the mission statement refers to  
2           the courts as serving the public. As the system stands  
3           today town and village courts are focused on serving local  
4           and municipal interests rather than the public at large.  
5           Local courts are at the mercy of town and village boards  
6           and the politics under which these boards function. The  
7           ability of local government to have undue influence on  
8           their courts by controlling the court's finances is  
9           undeniable. Without necessary resources the rule of law  
10          cannot be promoted. By giving town and village courts  
11          control over the court facilities the justice remuneration  
12          and the staffing of the courts, it is no surprise that  
13          local courts often become subservient to local  
14          politicians, elected and otherwise.

15                 As for the part of the mission statement that  
16                 states, "Providing just and timely resolutions of all  
17                 matters before the courts," right now no one can assure  
18                 just and timely resolutions consistently among the town  
19                 and village courts.

20                 Town and village courts are presided over by  
21                 judges who many times do not achieve their position based  
22                 upon qualifications but are installed in office based upon  
23                 political patronage and cronyism. The reality is that  
24                 many towns and villages in New York State are dominated by  
25                 one political party, and the candidates designated by the

1 dominant party officials is almost assuredly to be elected  
2 judge. Because of this dominance of a single party in  
3 many localities most voters in the local elections do not  
4 have a real choice of candidates. So, instead of the  
5 collective wisdom of the populous choosing the best person  
6 to be their judge, it is the local party bosses who decide  
7 who will become the judge.

8 While this criticism can be made with regard to  
9 any elected judicial position, it is even more so true  
10 when it comes to towns and villages. This is because  
11 local justice, are not high-profile candidates. Local  
12 justices are not highly paid positions which attract the  
13 attention of those most qualified. Since local justice  
14 positions are not usually highly competitive, candidates  
15 for local justice positions are not held up to the same  
16 scrutiny of the press, local bar associations, and  
17 well-funded competing political campaigns.

18 It seems more likely than not that many of the  
19 local justices are retired law enforcement officers or  
20 other government retirees who have spent their careers  
21 functioning in government contending with the local  
22 patronage system. The focus is on job security rather  
23 than the administration of justice.

24 This situation, coupled with inadequate  
25 training, forces situations that only can result in

1           injustice. Compounding the problem is that the system  
2           seems to almost discourage practicing attorneys from  
3           seeking a judgeship. While local judges are considered  
4           part-time employees in most towns and villages, the  
5           restrictions as to where a lawyer who is also a part-time  
6           judge may practice is draconian and only acts to  
7           discourage the most qualified from seeking judicial  
8           office. You're a witness on the stand. I ask the  
9           Committee to look deeply into the existing restrictions  
10          and to determine the relevance of these restrictions in  
11          today's world and to weigh the benefits against the  
12          detriments.

13                 There are no performance standards to which  
14          local courts are held. The cases can linger while  
15          litigants' rights are prejudiced. Or judicial decisions  
16          may be made without adequate research and deliberation.  
17          There are no law clerks. Albeit the resource center does  
18          a great job if and when a judge decides to seek their  
19          guidance, there are no detailed standards for record  
20          keeping. There is no centralized computer program that  
21          requires individual courts to adhere to a best practices.  
22          There are no oversight or system in place to check that  
23          the functions of local courts are being carried out  
24          properly and timely.

25                 I respectfully suggest to the Committee that the

1 local courts be standardized in procedures and that each  
2 justice be held to a higher standard. Check lists and  
3 flow charts should be provided to the local courts to make  
4 sure each step in the legal procedure has been considered  
5 and carried out where applicable.

6 I know that many consider an upstate district  
7 court system to be an unspeakable proposition. This is no  
8 surprise. District courts would disrupt local influence  
9 and patronage that effects so many local courts. It cuts  
10 off much fine revenue that many local government boards  
11 rely upon to contribute to their town or village budget.  
12 Many local justices would be put out of a job. However, I  
13 ask the Committee to consider a district court system, if  
14 not statewide, at least in the more populous counties.  
15 The resistance is gigantic I know. It will take great  
16 courage to effectuate such reform. But the elimination of  
17 inefficient, unprofessional and an unjust local court  
18 system would be a watershed event. It would be a state  
19 that would be akin to when the federal government took  
20 drastic actions to ensure the segregation in all 50  
21 states. It would be the State of New York ensuring that  
22 justice is carried out in all New York courts in every  
23 town and village.

24 I pray that this commission, Unified Court  
25 System, and the state's elected officials find the wisdom

1 and the courage to take on this momentous task. Then the  
2 courts in New York State will truly be unified. Then we  
3 can achieve the mission statement of the Unified Court  
4 System. Thank you for your time and the honor of speaking  
5 before your commission today.

6 CHAIRMAN DUNNE: Thank you. Questions? Judge  
7 Simons.

8 HON. RICHARD D. SIMONS: You propose that all  
9 judges should be attorneys. How do you accomplish that in  
10 places like Hamilton County where there are no attorneys?

11 HON. BRIAN J. HERMAN: I guess that is where  
12 either a district court system or a centralized court  
13 system would be most applicable. Obviously, there has to  
14 be a population base to support the bar. But if the  
15 prohibition against practicing attorneys appearing in  
16 various courts is lifted, I mean -- I presume if there's a  
17 town court in a town there has to be at least one -- has  
18 to be at least two attorneys in that town, right?

19 HON. RICHARD D. SIMONS: I don't think so.

20 MS. EVE BURTON, ESQ.: Yes.

21 HON. BRIAN J. HERMAN: Or at least in the  
22 vicinity to support that court. You know, what I'm  
23 saying? Attorneys are part of the court system,  
24 obviously, and there have to be attorneys available to  
25 each court. So maybe it isn't as impossible as some like

1 to portray it. I've not done a -- clearly, I've not done  
2 the analysis of the --

3 HON. RICHARD D. SIMONS: I'm just asking  
4 pragmatically can your desire be solved? Are there  
5 attorneys who can do it?

6 HON. BRIAN J. HERMAN: I don't know if the  
7 studies have been made of the distribution of attorneys in  
8 the various towns or counties, but on a county-wide basis  
9 I'm confident there's probably qualified candidates in  
10 each county.

11 CHAIRMAN DUNNE: Any more questions?

12 HON. DAVID OTIS FULLER, JR.: Yes. You were  
13 mentioning how politics enters in to a large extent with  
14 the selection of town and village judges. Are you  
15 suggesting that that would improve; there would be less  
16 politics if they were just limited to lawyers?

17 HON. BRIAN J. HERMAN: Well, I believe that as  
18 the position becomes more widely available it will become  
19 more competitive. And, you know, as long as there are two  
20 candidates who are opposed, chances are you're going to  
21 get the better of the two. At least I believe so. When  
22 the positions are so localized that the pool upon which  
23 perspective candidates can be drawn from the number of --  
24 there was less interest outside the local towns. And the  
25 ability to have a larger court, a more qualified judge,

1 and I guess a better paying job would attract more  
2 prospects. And I think that would break the strong hold  
3 of local government. Of local political parties, excuse  
4 me.

5 HON. DAVID OTIS FULLER, JR.: The district  
6 courts that you are advocating, would they be open on a  
7 24/7 basis?

8 HON. BRIAN J. HERMAN: I'm not an expert in  
9 efficiency and things like that. Will televised  
10 arraignments in certain situations be permitted? You  
11 know, things to deal with practicality -- I mean the same  
12 problems that we have now in the village court system of  
13 the 2 a.m. arraignments that town and village judges like  
14 to talk about all the time. Yeah, it exists and the need  
15 to bring an arrested person in front of a judge as quickly  
16 as possible is of paramount concern, and that has to be  
17 the number one issue.

18 However, I think there may be more official ways  
19 to process defendants than having a building and a staff  
20 working 24/7. I don't know.

21 HON. DAVID OTIS FULLER, JR.: Now, in Nassau  
22 County they do have district courts, but they retain the  
23 village courts. In your system would you retain the  
24 village courts as well as the district?

25 HON. BRIAN J. HERMAN: Well, I don't know enough

1 really to answer that, quite honestly. I don't see why  
2 villages are retained and towns aren't. I'm sure there's  
3 some logic to it, but I don't have that knowledge.

4 CHAIRMAN DUNNE: Any other questions?

5 HON. TERENCE WOLFE: You state that if there was  
6 an electoral system in the larger areas or a bigger pool  
7 to draw from, then the more qualified attorney judge would  
8 be the person elected. How would you explain to a town  
9 like Cheektowaga which is one of the largest courts in the  
10 state which has an elected non-attorney judge and has had  
11 for more than 20 years?

12 HON. BRIAN J. HERMAN: I can't comment on any  
13 particular town or any particular judge. But the fact is  
14 is that it's my experience -- again, I'm new to Upstate  
15 New York like I testified to. I've only been up here full  
16 time for the last five-, six years. But small towns tend  
17 to have small governments that have tight political  
18 parties. And the status quo would seem to be more  
19 permanent in a smaller jurisdiction than it is in a larger  
20 one where there's more mobility and more turnover of  
21 population. It doesn't surprise me that only one person  
22 has held this job for years. People may not be aware of  
23 the qualifications. It may not be publicized. The  
24 political party who is in power in that town, whichever  
25 party that might be, would have no interest in competing

1 or probably be an opponent. The opposing party is so  
2 impotent that they don't -- I mean look at the other  
3 candidates in that town, how much turnover there is in any  
4 of the positions, you know.

5 HON. TERENCE WOLFE: Also in your opening  
6 statement you say the town and village courts are the only  
7 courts that did not require an attorney. Is that your  
8 statement?

9 HON. BRIAN J. HERMAN: Well, the only I guess  
10 statewide court system I think. There's some  
11 administrative bureaus might not require it.

12 HON. TERENCE WOLFE: Are you also aware that the  
13 U.S. Supreme Court does not require you to be an attorney?

14 HON. BRIAN J. HERMAN: That's a law that is 200  
15 some odd years old, right?

16 HON. TERENCE WOLFE: A lot of old laws are good  
17 though.

18 HON. BRIAN J. HERMAN: I think some laws have to  
19 change also. I think that's part of why this commission  
20 is looking towards the future, it's not looking for what  
21 was done 200 some odd years ago.

22 CHAIRMAN DUNNE: Ms. Burton.

23 MS. EVE BURTON, ESQ.: I appreciate a lot of  
24 your comments. One question I have for you is do you see  
25 any distinction between the criminal and the civil? I

1 mean to the extent it's sort of Upstate New York where you  
2 have these geographical constraints that maybe if what  
3 we're talking about is parking tickets being 50 percent of  
4 the docket, that one could make a distinction between that  
5 and issues where people's rights are, you know, more  
6 intensely at stake?

7 HON. BRIAN J. HERMAN: I guess maybe something  
8 akin to the small claims court system and the New York  
9 City court system where you have a lay arbitrator or a lay  
10 judge which there is an immediate path for appeal to a  
11 full judge. That may be one way of compromising.

12 CHAIRMAN DUNNE: Okay. Thank you very much.

13 HON. BRIAN J. HERMAN: Thank you very much.

14 CHAIRMAN DUNNE: Is Greg Lubow present?

15 MR. GREG D. LUBOW, ESQ.: Yes. Right here.  
16 Good morning. My name is Greg Lubow, I'm a sole  
17 practitioner in Tannersville, New York, about an hour  
18 south of here in the great Catskill mountains. You're all  
19 invited to come join us, we can use the money. Tourist  
20 money.

21 I am a vice president of the New York State  
22 Association of Criminal Defense Lawyers, a statewide  
23 private bar association of criminal defense lawyers nearly  
24 1,000 members strong. I practice in the justice courts,  
25 practice everywhere. I'm here speaking on behalf of

1 myself and on behalf of the Association and it's members.

2 Why am I qualified to be here? I'm practicing  
3 for nearly 30 years in the justice courts. I've appeared  
4 in courts as far north as Massena, New York, on the  
5 Canadian border; as far south as the Town of Greenberg and  
6 Village of Scarsdale in Westchester County; as far west as  
7 Hancock Town Court in Delaware County on the water gap; as  
8 far west as Oneonta and Davenport Town Courts. I've  
9 appeared in dozens and dozens and dozens of town courts  
10 from Westchester to the Canadian border along the Hudson  
11 River. In the mid-Hudson Valley, to the Connecticut  
12 border, to the Massachusetts border, to the Vermont  
13 border. I've been doing this for 30 years. That's why  
14 I'm here.

15 If you think my practice is only limited to  
16 criminal defense in justice courts, I do traffic tickets,  
17 I do parking tickets. In the last two years I've been  
18 involved in five homicide cases, two have gone to jury  
19 verdict. I'm preparing my third trial homicide for later  
20 this fall. For 27 years I was the chief public defender  
21 of Greene County which was a part-time position. I've  
22 been in the justice courts every night for many, many  
23 years.

24 The Association's position is a very simple one.  
25 The current system cannot -- repeat, the current system

1 cannot provide the constitutionally mandated due process  
2 required. It's just that simple. The system has to be  
3 dismantled. It has to be replaced with a district court  
4 system with lawyer judges only.

5 If there's anyone in this room that in their  
6 wildest dreams would consider starting from scratch to  
7 create a criminal justice system that looks anything like  
8 the justice court system today, let me tell you folks  
9 there's a bridge in Brooklyn I'd like to show you because  
10 maybe you would be interested in buying it.

11 1,270 justice courts created in the 1700s. It's  
12 absurd. The duplication of services is ridiculous. It  
13 was created at a time when traveling five miles between  
14 communities over dirt roads and through the woods and  
15 forests would take three to four hours. If you had a  
16 wagon it might take a whole day. Today traveling five  
17 miles takes five minutes. Why in the world are we  
18 continuing to tinker with a system like this is beyond me.  
19 It's a waste of the resources of all of us to be here,  
20 quite frankly. You know what's wrong with the system, you  
21 don't need me to tell you that.

22 The reality is that when we talk about maybe  
23 we'll consolidate some courts because we don't need these  
24 limited jurisdictions. Maybe we'll just consolidate  
25 courts. Well, what are you talking about? You're talking

1 about a district court. So call it what it is and do it  
2 the right way. It's just that simple. The training of  
3 judges -- I'm glad that Mr. Wolfe asked about the United  
4 States Supreme Court because the United States Supreme  
5 Court in *Estes v. Texas* 381 U.S. 532 said, "Use of non-law  
6 trained judges is a procedure that, quote, 'involves such  
7 a probability that prejudice will result that is deemed  
8 inherently lacking in due process.'" Period. End of  
9 discussion.

10 You can increase the training from one week to  
11 seven weeks as the action plan calls for. By the way,  
12 that ain't happening. You know, your judges -- your town  
13 and village judges are not giving up two months of their  
14 lives to get training. You're talking about training  
15 that's going to be less than what a first-year law student  
16 gets in two months. They're not going. That's not going  
17 to happen. And even with seven weeks you are not going to  
18 be able to impress upon them and inculcate them on what a  
19 judge is supposed to do. These are people that come from  
20 a system where they were the justice of the peace. They  
21 were members of their town board. They were the  
22 protectors of the community. They are not impartial  
23 judges. They are not people who consider the evidence in  
24 a cold sometimes hard way and come to a legal decision.  
25 They're the people that have to go to the coffee shop the

1 next morning and say, "Why the heck did you let that kid  
2 out of jail? Why didn't you put him in jail? We know he  
3 broke into the house." The political and personal  
4 pressures on those judges is incredible.

5 Let me stop right here and let me tell you  
6 personally -- and I said this when I testified at the  
7 senate and the assembly -- personally I hold the men and  
8 women who are town and village judges in the highest  
9 esteem. They do great work with the resources that they  
10 have. They are dedicated servants. They are doing  
11 wonderful community service. All the good work, all the  
12 good intentions to the contrary is irrelevant because the  
13 issue here is not their good intentions and not their good  
14 efforts. The issue is very simple: Due process. We're  
15 lawyers. Due process. Keep your eye on the ball.  
16 Anything less than providing due process doesn't work.  
17 It's not constitutional.

18 By the way, I was quoting from *People against*  
19 *Charles F.* a 1983 case where Judge Kaye wrote -- she was  
20 then the Associate Judge. She wrote a dissenting opinion,  
21 four to three. The other two dissenters with her were  
22 then Chief Judge Lawrence Cook and then Associate Judge,  
23 soon to be Chief Judge, Sol Wachland. They were writing  
24 about this very issue.

25 Judge Kaye also wrote in that decision, "A

1 layperson, regardless of his educational qualifications or  
2 experience, is not a constitutionally acceptable  
3 substitute for a member of the bar." And citing *People*  
4 *against Felder*. Now, in the *Felder* case they were talking  
5 about who can represent a person in the court. And I'm  
6 sure you heard this argument, as brilliant a lawyer as I  
7 might be, if the judge doesn't understand my arguments  
8 because they're not properly trained, what good am I? I'm  
9 a potted plant. It doesn't work.

10 When you're talking about anything less than  
11 throwing it out and starting over with the district court  
12 system and lawyer judges, you're wasting everyone's time.  
13 You're tinkering with a system that is unfixable. Having  
14 said all that -- having said all that -- as an association  
15 we ask that you come to that conclusion; just say, "Look,  
16 this just isn't working."

17 Now, in the short term -- because I've heard the  
18 lack of political will, at least in the Senate, to make  
19 any changes. I was there when Senator DeFrancisco said to  
20 four judges who were testifying before him, "Don't worry,  
21 we're not going to make any changes." It's on the record.  
22 You can hear it. I was there. Everybody in the room  
23 heard it. I was two speakers behind them. Why did I come  
24 up? Why did we waste our time? Why did they hold  
25 hearings? It was a waste of time.

1           However, here's something you might want to take  
2           to the Senate and the Assembly. One of the issues in this  
3           is the quality of the judges. The qualifications, not  
4           quality, I'm sorry. The qualifications of the judges. As  
5           an individual lawyer representing an individual client I  
6           will use every tool in my tool box to get the best result  
7           for my client in the current system. But as a systemic  
8           matter it doesn't work.

9           So my suggestion would be that someone present  
10          an amendment to CPL Section 170.25, which is the  
11          divestiture statute and now requires good cause. You have  
12          to show good cause that the judge won't be able to  
13          understand. Now that's never happened. That motion is  
14          never going to be made. You have to do it in advance, you  
15          can't do it -- it has to be -- you have to figure out that  
16          gee maybe the judge won't understand. And then the county  
17          court judge has to come up with a decision that says  
18          you've proven your case that this judge is incapable of  
19          understanding. Now, what county court judge is going to  
20          look at a town court judge and say, "You're incompetent."  
21          It ain't happening. That's why those motions don't get  
22          made.

23          So instead, to add a level of competence in  
24          quality of education my suggestion would be to amend  
25          170.25 to allow, upon the request of the defendant, that

1 all pretrial hearings and the trial, if there is one, be  
2 conducted by a lawyer trained judge. It's not that hard.  
3 It's just not that hard. The application goes to the  
4 county court, the county court assumes jurisdiction. You  
5 don't need an indictment, you just create a circumstance  
6 that this is allowed. The county court judge can keep the  
7 case if it's interesting to him or her. They can assign  
8 it back to a lawyer judge within the county, within the  
9 town judge system. Or, we have a lot of JHOs looking for  
10 \$200 a day. That's what their salaries are. Maybe we'll  
11 send it to a JHO. Someone with proven experience. And  
12 you know what, it doesn't create a due process system, but  
13 it does in fact address one of our major concerns. You  
14 get lawyers presiding over the preliminary hearing. You  
15 get lawyers presiding over the probable cause hearing.

16 Now, that still doesn't resolve the arraignment  
17 situation. I mean, since 1983 when Judge Kaye wrote her  
18 dissent what's changed in the criminal justice system?  
19 Has it gotten simpler? Absolutely not. Look what a town  
20 judge has to deal with now: Orders of protection,  
21 suspension pending prosecution. Suspension pending  
22 prosecution has the greatest impact on the middle class.  
23 And I have judges in the last two months -- one in the  
24 last week who don't have a clue as to suspension pending  
25 prosecution. Any drinking driving offense comes before

1           them, "I have to have your license, I'm sorry."

2                       "I'm sorry, Judge, it's a DWAI, it's not under  
3           the statute."

4                       "Give me your license."

5                       "I'm sorry, I live in New Jersey."

6                       "Give me your license."

7                       "I'm sorry, Judge, I would like to get an  
8           adjournment to get a lawyer."

9                       "You can have an adjournment to get a lawyer,  
10          give me your license." This law has been in effect for 12  
11          years. Ask a judge why are they taking the license, "OCA  
12          said I got to take the license. DMV says I got to take  
13          the license the first time I see them." That's it. Just  
14          ask them. That's the reality out there. That happens  
15          every night.

16                      I had a judge call me up -- my client hasn't  
17          been arraigned yet, he's in Boston, he's a college  
18          student, he's coming back. He hasn't been arraigned yet.  
19          "Well, can you give me his license, I have to suspend his  
20          license."

21                      "I'm sorry, Judge, we're not ready. He's not  
22          here. You've adjourned the arraignment until..."

23                      "Gee, I've got to get his license, what am I  
24          going to do? God forbid this young person has an accident  
25          or drinks and drives again, people are going to criticize

1 me."

2 "With all due respect, those are the issues in a  
3 Pringle hearing." That's what's going on out there.  
4 That's the reality.

5 What other issues would a district court solve?  
6 Well, access to court. I hear a lot about access to court  
7 in these proceedings. Access to the Court, people say  
8 what's more convenient? Oh, come on, folks, this is 2007.  
9 You know, we don't need two village courts and a town  
10 court in the Town of Hudson with 4,000 people in it.  
11 Access to court; access to court means that if there's a  
12 district court -- which by the way does not have to be  
13 based in the county seat, it can ride a circuit. You can  
14 have more than one in a county, depending on size. But  
15 access to court means the judge is going to sit there five  
16 days a week instead of one day a week at night for an  
17 hour. That the district attorney is going to staff the  
18 court every minute rather than showing up once a month,  
19 which is the reality in justice courts. And we're going  
20 to have cases that are resolved in days rather than in  
21 months. And if you're the person sitting in jail on a  
22 misdemeanor charge for two months while your attorney,  
23 meets with the DA and the judge once a month, your case is  
24 going to get resolved in five days instead of eight weeks.

25 And what does that do? It frees up jail space

1 in our local jails so we don't have to board them out.  
2 It's going to free up deputies. Instead of the sheriff  
3 bringing in two deputies for each transport and taking his  
4 cars and riding all the heck over the county at night with  
5 two or three prisoners or one prisoner to each different  
6 court you can schedule all your jail cases for the  
7 centralized court. Lawyers are going to be able to  
8 schedule their -- you know, maybe they'll get home at  
9 night. After I leave here I've got the Town of Hunter  
10 Court and then I've got the Town of Saugerties Court and  
11 then I've got the Village of Tannersville Court. This is  
12 what I do for a living.

13 Those are some of the real issues that are out  
14 there. Again, our association believes that the only way  
15 for due process to be met is to throw it out and replace  
16 it. We understand the political difficulties, we  
17 understand the constitutional difficulties in doing that.  
18 But when you talk about consolidation, that's all you're  
19 talking about; creating district courts. Just giving it a  
20 different name.

21 My last comment is why am I sitting here and not  
22 over there? I look around, I know Judge Stack from her  
23 days with Legal Aid, I know Mr. Mollen from when I was  
24 living in Brooklyn. Grew up born and raised there.  
25 Graduate of Brooklyn Law School. I know Mr. Mollen. But

1 why are the criminal defense lawyers who practice in the  
2 justice courts not on your commission? I looked at the  
3 list, I didn't recognize any names. I know you have three  
4 town judges. But why are we here giving you testimony  
5 instead of sitting there and helping you craft your  
6 reports? I don't have an answer for that. So I'm  
7 available for any questions.

8 CHAIRMAN DUNNE: Questions? Mr. Fuller.

9 HON. DAVID OTIS FULLER, JR.: Yes. You  
10 mentioned that you run into pro-police and pro-prosecution  
11 judges. Were you saying that was just non-attorney judges  
12 or attorney judges both?

13 MR. GREG D. LUBOW, ESQ.: I run into judges who  
14 are pro-prosecution who are both lawyers and non-lawyers.  
15 However, it's more blatant, more obvious with judges who  
16 are lay judges rather than lawyers -- judges who are law  
17 trained. I ran into a New York City police officer who  
18 somehow got appointed to be a town judge in one of my  
19 courts one day. And Jack was a nice guy if you were a  
20 cop. And, you know, I brought a Pringle case with me for  
21 my first appearance in front of him. Brought the Court of  
22 Appeals case with me. "Mr. Lubow, I'm taking your  
23 client's license." I said, "No you're not, Judge."

24 "Well, why the heck not?" I said, "Well, here's  
25 the case called Pringle which says you have to hold a

1 hearing before you do that."

2 "Well, you've got me now." Luckily, Judge Jack  
3 when it came time for election -- he was appointed by the  
4 town board. When it came time for election the citizens  
5 realized what he was, very pro-police, and they didn't put  
6 him in.

7 I've seen judges -- you know, I've been in  
8 courts where the cop says, "Judge, this guy is going to  
9 jail tonight," and the judge says, "Well, you're right."  
10 I've also seen judges say, "Excuse me, that's my decision,  
11 don't you think?" So, yeah, I think it happens more with  
12 lay judges than with lawyer judges, but that's simply the  
13 way it is. So many lay judges in our communities come  
14 from law enforcement backgrounds. And that doesn't mean  
15 that they're forgiving. There's a town judge in Orange  
16 County, Town of Walden I think, when I was there several  
17 years ago the cop didn't show up within 15 minutes of his  
18 court time, "case dismissed." On the other hand, I've  
19 been in courts where, you know, the cop doesn't show up  
20 for a trial and the defendants there and says, "Dismissal,  
21 please, Judge," and the judge says, "I'm sorry, we're  
22 going to adjourn because maybe the cop is on a call  
23 somewhere." It happens. It happened, you know, weeks  
24 ago. I've seen it.

25 HON. DAVID OTIS FULLER, JR.: Are you opposed to

1 part-time judges regardless whether they're lawyers or  
2 non-lawyers?

3 MR. GREG D. LUBOW, ESQ.: I believe that the  
4 system works as -- is going to work with full-time judges,  
5 yes. I've made the quote, "Part-time judges give  
6 part-time justice." That's correct. I believe that this  
7 system doesn't work that way. People say, "Well a  
8 district court won't be as available as town judges for  
9 arraignments." Nonsense. You just write it in there,  
10 they'll be available. In New York City they're available  
11 24/7. So who says that the district court judge because  
12 they're a lawyer is not going to get out of bed at two  
13 o'clock in the morning. They've got the weekend duty. If  
14 there's an arraignment at two o'clock in the morning you  
15 go do it. Part-time judges don't serve any purpose. I  
16 think you need full-time judges.

17 HON. DAVID OTIS FULLER, JR.: Now, you mentioned  
18 the case of *Charles F.* As far as you know that's still a  
19 good law in New York?

20 MR. GREG D. LUBOW, ESQ.: As far as I know.  
21 *Charles F.* has not been overruled. *Charles F.* is the case  
22 that is not -- 1983 there have been so few challenges  
23 because the burden on the defendant to show good cause is  
24 just so overwhelming from a legal standpoint and from a  
25 personal standpoint. I mean, I have good relationships

1 with some of the judges I appear in front of. They're  
2 friends. I've seen them golfing, I've see them at  
3 functions. There's Judge Roberg who I've appeared in  
4 front of from the Town of Cocksackie Court many times.

5 The reality is that what lawyer in his right  
6 mind is going to make a motion in front of the town judge  
7 about a town judge and say, "Judge, you're incompetent."  
8 Because that's what the motion has to say, "You're  
9 incompetent, you can't hear this case." Now all of a  
10 sudden it's personal. How am I going to appear in front  
11 of that judge next week or the week after or the week  
12 after and expect to get treated fairly. It's a personal  
13 situation that you get into. So the reality is there's  
14 just a porosity of cases challenging this issue.

15 I suggested to our leadership that we should  
16 just draw up a standard motion and have every one of our  
17 attorneys, 900 plus, you know, make this motion each time  
18 you appear in justice court. Maybe then someone will get  
19 the picture. The problem is when you're representing one  
20 individual client your obligation is not to the system,  
21 your obligation is to that client to do the best for that  
22 client. And, therefore, making this motion may not be in  
23 that client's best interest for lots of reasons.

24 CHAIRMAN DUNNE: Ms. Burton.

25 MS. EVE BURTON, ESQ.: Two questions I guess.

1 One would be is there anything at all about the system  
2 that you could say is positive?

3 MR. GREG D. LUBOW, ESQ.: The people --

4 MS. EVE BURTON, ESQ.: Wait, wait, wait. And  
5 second of all, I appreciate a lot of your comments about  
6 the criminal defense bar. I've done criminal defense  
7 work, First Amendment work and I've done a lot of  
8 constitutional work. Of course, some of the judges have  
9 legal aid experience. But I think you raise a very fair  
10 point I think in terms of our deliberations that bring  
11 something to the process that we need to be focused on.  
12 So I thank you for that.

13 And I agree with you, by the way, having now  
14 read an incredible amount of testimony and heard from a  
15 number of people in the commission, so it's very difficult  
16 to refute what you're saying intellectually as lawyers who  
17 have some appreciation for constitutional rights of the  
18 accused particularly. I may be a little bit less  
19 sympathetic on the little issues like small claims, but I  
20 certainly hear you on the constitutional issues and on the  
21 efficiency in some of the political patronage.

22 MR. GREG D. LUBOW, ESQ.: I didn't say anything  
23 about political patronage.

24 MS. EVE BURTON, ESQ.: Well, I mean taking that  
25 as part of the argument that, you know, perhaps you can

1 better qualify people if you open up the process. My  
2 question to you really is is there anything you can point  
3 to, having someone who has an awful lot of experience  
4 day-to-day with the system presently constructed, that is  
5 positive so that it might be kept or incorporated into any  
6 suggestions that are made?

7 MR. GREG D. LUBOW, ESQ.: If you're going to a  
8 district court system -- and I call it a district court  
9 system. If you're going to consolidate courts, which is  
10 one suggestion I've heard at different times. If you're  
11 thinking of consolidating courts, creating district  
12 courts, the people in the system -- and quite frankly, as  
13 I said -- when I said that we have the highest respect for  
14 these people, we do. Ninety-five percent -- as in life,  
15 ninety-five percent of the people are extraordinary  
16 people. They're extraordinary in their private lives,  
17 whether they're plumbers or electricians, school bus  
18 drivers. The judges out there, school teachers -- the  
19 judges out there do a wonderful job with the tools that  
20 they have. And they're very -- most of them are very  
21 accessible. The clerks that run those courts are  
22 extraordinarily helpful as are clerks in many courts. You  
23 know, I can call up the town court and say, "I just got a  
24 call from a guy who says he thinks he's in the Town of  
25 Hunter Court, do you have his case?" And she'll stop and

1 she'll look and she'll find the case. But there's going  
2 to be consolidation somewhere. There's going to be a  
3 strengthening of the case somewhere. There has to be.  
4 You can't continue with 1200 courts. It's silly.

5 The system is set up to serve itself. The  
6 people serving the system work very hard and are very  
7 diligent about it. I rarely run into a quote unquote  
8 nasty clerk. And I call clerks in different courts that  
9 I've never appeared in front of and they're  
10 extraordinarily helpful. They're accessible, they're  
11 helpful. You call and they don't overstep their bounds by  
12 saying, "The judge will do this."

13 "We'll talk to the judge about that."

14 I have a case where there's some pretrial  
15 publicity out there. It was created in some court  
16 records. I called up the clerk, I said, "Did you meet  
17 with the reporter? Did the judge meet with the reporter?"  
18 She says, "I'll find out." Very accessible. In terms  
19 of --

20 MS. EVE BURTON, ESQ.: Hopefully the answer was  
21 "yes".

22 MR. GREG D. LUBOW, ESQ.: The answer was no she  
23 hadn't, quite frankly, it came from the prosecutor. But  
24 that's another story. I mean, you're asking what's good  
25 about the system? The personal aspect is good about the

1 system. The personal contact is good about the system.  
2 But as a system of criminal justice, I would expect that  
3 the clerks in the district court and the judges in the  
4 district court would have the same -- we won't have the  
5 same access to say hello and good-bye and having coffee in  
6 the coffee shop next to them every day, but that aspect  
7 will stick around.

8 So, yes, there are goods things. But as the  
9 system goes, from a criminal justice standpoint, yeah,  
10 each individual lawyer can utilize the system to their  
11 client's best interest. And other than that -- I have  
12 colleagues that say, "Greg, we like the system. Why would  
13 I -- you know, we like the way -- going to justice court  
14 because we think we have an advantage rather than  
15 appearing in front of a village judge or town judge where  
16 we have a personal relationship and we can do the  
17 talking." You have to remember 90 percent or more of the  
18 cases are resolved through plea-bargain. The proposal I  
19 made to 170.25 would not present that. If the case can be  
20 resolved, fine. But once you get to the point where  
21 you're going to have hearings, let's get it in front of a  
22 lawyer and let's get it in front of someone who  
23 understands the law.

24 CHAIRMAN DUNNE: It's time for the next witness.

25 MR. GREG D. LUBOW, ESQ.: Okay. My pleasure.

1 Any other questions?

2 CHAIRMAN DUNNE: No more questions. Thank you.

3 MR. GREG D. LUBOW, ESQ.: David, good to see  
4 you. Thank you.

5 CHAIRMAN DUNNE: Thank you. Robert Tembekjian.

6 MR. ROBERT TEMBEKJIAN, ESQ.: Good morning. The  
7 commission obviously has been the state agency that's  
8 responsible for investigating and where appropriate  
9 disciplining judges for engaging in ethical misconduct.  
10 And we have had a lot of experience over the years both  
11 with full-time and part-time judges because our  
12 jurisdiction is statewide and it covers the entire unified  
13 state court system.

14 I'm probably going to disappoint you in saying  
15 that the commission has purposefully never taken a  
16 position on two of the more significant issues that you  
17 will be dealing with. One is whether the town and village  
18 court system ought to be replaced and, secondly, if it is  
19 not replaced whether or not all judges of those courts  
20 ought to be lawyers. And let me just make a comment as to  
21 why we avoid taking public positions on those two  
22 subjects, because fundamentally we want to be sure to  
23 avoid even the appearance that any decision that the  
24 commission has made was influenced by the nature of the  
25 court on which the judge sat or the qualifications in

1 terms of legal education or non-legal education of the  
2 individual judge who is being disciplined. The rules on  
3 judicial conduct apply to all judges in all courts and the  
4 commission applies them fairly and equally to all judges  
5 of all courts and there is not a separate set of ethical  
6 mandates for judges of one type of court or another or one  
7 pre-judicial qualification or another.

8 Now, that said, let me point out that there are  
9 a number of areas in which we have had experience that you  
10 might consider addressing, both substantively and  
11 organizationally. Substantively, in my experience, with  
12 very few exceptions -- and I've been with the commission  
13 in one capacity or another for about 30 years -- there is  
14 no type of misconduct that a judge of a part-time court,  
15 lawyer or non-lawyer, is more likely to engage in than the  
16 judge of a full-time court. We have had public  
17 disciplines of judges who have failed to accord litigants  
18 their due process rights on full-time courts law trained,  
19 part-time courts law or non-law trained, inappropriate  
20 ex parte communications, the assertion of the influence of  
21 office for private benefit. These broad categories of  
22 misconduct that we have been dealing with for over  
23 30 years have applied to judges of all levels of our  
24 judiciary.

25 There are a couple of areas, though, where there

1 seems to be some more likelihood that a judge of a  
2 part-time court, and particularly a non-law trained judge  
3 of that court, might find himself or herself in ethical  
4 difficulty. One of them has to do with the handling of  
5 money, which is something that in the full-time courts the  
6 judge does not do and the judge is typically not  
7 responsible for it. If you pay a fine, you don't give the  
8 check to the judge. The judge is not literally  
9 responsible under the law to make sure that that check  
10 gets into a bank account controlled by the court and then  
11 remitted to the state comptroller, but in the part-time  
12 town and village court system it is the judge who is  
13 responsible for the fiduciary obligations of the finances,  
14 whether the judge handles the money individually or  
15 oversees a clerk.

16 And probably the single most active area of  
17 disciplines by the commission over the years, about one  
18 out of every six of our public disciplines, has involved  
19 the mishandling of court funds, which appears as much to  
20 be a function of the structure of the court as the  
21 individual who is presiding over the cases. So, to the  
22 extent that you may have the opportunity to observe and  
23 address the organizational structure of these courts, I  
24 would suggest that you pay some significant attention to  
25 crafting a system, whether the court is part-time or there

1 are two or three judges in a particular town, but there is  
2 a full-time clerk or a full-time structure where one or  
3 two or three judges in the area can rely on the full-time  
4 clerk who is properly trained to deal with finances, to  
5 deal with records keeping.

6 In some places in New York -- and I would  
7 suggest a couple of examples. Judge Wolfe mentioned  
8 Cheektowaga earlier. There is a fairly sophisticated  
9 structure, clerical structure, in Cheektowaga, in Amherst.  
10 Both of those are in Erie County. I believe in Tuckahoe,  
11 where Judge Fuller is, there is a significant mechanism  
12 for dealing with the administrative functions of the  
13 court. And to the extent that you've got a trained  
14 professional core that will be able to assist the judge, I  
15 believe you will see and we would ultimately see at the  
16 commission a decrease in the number of complaints we get  
17 involving the mishandling of funds or the misplacement of  
18 court records which lead to other problems such as  
19 inordinate delay in rendering decisions. Again, these are  
20 not structural issues that are unique to the town and  
21 village courts, but we tend to see more issues on this  
22 subject where the actual administrative detail of the work  
23 of the court is the responsibility of the judge.

24 And a second area, which is clearly unique to  
25 this level of court, concerns the practice of law by

1 part-time judges who happen to be attorneys before other  
2 part-time judges in the same county who also happen to be  
3 attorneys. There is a prohibition against it, for an  
4 obvious reason, because it would at the very least appear  
5 to be the taking care of one another by the judge who  
6 practices law before me one day and is going to preside  
7 over my case in his own court the next day. It's very  
8 difficult to imagine that a litigant is going to feel, on  
9 the opposite side of one of those two judges, that he or  
10 she is going to get a fair shake, even if it does in fact  
11 happen that the case is decided on the merits.

12 The geographical limitation, however, of the  
13 county boundary in this day and age tends not to take into  
14 account that a judge might end up practicing law across  
15 the county line only five miles away in front of a judge  
16 that he or she knows quite well; whereas, a judge on the  
17 opposite end of that very same county would be prohibited  
18 from hearing the case by this particular lawyer judge even  
19 though they don't know each other and are not likely to  
20 practice very often before one another.

21 So, you might want to take a look at whether the  
22 current geographical structure is sensible. It's clearly  
23 easy to understand. County lines are on every map in New  
24 York State and you can tell by looking at it if you can  
25 practice in one or the other, but it really doesn't make a

1           heck of a lot of sense to say that it's all right to  
2           practice five miles across the county line if you happen  
3           to live close to the county line, but you can't go  
4           50 miles to the other end of the county and practice  
5           there.

6                       The commission has publicly said that it is  
7           fully appreciative and supportive of the action plan that  
8           Chief Judge and then Chief Administrative Judge Jonathan  
9           Lippman had proposed, because it addresses the third area  
10          that I wanted to comment on as being relatively if not  
11          unique than more common to the town and village courts.  
12          And that has to do with training and education. As you  
13          know and as you'll be hearing probably ad nauseam  
14          throughout your hearings, there's no requirement that the  
15          judge be a lawyer, but there's no requirement that the  
16          judge have any educational credential, not a college  
17          education, not a two-year associate's degree from a  
18          community college, not even a high school education. And  
19          we have seen too often town and village justices,  
20          particularly the non-lawyers, who don't have a fundamental  
21          appreciation of the role of a judge. And I believe and  
22          the commission believes that that can be addressed by  
23          extensive and appropriate training, because as I said in  
24          my earlier remarks, even this area is one that is not  
25          unique to the town and village courts. Probably the most

1           egregious cases involving the abuse of rights that the  
2           commission has publicly resolved has been against  
3           full-time judges of city courts and higher, all of whom  
4           are law trained. So, this is not something that is  
5           unique, but it is something that we are more likely to see  
6           in our non-public disciplines.

7                     One of the significant tools that the commission  
8           has available to it is the non-public confidential letter  
9           of dismissal and caution to a judge, which is the way we  
10          educate individual judges when we come across  
11          circumstances that in one or two isolated instances a  
12          judge didn't understand that he was not the prosecutor or  
13          that you have to take a plea before you can sentence  
14          someone or that there is the due process right to be heard  
15          and that if a witness comes in and testifies but the  
16          witness was never served with documents, you can't render  
17          judgment against the witness. There are plenty of  
18          examples like that of well-intentioned but fundamentally  
19          unjust results that are purely a matter of training and  
20          education. So, to the extent that we can do it with these  
21          letters of caution we do.

22                     Up until this year we have not had the resources  
23          to be able to follow up on any of these cautions to  
24          determine if the judges whose conduct we have privately  
25          identified as needing amending has in fact changed, but as

1 some of you, certainly all the judges, are aware, the  
2 commission's budget was increased by the legislature this  
3 year. And as a result of that, we've taken a couple of  
4 initial steps and I hope to actually employ one or two  
5 individuals whose role will be training and education or  
6 assistance with the court authorities, the magistrates  
7 association on the training and education program so that  
8 from our experience as to what has gone wrong we can give  
9 some advice on how to stay out of trouble, because  
10 although many of my adversaries might not believe it, our  
11 ultimate goal is not to increase the number of disciplines  
12 that we render each year but in fact the opposite. By the  
13 public educational value, the judicial educational value  
14 of the public disciplines we render, by the work that this  
15 commission, chief judge's action plan, the work of the  
16 judicial institute and magistrates association, we hope to  
17 reduce the number of disciplines so that ultimately,  
18 although I think there will always be a need for a  
19 Commission on Judicial Conduct, that the workload will  
20 reduce as the quality of justice improves.

21 And let me just give you a couple of examples of  
22 what we've done already in this regard. Working with the  
23 magistrates association and particularly with Judge Fuller  
24 and his vice president, Ed VanDerWater, we've designated  
25 my deputy administrator from our Rochester office to be a

1 permanent liaison to the magistrates association. And  
2 we've been invited to participate in their conference this  
3 October particularly to comment and train on how to avoid  
4 the ethical pitfalls. We've designated someone now to be  
5 a liaison with the judicial institute so that we will have  
6 someone working on training and education with the court  
7 system as it tries to deal with the system we have while  
8 those in authority, based on either your recommendations  
9 or other legislative movement, might ultimately change or  
10 reaffirm the system that we have.

11 And in terms of the administrative structure of  
12 the court, some of you may or may not know, and I hope you  
13 get to appreciate, the tremendous resource you have on the  
14 commission in Terry Wolfe who runs a software company that  
15 actually supplies the program that a lot of town and  
16 village courts use so that their systems will be  
17 electronically recorded, monitored. It reduces the kinds  
18 of problems that result from some of the courts that are  
19 still basically using the old pencil and ledger book. And  
20 we've invited Terry to come to our own annual staff  
21 training and education programs. And I think we made some  
22 significant improvements to one another's understanding of  
23 how the system works. Simple things, just a very simple  
24 thing.

25 The law requires that if a person is served with

1 a summons on a vehicle and traffic case, a speeding case,  
2 that they have to be given a trial date, but there were  
3 too many courts, we were discovering, that were mandating  
4 a pretrial conference, which was not only contrary to law,  
5 but it was quite inconvenient to someone who might live in  
6 Westchester, was caught speeding in Buffalo, wants to  
7 plead not guilty and is told he has got to come back  
8 twice, first for a pretrial conference and then after she  
9 or he gets there and they can't agree, the arresting  
10 officer might not be there or they might not agree to a  
11 reduction, they've got to come back a week or ten days or  
12 two weeks later for a trial. Those documents are often  
13 automatically generated, the call, the response to the  
14 motorist to come back. The judge doesn't even necessarily  
15 see it. It might go out by a clerk. It's just something  
16 they photocopy, put in the name of the motorist and send  
17 it off. If there are ways -- and I think automating the  
18 system is a significant way of dealing with this -- where  
19 you can take out from the automatically generated notices  
20 that these courts send out the errors of law, you will  
21 have an enormous improvement both in the public relations  
22 of the court and in the dispensation of justice in those  
23 courts.

24 So, those are a few of the observations that I  
25 pulled together since I was called by Elliot on Friday and

1 asked to come by and speak and to answer whatever  
2 questions you might have. Clearly, you have a very  
3 important role and I hope you're not too disappointed that  
4 I'm not going to deliver a lecture on whether judges  
5 should all be lawyers or non-lawyers or whether you should  
6 scrap the system altogether, but I hope you will keep in  
7 context what I said a couple of times, that many of the  
8 problems that we've identified in these courts are in fact  
9 applicable to all the courts, particularly in the  
10 substantive areas. And with that I'll answer any  
11 questions you might have on anything but a pending case.

12 CHAIRMAN DUNNE: Judge Boyers.

13 HON. SEYMOUR W. BOYERS: Yes. Mr. Tembekjian,  
14 you have indicated that the most active area of discipline  
15 is the mishandling of funds and you've recommended that  
16 there should be a clerk and trained personnel that would  
17 be able to supplement the handling of these funds for the  
18 village as far as the village and town judges are  
19 concerned.

20 MR. ROBERT TEMBEKJIAN, ESQ.: Yes.

21 HON. SEYMOUR W. BOYERS: Earlier Mr. Younkins  
22 who spoke for OCA indicated that they were implementing  
23 and expanding a program for permitting credit cards to be  
24 used so that there will be the less handling of actual  
25 funds and money. Do you think that in and of itself would

1 have any impact on the problem that you have seen in the  
2 mishandling of money?

3 MR. ROBERT TEMBEKJIAN, ESQ.: I think, Judge  
4 Boyers, to be honest, almost any financial reform, while  
5 likely to solving some problems, is going to generate some  
6 others. The credit card problem I think is a very  
7 important step forward. I expect that we'll see some  
8 instances of credit card fraud now being brought to our  
9 attention, a dishonest clerk who might crib the  
10 information on somebody's credit card and end up helping  
11 himself or herself to funds that they're not entitled to.  
12 That caveat aside, I think it would be a significant step  
13 forward. However, I think we also have to remember that a  
14 vast majority of litigants that the town and village  
15 courts serve are people who unlike probably everyone in  
16 this room may not have a credit card, who pay \$15 at a  
17 time, who ask for an installment plan.

18 The credit card reform, important as it is, is  
19 not going to reach everybody and it's not going to take  
20 the place of the handwritten receipt that the person gets  
21 and is going to want to walk out of the courtroom with.  
22 So, yes, it's important. Yes, I happen personally to  
23 support it. And I think it will go a long way, but it's  
24 going to create some new problems that we're going to have  
25 to learn how to deal with and it's not going to help

1           everybody. I can't say that I could estimate what  
2           percentage of litigants are not going to be able to pay by  
3           a credit card, but I think you need to be mindful that  
4           there are a significant number of New York residents who  
5           walk around without credit cards.

6                     CHAIRMAN DUNNE: One more question. Gary.

7                     MR. GARY S. BROWN, ESQ.: A witness earlier this  
8           morning made the comment that the rate of discipline of  
9           non-attorney judges is roughly proportionate to the  
10          overall disciplinary rate. I was wondering if you could  
11          comment on that both for non-attorney town and village  
12          judges and attorney town and village judges and has there  
13          been any change or trend over the years?

14                    MR. ROBERT TEMBEKJIAN, ESQ.: On the  
15          commission's website we actually keep a running total of  
16          disciplines broken down by town and village courts and  
17          other. And if you go through our individual annual  
18          reports you can actually break down the town and village  
19          courts, how many of those are lawyers and how many of  
20          those are non-lawyers. The trend has been roughly static,  
21          I would say, over the last 20 to 25 years in this respect.

22                    The percentage of overall disciplines that the  
23          commission has imposed has roughly equaled the percentage  
24          of town and village courts versus full-time courts. About  
25          two thirds of our public disciplines have been against

1 town and village court justices and that's about the  
2 percentage of the overall judiciary that they make up.  
3 And the same is true, roughly speaking, of lawyers and  
4 non-lawyers. There's one statistic, however, where there  
5 is a skew, and that's as to conduct that is egregious  
6 enough to warrant removal from office. And there the  
7 percentage of town and village justices who have been  
8 removed from office is about 76 percent of our total,  
9 which is more by about 10 or 11 percent of the total  
10 population of the judiciary that they make up. And I  
11 think that's because of the two areas that I was referring  
12 to.

13 Finances. We take the same view of financial  
14 impropriety as a grievance committee would of lawyer  
15 escrow mismanagement. If you're fooling around with the  
16 money, you're gone. If any of it got into your own  
17 pocket, I should say, you're gone. There are occasions  
18 where our disciplines are censured or admonished where  
19 the judge was not personally responsible, where the judge  
20 took appropriate steps on learning that there was  
21 financial mismanagement by the people that the judge  
22 supervises, but generally speaking, because those courts  
23 handle the funds, where the full-time courts don't, that's  
24 one explanation for why there are more removals among town  
25 and village court justice. And the other is because, as I

1           said, we're more likely to see a fundamental  
2           misunderstanding of the role of a judge which leads to  
3           egregious violations of due process rights which the Court  
4           of Appeals has said is not mutually exclusive of judicial  
5           discipline.  Something can be an egregious error of law  
6           and it can be a judicial discipline.  A case can be  
7           reversed by a higher court and the judge can be  
8           disciplined by the Commission on Judicial Conduct all for  
9           the same conduct, but those two categories aside, it's  
10          roughly equal.

11                 The one other thing I also have to say to be  
12          fair statistically is that complaints against town and  
13          village court justices, while numerically and  
14          statistically less than the percentage of the court system  
15          that they make up, are more likely to be meritorious and  
16          investigated, in our 30-some-odd-year experience.  So,  
17          about one third of the complaints we get are against town  
18          and village justices even though they make up two thirds  
19          of the court system, but about 60 percent of our  
20          investigations involve judges of those courts, all of  
21          which suggests to me that the need for training and  
22          education as to the fundamental role of the judge is a  
23          critical component.

24                 And let's be very honest about this, it's going  
25          to cost the state money.  It's going to cost more than the

1 initial \$10,000,000 that the Office of Court  
2 Administration is getting the program started with. We're  
3 talking about a vast network. If you want to keep it in  
4 place and if we're going to improve the quality of  
5 justice, it's going to have to be a policy decision by the  
6 legislature to invest this kind of funding in the system,  
7 because the Office of Court Administration, as you know,  
8 doesn't foot the bill for these courts. These courts are  
9 essentially funded by their municipalities. And one  
10 reason why it has been politically unpalatable to change  
11 the system, to do away with the system, is because dollar  
12 for dollar it's probably the most cost effective bargain  
13 in all of New York State government. You've got judges  
14 who for the most part are earning 4 or 6 or \$8,000 a year  
15 paid for by the municipality, not by the state, but they  
16 are reaping hundreds of thousands of dollars, in gross  
17 aggregate millions of dollars, to the state in fines and  
18 fees just from speeding tickets alone.

19 So, if the legislature is serious and if you're  
20 going to recommend some sort of fundamental change in the  
21 way the courts are structured, even if you keep them, to  
22 educate and make sure that they have administrative  
23 apparatus, the money is going to have to come for it  
24 somewhere and that's going to be a commitment that is  
25 going to be huge, huge.

1 CHAIRMAN DUNNE: I'm afraid we're out of time.

2 MR. ROBERT TEMBEKJIAN, ESQ.: That's okay.

3 CHAIRMAN DUNNE: Thank you very much.

4 MR. ROBERT TEMBEKJIAN, ESQ.: I got off cue.

5 Thank you.

6 CHAIRMAN DUNNE: Mr. Beltramo.

7 MR. WADE BELTRAMO, ESQ.: Good morning. My name  
8 is Wade Beltramo. I am counsel to the New York State  
9 Conference of Mayors, also referred to commonly as NYCOM.  
10 NYCOM represents 581 of the state's city and village  
11 governments. Of those we represent 519 of the 556 village  
12 governments.

13 Chairman Dunne, commissioners, I want to thank  
14 you for affording me the opportunity to express the views  
15 of the Conference of Mayors on the village justice court  
16 system. I'm not going to read the testimony that I  
17 submitted. I've submitted a written copy for your review.  
18 I would like to make several brief points before answering  
19 any questions of the commission.

20 One of the benefits of working for NYCOM is not  
21 only that we get to represent the mayors and trustees of  
22 the State of New York and the other officials and  
23 employees who work very hard, often for little or no pay  
24 in what is commonly referred to as a part-time job where  
25 they spend, in some instances, more than 40 or 50 hours in

1 excess of their full-time jobs, but in many respects NYCOM  
2 represents the residents of those villages.

3 New York is a home rule state and villages have  
4 the benefit of being one of the most democratic forms of  
5 government in the state. They are formed and abolished by  
6 the residents of those communities, as are the justice  
7 courts themselves. And that is another unique benefit of  
8 the justice court system, is that unlike any of the other  
9 court systems, including the town justice courts, villages  
10 are not required to have justice courts. In fact, of the  
11 556 villages 220 villages have made the decision not to  
12 have a justice court.

13 This has many other benefits which we consider  
14 of value to the community. It creates the flexibility in  
15 the justice court system for local governments to consider  
16 many factors which this commission is going to be  
17 considering when it makes its final recommendations and  
18 proposals for reform of the justice court system.  
19 Villages take into consideration, of course, the revenue  
20 that the courts will generate for the municipality, but  
21 that is by no means the key or even primary factor in many  
22 instances. There are many village justice courts that  
23 have their justice court even though the revenues  
24 generated do not exceed the costs of actually operating  
25 the justice court. They do so because it provides a

1 convenience to the residents of the municipality. It  
2 provides a convenience to the municipality itself. If you  
3 look at this -- and one of the factors that is often  
4 overlooked is it is an expense for local government  
5 officials to have their officers -- whether it is police  
6 officers, code enforcement officers -- appear in court.  
7 They often prosecute the cases because there are not  
8 prosecutors in the local courts. And as a result, that is  
9 a lot of time if they were having to go to a town court  
10 that may be 40 or 50 minutes away. That is not good use  
11 of the local official's time.

12 I do want to talk briefly about the action plan  
13 because NYCOM is very supportive of the action plan and  
14 thinks that many of the criticisms that were highlighted  
15 by the *New York Times* articles and both the state  
16 comptroller's report that was issued in May of 2006 will  
17 be addressed by the action plan recommendations. I  
18 believe we are already seeing some of the benefits from  
19 the action plan. And NYCOM was pleased to actually see  
20 that involvement from the Office of Court Administration,  
21 something that we've been looking for for some time.

22 One thing I would like to note is that NYCOM was  
23 disappointed we were not involved in the decision-making  
24 process, we were not involved in forming the action plan  
25 or making any of the recommendations or reviewing the

1 action plan before it was issued. And I would say that's  
2 also one of the criticisms we have of this commission. I  
3 know one of the previous speakers noted that as well. The  
4 town and village justice courts are integrally involved  
5 and related to the villages themselves and there is not a  
6 representative, neither a village mayor nor town  
7 supervisor, sitting on this commission. NYCOM is  
8 disappointed in that.

9 I will say that one of the frustrations that  
10 local government officials have, but we also have a  
11 profound respect for and I think needs to be addressed by  
12 the commission and considered, is the issue of separation  
13 of powers. Local government officials have profound  
14 respect for the separation of powers. They recognize the  
15 separation of powers. And that has been one of the  
16 issues, that when our mayors or trustees have seen  
17 something that they think is untoward or improper in their  
18 justice court, they had really nothing that they could do  
19 except for referring that to the Office of Court  
20 Administration.

21 I will also say that there's been some criticism  
22 of justice courts, despite the fact that when villages  
23 make their recommendation or decision not to have a  
24 justice court, for whatever reason -- and we have seen a  
25 recent trend in the abolition of village justice courts

1 for a variety of reasons -- cost reasons, inability to get  
2 a justice to serve or run for office -- that when those  
3 cases are transferred to the town court we heard a cry  
4 from the town court saying this is unfair. We're now  
5 shouldering the burden of adjudicating these cases. I  
6 would like to note, first of all, that there's no  
7 statutory authority for an additional fee to be charged to  
8 the villages, but also that the village residents actually  
9 pay town taxes that support the town justice court system.

10 A couple other points. The cost of  
11 administering the justice courts has become a bigger issue  
12 of late. Local governments have been struggling in the  
13 past couple decades with struggling economies in their  
14 community, a reduction in aid that they receive from the  
15 state, an increase in the number of unfunded mandates from  
16 the state. And so, while it is not, again, the only  
17 consideration that villages look at when determining  
18 whether or not to have a justice court, the issue of  
19 revenues from the justice courts is a key issue. However,  
20 the common complaint that local governments treat the  
21 justice courts as a piggy bank I think is a fallacy.

22 I would like to note that with the exception of  
23 the recent allocation by the state legislature of  
24 \$10,000,000 to provide resources for the justice courts,  
25 as a general rule all of the expenses in the past have

1           been paid and shouldered by the town and villages in which  
2           the justice courts are located. I would also like to note  
3           that of the revenues collected from justice court  
4           adjudications, over 49 percent of the revenues collected  
5           are distributed not to the towns and villages but to the  
6           state and the counties. I think that that is one of the  
7           issues that must be addressed and looked at, is what is  
8           the rationale for how the money is distributed based upon  
9           whichever fines are imposed, because it is a Byzantine  
10          structure that has come about over decades of legislation.

11                 I'm going to wrap up here real quickly and take  
12          any questions that you may have. I will say that while it  
13          is fair to say that there is room to improve the justice  
14          court system, the recent criticism from the press and the  
15          state comptroller's office has been mostly anecdotal and  
16          there's a lack of quantitative and qualitative analysis  
17          necessary to make informed judgments and conclusions about  
18          the justice court system as a whole.

19                 I know there are a lot of recommendations to  
20          switch to a district court system and NYCOM neither  
21          supports or opposes the system without knowing more about  
22          what it would look like, how many districts courts would  
23          there be, where would they be located and how would that  
24          be determined, would you have parking tickets adjudicated  
25          by a district court. We are not interested in having any

1 individual's rights, constitutional rights to due process,  
2 representation by counsel, subrogated to the interests of  
3 the villages, but one thing I would say and one of the  
4 common complaints we hear from our members and the reason  
5 they form the court is that it is inconvenient in many  
6 instances to have village residents travel long distances  
7 to adjudicate a minor criminal matter that is often a  
8 violation and not a crime. And I would urge the court to  
9 consider that. I would be highly suspect and doubtful  
10 that any proposal would come out and recommend that even  
11 parking tickets from a municipality be adjudicated in  
12 district court requiring individuals, if they want to  
13 contest a five- or ten-dollar parking ticket --

14 MS. EVE BURTON, ESQ.: They are never that low.

15 MR. WADE BELTRAMO, ESQ.: Well, in some villages  
16 they are -- to have to travel 45 minutes or an hour and a  
17 half round-trip to contest a five- or ten-dollar parking  
18 ticket. And convenience is an important issue that, while  
19 maybe not as important necessarily as making sure that  
20 individual's constitutional rights are protected, are  
21 nonetheless important and are of concern to our members  
22 and their constituents. And our members hear this on a  
23 daily basis from the residents which they serve.

24 I want to thank you for the opportunity to  
25 testify at this important hearing. NYCOM looks forward to

1 working with you as the commission continues to study the  
2 justice court system and I would be glad to respond to any  
3 questions from the commission.

4 CHAIRMAN DUNNE: Questions? Judge Mollen.

5 HON. MILTON MOLLEN: Good morning, Mr. Beltramo,  
6 and thank you for coming here and sharing your views with  
7 us, but the latter part of your remarks touched upon an  
8 issue that concerns me and I would think might concern  
9 some of the other members of the commission. I don't know  
10 what point you arrived, but this morning we had speakers  
11 who spoke rather vigorously and eloquently of the problems  
12 that they see in the present system and spoke very  
13 strongly against the continuation of the present system.  
14 How do you perceive it if we in our professional and  
15 public judgment believe that there are problems with the  
16 present system, would like to see them corrected, and on  
17 the other hand we have this situation, which you alluded  
18 to, where the people who are the subject of this system  
19 like the present system or prefer it, putting aside for  
20 the moment local political considerations, but the truly  
21 sincere viewpoints expressed by the members of those  
22 communities in these towns and villages that they prefer  
23 the present system whether it be for economic reasons or  
24 policy reasons, or whatever reasons, they prefer it, and  
25 yet on the other hand we see certain problems in the

1 present system? How do you perceive our function and how  
2 should we treat with that issue.

3 MR. WADE BELTRAMO, ESQ.: Well, I would say that  
4 NYCOM defers to many of the other advocates who are much  
5 more knowledgeable about issues such as criminal defense  
6 rights and those issues there. They are much more  
7 intimately involved with the criminal justice issue and  
8 that's not something that we are unsympathetic to, but it  
9 is not the major concern of the Conference of Mayors. And  
10 I made the point and I want to reiterate NYCOM is not  
11 interested in subrogating anybody's criminal rights,  
12 constitutional protections, to the issues of convenience.  
13 That is not a matter. But I will tell you that again this  
14 is in many respects driven from the residents of the  
15 municipality where they want to have the convenience of  
16 the courts.

17 And so, the question is, well, we're dealing  
18 with the issues that were raised both from the -- OCA has  
19 revealed in the study of the court with the problems of  
20 indigent defendants and representation by counsel. And  
21 the question is, well, is the only way to deal with that  
22 to go to district court system or are there other  
23 alternatives? Because if you're looking at a costly  
24 system, the district court system, which I'm assuming is  
25 going to be paid for by the court, if you're going to be

1 spending fifty, a hundred, \$200 million to establish and  
2 maintain such a system, are there other ways that that  
3 money could be spent to address the issues either in judge  
4 pay, so you can get more of an incentive to serve as a  
5 justice in these communities, and additional training,  
6 because that is a constant effort? Are there other ways  
7 to spend that money to accommodate the issue of  
8 convenience and the convenience for residents to have  
9 justice conveniently located near them and also address  
10 the other issues? I don't think that they are mutually  
11 exclusive.

12 I will say there is a lack of information out  
13 there about how are the district court proposals -- how  
14 are they going to be flushed out. There are some benefits  
15 to them in the fact that you would have fewer courts and  
16 perhaps the ability of district attorneys to appear in  
17 more of the criminal courts, which is lacking now. You  
18 see many localities where it is the state patrolman, which  
19 has been an issue, who prosecute the cases, or the local  
20 code enforcement officer or the municipality itself that  
21 has to adjudicate those cases. That's definitely a  
22 benefit. But I will say that there is the potential for  
23 unintended consequences. Local government officials are  
24 very responsive to the complaints of their municipality.  
25 They receive calls at five o'clock in the morning from

1           somebody complaining about something in their  
2           municipality. I dare say that very few other elected  
3           officials in the State of New York have that kind of  
4           responsiveness to their community. And when somebody  
5           calls and complains that they have to take time off work  
6           to drive to the town or the village down the road and it  
7           costs them \$20 to do that to pay a \$10 or \$15 ticket or to  
8           appear in court and they have to go back not once but  
9           twice or maybe three times if they actually want to try  
10          the case because they can't get it heard that evening,  
11          that's going to be an issue and it's going to come back  
12          up, because as soon as people start making that complaint,  
13          they complain not only to their local legislative  
14          officials, whether it be a member of the town counsel or  
15          the village board of trustees or the mayor or the  
16          supervisor, but they start complaining to the state  
17          senator and the assemblyman. And it's something that I  
18          think needs to be addressed and you need to be aware of  
19          that when considering any proposals. The convenience  
20          factor I think is a primary factor for our communities.

21                   CHAIRMAN DUNNE: We're going to keep moving.  
22                   Sorry, we are out of time.

23                   MS. EVE BURTON, ESQ.: One thing to supplement  
24                   the record. I still think the Bill of Rights wouldn't  
25                   have passed if it was about majority views. So, I guess

1 what I would like to know from that conference is if we  
2 could have some more detailed understanding about the  
3 appreciation of due process and the criminal side of it.  
4 I think if you all could address why it is the convenience  
5 of the community should overrule perhaps those cases being  
6 handled in a separate capacity, I just would like --

7 MR. WADE BELTRAMO, ESQ.: NYCOM would never take  
8 that position. If there were a situation where an  
9 individual's criminal rights, constitutional rights, could  
10 not be protected --

11 MS. EVE BURTON, ESQ.: Let's assume criminal  
12 cases are different. I guess what I would like to know is  
13 whether or not counsel for the mayors would speak at least  
14 and submit something to the commission on what their  
15 position would be in terms of criminal cases not being  
16 handled the same as maybe parking tickets.

17 MR. WADE BELTRAMO, ESQ.: That may be one of the  
18 solutions. When the discussion of district courts arises,  
19 that was one of the first things that came to mind was  
20 that the district court system would not be amenable or a  
21 good solution to deal with what is a huge portion of the  
22 cases that are adjudicated by the town and village courts,  
23 being the parking tickets and the moving violations, that  
24 you would have to set up something else, but, you know, is  
25 that a solution as well to create another structured

1 system if you're trying to really simplify the system?  
2 How are those handled? Do they become --

3 MS. EVE BURTON, ESQ.: Just very specifically is  
4 there anything --

5 MR. WADE BELTRAMO, ESQ.: We will get it in  
6 writing, but I will tell you this, that the Conference of  
7 Mayors is never going to take the stand that the concerns  
8 or issues of convenience should trump an individual's  
9 constitutional rights to due process, representation of  
10 counsel, fair trial.

11 CHAIRMAN DUNNE: Thank you, Mr. Beltramo. Is  
12 Judge Reichler available? Is Judge Reichler here.

13 HON. JUDITH M. REICHLER: Yes.

14 CHAIRMAN DUNNE: Good morning.

15 HON. JUDITH M. REICHLER: Good morning everyone.  
16 Thank you so much for giving me an opportunity to speak to  
17 you this morning. I am a town justice in New Paltz. I've  
18 only been doing that for a while, but I've been involved  
19 for more than 20 years with the court system in one way or  
20 another. I was a support magistrate in the New York City  
21 Family Court where I judged thousands of support cases. I  
22 volunteered as a small claims arbitrator in New York City  
23 civil court. And I've participated in countless training  
24 sessions for attorneys, magistrates, supreme, family, town  
25 and village court justices. Many of those were done

1 through the offices of the Court of Administration. So I  
2 think my past experience may provide me with a unique  
3 perspective on the issues that come before the justice  
4 court.

5 I've submitted written testimony and I would ask  
6 you to allow me to leave my written testimony open for  
7 further comments before your hearings are concluded.  
8 Would you allow me to do that?

9 CHAIRMAN DUNNE: Yes.

10 HON. JUDITH M. REICHLER: Thank you. I want to  
11 deal with two primary issues in my remarks. One is the  
12 lawyer/non-lawyer issue, and the other is the district  
13 court as opposed to local court issues because I know they  
14 concern you. And I do believe that you have an entirely  
15 open mind about that issue now I can tell from your  
16 questions. I hope you'll continue to keep that open mind  
17 as we go along.

18 I want to put the lawyer/non-lawyer piece of it  
19 though in perspective because I think that knowledge is  
20 power. And I would like to have you take a look at the  
21 actual percentage -- I know you heard -- I have slightly  
22 different statistics so I don't contradict, but there's  
23 different aspects of the statistics that you've just heard  
24 a few minutes ago.

25 While it's true that the actual number of town

1 and village judges who were cautioned or publicly  
2 disciplined is high due to the fact that there's so many  
3 of them, but the percentage of the town and village  
4 justices who have been -- in 2005 -- who were cautioned or  
5 publicly disciplined is far lower than it is in either the  
6 supreme court or the family court. I just looked at  
7 the -- I think it's page 4 to 6 in their 2006 report and  
8 that's where I got my figures.

9 For example, 3.3 percent of the state's supreme  
10 court justices that sit as full time judges were cautioned  
11 or publicly disciplined in 2005; 3.3 percent. Almost 4  
12 percent of the family court judges that sit were  
13 disciplined or publicly disciplined. Yet only 1.5 percent  
14 of all of the town and village justices who sit were  
15 cautioned or publicly disciplined. 1.5 percent of them.  
16 4 percent of the family court judges, 3 percent of the  
17 supreme court judges, all of whom are lawyers, all of whom  
18 are full time, all of whom have law clerks, and all of  
19 whom are fully supported by the Office of Court  
20 Administration. It's pretty remarkable when you look at  
21 it in that context that there are -- that the percentage  
22 is so low given that they are part-time, non-lawyers and  
23 not fully supported with the resources --

24 CHAIRMAN DUNNE: Could I just interrupt for a  
25 second? Because I heard the statistics you spoke about a

1 number of times. The break down you just gave us, does  
2 that somehow incorporate or reflect the numbers of cases  
3 that the various groupings of judges actually heard during  
4 that calendar year?

5 HON. JUDITH M. REICHLER: No. If you take a look  
6 at pages four through six you'll do your own analysis of  
7 it. But according to my calculation if there were X  
8 number of supreme court judges sitting and Y number have  
9 been cautioned or publicly disciplined, that's a certain  
10 percent of the number. That's all I did.

11 CHAIRMAN DUNNE: My point is if a supreme court  
12 judge at issue has heard 2,000 cases in calendar year  
13 2005, and if the town or village justice has heard 200  
14 cases in that time -- I'm making this up -- would that  
15 make a difference?

16 HON. JUDITH M. REICHLER: That's not reflected  
17 in the report, but --

18 CHAIRMAN DUNNE: That was my question.

19 HON. JUDITH M. REICHLER: You're absolutely  
20 right, the volume also would be factored into that. The  
21 very high volume of cases heard by the town and village  
22 courts is even more remarkable that the percentage is so  
23 low. That's a very good -- I don't know if that was your  
24 point, but --

25 CHAIRMAN DUNNE: Actually, I was making the

1 opposite point, but we'll move on. The simple question  
2 was do you know if that factor was considered. I gather  
3 the answer's no.

4 HON. JUDITH M. REICHLER: You probably guessed  
5 by now that I am a lawyer. I can use it whichever way I  
6 need for my point. So moving on from that quickly, I also  
7 think it's important for you to be looking at judicial  
8 temperament and not just whether somebody has a law degree  
9 or doesn't have a law degree. Because ideally what you  
10 want to be looking at, since I think by far the most  
11 common reasons for discipline were unethical practices,  
12 such as favoritism or money problems or behavior that is  
13 rude, callus or intemperate, those are problems that could  
14 be corrected through education or proper mentor.

15 So I guess the point of what I'm trying to tell  
16 you now is that I don't think that it's not fixable and  
17 still have non-lawyer judges if you want to put in the  
18 time that's required to do that and not rush it with a  
19 broad stroke. So I'm not advocating that we eliminate the  
20 non-lawyer judges, although I have heard a number of  
21 attorneys tell me that when it comes to a hearing or  
22 motion practice or a trial they would prefer to be before  
23 a law-trained judge. I don't think that that goes across  
24 the board for every issue that comes before them,  
25 particularly with regard to individual town justices who

1 are not lawyers.

2 Some of the issues that come before the town and  
3 village court are more difficult than they appear at first  
4 and I think you need to be able to recognize that you have  
5 a difficult issue. And that may not always be possible  
6 for somebody who hasn't been trained and doesn't keep up  
7 with the legal evidentiary issues, for example. But I  
8 don't think it's impossible. And I would hope that you  
9 would continue to look for ways that you can include the  
10 non-lawyer judges in your circumstances, particularly  
11 since the locality -- the people in these towns and  
12 villages have elected them. They actually want that judge  
13 often because of whatever reasons. The whole town, I  
14 don't mean a particular person. So I would certainly hope  
15 that you could find some way to continue to keep them in  
16 our system of courts.

17 And the other thing I would ask of you while  
18 you're trying to decide this is do what I ask of my  
19 students. I'm near a university so I have students doing  
20 intern work for me. And one of the things I require of  
21 them is that they get up in the middle of the night with  
22 me when I have to do my middle of the night arraignment.  
23 And after the second time they all request to be relieved  
24 of that responsibility because they can't maintain their  
25 classes and get up in the middle of the night like that.

1 You need to realize that these judges, most of them have  
2 full time jobs the next day. They do get up in the middle  
3 of the night, they do whatever they can do.

4 I would urge you to one or two times at least  
5 connect yourself with a town and village judge and ask to  
6 be able to get up in the middle of the night the way they  
7 do and see what kind of justice you might be able to  
8 dispense in the middle of the night when you completely  
9 wake up, which you do.

10 I think it's -- as I say, information is power  
11 and it's more than just hearing us tell you what we think  
12 you ought to do. I really think it would be worth your  
13 while to track some judge that you know and just let --  
14 they will be happy to let you do it I'm sure, sit in their  
15 courtroom. The defendants don't know or care who you are,  
16 they'll think you're a clerk. Try it out. I think it  
17 will be very enlightening.

18 I do want to just address for a moment, because  
19 I've been asked to -- I'm a member of Judge Kaye's Family  
20 Violence Task Force and have been for the last 11 years.  
21 It's a task force, some of you may know of it, and it's  
22 composed of judges around the state from the Court of  
23 Appeals, the Appellate Division and the various  
24 administrative judges and a scattering of other judges.  
25 And one of the purposes of that task force is to train and

1 educate judges on the issues of domestic violence.

2 And just this spring I was a presenter at one of  
3 the interactive programs on evidence; particularly, the  
4 *Crawford* case. And it was packed. The room was packed.  
5 For the last two years it's been open to town and village  
6 justices. Before that, like almost all of the other  
7 education programs available in this court, has been  
8 closed out to town and village justices. I'm sure you're  
9 aware of that. It's only recently that they've been  
10 included, both I think because of prejudice against them  
11 and because there's so many it's hard to do. But that  
12 room was packed. And it was packed with town and village  
13 justices as well as some family court judges and supreme  
14 court judges. So I conclude from that that they're hungry  
15 for training and education. And a lot of them were  
16 non-lawyer judges.

17 I cannot tell you for sure how much they got out  
18 of the program. It was so focused on exceptions to the  
19 hearsay rule and testimonial statements and *Crawford*  
20 problems. I can't tell you that. But I know they didn't  
21 lose interest. And I think that small groups like that  
22 that are interactive would go a long way to training the  
23 non-lawyer judges.

24 And the last thing with regard to domestic  
25 violence that I wanted to address is that I think it's

1 very tempting for us to want to give the judges more and  
2 more requirements because we think that's going to improve  
3 what they do. What we really need to do is give them more  
4 and more resources. I don't necessarily mean money  
5 resources. Those integrated domestic violence courts, the  
6 more we have in the counties the more those cases can be  
7 funneled off to them I think the better our town and  
8 village courts will be.

9 And then I have one last point and it's a  
10 security issue. I was stunned to learn a few weeks ago  
11 that all court officers that are employed by my court even  
12 though they wear weapons are not actually peace officers.  
13 And I don't know if you're planning to do interim reports  
14 or not. But this would be easily corrected by the  
15 Legislature. I looked in the CPL to see who are peace  
16 officers and who are not. And I find that according to  
17 Section 2.2 of the Criminal Procedure Law only the people  
18 that are -- the officers that are enumerated there are  
19 peace officers. As you know, peace officers can arrest  
20 without a warrant, they can confiscate weapons and they  
21 can use physical force. Somebody who is not a peace  
22 officer -- that is to say just a security guard of some  
23 sort -- does not have the ability to do that. My officers  
24 were stunned to find out suddenly that they thought they  
25 had the ability to protect all of us in the courtroom may

1 not have that ability.

2 When you look at that section of the statute it  
3 enumerates that uniformed officers of the Unified Court  
4 System are peace officers. So all of the security  
5 officers that are guarding the supreme courts, the family  
6 court and so on, they all have peace officer status. It  
7 will amuse you to look at 2.20 to see that there are about  
8 seven towns and villages whose court officers are also  
9 peace officers: Village of Spring Valley, Town of Putnam  
10 Valley, Village of Pogue, Town of Newburgh, and so on. It  
11 appears that whichever town got the ear of the legislators  
12 got their town and village court officers covered as peace  
13 officers.

14 My recommendation would be -- and I will do what  
15 I can to -- I'm used to working with the Legislature and  
16 I'm going to try to do it myself, but it would be great to  
17 change that statute so that all uniformed court officers  
18 of town and village courts could be designated as peace  
19 officers. I don't feel as safe now that I know that my  
20 court officers do not have peace officer status as I did  
21 before that. And that concludes my remarks. If you have  
22 any questions, of course, I will be happy to answer them.

23 CHAIRMAN DUNNE: Abe Lackman.

24 MR. ABRAHAM M. LACKMAN: I'm curious on the  
25 peace officer status. You know, I represent all of the

1 private colleges in New York State. And this whole  
2 question of security guard versus peace officer versus  
3 police status, one of the issues of peace officer status  
4 is DCJS has been really seeking that they have extensive  
5 training. I think we're looking at training that would  
6 approach 400 hours. Do you know for those guards or  
7 personnel who do not have peace officer status in the town  
8 and village courts, do they have that training now? And  
9 who in effect would pay for it if they didn't?

10 HON. JUDITH M. REICHLER: I can only speak for  
11 my town since I don't know the answer. I do require my  
12 court officers to have training. Our local police train  
13 them in ballistics, they train them in self-defense. And  
14 the town pays for the police who just do it on their own.  
15 We do pay for their bullets when they shoot. It's pretty  
16 ad hoc I would say though, it's either in our budget or it  
17 isn't each time. Thank you for that.

18 MR. WILLIAM TREANOR, ESQ.: Judge, I thought  
19 your testimony was very helpful.

20 HON. JUDITH M. REICHLER: Thank you.

21 MR. WILLIAM TREANOR, ESQ.: I want to talk a  
22 little bit about the middle-of-the-night arraignments and  
23 get a sense how often do you have middle-of-the-night  
24 arraignments? What's the typical experience of judges?

25 HON. JUDITH M. REICHLER: Again, I may have

1 anecdotal information from other judges, but I can speak  
2 from my own experience. There are two judges in my court  
3 and we have a very relaxed notion about who's going to be  
4 called in the middle of the night and who isn't. We  
5 generally tell the police officers that on the odd days  
6 they're to call the other judge. The odd judge. And I'm  
7 the even judge, right? I like that, of course.

8 And in any event that's pretty relaxed, if  
9 you're not around on your even night they just call the  
10 other one. So I would say that in an average week several  
11 nights go by when I'm not called at all. Then I'll get a  
12 call just as I'm going to sleep perhaps, could be at 3:00  
13 in the morning. The ideal ones are at 4:30 or so because  
14 then I can just stay up after that. Once or twice I've  
15 been called out twice in a night. After you just get back  
16 to sleep you're called again. We gladly do this. I truly  
17 don't hear any complaints about these middle-of-the-night  
18 arraignments. We're tired the next day. We know they're  
19 necessary.

20 You know, by the way, they're necessary because  
21 the towns and villages do not have holding cells for the  
22 defendant. In New York City criminal court, which as I'm  
23 sure you know, has exactly the same jurisdiction over  
24 criminal matters as the town and village so-called local  
25 criminal courts, which is what the town and village courts

1 are defined as in the CPL, a local criminal court.  
2 Criminal court includes New York City's criminal court,  
3 all the town and village courts and the city courts and  
4 the district court. Local criminal court. In any event,  
5 sometimes I sit in the Kingston City Court as an acting  
6 city court judge when that one can't sit. The attorney  
7 judges can do that as you probably know. They have a  
8 holding cell. So it's very civilized. Nine o'clock in  
9 the morning the judge arrives and all the defendants are  
10 sitting there in their little orange suits to be arraigned  
11 by a judge who has a clerk sitting next to them with their  
12 computer going.

13 That is not the case in all the towns and  
14 villages because the defendant has only an hour or two  
15 before they must be arraigned. Plus the police have to  
16 get back on their beat. They can't be baby-sitting a  
17 defendant all night. That's why there are nighttime  
18 arraignments. And they take typically about two hours  
19 from the moment you wake up. You get fully, fully awake  
20 about the time the defendant walks out. I'm exaggerating.  
21 You get yourself fully awake from the time you wake up and  
22 the time you get there. Then you must wind down  
23 afterwards and sometimes that takes some time. Nobody  
24 complains about that. It is absolutely necessary though  
25 because there are no holding cells. If every town and

1 village had a cell to hold the defendants there would be  
2 no need for nighttime arraignments. I don't know if that  
3 answers the question.

4 MR. WILLIAM TREANOR, ESQ.: That's the question.  
5 Just ballpark would you say in New Paltz a hundred in a  
6 year or --

7 HON. JUDITH M. REICHLER: I would say no more  
8 than -- if you're talking about nighttime arraignments --

9 MR. WILLIAM TREANOR, ESQ.: Nighttime  
10 arraignments.

11 HON. JUDITH M. REICHLER: I might get called out  
12 several times during the day and interrupt what I'm doing  
13 also to go in. Are you talking about just nighttime or any  
14 calls?

15 MR. WILLIAM TREANOR, ESQ.: The figures largely  
16 were the nighttime. I want to get a feeling of how many  
17 that is.

18 HON. JUDITH M. REICHLER: Some weeks there won't  
19 be more than two or three. And I'm talking about day and  
20 night calls. Other times it can be as many as eight.  
21 It's not hundreds a week.

22 MR. WILLIAM TREANOR, ESQ.: No, but I mean just  
23 over the course of the year --

24 HON. JUDITH M. REICHLER: Anywhere from two to  
25 six or eight I would say a week.

1 MR. WILLIAM TREANOR, ESQ.: So middle of the  
2 night. So between midnight and 6 a.m. over the course of  
3 the year in New Paltz roughly a hundred or -- which would  
4 be about two nights a week.

5 HON. JUDITH M. REICHLER: I would say two or  
6 three a week, that's about right. A hundred,  
7 hundred-fifty all together for both judges would do it.  
8 It's not burdensome. It actually isn't burdensome. It  
9 may sound like a hundred is a lot, but it's not  
10 burdensome. We don't object, it's just necessary without  
11 holding cells.

12 CHAIRMAN DUNNE: Thank you very much for your  
13 testimony.

14 HON. JUDITH M. REICHLER: All right. Thank you.

15 CHAIRMAN DUNNE: Is Mr. Scott McNamara here?

16 MR. SCOTT MCNAMARA: Good afternoon.

17 CHAIRMAN DUNNE: Good afternoon.

18 HON. SCOTT MCNAMARA, ESQ.: My name is Scott  
19 McNamara, I'm the district attorney of Oneida County. And  
20 prior to becoming the district attorney I was an assistant  
21 district attorney for thirteen and a half years.

22 I wanted to come and share some of my  
23 experiences with you just so you would have an idea,  
24 because I do believe to a certain extent I've been on the  
25 front line of the town and village judge issue and also

1 non-lawyer versus lawyer judges.

2 My career, I have spent, in addition to some  
3 larger courts, for example, Verona I handled for a period  
4 of time which has the Oneida Indian Nation casino in it.  
5 But the rest of my career I spent handling two separate  
6 courts. One was handled by a lawyer judge and the other  
7 was handled by two non-lawyer judges.

8 So I've been able for thirteen and a half years  
9 that I've been handling those two courts to compare the  
10 two. And I really don't think that there's a major  
11 difference. You know, obviously a person that hasn't went  
12 to law school does lack a little bit in that area. But I  
13 believe that if you offered the training -- and there is a  
14 lot of training in our county. I've actually been a  
15 teacher in some of those courses. And I know a lot of my  
16 ADAs have. I really think that the courts that have  
17 non-lawyer judges are just as fair and they dispense  
18 justice just as proper as the court that I have the lawyer  
19 judge in.

20 And the other thing I'm just somewhat concerned  
21 about, especially for our county, is there's some talk  
22 about district courts. Oneida County is a very large  
23 area. And I guess the question becomes where do you put  
24 the district court? And when you do put that district  
25 court, who handles that district court? Where do these

1 judges come from?

2 And one of the things that I would like to  
3 emphasize is one of the courts I handle is actually the  
4 Town of Marshall. The Town of Marshall is a very small  
5 town. Probably one of the smaller towns in the State of  
6 New York I would guess. It's actually the town I grew up  
7 in. The judge that handles that, she's a lawyer, she knows  
8 what roads in the Town of Marshall when you're speeding 15  
9 miles an hour over is a bigger violation of the law than  
10 say a different area where maybe the person is traveling  
11 20. I'll give you a perfect example. In the Town of  
12 Marshall there's a stone quarry. Where the stone quarry  
13 is there's a 40 mile an hour zone. For all intent and  
14 purposes it could be a 55 zone. It wouldn't change very  
15 much what's going on, but they lowered it because it's a  
16 business. The police sit there and they write a lot of  
17 tickets out. Some people call it a speed trap, especially  
18 on nights and weekends. When the trucks are going in and  
19 out, obviously people go a lot slower, but when there's no  
20 trucks there people tend to travel 55 miles an hour.

21 On that same road, but in the middle of the  
22 hamlet of Deansborough there's a 35 zone. Traveling 50 in  
23 that 35 is significantly different than traveling 55 in  
24 the 40. And I just am concerned that if we go to a  
25 district court system are we going to get that same

1 concern for each small community? Because I know in my  
2 personal experience, and I see it when we have visiting  
3 judges come from outside of Oneida County, they don't  
4 really have the same concern as the judges from our county  
5 that are elected and run and care about the county. And  
6 that's just something I really hope you look into because  
7 if you get a district court are the judges going to be  
8 able to be aware of the smaller communities. And, you  
9 know, there's certain issues that go on in those  
10 communities. There's roads and certain crimes that make a  
11 bigger difference. So those are just the things I thought  
12 I would like to share with you. And I would be more than  
13 glad to answer any of your questions.

14 CHAIRMAN DUNNE: Questions? Abe.

15 MR. ABRAHAM M. LACKMAN: I just want to ask a  
16 question because we heard -- you're saying from your  
17 experience there's not been a fundamental difference  
18 between the lawyer versus the non-lawyer. From your  
19 experience would you say that would apply to felony type  
20 cases?

21 HON. SCOTT MCNAMARA, ESQ.: Generally, in the  
22 felony type cases they're always just a felony examination  
23 that's being conducted in a local criminal court. Those  
24 cases are on the record. I handled probably one of the  
25 biggest cases in my career in the non-lawyer judge case

1 that involved an individual who was smuggling -- a defense  
2 attorney as a matter of fact who got caught smuggling  
3 methamphetamines for the Hell's Angels. So that was  
4 obviously an A1 felony. I can't see anything that a  
5 lawyer judge would have done differently. I've had a lot  
6 of felony exams though, and that's in the Town of Lee. I  
7 haven't had that many with my lawyer judge because the  
8 Town of Marshall does not have a lot of felony crime.

9 But just in my experience overall, you know, I  
10 don't see it. I mean, the standard's reasonable cause to  
11 believe a crime's been committed, a felony's been  
12 committed, and I just don't -- you know, it's not -- I  
13 don't think that's a hard concept. I think what the  
14 judges need training in evidence is what is admissible  
15 evidence. I think the real tough issues come about when  
16 you're in the middle of a trial and it's the evidentiary  
17 issues I think that are the main issues that I think the  
18 training needs to be addressed on. Fairness and actually  
19 looking the law up. They have resources available to them  
20 now according to the judges I've spoke to. But it's the  
21 evidentiary issues. You know, what is hear -- especially  
22 when you're talking about hearsay. I think there's some  
23 lawyer judges that have a hard time with that too. That  
24 gets very complicated.

25 CHAIRMAN DUNNE: Judge Frazee.

1                   HON. EVELYN FRAZEE: Yes, I had a question. I'm  
2 not sure I was understanding your story about the 55 mile  
3 an hour -- 40 or 55 mile an hour situation on that one  
4 road. Are you saying because the judge knows that road  
5 she may not tend to fine somebody who is speeding 55 in a  
6 40 mile an hour zone because she knows the road and thinks  
7 well, everybody does it, it's okay? I wasn't quite sure  
8 what the point of your story was.

9                   HON. SCOTT MCNAMARA, ESQ.: No, the point of my  
10 story is this: That that judge would consider speeding in  
11 a 35 zone much different than the 40 zone for reduction  
12 purposes. Would look at what's the benefit of a reduction  
13 and might not go along with a reduction if they didn't  
14 think it was appropriate. And, you know, I think that's  
15 something that I think you're going to lose. The judges  
16 aren't going to -- a district judge isn't going to look at  
17 that. I'm just very concerned that a district court will  
18 become -- it would just become kind of pushing cases  
19 through. And I think right now we have a lot of concern  
20 for the community.

21                   Most of these judges don't make a lot of money  
22 and it is a form of community service for them. And  
23 knowing a lot of them I think they really are concerned  
24 about their community and they want to do the right thing.  
25 They want to be fair and I think they are overall fair.

1 HON. EVELYN FRAZEE: A little area that's  
2 different than what you spoke about, how many town and  
3 village courts are in Oneida County that you need to have  
4 DA coverage for?

5 HON. SCOTT MCNAMARA, ESQ.: I don't know the  
6 exact number. It's about 30 I guess.

7 HON. EVELYN FRAZEE: We've been hearing fairly  
8 consistently from most of the DAs that one of the problems  
9 with the present system is they have coverage problems  
10 getting DAs to court. Do you have that problem in Oneida?

11 HON. SCOTT MCNAMARA, ESQ.: The way we handle it  
12 in our county is each ADA is assigned to anyplace from one  
13 to three town or village courts. Most of those courts  
14 meet in the evening, so we really don't have a big problem  
15 with it. Some of our larger courts like New Hartford  
16 meets in the late afternoon and our assistant that handles  
17 that court goes out and handles that if he doesn't have  
18 something going on as a felony. So I don't see that as a  
19 problem. I would have to wonder how we would handle a  
20 district court.

21 CHAIRMAN DUNNE: Judge Stack.

22 HON. ELAINE JACKSON STACK: In the same vein, if  
23 you have 30 courts that your assistants are covering, you  
24 have a public defender system in your county or some other  
25 means to provide defense services?

1 HON. SCOTT MCNAMARA, ESQ.: Yes, we do, we have  
2 a public defender's office.

3 HON. ELAINE JACKSON STACK: And is the public  
4 defender able to be at every session at which a district  
5 attorney is present?

6 HON. SCOTT MCNAMARA, ESQ.: Yes.

7 HON. ELAINE JACKSON STACK: And that's no  
8 problem to do that. What about if you have a criminal  
9 trial, is the public defender able to serve?

10 HON. SCOTT MCNAMARA, ESQ.: The way it works in  
11 our county is most of the town courts have designated --  
12 I'll use my courts for example. Marshal, it meets twice a  
13 month. The first Monday of the month is DA night as they  
14 call it. And on DA night the district attorney's office  
15 and the public defender's office is present. In the Town  
16 of Lee they have DA night on the third and fourth  
17 Wednesday of the month because there's one Wednesday for  
18 one judge, one Wednesday for the other, and on both of  
19 those nights the public defender is present. If somebody  
20 is arraigned and needs services of the public defender the  
21 judges will call the public defender's office and have  
22 that person interviewed.

23 HON. ELAINE JACKSON STACK: Thank you.

24 CHAIRMAN DUNNE: Judge Boyers.

25 HON. SEYMOUR W. BOYERS: Yes. Mr. McNamara, do

1           you think that in the cases of criminal matters that come  
2           before the courts where there are multiple nuances of when  
3           you think of due process, do you think that the non-lawyer  
4           judge is equal to the trained lawyer even with limited  
5           training that they receive in being able to deal with  
6           those due process nuances that they are presented with?

7                    HON. SCOTT MCNAMARA, ESQ.: I think it depends  
8           on the lawyer judge. Certain lawyer judges are much more  
9           qualified than others just because of their background.  
10          In our county our two county court judges both worked in  
11          the District Attorney's Office. One was a district  
12          attorney and one was first assistant. So they kind of  
13          understand the rules in much more detail than say a lawyer  
14          judge who practices corporate law or something.

15                   So I mean it's hard to say. I think it really  
16          depends on the person and what their background is. But I  
17          don't think the law degree in itself is the biggest thing.  
18          I think a lot of it has to do with their training and  
19          experience before they take the bench.

20                   CHAIRMAN DUNNE: Okay. Thanks.

21                   HON. SCOTT MCNAMARA, ESQ.: Thank you. Have a  
22          nice day.

23                   CHAIRMAN DUNNE: I understand that Jerry Frost  
24          is not here. Is that correct? In that case, is Judge  
25          VanDerWater present? Good afternoon.

1 HON. ED VANDERWATER: Good afternoon.

2 Commissioner Dunne, the Special Commission on the Future  
3 of the New York State Courts, on the topic of efficiency  
4 and organization of our local justice system, town and  
5 village residents benefit from and bear a good part of the  
6 cost of maintaining their local courts. We don't feel  
7 that the state should force local courts to be eliminated.  
8 That decision should continue to be left to the residents  
9 who pay for and are served by them.

10 A justice system organized around the needs and  
11 best efficiencies for law enforcement, for defense, for  
12 prosecution would each likely be a little different. The  
13 organization and efficiency of the local justice system  
14 should have as its most compelling considerations, first  
15 of all, the ability to provide justice, of course, as well  
16 as the needs and preferences of the community it serves,  
17 not the needs and preferences of the people that serve the  
18 community, if push comes to shove.

19 I bring messages from local governments within  
20 the six counties of the judicial district, the Fifth  
21 Judicial District. So far seventy towns and villages, two  
22 county governments, and the supervisors association of  
23 Herkimer County have passed resolutions in support of  
24 continuing the tradition of local courts and non-lawyer or  
25 lay judges serving their communities. Many other

1 communities are in the process of passing these  
2 resolutions and I will leave this as an exhibit for part  
3 of the record.

4 In addition to local governments, attorney  
5 judges in the Onondaga County Magistrates Association have  
6 unanimously passed a resolution in support of the same  
7 concept, local courts and the ability of non-lawyer or lay  
8 judges to continue to compete in elections. Oneida and  
9 Oswego County Magistrates Associations have passed the  
10 same resolutions. And, finally, the Onondaga County Bar  
11 Association's board of directors, the Onondaga County Bar  
12 Association's board of directors, has unanimously passed a  
13 resolution supporting the action plan and the tradition of  
14 non-lawyer or lay judges continuing to serve their  
15 community as town and village judges. Again, I'll leave  
16 the pile of these resolutions to become part of the  
17 record.

18 In regards to the benefits of town and village  
19 courts, serving as a town or village justice is generally  
20 regarded as a special calling by those that serve. It's a  
21 labor of love, certainly not money. Almost 200 of our  
22 judges make less than 3,000 a year. Hundreds more make  
23 less than 8,000 a year for a responsibility that includes  
24 responding to arraignments 24 hours a day, 7 days a week,  
25 365 days a year. I've been called out as many as six

1 nights in a row, or mornings. And in one seven-hour  
2 period from eleven at night until six in the morning I was  
3 called out three times. I can tell you it makes for a  
4 long next day, but it is a special calling that we serve.  
5 I was called out, as usual, both on Christmas and New  
6 Year's to do arraignments for people who had been taken  
7 into custody. Each time, in those particular instances, I  
8 ordered that the defendant be released pending further  
9 court appearance, one first posted a little bail. Neither  
10 of those defendants had to wait in jail until the next  
11 business day for a decision on release, which was of  
12 course better for them.

13 Immediate arraignments are, in fact, a benefit  
14 of the town and village justice court system. There are  
15 others. We generally have free parking. And since our  
16 courts are usually held after normal work hours, most  
17 people don't suffer a financial hardship by having to  
18 appear on their case.

19 For every defendant there's at least one victim.  
20 Orders of protection are issued and actually served at  
21 arraignments all hours of the day and night in justice  
22 courts, rendering them, one, immediately enforceable and  
23 also thereby providing an immediate comfort level to  
24 alleged victims, another benefit of town and village  
25 justice courts. And I have to say to you that I am amazed

1 about the number of people who actually experience a  
2 noticeable level of comfort just as the result of a judge  
3 signing an order of protection. That just amazes me.

4 Plea agreements settle criminal charges in town  
5 and village justice courts. We seldom have jury or judge  
6 trials, but we do on occasion. But more importantly all  
7 three forms of settlement have a healthy dose of opposing  
8 counsel to ensure the rights of the parties are protected  
9 and that the judge's decision-making benefits from the  
10 light as each side sees it, and sometimes that light is  
11 seen differently.

12 Another healthy, very healthy feature of our  
13 town and village justice system is that it has checks and  
14 balances. Just about any action that I or another town or  
15 village justice make can be challenged by an appeal, an  
16 Article 78, or a complaint to the Commission on Judicial  
17 Conduct, which of course is charged by the state to look  
18 into improper conduct on the part of judges.

19 The *New York Times* articles are in fact evidence  
20 of a check and balance system that works. The information  
21 about the improper actions cited in the articles actually  
22 came from the files of the Commission on Judicial Conduct.  
23 The commission had already investigated those actions and  
24 held the judges that were responsible accountable for  
25 their actions. A number were removed from office. That

1 check and balance system works. Many in fact do file  
2 complaints with the Commission on Judicial Conduct.

3 The administrator of the Commission on Judicial  
4 Conduct recently testified before the New York State  
5 Senate Judiciary Committee, as did I. He testified that  
6 since 1975, which actually predates by a year or two the  
7 present legal form of the commission, but nonetheless they  
8 aggregated the records that far back -- he testified that  
9 since 1975 the commission had received 34,343 complaints  
10 and that 28 percent, 9,605 of those complaints, were  
11 against town and village judges. He also testified that  
12 we make up 68 percent of the judges in the Unified Court  
13 System. What he didn't say, but by deductive reasoning  
14 one can conclude, is that state-paid judges comprise  
15 approximately 32 percent of the judges in the system and  
16 received approximately 62 percent or 24,718 of the 34,323  
17 complaints filed with the commission, minus any complaints  
18 that may have been filed in error. Let me add that  
19 complaints are certainly not findings of wrongdoing, and  
20 that's certainly not my point here, but they're the front  
21 end piece of the commission's work.

22 I've heard people say and I've read in the  
23 newspaper more than once that we are a major part of the  
24 commission's work, or cause a large share of their  
25 investigations. Well, we're sure not a major part of the

1 front end of the commission's work, and as for causing a  
2 large share of their investigations, put in perspective  
3 we're two thirds of the judges in the system, a large  
4 share.

5 I'm going to leave, along with this stack of  
6 resolutions that have been passed, page 9 of the  
7 commission's report in 2005 for your ease of reference.  
8 It clearly shows that at least as far back as 1987 --  
9 these are their records -- disciplinary determinations for  
10 town and village judges and state-paid courts of records  
11 mirror their reflective percentages in the system. Some  
12 have a different view, based on decades old information  
13 that is not on point, in my opinion, for present day  
14 decision-making.

15 On the issues of sufficiency of court resources  
16 and management of those resources, unlike state-paid  
17 courts, our town and village courts are not cookie-cutter  
18 like operations. The stage of development for each of our  
19 local courts is different. That's the system. It's not  
20 news to us. And over the years, as elected officials,  
21 we've done the best that we can with it. We judges don't  
22 have the final say on what resources are made available to  
23 the court. The other two branches of government make  
24 those decisions. You can understand, however, we do have  
25 an obligation to conduct the business of the court

1           regardless of the resources that are made available to us  
2           and, yes, to carry out that obligation some of us hold  
3           court in places we wish we weren't sitting. Some of us  
4           hold court in places that a reporter might write an  
5           article about and poke fun at, and rightfully so.

6                     Under the action plan our courts, for example,  
7           will now be able to finally, all of us, harness technology  
8           to the work of the courts. All courts will finally have  
9           computers and printers, record proceedings, have on-line  
10          access to things like Westlaw and Lotus and other data  
11          bases. We'll have on-line case management, on-line  
12          records management, electronic recording to the New York  
13          State Comptroller's office. We'll accept credit card  
14          payments, and the list goes on. In conclusion of the  
15          issue about technology, the action plan will finally  
16          ensure that each individual town and village court has a  
17          minimum baseline of resources that a judge can apply to  
18          the work of the court. Up till now there hasn't been a  
19          baseline. There will be now and it will have a very  
20          positive effect on our system.

21                    We're assisted in another area as far as the  
22          resource goes with research and information requests,  
23          including case law on point, by a staff of attorneys at  
24          the City, Town and Village Resource Center. They serve as  
25          our law clerks. The center, under the action plan, will

1 be expanded.

2 In the Fifth Judicial District our  
3 administrative judge, Judge Tormey, has assigned a special  
4 counsel to the town and village courts in his district.  
5 He's on call 24 hours a day, 7 days a week to help us with  
6 our problem-solving. It's worked well. Perhaps OCA will  
7 replicate this idea in other administrative districts or  
8 judicial districts. Also consistent with the action plan  
9 we now have supervising judges assigned to each district  
10 that we can contact for assistance as well. Judge Tormey  
11 has assigned to our district the Honorable James Murphy.  
12 We couldn't ask for someone more committed to helping us  
13 solve problems.

14 I'm going to move to an issue on judges without  
15 law degrees, which I was surprised wasn't a topic  
16 particularly mentioned in the request for people to come  
17 and appear, because for many of us it is certainly a very  
18 important topic. I use the term judges without law  
19 degrees because many of our judges have degrees. They  
20 just aren't law degrees. We have many judges with  
21 associate's degrees, bachelor's degrees, master's degrees,  
22 doctorate degrees. The Office of Court Administration's  
23 action plan, which you all have a copy, concludes that  
24 most non-attorney justices perform their judicial roles  
25 admirably and well. Their professionalism, diligence and

1 dedication are apparent and they take very seriously their  
2 judicial roles and their duties to continually improve  
3 their knowledge of the law and over the years exceptions  
4 to these principles have been relatively few in number.  
5 Why would anyone want to get rid of 1500 elected officials  
6 who behave like that?

7 Judges without law degrees make up half the  
8 judges in the Unified Court System. According to the last  
9 eight years of the commission's annual reports, judges  
10 without law degrees received 88, approximately 50 percent,  
11 of the disciplinary determinations rendered by the  
12 Commission on Judicial Conduct. Now, within that group  
13 are judges that commit the most serious, serious  
14 transgressions. 27 judges were removed from office upon  
15 recommendation of the Commission on Judicial Conduct over  
16 that eight-year period, 27 judges. 13 of those judges  
17 were judges without law degrees. 14 of the judges removed  
18 for conduct that was very serious were judges with law  
19 degrees. In the last eight years of determination rate,  
20 including removal from office, and the determination rate  
21 of judges with law degrees, is the same. Current  
22 determination figures do not support barring judges  
23 without law degrees from seeking reelection. Some have a  
24 different picture based on overly historical data. You,  
25 this commission, should design your bridge to the future

1 from where we are now, not where we were 25 or 30 years  
2 ago.

3 In closing, we're absolutely excited about the  
4 state's newly found interest in the town and village  
5 justice courts. We have been struggling almost alone for  
6 a long time. We are excited about the action plan. It  
7 will provide improvements to the town and village justice  
8 system that none of us could have imagined just two years  
9 ago, but at a point in time when we should be devoting all  
10 of our energy to a future that has never looked brighter  
11 in regards to our ability to on one side manage our courts  
12 and on the other side our ability to craft justice, but at  
13 the same time we are burdened, we are heavily burdened, by  
14 a possibility that three quarters of the town and village  
15 judges from across our states, 1500 men and women  
16 presently serving their communities admirably and well,  
17 according to the Office of Court Administration's action  
18 plan, that they may be barred from competing in an  
19 election where the people served get to decide who's  
20 elected to serve them.

21 The requirement of law degree is an unnecessary  
22 barrier to running for town or village judges.  
23 Unnecessary barriers to running for office, regardless of  
24 the motive, are harmful to the basic fundamentals of  
25 democracy. People without a law degree are free, in this

1 country, to run for President of the United States,  
2 Governor of the State of New York and the Senate and  
3 Assembly at both the federal and state level. People  
4 without a law degree should continue to be free to run for  
5 the position of town and village justice as well. It is  
6 our hope that you will not recommend barring us from  
7 elections where the people served get to make the final  
8 decision on who is to serve them in their towns and in  
9 their villages. And it's our hope that you will not  
10 recommend taking away the voter's right to choose. Thank  
11 you.

12 CHAIRMAN DUNNE: I think we're out of time for  
13 questions. Thank you very much.

14 HON. ED VANDERWATER: You're quite welcome.

15 CHAIRMAN DUNNE: Jerry Frost is still not here  
16 and Amy Barasch is not here either. In that case I think  
17 we'll take our lunch break a little bit early. Is Denise  
18 Kronstadt here from Modern Courts?

19 MS. DENISE KRONSTADT: Yes.

20 THE COURT: Could I ask, are you able to come  
21 back, rather than 2 o'clock, at 1:40?

22 MS. DENISE KRONSTADT: Certainly.

23 CHAIRMAN DUNNE: Okay. So, if we could resume  
24 at 1:40 with Ms. Kronstadt, we'll gain a little time.  
25 1:40.

1 (Whereupon, a luncheon recess was taken at  
2 approximately 12:38 p.m.)

3 (Proceedings continued at approximately  
4 1:43 p.m. as follows:)

5 CHAIRMAN DUNNE: Could we get started, please?  
6 Is Denise Kronstadt here? For those of you who were not  
7 here this morning, we are keeping to a very strict  
8 schedule given the fact that we've got a completely full  
9 roster of witnesses. So, please don't think us rude when  
10 we tell people your time is up or otherwise cut off  
11 questioning after the 20 minutes. We want to make sure we  
12 get everybody in. We also, just so you know, are, believe  
13 it or not, ahead of ourselves because we had a  
14 cancellation before lunch, which is why we're starting now  
15 at twenty of two rather than two o'clock. We'll see how  
16 that goes throughout the afternoon and whether all of the  
17 rest of the attendees actually appear, but for now we've  
18 got Ms. Kronstadt. Thank you.

19 MS. DENISE KRONSTADT: Thank you very much. My  
20 name is Denise Kronstadt and I am the director of advocacy  
21 for the Fund for Modern Courts. Modern Courts has  
22 established a special task force on the town and village  
23 justice courts. And on behalf of the task force I want to  
24 thank the chair and the honorable members of this  
25 commission for holding this, the first in a series of

1 important hearings, and for giving our task force the  
2 opportunity to present testimony.

3 And if I may with your permission take my Modern  
4 Courts hat off for one second, I am a former town and  
5 village justice court practitioner having represented  
6 tenants facing eviction in those courts in Rockland County  
7 and I was also a candidate for town justice. So, I know  
8 how complex this issue is to determine, both through  
9 Modern Courts reviewing it and also through my own  
10 experience representing people.

11 Modern Courts is a private nonprofit,  
12 nonpartisan organization dedicated to fostering  
13 improvements in the administration of justice in New York  
14 State. The fund was founded in 1955 and it is the only  
15 organization of its kind focused exclusively on improving  
16 New York State's judicial system. We are headquartered in  
17 New York City, but our board members are from many parts  
18 of the state and members of our task force reside in the  
19 Counties of Albany, Broome, Erie, Rockland, Schenectady,  
20 Suffolk and Westchester and consist of lawyers who have  
21 practiced before town and village justice courts along  
22 with non-lawyers who have a history of involvement in  
23 court monitoring and court reform.

24 As we have previously stated in testimony given  
25 to both the Senate and the Assembly, Modern Courts

1 enthusiastically supports the comprehensive action plan  
2 for justice courts which was released by the Office of  
3 Court Administration. The action plan acknowledged the  
4 political realities and existing framework of the justice  
5 courts while providing dozens of steps to enhance  
6 assistance to and support these courts in order and in an  
7 attempt to improve the status quo.

8 As you know, these initiatives detailed in the  
9 action plan cover operations, administration, auditing,  
10 financial controls, education, training, and court  
11 security. Providing the justice courts with digital  
12 recorders to assure real-time records of court proceedings  
13 and integrating the courts into the state judiciary e-mail  
14 and data base systems are examples of changes that should  
15 lead to tangibly positive results.

16 During this year's state budget process Modern  
17 Courts lobbied in support of the judiciary 2007/2008  
18 budget submission which included a \$10 million  
19 appropriation request for town and village justice courts.  
20 We have also long supported the New York State Commission  
21 on Judicial Conduct's request for greater funding and  
22 strongly lobbied on its behalf as well. The need for more  
23 funding was made very clear to the legislature and to us  
24 after hearing the commission's executive director's  
25 testimony, quote, the lion's share of commission resources

1 is devoted to investigating and prosecuting complaints  
2 against town and village justices. And I was thinking  
3 about what I was about to say to them when I was listening  
4 to all the statistics that came before you and it may be a  
5 really interesting idea to chart the statistics and see  
6 from where they come, because clearly statistics speak  
7 from an advocate's point of view. So, I wonder how  
8 valuable they are for this process.

9 Fortunately, those funding requests --

10 CHAIRMAN DUNNE: As judges sometimes say, we'll  
11 let it in for what it's worth.

12 HON. ELAINE JACKSON STACK: Do judges really say  
13 that? What they say is we'll give it the weight it  
14 deserves.

15 MS. DENISE KRONSTADT: Fortunately, those  
16 funding requests have been met by our legislators and the  
17 governor and we thank them for the wise decision to  
18 provide increased funding that will be used directly to  
19 better serve the administration of justice in all of the  
20 courts.

21 Modern Courts also supports Assembly bill 7369  
22 and Senate bill 4246, which was passed and will raise the  
23 JCAP ceiling from 20 to 30,000. I know that it's now  
24 before the governor and we of course urge the governor to  
25 sign it if he hasn't already. I don't know.

1                   Modern Courts also supports legislation A.7374  
2                   and S.4257 that will address concerns involving the chief  
3                   administrative judges, temporary assignment powers, as  
4                   well as more training, oversight and education for justice  
5                   and non-judicial staff. Such immediate legislative action  
6                   is essential in providing necessary resources to the  
7                   courts.

8                   As important as legislative action is, it is  
9                   equally important to involve the users of the courts and  
10                  engage the community, especially when dealing with issues  
11                  that are so local and have such complex implications,  
12                  which I know is what you're doing right now.

13                  This April Modern Courts sponsored a forum with  
14                  the New York State Bar Association in Albany entitled  
15                  *Perspectives on Criminal Jurisdiction in Town and Village*  
16                  *Justice Courts. Is There Justice in Justice Courts?* Our  
17                  decision to present the topic was decided by testimony  
18                  given before the Assembly and Senate hearings on justice  
19                  courts and the June 2006 report by the Spandenburg Group  
20                  on the status of indigent defendants in New York.

21                  The report, prepared for Chief Judge Kaye's  
22                  Commission on the Future of Indigent Defense Services,  
23                  along with testimony given at the legislative hearings  
24                  raised serious issues about the structure and operation of  
25                  justice courts, particularly with respect to the prompt

1 provision of counsel to indigent defendants in criminal  
2 cases as constitutionally mandated. Our panelists  
3 included some members of the commission -- the Honorable  
4 David Fuller. We also had people who testified here --  
5 Greg Lubow; Connie Neal, the director of Criminal Justice  
6 Projects for the State Coalition against Domestic  
7 Violence; the Honorable Diane Lufkin Schilling, who is  
8 here; and David Soares, the district attorney in Albany;  
9 and Judge VanDerWater, who also testified here. And the  
10 forum was moderated by our chair, Dan Murdock.

11 Each panelist provided the audience with a  
12 wealth of knowledge on the practice of criminal law in  
13 justice courts. Topics ranged from how the district  
14 attorney staffs the courts to arraignments, educating and  
15 training justices, to the experience of victims of  
16 domestic violence in justice courts. Questions directed  
17 to the panelists included the use of mediation, the Office  
18 of Court Administration's backup center resources, and  
19 whether non-lawyer judges could properly address the  
20 constitutional rights of criminal defendants.

21 The most contentious questions involved the  
22 issue of whether the justice courts should maintain a  
23 system of non-lawyer judges. Strong and varied opinions  
24 regarding this were voiced. Judge Lufkin Schilling noted  
25 that prior work experience of non-lawyer justices and the

1 education provided by OCA is sufficient for adjudicating  
2 proceedings in justice court. Greg Lubow, as you heard  
3 today, spoke of the need for judges to be lawyers in order  
4 to meet the constitutional rights of criminal defendants.  
5 And Judge Fuller referred to the contents in support of  
6 the action plan as a basis for supporting non-lawyer  
7 judges.

8 After the forum, Modern Courts developed a  
9 questionnaire seeking further input on the forum content.  
10 We asked the following questions of audience participants:

11 What is your relation to the justice court --  
12 litigant, judge, civil or criminal attorney? And please  
13 list the counties where you've been in justice courts.

14 Explain what experience you may have had in  
15 justice court that informs your opinions to the questions  
16 contained in this survey.

17 In your opinion, are town and village justice  
18 courts, as they are currently constituted, able to  
19 appropriately adjudicate criminal cases?

20 Do you think that there are changes that might  
21 enhance the administration of justice in criminal cases?

22 Should the criminal jurisdiction of town and  
23 village courts be limited?

24 Should town and village justices be members of  
25 the bar in good standing? If so, should that requirement

1 apply to all constituencies even if they have few  
2 attorneys?

3 Should all the costs of town and village courts  
4 be borne by their respective localities or should the  
5 state bear some portion?

6 Should local communities switch to consolidated  
7 courts?

8 And would a system of circuit courts or district  
9 courts benefit the community?

10 About 20 percent of the participants responded  
11 to the survey. I don't think that's statistically  
12 significant. I'm just laying out the responses as part of  
13 the debate, which you already know, but I think it's  
14 important to see that the issues always seem to revolve  
15 around the same thing from whatever forum you're in.

16 The responses came primarily from civil and  
17 criminal defense attorneys who practice in the justice  
18 courts across the state. We also received responses from  
19 a public defense administrator as well as a justice court  
20 judge and one response from someone who had never been to  
21 justice court. The responses came from diverse parts of  
22 the state with the counties listed in the testimony.

23 And although many would say that justice courts  
24 have been studied to death, engaging the users and the  
25 community as you are beginning to do today is an essential

1 part of the discussion at this time. And I offer some of  
2 the responses we received to note the issues surrounding  
3 this debate. Again, these are not answers or solutions.  
4 They're just what issues were raised.

5 In response to the question of whether town and  
6 village justices should be required to be members of the  
7 bar we received varied opinions. Many believe judges  
8 should be required to be lawyers in order to truly  
9 administer justice at the local level and view  
10 consolidation of jurisdictions as a solution to finding  
11 suitable lawyers in small towns and villages. Those who  
12 believed it would be unnecessary to require judges to be  
13 lawyers cited a limited pool of potential lawyer judges as  
14 well as past experience with competent, committed and  
15 well-trained lay justices.

16 Responders universally agree that the state  
17 should bear some economic responsibility for the costs of  
18 town and village justice courts. One respondent reasoned,  
19 quote, the state should bear some portion because all the  
20 municipalities do not have the same resources, but the  
21 citizens deserve the same quality of services.

22 Respondents generally believe that consolidation  
23 of the courts would be valuable in ensuring fair  
24 administration of justice. Many support the idea of  
25 establishing district or circuit courts as tools for

1 creating effective courts in regions where having small  
2 town courts would not be feasible. At the same time some  
3 value the intangible benefits of justice courts such as  
4 convenience and friendly atmosphere of local  
5 administration of justice.

6 The respondents in our survey had various  
7 responses to whether the justice courts as they are  
8 currently constituted have the ability to adjudicate  
9 criminal cases properly and effectively. The participants  
10 who responded positively admitted that there were always a  
11 few exceptions and that justice sometimes depended on a  
12 particular judge. Others believe that with approved  
13 training and resources judges in justice court would  
14 become more qualified. Those respondents who view the  
15 town justice court as ineffective called for judges to be  
16 lawyers as a starting point.

17 All respondents had propositions for change to  
18 enhance justice in criminal cases -- verbatim recording  
19 systems, limiting justice court jurisdiction, replacing  
20 the justice court system with a district court system for  
21 criminal cases, increase training for elected judges that  
22 would culminate in an exam, the ability to anonymously  
23 report problems to OCA as merely a feedback, not  
24 disciplinary system, to compliment the existing Commission  
25 on Judicial Conduct, better pay to attract more qualified

1 judges, and, again, countywide district courts for  
2 misdemeanors similar to the structure on Long Island.

3 Modern Courts respectfully offers this  
4 commission a summary of responses as part of the framework  
5 for your investigation. Perhaps you will have the  
6 opportunity to use the survey as you travel across the  
7 state and visit justice courts. It would be most useful  
8 to continue the survey for all users and to add questions  
9 regarding sensitive civil matters as well.

10 Modern Courts' task force also strongly supports  
11 engaging the local community in the discussion on the  
12 future of justice courts. Since 1975 Modern Courts has  
13 sponsored court monitoring programs across the state  
14 through which ordinary citizens observe, evaluate their  
15 courts, report their findings, and issue public  
16 recommendations for improvement. Monitoring projects are  
17 taking place on a rotating basis in 16 counties throughout  
18 New York.

19 Monitors are non-lawyer volunteers who have a  
20 sincere interest in the efficient operation of their local  
21 courts. They look at the system from an average citizen's  
22 viewpoint thereby providing a fresh, common sense  
23 perspective on how the courts can be improved. During the  
24 monitoring project the volunteers observe proceedings in a  
25 particular court for a period of several months and

1 complete monitoring forms designed to evaluate all aspects  
2 of the court's performance ranging from the demeanor of  
3 judges to the physical conditions under which the court  
4 operates. They observe proceedings as neutral,  
5 inconspicuous observers; however, they do not conceal  
6 their presence in courts.

7           Between 1985 and 1995 members of our citizens  
8 monitoring program observed town and village justice  
9 courts in the counties of Albany, Delaware, Monroe,  
10 Putnam, Suffolk and Westchester. Their concerns included  
11 the inaudibility of proceedings, the lack of accessible  
12 facilities for people with disabilities, poor lighting,  
13 overcrowding, the absence of security arrangements,  
14 disparity in DWI matters, and the lack of interpreters,  
15 certainly things that seem to be true today. Overall  
16 citizen court monitoring has improved communication  
17 between citizens and the judiciary, heightened the court  
18 system's sensitivity to public needs and helped to assure  
19 that those needs are met.

20           We are now developing a program to again engage  
21 community members in monitoring town and village justice  
22 courts. We are also seeking to involve local colleges and  
23 universities in the court monitoring. And I was going to  
24 ask Mr. Lackman for assistance in that. And we hopefully  
25 will also interview local practitioners, district

1 attorneys, public defenders, et cetera.

2 Any effort to comprehensively assess the town  
3 and village courts across the state through citizen court  
4 monitoring would be extremely complex to set up and  
5 administer and although revelatory results would take some  
6 time, it would be valuable to undertake. As we develop  
7 our upcoming court monitoring program we hope to have the  
8 cooperation of this commission, the Office of Court  
9 Administration, the magistrates association, local  
10 practitioners, and all those who are concerned.

11 On behalf of the fund and committee, thank you  
12 for your time and listening to our testimony and for the  
13 great efforts you are undertaking so you may carefully  
14 recommend reforms to the justice court system.

15 CHAIRMAN DUNNE: Thank you. Questions.

16 HON. DAVID OTIS FULLER, JR.: Yes. Thank you  
17 for the presentation. I was just interested in whether  
18 you had a time frame as to when this monitoring is going  
19 to take place.

20 MS. DENISE KRONSTADT: We are developing it over  
21 the summer and it takes time to get the appropriate number  
22 of volunteers and for us to determine which counties and  
23 which courts we are going to go into. So, I would say our  
24 goal is to start in early October.

25 HON. DAVID OTIS FULLER, JR.,: And then when do

1 you expect to finish, how long a period of time?

2 MS. DENISE KRONSTADT: It depends on how long we  
3 determine we want to do these courts. In the past Modern  
4 Courts has stayed in courts for a number of months, like  
5 they would go to Albany Family Court for a number of  
6 months. That may not be realistic for town and village  
7 justice courts. So, we really are in the process of  
8 changing the paradigm that's been used in the past because  
9 town and village justice courts are different. So, I  
10 don't have a specific answer to you on that, but I don't  
11 think we're going to spend more than four months to do it  
12 kind of thing.

13 HON. DAVID OTIS FULLER, JR.: Is there a list  
14 that you have for the monitors that they're supposed to  
15 particularly look out for, a list of items that they are  
16 supposed to focus on?

17 MS. DENISE KRONSTADT: Yes. In the past Modern  
18 Courts trains the monitors. A lot of them come from the  
19 league, church groups and people in the community, and  
20 they get trained. And as part of the training there is a  
21 list of questions that they answer. There are open-ended  
22 questions. There are yes and no questions. And we would  
23 carefully create those to focus on issues in town and  
24 village justice courts, both the jurisdiction and the  
25 issues that have been raised by everybody.

1                   HON DAVID OTIS FULLER, JR.: So, you intend,  
2 then, to compile the results and then provide that to our  
3 commission here or what did you have in mind?

4                   MS. DENISE KRONSTADT: Yes.

5                   HON. DAVID OTIS FULLER, JR.: Very well. Thank  
6 you.

7                   CHAIRMAN DUNNE: Actually, one question I had is  
8 whether the fund would be willing to share with us the  
9 past results of the monitoring that you mentioned as well  
10 as in some fashion the data collected in the questionnaire  
11 you've done recently.

12                   MS. DENISE KRONSTADT: The past results  
13 certainly. We have old monitoring reports. Many of them  
14 are on the Internet. The town and village ones are not on  
15 the Internet, but I have a stack of town and village ones  
16 from the past. We may not have all of them, because we  
17 have records going back for 50 years. So, I would be more  
18 than happy to provide those to the commission. In terms  
19 of the results of the survey, I'm concerned because I did  
20 offer that it would be anonymous. I would be more than  
21 happy to remove the person's name and maybe their  
22 affiliation that could potentially identify them and give  
23 you the full answers.

24                   CHAIRMAN DUNNE: I think that would be useful to  
25 us. Thanks. We'll follow up with that.

1 MS. DENISE KRONSTADT: My pleasure.

2 CHAIRMAN DUNNE: Thank you.

3 MS. DENISE KRONSTADT: Thank you very much.

4 CHAIRMAN DUNNE: Since we are running ahead  
5 because of the loss of a witness, I'm told that the next  
6 three people have yet to arrive, which is fine. I'm  
7 wondering if Justice Rogers is here and would you be  
8 willing to accelerate your appearance so we can stay on  
9 schedule.

10 HON. JAMES ROGERS: Why not.

11 CHAIRMAN DUNNE: Thank you.

12 HON. JAMES ROGERS: Ladies and gentlemen, I'm  
13 here on the behest of the Essex County Magistrates  
14 Association and because of my own convictions. I'm a town  
15 justice in the Town of North Elba, the town in which Lake  
16 Placid is located. Just to orient you, Lake Placid is 25  
17 miles from the county seat and 75 miles from Ticonderoga,  
18 the southernmost community in Essex County. With 35,000  
19 people in the entire county it is the second largest  
20 county by square mileage in the state. There are 33 town  
21 and village judges in Essex County. Lake Placid has two  
22 village justices and two town justices. Village justices  
23 share their load equally and the town justices share their  
24 load equally.

25 My biggest evening with a combination of traffic

1 and criminal cases was 106. Of course they didn't all  
2 show, but I started at six in the evening and the last  
3 case left around 10:15. I stayed until after eleven to  
4 make sure all the paperwork was done. I have court every  
5 other Monday evening. My co-justice alternates with me.

6 The part about the job that nobody loves but  
7 everybody does is getting up at three in the morning  
8 because neither the village nor the state police have  
9 holding facilities and something must be done with this  
10 man who has beaten the tar out of his wife or the man from  
11 North Carolina who blew a .27 and plans to leave for home  
12 at six in the morning. Both of them need attention then,  
13 not at nine o'clock in the morning.

14 I must admit in some small towns the folks who  
15 are elected to the position of town justice are simply  
16 those that are willing to run. It has always appealed to  
17 me that some of the busier adjacent towns could pick up  
18 the pieces of the less active town courts. Most of the  
19 uncontested or unsatisfactory judges are people who have  
20 court once or twice a month and take care of four cases in  
21 an evening. Even some of those are conscientious people  
22 who learn all they can but just don't have the traffic in  
23 their courts to keep their skills honed.

24 Let me speak for Essex County because I think it  
25 is probably a good representative of the less populated

1 counties in the state. We're not talking Nassau or  
2 Suffolk or Albany or Erie or Monroe or Onondaga. We're  
3 talking Essex, Clinton, St. Lawrence, Lewis, Hamilton,  
4 Saratoga, Washington. And the list is legion. Many, if  
5 not the majority of upstate, north of Westchester,  
6 counties of New York are supplying justices who take their  
7 job seriously, study and learn as much as they can, and  
8 pick up every opportunity they have to increase their  
9 knowledge and better prepare themselves to sit the bench.  
10 Most of the justices I know are very much in favor of the  
11 proposed education program for New York State justices.

12 The four justices in Lake Placid area are  
13 well-educated. They work hard to keep abreast of their  
14 job. The Lake Placid village justices are a lawyer and a  
15 man who completed divinity school and decided not to  
16 become a priest. I have 2 years of college and owned my  
17 own business for 35 years. My co-justice has a master's  
18 degree in education. Three of us are not lawyers. One of  
19 the toughest jobs we have is to keep lawyers from trying  
20 to steamroller us.

21 The most important part of my job is to  
22 administer justice in my home territory. I decide civil  
23 cases. They're the most difficult because you have two  
24 people appearing before you and you, almost without  
25 exception, cannot make either of them happy.

1 I have arraigned murder cases. I have signed  
2 search warrants for murder and major drug cases. I have  
3 heard felony hearings on major drug cases, but I would  
4 like to tell you of two cases that appeared before me to  
5 help you understand, one, that this is the court closest  
6 to the people and, two, the local justices are dealing  
7 with human beings whose life they're affecting and who may  
8 well be acquaintances. The acquaintanceship may be  
9 important to the case.

10 The first case was that of a young man who  
11 smacked his girlfriend around while they were separated.  
12 She'd thrown his entertainment center out of the  
13 second-story window. I offered him 15 days in jail or  
14 28 weeks of violence intervention program. He chose the  
15 latter but said it was Mickey Mouse. After his first day  
16 in VIP he returned to the court to reiterate that it was  
17 Mickey Mouse. And I again offered him the alternative.  
18 He preferred to remain with VIP. After 28 weeks he took  
19 the trouble to come back to court to thank me. He said,  
20 and I quote, judge, I want to thank you. I found out some  
21 things about me I didn't like.

22 The other was perhaps even more rewarding. A  
23 young man that I knew had a drinking problem even before  
24 he came to court came before me on a DWI charge. His  
25 charge was reduced to DWAI because his blood alcohol was

1 low and this was his first arrest. The sentence I imposed  
2 included assessment and the requirement that he follow up  
3 with whatever alcohol assessment required. He went away  
4 to rehabilitation. A few months later I was at the Lake  
5 Placid Post Office. There are usually 2 or 3 people there  
6 when I stop by. This time there were 10 or 12. The young  
7 man shouted me across the post office lobby. Judge, I  
8 want to thank you for sending me to rehab. It's the best  
9 thing that ever happened to me. I don't need to tell many  
10 of you that these happenings keep me doing my job with  
11 enthusiasm.

12 Ladies and gentlemen, a large majority of town  
13 and village justices do their jobs because they feel they  
14 can make a difference. They do their jobs because they  
15 know they're affecting lives. They work hard at their  
16 jobs. They study. They try to keep up with recent laws.  
17 They attend learning sessions. In Essex County some 20 to  
18 25 of the 33 justices attend monthly magistrate  
19 association meetings to learn something more about their  
20 jobs. Two of the ones that don't attend are lawyers who  
21 don't feel they need the education.

22 There must be at least 30 to 50,000 cases  
23 considered by Essex County justices each year. I  
24 seriously doubt that one or even two district judges  
25 would, one, handle 18 township problems in the wee hours

1 of the morning or understand the individuals who are  
2 coming before them from a town 25 or 50 miles away.  
3 50,000 cases a month to a thousand cases a week, or  
4 200 cases a day. Any district judge will want to work 5  
5 days a week 50 weeks a year, maybe only 48 weeks a year.

6 Please consider the best situation for the  
7 people who appear before us. Please consider that most  
8 people who come before us are not people who are defying  
9 the law. Most of them are just people that goofed. The  
10 system of town and village justices is flawed. Not every  
11 judge is dedicated to his or her job. But the vast  
12 majority of town and village justices are aware that they  
13 are the court closest to the people. They are aware that  
14 they are fallible human beings and are trying and mostly  
15 succeeding in being an important and effective judicial  
16 system for the State of New York.

17 The town and village justice system is flawed,  
18 but the best option is not to replace it with a  
19 potentially equally flawed system, but to make efforts to  
20 improve the system as it exists. The Unified Court System  
21 is making efforts in that direction and these are efforts  
22 that are supported by the New York State Magistrates  
23 Association.

24 I want to thank you for the opportunity to  
25 testify and I wish you part of what I pray for each time I

1 sit the bench -- more wisdom than I now have. Thank you.

2 CHAIRMAN DUNNE: Thank you, Judge. Questions.

3 Dan Feldman.

4 MR. DANIEL L. FELDMAN, ESQ.: Judge, some of the  
5 earlier witnesses have made sort of strenuous pleas for  
6 consolidation, reduction in the number of courts. You  
7 alluded to it in your testimony, but coming from a large  
8 relatively low-density county, I wonder if you could  
9 briefly sketch what you would see as the impact on local  
10 residents with kind of a specific sort of illustration, if  
11 you could, of a substantial reduction in the number of  
12 courts.

13 HON. JAMES ROGERS: One of the problems again is  
14 mileage between, but there's a town that many of you may  
15 know, Essex. The judge meets once a month and he has  
16 maybe as many as ten cases. Right next to it is Westport,  
17 which has two justices, and they're close enough -- or  
18 Willsboro on the other side, the townships. They're both  
19 close enough so they know the people in the Town of Essex.  
20 The Town of Essex really doesn't need a justice. One of  
21 those other two towns -- or they could even split it  
22 geographically so that the two adjacent towns could pick  
23 up half of the Town of Essex, but we're eight miles from  
24 Saranac Lake. Saranac Lake has two villages and two town  
25 justices and they're almost as busy as Lake Placid. I

1 can't see our picking up any of them. And the Town of  
2 St. Armand is right next to Saranac Lake. The Town of  
3 North Elba could pick up St. Armand, which is also a  
4 small --

5 MR. DANIEL L. FELDMAN, ESQ.: It sounds like  
6 you're saying that some reduction might be feasible.

7 HON. JAMES ROGERS: Yes, I believe so, as long  
8 as we're not doing heavy mileage. I mean, I can't see  
9 the -- I don't know what you do with somebody at two or  
10 three or four o'clock in the morning when the nearest  
11 judge is 20 miles away.

12 MR. DANIEL L. FELDMAN, ESQ.: Thank you.

13 CHAIRMAN DUNNE: Any other questions? Yes.  
14 Dean Treanor.

15 MR. WILLIAM TREANOR, ESQ.: Judge, I thought  
16 your testimony was very helpful and I wanted to follow up  
17 on that and ask the same question I asked Judge Reichler  
18 this morning. Can you give me a sense of how many  
19 arraignments in the middle of night, say from ten to six,  
20 that you have and how typical that it is of Essex County?

21 HON. JAMES ROGERS: Well, the county seat  
22 probably has more than I. My co-judge and I probably are  
23 called out at least once a week. And it usually is in the  
24 wee small hours of the morning. The state police who have  
25 headquarters nearby have no holding facilities. The

1 village police had a holding facility until they had a  
2 suicide and then decided they didn't want to have a  
3 holding facility anymore. So, the county jail is 25 miles  
4 away. I do arraignments once in a while for the village  
5 if neither of the village justices is available and  
6 sometimes for an adjacent township if they can't chase up  
7 a judge at two o'clock in the morning, but not very often.

8 MR. WILLIAM TREANOR, ESQ.: Okay. So, about,  
9 again, about once a week?

10 HON. JAMES ROGERS: Yes. Probably.

11 MR. WILLIAM TREANOR, ESQ.: Thank you.

12 HON. DAVID OTIS FULLER, JR.: I have one.

13 CHAIRMAN DUNNE: Judge Fuller.

14 HON. DAVID OTIS FULLER, JR.: Yes. Thank you  
15 very much for that moving presentation. It sounds as  
16 though if there were some consolidation it wouldn't be  
17 very much. You mentioned a few illustrations, but in  
18 general you really need the courts that you have in your  
19 county. Would that be a fair statement?

20 HON. JAMES ROGERS: I think so. I don't know  
21 what would be an effective replacement. And that's got to  
22 be true in a number of the counties in this state that are  
23 quite rural. I think Essex County is one of two counties  
24 that doesn't have a city in it.

25 HON. TERENCE WOLFE: On the subject of

1 consolidation, would this be something that you feel the  
2 state should dictate which towns would consolidate or is  
3 this something you are in favor of a local referendum to  
4 do?

5 HON. JAMES ROGERS: I frankly can't see the Town  
6 of Essex saying to its two neighboring towns, do you want  
7 to take over the job? I have to believe that each  
8 township likes their autonomy. I think it would have to  
9 be -- I think it probably would have to be directed.  
10 That's just a practical matter.

11 HON. TERENCE WOLFE: Thank you.

12 CHAIRMAN DUNNE: Judge Frazee.

13 HON. EVELYN FRAZEE: I was on the visit in the  
14 North Country and we went to St. Lawrence and Franklin  
15 County. I'm assuming in Essex as well there's one county  
16 seat where the jail is housed.

17 HON. JAMES ROGERS: Yes.

18 HON. EVELYN FRAZEE: And now the sheriff is  
19 having to transport prisoners to all the different town  
20 and village courts. Would there be some type of savings  
21 with the consolidation or combination of town and village  
22 courts?

23 HON. JAMES ROGERS: I think there would be some  
24 -- to the towns there would be some. What are you talking  
25 about?

1 HON. EVELYN FRAZEE: I'm talking about the  
2 sheriff's department. If you're cutting down three courts  
3 into one, aren't you saving money and time in terms that  
4 the sheriff has to transport people in custody to court?

5 HON. JAMES ROGERS: Probably not.

6 HON. EVELYN FRAZEE: Why would that be?

7 HON. JAMES ROGERS: Yes, because there would be  
8 one less court to conduct people to, but the small  
9 townships -- I'm thinking Newcomb, which is way off in the  
10 woods, or Essex -- don't have an awful lot of time that  
11 they're calling for a prisoner to be brought to court.

12 HON. ELAINE JACKSON STACK: One more?

13 CHAIRMAN DUNNE: Yes. Judge Stack.

14 HON. ELAINE JACKSON STACK: Judge, do you have  
15 any reason to believe that a district court judge would  
16 not see that a batterer could do well in a batterer's  
17 program or that a person who has an alcoholism problem  
18 wouldn't do well in a rehab center?

19 HON. JAMES ROGERS: Not at all. My point is,  
20 particularly in the DWI case, somebody who is sitting from  
21 Elizabethtown wouldn't have a clue as to whether this  
22 young man had a drinking problem.

23 HON. ELAINE JACKSON STACK: Just because --

24 HON. JAMES ROGERS: Just because he didn't know  
25 him. And the troopers aren't going to tell you he has a

1 drinking problem. The troopers are going to tell you he  
2 has a DWI.

3 HON. ELAINE J. STACK: Thank you.

4 CHAIRMAN DUNNE: Thank you, Judge.

5 HON. JAMES ROGERS: Thank you.

6 CHAIRMAN DUNNE: Is Melanie Trimble down here?  
7 Good afternoon.

8 MS. MELANIE TRIMBLE: Good afternoon. I have a  
9 written statement which I think I'll stick to because it's  
10 a little nerve wrecking to think about how to do it  
11 extemporaneously if you don't mind. I'm sure you've been  
12 through this before.

13 The New York Civil Liberties Union is one of the  
14 nation's foremost defenders of civil liberties and human  
15 rights. We present testimony here today regarding the  
16 need for comprehensive New York State town and village  
17 court reform that both incorporates and goes beyond the  
18 action plan for the justice courts of the Kaye Commission.

19 The Legislature should take full responsibility  
20 for structural reform by ensuring that every court is a  
21 court of record with a public docket, creating enforceable  
22 standards of justice and meaningful oversight by  
23 centralized authorities, ensuring justices are qualified  
24 graduates of law school and are members of the Bar  
25 Association, ensuring effective appointment of counsel for

1 indigent defendants.

2 Justice courts are the only courts by state law  
3 who's proceedings are not required to be recorded.  
4 Proceedings in all other trial courts in New York are  
5 recorded and are caught manually or electronically. Due  
6 to the lack of recording equipment and public docket local  
7 judges must recreate hearings based on their handwritten  
8 notes if an official record must be produced. Such a  
9 process can raise questions of completeness. When  
10 official records must be produced for appellate review  
11 fundamental liberties are at stake, especially in criminal  
12 cases. Proper recording equipment will permit appellate  
13 courts to perform meaningful review of justice court  
14 proceedings and guarantee that citizens unalienable rights  
15 are protected in all courts.

16 The *New York Times* reviewed public documents in  
17 2006 and found overpowering evidence of people being  
18 deprived of their fundamental legal rights. Defendants  
19 were jailed unlawfully, denied the right to trial,  
20 subjected to racial or sexual bigotry, and denied an  
21 impartial judge and the presumption of innocence.

22 Requiring justice courts to be courts of record  
23 is essential to shine the light of public review on the  
24 judicial process. And the Judicial Review Commission  
25 often talks about how difficult it is for them to evaluate

1 possible improprieties on the part of the judge because  
2 there is no official written record. No official taped  
3 record. No official record.

4 Again, unlike all other courts in New York State  
5 village courts are not overseen by the Office of Court  
6 Administration which is responsible for supervising the  
7 administration and operation of trial courts. The State  
8 Commission on Judicial Conduct, which is only 11 part-time  
9 uncompensated members, is not equipped to fully monitor  
10 the town and village courts in the entire state. Who is  
11 to hold these justices accountable for their failures when  
12 citizens' livelihoods and basic freedoms are on the line?

13 A mother of four went to court to request an  
14 order of protection against her husband. The police  
15 involved with the case said her husband choked her, kicked  
16 her in the stomach and threatened to kill her. Donald R.  
17 Roberts, a former state trooper, not only refused the  
18 order of protection, but was also later quoted as saying  
19 to the clerk, "Every woman needs a good pounding now and  
20 then."

21 OCA should take responsibility to ensure that  
22 judgments are not based on -- sorry -- are made based on  
23 sound legal principles not irrational grounds and  
24 insidious biases. Seventy percent of the town and village  
25 justices are not trained legal professionals. This

1 percentage is higher in New York State than in any other  
2 state, and yet these courts have control over the largest  
3 number of cases in the criminal justice system, and must  
4 fully comprehend complex issues of housing law, domestic  
5 law, domestic violence law and criminal procedure. A  
6 crash training program, whether one week or three, cannot  
7 adequately prepare a justice to adjudicate this wide range  
8 of cases.

9 There is a substantial amount of information  
10 that must be learned and a significant amount of skill  
11 that must be acquired before non-lawyer justices can take  
12 the law into their own hands. Quote, "It is ironic that  
13 judges are held to a lower standard than the lawyers that  
14 appear before them," says Corey Sutton, staff attorney at  
15 the New York Civil Liberties Union.

16 If admission to the bar is required to give  
17 legal advice it should be required to make binding legal  
18 decisions that directly impact the liberty and property of  
19 New Yorkers. The court system should be required to  
20 follow the rules already in place within the legal  
21 profession. And mandatory continuing legal education  
22 programs should be a requirement for all justices in New  
23 York State.

24 One aspect of the problem with justice courts is  
25 that it often overlooks -- and this is our big issue -- is

1 the problem of providing constitutionally required legal  
2 representation to indigent people accused of crimes. The  
3 New York Civil Liberties Union wholeheartedly supports  
4 Chief Judith Kaye's call to reform the quality of the  
5 public defense services in the state.

6 New York has struggled to meet the challenges of  
7 providing sufficient counsel to the disadvantaged since  
8 the Gideon decision more than four decades ago. It is  
9 clear that local justices do not understand criminal  
10 procedure and the result is often no appointment of  
11 counsel whatsoever, leaving indigent defendants helpless.

12 Moreover, public defense services are so  
13 underfunded as a direct result of the state's failure to  
14 provide adequate financial support, that in the vast  
15 majority of counties there are not enough public defense  
16 attorneys to cover the many justice courts. Thus, one  
17 cannot fully understand the problems of the justice courts  
18 without understanding the related problem of New York  
19 State's underfunded and mismanaged public defense system.  
20 We find this subject matter deeply concerning at the NYCLU  
21 and hope persistent efforts will at last be rewarded  
22 through much-required court reform. Thank you.

23 CHAIRMAN DUNNE: Judge Lack.

24 HON. JAMES J. LACK: Just for clarification, I  
25 assume where you say ensuring justices are qualified

1 graduates of law school and members of the bar  
2 association, since New York is not an integrated bar state  
3 you're just referring to the fact they should be admitted  
4 to practice?

5 MS. MELANIE TRIMBLE: They should be admitted to  
6 practice, yes.

7 CHAIRMAN DUNNE: Judge Fuller.

8 HON. DAVID OTIS FULLER, JR.: Yes. In your  
9 first point you had there ensuring every court is a court  
10 of record. I take it you're familiar with the action plan  
11 of OCA?

12 MS. MELANIE TRIMBLE: Yes.

13 HON. DAVID OTIS FULLER, JR.: So that's taken  
14 care of then really. So it would be taken care of by the  
15 court's --

16 MS. MELANIE TRIMBLE: Once it's fully  
17 implemented, yes.

18 HON. DAVID OTIS FULLER, JR.: Once it's full of  
19 ruff.

20 MS. MELANIE TRIMBLE: Full of ruff, correct.

21 HON. DAVID OTIS FULLER, JR.: And how about the  
22 -- the second point -- the supervising judge; would that  
23 take care of the oversight you had in mind or did you want  
24 to augment the Conduct Commission or what did you have in  
25 mind?

1 MS. MELANIE TRIMBLE: I will have to get back to  
2 you about that because I personally didn't do the full  
3 analysis. And I will take that question to my agency and  
4 have them -- in other words, the recommendations made in  
5 the initial commission's report, and are those  
6 recommendations enough to satisfy our claims that the  
7 oversight would be adequate. Is that the question that  
8 you're asking?

9 HON. DAVID OTIS FULLER, JR.: Yes, that's right,  
10 based on the action plan.

11 MS. MELANIE TRIMBLE: I'm not sure about that  
12 answer, I will have to go back to my agency and have them  
13 follow up with a letter to you guys.

14 HON. DAVID OTIS FULLER, JR.: Now, your point  
15 about the graduates of law school, members of the bar, is  
16 that for all cases on the -- in other words, you would  
17 like to have any judge in magistrates court you would want  
18 to be a lawyer; is that true?

19 MS. MELANIE TRIMBLE: Yes.

20 HON. DAVID OTIS FULLER, JR.: Have they  
21 considered the problem of pool of lawyers in Upstate New  
22 York?

23 MS. MELANIE TRIMBLE: Yes, they have. And our  
24 feeling is that because judgeships have been so  
25 politically entrenched, that perhaps lawyers in the area

1 have been discouraged from pursuing it because of the  
2 politicalization of these smaller town justices. So we  
3 think that there's adequate personnel, lawyers and  
4 attorneys about in the smaller communities that would be  
5 willing to step forward.

6 HON. DAVID OTIS FULLER, JR.: Is that something  
7 that's been ascertained; because what I heard on the other  
8 side is that they just don't have the pool up there and  
9 lawyers don't like the idea of cutting out their practices  
10 by not being able to take some of these appointments they  
11 can take if they were town or village justices.

12 MS. MELANIE TRIMBLE: That's information that I  
13 think we can gather for you. We would certainly be  
14 willing to go out to these communities and to make sure  
15 that the perception that one has that there are no  
16 attorneys there that in fact is just a misperception.  
17 That's our belief, but I don't have anything concrete to  
18 illustrate that. But our anecdotal information is that  
19 there are lawyers out there that are willing to  
20 participate, they just haven't been willing to step  
21 forward under its current climate.

22 HON. DAVID OTIS FULLER, JR.: Now, performance  
23 of counsel, obviously we must have counsel for people  
24 charged with crimes whether they can afford it or not, and  
25 that's very basic. But there certainly have been

1 instances before the Conduct Commission where people have  
2 not given the defendants the rights they should have. But  
3 talking about just the magistrates in general, are there  
4 any specific deficiencies that you know of where the  
5 people aren't getting counsel?

6 MS. MELANIE TRIMBLE: We did -- we have done  
7 extensive studies on smaller town courts and we are  
8 currently considering litigation with the state regarding  
9 the lack of defendant services in smaller counties. And I  
10 can provide you with that information in a few months.

11 HON. DAVID OTIS FULLER, JR.: Thank you, that  
12 would be very helpful.

13 MS. MELANIE TRIMBLE: That is our analysis that  
14 there are people not represented by counsel.

15 HON. DAVID OTIS FULLER, JR.: We would like to  
16 hear about that, thank you.

17 CHAIRMAN DUNNE: Thank you for your testimony.

18 MS. MELANIE TRIMBLE: Thank you.

19 CHAIRMAN DUNNE: Is Judge Watinger here yet?

20 HON. CHARLES WATINGER: Hello.

21 CHAIRMAN DUNNE: Hello.

22 HON. CHARLES WATINGER: I'm Judge Charles  
23 Watinger, I'm from western New York. I live in a township  
24 about 30 miles south of Buffalo. I have been a member of  
25 the State Magistrates Association for 22 years. I'm

1           presently the president of Catt County Magistrates  
2           Association. I've been there for two years. And I  
3           indulge in a lot of training for my fellow magistrates. I  
4           write and get credits for these people. We get training  
5           aids. We have two- or three-hour sessions and get credits  
6           for them. And I'm a firm believer in the state's new  
7           action plan.

8                        In fact, I had Paul Toomey out to one of my  
9           meetings and he explained everything that was going on  
10          with the new action plan and I'm a firm believer that we  
11          as local justices have got to make this work. If the  
12          training is there, myself and our fellow judges will  
13          assure that some of these judges will get training.

14                      You speak about attorney judges. There's some  
15          very good attorney judges. There's some very bad attorney  
16          judges. I as president am a non-attorney judge. I have  
17          had to help some attorney judges along in their first and  
18          second terms because they were unsure of what they had to  
19          do. I had a fellow attorney judge in another township --  
20          I won't mention it, not in my county -- kept a defendant  
21          incarcerated for 22 days without an attorney. And I said,  
22          "Listen, what's this training that we have done. We  
23          specifically state you got to assign counsel. You've got  
24          to make sure they have got counsel." This particular  
25          judge said, "Well, the defendant's got the money, but he

1 can't get out of jail to get somebody to get him the  
2 money. He's got the money in the bank." I said, "Assign  
3 him counsel, the public defender's office or somebody,  
4 until he gets out and gets bail." He had 15,000 on him.  
5 So attorney judges are not perfect. Most of them are.  
6 But I have had some -- I have had some discrepancies with  
7 them.

8 But this is very informal and I want to commend  
9 the commission and the people that drafted up this action  
10 plan, because I'm sure it will work. We've just got to  
11 give it some time, a couple of years. The training -- the  
12 last few sessions that we've had of training has been  
13 great. It's been great. What I think should be -- and I  
14 will address this in the Magistrates Association in the  
15 fall. What I think should be done is we should have more  
16 hands-on training, mock trials, small groups, on-hands  
17 decisions; go through the hearings, have every judge know  
18 what a hearing is supposed to run like, have every judge  
19 know how to handle small claims.

20 I had an attorney judge -- and I'm not just  
21 speaking on attorney judges, but this attorney judge after  
22 hearing testimony in a dog case recused himself because he  
23 didn't know how to make a decision. He said, "Well, I'll  
24 let the other judge handle it because I'm not sure how to  
25 do this." I just heard about that last night, so I had to

1 bring it up.

2 There are deficiencies in the local justice  
3 courts. But I'm sure if the word gets out how important  
4 this is to every elected town justice, whether he's an  
5 attorney or whether he's not an attorney, we can get the  
6 word out and stress what it means to our own townships,  
7 our local organizations, I think it will benefit  
8 statewide.

9 I just had a report from the Comptroller's  
10 office did an audit. I come out smelling like a rose  
11 after 22 years. That's pretty hard to do. Being a dollar  
12 eighteen cents over. They commended me. But they said,  
13 "Judge, what are we going to do in your township? You  
14 have \$65,000 worth of unpaid fines." I said, "Listen. We  
15 try to collect them. You can't get blood out of a stone."

16 My court clerk, they give her 20 hours a week.  
17 Right now I'm sending in anywhere from \$15- to \$18,000 a  
18 month in my little court. The town realizes about \$6- or  
19 \$7,000 of this. And they can't give my town court clerk  
20 another five- or ten hours a week to catch up on this  
21 stuff. It takes time to collect.

22 Now, the state should be aware of this also  
23 because they're supposed to realize probably about 60  
24 percent or 70 percent of this money. The computer spits  
25 it out and -- when we put it in the computer spits it out

1 and says oh, Town of Yorkshire in the last two years  
2 you've got \$65,000 of uncollected fines. That's about  
3 \$40,000 for the State of New York. Somebody's got to  
4 start collecting. Somebody has got to mandate that this  
5 has got to be collected. If this went into district  
6 courts -- imagine a district court or a county court  
7 trying to collect from 52 jurisdictions in my county. It  
8 would be a fiasco.

9 On February 21st I left my courtroom at one  
10 o'clock in the morning after an arraignment. At five  
11 after five I walked back out of the house for another  
12 arraignment. It was one below zero. Do you think a  
13 county judge or a district judge is going to walk out and  
14 do this? No way. I've had sex offenses -- local sex  
15 offenses, drug abusers that are handled right in our court  
16 with my district attorney and the defendant's attorney.  
17 And everything seems to work out pretty good.

18 Also, I think that -- I don't know how it's  
19 going to work now, but I think the Office of Court  
20 Administration should be in control of the probation  
21 people. Probation people in my county, they're losing  
22 another two people. Each probation guy puts in about 105  
23 to 110 cases that he has to take charge of. Probation  
24 helps the local justice courts. You can know the  
25 defendant, send him to probation, let the probation

1 officer contact you to see how things are going.

2 On April 25th I sent a kid to alcohol and drug  
3 rehab, the DA says, "Okay. We want a drug and alcohol  
4 evaluation and the fine, Judge. You can fine him." Okay.  
5 This gentlemen spit on two state troopers and had an  
6 assault. She covered the assault with two disorderly  
7 conducts. I sent the defendant to drug and alcohol  
8 rehabilitation for an evaluation. That was all that was  
9 required. That was on April 25th. On April 25th in the  
10 afternoon he came back to my court, paid his fines and  
11 walked out the door. I just got a letter back from the  
12 rehab place, the alcohol place, and they said, "Yeah, the  
13 defendant definitely needs treatment." He said he's not  
14 going to do it because he's already paid his fine. I had  
15 a conditional discharge on it stating that, you know, you  
16 will get a drug and alcohol eval. He got an evaluation  
17 but he didn't do anything about it. Probation would help  
18 in this matter.

19 I had a couple other notes I wanted to stress.

20 CHAIRMAN DUNNE: For the record, probation is  
21 the other commission.

22 HON. CHARLES WATINGER: Right, I understand  
23 that. I'm just saying if we can help in any way, you  
24 know -- our court clerks, there's many courts in my county  
25 that do not even have a court clerk. I don't know how

1 we're going to stress to town boards to get a court clerk.  
2 I for 18 years did this on nights and Saturdays and kept  
3 all my books in proper, and my dockets were up to date,  
4 and the last five years have been -- I could no longer do  
5 it by hand. We got the computer system. We have the SCI  
6 program and it works good for my court. Any time we have  
7 a problem we just get on the phone and call, they're  
8 always right there to answer our questions. So I have no  
9 problem with that. It's the problem of the time that has  
10 to be spent putting the stuff in the computer. So has  
11 anybody got any questions of me?

12 CHAIRMAN DUNNE: Any questions?

13 HON. DAVID OTIS FULLER, JR.: I have a question.  
14 I would like to see how we can get the \$65,000 back. Are  
15 these people that pleaded guilty and then they were  
16 supposed to pay the fines and never showed up? They were  
17 given time to pay it and --

18 HON. CHARLES WATINGER: They were given time to  
19 pay. Now, some courts that I'm aware of say, "Listen.  
20 I'll give you 60 days to pay your fine, otherwise we're  
21 going to put a civil judgment on you." Civil judgments  
22 then will go to the county courts and then they've got to  
23 pick up the slack and try to do the collecting on a civil  
24 judgment. They're not going to be able to send us the  
25 money so that we can straighten out our Comptroller's

1 report that goes back to the state.

2 The only thing it is that the computer says, you  
3 know -- you put a partial fine in the computer the  
4 computer says this defendant owes \$105 balance. To  
5 collect the 65,000 what we are trying to do right now on a  
6 very limited basis because my clerk has very limited time  
7 and I'm retired and put in 20-, 25 hours a week on a  
8 part-time job as judge, not because of the money, trust  
9 me, but the job has got to be done and if it's done right,  
10 you know, you got to put the time in.

11 Now, what we do the second time around if they  
12 don't pay, I send a notice to their last mailing address.  
13 Or the clerk does. I had a stamp made up that says,  
14 "Warrant pending. If you don't pay this within 30 days  
15 there will be a warrant for your arrest." That wakens  
16 them up. Awakens them. We've collected quite a bit. But  
17 like I said, there's another postage involved. There's  
18 another -- you know, people call me -- in fact, somebody  
19 called me Saturday and said, "I'm supposed to be down  
20 there to pay a fine" on Saturday. So I took the money  
21 because he wouldn't come back again. So I just happened  
22 to be out in the yard and I went down.

23 There is a way to collect this money, but it's  
24 going to take some time. So, I don't know how I can get  
25 through to my town board to give the clerk more time or

1           whatever.

2                   HON. DAVID OTIS FULLER, JR.: Now, if she were  
3 full time do you think that would make a big difference?

4                   HON. CHARLES WATINGER: Even if she had ten more  
5 hours. And that's just in my court. Some of these courts  
6 they're very stressed. Especially what the state mandates  
7 today to do with your court records. I mean you got to  
8 send everything and his brother in. We constantly get  
9 dispositions from 10-, 15 years ago that I have to go up  
10 and look because we didn't have computer systems then. I  
11 have to go up and dig them out and do it by hand for  
12 military purposes, for people wanting jobs, da, da, da,  
13 da, da, and it's time consuming. Now, sure, I would love  
14 to see her on full time, but I know it's not possible  
15 because our town doesn't have the money. I understand  
16 that.

17                   But presently right now with what we have up  
18 until the end of May in my town alone, very small town,  
19 but I'm going to realize the town net about \$75,000. Now  
20 that's not too shabby for a little bitty town that we get  
21 back from the Comptroller's office. It's not a huge  
22 amount of money, but it pays the lights.

23                   But like I stressed to my board, this is not a  
24 collection agency this is a justice court. We're here to  
25 ensure justice, whether we have to do it with a fine or

1           whatever. But if somebody owes the bank money you don't  
2           get by without it by saying well I'll be in in a couple of  
3           years to pay you up. Anybody got any other questions?

4                   CHAIRMAN DUNNE: No, I'm afraid we have to move  
5           on to the next witness. Thank you.

6                   We have Brianna Bailey and Heather Buanno  
7           together.

8                   MS. BRIANNA BAILEY: Heather is parking her car  
9           and walking here now.

10                  CHAIRMAN DUNNE: In that case we can wait for  
11          her. Is Livingston Hatch present?

12                  MR. LIVINGSTON HATCH, ESQ.: Yes.

13                  CHAIRMAN DUNNE: We'll swap.

14                  MR. LIVINGSTON HATCH, ESQ.: Good afternoon.  
15          I'm the Essex County Public Defender and I've been  
16          practicing law since 1967 and part of that time I've  
17          practiced in the Nassau County area and I'm familiar with  
18          the district court system. And when I went to Northern  
19          New York in 1973 in Essex, Clinton, Franklin and parts of  
20          Hamilton County I became familiar with the justice court  
21          system and I have practiced there 40 percent of my  
22          practice. Throughout the 30 years I was -- 33 years that  
23          I was a practicing attorney 40 percent of my time was in  
24          justice court. When I hear people like the Civil  
25          Liberties Union and hear those other people say things,

1 I've been to every court in Northern New York as far as  
2 Star Lake and tried cases. I tried probably 150 DWI cases  
3 in front of non-lawyer judges and found that they were  
4 probably just as good if not better than some judges that  
5 we've tried cases before. I have had felony hearings.  
6 I've had all kinds of hearings.

7 And, you know, about no stenographer, since  
8 about 1980 when I believe the judges started talking about  
9 having a stenographic record, I've never had a felony  
10 hearing in justice court that we didn't have a  
11 stenographic record. Most of the time arranging the  
12 stenographic record is the thing that takes the time. We  
13 have to call the stenography agency out of Albany to send  
14 people up. I just don't understand that. I never see  
15 that.

16 Now we have this new procedure that was enacted  
17 by -- I don't remember who enacted it, but the rules and  
18 regulations about when a person ends up in jail and if he  
19 doesn't have lawyer they send it to the Public Defender's  
20 office or to the 18-b representative. We get an order --  
21 not an order. We get the jail roster in Essex County.  
22 There's probably only 80 inmates in Essex County. We  
23 check it every morning. We check it over the weekend.

24 Most people don't stay in the county jail except  
25 for two problems; one, if they're charged with murder and

1 they don't get released. That's not a problem. We can't  
2 get them out on bail most of the time, but most of the  
3 time you can call the district attorney. I don't know  
4 where all this problem is, because we don't have any  
5 problem calling the district attorney and saying, hey,  
6 what kind of bail can we work out. People usually get  
7 out. The problem is they can't get their bail. That's  
8 what the problem is. That's problem number one.

9 Problem number two, the gentleman from the *New*  
10 *York Times* came to my office. Now, I became the Public  
11 Defender after I stopped private practice and took the job  
12 in 2004. They had difficulties with the office, but that  
13 was because of manpower and what have you. There's two of  
14 us handling the entire county. We never miss any court.  
15 And we probably have one or two defendants that are in  
16 jail because they can't raise the bail. And the county  
17 judge, we make an application to him. If we feel that we  
18 don't want to have the justice review the bail, we go to  
19 the county judge. You know, it usually works out with no  
20 problem. So, I don't know where all these people are  
21 sitting in jail.

22 Now, the fellow from the *New York Times* came to  
23 me and he talked to me about one of the people that  
24 complained, the person that made all the complaints up  
25 there. Now, I had her for a divorce. I know all about

1 her. And I said to him, you know, you ought to take a  
2 good look at some of these justices. They are good men  
3 and they're good women that do a good job. And you take  
4 that corridor from Plattsburgh to Warren County, I mean,  
5 like Judge Garrison. I think he has got 25,000, 30,000  
6 tickets a year coming down there. He's out all hours of  
7 the night, people calling him and bringing him in. I  
8 think there's problems that you cannot control. And the  
9 problems you cannot control -- you cannot control a  
10 district attorney. You can't say, district attorney,  
11 you're going to come in with your plea offers. They tell  
12 you they're elected officials. They don't need to do  
13 that.

14 The other problem is when Pataki bought his  
15 place up in Essex, New York, there were 86 new troopers  
16 put up there. And, you know, they issue all kinds of  
17 things that a district court probably might just throw  
18 out. I mean, like somebody had an old car sitting in his  
19 yard and he took the radio out of it and they charged him  
20 with criminal possession of stolen goods and, you know, it  
21 took two days to get him out of jail. And finally he  
22 said, trooper, it's mislaid property. That's how you  
23 charge them. You know, you talk to the district attorney,  
24 you call the district attorney. So, I'm saying I don't  
25 see all the problems. I would be four nights a week in my

1 private practice in Clinton County, Franklin County and  
2 stuff like that. I never saw anybody.

3 Now, I do know that there is a problem with 18-b  
4 lawyers. I mean, most of them, if you look at the people  
5 who are 18-b lawyers, they couldn't make a dollar. They  
6 probably shouldn't have been in law school. There's some  
7 of them that are there that that's how they make their  
8 living, on 18-b. So, they don't care whether the  
9 defendant languishes in jail or anything like that, but I  
10 don't think that's anything that you can correct, because  
11 there are not very many people that are out there wanting  
12 to knock the door down for some defendant.

13 Now, concerning lawyer judges, boy, I don't know  
14 that problem about them being afraid to run for office.  
15 In the Town of Plattsburgh when I practiced there there  
16 were many lawyers, but none of them wanted to lose the  
17 fees. They didn't want to go and get \$55,000 or whatever  
18 they planned to pay. They pay \$36,000 for the justice in  
19 the Town of Plattsburgh. And interesting in the Town of  
20 Plattsburgh the guy has got a master's degree. In the  
21 Town of Peru it's a former major of the New York State  
22 Police. These are not dumb people. And these are people  
23 that take their job serious.

24 There's other things, like I said, problems with  
25 police. You know, the problem with the police is, you

1 know, they charge these people. They're the ones that  
2 have the first contact with the judge. When you judges  
3 sit on the bench -- and you never see the trooper, but  
4 these people see the troopers. And they get the idea  
5 about bail and stuff. So, these are problems that you  
6 don't have any control over and you never have any control  
7 over.

8 Now, as the Public Defender, we're in  
9 Ticonderoga. The other night we were there until 12:30 at  
10 night. Started at 11:30 in the morning. 12:30. We went  
11 through maybe 80 or 90 serious cases and there were other  
12 people there for other lawyers. Now, Judge O'Brien, who  
13 is in Ticonderoga, runs the entire Ti Mill. That's his  
14 job. And he is a justice of the peace and he does an  
15 excellent job. The other fellow there is a master's  
16 degree graduate, educated teacher. All over that county  
17 they do a good job.

18 I think that everybody, like the people that  
19 make complaints -- I've testified before the Stern  
20 Commission when justices were in trouble. One time we had  
21 a guy that they said that the judge said something about  
22 the next time you came here I'm going to put you in jail  
23 or you belong in jail like your father. I stood right  
24 next to the guy, right next to the guy. And as a matter  
25 of fact, the judge was represented by Stu Jones who's no,

1           you know, piker. And I was testifying. And they asked me  
2           what was said. The guy never said anything to this kid,  
3           but he had made this up and oh, that Stern Commission was  
4           so interested and they were going to make this guy wiggle.  
5           And we all went down and the people that knew this man who  
6           was a really nice man and always has been really fair.

7                        I think of the 30 years that I have been before  
8           the justice court I only know one justice that ever  
9           renegeed on his deal with me and his name was -- he was the  
10          famous judge in Schuyler Falls that everybody loved. And  
11          he agreed to give a man 90 days and when we -- he agreed  
12          to give him 30 days. And when we went there he gave him  
13          90 days. Of course he gave him one more day than the  
14          89 days. He needed a PSI. So, I had him out in the  
15          morning. But that was the only guy that I ever had any  
16          difficulty with.

17                       That's all I have to say. I think you fellows  
18          are doing a great job, and ladies. I think that's  
19          important. But I think when you change the system -- and  
20          I think you don't know the lawyers that you think are  
21          going to be judges. I think you will have a much  
22          different system. I know the two judges that are lawyers  
23          in Essex County. It's much more difficult to get them on  
24          a speaker phone with the judge and the D.A. They won't  
25          even talk to you, you know, but a lot of the local judges,

1 we say, let's have a conference call with the D.A. and us  
2 to figure out where we're going with this. Now, we have  
3 two trials in Ticonderoga starting in July and I don't  
4 think that -- I've never had any trouble with a jury trial  
5 with a judge that's not a lawyer.

6 CHAIRMAN DUNNE: Okay. Thank you. Questions?

7 MR. LIVINGSTON HATCH, ESQ.: Thank you.

8 CHAIRMAN DUNNE: Do we now have Ms. Bailey and  
9 Ms. Buanno? Good afternoon.

10 MS. BRIANNA BAILEY: Hi. We come from a  
11 domestic violence program and a lot of what we're going to  
12 talk to you about today comes from the fact that we have a  
13 court monitoring program housed in our non-residential  
14 office which goes into various town and rural courts  
15 around the county, specifically into Rensselaer City, East  
16 Greenbush -- it's all Rensselaer County based --  
17 Rensselaer City, East Greenbush, Pittstown, Grafton Town  
18 Court, Petersburg Town Court, West Sand Lake, Brunswick  
19 and Poestenkill. And so, a lot of the evidence that we're  
20 coming from comes from what the monitors have come back  
21 and observed and put together into a pretty comprehensive  
22 data base that we're able to come to terms with these  
23 general kind of observations that we're going to say now.

24 The other thing that we also have been doing for  
25 I believe two years is semiannually hosting a magistrates

1 dinner and/or lunch in our office where we'll have an  
2 opportunity to meet with town court justices throughout  
3 all the municipalities in Rensselaer County as a way in  
4 which to help us provide services to victims that are  
5 throughout Rensselaer County and as a way to gain access  
6 into these courts. So, like I said, that's where a lot of  
7 our information is coming from.

8 MS. HEATHER BUANNO, ESQ.: Right. To piggyback  
9 off of what Brianna was saying, my name is Heather Buanno.  
10 I'm the staff attorney at the Unity House Law Project in  
11 Troy. Most of my work is done in Rensselaer County Family  
12 Court, but I do have the occasion to speak with and  
13 interact with some of our court monitors. Our court  
14 monitors are mostly comprised of students who are either  
15 full-time at Skidmore College, SUNY Albany, some paralegal  
16 students, and they give us feedback based on what they  
17 observe, what they see in the courtroom, et cetera.

18 I guess the first thing I want to talk about,  
19 our general observation is that a lot of the town justices  
20 experienced a lack of knowledge per se regarding victims  
21 of domestic violence. We hear a lot of the basic  
22 stereotypes. Some of the women will come, you know, five  
23 or six times to a town justice asking for relief,  
24 reconciling with their partners, and then going back and  
25 getting orders of protection again. Basic domestic

1 violence studies have indicated that it typically takes  
2 the woman seven or eight times of going back and forth  
3 with her partner before she finally leaves him. So, we  
4 find just a general lack of knowledge in that regard and  
5 also, unfortunately at times, a general lack of compassion  
6 or really sympathy for some of the clients that we work  
7 with.

8 Some common things that I've heard from a town  
9 justice directly was that, well, you know, a woman comes  
10 to me and she says she wants an order of protection so I  
11 give her one and then she comes back to court next time  
12 and automatically wants it withdrawn. I can't make her  
13 happy. I just don't understand what's going on in that  
14 household. So, we feel covertly there is some victim  
15 blaming, I guess, going on, but it could also stem from  
16 the fact that they just don't have the knowledge of the  
17 phenomenon of domestic violence.

18 As you're aware, attorneys to maintain their  
19 license in the State of New York have to attend a certain  
20 number of CLE, continuing legal education, courses. And  
21 from time to time -- I specifically go to ones  
22 concentrated in family law and domestic violence -- I will  
23 see other Family Court judges there. I will see Supreme  
24 Court judges. I'll see domestic violence advocates and  
25 other attorneys. And I would say, you know, nine times

1 out of ten out of a room of sixty to seventy people, you  
2 know, one or two of those people will typically be from  
3 town justice courts, either town justices themselves or  
4 other representative, which is a little alarming to me  
5 because again that speaks to the general phenomenon that  
6 they just don't have a lot of knowledge or understanding  
7 about what our clients are living through and experiencing  
8 as they try to maneuver through the legal system.

9 On a personal level, I appeared on a traffic  
10 ticket for one of my clients down in New Baltimore and  
11 literally when I had gone before the town justice he had a  
12 law book or a statute book in front of him and he was  
13 literally like reading from the book and referencing this  
14 book, you know, throughout the proceeding, which I thought  
15 was kind of alarming in the sense that, you know, there  
16 was, again, just I guess the general lack of overall  
17 knowledge in terms of the law in general, which I'm sure  
18 you've heard that sentiment as well.

19 So, we would advocate, I guess, at a minimum  
20 that, you know, town justices, you know, be forced to take  
21 certain legal trainings, to attend trainings on domestic  
22 violence, because specifically in Rensselaer County in the  
23 rural population there's a lot of domestic violence that  
24 goes on there in these households. And, you know, women  
25 are fearful for their safety. They go to the town courts.

1 Town courts aren't really familiar with the dynamics and,  
2 you know, they end up leaving very frustrated, oftentimes  
3 returning to their abusive homes because they don't feel  
4 that they are getting a lot of support from the court  
5 system.

6 I'll let Brianna continue on with some other  
7 thoughts that she has.

8 MS. BRIANNA BAILEY: Some of the other things  
9 that we have noted that again demonstrate the lack of  
10 domestic violence comprehension are that there are some  
11 specific cases wherein a victim will receive an order of  
12 protection from the town justice that then will not  
13 enforce or not know to enforce the removal of firearms  
14 from the offender. And there was a case recently that  
15 because this wasn't enforced it ended up in a gun injury  
16 to her. She fortunately wasn't killed, but he did end up  
17 shooting her due to the fact that the firearms removal  
18 wasn't enforced, which wasn't that long ago in one of the  
19 rural courts in Rensselaer County.

20 One of the other alarming things that we just  
21 notice again and again is a preponderance of negative  
22 attitudes with respect to victims, as Heather was saying,  
23 just blatant victim blaming, covert and overt, not  
24 necessarily always to the victim directly, but almost  
25 every single time one of the monitors follow up with a

1 town court clerk or the court justice or any of the other  
2 court personnel, they'll just victim blame outright, which  
3 only enhances the fact that she probably isn't getting the  
4 services they need.

5 One of the other things that was most noted was  
6 that town justices and court clerks don't often know of  
7 services that victims can get. They might not know of  
8 Unity House, for instance, in Rensselaer County or, you  
9 know, another analogous program in some other county or  
10 any really other social service program, just lacking in  
11 that knowledge.

12 Some of the other things that we've noticed were  
13 that the communal setting often negatively impacts the  
14 outcome of hearings. There was a specific case in the  
15 Town of Pittstown wherein the offender was going for at  
16 least his third or fourth domestic violence offense and  
17 came in and knew the court clerk immediately, gave the  
18 court clerk a hug, and then the judge said, oh, okay, and  
19 basically dismissed him of all charges despite the fact it  
20 was a violent offense. And the victim, feeling very  
21 ostracized in this situation, did not continue to press  
22 forward or feel as though she had really a chance of  
23 anything to do. And this is something -- I mean, that's  
24 kind of an egregious example of this, but the whole  
25 communal atmosphere, the whole fact that the victim feels

1 ostracized and can't go because he has such an  
2 outstanding, you know, perceived perception. And it's  
3 very common, we've noticed, in the rural communities.

4 MS. HEATHER BUANNO, ESQ.: Just kind of  
5 interjecting for a moment, we all know Family Court judges  
6 have to be licensed attorneys and have to be practicing  
7 for a certain period of time, obviously, before they run  
8 for Family Court judge. The Family Court judges in  
9 Rensselaer County are very connected with probation  
10 departments. They're connected with batterer's  
11 intervention programs. They know and they understand  
12 perpetrator accountability.

13 We find that in the town justice courts there  
14 really isn't that kind of connection or the knowledge of  
15 the various ways in which perpetrators can be held  
16 accountable. Batterer's intervention programs are classes  
17 that batterers have to take. They're typically offered  
18 once a week for 52 weeks, that Family Court judges will  
19 order perpetrators to take these classes and will be  
20 monitored by probation officers, et cetera. Town justices  
21 are not enforcing any of these programs. And while these  
22 programs don't necessarily cure batterers, it is part of  
23 the sentence where they'll be held accountable. Orders of  
24 protection are much more enforced and there's a heightened  
25 level of understanding and sensitivity to the issues that

1 we've found that just really don't exist in the town  
2 justice courts.

3 MS. BRIANNA BAILEY: Some of the other just  
4 administrative shortcomings that we have noticed that  
5 exacerbate the lack of victim safety are, for instance,  
6 the lack of space to accommodate the A.D.A. meeting with  
7 the victim or the public defender meeting with the  
8 offender or victim in any space other than the middle of  
9 the open courtroom, which then allows everyone in the room  
10 to hear the case that may have some kind of, you know,  
11 personal details the victim may not want disclosed. It  
12 may not be safe for them to be disclosed. And many of  
13 these town courts don't have space to provide any other  
14 circumstance where she could meet with the A.D.A. or the  
15 public defender, whatever the case may be.

16 There's often, the court monitors have noticed,  
17 a lack of structure to the proceedings. Victims have  
18 routinely stated it's very hard to follow due to a lack of  
19 process. One of the specific cases that I had referenced  
20 earlier, the one where he had come in and hugged the town  
21 clerk, wasn't originally supposed to be held first but  
22 because he was friends with the town clerk she said, oh,  
23 well, let me get it right away. The victim was very  
24 unprepared for this to happen. She said she felt that her  
25 case was compromised because he had such a close

1 connection with the town clerk. And this is again a  
2 sentiment that the court monitors are coming back and  
3 saying is not necessarily an exception to the rule but  
4 rather the rule itself.

5 And also there are several town courts  
6 throughout Rensselaer County that have just very terrible  
7 acoustics and they have come back repeatedly saying that  
8 it's very difficult to hear what's going on and,  
9 therefore, many victims as well as the monitors are  
10 missing substantial chunks of the proceedings as to what  
11 happened. The victims leave saying I don't really know, I  
12 didn't hear a lot of what is going on, and the judges in  
13 town courts not really being that sympathetic to the  
14 victims, which again kind of encapsulates the whole  
15 preponderance of victim blaming, et cetera.

16 MS. HEATHER BUANNO, ESQ.: I think that's it.  
17 Do you have questions?

18 CHAIRMAN DUNNE: I'm sure we do. Judge Mollen.

19 HON. MILTON MOLLEN: Ms. Bailey and Ms. Buanno,  
20 you seem to be making a comparison between town justices  
21 and Family Court or state court courthouses. When you're  
22 referring to the town justices, are you referring only to  
23 non-attorney justices or both non-attorney and attorney  
24 justices?

25 MS. BRIANNA BAILEY: Both attorney and

1 non-attorney.

2 HON. MILTON MOLLEN: The complaint is about the  
3 town court itself, the way it --

4 MS. BRIANNA BAILEY: Yeah, yeah.

5 HON. MILTON MOLLEN: They lack a knowledge of  
6 the processes of dealing with violence and domestic  
7 problems.

8 MS. BRIANNA BAILEY: Yes, definitely. There are  
9 obviously some differences in the way in which attorney  
10 and non-attorney town justices are run, but they both lack  
11 a substantial amount of domestic violence comprehension.

12 HON. MILTON MOLLEN: Thank you.

13 CHAIRMAN DUNNE: Judge Wolfe.

14 HON. TERENCE WOLFE: Ms. Buanno, you mentioned a  
15 case where the plaintiff had requested an order of  
16 protection and then returned to the court and asked to  
17 have the order of protection withdrawn. Could you expand  
18 on that a bit? Was the problem that it was not withdrawn  
19 when she asked for it or that it was withdrawn?

20 MS. HEATHER BUANNO, ESQ.: I think the problem  
21 is really that the town justice was frustrated and very  
22 confused by the fact that this woman had come to him at  
23 least a couple different times and was seeking orders of  
24 protection and then immediately withdrawing them, like  
25 let's say at the next court appearance pleading with the

1 judge to have them withdrawn, and then another domestic  
2 incident would happen a month or two later,  
3 hypothetically, and then she would return again seeking an  
4 order of protection. And there was just a general lack  
5 of, I guess, compassion and lack of understanding on the  
6 part of the town justice. I think he was trying to make a  
7 good faith effort to understand, but he hadn't had a lot  
8 of domestic violence training. And so, as a result of  
9 that and not being familiar with the phenomenon it  
10 resulted in the victim, I think, just feeling very  
11 frustrated with the whole process and feeling -- and I've  
12 heard this from a lot of my clients in general -- feeling  
13 that the court really doesn't understand their perspective  
14 and just, you know, they go to the court thinking that  
15 they can get help and then they find that their claims and  
16 their concerns fall on deaf ears. That was the issue.

17 HON. TERENCE WOLFE: Have you heard at all of  
18 the special domestic violence courts that are being run by  
19 some of the town courts, especially in Western New York,  
20 where the judge has set up a specific court just for  
21 domestic violence cases?

22 MS. BRIANNA BAILEY: Are you referencing the  
23 integrated domestic violence court?

24 HON. TERENCE WOLFE: No. I'm talking about the  
25 Town of Amherst.

1 MS. HEATHER BUANNO, ESQ.: I'm not familiar  
2 specifically with the Town of Amherst program, but if they  
3 are doing something that is heightening the level of  
4 training and attention given to domestic violence issues,  
5 then I think it would be worth exploring, at least  
6 exploring in this area, because I know we definitely don't  
7 have that in Rensselaer County and it's something --  
8 something is needed.

9 HON. TERENCE WOLFE: We met with the judge in  
10 Amherst, who is also a commission member, last week. He  
11 has quite an involved process with practitioners involved  
12 in the whole process. It might be something you want to  
13 take a look at.

14 MS. BRIANNA BAILEY: Definitely. Thank you.

15 CHAIRMAN DUNNE: Judge Frazee.

16 HON. EVELYN FRAZEE: If I'm understanding what  
17 you're saying, are you advocating perhaps that there be a  
18 mandatory component to the judicial training that covers  
19 domestic violence issues? Is that what you're advocating  
20 for? You're telling us the problems. Would that be a  
21 solution, at least?

22 MS. BRIANNA BAILEY: That would definitely be a  
23 solution, absolutely. One of the biggest problems that  
24 we've encountered is just a lack of training overall. So,  
25 if there certainly was an advocate component of training,

1           that would be fantastic.

2                       MS. HEATHER BUANNO, ESQ.: I know that a lot of  
3           the CLE's that attorneys attend have been extended to town  
4           justices, but I just haven't seen a strong representation,  
5           if any representation there at all, at our mandatory  
6           attorney trainings. So, that would be excellent.

7                       HON. DAVID OTIS FULLER, JR.: I have a question,  
8           yes. Thank you very much. It's an exceedingly important  
9           topic here. I just was interested in the interplay that  
10          the assistant district attorney here -- for instance,  
11          there was the embarrassment, which it would certainly be  
12          embarrassing if you had to talk in front of other people.  
13          In the D.A.'s office that we're familiar with there is a  
14          domestic violence bureau, so that the discussion would  
15          never take place in the courtroom or anywhere near it. It  
16          would be in the district attorney's office. And, also,  
17          the complainant would not be able to withdraw it. The  
18          judge wouldn't consent to it until there had been some  
19          contact with the domestic violence bureau, because maybe  
20          there was some intimidation somewhere along the line and  
21          you want to make sure that this is what the victim wants  
22          to do.

23                       Let me finish one other thing also in that  
24          connection. In the order of protection there's a section  
25          for weapons where you're supposed to check off that you

1 have to surrender your weapons. You said the district  
2 attorney is involved in this. So, my question really is,  
3 doesn't the D.A. provide a place where they can have a  
4 conference in confidence and also doesn't the D.A. insist  
5 that the order of protection contain a prohibition and  
6 surrender of weapons?

7 MS. BRIANNA BAILEY: My understanding from what  
8 we've observed from the court monitors is that it's not  
9 necessary -- the district attorney does go in and does  
10 cross off the firearms. It's more of an issue of them not  
11 being enforced and the judge or justice not following  
12 through with having the police remove the firearms and/or  
13 knowing that they could. There was more than one case  
14 where the judge said, I'm not sure I have the power to do  
15 that and, you know, the district attorney said, I think  
16 you do. I think you can do that.

17 HON. DAVID OTIS FULLER, JR.: Well, of course  
18 it's right.

19 MS. BRIANNA BAILEY: And in the specific case, I  
20 believe, where the firearm wasn't removed it was because  
21 the father also lived there and the gun technically  
22 belonged to the father who was also in the house.  
23 Obviously the offender had access to the weapon. That  
24 weapon was not removed but his one rifle or what have you  
25 was. And so, it's more of a not following through and it

1 not being enforced type issue that we're finding, not  
2 necessarily that the district attorney is not bringing it  
3 up to the attention of the court.

4 And with respect to whether or not the district  
5 attorney is not having meetings in confidence, what we've  
6 noticed more often than not is the public defender not  
7 taking the offender or the victim, if the victim is  
8 having -- if he's pressing charges against her, then, you  
9 know, he is not really taking it aside and having it  
10 instead in open court and it's the A D.A. also following  
11 suit and not doing it, not often because they haven't  
12 thought of it or aren't trying to, just because of lack of  
13 space is what we think the issue mostly is.

14 HON. DAVID OTIS FULLER, JR.: As I said, it's  
15 not even the space in the court. What I'm familiar with  
16 is the space in the D.A.'s office, but I don't want to get  
17 into pressing particular points here. I think this lack  
18 of sensitivity you mentioned to domestic violence problems  
19 is a very serious one. I would just suggest, and I think  
20 it would be certainly helpful to me, if you could give us  
21 a list of the areas that they are deficient and we will  
22 certainly pass that on to the -- I will, anyway -- to the  
23 education, because there should be sensitivity and there  
24 should be a complete understanding of what an order of  
25 protection is and how it is supposed to be helping these

1 victims.

2 MS. BRIANNA BAILEY: Absolutely.

3 HON. DAVID OTIS FULLER, JR.: I thought you had  
4 a very helpful presentation and it certainly was important  
5 for us to hear. I think if you could follow up with a  
6 list of the areas that need to be emphasized, this should  
7 be included in the education program that we've been  
8 talking about today.

9 MS. BRIANNA BAILEY: Absolutely. Where should  
10 we send that to?

11 HON. DAVID OTIS FULLER, JR.: Yes. Thank you.

12 MS. HEATHER BUANNO, ESQ.: Who should we send  
13 that to?

14 HON. DAVID OTIS FULLER, JR.: Send it to the  
15 commission here, to the chairman. What you're saying is a  
16 very important thing and there has to be sensitivity here  
17 and if it's not there, it has to be corrected.

18 CHAIRMAN DUNNE: Dean Treanor.

19 MR. WILLIAM TREANOR, ESQ.: I just want to  
20 follow up. I thought your testimony was very powerful.  
21 And the thing we've been focusing on is the lack of  
22 training, which I think, as I hear your testimony, has two  
23 components. One is that the judges don't have the  
24 knowledge of the resources that are available; right?

25 MS. HEATHER BUANNO, ESQ.: Yes.

1 MR. WILLIAM TREANOR, ESQ.: And the other is  
2 they don't have a full awareness of how you respond to  
3 domestic violence or the way in which people who are the  
4 victims of domestic violence respond to it. And so, I  
5 think what you would prepare for the commission are your  
6 list of specifics of the training that you think would be  
7 helpful.

8 MS. HEATHER BUANNO, ESQ.: Okay.

9 MR. WILLIAM TREANOR, ESQ.: When you have  
10 concerns about the town courts, does it go beyond training  
11 or is it really about training?

12 MS. BRIANNA BAILEY: Most of it is training.  
13 Like I mentioned earlier, some of our concern just comes  
14 out of the communal settings that really you can't take  
15 away, necessarily, from the town courts. What we have  
16 been hearing from victims is that they feel very  
17 ostracized in pressing charges against an offender who is  
18 very closely tied to the town justice or the town court  
19 clerk or, you know, the police or really anyone involved  
20 in the criminal justice process. And that's, I think, a  
21 lot harder to find a solution than to provide training.  
22 So, I mean, that's also a lot of our concern, but like I  
23 said, I'm not sure if that at all has a solution and if so  
24 what one would look like.

25 MR. WILLIAM TREANOR, ESQ.: Okay.

1 MS. HEATHER BUANNO, ESQ.: And I think just to  
2 follow up, I mean, some of our most dangerous cases have  
3 happened in very, very rural populations. We're in  
4 downtown Troy. So, some people who are in the downtown  
5 community, there's a lot of resources for them. People in  
6 the far, you know, hinterlands of Rensselaer County, we're  
7 trying to do more rural outreach, but it's more the  
8 victims automatically feel isolated because they're just  
9 living geographically in neighborhoods that are isolated.  
10 And so, it's a big step for them to, you know, move  
11 forward and prosecute someone that they may have been  
12 married to for 30 years, you know. So, I think there  
13 definitely needs to be, you know, more sensitivity to the  
14 issues and a more positive response from the town justice  
15 system because of the rural nature and the isolation that,  
16 you know, inherently exists in those communities.

17 CHAIRMAN DUNNE: Thank you very much. We have  
18 Justice Denenberg and Mr. Hoffman.

19 MR. RICHARD B. HOFFMAN: Good afternoon.

20 CHAIRMAN DUNNE: Good afternoon.

21 MR. RICHARD B. HOFFMAN: My name is Richard B.  
22 Hoffman, I'm pleased to be able to be here to testify  
23 before this commission. By way of background, I've been  
24 involved in court system improvement projects in the U.S.  
25 and overseas for many years, first as a staff attorney and

1 project director for the National Center for State Courts,  
2 and later for the Justice Management Institute, and the  
3 American University Criminal Courts Technical Assistance  
4 Project. This work included major programs over the past  
5 few years in mid-Atlanta, Chicago and Washington, D.C., as  
6 well as 14 countries, including Indonesia, the  
7 Philippines, the Balkans, and the Caucasus. I've also  
8 served as clerk of the District of Columbia Court of  
9 Appeals; Long Range Planning Counsel for the  
10 Administrative Office of the U.S. Courts, and some years  
11 ago in the Department of Justice's Office for Improvements  
12 in the Administration of Justice.

13 I'm most interested in your work because over a  
14 25-year period I was heavily involved in two major studies  
15 of New York town and village courts. The first project,  
16 which I directed for the National Center for State Courts  
17 in the late 1970s, studied how these courts are financed  
18 and its implications on their operations. Our report, *The*  
19 *Price of Local Justice*, for the first time estimated the  
20 costs of operating these courts. The second, about eight  
21 years ago, was part of a national criminal justice system  
22 study sponsored by the National Institute of Corrections  
23 to reduce jail overcrowding and included my visiting and  
24 assessing the role of town and village justices in  
25 Dutchess and St. Lawrence Counties, two of ten counties

1           whose justice systems were selected nationally to learn if  
2           the principal actors could work together to improve case  
3           processing.

4                       During these studies I learned quite a lot about  
5           these courts, largely because I approached them with an  
6           open mind. Despite my awareness that many others had  
7           suggested that these courts be eliminated, replaced by  
8           district courts or merely have their work shifted to city  
9           or county courts, I also was interested to see how these  
10          courts actually functioned, largely staffed as they are by  
11          lay judges and generally hearing small civil cases,  
12          traffic offenses and felony arraignments.

13                      Although NYU's Institute of Judicial  
14          Administration had produced a report in the late 1970s  
15          recommending that these lay judge courts be abolished, I  
16          realized quickly that these courts had endured to qualify  
17          as progenitors of what we now proudly call community  
18          courts, courts that strive to resolve life situations as  
19          well as the cases of their clients by connecting them to  
20          necessary services. In the 1990s the U.S. Justice  
21          Department expended millions of dollars helping  
22          communities across the country establish what New York  
23          State already had, a structure of community courts. A  
24          showpiece was and is -- I don't know if Mr. Fineblatt's  
25          here, he of course is a great expert on this -- Midtown

1 Community Court in Manhattan, as a third-generation New  
2 York lawyer -- despite my now long sojourn in the nation's  
3 capital -- who grew up in Yonkers and Mount Vernon and  
4 graduated from Cornell, it was nice to see the City  
5 catching up with the rest of the state.

6 I do credit some highly motivated town and  
7 village justice for helping me appreciate the key role  
8 these courts play in providing accessible, low-cost  
9 services to their communities. Professor Doris Marie  
10 Proving, who was once the chair of the political science  
11 department at Syracuse now directs the School of Justice  
12 and Social Inquiry at Arizona State, served as a town  
13 justice outside Syracuse and emphasized to me how these  
14 justices had the time and the temperament to provide  
15 individual service to their communities. Justice  
16 Denenberg of the Town of Gallatin in Columbia County, my  
17 friend and colleague here, has made me even more aware of  
18 the severe constraints under which these courts try to  
19 provide justice despite the failure of the state court  
20 system to supply both needed resources and training. Our  
21 recent article in the Albany Times Union emphasized these  
22 trying needs.

23 We also stressed how a non-lawyer court system  
24 could both dispose of more than 90 percent of criminal  
25 cases, as the case in England, while managing to make the

1 job of magistrate a sufficient honor to entice many to  
2 apply for the post, despite the absence of compensation.

3 My experience in court administration has led me  
4 to recognize that these courts in almost all important  
5 ways have been treated as step-children of the state court  
6 system. While all other courts are now funded through the  
7 state judicial budget, these courts remain local  
8 responsibilities, and very demanding ones for towns with  
9 tiny populations and very limited resources. In England,  
10 the lay magistrates undergo significant training and each  
11 bench of about 20 to 30 magistrates is served by a  
12 legally-qualified justice clerk or clerk. Here, the  
13 training is summary and the system has only in recent  
14 years provided any access to legal assistance through a  
15 phone service that is not operating in the evening hours  
16 when the vast majority of these courts are in session.

17 We noted in our article that similar percentages  
18 of these justices and full-time state judges have been  
19 disciplined or removed by the State Commission on Judicial  
20 Conduct. I would add, at least with respect to limiting  
21 financial chicanery, the Office of the State Comptroller  
22 surely needs to revive its former practice of auditing  
23 these courts on a cyclical as well as surprise accounting  
24 basis. The mere knowledge that the Comptroller's auditors  
25 might be reviewing their books at any time or in the

1 county served to reinforce financial rectitude. And I  
2 know this is especially listed in the action plan. And I  
3 guess what's sort of a shame is that we had a good system  
4 going at one time and it just sort of atrophied.

5 But the State finally needs to face the fact  
6 that the problems arising from these courts are the result  
7 of their being ignored as a valued resource for so long.  
8 The court system proposes to provide electronic recorders  
9 when we have learned from courts everywhere that it is  
10 critical to have someone competent on hand when court is  
11 in session to ensure effective and uninterrupted operation  
12 of these recorders. Computers are needed and will be  
13 welcomed, but everyone whose office operates on a network  
14 knows that this too needs constant servicing and  
15 maintenance.

16 The crux of the need facing the state if these  
17 courts are to function effectively is to take the problem  
18 seriously. Recorders and computers are nothing without  
19 well-designed software that could readily provide useful  
20 data on the entire range of justice courts, and also make  
21 life a lot easier for the clerks who keep the records for  
22 these courts. Many of these courts see the Office of  
23 Court Administration as an entity that merely requires  
24 completing of endless forms, rather than a source of  
25 administrative support.

1 I'll leave you with a brief mention of the most  
2 important responsibility the state judicial system needs  
3 to assume with regard to these courts, and that's taking  
4 training seriously. From what I've been able to see the  
5 training now is not well-conceived, is far too summary and  
6 cursory, and often fails to address what these justices  
7 actually do in court. I'm afraid it reflects an attitude  
8 far too common in this state. I feel I can say this since  
9 I started out here. That the idea that New York has  
10 little to learn from others. Rural courts function across  
11 America. And they have their own special problems and  
12 challenges. They are frequently isolated, they have to  
13 share judges and prosecutors. We long ago ended the  
14 centuries-old circuit-riding system for our full-time  
15 judges, but we maintain it in these courts for the  
16 prosecutors who sometimes appear only once a month. It's  
17 difficult to criticize a judge for not disposing of cases  
18 when no one is there most of the time to represent the  
19 People.

20 Judges and court clerks learn much from  
21 attending training in the company of their peers  
22 elsewhere. The National Judicial College in Reno  
23 organized classes aimed at rural judges, as have the  
24 Justice Management Institute and the National Center for  
25 State Courts. I no longer work for either one of them,

1 I'm not holding them out. Not only must the training  
2 given these judges and their clerks be vastly upgraded, it  
3 must draw on what has been learned in other jurisdictions  
4 about how to resolve common problems, across the U.S., as  
5 well as mentioned earlier, places such as England. I'm  
6 not even certain that providing separate training for  
7 attorney and lay justices is the right approach. The  
8 training should be at a sophisticated level that offers  
9 what both groups need. As the action plan properly did  
10 note, adult learners learn from doing and from observation  
11 and not so well from lectures. Frankly, I'm not so sure  
12 law students learn all that well from lectures either.

13 Judge Denenberg will discuss some of the  
14 particulars regarding what's needed to improve the  
15 training experience, both initial and continuing, for the  
16 town and village courts. And we both then will be very  
17 pleased to answer any questions that you might have for  
18 us.

19 HON. TIA SCHNEIDER-DENENBERG: Thank you. My  
20 name is Tia Schneider-Denenberg, and as my colleague Dick  
21 Hoffman told you, I am one of the two justices in the Town  
22 of Gallatin, which is in Columbia County. I was first  
23 elected in 1999 and I'm now in my second term and I guess  
24 I'm technically in my window period for my third term. I  
25 am a non-lawyer whose background is in industrial

1 relations and conflict resolution. I have served as an  
2 arbitrator and mediator in thousands of labor disputes  
3 throughout the country. And I am a member of numerous  
4 federal, state and private panels. I also served on the  
5 U.S. Foreign Service Labor Relations Board for 16 years.  
6 It's kind of like an in alarm beat for the foreign  
7 service. I have extensive experience in organizing  
8 training in the U.S. and overseas in the field of conflict  
9 resolution.

10 To tell you a little bit about my town, my town  
11 has a population of about 1400, which is less than the  
12 number who lived there in 1845. The town has no banks, no  
13 gas stations and no traffic lights. Gallatin sits astride  
14 six miles of the Taconic State Parkway, and the justice  
15 court convenes in a highway maintenance barn at one of the  
16 Parkway exits.

17 And as Dick said, I'm coauthor with Richard  
18 Hoffman of the piece entitled *Civic Pride*, which appeared  
19 in the Albany Times Union on May 27th, 2007. Since its  
20 publication I have heard from many town justices who  
21 believe that their perspective is often overlooked in  
22 planning judicial policy.

23 In my appearance today I would like to address  
24 the issue of lay courts from that perspective. I will  
25 focus on training and support services. And I should say

1 my perspective is really as a consumer of justice  
2 training. I have to tell you I find the sessions are  
3 typically poorly designed, lacking in context and  
4 unskillful presented. These are the specific  
5 shortcomings. And they're bullets. I can certainly  
6 elaborate.

7 Training design. First of all, it depreciates  
8 the abilities of justices. It is aimed, as was noted in  
9 the New York Times, one of the New York Times pieces, in  
10 quotes, "The lowest common denominator," unquote, even  
11 though it is well-known that low expectations affect  
12 learning. Within a training day too many subjects are  
13 covered and each is dealt with superficially. The  
14 emphasis is on rote learning without any attempt to  
15 analyze the underlying concepts or themes. Trainers are  
16 not selected for a combination of subject matter,  
17 expertise and skill in communicating. They learn the  
18 material in a train-the-trainer session. They are tied to  
19 a script, and often lack the curiosity or the background  
20 to expand upon it or answer even obvious questions.

21 An example happened several years ago when the  
22 lecturer -- who I should say is an attorney, a town  
23 justice, and an OCA employee -- was talking about an  
24 aspect of surrogacy and he said that we were not allowed  
25 to point within six degrees of kinship. I, of course,

1 wanted to understand, raised my hand and said, "Can you  
2 explain what that means in terms of relationships so we  
3 can understand?" And he looked up and said, "Are there  
4 any surrogacy lawyers in the room?" No hands went up and  
5 he said, "I don't know." I went home -- actually, I had  
6 an internet connection in the training site so I  
7 immediately Googled it and found out what it was. The  
8 next year I should say when someone -- I guess I get a  
9 letter from one of the presiding judges that there was now  
10 an appointment that was in a fourth degree of kinship. I  
11 immediately went to the internet and I learned what that  
12 meant in terms of a relationship. But it was astounding  
13 to me that you could go to a train-the-trainers, get a  
14 script, not understand it fully and not have the curiosity  
15 to ask. And that was emblematic to me of what is wrong  
16 with the training.

17 Justices are also not directly exposed to  
18 research persons in the state or charitable agencies who  
19 can answer these questions. For example, about the kind  
20 of social problems that we were talking about in domestic  
21 violence, elderly abuse, alcohol abuse, drug abuse and  
22 mental illness. For example, in this year's update on  
23 income law the trainer, again, who was a very  
24 well-qualified attorney, OCA employee, apologized to us  
25 for not being an EnCon expert. She said the EnCon experts

1 were at the train-the-trainer sessions, but they weren't  
2 with us. So, again, what kind of learning can we possibly  
3 have? It's the kind of thing we could have read. We  
4 could have read on the web. The face-to-face contact, it  
5 is nothing. And, again, it's not depreciating her  
6 ability, she was saluting and doing what she was asked to  
7 do.

8 Another thing which is a bit more troubling is  
9 that at times there are attempts at humor which often are  
10 embarrassing, irrelevant and, foremostly, not good role  
11 modeling for judicial temperament. Off-colored jokes lack  
12 any point and add no enlightenment. It's just sheer  
13 buffoonery. An example -- and I gather this is a joke  
14 that's been told many times in New York, was one of the  
15 very distinguished attorney judges wanted to illustrate  
16 the fact that the way you use words have meaning. And he  
17 told a rather bad joke which I gather he's been telling  
18 for many years about the difference between castration and  
19 circumcision.

20 At the same session that year there was a  
21 humiliation of a female justice who happened to walk by in  
22 the front of the room I think to drop off a piece of  
23 paper, followed by a similarly bad story. I have to tell  
24 you when that happened I've not only complained, but I've  
25 spoke to the trainers personally. And where I've had to

1 speak to them more than once in a number of years, some of  
2 them have stopped teaching.

3 But what is needed -- and I should say it really  
4 happened in New York City not upstate -- staff OCA and  
5 professionals who have imagination and vision, as well as  
6 a positive view of town justices, whether we are lawyers  
7 or not, and they should be looking at us as essentially  
8 volunteers who are dedicated to our communities. They  
9 need to view justices positively rather than focusing on  
10 the negative, which is a lack of a law degree. Oftentimes  
11 I think the ADA analogy is appropriate. When we see  
12 someone who has an obvious physical disability if you  
13 dwell on their lack of ability you don't see what they  
14 bring to the table. And as we know, a lot of people have  
15 very rich lives, and in spite of what we may consider a  
16 limitation contribute mightily to their society and to  
17 their family. So I do feel that the non-lawyer judges,  
18 all you're seeing is that label on my head, has never been  
19 to law school, and you're not thinking about what we bring  
20 to the table. So lay justices and town and village  
21 justices should be seen as persons who can contribute  
22 their experience and knowledge of their towns rather than  
23 as defectives.

24 I also feel -- and I think Mr. Hoffman touched  
25 on this -- is that what we need to do is mainstream the

1 town and village justices by integrating them into  
2 high-quality programs intended for regular judges. And I  
3 thought in a way it ties in with your last speakers very  
4 well because for the last three years every year that I've  
5 known about it I have attended the Family Violence Task  
6 Force

7 seminar -- full-day seminar -- in Saratoga. In fact, it's  
8 the highlight of my year. I should tell you I usually go  
9 to my mandatory updates, whether it's in New York City or  
10 up at Columbia-Greene College, sort of with a rather bad  
11 attitude because I feel I'm being held captive for no  
12 really good purpose, other than some people to say,  
13 "There, that's done, we've trained them again and they've  
14 passed this test." Saratoga is different. I relish this  
15 opportunity. I relish it because the people who are  
16 presenting are there because they might be the justice  
17 from Amherst who has an integrated domestic violence  
18 court. Dedicated to that. There's justices from  
19 Binghamton that have done the same thing. They're truly  
20 pioneers, they're judicial innovators. They're people who  
21 have a passion for what they're doing.

22 And not only that, it's not just limited to  
23 judges. This year when they focused on elder abuse, which  
24 is in our town going to be an increasing problem just as  
25 it is in society because us baby-boomers are getting older

1 as the years go on. They also brought in people from  
2 Adult and Family Protective Service. Helpers in elder  
3 abuse. Prosecuting attorneys. It was a very rich mixture  
4 of judges of all levels. And what it prevented anybody  
5 from doing was dumbing down the training. And I find  
6 that on domestic violence issues, because I also deal with  
7 this in my other life as an industry, that it is a very  
8 difficult subject for anyone, that lots of things fall in  
9 the cracks. And that's why in terms of educating we need  
10 to have as full a perspective as possible. That a lot of  
11 these retrograde attitudes are not just coming as the  
12 former speakers who were testifying maybe in certain town  
13 and village judges they've encountered, but it's  
14 throughout the population and every level of education.  
15 And I think the only way of doing that is to give the kind  
16 of rich Saratoga experience, not the dumb-down version  
17 that you would give just to the town and village courts.  
18 And as I say, I just really look forward to it.

19 Another thing that struck me, that won me over  
20 immediately -- I don't remember if it was the first or  
21 second year, but one of the presiding judges actually in  
22 welcoming us specifically thanked the town and village  
23 justices for being there. Because he said, "Let's face  
24 it, you're the only people who are here who are not being  
25 paid to be here." It's true. I'm self-employed, I take a

1 day off from work, no one pays me. So I thought that was  
2 a very lovely and gracious recognition of the fact that  
3 often times to seek the better training it's not that easy  
4 for us. But I have to tell you that as long as I sit as a  
5 judge it's something that will be on my calendar every  
6 year and that I continue to learn from.

7 The other thing was this year for the first time  
8 there was a special New York State Bar Association  
9 training on changes in the dangerous dog laws. And if  
10 there's one thing that drives rural courts crazy, it's  
11 dangerous dog cases. And, again, it was attorneys,  
12 judges, ASPA people, animal behaviorists who were there.  
13 And in the almost full day we devoted to it I can tell you  
14 I learned something. Which, again, is nothing that  
15 happens when I'm in the mandatory training. I should tell  
16 you generally I think I get a hundred on the exam, but  
17 it's only because when I take the true and false  
18 questions, after I finish it I go back and dumb down my  
19 thinking. Because I think one of the interesting aspects  
20 of the law is finding the shadows and asking what if.  
21 True and false doesn't allow for that. So it's a game I  
22 play with myself. I have a great difficulty taking that  
23 test because of it.

24 But, in any case, in choosing the lecturers you  
25 have to get better pedagogical and presentation skills who

1 are well-prepared and motivated just like the domestic  
2 violence people are. Criteria should be established so  
3 that selection is not made by cronyism or habit.  
4 Lecturers, of course, should be shown how to use power  
5 point effectively. Something that I have to say has  
6 vastly improved since 1999 when I first got elected, but  
7 has a long way to go.

8 The other thing I think should happen is we  
9 really have to provide access to web-based courses and  
10 other courses given by the National Judicial College on  
11 subjects such as rural courts, which is a web-based course  
12 coming up this fall. And, for example, managing cases  
13 involving persons with mental disabilities. When I was  
14 thinking of preparing for this appearance today I actually  
15 realized that during the winter I guess I was making --  
16 you know the way people make their wish list for their  
17 birthday or a holiday, I actually printed out a number of  
18 courses that I wish I could attend in that Reno-based  
19 college because I think it would add value to my judging  
20 experience and make me a better judge.

21 I think the other question is to provide  
22 effective support services from the resource center as Mr.  
23 Hoffman was saying on a 24-hour basis. We work 24/7.  
24 When I'm out at three in the morning in the middle of a  
25 snowstorm and if a knotty question comes up you can better

1 believe I sometimes want to talk to people. And at times  
2 I've had my queries returned days later. The other thing  
3 is that staff should have a more helpful attitude. I have  
4 called up and asked people to run me through certain  
5 things that I don't do very often just to remind me and  
6 I've been told peremptorily, "Well, Judge, you should know  
7 that." And my response was, "I didn't ask you what I  
8 should know, I asked you to be a resource for me."

9 And, typically -- and this was another comment  
10 in the New York Times articles that really for me was like  
11 chalk squeaking on a blackboard, is that the resource  
12 center often expresses the view, "We can't tell them what  
13 to do." Well, clearly when we call them up we're not  
14 asking them to usurp our decision-making function as a  
15 judge, what we're asking them is to be a resource. To  
16 give us parameters. Sometimes give us options. Remind us  
17 of procedures that we might not use every day. But it's  
18 this kind of dismissive attitude, that's not universal to  
19 everybody, to every call, but it comes up enough, so that  
20 I think a lot of people are very discouraged from calling.  
21 And I would say one simple solution would be to give all  
22 town and village justices a feedback form. And to say,  
23 one, when did you call; when was your call taken; were you  
24 treated with courtesy and respect; and did you get any  
25 useful information. I think that would be very, very

1 interesting feedback.

2 Another thing that I would encourage is -- and I  
3 know the action plan has rather elaborate things that are  
4 spelled out to provide on-site support for town and  
5 village justices, but I would say a simple one is just to  
6 encourage mentoring of town and village justices by judges  
7 from other town and village courts or higher courts. And  
8 I know when I first started sitting I was lucky enough  
9 that when Dick was up visiting I said, "Hey, you're on a  
10 court day, would you come to my highway barn and see what  
11 we do and give me some feedback?" Because no one had done  
12 that. And Mr. Hoffman gave me some useful feedback. I  
13 would have loved to have been paired with the county court  
14 judge or anybody else that would give me that kind of  
15 feedback.

16 The other thing we need is a bench book. And I  
17 think in doing so we should really reach out to other  
18 court systems to see what they do. Because I recently --  
19 I have a friend who's a Federal District Court judge in  
20 Southern California and she recently emailed me their  
21 bench book. And I can tell you it's simple, it's clear, I  
22 can see that it's very useful. And so if we're going to  
23 the trouble of making a court manual for town and village  
24 courts, I would encourage you to look at models in other  
25 jurisdictions, because to be truly useful it has to be

1 written in a certain way and it has to set forth  
2 information in a certain way. And while certainly all of  
3 the stuff contained in the federal book does not apply to  
4 me, I found it very useful in the way it was conceived and  
5 organized.

6 And then I guess I didn't mean to take up so  
7 much time, but in conclusion I have to say one of the  
8 virtues of these courts is that we are very user-friendly.  
9 We do take the time to treat everybody with patience and  
10 dignity while doing substantial justice. We're often in  
11 our communities -- and I think the previous witnesses had  
12 indicated that rural areas have special problems. We're  
13 often very distanced from the kind of social services that  
14 peoples in cities might just know about and walk into. So  
15 that oftentimes the court is the first contact in which  
16 extreme family or neighborhood dysfunction is identified.  
17 And so we're often the people who try to refer people,  
18 either within the context of sentence or something else,  
19 to the appropriate services. I sometimes have cases which  
20 gee a lawyer would say, "Hey, this isn't a judicial issue,  
21 are you crazy?" I will often listen to people and using  
22 my mediation skills get them to go to a neighborhood  
23 mediation service without every saying, "You know what,  
24 it's not an issue that I can grab hold of." But I think  
25 that's one of the functions that our courts do admirably.

1 I should also say that one of the things that I  
2 have been blessed with is a court clerk, Isabella Schultz,  
3 who has been serving our time for almost 30 years. And  
4 Mrs. Schultz has been in the forefront of really trying to  
5 develop training for clerks. I think she said when she  
6 first started she met a clerk at an annual magistrates I  
7 guess town and village conference in tears unable to  
8 understand something and Dora and a number of the other  
9 clerks sat down and in 20 minutes helped this person out.  
10 And I think one of the things she made me appreciate is  
11 since the 1990s that the Association of Magistrates court  
12 clerks have been asking for mandatory training. Pleading  
13 for it. Even costed it out. And always it came back no.  
14 I mean there's just too many problems. Are they employed  
15 by the municipality? Who would pay for their time. But  
16 it's very difficult to help the system grow when these  
17 insuperable obstacles to what seems like a common-sense  
18 position is there.

19 And I should tell you a lot of times I feel I'm  
20 very blessed to have Dora working with me because she's  
21 very civic minded, she's been computerized for years, and  
22 she's extremely diligent and inventive. I have to tell  
23 you a few months ago someone from the Comptroller's office  
24 came to the Columbia County Magistrates Association and  
25 tried to talk about what we're supposed to do with funds.

1 And it took us a long time to make this person appreciate  
2 that there was no way we can leave it in our court,  
3 there's no safe place to lock it. It's just a highway  
4 barn. Someone might kick in the panel. And we have  
5 provided procedures that seem reasonable. But I mean  
6 there's no way that I would even feel comfortable leaving  
7 it if we had a safe because it's a largely unoccupied  
8 building other than the hour or two that we meet in it a  
9 week. So I think there are special challenges.

10 But as I said, rather than just looking at us  
11 and saying, "You lack legal qualifications," really look  
12 at the richness that we and our clerks bring to the table  
13 and to the court system. Sorry to go on for so long. Do  
14 you have any questions for us?

15 CHAIRMAN DUNNE: Questions? Judge Boyers.

16 HON. SEYMOUR W. BOYERS: Judge, are you saying  
17 that the court clerks that serve in your court have not  
18 received any training at all?

19 HON. TIA SCHNEIDER-DENENBERG: We have one court  
20 clerk. She has because she's been instrumental in  
21 establishing it statewide, and I think she was New York  
22 State court clerk in the 1990s, so she's really exemplary.  
23 But she's someone who constantly reaches her hands out to  
24 help others to bring them aboard. But from what she says,  
25 there are a lot of institutional obstacles to ensuring

1 that every court clerk is properly trained. As I said,  
2 she's a doer and so she has managed to really educate  
3 herself and also be aware of the history and what goes on  
4 in it.

5 HON. SEYMOUR W. BOYERS: Are you saying that OCA  
6 hasn't implemented from the action plan a court training  
7 program for clerks in the town and village?

8 HON. TIA SCHNEIDER-DENENBERG: Well, I'm seeing  
9 it in the action plan. Whether or not it's been  
10 implemented, I can't say. But I know it's something that  
11 long before the action plan the court clerks had been  
12 seeking repeatedly. I mean, I specifically -- I would  
13 have liked to have Dora come with me today, but she's  
14 actually in court right now with the other judge.  
15 Because, again, she has a very unique perspective on what  
16 actually happens on the ground. And certainly she's the  
17 kind of person were she not the clerk of the court I  
18 probably wouldn't have taken on this responsibility, it  
19 would just be too overwhelming.

20 CHAIRMAN DUNNE: Any other questions? Mr.  
21 Hoffman, do you have the year of the second report that  
22 you mentioned? First was from the National Center, but  
23 the corrections report.

24 MR. RICHARD B. HOFFMAN: This was actually  
25 produced by an organization called the Center for

1 Effective Public policy. I'll get you that information.  
2 I know that it was about seven or eight years ago.

3 CHAIRMAN DUNNE: In fact, I'm not sure if we  
4 have access. If we could get copies of both of those.

5 MR. RICHARD B. HOFFMAN: I will try to get you  
6 both of those.

7 CHAIRMAN DUNNE: Anything by way of the  
8 bibliography would be useful too. You mentioned your  
9 familiarity with the system in England and other states.  
10 That would be useful too.

11 MR. RICHARD B. HOFFMAN: I will get that  
12 together for you.

13 CHAIRMAN DUNNE: One more question.

14 HON. DAVID OTIS FULLER, JR.: Yes. Thank you  
15 very much for that presentation. It was like the one you  
16 had at the Times Union of the highest I thought.

17 HON. TIA SCHNEIDER-DENENBERG: Thank you.

18 HON. DAVID OTIS FULLER, JR.: Just two comments.  
19 Just one comment, one question quickly. Once the new  
20 judges have played catch up, I mean they've gotten their  
21 special training, the courses for the lawyers and the  
22 non-lawyers are the same. I just want to -- there was  
23 talk about being different levels, but they're the same.  
24 I was interested -- obviously, we don't want to have  
25 horrible jokes and people who are not knowledgeable. But

1 I was interested in what you thought -- just to get the  
2 essence of what you thought would be a better program. I  
3 know you talked about training the instructors, lowest  
4 common denominator, would it be mock proceedings, more  
5 pragmatic method. You talked about Saratoga. What was  
6 really the essence that made that much more effective than  
7 the regular programs you said you had from the training?

8 HON. TIA SCHNEIDER-DENENBERG: Well, I think one  
9 it's the level of intensity and the level of commitment.  
10 In other words, I think the people there had a burning  
11 passion for this issue. The judges were truly pioneers  
12 and it showed. So this was not just a matter of academic  
13 interest, they had a lot of subject matter expertise.

14 For example, in this recent one on elder abuse  
15 they shared with us a film of an abused elder gentleman.  
16 I think his name was Norman. And really told his story  
17 and used it as a discussion point. But, typically, I can  
18 say in my other life my husband and I have a  
19 not-for-profit called Birth Place Solutions that deals  
20 with these kinds of social problems in industry and I know  
21 that one of the things we resist very strongly is the  
22 sense that any bargaining unit, no matter how blue  
23 collarish, whether they're state correctional guards,  
24 can't learn like anyone else. And so what we often do is  
25 we actually write plays, we use professional actors, we

1 have simulations that are live that people can have their  
2 hands in. And so it's a combination. So what we tend to  
3 use is real action to open people's guts to the importance  
4 of what they're learning, which then opens their minds.  
5 So we definitely don't dumb it down. But we use various  
6 modalities in every training session. And it's not cheap,  
7 but it changes people's attitudes, and I think that's what  
8 you need.

9 It's not to say it can't be done, but one of the  
10 things I'm concerned about is just rearranging the bodies.  
11 In other words, I think you need visionary leadership.  
12 You can't simply rearrange bodies who have been in the  
13 system, who have been happy with the system, who saluted  
14 under the system, who may have improved it marginally, but  
15 basically lack the vision to substantially affect what  
16 they were doing. And as far as I could tell when they  
17 were in it they certainly had flexibility to do things in  
18 certain ways.

19 And also really I have to say that one of the  
20 main problems I see with the training is I think with  
21 training I try to be very participant-centered. The  
22 judges' training seems to be focused on the needs of the  
23 trainers rather than the participants. And I think in  
24 learning you have to really focus on who you're training  
25 rather than the other way around. And I think that's a

1 heavy lift. And it gores a lot of oxes, but I mean I  
2 definitely think it can be done.

3 I also want to mention one thing that I forgot  
4 on the domestic violence cases that we're seeing. A lot  
5 of times the problem is also with the assistant district  
6 attorneys and the defense attorneys who are often very  
7 ignorant about this. I can't tell you how many pleas I've  
8 had to reject because it's the kind of problem that is  
9 very disturbing for the reasons that the previous speakers  
10 outlined. That it's puzzling. Can't she make up her  
11 mind. Blaming the victim. We know it's a terrible cycle,  
12 it's a long cycle, the same with alcohol and other drug  
13 abuse cases. That you have to take the longer  
14 perspective. But oftentimes in court if people can cut a  
15 deal and get rid of something, great, you don't have to  
16 deal with it. So I tend to sort of put my foot down and  
17 even in the advance of drug courts would have people come  
18 back monthly, especially young people, get the results of  
19 their urine tests and their counseling and really just try  
20 to stay in touch with them at least once a month during  
21 their probation.

22 I've also been trying, with no success, within  
23 my own area, to try and get the people in Social Services  
24 and Mental Health Services to actually meet with the  
25 magistrate so that we can understand what are the

1 available resources. Because one of the things I was  
2 always interested in is how you benchmark the  
3 effectiveness. And we simply don't have outcome  
4 statistics for that sort of thing. So I think there's a  
5 lot to be done on every level. I think definitely you can  
6 devise more active learning experiences, but to do that  
7 you really need people who think out of the box and have a  
8 passion for this kind of thing and respect the people in  
9 training.

10 HON. DAVID OTIS FULLER, JR.: Would you be  
11 interested in participating in the judge training?

12 HON. TIA SCHNEIDER-DENENBERG: If you can take  
13 me, sure. Obviously, I have a lot of views that annoy  
14 people. But, yes, absolutely. Yes. And, you know, I'm  
15 already invested in the system. If I'm going to  
16 participate, you bet I want it to be as valuable for me  
17 and as for others as possible.

18 HON. DAVID OTIS FULLER, JR.: Thank you.

19 CHAIRMAN DUNNE: Okay. Thank you very much.  
20 I'm told we have two more witnesses on the list, but  
21 they're not yet here because we're actually ahead of  
22 ourselves. I don't think either Judge Mathus or Judge  
23 Ditch is yet here; correct? Because we've lost two  
24 witnesses throughout the day we are about 40 minutes  
25 ahead, I suppose. In other words, the first of those two

1 witnesses is not yet here and is not scheduled to testify  
2 until 4:40. These are both justices from Saratoga. We're  
3 trying to reach them to see if they're on their way in  
4 getting here. If they're on their way, I don't want to  
5 adjourn until they get here. So, I propose that we take a  
6 break for about a half an hour. And if they arrive in the  
7 meantime we'll try to reassemble. Why don't we say this:  
8 Why don't we take a break and reconvene in this room at  
9 4:15. If they show up early, we'll get them in.

10 (Whereupon, a recess was taken.)

11 CHAIRMAN DUNNE: Can we get started, please?  
12 I'm told that our last two witnesses are now here. So, if  
13 that's correct, maybe we can get started. Is Justice  
14 Mathus present? Judge Mathus?

15 HON. DAVID MATHUS: Thank you.

16 CHAIRMAN DUNNE: Thank you for coming. I  
17 apologize for being early. We got a little bit ahead of  
18 ourselves.

19 HON. DAVID MATHUS: That's great. I'm David  
20 Mathus, Saratoga Town Court Justice. I'll speak primarily  
21 about magistrate training, but first a brief comment on  
22 the idea of having only lawyers as magistrates. A  
23 conflict seems to exist between what court administrators  
24 want, which is for all judges to be attorneys, and what  
25 the voters want. The fact that time after time the people

1 elect a non-attorney over an attorney candidate should  
2 send a clear message to the state's court administrators  
3 and policymakers as well as the state's lawmakers. And a  
4 stray from the voter's mandate is a stray from democracy  
5 and a stray from government by the people. We caution any  
6 attempts to create district courts in upstate areas will  
7 be seen as an attempt to make an end run around the will  
8 of the people.

9 So, what caused this issue to arise? Why the  
10 push for attorney judges? Education and training is the  
11 most commonly cited issue. But is requiring every person  
12 to sit on a local criminal court bench to have a J.D. the  
13 answer? Are we better off with a corporate tax attorney  
14 or one specializing in trusts and estates, neither who has  
15 been inside a criminal court other than during the second  
16 year of law school? Again, the voters think not.

17 The vast majority of us agree that significant  
18 improvements to training are needed. Training of enhanced  
19 scope and depth is needed to enable magistrates, attorney  
20 as well as non-attorneys, to properly administer the daily  
21 functions of the court as well as managing the jury trials  
22 and other occurrences that are infrequently but vitally  
23 important to the judicial system.

24 Now that we have called for better training, how  
25 do we go about achieving this goal? First, as with any

1 training, the administrators and the instructors need to  
2 ask, have the instructors told the students what to do or  
3 have the students been taught how to do it? There's a  
4 distinct difference. Know that difference. Teach rather  
5 than just tell.

6 Two, principles for adult learning need to be  
7 incorporated into training. The need for effective  
8 training of adults is too lengthy for elaboration at this  
9 forum; however, training needs unique to those who have  
10 been away from academia for considerable time are distinct  
11 and well-documented.

12 Three, all instructors should have a basic  
13 course in educational methodology, often called how to  
14 teach 101 or introduction to classroom instruction. Law  
15 enforcement has an excellent course called instructor  
16 development, which is highly recommended. Fewer lectures  
17 and more role playing can improve retention rates. And  
18 retention is paramount in any educational program.  
19 Unfortunately, training records tend to give much more  
20 emphasis as to what is taught rather than what is retained  
21 for a meaningful time period.

22 Five, perhaps a two-tiered qualification system  
23 could alleviate some of the present problems. Initial  
24 training could focus on arraignments, sentencings, small  
25 claims, ethics, and some of the more routine issues. This

1 would lead to a basic qualification but would not permit  
2 the new magistrate to sit for trials, summary judgments,  
3 preliminary hearings, or other more complex matters.  
4 Additional training within the first two to four months  
5 would lead to a fully-qualified certification.

6 If adopted, the basic qualification should be  
7 obtained with the traditional classroom training as we now  
8 have. And the second phase, that leading to becoming  
9 fully qualified, should be taught in role playing or  
10 demonstration method with the examination being practical  
11 rather than written.

12 Positive steps have already been taken to  
13 increase and improve training, and that progress is  
14 applauded; however, the problem of how to prepare for the  
15 bench in seven weeks between the election and taking  
16 office is still present. It is unrealistic to expect  
17 anyone to attend a six- or seven-week course eight hours a  
18 day plus home study between winning the election and  
19 taking office on January 1.

20 Imagine a new magistrate elected approximately  
21 seven weeks ago. The midnight ball dropped just two hours  
22 ago signaling the coming in of the new year and the new  
23 judge. The judge's home phone rings. The police have a  
24 defendant with a felony domestic violence charge. He's  
25 arraigned and wants a preliminary hearing. An hour later

1 the police bring in a DWI defendant who decides to proceed  
2 pro se and demand a jury trial. Has a new judge received  
3 adequate training for either situation? It's unlikely.  
4 We must ask is it possible the prosecutors may be more  
5 liberal with plea bargaining due to the lack of confidence  
6 in a new judge's ability to conduct a trial?

7 As a recap, we agree that significant  
8 improvements in training are needed and that it's  
9 unrealistic to expect truly adequate training to be  
10 completed within a short time from election and from  
11 taking the bench. By incorporating principles of adult  
12 learning, requiring basic educational methodology training  
13 for all instructors, and changing much but certainly not  
14 all of the lectured methods of instructions to  
15 demonstration and role play, the level of training and  
16 retention rate can be much improved. And by adopting a  
17 two-tiered qualification system, the new magistrates will  
18 gain the additional time required to realistically obtain  
19 the knowledge and learn the skills needed to administer  
20 the court and confidently respond to the daily situations  
21 at the bench.

22 CHAIRMAN DUNNE: Thank you, Judge. Questions?

23 HON. DAVID OTIS FULLER, JR.: I have one  
24 question. That is a very important problem that you  
25 raised as far as the period between election and taking

1 office. Do you envision that by having that two-step  
2 process -- I want to make sure I have your solution right.

3 HON. DAVID MATHUS: Yes. My idea is to have  
4 basic qualification before January 1. So, a judge, the  
5 new magistrate, actually takes the bench, but he's limited  
6 in his duties. He can certainly do arraignments, he  
7 certainly can do a sentencing, you know, within  
8 guidelines, but as far as actually conducting the more  
9 complex issues, he needs more time and that would -- that  
10 two to three months would give that time to become fully  
11 qualified.

12 HON. DAVID OTIS FULLER, JR.: Not that it's  
13 such a big deal, but I guess the other judge, the one who  
14 wasn't elected, the other incumbent or the one whose  
15 election takes place later, would have the experience. He  
16 then or she has to serve double duty, I guess, for a few  
17 months? Is that the idea?

18 HON. DAVID MATHUS: I don't have all the answers  
19 here. I'm just --

20 HON. DAVID OTIS FULLER, JR.: I'm not  
21 criticizing. I'm trying to work it out in my own mind as  
22 to what you propose.

23 HON. DAVID MATHUS: It seems if someone has that  
24 skill, someone has been sitting, someone is a five-year  
25 judge, certainly they have the experience. You don't need

1 to be requalified.

2 HON. DAVID OTIS FULLER, JR.: I understand, but  
3 that person for those two months, not that it's a big  
4 deal, but that person would have double duty --

5 HON. DAVID MATHUS: I misunderstood your  
6 question.

7 HON. DAVID OTIS FULLER, JR.: -- all the  
8 preliminary hearings and all the trials until the other  
9 one got up to speed?

10 HON. DAVID MATHUS: Yes.

11 HON. DAVID OTIS FULLER, JR.: Thank you.

12 HON. DAVID MATHUS: For that aspect. Not for  
13 arraignments, but only for trials, for preliminary  
14 hearings, yes, you would have to have double duty. Or, as  
15 you know, you could appoint someone from another township,  
16 whatever. There is various ways to handle that for the  
17 first two months.

18 HON. DAVID OTIS FULLER, JR.: Thank you.

19 HON. DAVID MATHUS: Anyone else?

20 CHAIRMAN DUNNE: Thanks very much.

21 HON. DAVID MATHIS: Thank you for your time.

22 CHAIRMAN DUNNE: Is Justice Ditch here?

23 HON. JACK DITCH: I'm the town justice for the  
24 Town of Saratoga. I notice by the schedule that I'm the  
25 last one to speak. And two things. One is that you

1 probably have been here all day, so I'm not going to take  
2 a lot of time. I just have a couple of points, but I  
3 thought that they were important enough that I did call up  
4 and come down and at least talk to the panel about some of  
5 the ideas that I have after having served as a town  
6 justice.

7 A lot of the -- the majority of my comments are  
8 in reference to the articles that came out in the New York  
9 Times commenting about our justice system. And the first  
10 thing that caught my attention was that in the articles  
11 they tended to refer to the system that we have as an old  
12 system, as if it was old meaning useless and not of much  
13 value. And one of the things that had occurred to me in  
14 terms of our system is that old in this case could also  
15 mean that it's a proven system. It's a system that's been  
16 around and it's shown its value and its stability and its  
17 utility. By defining it old and then coming up with  
18 perhaps a new idea, one of the things that had occurred to  
19 me was this new idea that the authors of the articles  
20 might be talking about were perhaps not as -- not new, and  
21 that one of the suggestions was that we go from this  
22 decentralized small town and village kind of court system  
23 into a more centralized system. And that seems to be  
24 something that happens in management or business circles  
25 all the time, is the swing from centralization and

1 decentralization.

2 One of the things that happens certainly when  
3 you centralize -- even in our court system we would take  
4 two or three towns and have one building that the justices  
5 may go to, you would have one court to maintain, probably  
6 one full-time judge to take the place of several part-time  
7 judges. But what occurred to me as I was reading this is  
8 that as I redefined this centralized system as something  
9 that is money and time effective, what had occurred to me  
10 is that there was another aspect and that had to do with  
11 fairness, justice and decency that comes out of the local  
12 court system.

13 It had occurred to me that one of the -- how do  
14 we know that a person sitting on the bench meets those  
15 qualifications. And one way that we've been using for a  
16 number of years is by electing the person from our  
17 community that's going to sit on the bench. And basically  
18 what the people are saying is that in my mind that person  
19 is just, that person seems to be fair and a decent person,  
20 and that if I had to appear before the court that would be  
21 a person that I would trust those tough decisions to come  
22 before.

23 An additional topic that came up was the  
24 occupations that we find in the court system. In the  
25 articles the recommendation was to use attorneys as the

1 primary source of justices. And it occurred to me that if  
2 we're going to use occupations, perhaps there are a number  
3 of occupations that we could use that might be just as  
4 applicable and maybe even more if you're going to define  
5 the need to be just and fair and decent persons.  
6 Therefore, we might want to consider priests or pastors as  
7 the occupation of choice. But basically what happens, as  
8 I thought about the justices that I've met in my career,  
9 what happens is that we have a large variety of  
10 occupations that are represented in the court system. And  
11 by using the current system that we have now we're  
12 bringing in a lot of resources that we wouldn't have  
13 access to if we limit ourself to one occupation.

14 So I wanted to say to this Committee that I  
15 support this hearing in giving an opportunity to respond  
16 to some of the issues that have been brought up in the  
17 news media. And I also support -- I want the Committee to  
18 know that I also support our current system of electing  
19 local justices, our local justice system. Thank you.

20 CHAIRMAN DUNNE: Thank you, Judge. Questions  
21 for Justice Ditch?

22 HON. DAVID OTIS FULLER, JR.: I had a question,  
23 yes. Justice, I was just interested in your view of the  
24 action plan. Do you think that the action plan that the  
25 OCA has given us will bring the system to a point where

1           you think that it will be up to speed doing the right kind  
2           of a job?

3                   HON. JACK DITCH: You know, I think it's really  
4           a start. I think we all know that. As I read over the  
5           action plan one of the things I realized is that in our  
6           court, in our local court, we've already accomplished some  
7           of those things that's being asked about. But it's those  
8           issues, being able to record, because we don't have access  
9           to a court stenographer, but being able to record our  
10          sessions. Having access to some of the education that  
11          they were talking about, on-line education, that's going  
12          to -- and the education ideas that Judge Mathus talked  
13          about, that's going to raise the level of knowledge of the  
14          judges on the bench. I think the action plan is a great  
15          start and being able to achieve that is going to be quite  
16          an accomplishment.

17                   HON. MILTON MOLLEN: Justice Ditch, how have you  
18          found the present training program so far as helping to  
19          prepare you to fulfill your responsibilities to the  
20          community?

21                   HON. JACK DITCH: I find it lacking. I  
22          certainly found it lacking this -- I'm going to be quick  
23          on this, but I came from a law enforcement background, so  
24          I wasn't unfamiliar with some of the issues that I had to  
25          deal with at my training. But what I found was that I was

1 looking at a different part of the book, especially in  
2 terms of the Criminal Procedure Law. I was looking as a  
3 police officer at warrants and arrests. And as a judge I  
4 was looking at the rights of the defendant and the  
5 procedures that go in court. Most of the things that I  
6 learned I learned by going in and prior to court sitting  
7 down with the book and reading over the Criminal Procedure  
8 Law time after time after time until I learned it.

9 I'm not saying that the system isn't good, but I  
10 think it could be better. For example, oftentimes I go  
11 into a training and somebody is reading from the book to  
12 me. I already know how to read. If you want me to read  
13 that material, send it to me, tell me to read this because  
14 when you arrive, Judge, we're going to have a discussion  
15 about this material. That would raise the level of my  
16 ability to absorb the material and the level of education  
17 three or four steps.

18 HON. MILTON MOLLEN: Thank you.

19 HON. DAVID OTIS FULLER, JR.: As a followup to  
20 that, do you think then that the materials should be  
21 distributed in advance so you could read them in advance;  
22 is that what you're saying?

23 HON. JACK DITCH: I think that's one solution.  
24 That's not uncommon in colleges or in schools that when  
25 the semester starts you already have your textbook and

1           there's already an assignment set for you. So there's  
2           nothing -- there would be nothing that I would think that  
3           would -- that says, "Judge, this is the material we're  
4           going to be discussing, we want you to read it over. At  
5           least be familiar with it so if you have questions or you  
6           have issues about this material, when you step into that  
7           classroom we're ready to go."

8                   CHAIRMAN DUNNE: Dean Treanor.

9                   MR. WILLIAM TREANOR, ESQ.: Judge, this is a  
10           question I asked the other justices. Just to give me a  
11           sense of what you do or one piece of what you do, how many  
12           arraignments in a typical year will you do off hours like  
13           from ten at night to ten in the morning? How common is  
14           that?

15                   HON. JACK DITCH: Yeah, that's a nice word,  
16           "common," because I think it varies. Certainly, up in the  
17           rural area in the County of Saratoga, certainly we're not  
18           as busy as some of the other towns. But it's not  
19           unusual -- I'm guessing. But I'm just going to pick a  
20           figure to say maybe eight to twelve a year.

21                   MR. WILLIAM TREANOR, ESQ.: Eight to twelve a  
22           year?

23                   HON. JACK DITCH: Yes. There are times when  
24           I've had more than one a night. And then, of course,  
25           there are times when I will go two or three weeks without

1 being called on.

2 MR. WILLIAM TREANOR, ESQ.: And what kind of  
3 crimes are they for?

4 HON. JACK DITCH: Well, you know, for a variety  
5 of crimes. Certainly, we have your DWI and your needs --  
6 serious DWI. And also have the domestic incidences. So  
7 they vary from the vehicle and traffic into the criminal.

8 CHAIRMAN DUNNE: Anything else? Judge Boyers.

9 HON. SEYMOUR W. BOYERS: Judge, with reference  
10 to the action plan, one of the things that's been  
11 advocated is to provide laptops to the judges, and that  
12 supposedly will help oversight as far as OCA is concerned.  
13 How do you feel about that?

14 HON. JACK DITCH: Not having used it at two  
15 o'clock in the morning, I'm not sure. I believe the  
16 program that I heard them talking about, the one that  
17 we're going to be able to record, we're going to be able  
18 to take that with us into the arraignment, we're going to  
19 be able to have that with us in the courtroom, I think  
20 that that's going to be a real asset, not only for myself  
21 as a judge, if there's an appeal -- and I have been  
22 appealed -- but also for the defense attorney to have a  
23 record. I think it's going to help both sides.

24 HON. SEYMOUR W. BOYERS: Thank you.

25 CHAIRMAN DUNNE: I think that's it. Thank you,

1 Judge. Unless anyone in the audience has anything else  
2 for us, I believe that concludes our hearing today. I  
3 want to make clear for the record how much the commission  
4 appreciates the work that went into organizing this  
5 hearing on the parts of the court personnel, OCA, court  
6 securities staff, as well as the staff to the commission  
7 from my office at Davis, Polk & Wardwell. It went  
8 flawlessly and was very informative and very, very  
9 well-organized. So thanks to all of you. That's it.  
10 Thank you very much.

11 (Whereupon, the proceedings in the  
12 above-entitled matter were concluded.)  
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C E R T I F I C A T E

We, **AMY E. MACKENZIE** and **COLLEEN B. NEAL**, Senior Court Reporters in and for the Third Judicial District, State of New York, **DO HEREBY CERTIFY** that the foregoing is a true and correct transcript of our stenographic notes in the above-entitled matter at the time and place above-mentioned.

*Amy E. MacKenzie*

\_\_\_\_\_  
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