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4 THE TASK FORCE ON THE FUTURE OF PROBATION

5 PUBLIC HEARING

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7 14 Vesey Street
8 New York, New York
9 October 11, 2006
10 PROCEEDINGS

11 BEFORE:

12 THE PROBATION TASK FORCE MEMBERS

13 (John R. Dunne, Esq.; Hon. Phyllis S. Bamberger; Robert M.
14 Maccarone; Catherine Abate; Martin F. Horn; Hon. John J.
15 Brunetti; Hon. Richard C. Kloch, Sr.; Hon. Jerald S. Carter;
16 Janet M. DiFiore; Patricia L. Aikes; Edward J. Nowak, Esq.;
17 Seymour W. James, Jr., Esq.; Rocco A. Pozzi; Robert J. Burns;
18 Lawrence Marks, Esq.; Hon. Michael Corriero; Nancy Ginsburg,
19 Esq. and Michael P. Jacobson)

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22 Toni Ann Figueroa, RMR, CRR, CSR
23 Anne Marie Scribano, RPR
24 Official Court Reporters

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2 CHAIRMAN DUNNE: Good morning. I'm Chairman
3 of the Task Force on the Future of Probation of New
4 York State, which was formed as a result of the State
5 of Judiciary message by Chief Judge Judith Kaye in
6 February. She formed this task force. In her words,
7 "It is time for a new era of State responsibility for
8 probation."

9 All of you in the audience as well as the
10 panel are familiar with the operation of probation and
11 the purposes it serves in our state. But we are here
12 to take a critical analysis of it to hear from you. We
13 come here with no preconceptions or any issues other
14 than our goals, which are to protect the safety of the
15 community in terms not only reducing recidivism, but
16 also in shaping the lives of those who have come under
17 the care of the State through its judiciary. But we
18 are also concerned about finding some alternative
19 methods to incarceration which would impose even
20 heavier burdens upon probation and, therefore, we are
21 looking for ways to strengthen and give probation not
22 only the resources, but also perhaps some new
23 guidelines and a roadmap for the successful completion
24 of their responsibilities.

25 Before we begin, I want to introduce the

26 members of the Task Force who have been so faithful in

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2 attending not only meetings of the Task Force
3 personally, but also, in whole, list of telephonic
4 meetings that we've had for the Force subcommittees
5 that we've formed for the purpose of fulfilling our
6 responsibilities.

7 To my far right is Catherine Abate, former
8 New York State Senator, former Commissioner of
9 Correction Probation for New York City.

10 Next to Catherine is Judge John Brunetti, who
11 is a Judge in the Court of Claims sitting by assignment
12 in the Supreme Court in Onondaga County.

13 Next is senator -- is Judge Michael Corriero
14 who sits as a Supreme Court Justice here in New York
15 County and addresses many of the problems of young
16 people who are brought to court on criminal charges.

17 Next to Judge Brunetti is a distinguished
18 visitor from the great county of -- what's the name of
19 your county?

20 JUDGE KLOCH: Erie County. Erie and Niagara.

21 CHAIRMAN DUNNE: Supreme Court Justice Judge
22 Kloch, who is an administrative judge for that
23 district.

24 Next to Judge Kloch is Robert Maccarone who
25 is the State Director of Division of Probation and

26 Correctional Alternatives.

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2 Next to my right is my strong right arm,
3 former Justice of the Supreme Court of the State of New
4 York, Honorable Phyllis Bamberger, who has been
5 involved in probation issues for many, many years and
6 has been a great influence on the criminal justice
7 system as a whole.

8 Immediately to my right is Robert Burns who
9 is the Director of Probation and -- I'm drawing a
10 blank --

11 MR. BURNS: Monroe County.

12 CHAIRMAN DUNNE: In Monroe County and a
13 leader in the profession.

14 Next to Bob Burns is distinguished defender
15 of the indigent, Mr. Ed Nowak, who has had a rich
16 history in addressing issues not only in probation, but
17 about criminal justice in general.

18 Next to Ed is Ms. Patricia Aikens, who is not
19 only the Director of Probation for Albany County, but
20 she is president of the Association of Probation
21 Directors.

22 Next to Patricia is someone who really knows
23 what's going on, a real trial lawyer that's been
24 involved and worked for many years, Nancy Ginsburg, who
25 also works with Legal Aid.

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2 introduction, Lawrence Marks, who's counsel to the
3 Office of Court Administration and has been deeply
4 involved in issues relating to probation for many
5 years.

6 And bringing up the end -- good morning. How
7 are you? I didn't know you were going to be with us.
8 Just so pleased.

9 -- Michael Jacobson, the Director of Vera
10 Institute and a very experienced person in the
11 Administration of the City of New York Department of
12 Criminal Justice.

13 I apologize for the long introduction, but I
14 want to give you the flavor of the quality and the
15 experience of those who are going to make a report to
16 our Chief Judge hopefully by the end of 2006.

17 Is Mr. John Desmond present?

18 (Pause in the proceedings.)

19 CHAIRMAN DUNNE: He is not.

20 I would like to call on Mr. Jerome McElroy,
21 the Executor Director NYC Criminal Justice Agency.

22 Is it your intention to be joined by your
23 colleague?

24 MR. DESMOND: No, I believe Mr. Kiers is
25 going to speak after me.

Good morning, Mr. Chairman, members of the

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2 Commission.

3 I want to begin by thanking Justice Kaye for
4 creating this Commission. And for your invitation to
5 meet me and let me offer my views on the current status
6 of probation and the need to enhance its efforts in the
7 future.

8 I have long believed that probation is the
9 most neglected and overlooked component of the criminal
10 justice system. So I welcome a serious effort to study
11 its operations, identify its needs, and plan for
12 effectively addressing those needs in the future.

13 We need to stop what seems to me the cynical
14 practice of sentencing ever increasing numbers of
15 defenders to probation, expecting the service to
16 prevent their recidivism and assist in the integration
17 into law abiding society while never carefully
18 assessing the effective strategies to pursue those
19 objectives and never providing remotely adequate
20 resources to implement those strategies. I suggest
21 that this may be a proficient moment for such an
22 assessment and planning effort. I expect the probation
23 will continue to be the most frequently-used sentence
24 for convicted offenders. Its obvious to everyone that
25 probation has a far less costly option than

26 incarceration. And now I believe we know a great deal

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2 more than we used to know about the principles and
3 programs that can reduce recidivism and place
4 probationers in needed service programs.

5 The last dozen years or so have produced a
6 great deal of research on approaches that do work to
7 reduce recidivism. Researchers in Canada, California,
8 Cincinnati, Wisconsin and other places have produced a
9 series of recommendations, empirically-based
10 recommendations, for agencies to adopt what they refer
11 to as Evidence Based Practices or EBP. Some of the
12 principles that have emerged from this work include the
13 need to create or adopt validated risk assessment and
14 need assessment systems that can effectively
15 distinguish among defendants presenting relatively low,
16 moderate and high risks of failure if placed on
17 probation; the need to develop guidelines that tie the
18 levels of supervision and services to the risk levels
19 that have been identified; the needs to avoid imposing
20 high levels of supervision on lower risk defendants.

21 Indeed, the research clearly indicates that
22 excessive supervisory conditions imposed increase,
23 rather than decrease, the failure rates for such
24 offenders; the need to structure 50 to 70 percent of
25 the high offenders' time for the first several months

26 of probation; the need to concentrate on addressing the

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2 most criminogenic needs of offenders such as drug and
3 alcohol dependence, associations with known offenders,
4 securing and sustaining employment and stable
5 residence, using cognitive behavioral techniques to
6 change criminogenic values and perspectives; the need
7 to create a range of responses to probation violations
8 rather than having to choose between ignoring the
9 misbehavior and violating the offender; the need to
10 create a range of awards for positive behaviors that
11 move offenders towards realizing the objectives of
12 supervision; the need for probation services themselves
13 to develop a knowledge of neighborhood cultures,
14 institutions and networks of local persons and
15 organizations that can facilitate the integration of
16 the offender into the community; the need to create a
17 system for monitoring compliance with the conditions of
18 probation; the services that are provided either by the
19 Probation Department itself or by outside referral
20 agencies and their relationship to case outcomes in
21 terms of recidivism and probation violations; and the
22 need to develop a capacity for using these data to
23 identify successful and unsuccessful strategies and for
24 feeding that information back to operational staff in
25 probation departments. These are promising approaches

26 to enlivening the service that is thought by some to be

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2 ineffective at present.

3 I think we need to emphasize also that these
4 are conclusions drawn on the basis of a considerable
5 amount of imperical research that, until a dozen years
6 ago or so, was not available either to probation
7 departments or, for that matter, to community agencies
8 that were often times collaborative with probation
9 departments.

10 I believe that some of the agencies within
11 this state are actively attempting to restructure their
12 organizations and retrain their officers around these
13 principles. But even in these agencies much needs to
14 be done and much technical assistance is required to
15 bring about such dramatic restructuring.

16 The State Division of Probation and
17 Correctional Alternatives has been encouraging this
18 movement by developing guidelines, standards, grants to
19 assist in planning and redesign efforts and technical
20 assistance and conferences to facilitate
21 interdepartmental sharing of experience as the
22 departments struggle to bring about their -- to turn
23 themselves around. And still more assistance is needed
24 in those agencies which are, at present, not familiar
25 with the EDP movement and to intimidate it or to

26 imitate it to know how to begin to implement those

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2 principles in their own departments.

3 I believe DPCA can be an important force in
4 leading this movement. But recent patterns of cutting
5 funding to that agency and reducing resources provided
6 to it need to be reversed. There must be -- obviously
7 effective significant improvements in the probation
8 service will require a significant increase in funds
9 for local agencies. It is unlikely, it seems to me,
10 that counties will be able to meet that need by
11 themselves. And yet the level of state reimbursement
12 to local probation departments has been falling for
13 several years.

14 I can recall, and I suspect many of you can
15 recall, a time when the State was seriously considering
16 assuming all costs for probation services. That may
17 not be feasible at the present time, but movement
18 toward rather than away from that goal is certainly
19 called for.

20 I am the Director of the New York City
21 Criminal Justice Agency which is the pretrial services
22 agency serving the city's criminal courts. We are a
23 nonprofit agency and as are the agencies in Monroe and
24 Westchester counties. But to the extent that pretrial
25 services are available in other counties throughout the

26 state, they tend to be provided by probation

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2 departments. These programs facilitate the release of
3 the accused but unconvicted persons. They reduce
4 dependance on money bail and they reduce crowding
5 pressures on local correctional facilities.

6 Working with DPCA recently we have completed
7 a revision of the State's standard for pretrial
8 services, but training and technical assistance is
9 needed in nearly every county to monitor and encourage
10 the implementation of those standards. And unlike many
11 other states, New York is lacking in legislation
12 requiring the establishment of pretrial services and
13 defining the confidential nature of pretrial
14 investigations.

15 In this regard, I would also note that when
16 pretrial services are provided by probation
17 departments, the costs incurred are included in the
18 county's calculation of costs that are subject to State
19 reimbursement. However, when the services provided by
20 a nonprofit agency, such as my own, those costs are not
21 eligible for reimbursement. Thus, New York City, which
22 spends over eleven and a half million dollars for our
23 services must shoulder that entire expense by itself.
24 I suggest that if the State deems this to be a needed
25 and appropriate service, it should be eligible for

26 reimbursement regardless of how a municipality decides

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2 to implement it.

3 In the interest of efficiency, I would also
4 suggest that requirements for conducting presentence
5 reports in all felony cases and some misdemeanor cases
6 be at least reconsidered. In cases in which the
7 sentence is virtually mandated and in cases in which
8 the plea and accompanying sentence has been negotiated,
9 the Court should have the discretion to order APSI when
10 it suspects that the agreed upon plea may be
11 inappropriate. Such a change would free up some number
12 of investigative offices to participate in implementing
13 the evidence-based supervisory practices I've referred
14 to before.

15 And finally, I would remind the Commission
16 that literally hundreds of nonprofit agencies that are
17 capable of providing a wide range of community-based
18 services for offenders in the form of diversion
19 programs or alternative sentencing options either to
20 the Court's directly or in some form of collaboration
21 with probation departments. Twenty years ago,
22 relations between probation departments and the
23 community-based service agencies were genuinely
24 competitive and hostile. As a result of efforts
25 initiated by Probation Officers Associations, DPCA and

26 representatives of the community-based service

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2 agencies, both sides came to recognize the many ways in
3 which these agencies can complement and extend the
4 probation service, and the probation departments can
5 facilitate the system's access to these services. It
6 is crucially important now to encourage the spirit of
7 collaboration and to support programs that embody it.

8 Mr. Chairman and members of the Commission, I
9 thank you once again for giving me the opportunity to
10 offer my views for whatever they're worth, and I'm
11 happy also to offer the resources of the Criminal
12 Justice Agency to assist you in any way you may think
13 would be appropriate.

14 Thank you.

15 CHAIRMAN DUNNE: Thank you for the very
16 generous work you're doing. Of course it brings you to
17 be recognized as one of the great stars of the field.

18 Now, having said that, yes, I deeply
19 appreciate you sharing those thoughts with us.

20 Let me get to a specific if I may.

21 CIA did a study on a contract for the City to
22 look at seven programs which fall under the ATI
23 grouping. And your conclusion at the end of one of
24 those studies with regard to the effects of ATI on
25 recidivism, you concluded the success in the program,

26 as defined by the program's themselves, "does not

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2 translate into reduced levels of recidivism." And the
3 next paragraph you state, "We found no differences
4 among felony ATI participants and felons serving a
5 probationary sentence or felons released from a State
6 prison." That makes me pretty uncomfortable.

7 What can you tell me about that since we put
8 a lot of stock into ATI programs?

9 MR. McELROY: I can tell you that this was
10 one of two evaluations which we did. One of them. The
11 other one was attempting to measure the extent which
12 ATIs were actually displacing jail time. I've sent
13 them both on. You've probably seen them. I think the
14 results of the displacement analysis were somewhat more
15 promising than the recidivism analysis.

16 With respect to the recidivism analysis, I
17 guess I would point out that we were doing simply a
18 statistical study. We looked at -- we did use match
19 samples, which I think you will recall from reading
20 material. But one of the things we did not do was to
21 look inside the programs.

22 There were a number of felony programs,
23 seven, if I remember correctly, and one misdemeanor
24 program, the Community Service Sentencing Project.

25 Speaking about the felony programs, we did

26 not study what the various programs did to the people

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2 who were participating with the program. I think,
3 frankly, that's critically important because in the
4 absence of that, we're looking at -- you know, we're
5 doing what is on -- referred to as black box research.
6 You see people go into the programs. We see people
7 come out of the programs. Some successfully
8 completing. Others not successfully completing.

9 It is also true in our studies that we found
10 that the rates of successful completion in the programs
11 differed. They were not uniformly -- they were not the
12 same in all of the programs. Some programs were much
13 more successful in having their participants complete
14 during an important part of the finding, because we
15 also found that successful completion versus
16 unsuccessful completion was one of the principal
17 predictors of subsequent recidivism. All of that
18 suggests to me that it would have been very useful, had
19 we been able or some other research organization been
20 able to go inside the ATI programs, to actually measure
21 what is being done by the ATI programs, the extent of
22 service that is actually provided and the nature of the
23 services that are actually provided to the
24 participants.

25 I think the same would be true if one were

26 trying to determine the effectiveness of probation.

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2 You can look simply at outcomes such as recidivism
3 which you can study statistically, but we don't know an
4 awful lot about what it is that produces that result.

5 I would tie that back to my comments earlier
6 about the EDP movement.

7 As I suggested then, we are now, I think, in
8 a position of knowing a good deal more about the kinds
9 of approaches that work at least based upon imperical
10 research. We do not know the extent to which ATI
11 programs or, for that matter, particular probation
12 departments are implementing those EDPs, those Evidence
13 Based Practices. There is a tendency to believe that
14 is probably minimal at this point in time.

15 So I would suggest that what we need to do is
16 to look more faithfully inside both probation and ATI
17 programs to see what they're doing to encourage the
18 development of the use of EDPs and then to try to
19 measure results in relation to not only successful or
20 unsuccessful completion, but what was being provided to
21 those defendants, why were the techniques being used in
22 the programs that would tend to be successful.

23 I would also point out that one of the
24 findings in that particular analysis was that when,
25 compared to the match sample of prison inmates or

26 prison releasees and probationers, there was no

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2 significant difference in recidivism. But when
3 compared with the match sample of jail-sentenced
4 persons, the ATIs did better.

5 We, again, were not in a position to pursue
6 that as carefully as we could. But we speculated, and
7 I think believed, that that may reflect the fact that
8 people who come out of the local jail are essentially,
9 thereafter, without supervision in the community. That
10 is not true of people coming out of prisons. Obviously
11 a vast majority are subject to some kind of parole
12 supervision and, of course, probation. They continue
13 on probation.

14 CHAIRMAN DUNNE: Thank you.

15 MR. McELROY: I also point out one other
16 thing, and that is that in those felony ATI programs
17 that we study, typically, when someone completed the
18 program, particularly if he completed this
19 successfully, he went back to Court and then was placed
20 on probation in lieu of being placed in the ATI
21 programs, in lieu of being placed in the state prison
22 facility that he would have been placed in had the
23 normal process proceeded.

24 And I guess, finally, the most obvious fact
25 is that the ATI programs are considerably less

26 expensive than incarceration.

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2 CHAIRMAN DUNNE: Thank you.

3 There will be other questions, but we've been
4 joined by Martin Horn, the Commissioner of the
5 Department of Probation for New York City.

6 Good morning.

7 MR. HORN: Sorry I was late.

8 CHAIRMAN DUNNE: And where is my dear friend,
9 Seymour James?

10 MR. JAMES: Good morning. Sorry I was late.

11 CHAIRMAN DUNNE: Sorry?

12 MR. JAMES: Sorry I was late.

13 CHAIRMAN DUNNE: The Director of the Criminal
14 Division.

15 And that's New York Legal Aid.

16 And, sitting last, Nassau County Judge Jerald
17 Carter who sits in the Felony Criminal Court in Nassau
18 County.

19 Questions from the panel?

20 JUDGE BAMBERGER: Yes.

21 In the pretrial ATI programs there's
22 generally a judge involved in that supervision; is that
23 right or not right?

24 MR. McELROY: You mean ongoing involvement of
25 the judge while a person is in the program?

JUDGE BAMBERGER: Yes, before pretrial.

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2 MR. McELROY: No.

3 As a matter of fact, in New York City we
4 actually do not, at present, offer supervised release
5 alternatives to the arraignment in court. There are
6 reasons for that which I won't go into. We are now
7 proposing to experiment with that in one county so
8 that, in New York City, if somebody is released on
9 recognizance, there is no service going on at that
10 point. And the person is simply released on his
11 premise through his turn on his own.

12 JUDGE BAMBERGER: And then the judge sets up
13 the program if the judge wants the defendant in the
14 program?

15 MR. McELROY: If the Court would then
16 determine when the person is before it what to do by
17 way of disposing of the case, it would then no longer
18 be a pretrial notion.

19 Am I just confusing you?

20 In other words, all of these programs entail
21 people, the ATI programs, who were before the criminal
22 of the Supreme Court in which the question of release
23 pending disposition was no longer an issue. The
24 question was what would the disposition of the case be
25 and the offer from the ATI is it places the person in

26 our services rather than presumably sending him to jail

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2 or prison, which was assumed to be the likely outcome
3 if the ATI intervention had never taken place.

4 Now, when the person was placed in an ATI
5 program, the judges did remain involved in the sense
6 that the ATI programs would then require to report back
7 to the judge periodically on the status of the person's
8 waiver in the program, whether or not he had been
9 re-arrested, if so, why, and the programs would also
10 then be given an opportunity to appear before the Court
11 in instances where they thought this is clearly an
12 inappropriate placement, we can not manage this guy and
13 we would, therefore, petition the Court to take him out
14 of the program and re-sentence him.

15 JUDGE BAMBERGER: Did it make any difference
16 to the ultimate circumstance in which the defendant
17 found himself a better plea or whatever that the judge
18 was involved, in your opinion?

19 MR. McELROY: It was something that we were
20 not able to study imperically because we didn't
21 actually have that data on the ultimate disposition.
22 We would argue, of course, that it did because the
23 successful people went back to Court and they were then
24 placed on probation.

25 Again, all of these programs assumed the vast

26 majority of people whom they were petitioning for would

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2 have been incarcerated had they not intervened. And
3 so, certainly, for those people who successfully
4 completed the program, they were -- received an
5 ultimate sentence that was a good deal better that they
6 would have received otherwise. For unsuccessful
7 participants, that would not necessarily be true.
8 Obviously in some of the programs, the program
9 representatives themselves would go before the Court
10 and actually encourage the Court to incarcerate this
11 defendant. And the courts generally comply with that.
12 So you have, in that instance, if you were measuring
13 displacement, for example, that would be a negative
14 displacement, unsuccessful people were, in fact, being
15 incarcerated, and, therefore, bringing down the overall
16 displacement rate of any single program or all of the
17 programs in the aggregate.

18 CHAIRMAN DUNNE: Perhaps go down the line.

19 JUDGE CORRIERO: I would like to change gears
20 a little bit.

21 In our own work in creating the pretrial
22 service instrument, it came a point in time when you
23 felt, I believe, that it was necessary to have a
24 separate division for juveniles not only in regards --

25 MR. McELROY: Juveniles offenders, not JDs?

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2 And I believe you came to that conclusion in
3 part because you concluded that they had different
4 issues with respect to returning the need for
5 supervision.

6 Do you think that there ought to be a
7 separate division in probation department -- within the
8 probation department to deal with offenders under
9 16 years of age?

10 MR. McELROY: Are you speaking, Judge, about
11 JOs who are before --

12 JUDGE CORRIERO: Juvenile offenders. Of
13 course there is specific juvenile delinquency, but what
14 about the 13, 14 and 15-year old who happens to be --
15 14, 15-year old who are being prosecuted in adult
16 court? Should there be a separate division either with
17 the adult system or connected somehow to the juvenile
18 court probation department by which you are purporting?

19 MR. McELROY: In so far as we believe, and I
20 think the evidence indicates that the issues presented
21 by children of that age differed, in some instances,
22 differed dramatically from those presented by 19,
23 22-year olds, et cetera. It makes sense that Probation
24 Department utilized officers, created offices,
25 particularly well-trained, inspected what those issues

26 are and in dealing with them effectively. Whether that

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2 unit or that group of people would best be placed in
3 the Family Court probation service or in the adult
4 probation service, I don't know. I suppose, again, the
5 similarities of experience and the kind of needs deal
6 intensively with families that is characteristic of
7 these youth might suggest that it would be best to do,
8 even though they're coming out, adult Court and would
9 be placed on probation with the adult Court that they
10 be supervised by a juvenile --

11 JUDGE CORRIERO: You also indicated that
12 judicial supervision, if you will, has generally a
13 positive impact upon recidivism.

14 Am I correct?

15 MR. McELROY: Well, in that particular study
16 where there was a difference between the recidivism
17 rates for the ATI participants and those who were --
18 who had come through the jails, we did find, as we kind
19 of expected to find, that in the beginning, for the
20 first several months of the tracking period, the
21 recidivism rates would pretty much remain the same for
22 those two modalities, if you will. But as time went on
23 and the supervision continued in the ATI programs --
24 but the jail and those without supervision, those lines
25 would begin to separate and the ATI -- the recidivism

26 rates for the jail-matched group would rise more

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2 rapidly and earlier than those of the ATI.

3 JUDGE CORRIERO: Would you have an opinion as
4 to whether or not if such a separate division within
5 the Probation Department established thought over that
6 division somehow be transferred to the judiciary as
7 opposed to the executive?

8 MR. McELROY: I would not have an opinion on
9 that. I'm really --

10 JUDGE CORRIERO: You also indicated that the
11 ATI recidivism rate didn't seem to improve the
12 situation as in comparison to institutionalization.

13 MR. McELROY: Correct.

14 JUDGE CORRIERO: But, of course, you're aware
15 that the juvenile to send to the Office of Children
16 Family Services, the recidivism rate is 60 to
17 80 percent, these children are being re-arrested within
18 36 months of their release. Would you compare that
19 recidivism rate with the recidivism rate with the
20 adults in incarceration programs?

21 MR. McELROY: Obviously the recidivism rate
22 for the ATIs program was considerably lower than what
23 you're referring to. The people you're referring to
24 are people 16 and under and generally charged with more
25 serious kinds of offenses.

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2 would be much more salutary or helpful for children
3 under 16 than they would adults?

4 MR. McELROY: I would like to say yes, Judge,
5 but, in fact, I don't have the imperical evidence that
6 would lead me to that conclusion. In that if there was
7 an ATI program that was organized specifically with
8 kids of this age in mind and had a staff and,
9 particularly, if they were incorporating some of the
10 EDP principles we mentioned before, I would think they
11 would be able to have a substantially better recidivism
12 rate in order to get out of the kids coming out of the
13 trained schools and institutes. If I could --

14 JUDGE KLOCH: I thank you for your comments
15 here today.

16 You indicated one item of greater discretion
17 to the Court in regard to dispensing the necessity for
18 a PSI. We've discussed that task force. And coming
19 from Erie County, maybe I think we realized if we had
20 had a budget problem, and there were a lot of
21 discussions in that county about ways we could help the
22 probation officers regarding PSIs.

23 Do you have any feelings as to how to provide
24 for greater discretion of the Court? And by that I
25 mean - you could get into a philosophical discussion -

26 it's better to do away with the necessity of the PSIs

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2 or the low-level misdemeanors or is that exactly the
3 levels where you want to exactly study maybe the
4 individual hopefully to deal with the problems bringing
5 that person into the criminal justice system or you do
6 away with the PSIs and do more serious felony cases
7 where a lot of times you would be sentenced commitments
8 or you were restricted by the statute with regard to
9 what you have sentenced? Any regards for that?

10 MR. McELROY: I guess besides, I think, the
11 vast majority of PSIs done on felony cases, that's
12 where I was thinking, and I prefaced my remark,
13 indicated for me having been around the system for
14 many, many, years, decades, in fact, this is not a new
15 issue. This was being discussed by people in the State
16 and Local level back in 1970. It didn't get anywhere,
17 but it was being discussed.

18 My own thought is that the PSI years ago was
19 designed -- was intended to be a sentencing instrument
20 information to the judge of the person, background
21 history, family, whole bunch of things that would
22 actually lead the judge to fashion a sentence that was
23 both appropriate and had some potential for
24 facilitating rehabilitation. That's where the idea
25 came from.

I think in more recent years it is less -- it

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2 is done less with the thinking of a rehabilitative
3 plan, if you will, for the Court and, as a result, I
4 think, given the fact that the vast majority of these
5 felony cases are being disposed as a result of a plea,
6 clearly the sentence is being negotiated as part of the
7 plea negotiations that the outcome in terms of the
8 sentence is pretty clear, and it is unlikely, in most
9 instances, that the presentence report is going to
10 reverse that.

11 I do believe that there may be cases, as I've
12 indicated, in which the Court believes that, or at
13 least suspects that, the disposition here is
14 inappropriate and wants to know more before it either
15 blesses it or changes it. And in that case, that's why
16 I say the discretion of the Judge --

17 JUDGE KLOCH: You say leave it to the
18 discretion of the Court?

19 MR. McELROY: I would say it should be, yes.

20 There's another point, I think, to be made in
21 that. If the person is subsequently sentenced to
22 probation or, for that matter, sentenced to a
23 correctional institute, a report is going to be made
24 which also looks into the needs, the weaknesses, et
25 cetera, of this particular person, especially through

26 probation because they've got to develop a plan for

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2 supervision and service.

3 JUDGE KLOCH: Any thoughts about the
4 misdemeanor level?

5 MR. McELROY: Well, in New York City, the
6 vast majority of misdemeanors are, in fact, disposed at
7 arraignment, so it's a moot issue.

8 Again, I would say that I think the nature of
9 the negotiations that go on leading to a plea preclude
10 the need to do a PSI in most of these instances. And,
11 again, I said if the judge believes there's --
12 something more is needed, he should ask for it.

13 JUDGE KLOCH: Thank you.

14 MR. McELROY: If I may add one more thing to
15 do.

16 There have been programs elsewhere that I've
17 seen in which the defense bar would prepare, if you
18 will, a sentencing plan in which they would, in fact,
19 look for alternative services that could be provided in
20 the community, et cetera, et cetera, and present that
21 to the Court at the time of disposition and sentencing.
22 Subject, of course, to challenge by the prosecution or
23 by the Court, and that may be another alternative
24 which, of course, would require, I'm sure, a
25 substantial reprieve to the resources of the defense

26 bar.

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2 JUDGE KLOCH: Thank you, sir.

3 CHAIRMAN DUNNE: Anymore questions?

4 MR. BURNS: Jerry, just one brief question.

5 You made a brief comment about perhaps we
6 ought to look toward the goal of a State takeover, and
7 I certainly know that the connection is made relative
8 to relieving the burden -- fiscal burden on local
9 government. Let me just take it one step further.

10 You had a fairly unique experience working
11 with both State funded parole officers and Locally
12 funded probation officers working with offenders.

13 Anything in your experience to compare the
14 two disciplines, their focus, their practices, anything
15 that could be helpful as we potentially talk about that
16 State takeover issue in the future?

17 MR. McELROY: In fact, Mr. Burns, I have not
18 had an awful lot of experience working with parole
19 officers and agencies.

20 While I was at the Vera Institute years ago,
21 and I believe it was at a time Marty Horn was up in
22 parole, we did have a program of employment services to
23 parolees who were coming out. I was personally not
24 involved in that program. And so I don't know I am
25 able to offer an opinion on the comparisons.

MR. NOWAK: Just one quick question.

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2 I'm interested in your comment you made
3 earlier about the need to develop a continuum of
4 positive reinforcements. And in my experience, with
5 30 years in the criminal justice systems, what comes
6 upon a defendant is neglect, neglect do this, do this,
7 do this, and there isn't that positive reinforcement
8 which, in fact, people have seen in some of the
9 therapeutic juris prudence courts that have popped up
10 throughout the -- America.

11 I'm wondering, in context of probation, what
12 you see as that continuum of positive reinforcers that
13 could be implemented.

14 MR. McELROY: I'm not familiar in any kind of
15 detail with that. I do know some of that work being
16 done in Ohio, some of that work is being done in parts
17 of California. And it certainly is one of the
18 recommendations that has come out of the EDP research.
19 In some ways, I think some of the things are fairly
20 obvious. For example, much of that research suggests
21 that when someone comes on probation, there's required
22 appearances, call-ins, face-to-face appearances, et
23 cetera may be set at a particular level, depending upon
24 the risk level that has been assigned to the
25 probationary. But that as the person continues to move

26 through the program and not only stay out of trouble,

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2 but perhaps participate effectively in some of the
3 services being offered, he can be rewarded by reducing
4 the frequency with which he must report either in
5 person or by phone.

6 I've heard of some places that would reward
7 people with tickets to the local baseball game or
8 things of this sort, but also make a note in their
9 record that this guy is doing well, he was rewarded for
10 what he has been doing, and the belief is that this
11 both does reward the person and does begin to build in
12 the probationer a desire to stay on that path and some
13 belief that the probation department or the ATI,
14 whatever it is, the service agency, is truly interested
15 in facilitating this movement. And that's a correction
16 to what you described which one hears all over the
17 place that particularly -- a person is supervising a
18 series of neglect, he didn't do this, he didn't do
19 this, and he didn't do that, and parole violation rates
20 very high across the country, let's violate him.
21 Parole violations account for something like 50 percent
22 or so of the prison population, and the prison
23 population is in the neighborhood of what? 150,000
24 people. So something needs to be done in that regard.

25 MR. NOWAK: Thank you.

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2 COMMISSIONER HORN: Good morning, Jerry.

3 Two questions. One you may not have the
4 information on.

5 You mentioned the funding for the CJs
6 pretrial evaluation process and, in fact, it is not
7 reimbursed by the State.

8 Are you aware of whether there is any
9 incongruity across the state or are there jurisdictions
10 where the function you perform is, in fact, reimbursed
11 so is there unevenness in the way it's handled
12 throughout the state?

13 MR. McELROY: My understanding, the costs are
14 eligible for reimbursement only if the service is
15 delivered by a probation department.

16 In Monroe county, for example, I know for a
17 fact that their costs are not eligible and are not
18 reimbursed. And I also note for a fact that that is
19 true in Westchester County. I know that for a fact
20 because a few years ago we were trying to persuade
21 people that we ought to be reimbursed. So we did a
22 little additional research.

23 COMMISSIONER HORN: There are jurisdictions
24 where it is reimbursed?

25 MR. McELROY: Not if it's delivered by

26 something other than a probation department.

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2 COMMISSIONER HORN: Jurisdictions where
3 probation lives that --

4 MR. McELROY: To the extent it's delivered.
5 It's delivered in most counties by probation
6 departments, and those costs are subject to
7 reimbursement.

8 Now, there are fairly elaborate formulae, I'm
9 sure you're more familiar with them than I, which
10 define a cost as eligible or not. I don't know the
11 details of it. What I do know is that service provided
12 for pretrial services are not excluded from
13 eligibility.

14 COMMISSIONER HORN: But if considered out,
15 they may be?

16 MR. McELROY: They would be.

17 COMMISSIONER HORN: Second question. Maybe a
18 quick you don't know the answer.

19 Going back to Senator Dunne's question about
20 studies you did and the effectiveness of ATIs,
21 preparing the outcomes to probation, can you address
22 the question of cost per person served or cost per
23 outcome? Did you look at the relative cost issues?

24 MR. McELROY: No, we did not.

25 As I say, there were strengths to this

26 research and, particularly, frankly, in the methodology

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2 that was used by our research, it was a very
3 sophisticated methodology. There are some limitations
4 to this and every research. Those limitations in this
5 case include a whole series of relevant questions that
6 we were not able to address, but should be addressed.
7 But primary among those, in my view, is the need to go
8 inside the programs. And start finding out what
9 programs are doing. We have sales impressions that
10 some programs dealt much more intensively with their
11 subjects than others did.

12 COMMISSIONER DUNNE: Any other questions?

13 MS. ABATE: I have.

14 Jerry, thank you for your testimony.

15 I know you did not look into the black box to
16 look at what the practices were for the ATI programs
17 versus probation. But was there a difference in terms
18 of the profile of the probation per who was sentenced
19 to an ATI program versus probation?

20 MR. McELROY: In this study - and, again,
21 we're not talking about all probationers --

22 MS. ABATE: If you can answer either or all
23 probationers or in this study.

24 MR. McELROY: I would suspect there is some
25 difference in the profile between people going to ATIs

26 in the City and the whole of the Probation Department

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2 wouldn't apply here because of the methodology used.
3 We can -- clearly, in order to conclude neglect
4 contributed to the ATI programs, we would have to look
5 in the same effect in a perfectly matched sample. So
6 these were on a variety of variables they were
7 individually matched. So if you had -- if you had a
8 fellow of 22 years old with a drug problem going into
9 one of the ATI programs and you had a criminal history
10 of X, Y and Z, we actually went into our database to
11 find somebody male, 22 years old, comparable history,
12 similar charge, and he was the match respondent, if you
13 will.

14 MS. ABATE: The second follow up question,
15 putting aside your study, looking at the universe of
16 the judicial practices, who gets sentenced to ATI
17 versus probation? Is there a difference in the profile
18 of that offender?

19 MR. McELROY: Overall, I suspect, yes. I
20 suspect.

21 MS. ABATE: You haven't done any studies?

22 MR. McELROY: Again, these ATIs, remember --

23 MS. ABATE: Not within this study. Just
24 looking at a universal --

25 MR. McELROY: Even thinking of it

26 universally, one of the distinguishing features of an

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2 ATI, presumably, is its intention to serve as an
3 alternative to incarceration. That means that whatever
4 means they use to select cases, they were specifically
5 looking for cases in which there is a high probability
6 that if they didn't intervene, this guy is going to
7 jail. That's not necessarily true of the whole
8 universe of people who go on probation. So my own --

9 MS. ABATE: But a huge number fits that
10 profile.

11 MR. McELROY: Perhaps. And I'm not really in
12 a position to estimate what that number would be. But
13 that would lead me to speculate, at least, that the
14 people who are selected by the ATI programs and
15 ultimately agreed to by the Court are people facing --
16 typically facing more serious incarcerative sentences
17 than the average probationer.

18 COMMISSIONER DUNNE: Thank you very much.

19 MR. MACCARONE: You've almost used up your
20 allotted 15 minutes. Enough time for one last
21 follow-up.

22 MR. McELROY: Mr. Burns said he had a very
23 simple question or brief question. My family will tell
24 you they may be brief questions, but in my case there
25 aren't any brief answers. I apologize.

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2 brief question.

3 When probation reports are used by
4 Corrections Departments to State Corrections generally
5 to classify and then determine programs, is that a
6 function that you think should be done by the Probation
7 Department or the Corrections Department, and who
8 should pay for it?

9 MR. McELROY: Well, I guess I don't know an
10 awful lot about what exactly Corrections Departments do
11 by way of classification inquiries, et cetera. I know
12 that one of the justifications for requiring PSIs
13 historically has been that. Probation, Corrections
14 Departments needed to do their classification. I don't
15 know the extent to which that is true. I expect
16 Corrections Departments. I do know they collect a lot
17 of their own kind of data when they come into the
18 intake. An intake process in Correction Departments,
19 including local correction departments like this, are
20 fairly extensive. So it may very well be that they are
21 redundant in collecting a number of pieces of
22 information that were collected and perhaps presented
23 in PSI. That bears some looking into.

24 But my own thought was in the past it was
25 kind of a given justification for requiring PSIs. I

26 think it's suspect, but I think that the Corrections

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2 Departments could do what they need to do. And,
3 remember, the classification is a security
4 classification for when the person is in the
5 institution. That, among other things, probably
6 addresses some questions that a PSI might not
7 necessarily address.

8 If you're then talking about what should a
9 Corrections Department be doing to prepare somebody for
10 reentry, then we're talking about personal needs,
11 family needs, housing needs, job needs, supervision
12 needs, et cetera, et cetera, and that kind of
13 assessment goes well beyond the question of classifying
14 somebody on the basis of security. And, clearly,
15 Correction Departments should be doing that, and one
16 would hope they are.

17 COMMISSIONER DUNNE: Thank you very much.

18 MR. MACCARONE: Thank you.

19 (Whereupon, the following was transcribed by
20 Official Court Reporter Anne Marie Scribano:)

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1 THE CHAIRMAN: We have been joined by
2 Rocco Pozzi, who is the Commissioner of both
3 Corrections and Probation in Westchester County.

4 There has been an emergency in Nassau
5 County, so I want to deviate from our schedule.

6 John Carway, Director of Probation in
7 Nassau County, are you prepared to testify, please?

8 MR. CARWAY: Thank you very much.

9 Ladies and gentlemen of the Task Force, I
10 thank you very much for the opportunity to speak to
11 you today. And I am most grateful to Judge Kaye for
12 having had the foresight to ask that this Task Force
13 be put together to take a look at the future of
14 probation in New York State.

15 Now, I'd prepared some remarks last night.
16 Looking them over again this morning in the light of
17 day, they don't seem as -- as -- quite as witty and
18 as, you know, as appropriate as I thought last night.
19 And I thought that what I would like to do today is
20 perhaps to just share with you some of my
21 experiences.

22 I'm not a scholar. I'm a probation
23 officer. I've been the Director of Probation since
24 2001. And before that, I've had about 42, 42-1/2
25 years with the Probation Department. I came into

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1 this system when we were under the Judicial
2 Conference, when we were subject to the courts. I
3 was a very, very little, little fish at that time.

4 I do remember, though, that my boss at the
5 time, Lou Malone, who was legend in, you know, as a
6 director in Nassau County, got a lot of support from
7 the Judiciary. And that support was very, very
8 helpful in his efforts at the time to professionalize
9 the department and to get the county to go along with
10 a lot of the things that he thought that we needed.
11 Those were sometimes thought to be the glory days of
12 probation in Nassau County.

13 Over the 42 years that I've been there, I
14 can't remember a time that the probation service, at
15 least in Nassau County, wasn't in crisis. I know
16 that when I first -- and I spent most of my time as
17 kind of a middle -- as a middle manager, starting in
18 1971 up until I became a deputy director in 1991.
19 And the first thing I had to do was cope with the
20 layoffs of 100 probation officers. So most of my
21 career, I have to say, has not had the luxury of
22 engaging in philosophical discussions as to what
23 would be the best program or, you know, it's been
24 mostly with trying to keep the doors open and to try

25 to keep the services to the courts, to the people

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1 that we are supposed to supervise and to keep the
2 trust of the community that looks upon us, if they
3 know who we are and what we are, to try to keep them
4 safe.

5 I can't remember, as I say, when we
6 weren't in crisis. And the crisis has always been
7 about funding.

8 I've never -- I've never had any doubt in
9 my mind in all of the years that probation worked and
10 could work. I think, from the very beginning, when
11 John Augustus, the first probation officer, took on
12 the town drunk, you know, probation has always been
13 about the interaction of two human beings in an
14 effort to try to get one of them to change their
15 ways, change their behavior and no longer become a
16 risk to themselves and a risk to their community.

17 Anything else, you know, has been, you
18 know, is just something that -- there's certainly
19 been a lot of fluff in this thing, there's been a lot
20 of failed efforts, there have been a lot of programs
21 that have come along that haven't worked.

22 But especially more recently, I've been
23 very heartened by the whole movement towards
24 evidence-based practices in probation. And what they

25 found out is that, when programs are funded properly,

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1 when people don't have 100 or 200 cases to try to
2 cope with, that that interaction between the two
3 people, you know, can and does work. They call it
4 what works because they know that when people have
5 jobs, when they have decent housing, when they have
6 opportunities, when they have somebody that just
7 cares and gives a damn about them, you know, then
8 they can, you know, and very often do change their
9 behavior.

10 I believe that there's always going to be
11 some people who cannot and will not change. There
12 will always be those sorts of failures. That's when
13 we get into trying to measure probation.

14 And I saw on one of the questions that
15 came out on the flier had something to do with
16 recidivism as kind of the *raison d'être* of probation.
17 And I really wondered the extent to which that is the
18 case.

19 In some ways, yes, we're successful if
20 people don't get into trouble again. On the other
21 hand, looking at it from the point of view of another
22 one of our customers -- and there's a lot, you know,
23 a trend in government today to become more customer
24 based in our approach. But probation has certainly a

25 lot of customers, and one of those customers are the

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1 community. And from their point of view, the
2 probationer that we violate and send back to jail,
3 well, that's a success, you know, because maybe they
4 shouldn't have been on probation in the first place.
5 You know, they screwed up. The community is then
6 safer by the fact that, you know, we were on top of
7 it and that we were watching very, very closely and
8 that that person has now been returned to court and
9 perhaps sent to jail or to prison.

10 So I don't know, really, whether
11 recidivism per se is really the full measure. It's a
12 lot more -- it's a lot more complex than that.

13 I'm sure there was something that I had in
14 here that was probably, you know, germane, but, as I
15 said, the one thing that struck me is the complexity
16 of the system.

17 I started to say that we have a number of
18 customers. The community is our customer, the
19 probationer certainly is our customer and probably
20 one of the most important customers that we have are
21 the courts.

22 I've heard it said and suggested, perhaps,
23 that the pre-sentence investigation maybe ought to be
24 eliminated in some cases or modified. That's -- the

25 pre-sentence investigation, as I've seen it over my

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1 years, is probably the most visible product that we
2 have as a probation -- that's the one thing that
3 people see. Judges see it, DAs see it, defense
4 attorneys see it, even the probationers and the
5 defendants see it. And it's the -- it becomes a
6 product upon which we are judged and, unfortunately,
7 I think that happens to be one of the first
8 casualties when the funding isn't there.

9 Because, as was suggested, you know, I
10 think earlier, that, well, perhaps to take some of
11 the financial, you know, pressure, cut back, you
12 could use the people in another way. But I wonder if
13 that's really serving the courts and serving the
14 people, the defendants that are before us. And I
15 think that we have to take a look at that, too, and
16 say, do they deserve, also, to have somebody who is
17 that independent third party that's going to take
18 into their -- take a look into their lives and
19 present to that person who is going to make a
20 decision as to whether or not they walk out the door
21 or whether they spend quite a number of years in a
22 prison, that they know the full story.

23 And I don't think that judges or anybody
24 else can, you know, can be that precognizant before

25 the fact.

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1 So, again, that's just, you know, that's
2 just my opinion. I --

3 THE CHAIRMAN: That's what we came here to
4 hear.

5 MR. CARWAY: I would like to see the
6 pre-sentence investigation. I know a lot of work has
7 just recently been done at the DPCA level to revise
8 all of those rules and put things into, you know,
9 into the proper perspective. A lot has certainly
10 been done and can be done to speed up that process,
11 to make it easier to read.

12 New York City has just spent a lot of
13 money trying to automate that process, a process that
14 they've been especially generous in being willing to
15 share with us and anybody else that wanted to use it.

16 THE CHAIRMAN: I know you have a deadline.
17 Let me see if the members of the Task
18 Force would like to inquire.

19 Judge Bamberger.

20 JUDGE BAMBERGER: Mr. Carway, when you
21 have someone on probation, can your department avail
22 itself of the services of other governmental
23 agencies, like public hospitals, discounts on public
24 transportation --

MR. CARWAY: Absolutely.

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1 I don't know about discounts. I'd have to
2 look into that.

3 But I do know that we spend a lot of time,
4 at least in Nassau County, interacting with all of
5 the other public and private agencies within the
6 community trying to get a priority for our
7 probationers. As a matter of fact, I've seen a lot
8 of difference.

9 Now we have a situation where they're
10 coming to us, because a lot of times their funding is
11 based on, you know, them being able to serve our
12 population as opposed to when I first started, we
13 used to have to, you know, beg, borrow and steal and
14 do just about anything to get one of these agencies
15 to take, you know, our people, because they --

16 JUDGE BAMBERGER: Is that also true of the
17 public schools for school-age probationers?

18 MR. CARWAY: I can't say that the public
19 schools have been that cooperative. It's been more
20 of a battle with them. Very often, you know, and
21 this is not universally the case, but I know in the
22 family court, their frustrations have been -- very
23 often, I guess, come about by just wanting to, in
24 some instances, dump their failures on to the Family

25 Court system.

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1 Don't get me started on the managed care
2 system in this country, that when the insurance runs
3 out and we get severely mentally ill, you know,
4 children in private mental hospitals, when the
5 insurance runs out, that the plan, the discharge
6 plan, is to go file a PINS petition and let the
7 criminal justice system --

8 THE CHAIRMAN: We can save that for
9 another day.

10 JUDGE CORRIERO: I have a question.

11 Thank you very much, and thank you
12 especially for your remarks with respect to the
13 concept of recidivism. It certainly opened my eyes.

14 But you've had experience, as you say,
15 working in the Judicial Conference. I was wondering,
16 in Nassau County, how do you deal with recidivism in
17 children under 16?

18 MR. CARWAY: I believe you're talking
19 about the JOs?

20 JUDGE CORRIERO: JOs.

21 MR. CARWAY: When I heard your comments
22 earlier, I said to myself, I can't remember in Nassau
23 County when we last had one. It may be a big problem
24 in New York City, but, you know -- and with no

25 disrespect to New York City, but in Nassau County,

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1 I -- you know, we might have -- might have had a
2 handful over the years, but I can't remember the last
3 time I saw one, so I wouldn't recommend a whole
4 department for them, at least in Nassau.

5 JUDGE CORRIERO: What do you think about
6 the concept of the Judiciary supervising the young
7 people, other than Family Court, or, in that case, or
8 the executive having responsibility for that
9 category?

10 MR. CARWAY: It's a real tough issue, and
11 it's replete with an awful lot of politics that's
12 involved.

13 I've heard arguments on both sides saying
14 that, if we reported it to the Judiciary, and that
15 they might have a little bit more clout with the
16 Legislature, but it also depends, you know, on the
17 will of the Legislature, how much money are they
18 going to come up with. And I don't know. If they
19 say there's only going to be X amount of dollars,
20 where will the Judiciary now lie? Will they put
21 those dollars into probation at the expense of some
22 of the other programs? I don't know.

23 I would certainly hope that they could
24 possibly be more successful in getting more dollars

25 out of the Legislature. But if they don't, the only

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1 other schtick that they might have, I would think,
2 would be the rule-making responsibility that they
3 have where they could, you know, mandate the
4 localities to come up with certain programs and
5 standards. That might be good for probation, but not
6 so good for the counties. Especially, you know, in
7 talking about, you know, more unfunded mandates.

8 Now, might they be more immune to some of
9 those political pressures? You know, I don't know.
10 I don't really operate too much on that level. But
11 I'm certainly aware that there are a lot of forces,
12 you know, beyond -- certainly beyond the control of a
13 local probation department.

14 Thank you.

15 THE CHAIRMAN: Commissioner Pozzi.

16 COMMISSIONER POZZI: Earlier in your
17 comments, you talked about probation being in crisis.

18 Can you elaborate a little bit more, maybe
19 define that?

20 MR. CARWAY: Like I say, every time that I
21 can recall the -- first of all, the State
22 reimbursement rate, you know, keeps going down and
23 down. What are we now, at 18 percent, 19 percent,
24 something like that? When I first started, it was

25 around 46 percent with a cap of 50. And, at that

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1 time, the clarion call was to try to get it over
2 50 percent. Now I've just been trying to keep what
3 we -- keep what we have. So there's always been that
4 kind of a financial crisis.

5 Someone mentioned that, back in the day,
6 there was the call for a State takeover of probation.
7 And I recall back then, the localities, the counties
8 kind of fought that tooth and nail. I'm not so sure
9 whether my County Executive, you know, today wouldn't
10 give us up in a heartbeat to save a buck.

11 So I think that there is a lot of benefit
12 in being responsible to the community that we -- that
13 we serve. That certainly has, you know -- and that's
14 one of the areas where I think that we possibly --
15 because of the fact that we've always been in crisis,
16 we've missed the boat in many instances in not being
17 more involved with the community and not building up
18 our own constituency.

19 I sometimes call Nassau County Probation
20 the secret service of Nassau County. Nobody knows
21 who we are, what we do. And in many instances, they
22 don't care. We're confused with truant officers,
23 they think we're parole officers. I don't know how
24 many times I've had to explain that difference.

THE CHAIRMAN: Yes, Seymour James?

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1 MR. JAMES: Thank you for coming in today,
2 sir.

3 You talked about the excess case load the
4 probation officers had as a result of lack of funds.

5 Do you believe there should be some sort
6 of case-load cap?

7 And what other type of standards do you
8 think ought to be instituted to guide the
9 Commissioner of Probation Services?

10 MR. CARWAY: Well, the answer to the first
11 question is absolutely. I think that there should be
12 a case-load cap.

13 But even more so, again, like everything
14 else, it's a lot more complicated than that. The
15 issue is not case-load standards, but rather workload
16 standards, in that not every probationer is the same,
17 not everyone presents the same risk, and they don't
18 need to be treated the same. We don't have a level
19 of -- we have levels of supervision ranging from, you
20 know, from intensive down to minimal supervision and
21 even those that are just on administrative case
22 loads.

23 And the American Probation and Parole
24 Association just recently came out with a paper just

25 posted on their web site last week, I believe, the

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1 week before, that adopted such standards based upon
2 the risk that people, you know, presented ranging
3 down from -- I think it's around a case load of 20
4 for someone that had presented a high risk down to,
5 you know, 200 or so for a very low risk and up to
6 1,000, I guess, for people that are just
7 administrative case loads.

8 And we've got the full range, you know, in
9 Nassau County.

10 THE CHAIRMAN: Judge Carter.

11 JUDGE CARTER: How are you doing?

12 I have two questions.

13 Number one, you mentioned that the County
14 Executive would give you up in a heartbeat. I won't
15 quote you back out in Nassau County. I won't give
16 you up in a heartbeat.

17 MR. CARWAY: I'm probably going to be
18 retiring.

19 JUDGE CARTER: With respect to the
20 County's funding, at this point in time, how does
21 that impact you in terms of some of the other
22 services that you have to provide?

23 For example, I know that you're in the GPS
24 and other things going on with sex offenders. I also

25 know we have a burgeoning gang problem in Nassau

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1 County.

2 How is the funding affecting your ability
3 to discharge your responsibilities?

4 And would a State takeover ameliorate some
5 of that?

6 MR. CARWAY: I don't know because, again,
7 a State takeover, you know, I have to know what that
8 -- what that meant. If it just meant that the
9 existing, you know, amounts of money -- if you take
10 what the County provides and what the State
11 provides -- was all of a sudden, you know, taken over
12 by the State, I still think that, at that point, it's
13 inadequate. So it would depend upon the levels of
14 funding as much as who is, you know, who is providing
15 it.

16 But as far as the County is concerned,
17 crime is down and certainly our case loads have been
18 down, you know, thank God. We have now, in Nassau
19 County, about 7,500 people on probation. Not too
20 many years ago, there was, you know, maybe upwards of
21 12,000 people on probation.

22 I remember when we had close to 600
23 employees in the Probation Department. For 2007, we
24 have a cap, a head count cap, of 248. As recently as

25 a couple of years ago, we were well -- we were like

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1 340 something.

2 We got hit very hard with a lot of
3 those -- with the early retirement incentives. A lot
4 of those people were not replaced.

5 And, in some instances, we've been able to
6 make economies with -- we've put some differential
7 supervision capabilities into place to take up some
8 of the slack. But we still have, other than the
9 specialized units -- we have a gang unit, we have a
10 sex offender unit, we have an intensive supervision
11 and a special DWI unit that all have reasonable case
12 loads of 50 and 60. But the rest of the, you know,
13 the generic, they're running around 100, 110.

14 And we have people on the very minimal
15 supervision where there's, you know, several hundred
16 what we call EARS, the Electronically Assisted
17 Reporting System. We have people, they just call in,
18 and we use a voice verification system, to just let
19 us know that they're still around. I'm not terribly
20 happy about it, but it's one of the things that we've
21 had to do, as I said, to keep the doors open.

22 THE CHAIRMAN: Any questions?

23 OCA Attorney, Lawrence Marks.

24 MR. MARKS: Do you think that Probation

25 will ever be adequately financed and adequately

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1 supported?

2 MR. CARWAY: Probably not before I retire,
3 sir. But hope springs eternal.

4 MR. MARKS: Given the current structure --
5 this is the question I'm asking. Given the current
6 structure of local financing with some partial County
7 and State reimbursement, is there any hope at all?

8 MR. CARWAY: There may be some probation
9 departments that have excellent relationships with
10 their local government and they've been able to do a
11 good job prioritizing the service. I don't know, you
12 know, specifically, because I'm, you know, been more
13 trying to take care of my own backyard.

14 But probably under the current -- the
15 current structure, I think the financial pressures
16 locally are just, you know, are just too great for,
17 you know, for County Executives to cope with it.

18 But you have a situation where probably
19 the County figures that that should be a State
20 responsibility and, as far as I understand, it's been
21 a philosophy for the last 20 years, at least that I'm
22 aware of, of the professionals in the State Budget
23 Office, for example, that feel very strongly that
24 probation should be a local concern. And the

25 Commission on Corrections oversees the County jails

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1 and they get virtually, you know, not a dime. And
2 they deal with, you know, a similar population,
3 mostly, certainly misdemeanors, but -- and we get,
4 you know, we kind of get whatever is left over.

5 We were told a number of years ago that,
6 if we were going to get anything, it would have to
7 come out of the State prison system.

8 But the State prison system is very, very
9 much tied into the economic health of the upstate
10 communities in which they reside. So there are some
11 that, you know, say that there is a disinclination
12 to, you know, empty out the State prisons. I think
13 you saw that in the reform of the Rockefeller drug
14 laws. I don't know what went into people's minds.
15 But that would have, I think, a devastating effect,
16 economically, on many of the upstate communities that
17 have prisons in them if, all of a sudden, you know,
18 they went right there.

19 It's very complex issue. I really don't
20 pretend to have all of the answers. I'm hoping that
21 all you ladies and gentlemen, after you, you know,
22 hear from some of us today and in the next couple of
23 months will perhaps be, you know, inspired to come up
24 with some creative solutions.

THE CHAIRMAN: We're going to hear from

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1 you in Syracuse next week.

2 Mike Jacobson.

3 COMMISSIONER JACOBSON: I wanted to follow
4 up on the issue of recidivism, the technical
5 violations.

6 And you mentioned certainly a lot of
7 practitioners in the field saying those violations
8 are indicators of success, because you're catching
9 some and you're watching very closely. And there's
10 some pretty healthy debate about that. There's no
11 research in the field whatsoever that says that
12 violator behavior is an indicator of committing a
13 serious crime. In fact, the research that does exist
14 most on parole and probation really questioned,
15 certainly, the level of violations that we use in the
16 aggregate.

17 So what I'm sort of curious about is, at
18 least for your own county, what -- if we can talk for
19 a minute about both what your -- how your officers
20 made those decisions, whether there's uniformity to
21 the decisions on making the technical violations.

22 MR. CARWAY: It's really individualistic.

23 But we do have some guidelines.

24 Number one, we don't file technical

25 violations based on an arrest. We will notify -- we

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1 will notify the Court. Occasionally, you may find a
2 judge that will ask for a violation to be filed based
3 on just a new arrest.

4 We also don't file the spitting on the
5 sidewalk type of technical violations. We're
6 relatively tolerant, because we recognize that, you
7 know, if they didn't have behavior issues, they
8 wouldn't be on probation. So we expect that someone
9 is going to come up occasionally with a dirty urine.

10 We expect that they're going to miss appointments.
11 It's only when it gets to be a pattern where someone
12 is getting to the point where they're absconding,
13 where they're totally thumbing their nose at us that
14 if, after, say, a dirty urine and they totally resist
15 any efforts to get them into a treatment program,
16 whether inpatient or outpatient, that we finally, you
17 know, say -- and then usually, you know, in
18 consultation with the judge -- say we're going to
19 file the violation because, you know, things are just
20 total -- it's a total disregard.

21 At least that's what we do in Nassau
22 County.

23 COMMISSIONER JACOBSON: Do you know how
24 many you do a year?

Mr. CARWAY: I don't have it at my

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1 disposal.

2 COMMISSIONER JACOBSON: Thank you.

3 THE CHAIRMAN: Mr. Horn.

4 COMMISSIONER HORN: John, I'd like to
5 revisit, if we may, the case load issue just for the
6 record.

7 MR. CARWAY: Yeah.

8 COMMISSIONER HORN: So, if I understood
9 what you were saying, we've got differential
10 supervision, by which I mean you supervise specific
11 types of cases more intensively or less intensively?

12 MR. CARWAY: Correct.

13 COMMISSIONER HORN: I heard you say that
14 your regular case loads are roughly 110, on average?

15 MR. CARWAY: Yes.

16 COMMISSIONER HORN: General supervision
17 case loads?

18 MR. CARWAY: Yeah.

19 COMMISSIONER HORN: And that you've got
20 specialized case loads, DWI, sex offenders, it's more
21 of a -- by type of crime?

22 MR. CARWAY: When I say DWI, it's only for
23 recidivists, people with the second, third and
24 fourth, that are in that special unit.

COMMISSIONER HORN: Those case loads are

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1 around what number?

2 MR. CARWAY: Those are around 50.

3 COMMISSIONER HORN: 50?

4 MR. CARWAY: ISP is 35.

5 COMMISSIONER HORN: 35, and that's
6 pursuant to a waiver, right.

7 MR. CARWAY: I think it's 35 --

8 COMMISSIONER HORN: 35 allowed.

9 MR. CARWAY: -- is what's allowed for ISP.

10 MR. MACCARONE: 21 --

11 COMMISSIONER HORN: So 35 is for the
12 waiver?

13 MR. CARWAY: Right.

14 COMMISSIONER HORN: Then you've got
15 administrative case loads that you said were the
16 ratio of roughly what?

17 MR. CARWAY: We have Probation Assistance,
18 and they're roughly around maybe 4 or 500.

19 COMMISSIONER HORN: And those are the EARS
20 cases?

21 MR. CARWAY: EARS cases.

22 COMMISSIONER HORN: What about on the
23 juvenile side?

24 MR. CARWAY: Juvenile side, they're

25 running around 45 to 50. We're in halfway decent

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1 shape in Family Court. We've only got about 550 kids
2 on probation, and that's been going down because --
3 as the PINS cases have been going down. With PINS
4 diversion, they haven't been -- we've been putting
5 more of our efforts on the other end.

6 COMMISSIONER HORN: So your general case
7 loads in Family Court are about 45?

8 MR. CARWAY: Yeah.

9 COMMISSIONER HORN: You have a Juvenile
10 Intensive Supervision Program?

11 MR. CARWAY: Yes.

12 COMMISSIONER HORN: And that case load is
13 roughly?

14 MR. CARWAY: I think it's around 20.

15 COMMISSIONER HORN: That's pretty much the
16 range?

17 MR. CARWAY: Yeah.

18 COMMISSIONER HORN: Let me ask you this.

19 For general supervision, on the adult
20 side, what do you think is the ideal case-load size?

21 60, 65, on the juvenile side --

22 MR. CARWAY: Probably about 30.

23 Unscientific, but it's what I do.

24 THE CHAIRMAN: Rocco Pozzi.

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1 on Mike's point about technical violations.

2 When they're technical in nature, have you
3 experienced any difficulties in dealing with
4 technical -- in other words, you have someone with a
5 dirty urine or someone who may not be reporting or
6 not going into treatment. Have you experienced
7 difficulties in dealing with that population in going
8 back into court, being able to get upward
9 modifications or having latitude within the
10 sentencing structure itself?

11 MR. CARWAY: Obviously, it depends on the
12 judge. Some of them are more cooperative than
13 others. Judge Carter, of course, is --

14 COMMISSIONER POZZI: He retired.

15 MR. CARWAY: I didn't even know he was
16 coming.

17 COMMISSIONER POZZI: Would you make a
18 recommendation?

19 MR. CARWAY: We have not had -- we've
20 generally had a pretty good relationship with the
21 Judiciary in Nassau County.

22 We do have -- perhaps one of the things we
23 do have, court liaison officers that are in court, so
24 that probation officers don't have to be there.

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1 they're there to -- they have very close
2 relationships with the judges, so if we have a
3 problem, our court liaison officer can go in and get
4 the judge's ear and tell them where we're going and
5 they have no problem in asking us to come over and,
6 you know, talk about the case, you know, generally.
7 They're pretty interested in what they do. You know,
8 sometimes, you know, we've had a judge that just
9 keeps putting the guy back on probation and sometimes
10 that might get frustrating, but I haven't heard about
11 it. Nobody's been banging down my door saying, "You
12 got to do something about Judge So and So."

13 COMMISSIONER POZZI: The only reason why I
14 bring it up, because I think some of us might
15 remember several years ago, we were actually looking
16 at the concept of creating a hearing officer that
17 would deal with technical type of issues. This way,
18 he didn't have to go into the court per se. And it
19 would be someone available to handle those type of
20 requests for upward modifications, if they were
21 needed, to deal with some of the violations. This
22 way, the Court wouldn't be burdened with that.

23 MR. CARWAY: It's not been a, you know, a
24 big problem. Certainly not one that I'm aware of.

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1 MR. MACCARONE: Just one question, John.

2 You're in the twilight, so to say, of a
3 very long and accomplished career, and I think your
4 opinions are very important.

5 I was heartened by what you said in the
6 beginning of your presentation about you seem to be
7 encouraged by the move toward evidence-based
8 practice.

9 MR. CARWAY: My gut has always known what
10 to do, and it's nice to see that there have been
11 studies and people say that, when something is
12 properly funded and the services are there, that it
13 works. You know, I can't get more technical than
14 that. But, yes, I'm heartened to see that it's
15 now -- it's now catching on.

16 MR. MACCARONE: Okay.

17 THE CHAIRMAN: Okay. Thank you very much.

18 Oh, pardon me.

19 Patricia Aikens.

20 MS. AIKENS: John, you've had over
21 40 years of experience in the probation field.

22 And can you tell us a little bit about,
23 over the years, the need to follow the dollars, as
24 far as grant money and --

MR. CARWAY: You got the dollars, we'll

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1 come up with the program. That's the way it is.

2 MS. AIKENS: Has your experience been,
3 though -- I guess the point I'm trying to get to is,
4 you've had to follow the dollars, so Probation's
5 focus has depended on what was the buzz word for the
6 day, as far as what was the up-and-coming program?

7 MR. CARWAY: To some extent.

8 There have been some instances, you know,
9 when we did. And I think sometimes that was our
10 failing, that something was out there and we had
11 people that say that, no, they didn't want to get
12 into that, in the early 70s, when a lot of the --
13 when a lot of the alternatives were being funded.
14 And as the gentleman before had mentioned, that there
15 was a time when we were all at each other's throats
16 because a lot of people in Probation thought that
17 other people were getting what should have been our
18 money.

19 In my estimation, a lot of it was
20 Probation was so stuck in the mud of doing things the
21 way we always did it, that we weren't open to some of
22 the -- weren't willing to try some of the things.

23 So, while following the dollars can get us
24 off in the wrong, you know, track, I've always found

25 that, whenever we've pursued grants, if we thought

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1 that we needed to go in a particular direction, we've
2 been relatively successful in, you know, in kind of
3 getting, you know, getting our way. It hasn't been
4 that hard and, you know --

5 MS. AIKENS: Has your experience been,
6 when the grant money has run out, though, that the
7 County would --

8 MR. CARWAY: The programs -- probably one
9 of the most successful programs that we ever had in
10 Nassau County was something called Operation Midway,
11 which the Senator may recall.

12 And it was a -- it was a pretrial -- a
13 diversion program for people with felony arrests.
14 And after a year to two years of successful
15 completion, they used to get those charges dismissed.
16 It was extremely successful. But when the money ran
17 out and we had to rely on the local funding of it, it
18 just wasn't there to sustain the kind of, you know,
19 30-case load that was necessary for that kind of a
20 program.

21 THE CHAIRMAN: Mr. Carway, speaking of
22 running out, I know you have a commitment.

23 MR. CARWAY: I do.

24 Thank you very much.

THE CHAIRMAN: Thank for you coming.

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1 MR. CARWAY: I wrote something, as
2 significant as it may -- you know -- but I'll leave
3 some copies.

4 Thank you very much.

5 THE CHAIRMAN: Is the missing John Desmond
6 here?

7 How are you, Mr. Desmond?

8 This is a like a one-two punch. We've got
9 Nassau and Suffolk.

10 Mr. Desmond is the Director of the Suffolk
11 County Probation Department.

12 Welcome.

13 MR. DESMOND: Thank you very much.

14 I apologize for being late, but the BQE
15 got the best of me yet again.

16 I have a prepared statement and I also
17 have recidivism statistics for 2005. I don't know if
18 you'd like me to do the prepared statement or just
19 hand it out.

20 THE CHAIRMAN: I'd like you to give it to
21 us, please, and give a copy to the reporter.

22 And you've sat here for a while listening
23 to comments. I'd like you to comment on your
24 reaction to those, as well as anything else you would

25 like to tell us.

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1 MR. DESMOND: So I'll hand -- I'll put the
2 prepared statements to the side, and I'll just go on
3 comments.

4 I could probably spend about four hours
5 just in response to all the comments that I've heard
6 so far.

7 Taking them just as they come, it seems to
8 me that the place where probation should be is at the
9 county level. That's the place where you can best
10 interact with all the other services that are
11 available to the communities, where you can really
12 get the job done, if you have effective ways of
13 communicating and working with other departments and
14 agencies, both at the municipal level of the towns
15 and villages and the county level.

16 We work very strongly and very closely
17 with all those levels, and the state level, as well.
18 We are very lucky. We've had a lot of support from
19 our county government, thank God.

20 I -- Nassau County was once the crown
21 jewel of probation in New York State. John's tried
22 very hard to maintain those standards. I've been far
23 luckier in terms of budgets than he's been, and I'm
24 very, very happy with my staffing levels and the

25 ability to adjust my programs to work with the

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1 communities, to work with the courts.

2 I have a lot of flexibility in the
3 assignments of my staff. And I got a lot of support
4 from both the County government, the County Executive
5 and the County Legislature.

6 That's just a quick intro.

7 JUDGE BAMBERGER: Do you get money?

8 MR. DESMOND: Yes, I get money.

9 COMMISSIONER POZZI: Does the County take
10 the cuts that occur from the State budget?

11 MR. DESMOND: I have been very lucky.
12 We're looking at a tight '07 budget, yet Probation
13 and Department of Social Services were the only two
14 units that got an increase in their budgets this
15 year.

16 Part of that, of course, to be frank, is
17 due to the fact that Suffolk County is trying to
18 avoid building the Taj Mahal of all jails. We're
19 looking at somewhere between 400 and 500 million
20 dollars to produce the kind of super jail that the
21 State has been encouraging us to do. And we're
22 trying very hard to develop alternative programs to
23 keep from having to house the sheer number of inmates
24 that they're kind of anticipating we will need.

I'd also like to point out, in that vein,

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1 that Suffolk County has a percentage of population --
2 the State of New York only sends half as many people
3 to the State prison system as you would expect from a
4 county with population of our size. And I think the
5 reason why that's true is because the criminal
6 justice system works very, very closely, all
7 components of it together, to try to minimize the
8 need to send people to the State prison system.

9 I don't think that has been recognized by
10 the State, that we save the State a great deal of
11 money.

12 And having a reasonable State rate for
13 probation services, I think, would save the State
14 money and the prison system statewide.

15 Again, the County has not seen fit to wait
16 for the State to adequately fund us, and I'm very
17 happy, because it makes a lot less stress for my
18 people and for me.

19 We were talking about Family Court in
20 terms of the judges doing supervision. We have a
21 very active bench, Family Court bench, in Suffolk
22 County. And we kind of have that system, that goes
23 on already.

24 We have Suffolk Probation, we have also --

25 we have specialized case loads. Where I think we may

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1 be very unique is the fact that two-thirds of our
2 Family Court case loads are specialized case loads
3 that we work with specific types of offenders, each
4 officer.

5 We also have something called a juvenile
6 day reporting center, in which we take children at
7 severe risk for placement, and we run a day program
8 for them, which we provide educational services, as
9 well as mental health services, substance abuse
10 services.

11 With our Family Court judges, what we
12 normally do on virtually every case is, every three
13 months, every case is reviewed by the Family Court
14 judges. About a third of the cases, the children
15 come in to report to the judges again, about once
16 every three months.

17 And we have situations where we will
18 either bring in the child to talk to the judge,
19 because there is something unusual going on in the
20 case, or the judge -- because we do keep in constant
21 contact with the Court -- will want to see the child.

22 And we find this a very effective system.

23 The other component of that is we also
24 have a very high placement rate.

THE CHAIRMAN: Well, is there -- Mr.

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1 Maccarone?

2 MR. MACCARONE: I have no questions at
3 this time.

4 MS. ABATE: After your testimony, tell us
5 a little bit about who is on probation, what
6 percentage of your case load are people convicted of
7 DWI, how many of them are felonies, misdemeanors.
8 And maybe if you just give us a breakdown of what the
9 number of probationers supervised in these case loads
10 is, super high risk to low risk.

11 MR. DESMOND: We have roughly 14,000
12 adults that come under our supervision during the
13 course of a year. We have roughly 700 adults on
14 interim probation. Out of that 12 to 14,000 --

15 THE CHAIRMAN: What was that?

16 MR. DESMOND: 700 on interim probation. I
17 believe that's very high for the State of New York.
18 Our judges love interim probation.

19 That brings me back to the question about
20 the utilitarianess of PSIs. We don't do PSIs on the
21 interim cases, and we find that this is an ongoing
22 problem, because what occurs is interim cases are
23 only for one year max. And, on those cases, we find
24 out that there are problems with, I'd say, a good

25 half of the probationers that require us to go back

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1 to the Court to get additional special conditions,
2 narcotic, alcohol, psych. And this ties up a lot of
3 court time, as well as time for our probation
4 officers. That would be alleviated by having PSIs.

5 So, if you think you're saving time by
6 removing the PSIs as a feature, you're going to lose
7 in the end, because we'll be coming back to you,
8 because we're going to need additional instructions
9 and conditions for these offenders.

10 Now, in terms of the makeup, just very
11 roughly, about 40 percent of our case loads are
12 felons, 60 percent are misdemeanors. We dropped
13 about 3,000 cases over the last three, four years.
14 We've been dropping misdemeanors faster than we've
15 been dropping felonies. So the felons are becoming a
16 large component of our case loads. We've got about
17 25 percent of our offenders are DWIs. We have 350,
18 roughly, designated sex offenders on probation. We
19 have roughly 2,000 juveniles that come through our
20 system each year. That's becoming rougher and
21 rougher, because we're doing more and more diversion,
22 because of the new PINS law, and less and less of the
23 previous normal supervision.

24 In terms of case loads, I'm very happy to

25 report that we're doing very well. As I said

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1 earlier, about two-thirds of our Family Court case
2 loads are specialized case loads. And those run
3 between 15 and 25. The average case load for the
4 Family Court is between 40 and 50. Criminal Court,
5 we have a large number of specialized units of
6 probation officers. We have two full units of
7 officers that work with mentally ill, severely
8 mentally ill, depending on how you define severely
9 mentally ill. We have between 700 and 1,200
10 individuals on probation. Within that category,
11 about 400 of them, maybe a little less, are within
12 those two mental health units. We'd obviously love
13 to expand further on that, but we've done -- my
14 officers have done incredible work in reducing the
15 statistical recidivism for the mentally ill.

16 And my prepared comments and my recidivism
17 rates will show that it's absolutely amazing what you
18 can do with the mentally ill if you have the
19 cooperation of the County Health Department and
20 reasonable numbers of clients on your case loads.

21 (Continued on the following page)

22

23

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2 MR. DESMOND: We also have --

3 MS. ABATE: What was the case loads?

4 THE WITNESS: The case loads are generally
5 around 25 for the mentally ill. For sex offenders,
6 between 20 and 30. For intensive supervision, between
7 15 and 20. We have a narcotics unit. We've gone back
8 to that again. They're running about 40 to 50. Our
9 general supervision case loads at the high end, we
10 unfortunately have a couple between 80 and 100. The
11 majority are around 50 to 70. We've done very well on
12 this.

13 COMMISSIONER DUNNE: Any other questions of
14 Commissioner Desmond?

15 MR. JACOBSON: You mentioned, at least, for
16 the interim supervision case, and if you lose, if you
17 didn't do PSIs. And, obviously, for probation-bound
18 cases where you lose, it's also pretty obvious. What
19 do you think you lose if you didn't think you do PSIs
20 for prison-bound cases?

21 MR. DESMOND: I think you would create
22 enormous problems for the correctional system.

23 MR. JACOBSON: I understand what they'd lose.

24 MR. DESMOND: Well, I think -- I view myself

25 as part of a far bigger system. And I know that what

26 we do with the PSIs is really important to the

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2 correctional people and is really important to the
3 parole people. I just -- I think it would be
4 penny-wise pound foolish not to do the PSIs for the
5 prison-bound. And, you know, something else funny
6 happens. Sometimes when we do PSIs for the
7 prison-bound, suddenly they're not prison-bound
8 anymore.

9 MR. JACOBSON: That was my next question.

10 It's obvious -- it's actually not obvious,
11 but you certainly make a case what it means for the
12 State system, and given the strength of that case, it's
13 obvious for the strength of the State to pay for that.

14 MR. DESMOND: I would fully support that.

15 MR. JACOBSON: I'm curious about your second
16 comment.

17 I know, at least in New York City, certainly
18 when I was there, you could have long discussions about
19 what decade it was, when felony PSI actually changed
20 the plea agreement. Is that common in your
21 jurisdiction? It almost never happens here.

22 MR. DESMOND: I would say it's somewhat
23 common. It's actually getting less common now because
24 with the development of the ATI programs and the fact
25 that we really have a strong working relationship with

26 most parts of county government, we have a pretty good

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2 idea, and so does the district attorney's office, very
3 often, before there's a plea deal, where things are
4 going. But you do still see that where a presentence
5 investigation will impact on the sentencing. And quite
6 normally. I won't say it's rare.

7 MR. JACOBSON: Thank you.

8 COMMISSIONER DUNNE: Commissioner Horn.

9 COMMISSIONER HORN: So you've done relatively
10 well, as I understand it, because county government has
11 stepped up and given you sufficient resources, right?
12 So if the State reimbursement improved, what do you
13 think would happen? Would the quality of your work
14 improve, your case loads go down further or would it
15 just offset and allow the county to divert more money
16 back to county government for other purposes?

17 MR. DESMOND: I think there's also a tendency
18 when the money flows into the State for the county to
19 try to plug whatever holes they have. I think that the
20 services that we are providing the County deems
21 valuable enough that at least part of that money will
22 go into -- to allow me to increase services in
23 specialized areas. I don't think supervision will be
24 increased, except for possibly some of the specialized
25 units, the sex offenders, the mentally ill. I think

26 the County would probably put more money into ATIs.

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2 We really are interested and we are working
3 very hard in beefing up our diversion programs,
4 alternative programs. We've done a number of jail
5 studies. We've identified fair population pockets that
6 we think we could work with and I think that would be
7 the thrust of the County's effort.

8 COMMISSIONER HORN: What's the starting
9 salary for probation officers?

10 MR. DESMOND: Starting salary with probation
11 officers with us is about 35,000. It jumps very
12 quickly to 40,000 after the first year as a trainee.
13 And then it goes up to somewhere between 65 and 70,000.
14 My officers are currently without a contract and have
15 been for about two years. So I can't tell you what the
16 salary structure is going to look like after that.

17 COMMISSIONER HORN: And their pension is
18 what?

19 MR. DESMOND: Twenty-five and out. They have
20 a choice. Twenty-five and out or the standard civil
21 service pension. So we also have two tiers that way.
22 We have probation officers that come in with the plan
23 they're going to be with us for the twenty-five. They
24 go to school and they go out -- we really haven't
25 gotten to that point yet. That's what they're planning

26 to do. And we have others that are on the more

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2 administrative promotional tract.

3 JUDGE BAMBERGER: Do you work with
4 specialized courts?

5 MR. DESMOND: Yes. We work heavily with
6 specialized courts. That's another place if we get
7 more money from the State I would advocate very
8 heavily, and I think my County Secretary would back me
9 in putting more personnel into those specialized
10 courts.

11 JUDGE BAMBERGER: Does the staffing of the
12 specialized courts minimize the help you give to the
13 other judges and their case loads? Are you taking
14 people from regular cases for the specialized courts?

15 MR. DESMOND: So far we haven't and we have
16 no intention of doing that. We're providing to the
17 specialized courts. We have some grant money for some
18 of the specialized courts. We have some additional
19 personnel from the county executive and county
20 legislature to work with the specialized courts. We
21 have no intention of cannibalizing normal supervision
22 for special courts. We'll do whatever we can to help
23 out.

24 JUDGE BAMBERGER: What about to other
25 counties?

MR. DESMOND: THE WITNESS: I have no idea.

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2 COMMISSIONER DUNNE: Commissioner Pozzi.

3 COMMISSIONER POZZI: John, you made an
4 interesting point at the very beginning of your
5 presentation when you talk about the number of people
6 that Suffolk County sends to State Correctional
7 Facility. It's interesting because what you're saying
8 is basically because of a strong probation system, a
9 lot of good ATI programs, that that's really directly
10 benefitted the State. Yet I think all of us who have
11 been in this profession for years and have spent a lot
12 of time up in Albany when draconian budget cuts are
13 being imposed upon probation, the prevailing philosophy
14 in the budget office, they can continue to cut, cut,
15 cut. Because probation really does not affect the
16 state prison population.

17 MR. DESMOND: Then they wonder why the prison
18 population goes up and up and up.

19 It's been very frustrating in the last
20 30 years to watch the prison population go up and for
21 us to be hand-strung the way we have been.

22 MS. GINSBURG: You indicated you have a high
23 placement rate for juveniles. Is that a function of
24 judicial decisions or is that a function of some
25 challenges that your department is having supervising

26 the juveniles?

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2 COMMISSIONER DUNNE: Can you repeat Ms.
3 Ginsburg's questioning?

4 MR. DESMOND: The question was my high
5 placement rate for my juveniles in family court and
6 whether that's a function of a particular problem we
7 have in the county or as a result of the judicial.

8 We have very activist judges who take a very
9 strong interest in the children. And they're very
10 concerned for them. One of the problems that we have
11 in Suffolk and Nassau, and I think it is to a larger
12 extent than anyplace else in the state, is our rate of
13 mental illness. We've enormous problems getting
14 appropriate levels of services from the State for our
15 children with mental illnesses. We need far more
16 treatment that's for our mentally ill children than
17 we're able to access. I'd say by a factor of 400 to
18 500 percent. The result of that, these children going
19 to placement through the family court, that our family
20 court system has become the resort of first choice for
21 the mentally ill child. And this has been very
22 upsetting to me for the last 20 years as this has just
23 gotten worse and worse. We have large numbers of
24 children going out of the state to very expensive
25 facilities just because they can't get adequate mental

26 health treatment within the State itself.

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2 MS. GINSBURG: Are you finding a similar
3 trend with the juvenile offenders in Supreme Court?

4 MR. DESMOND: With the JO?

5 MS. GINSBURG: Yes.

6 MR. DESMOND: Frankly, I have not. We also
7 don't get as many JOs as other jurisdictions appear to
8 do.

9 I was just checking my stats. We only have
10 four JOs placed on probation last year. I really can't
11 speak to the JO problem. I just don't have that much
12 involvement with it.

13 COMMISSIONER DUNNE: Commissioner Maccarone.

14 COMMISSIONER MACCARONE: John, Suffolk County
15 has made a substantial commitment to employment
16 initiatives and reducing recidivism. I applaud you for
17 doing that.

18 I wonder, speak briefly on the reason why
19 you've done so and its importance to helping you in
20 succeeding with your venture.

21 MR. DESMOND: Yes.

22 As commonly recognized, the best practices
23 are that you need to provide employment opportunities
24 for your recidivists for your offenders in order for
25 them to have a reasonable chance of avoiding future

26 incarceration. I mean that's well known in the

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2 practice. We've been able to get support and we've
3 hired our own labor specialists. We also have an
4 active Department of Labor and we have a -- actually,
5 we go back 20 years with training probation officers to
6 also do labor specialist-type work. We now actually
7 have labor specialists on staff. And we found that we
8 have wonderful success with that approach. Especially
9 in our late teens, early 20s population. Very often by
10 that point they're kind of sick of the games, of the
11 street, they've messed up their education, and they're
12 willing to sit down with somebody and work with the
13 prospect of getting a decent job. We've been very,
14 very happy with that approach.

15 COMMISSIONER DUNNE: Yes.

16 MR. BURNS: I think you started your comments
17 by saying probation ought to remain as a county
18 function. Assuming it does and the county executive
19 and yourself make appointments, budgets made in your
20 legislature and so on, would it matter to you if the
21 State Regulatory Agency were in the executive branch as
22 it currently is or if it shifted to the Unified Court
23 System? Would you have any opinion if just the
24 regulatory and reimbursement part of your functions
25 would change at the State level?

MR. DESMOND: I do. Because I have concerns

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26 are the arguments or who are the advocates and leaders

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2 on behalf of probation that have created this success

3 story?

4 MR. DESMOND: I think that basically we've

5 just been quietly doing a good job for a long time.

6 I'm very, very blessed with the officers, with the

7 staff that I have in the department. We've always been

8 very research-based. We've had a chief planner for

9 more than 30 years. We have a very active criminal

10 justice coordinating counsel in Suffolk County of which

11 I happen to be the chairperson right now. Probation

12 has always been an essential component of that CJCC

13 operation. The county works very closely together,

14 every component of it, in terms of criminal justice

15 system, and there's a lot of encouragement when one

16 department is weakened, kind of like dragging on

17 others, everybody else speaks out in favor of that

18 department. That doesn't happen in a lot of

19 jurisdictions.

20 My probation staff are very, very dedicated.

21 Somewhere about close to 40 percent now have advanced

22 degrees. We give them a lot of freedom. We utilize

23 what's called flex time. So that our officers are out

24 on the street, evenings, nights, weekends. And we just

25 don't get a lot of bad press, thank God. If we get

26 mentioned in a newspaper article twice a year in a

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2 negative fashion, we're doing -- that's about normal.

3 We get the job done. We stay out of the headlines.

4 COMMISSIONER DUNNE: Judge Carter.

5 JUDGE CARTER: How often do you interact with

6 the judiciary on the administrative level, the

7 administrative judge, the supervising judge? Do they

8 give you -- what input do they give you? That's it.

9 MR. DESMOND: They call me any time they feel

10 like it. I see the Chief Family Court Judge, I'd say,

11 on an average of about once a month. The other

12 administrative judges, when I was first on the job as

13 the director, I was seeing them very, very frequently.

14 We met and worked out kinks.

15 So at that point I was seeing them, all of

16 them, I would say, on an average, about once a month.

17 Now it's down to once every couple of months. And

18 phone calls.

19 JUDGE CARTER: What kind of concerns are you

20 addressing with them at this point once a month?

21 MR. DESMOND: What kind of -- mostly system

22 concerns where we get backlogs, where we get mistakes

23 made, errors. We're providing a lot of training to the

24 judges and to the district attorney, the ADAs and to

25 the law guardians, Legal Aid and the Bar Association as

26 part of the CJCC about the different components of the

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2 criminal justice system. And that's been helping a
3 great deal in clarifying roles and resources,
4 understanding how different components of the system
5 work. We also sit down in task forces with the
6 administrative judges or the representatives to look at
7 different problems that arise in the system. We've
8 been having some problems in terms of getting prisoners
9 to the right spots at the right times. We've got a
10 task force working on that. Whenever we find there's a
11 problem, we try to group the professionals together and
12 resolve it.

13 COMMISSIONER DUNNE: Well, thank you very
14 much.

15 MR. DESMOND: You're very welcome.
16 Everybody have a good day and I appreciate
17 it.

18 COMMISSIONER DUNNE: We look forward to
19 hearing from your colleagues at the State Association
20 next week in Syracuse.

21 Peter Kiers who's with the Executive Director
22 of New York City Criminal Justice Agency.

23 MR. KIERS: Now you heard from the long --

24 COMMISSIONER DUNNE: New York City Criminal
25 Justice Agency.

26

MR. KIERS: Hi. Thank you, everyone. Good

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2 morning. Thank you for allowing me to speak before the
3 Committee today.

4 My name is Peter Kiers. I'm the director of
5 operations for the New York City Criminal Justice
6 Agency and I am also the Immediate Past President of
7 the New York Association of Pretrial Service Agency.
8 And the current Vice President of the National
9 Association Pretrial Service. And it is as a member of
10 the boards of those associations that I address you
11 this morning.

12 I'd like to speak about three issues and
13 their relationship to each other today.

14 The first is the consideration for pretrial
15 programs that are housed in probation departments. The
16 second is the support that those pretrial programs
17 need. And the third is the need to have pretrial
18 programs in every jurisdiction.

19 In New York State, the locus of the pretrial
20 program varies. The older program and jurisdictions
21 with larger populations, such as New York, Monroe
22 County, Westchester County, as well as a smaller county
23 such as Wayne County, are not-for-profits. And they
24 are contractors for those services. This form has
25 served those jurisdictions well. Other pretrial

26 programs have been placed in probation departments,

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2 such as Dutchess County and most recently Nassau County.

3 This has become the favored locus for pretrial and most

4 jurisdictions not only in New York City in recent

5 years.

6 The reason for situating pretrial in a

7 particular setting may vary and most often relates to

8 budgetary and administrative considerations and

9 concerns. The locus of the program is not as important

10 as a jurisdiction having the pretrial program.

11 Approximately five counties in the state do not have

12 pretrial programs at this time.

13 In 2002, the American Bar Association issued

14 standards on pretrial. In 2004, the National

15 Association of Pretrial Service Agencies issued their

16 third addition for standards on pretrial release, which

17 draws heavily on the AVA standards. Both sets of

18 standards call for every jurisdiction to have services

19 of a pretrial agency or program. The reasoning was

20 simple. The programs assist the Court in making

21 release decisions, provide monitoring and supervisory

22 services, work with other agencies and social service

23 programs to provide services to defendants, operate and

24 share pertinent information within the criminal justice

25 system, remind persons of upcoming Court appearances

26 and work with the Court to assist persons who cannot

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2 communicate in written or spoken English. In short,
3 such programs ensure the equal, timely and just
4 administration of the laws governing pretrial release.

5 One can take a look at jurisdictions that do
6 not have pretrial either in New York or around the
7 country. Jail overcrowding is a common result. It
8 happened in Nassau where it is hoped a new pretrial
9 program will assist in identifying defendants who can
10 safely be released with non-financial conditions.

11 Putnam County, where there is no pretrial program, I
12 believe, approved a new jail to accommodate the
13 increase in jail population.

14 In 2003, the New York State Division of
15 Probation and Correctional Alternatives also issued a
16 set of standards for pretrial release services in the
17 state recognizing the need for universal screening and
18 determination of a defendant's community ties. Those
19 standards say that, and I quote, "The Division seeks to
20 reduce the disparities in the delivery of these
21 services to maximize the effectiveness and to increase
22 fairness and quality with regard to pretrial release
23 and detention while ensuring public safety."

24 It is significant for the Division to
25 recognize that disparities exist and that it is not

26 important for a jurisdiction forum simply to have some

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2 type of pretrial program, but that the method of
3 service delivery and services offered are most
4 important for full and maximum effect of pretrial
5 process.

6 Having been involved with these standards and
7 talking to people from around the state and country who
8 are involved in pretrial work, it has become clear to
9 me that probation departments who are suddenly given
10 the task of pretrial need assistance. They need to
11 determine the mission of the pretrial unit within the
12 larger agency. They are struggling to staff adequately
13 those units. They are hungry for training in the
14 proper role in practices of pretrial. And they are
15 looking for technology to assist in productivity and
16 data collection support to substantiate an audit
17 program. It is extremely difficult to accomplish these
18 goals and objectives when left to their own devices.
19 Probation managers, policy makers and judges do not see
20 or get the full benefit of pretrial without such
21 assistance and coordination.

22 For example, when probation managers must use
23 existing staff to start and staff a pretrial program,
24 they must rotate rotation staff through the pretrial
25 unit. The focused consent is specifically covering the

26 position, let's just go get it covered. This affects

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2 moral, causes confusion among probation officers as to
3 their role vis-a-vis the defendants. They are
4 defendants at this point, not offenders. And can
5 jeopardized the ability of the program to function
6 effectively.

7 Perhaps there is no substantial or verified
8 screening instrument to assess risk of flight. And if
9 there is, it may not be used to full advantage. Court
10 reports may be heavily substantive and may or may not
11 be predictive of a defendant's flight. Lack of
12 reliable information or appropriate assessments of
13 defendants can lead to either two undesirable outcomes;
14 the unnecessary detention of too many defendants who
15 pose no significant risk of flight or nonappearance or,
16 conversely, the release without appropriate conditions
17 of defendants who do pose such a risk. This, of
18 course, relates to funding, but also to professional
19 incompetent oversight and technical assistance.

20 Over the past years, the Division of
21 Probation and Correctional Alternatives has had to cut
22 staff several times. This is unfortunate. The
23 Division is in a unique position to support pretrial
24 efforts and best practices around the state and to
25 contract out for technical assistance to ensure that

26 programs flourish. To date, they have exerted a

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2 Herculean effort, development standard, marking
3 objective fashion instruments and imposing reporting
4 requirements. But without the ability to provide
5 effective on-site follow-through, program monitoring,
6 the goals I have been speaking about will be delayed or
7 possibly unrealized.

8 The Committee should look closely into the
9 role of -- that DCPA can play in fostering maximum
10 service and assistance. Pretrial programs provide
11 critically important functions in the effective
12 administration of the criminal justice. They gather
13 and present information about newly arrested defendants
14 and available release options for the judge in guiding
15 what, if any, conditions are to be set for a
16 defendant's release prior to trial. They supervise the
17 defendant's release from custody during the pretrial
18 period by monitoring their compliance with release
19 conditions. And they provide programs such as failure
20 to appear units that reach out immediately and get
21 defendants to return to court and bail expediting
22 programs that call family and friends immediately after
23 arraignment to see if they can come to court to post
24 bail, thereby eliminating the need for unneeded
25 detention and helping to ensure appearances.

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2 minimize unnecessary pretrial detention, reduce jail
3 crowding, increase public safety, ensure that
4 defendants appear for scheduled court dates and lessen
5 individuous discrimination between rich and poor and
6 the pretrial process with overuse of the cash bail
7 system.

8 I would intrigue this Committee to support
9 and recommend the need for appropriate staffing,
10 training and support of these pretrial initiatives
11 through direct funding of pretrial programs. And more
12 extensive use of DCPA. I would also encourage the
13 Committee to promote the establishment of pretrial
14 programs in all jurisdictions. Perhaps through the
15 legislative process and state funding directly for
16 implementation of such pretrial initiatives. In those
17 jurisdictions where probation houses pretrial, pretrial
18 should not be an afterthought. It needs its own
19 identity. It cannot be expendable during a time of
20 budget cuts. There is cost to this if it's done. And
21 it should never be something squeezed into an existing
22 culture without resources or assistance. Training and
23 technical assistance is vital for staff assigned to
24 work in such programs.

25 I want to thank the Committee for listening

26 to me today.

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2 COMMISSIONER DUNNE: Thank you.

3 Questions?

4 JUDGE KLOCH: Thank you for coming in.

5 One of five counties. Five counties that do

6 not?

7 MR. KIERS: I know that Putnam is one.

8 And -- but we do have the five counties that don't have

9 a pretrial agency right up front to screen everybody

10 who comes in before the first reporting periods.

11 COMMISSIONER DUNNE: Yes. Commissioner Horn.

12 COMMISSIONER HORN: Is there any rational

13 distinction between whether services were provided

14 directly by probation agencies using probation staff or

15 by private agencies under contract? And could you

16 address the question whether there's any rational basis

17 for funding one but not the other?

18 MR. KIERS: No, I think that the way it has

19 developed over the course -- I mean, in New York City

20 we came out of the Manhattan Bail Project, and I think

21 at one point it was taken over by probation, but then

22 something happened. It wasn't working out.

23 COMMISSIONER HORN: Does it make a

24 difference?

25 MR. KIERS: I think the locus now really

26 doesn't -- I wouldn't like to see it in the DA's

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2 office.

3 COMMISSIONER HORN: Probation versus
4 contracted, you think the quality of service isn't
5 going to change?

6 MR. KIERS: I don't think so. I think that
7 if you take a look, for example, at Dutchess County,
8 they have an excellent pretrial program. You know,
9 it's a fit.

10 COMMISSIONER HORN: Is there any rational
11 basis for why one is reimbursed and the other not?

12 MR. KIERS: I don't see any reason why.

13 SENATOR MACCARONE: I might be able to shed
14 some light on that.

15 COMMISSIONER DUNNE: Senator Maccarone.

16 SENATOR MACCARONE: Thank you.

17 It's largely historical. Most of the
18 pretrial services in DCPA funds, 41 throughout the
19 State that exist, are funded through their counties.
20 We also fund Westchester and Monroe County. Those are
21 legislatively added items to the State budget, and
22 that's why we fund them in that capacity.

23 COMMISSIONER HORN: It's historical. No
24 rational basis for it?

25 SENATOR MACCARONE: It's historical.

COMMISSIONER DUNNE: Again, thanks to you.

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2 MR. KIERS: Thank you very much.

3 COMMISSIONER DUNNE: I hope we'll keep in
4 touch.

5 The Honorable John Leventhal, Supreme Court
6 Justice from the Brooklyn Felony Domestic Violations
7 Court.

8 Judge, thank you for breaking your weighing
9 regular calendar and sharing your views.

10 JUDGE LEVENTHAL: Thank you.

11 Mr. Chairman, members of the Task Force.

12 First question raised, what is the
13 fundamental purpose of probation? Well, we all know
14 that probation ultimately is to reduce recidivism. We
15 are eliminating for those defendants for whom jail may
16 not be warranted or appropriate or some jail may be
17 appropriate and to avoid State jail time.

18 How is this done? Through two functions of
19 probation. One everyone is familiar with and is
20 getting a lot of attention; law enforcement. The other
21 one which I think has been taking in many areas, not in
22 mine, thank God, but taking the back seat is social
23 services. And that's what probation was created for.
24 Really to make people not commit crimes and to give
25 them services to enable them to get help wherever they

26 need.

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2 Probation in New York City is an independent
3 agency. It's part of the executive branch. In many
4 jurisdictions it is an arm of the judiciary. The
5 courts. Probation works for the courts. That's
6 something that this Commission may want to consider in
7 the future. However, I caution that unless necessary
8 budgetary proposals and bills are passed, I'm sure the
9 executive branch may welcome pushing or placing the
10 probation function onto the courts without the
11 appropriate funding. There needs to be appropriate
12 funding to do that. I'll go into it a little later,
13 the advantages of such a system.

14 But probation, unlike parole, works in a
15 partnership with the court. It is not an independent
16 agency. It works in a partnership with the court. The
17 Court must give approval for probationers to travel out
18 of the City. The Court rules on violations of
19 probation and probation must enforce the condition of
20 probations that the Judge may make as a special
21 condition of probation.

22 For example, if I were to rule that someone
23 should get a high school diploma or G.E.D. ,that is a
24 condition that probation will enforce.

25 How is the reduction of recidivism

26 accomplished?

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2 My own experience as the presiding judge of
3 the first felony domestic violence court in the country
4 and first domestic violence court of any kind in New
5 York, this is accomplished through the strength of the
6 court probation partnership, which is proven to be very
7 successful, in our case, and I hope Commissioner Horn
8 won't disagree with that.

9 COMMISSIONER HORN: No.

10 JUDGE LEVENTHAL: This court was created
11 amongst a lot of the other problem-solving courts
12 through the leadership and direction of Judge Kaye.

13 One of the first things that I did when I was
14 placed in charge of domestic violence court, I realized
15 two things. Number one, I didn't know a lot about
16 domestic violence. And, number two, I better hurry up
17 and learn.

18 So one of the things that I did is went down
19 to Quincy, Massachusetts. Now, Quincy, Massachusetts
20 had a dedicated prosecutorial team, but they didn't
21 have a, per se, domestic violence court. But they had
22 one judge who handled all of the domestic violence
23 violations of probation. So they would have
24 consistency in what the punishments were for violating
25 probation.

You may be interested to note that in

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2 Massachusetts, misdemeanors are punishable up to two
3 and a half years in jail as opposed to one year here.
4 So people were getting two years for not paying child
5 support orders which were a condition of probation. I
6 was stuck by that. I liked it. One judge handling
7 everything and that's why we wanted to create the
8 specialty courts such as the domestic violence court
9 because we would be able to concentrate resources.

10 However, I was also struck by the very large
11 violation calendar. So upon my return, I decided, with
12 the cooperation of Probation, to bring back
13 probationers to my court every two or three months
14 whether they were successful or not. Heretofore only
15 those probationers who violated probation would come
16 see the judge. The judge was the dean of bad students.
17 If you were a good student, you never saw the dean.

18 So we bought them back every two or three
19 months. And, don't forget, my population of high risk
20 defendants are people who know the complainant, know
21 the victims, they were once very intimately involved
22 with them and they may continue to be so.

23 Through this intent --

24 So what did probation do in this partnership?

25 Now -- I don't want to seem that probation

26 was our only partners, but probation was a very

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1 Proceedings
2 important partner in setting up the Court and following
3 through with the Court. Probation was able to give us
4 a liaison officer which increased the flow of
5 information to report violations quickly and to get
6 action done very quickly and follow through on all the
7 court's directions.

8 Number two, they agreed to put all domestic
9 violence offenders into intensively supervised
10 probation, and that included those who might have been
11 convicted of only misdemeanors. They were intensively
12 supervised.

13 Now, I have to credit the Department of
14 Probation, Commissioner Horn, and I also want to
15 mention someone in -- the late Jack Rossi, who was a
16 Deputy Assistant Commissioner, who also had this vision
17 and was willing to put the resources into this area.
18 And because of that, we also have the liaisons and
19 people like Joel Weinstein, Judy Rubin and now Rosita
20 Rodriguez who continue to be liaisons for this court
21 and make it as successful as it is.

22 What are the results?

23 Our violation rate is half the violation rate
24 of the general -- less than half the violation rate of
25 the general probation population. I think the reason

26 for that is that they see the Judge who did the

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2 arraignment, who took the plea or did the trial and
3 they continue to see him. And not that probation is
4 not an effective tool, but when you have judicial
5 intervention, when you have judicial supervision,
6 judicial monitoring, it kind of adds some clout to the
7 whole probation process. And this is not a one-year
8 thing. This is a ten-year -- we became -- I kid
9 myself. And when I started doing this, people started
10 asking me to speak at different areas. And my family
11 would say what do you know about domestic violence?
12 It's true when you do the first thing, everyone deems
13 you an expert.

14 But we have a ten-year record to run on that.
15 Our violation of probation rate is half the general
16 population. And I'm not talking about substantive
17 violations like wife beating or another assault. I'm
18 talking about this includes all technical violations
19 that would be in the general population. There are
20 very few incidents of assaults that are -- constitute
21 violations of probation.

22 In forging a partnership with these agencies
23 such as probation, this was an essential ingredient to
24 making our court, and I believe courtrooms in general,
25 successful. By bringing probationers back, I believe

26 that you will -- costs more money. There's budgetary

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2 restraints. After 9/11, there were massive retirements
3 in probation. There was budgetary cutbacks across the
4 board because we were spending so much money in
5 security and probation credit even though there was a
6 large temptation to withdraw from the program. They
7 realize someone may die and they would have to just put
8 the money back into the Court. And they had a
9 successful program which won awards, that they stayed
10 the course, and it was very difficult for them to do
11 so. And I credit the Probation Department for doing
12 so. And I'm not unmindful you can't do this in every
13 court. And some people say you have one violation of
14 probation part because it's efficient. Now, it may be
15 efficient in some ways because you have one judge
16 hearing all the violations and you concentrate it in
17 one area. However, I -- I think there's something to
18 be said that you have the judge who monitored the whole
19 proceeding, to see the person when they violate it, who
20 knows a lot about the case. So it may be in some cases
21 you could have that centralized part, but I dare say in
22 specialty courts, in mental health courts, mental
23 illness court, drug treatment courts, or domestic
24 violence courts, or what we would call problem-solving
25 courts, I think the judges themselves should handle the

26 VOPs.

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2 Now, let me tell you my own experience.

3 Parole, which I mentioned before, was an independent
4 agency. And I know Commissioner Horn was in parole at
5 one time and he had to learn to play nice with the
6 courts when he became Commissioner of Probation.

7 Parole saw the success that we had with
8 probation and they approached the court and they said
9 can we bring back the people who you sentenced to State
10 prison time within a month of their release and will
11 you go over with them their conditions of parole?

12 Now, I want to remind the members of the Task
13 Force that maybe six -- five, six years ago, Janet Reno
14 was the -- when she was the attorney general, so it was
15 probably longer than that, came up with a concept of
16 Reentry Court where people who got state prison time,
17 when they returned to the community, they would be
18 given services so that they won't repeat the same
19 mistakes that they had then. I don't know if this is
20 being done in many parts of the country. I know that
21 the Departments of DCJS - I forgot what the acronym
22 means - Department of Criminal Justice Services had a
23 seminar about a few years ago when I was asked to
24 speak. But we were doing this with parole when the
25 federal government was talking about it. And I can't

26 give you any firm statistics like I did for probation.

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1 Proceedings

2 But I've been told by parole that anecdotally there are
3 much less violations on parole because they come back
4 to the Court. And this shocks. I see people I
5 sentenced five, six years ago come back to court and
6 they see this Leventhal guy, little heavier, little
7 less hair. They see the same judge six years later and
8 they say, oh, my God, this is the guy who arraigned me,
9 this is the guy who sentenced me, and he's still
10 watching me. That's what I tell them.

11 These are the services. You the curfew,
12 order of protection in effect. There's drug treatment
13 you can go to. Unemployment services. But also that I
14 am still watching you. And I think that's what makes
15 it effective with the judicial supervision and
16 monitoring.

17 So, again, I said what probation has done.

18 The IS -- Intentionally Supervised Probation
19 for DV cases. One other thing they do, and started
20 doing this within the last two years, which has been
21 very effective, they don't wait until someone's
22 arrested to do a violation of probation. They do DIRs,
23 Domestic Incident Reports, when they're filed with the
24 police. Police may not take any action. There may not
25 be an arrest made even though there's a monitoring

26 arrest policy when that DIR is followed that will

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2 trigger a violation of probation so it would be early
3 intervention by the courts. Probation has taken a
4 proactive assistance.

5 Now, again, courts like mine are very labor
6 intensive. I don't know if this will be practical to
7 do in other courts. But I'm saying if we have the
8 success and we can do this, it would be cheaper to put
9 someone on probation.

10 Someone here, both the Commissioner of
11 Probation and Corrections, so maybe he could give you
12 the statistics. It would be cheaper to put someone on
13 probation than to put someone in jail. These are some
14 of the successors that I've talked to you about.

15 Just give me one second. Even though I wrote
16 notes, I really didn't follow them.

17 One way -- another way to reduce recidivism
18 is to remind you of the Social Services aspect of the
19 probation function. Where I have a little disagreement
20 with the Department of Probation. In this political
21 climate.

22 Let me tell you, when I started my court,
23 there was another judge who changed bail. The person
24 went out and killed the defendant, killed his wife and
25 the Governor and the Mayor asked for the impeachment of

26 that judge. It didn't happen because that was a bail

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2 decision. And then what happened subsequently was
3 there was a Commission of Judicial Conduct Commission
4 where the prosecutors, through the whole City, came
5 forth with anti-woman/anti-prosecutors bias and the
6 judge was driven from the bench. In that back drop, my
7 court was started.

8 You can imagine there wasn't a lot of
9 volunteers to do the work that I started at that time.

10 It was a high-risk pilot project which miraculously
11 became a model court. So the temptation was, for me,
12 put everyone in jail for bail, right? It's a safe
13 thing. Put everyone in jail. Probation? No
14 probation. Everyone goes to jail. No one gets
15 probation. We can't conduct business out of being
16 scared because we may err. Thank God we haven't had a
17 fatality in my court while the case was pending. I'm
18 just saying because of the grace of God, because I
19 realize we're one heartbeat away from tragedy and
20 disaster, no matter how much care we give and no matter
21 how much we enclose and encapsulate the problem because
22 I'm not sure of the solution, I know if we surround it,
23 we'll do the right thing.

24 So having said that, Probation, routinely in
25 my court, and maybe it's their policy, they have

26 certain policies. Don't give a relief from civic

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2 disability for someone who's convicted of a gun, gun
3 possession. Don't recommend probation for any domestic
4 violence offender. I'm not saying that's wrong. I'm
5 not saying that's right. I'm just saying that I think
6 that instead of categorizing certain crimes, no
7 probation, mandatory jail, I think Probation has to go
8 back to its social services aspect and evaluate each
9 case on a case by case, each person as a person as
10 opposed to a blanket rule. And I think the enforcement
11 will be that much better. It's easy to be safe. I
12 could put everyone in jail. I could have -- deny
13 everyone bail. That's not my function.

14 (Whereupon, the following was transcribed by

15 Official Court Reporter Anne Marie Scribano:)

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1 And I just -- I don't want to beat a dead
2 horse.

3 I caught part of the last speaker's
4 comments, and one of the things I do wish, it is my
5 wish list that we had probation like they do in the
6 federal government, where they would be involved in
7 pretrial monitoring, pretrial services, ankle
8 bracelets for certain high-risk people who may not be
9 in jail.

10 But, look, I tell everyone, the first rule
11 in my court is the judge must sleep at night. And I
12 tell the defendants, "If I wake up in the middle of
13 the night and I dream you're doing something stupid,
14 I'm going to bring you back to court."

15 And I tell you, in my job, I don't sleep
16 very well, all right.

17 But I'm telling you that, if I had ankle
18 bracelets, if we had a Juris Monitor -- we used to
19 have -- if I had something like Juris Monitor, it
20 would be much more effective in terms of monitoring.

21 I know the money is not there.

22 It's coming back?

23 In any event, I would sleep much better if

24 I could have more effective monitoring with high-risk

25 people.

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1 Look, there are problems with Probation,
2 but I'll tell you the truth, my experience has been
3 very positive. And I don't know -- and, you know, we
4 have tensions, we have tensions.

5 I remember, after 9/11, there was a little
6 to do when they were going to pull back -- put my
7 misdemeanor people in.

8 Everything seems to work out. I threaten
9 them, they threaten me, but they really do a good job
10 in my court.

11 And I think the direction of probation is
12 that we can't have absolute rules. I think what we
13 have to do, we have to be a country of relativism and
14 treat everyone as -- treat everyone as an individual.

15 I want to thank you for allowing me to
16 come here. I just wanted to give you my experience.

17 And I'd be happy to answer any of your
18 questions.

19 THE CHAIRMAN: Thank you very much, Judge.

20 I am sure when I speak, I speak for the
21 entire panel, we're grateful.

22 One question. Has your court been
23 replicated anywhere in New York State?

24 JUDGE LEVENTHAL: Let me tell you, my

25 biggest fear, that I put every defendant in a

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1 batterers' intervention program as a monitoring
2 device, because the literature seems to suggest that
3 a batterers' intervention program will not make
4 someone more safe. And I think, much to Governor
5 Pataki's credit, that he never credited any of the
6 batterers' intervention programs, because he didn't
7 want society at large or victims to feel that, if
8 you're in a good program, you're going to be safe.

9 And judges who are not educated or
10 initiated to the dynamics of domestic violence may
11 think, as I did at the beginning, that you put
12 someone in a batterers' intervention program, there's
13 no need to put someone in jail or give them
14 probation, because they're going to be miraculously
15 cured. That simply is not the case.

16 The things I've done, I've put batterers
17 in a batterers' intervention program. Why? Because
18 I think it's the only sensitivity they ever get and,
19 number two, I use that as a monitoring device. They
20 have to go back every week and come back to my court
21 every two or three weeks. I bring defendants back to
22 let them know I'm watching them in a regular
23 courtroom.

24 What you have is you want to be

25 economical. You want to do the arraignment, you want

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1 to set a motion schedule, you want to have the
2 motions decided, you want to have the hearings, you
3 want to set the trial and then you want to do the
4 sentencing.

5 In my court, I bring the defendants back
6 in if nothing's going on to let them know I'm
7 watching, to let them know the case is pending. And
8 I do it on probation, parole. And maybe that's why
9 we've been somewhat successful.

10 Has it been replicated? Yes. That was my
11 greatest fear. Because I figured all these policies
12 I'm doing by will, some other person may not have the
13 same confidence of the bar, and they may appeal it,
14 and all the things I've been doing will be changed.
15 But it's been replicated throughout New York State.

16 We have Integrated Domestic Violence
17 courts, where they're handling Family Court matters,
18 matrimonial and criminal cases, misdemeanors before
19 one family -- one judge. It's not a potpourri,
20 because there's different burdens of proof. Family
21 Court is preponderance of the evidence, Criminal is
22 beyond a reasonable doubt. In one case, you're
23 entitled to a jury trial; in another, you're not.
24 But they're handled before one Judge, so it makes it

25 simpler for the litigants to know where they're

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1 going, and the judge will be fully familiar with the
2 case.

3 It's been replicated in this State, it's
4 been replicated in other states.

5 And now my family knows that, when I get
6 called, that I do know what I'm talking about.

7 And I have been asked to speak throughout
8 New York State, throughout the country and other
9 countries, as well. But we really -- Judge Kaye
10 really started this. And Charlie Hynes, who is a
11 victim of domestic violence himself, had really been
12 proud to start the first felony Domestic Violence
13 Court.

14 THE CHAIRMAN: Thank you.

15 Questions for the Judge?

16 Rocco Pozzi.

17 COMMISSIONER POZZI: I'd like to tell you,
18 there's enough of us on this panel who are actually
19 strong candidates for the Mental Health Court.

20 I just want to follow up on your first
21 comment when you were talking about probation law
22 enforcement functions and not enough of the social
23 services.

24 And I think this is a discussion that

25 we've had. There were a number of meetings that have

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1 already taken place about a balancing act and keeping
2 probation balanced.

3 And I think John Carway, who had testified
4 a little bit earlier, and I think Pattie Aikens had
5 said something earlier about dollars coming into
6 Probation, they're scarce and they're very targeted.

7 But what's been happening over the last
8 couple years is that a lot of the special monies
9 coming in have been more toward the law enforcement
10 emphasis placed on probation and not enough, perhaps,
11 on the programmatic side of it.

12 So I think that's something that we are
13 really looking at in this Commission and trying to
14 create a real balance.

15 JUDGE LEVENTHAL: Can I give you an
16 analogy, something that I'm familiar with?

17 I know probation, okay, but I'm not an
18 expert in probation.

19 But in the domestic violence, what they
20 have done in 1994, the State Legislature passed a
21 whole bunch of domestic violence laws. They've made
22 violation of orders of protections felonies. They've
23 raised the assault in the first degree to a B violent
24 felony. They federalized crimes crossing state

25 lines. They have mandatory arrest policies. They

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1 have primary regress rules. They have all this law
2 enforcement muscle.

3 What did they do on the civil side?

4 Are you familiar with the Nicholson case,
5 the one before Judge Weinstein, where the City's
6 position was that, if the wife came forward and said
7 she was a victim of domestic violence, they would
8 bring a neglect proceeding against her, because she
9 subjected the kid to domestic violence, even though
10 she was faced with the decision to get out of this
11 relationship or maybe lose her kid?

12 And it happens in other contexts.

13 There are no shelters for people. The
14 most important thing in domestic violence is develop
15 a safety plan if you're going to leave.

16 Everyone is saying, "How could they stay
17 with that guy?" There are two reasons why. A woman
18 is 75 percent more at risk of getting killed when
19 she's leaving her abuser than when she stays, number
20 one, and, number two, they don't have a safety plan.

21 And why is that? If you have a male child 12 or
22 more, shelters won't take them in. So, again,
23 they're saying, "Do I break up my family or do I stay
24 with my abusive husband?"

So what you're saying -- that's the

1 analogy that I can give. They're putting all this
2 muscle -- in Israel, it's a very small program.
3 There's a residence for men where they put the men
4 who are accused of domestic violence in a residence.
5 What do they do? They do -- and I don't mean to
6 stereotype -- they put them in the traditional roles
7 of a woman. They shop, they clean for themselves
8 there, they take therapy, group therapy, every night
9 of the week, and they do individual therapy one day
10 of the week. What does this let the woman do? It
11 lets her not leave her home. Why does she have to be
12 uprooted, the kid has to change schools?

13 These are simple things that have to be
14 done in the context.

15 And Probation is probably, you know,
16 trying, but we have to do -- whenever we have a law
17 enforcement hammer that comes down, which is
18 politically appealing, if we don't have a concomitant
19 civil remedy to deal with the problem of the people,
20 what are we going to forget about, the people. We
21 put the person in jail and what happens to the person
22 left behind?

23 There are a lot of reasons why women don't
24 want to go ahead in domestic violence cases. The

25 husband may have the insurance for the sick kid.

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1 He's the money earner. She may want to go to school.

2 She just wants the violence to stop.

3 We know the universe. We don't know what
4 causes the recantation and the change of heart in any
5 one case. But we know the universe.

6 But it's very important that, when we do
7 tougher things, that we also have a safety net or a
8 cushion on the civil side, housing, employment,
9 social services, drug treatment. And, yes, these are
10 expensive things. People don't want to hear these
11 things because politically it's okay, put the person
12 in, put the bum in jail and forget about everyone
13 else after that's done.

14 THE CHAIRMAN: Mr. Burns.

15 MR. BURNS: Judge, can I just connect two
16 things?

17 I should ask you one question.

18 You talked about the beginnings of your
19 court and the incident that occurred, the criticism
20 from political entities and you also mentioned about
21 where Probation might be.

22 Pretend for just a moment, purely pretend,
23 I realize that this was a difficult case that you
24 dealt with, that all of a sudden the mayor of this

25 City called for some action against you.

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1 JUDGE LEVENTHAL: I'd call you to testify
2 for me.

3 MR. BURNS: And I know that you're close
4 to the probation officers in your courtroom.

5 I'm from Rochester, where our Domestic
6 Violence Court probation officers are just as close
7 with our judge.

8 Would that criticism from that mayor, who
9 technically is those probation officers' boss, would
10 it even connect with you or would it matter, would it
11 hinder your relationship with your City of New York
12 probation officers, because their elected --

13 JUDGE LEVENTHAL: The way it is now, you
14 mean, the system now?

15 Mr. Burns: Yes.

16 JUDGE LEVENTHAL: I have a very good
17 relationship, I think, with Probation. I have a
18 couple of Assistant Commissioners here.

19 Having said that, are we adversaries in
20 some ways? Yes, we are. Every time they put down
21 that they recommend jail and I put this guy on
22 probation, if something happens, I know what's going
23 to happen. They're going to say, "We recommended the
24 guy to go to jail and look what Judge Leventhal did."

25 You know, the paper is not going to put in that every

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1 time they recommend the guy to go to jail. It
2 happens now and it may happen then.

3 People do come forward when they disagree.
4 It happens. We see it now in national politics.
5 People who are on the same page and work for the same
6 executive branch, when they disagree, if they're
7 people of principle, they come forward and say
8 something.

9 I think it would really be a dereliction
10 of my duty and discretion to give no one probation; I
11 think it would be a dereliction of duty and of my
12 office to give no one bail just so I can be safe. I
13 think it's the wrong thing to do. That's not to say
14 that some people should not get bail. That's not to
15 say that.

16 And, also, as long as we're on that
17 subject, give the judge -- even though it's not in
18 your purview -- give the judge a better tool for
19 bail.

20 If you look at 3118 USC 3142 of the
21 federal government -- of the United States Code, it
22 talks about the safety of the community or a person.
23 That's not one of our bail criteria. Everyone says,
24 "Set higher bail." Give us better ammunition.

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1 complainant in a domestic violence case, my bail
2 decisions may be a little different. But that's not
3 the criteria I go by.

4 So, yes, would it -- I can't say that it
5 might not cause ill will. But it's set up that way
6 right now. But I do what I think is right.

7 And will I make a mistake? I haven't, but
8 I will.

9 Maybe it's time to get out after this
10 speech.

11 But I'll tell you something. You do what
12 you think is best, you try to sleep at night, and you
13 only have to search your own soul if you're doing the
14 right thing.

15 JUDGE CORRIERO: If I may, first of all,
16 you should be commended for the work that you're
17 doing and the courage with which you do it. That's
18 probably one of if not the most difficult tasks I
19 think a judge would have and you have in that
20 situation.

21 But one of the issues that we discussed in
22 terms of the Commission recommendations is, under
23 what auspices, what jurisdiction should the Probation
24 Department be, state, local, county, executive,

25 judicial?

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1 And what you've described is a very close
2 working relationship with the Probation Department,
3 which makes your part a success. Very important, the
4 relationship between the Probation Department, which
5 is the social service arm of the Court.

6 And I wonder what your opinions are, if
7 any, about where the responsibility, the ultimate
8 responsibility, for administering the Probation
9 Department should be.

10 And, perhaps, what is your opinion about
11 separating the funding aspects of the Probation
12 Department from the administration aspects of it?
13 For example, leaving the funding in the executive
14 branch and the actual administration in the
15 Judiciary?

16 JUDGE LEVENTHAL: I'm not a fiscal expert,
17 but -- however, I would welcome to have Probation put
18 under Judiciary supervision. But, again, if it's up
19 to someone else to fund, what if it is under funded?

20 So, there is tension, though -- I mean, I
21 do have a good relationship, but I do have to fight
22 for my turf sometimes. And they fight for their turf
23 sometimes, too. And I think that's a fair give and
24 take between two different agencies.

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1 go into old news.

2 Anyway, my wish list would be, in a real
3 wonderful world, is to have Marty Horn work for me
4 and not the -- and not for the executive branch,
5 because they are my partner. But I don't think
6 they're responsible entirely to me. If there is a
7 new prerogative in the executive branch, it may be
8 contrary or create some tension for the goals of the
9 Court. And I do the sentencing, I put someone on
10 probation. There's a little tension here. Can I
11 exactly tell them what kind of probation it is, or,
12 once I put them on probation, accept it if I put in a
13 special condition? Is that within the Probation
14 Department's purview? We've had differences on that.

15 I would guess that, if it were in my --
16 they were working for me, then I'd get my way every
17 time.

18 So there is some tension. There are some
19 differences.

20 I see benefits here, but I would not want
21 the Probation function, unless it were adequately
22 funded, because then it would be doomed to a failure.
23 It's like expanding your case load without putting
24 more resources in.

THE CHAIRMAN: Any questions?

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1 JUDGE LEVENTHAL: I want to thank you for
2 having me.

3 THE CHAIRMAN: Thank you.

4 MR. MACCARONE: Thank you, Judge.

5 JUDGE LEVENTHAL: The reason why I'm in a
6 hurry, it's not just the courtroom, I have my whole
7 staff mandated to watch a simulcast on Kendra's Law
8 at the courthouse. Now they're wondering why I'm not
9 there.

10 Thank you very much. Thank you.

11 THE CHAIRMAN: The Task Force will take a
12 half hour break for lunch. Sorry we didn't order
13 enough for all of you, but lunch is on the table
14 there.

15 And we will resume at 1:15.

16 I hope Mr. Juan Sierra is still here.

17 (Luncheon recess)

18 THE CHAIRMAN: Thank you again for being
19 here.

20 Our next witness will be Mr. Juan Sierra,
21 Westchester -- from the Westchester County Probation
22 Officers Association.

23 Mr. Sierra.

24 MR. SIERRA: Good afternoon.

My name is Juan Sierra, and I have been a

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1 probation officer in New York State for a little over
2 15 years. I began as an officer in New York City and
3 I'm currently employed as a probation officer in
4 Westchester County. I'm a dues paying member of the
5 New York State Probation Officers Association,
6 executive board member of the Probation Officers
7 Association in Westchester, and a shop steward of the
8 CSEA Local 9200.

9 My testimony will focus on the four
10 outlined topics, as well as a topic that really
11 hasn't come up to light yet.

12 The first topic is what is the fundamental
13 purpose of probation in the criminal justice system?

14 When I was trying to come up with an
15 answer to that, I just found it -- I went on to my
16 web site for our department and our mission
17 statement, which says:

18 "Probation is a law enforcement agency
19 committed to the protection, safety and quality of
20 life in the communities we serve. As highly skilled
21 and dedicated are professionals, we employ a balanced
22 approach through the use of prevention, intervention
23 and control strategies, utilizing a continuum of
24 comprehensive services. We provide information,

25 access and recommendations to the courts and other

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1 authorities. We enforce court-ordered sanctions,
2 respond to the needs of victims, assist families in
3 crisis and help offenders change."

4 I've also included the mission statements
5 of several other departments in the handout that I
6 gave you.

7 Our mission statement is clear, to the
8 point and, most important, it's in practice. To me,
9 protection of the community involves local
10 governments having the political will to provide
11 their probation officers with the necessary tools, as
12 they do their police officers and correction
13 officers, in order to protect the community and
14 themselves while holding offenders accountable.

15 In Westchester County and in other
16 counties, this is happening on a daily basis. This
17 is not to say that we, as probation officers, are
18 police officers and correction officers, but we are
19 law enforcement officers. And my question to the
20 judiciary would be, will you view us the same? Less
21 than two miles from here, in New Jersey, where
22 probation is under judicial control, they have gone
23 on the record as saying, "Probation officers have a
24 very specific work to do for their clients, but they

25 are not law enforcement officers." And in the

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1 federal system in neighboring Connecticut, probation
2 officers are not allowed to carry firearms, even
3 though the U.S. Judiciary allows officers to do so
4 nationwide. However, the Connecticut Chief Judge has
5 decided not to. Is that what's going to happen here
6 in New York if Probation goes under Judicial
7 jurisdiction?

8 I guess, in the closest example of what is
9 yet to come, several subcommittees have been formed
10 to look at this possibility. And there has been a
11 report that says prior to 1974 Probation was viewed
12 as a social work agency, but since that time, many
13 departments have armed their officers for self
14 protection while in the community garnering
15 information for judges. They also seem to share that
16 New Jersey State Judiciary belief that probation
17 officers are not law enforcement officers, but they
18 do insist there must be a balance between public
19 protection and rehabilitating offenders and believe
20 the Judiciary can do this balancing act.

21 I, as a line officer, don't know, because
22 I haven't received anything from the Judiciary
23 telling me what's going to happen. How do you view
24 me as a probation officer?

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1 political will, have armed their officers for the
2 same reasons that they have armed their police
3 officers, to provide the necessary tools, not just
4 for self protection.

5 I've been an armed officer for 14 years.
6 Like I said, I worked in New York City and I've been
7 working now in Westchester County, two of the
8 counties that do arm their probation officers. And
9 I've never used my gun to garner any information.

10 And when I kind of read that, I thought
11 about doing a PSI at gun point. While it might sound
12 good, you might get information you might not get
13 from just a regular interview, I think it might be a
14 little unethical and probably against the law.

15 My gun is no different than a flashlight,
16 pen, a Breathalyzer or drug testing equipment. It's
17 just a tool that helps me do my job.

18 Second topic is, if the purpose of
19 probation is to reduce the risk of recidivism, which
20 practices or policies have been shown to actually
21 reduce recidivism?

22 It's not only the purpose of probation,
23 but it should be a major goal of every Probation
24 Department. We hear every day our politicians tell

25 us crime is at record lows in New York State, you

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1 know. Since 1994, violent crime is now down
2 53 percent, property crime down 48 percent, car theft
3 down 78 percent.

4 Why has this happened? Police departments
5 will be the first ones to jump up and say, "We're
6 cracking down on crime." Technology is advancing and
7 happening in surveillance and monitoring offenders.
8 But I'm here to tell you that a well-balanced
9 Probation Department is key to reducing crime.

10 And it's no more evident anywhere than in
11 New York City, where I worked in 1990.

12 The Probation Department has made
13 tremendous strides in New York City in the way they
14 have dealt with offenders. New York City government
15 has taken the necessary steps to get the officers,
16 who were once held hostage in their own offices by
17 insurmountable case loads, out into the community as
18 part of a more proactive, fully functional law
19 enforcement agency, all the while utilizing community
20 resources to help offenders change.

21 Commissioner Horn, who is here from New
22 York City Probation, has finalized a program that was
23 started by Commissioner Pozzi, Commissioner Jacobson,
24 who I saw here earlier, and really changed New York

25 City Probation into a agency that once only

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1 functioned within its fortress and now is out in the
2 community holding people accountable. That's what
3 you need to do. And it's no doubt that New York City
4 Probation has been a major player in reducing crime
5 in New York City.

6 Westchester County is the same thing with
7 our Commissioner, Rocco Pozzi, and a proactive County
8 Executive, along with the hard work of my fellow
9 officers. We've become a national model probation
10 department.

11 Somebody talked before about the crown
12 jewel of probation in New York State. You don't have
13 to go too far. We're right here. Westchester
14 County, White Plains, New York.

15 In 1999 Governor Pataki issued a
16 Governor's Proclamation singling out our Department
17 as a State model. And I've included the Proclamation
18 in the handout.

19 April 2005, National Highway Traffic
20 Safety Administration recognized our DWI Enforcement
21 Program as a Best Practice. And in 2006, April 2006,
22 gave us one of 15 public service awards at the
23 National Lifesaving Conference.

24 Why? Because we use a balanced approach

25 of treatment, education, surveillance and

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1 enforcement.

2 Some of the highlights in the decision was
3 our 4 percent recidivism rate, re-arrest rate in DWI
4 cases.

5 Between the years 2000 and 2005, which in
6 2000 is when we went to our automated case management
7 system and statistics were available then, of over
8 1,700 offenders, only 67 were re-arrested for a new
9 DWI offense.

10 And our DWI Unit has a philosophy that the
11 probation officer must be the leverage between the
12 offender and treatment. The officer must also be
13 readily capable of taking law enforcement action when
14 necessary in order to let the offender know that any
15 transgressions will be dealt with effectively and
16 immediately.

17 This balanced approach is not just for
18 DWI. We use it in our sex offender program, where
19 our officers are monitoring sex offenders around the
20 clock, 24/7, using GPS.

21 What a lot of people don't know is that
22 our officers are also co-facilitators in the Sex
23 Offender Treatment Program, working side by side with
24 the therapist and the sex offenders and our Domestic

25 Violence Unit. We partner as equals with the County

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1 police, making unannounced and uninhibited home
2 visits, checking on people, making sure they're not
3 violating their orders of protection.

4 We also run our batterers' groups in the
5 Probation Department with WAVE or Mental Health
6 Associates in Westchester.

7 These successes from these units, aside
8 from the hard work, come from using a balanced
9 approach and a specialized case load.

10 What role should victims play? Victims
11 should have an active role in probation. To insure
12 that they are not victimized again by a system that
13 has neglected them in the past, our Department has a
14 full-time probation officer who is our victim
15 advocate or a victim services outreach program. In
16 addition, we have two full-time probation officers
17 who deal directly with victims of domestic violence.

18 Now, I know that every Probation
19 Department is not going to be able to do that, but
20 you have to make an effort to reach out into the
21 community to volunteer services that have always
22 given a hand to Probation. We have a good working
23 relationship with the Westchester County Office for
24 Women, My Sister's Place, which is a shelter for

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1 Center. We have a Domestic Violence Court. We also
2 work with the Mental Health Association of
3 Westchester and Victim Assistance Services, who, by
4 the way, have offices inside our office, so they are
5 on the site. All you've got to do is just give them
6 the space and they'll show up.

7 What legislative changes or other
8 proposals could be implemented immediately? We know
9 that nothing is implemented immediately, but what
10 needs to happen is we need workload standards in
11 probation. Has to happen. In particular, reducing
12 current case loads.

13 As an active probation officer, I can tell
14 you that the only aspect of the probation job that
15 affects community safety negatively is the size of
16 the case load.

17 In 1990, when I walked into the Probation
18 Department in the Bronx, I was given 140 cases. 140
19 criminals unsupervised for two years. And you want
20 to talk about helpless. But, you know, the person
21 sitting in the office next to me had 300 cases. How
22 can I protect the community from people that I didn't
23 even know?

24 All other -- all other -- all other

25 professions have ratios.

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1 Corrections Department, the number of
2 correction officers in a facility are dictated by the
3 number of inmates.

4 Student-to-teacher ratios, they have ideal
5 numbers.

6 A pilot shouldn't fly X amount of hours to
7 protect the people that they're, you know, taking
8 around the country.

9 We need that in Probation.

10 The American Probation and Parole
11 Association, right on their web site, has a workload
12 case-load formula. It doesn't tie you into a
13 specific number. People like to throw around 60, 30,
14 40. You don't have to do that. People don't want to
15 do that. Nobody wants to be tied into a number. But
16 what -- what kind of workload can you manage within
17 the hours that you're at work? And it gives you with
18 the average officer working 120 hours a month what
19 kind of cases they can do.

20 If you're dealing with high risk, these
21 are the bad guys, the people that some people say
22 shouldn't be on probation, but we know they have to
23 be because we can't put them all in jail, those
24 people, you should have 30 cases, because you got to

25 dedicate the time to them, you got to dedicate four

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1 hours a month to each person.

2 If it's a medium-risk case, you can have
3 60 cases.

4 And in the low-level cases, low-risk
5 cases, you can have 120 cases.

6 Those are standards set by the American
7 Probation and Parole Association, the people that
8 know about probation and parole, which I'm sure many
9 of you are members of.

10 Setting standards is not easy, but it's a
11 must. Setting case load workload can only increase
12 offender accountability and thereby enhance safety.

13 The last topic is conflict of interest in
14 the handling of violations of probation.

15 If the Judiciary assumes control of
16 Probation, who will prosecute the violations of
17 probation? And I use the term loosely, "prosecute,"
18 because we know that violations of probation are not
19 criminal proceedings, so you don't prosecute them. I
20 don't know what you do with them, but we don't
21 prosecute them.

22 In New York State, the Office of General
23 Counsel handles the violation of probation. The
24 Probation Department comes under the Judiciary. So

25 does the Office of General Counsel. So how can the

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1 General Counsel prosecute a case before the judge
2 that's going to hear it if that's his boss? You
3 can't do it. Conflict of interest, I think. And I'm
4 sure defense attorneys think that as well.

5 In Westchester County, for a few years,
6 our District Attorney refused to prosecute our
7 violations of probation. Luckily, we had a County
8 Attorney who stepped in and did it. If we're no
9 longer a County agency, would they step in? Probably
10 not. Luckily, now our DA is handling the cases. But
11 who's to say? That's not set in stone. It happened
12 before, it can happen again. DAs in New York City
13 traditionally never handled violations of probation
14 and they're not mandated to. They don't have to do
15 it. So then what will the Court do?

16 It's funny. On the way out, I spoke to
17 the judge, and I didn't get his name, the judge from
18 Kings County, who had the Domestic Violence Court.
19 And I asked him, I said, "Is that a conflict of
20 interest?" And he said, "Funny, I never thought
21 about that."

22 And I kind of get that feeling, that we're
23 not thinking this through the whole way, and it's
24 really creating a panic amongst my fellow co-workers

25 and people in general.

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1 Right now, in Westchester, the probation
2 officer is an equal partner in the criminal justice
3 system. I work with the DA, I work with the judge,
4 and I work with the defense attorney and the people
5 in Westchester are better for it.

6 Probation belongs in the executive branch
7 as a separate function that works in conjunction with
8 the Court. Judges should be involved in the
9 probation process, but they shouldn't become
10 probation officers.

11 In listening, I heard people bring up the
12 technical violations and how it's become a burden on
13 the system. And that's when the judge should
14 flourish, that's when the judge has total discretion
15 on what to do with the case. Don't look at it as a
16 burden. Look at it as your chance to get involved in
17 the case.

18 If I bring you a case where the guy has
19 committed a heinous crime, you can't do anything
20 about it, he's probably in jail, you've got to wait
21 for the conviction. He's probably going to go to
22 prison for years. All you're going to do is close
23 the violation of probation.

24 Don't look at a violation on a technical

25 basis as a burden on your calendar. It's your time

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1 to get involved in the case and make a difference.

2 That's all I have to say.

3 THE CHAIRMAN: Thank you. That was
4 wonderful. Thank you.

5 Just a minute. There may be a few
6 questions.

7 MR. SIERRA: Sure.

8 THE CHAIRMAN: Questions of Mr. Sierra?

9 Yes, Commissioner Horn.

10 COMMISSIONER HORN: In Westchester County,
11 could you tell me, what is the starting salary,
12 maximum salary?

13 MR. SIERRA: Starting salary for a
14 probation officer trainee is approximately \$42,000.

15 COMMISSIONER HORN: 42,000?

16 MR. SIERRA: Yes.

17 COMMISSIONER HORN: What's the top of the
18 range?

19 MR. SIERRA: Right now, 68,500 after seven
20 years.

21 COMMISSIONER HORN: After seven years?

22 MR. SIERRA: Yeah.

23 COMMISSIONER HORN: And the pension works
24 how?

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1 COMMISSIONER HORN: What does that mean?

2 MR. SIERRA: 30 years.

3 COMMISSIONER HORN: Everybody's Tier 4?

4 MR. SIERRA: Everybody's Tier 4, except
5 the people who have been there a hundred years.

6 COMMISSIONER HORN: So it's the standard
7 system?

8 MR. SIERRA: Yeah.

9 COMMISSIONER HORN: 25 years?

10 MR. SIERRA: No.

11 COMMISSIONER HORN: 30?

12 MR. SIERRA: Or 62.

13 COMMISSIONER HORN: It's different than
14 Suffolk.

15 MR. SIERRA: Suffolk County, I believe, is
16 the only probation department that has the 25-year
17 rule.

18 JUDGE BAMBERGER: Do a lot of people leave
19 after that period to go to federal probation or
20 federal parole?

21 MR. SIERRA: I think, when people come to
22 Westchester County, they find a home. We kind of got
23 the knack of what we're doing, and people really
24 don't leave.

JUDGE BAMBERGER: They're set.

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1 MR. SIERRA: I also wanted to bring up
2 another point. And I'm sorry to go back.

3 When the judge mentioned he wishes that
4 probation in New York was like it is in the federal
5 system, where Probation is involved in the pretrial,
6 Probation is not involved in the pretrial in the
7 federal system. Federal pretrial is a totally
8 separate agency than the federal Probation
9 Department. It's two separate agencies.

10 So, to ask Probation, which is on a
11 post-conviction scale, to handle pretrial, it's
12 totally going against what we've usually been doing.

13 So maybe he was -- he didn't understand
14 exactly what happens in the federal system, but it's
15 two separate agencies which do not work together.

16 The pretrial ends once the person is
17 sentenced or -- actually, yeah, once the person is
18 sentenced, they end, so.

19 Yes, sir?

20 JUDGE CARTER: A question.

21 You mentioned something about victim
22 advocacy that you have in-house.

23 MR. SIERRA: Yes.

24 JUDGE CARTER: That's foreign to me.

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1 MR. SIERRA: The victim advocate works --
2 mostly works with the people who conduct the
3 pre-sentence investigation in obtaining victim impact
4 statements. They also work with our Domestic
5 Violence Court, as well.

6 JUDGE CARTER: They would give the
7 intention in the section of the pre-sentence report,
8 victim impact statement?

9 MR. SIERRA: Right.

10 And usually it's not just for the person
11 who got their car broken into, it's for when you
12 really have a serious case or a delicate case that
13 really needs a person dedicated to that victim in
14 getting the information from the victim.

15 JUDGE CARTER: The second question is
16 violation of probation.

17 In Nassau, our District Attorney handles
18 the violation of probation. You indicated that,
19 prior to the present District Attorney, the County
20 Attorney was handling the violations?

21 MR. SIERRA: Yes.

22 JUDGE CARTER: What was the reason why the
23 District Attorney didn't handle it?

24 MR. SIERRA: There was some -- there

25 was -- I mean, personally, you're asking me or do you

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1 want the official answer?

2 JUDGE CARTER: Both.

3 MR. SIERRA: The official answer is that
4 because -- because the -- all the departments in
5 Westchester County suffered cuts, 5 percent cut, I
6 believe, so she would not be able to prosecute our
7 cases. So what it entailed was, when you had a
8 violation of probation, the District Attorney, who
9 was in the court -- it's not like they brought in a
10 special person in court -- they would just sit down
11 and kind of like leave you there to stand on your
12 own. But our County Attorney stepped up. And their
13 rationale was, because it's not a criminal -- because
14 it's not a criminal proceeding, they have no
15 obligation to prosecute. Our current District
16 Attorney has taken it back and admitted that it was a
17 mistake for the office to let it go.

18 JUDGE CARTER: Thank you.

19 MS. ABATE: Thank you for your testimony.

20 You talked about the need for standards
21 and development of best practices. And you also said
22 that there's only a certain number of hours in the
23 day. And if you're asked to supervise so many more
24 probationers, something has to give.

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1 arguing for more resources, what would your argument
2 be why you needed more hours in the day or more staff
3 to see those greater number of probationers? Because
4 what's the impact in not giving you those resources?

5 MR. SIERRA: The impact is that you just
6 can't -- you can't adequately supervise people who
7 need supervision.

8 MS. ABATE: What about your home visits;
9 you can't make referrals to drug treatment?

10 Can you explain a little bit about what
11 doesn't get done?

12 MR. SIERRA: By the way, home visits are
13 probably a luxury in some counties. They're very
14 regular in our county. We, in Westchester, we
15 practice -- we have specialized case loads and we are
16 able to reduce our case loads in a specialized way.
17 But we still do have general supervision cases, you
18 know, over 120, 130. We have administrative case
19 loads that are up about 200. So, I mean, these
20 people need to be supervised, as well.

21 So, while we are focusing our resources on
22 the most serious offenders, there may be -- we may be
23 neglecting a population that needs to be supervised.
24 And if we had more officers, we could cut that down

25 to reasonable -- reasonable numbers. You just can't

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1 -- they use -- if you have a -- if you have a
2 high-risk offender, all they're asking you to do is
3 dedicate one hour a week to 30 cases. 30 cases, one
4 hour a week and there goes your month's worth of
5 work. And an hour is not really a lot of time to
6 dedicate to someone who really should be in jail. If
7 we had the room, they wouldn't be on probation. We
8 just don't have the room, so we have people on
9 probation. So to dedicate one hour to what we
10 categorize as a high-risk offender, you can't have
11 more than 30 cases.

12 People work 140 hours a month. You have
13 training that you have to do, you have meetings that
14 you have to attend, court, you know, you need other
15 time, other than actually dealing with the offender.

16 Yes?

17 JUDGE BAMBERGER: Judge Leventhal told us
18 about his practice in having probationers in his
19 courtroom, good or bad, and the time schedule they
20 come in.

21 Do you think that's helpful to the
22 probation officer who is supervising them at that
23 particular moment on probation, to have the judge
24 involved on a regular basis, having nothing to do

25 with violations, technical or otherwise?

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1 MR. SIERRA: Post conviction?

2 JUDGE BAMBERGER: Yes.

3 MR. SIERRA: Of course. It's great. I
4 need all the help I can get.

5 JUDGE BAMBERGER: So if the judge set up a
6 system with you, "I want this guy every two weeks or
7 three weeks," you wouldn't have any objection?

8 MR. SIERRA: Absolutely not. Come every
9 day, if the judge wanted it. I need all the help I
10 can get. That's not the problem.

11 The problem is, when you set up a
12 specialized court prior to conviction, where the
13 person is put through the ringer, so to speak, and
14 then their conviction is reduced based on their
15 compliance, you can't have probation officers
16 involved there, because a person is not sentenced to
17 probation.

18 JUDGE BAMBERGER: You're not into
19 specialized courts?

20 MR. SIERRA: Post-conviction, yes; not
21 pre-conviction, our involvement is minimal.

22 JUDGE BAMBERGER: Are the post-conviction
23 specialized courts needs making you take resources
24 from other courts and put them into specialized

25 courts?

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1 MR. SIERRA: I don't understand --

2 JUDGE BAMBERGER: Has the specialized
3 court, as developed in the counties, meant that you
4 had to devote more -- I don't mean you personally --
5 but the Probation Department has to send their
6 resources to those specialized courts to the
7 detriment of the general courts, not specialized?

8 MR. SIERRA: It could happen.

9 JUDGE BAMBERGER: Have you found that to
10 be the case?

11 MR. SIERRA: Our specialized court, the
12 one that I'm familiar with, when I was in -- I was in
13 the Domestic Violence Unit, but ours was
14 post-conviction, and we had compliance courts. And,
15 again, we had County Attorneys handling the cases for
16 us in court, so we were there when we needed to be
17 there, but if it was a regular compliance where the
18 person was doing fine, the officer's appearance
19 wasn't necessary.

20 MR. MARKS: There was a point you made
21 about a possible conflict of interest in probation
22 officer Judiciary employees prosecuting the VOPs.

23 Do you know how it works with parole
24 violations in revocation of parole?

MR. SIERRA: I'm not familiar.

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1 MR. MARKS: Does anyone know?

2 COMMISSIONER HORN: Yeah. The parole
3 violations are heard by an administrative law judge,
4 who is employed by the Parole Board, and the advocacy
5 of people is done by what's called a parole
6 revocation specialist, who is also an employee of the
7 Parole Board.

8 MR. MARKS: Has anyone ever suggested that
9 that was a conflict of interest?

10 COMMISSIONER HORN: Not to my knowledge.
11 I would have to do research, but not that I'm aware
12 of.

13 THE CHAIRMAN: Okay. Thank you very much.

14 MR. SIERRA: Thank you.

15 THE CHAIRMAN: We're being joined by
16 another one of our Task Force members, District
17 Attorney of Westchester County, Janet DiFiore.

18 MS. DiFIORI: I apologize for my late
19 arrival.

20 THE CHAIRMAN: Marsha Weissman, the
21 Executive Director for the Center for Community
22 Alternatives.

23 Is Miss Weissman here?

24 MS. WEISSMAN: Yes.

THE CHAIRMAN: Thank you.

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1 You've been very patient.

2 MS. WEISSMAN: Good afternoon.

3 My name is Marsha Weissman. I'm the
4 Executive Director for the Center for Community
5 Alternatives, also known as CCA.

6 CCA is a not-for-profit agency that works
7 to reduce reliance on incarceration. We do a range
8 of services, including sentence advocacy, direct
9 services like drug treatment, and we also do research
10 and training and policy analysis.

11 I'd like to thank you for having this
12 hearing today and I particularly want to commend
13 Judge Kaye for her attention to this issue, evidenced
14 by this Commission. I think it's an opportune time
15 to consider the future of probation services in New
16 York State, particularly, with respect to the purpose
17 and the role and the function of the pre-sentence
18 investigation report.

19 Just four months ago, on June 7th, the
20 Governor signed into law an important change in New
21 York sentencing law. The Penal Law, which previously
22 focused on the four traditional goals of sentencing,
23 deterrence, rehabilitation, retribution and
24 incapacitation, was revised to include the new goal

25 of the promotion of the defendant's successful and

1 productive reintegration -- sorry -- re-entry and
2 reintegration into society. I think that this really
3 presents an opportunity and, to some extent, a
4 challenge with respect to what happens with the
5 pre-sentence report.

6 CCA considers this, actually, to be quite
7 a significant stint in sentencing policy and
8 practice, because the law essentially recognizes that
9 reintegration is the best way to achieve public
10 safety.

11 I think it puts new responsibilities on
12 every key actor in the system. Judges, in
13 particular, will need information to make a
14 sentencing decision to determine which sentence
15 actually best promotes community reintegration, the
16 reintegration of the defendant into society.

17 (Continued on the following page)

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2 MS. WEISSMAN: The probation system is likely
3 to play a critical role under the new law. The
4 presentence report prepared by probation officers has
5 significant influence over sentencing decisions. And
6 right now probation departments around the state
7 prepare more than 100,000 presentence reports each
8 year.

9 Currently, the reports focus largely on legal
10 history, social circumstances and victim information.
11 The investigation attempts to assess need and risk and
12 then results in a sentencing recommendation or
13 probation incarceration. We think that implicit in the
14 new law is the expectation that the presentence
15 investigation in the future will also include an
16 assessment of what kinds of a sentence will best
17 achieve the goal of community reintegration for the
18 specific defendant. While this is, of course, related
19 to questions of needs and risk, the issue of community
20 reintegration has distinct features. It changes the
21 emphasis from simply looking at whether the defendant
22 can be punished or fixed to a more complex
23 understanding that the community has to play an active
24 role in this shared responsibility of achieving public

25 safety.

26 The recent report by the Special Committee of

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2 the State Bar Association Reintegration and -- Reentry
3 and Reintegration, The Road to Public Safety concludes
4 that public safety high recidivism rates, prisoner
5 reentry and reintegration are inevitably linked and
6 intertwined. If people returning home from prison are
7 not successful in their reintegration back into the
8 community, public safety suffers. So the new law, by
9 implication, extends to looking at the well-being of
10 the community as a whole. And raises new questions to
11 be considered in the presentence report. Such as will
12 a community-base sentence service the goals of
13 reintegration? How can we best promote public safety
14 now and in the future by a development of a
15 reintegration plan for this defendant? What type of
16 sentence should be imposed not the in/out decision, but
17 the length of incarceration?

18 Right now presentence reports focus heavily
19 on an analysis of the offense behavior. I think that
20 the new sentencing law would require that the reports
21 consider that offense behavior, obviously critical
22 information, but within the context of how to advance
23 the goal of community reentry and reintegration. For
24 the defendants who are recommended for probation, this
25 means the presentence report will focus more on

26 developing an individual plan for a community-based

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2 sentence. What specific programs, resources, services,
3 accountability measures, supervision will best forward
4 the ability of an individual to return to the community
5 very quickly?

6 While less obvious, the set standards will
7 apply to presentence reports prepared in cases where a
8 defendant is recommended for a prison sentence.
9 Reentry and reintegration concerns should begin at the
10 moment of arrest, not at the time of release. This
11 prompts any questions to be addressed through the
12 presentence report, including how the length of
13 sentence is likely to affect community reintegration
14 and what issues should be addressed during someone's
15 incarceration so that reentry could be effective. Even
16 where the defendant is incarcerated, the presentence
17 report should reflect an individual approach to
18 sentencing. And set forth what issues should be
19 addressed during incarceration in order to prepare for
20 reentry and reintegration. The presentence report can
21 become a roadmap of sorts for the defendant,
22 correctional officials, patrol and the defendant's
23 family members, alike, guiding how the defendant serves
24 his or her sentence.

25 The presentence report right now plays a key

26 role at the time of parole. And it will continue to do

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2 so. However, in the current iteration where the
3 emphasis is so much on the offense behavior, the parole
4 hearing tends to focus exclusively on a revisiting of
5 the crime. In our experience, this is one of the most
6 counterproductive experiences of a prisoner's sentence.
7 We have seen people who have made the best use of their
8 time incarcerated. They have taken advantage of any
9 and every educational opportunity, any program that
10 they could get into. They have served as trustees in
11 the prison. They have amassed a positive record. When
12 we help prepare them for parole, it's really sort of
13 sad. They'll come with their folder, this thick folder
14 of their certificates. And they think it makes a
15 difference. And, unfortunately, all too often, it does
16 not. Because what is discussed is only what happened
17 at the time that the crime was committed.

18 There's little that a defendant can do five
19 years later or ten years later about the offense he or
20 she committed other than do the kinds of changes that
21 should be laid out in a presentence report. The crime
22 has been done. The sentence has been served. The
23 question now is is the person ready to reenter? And
24 the PSI can be a roadmap for evaluating that.

25 In order to take up these new

26 responsibilities in a sentencing system that focuses on

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2 reintegrated justice, probation will have to be
3 retooled, we think, around probation officers provided
4 with additional training. Retooling will be collecting
5 data on outcomes of sentences so one could actually
6 look at which kinds of sentences promote less
7 recidivism, which kind of sentences are less
8 successful. Other questions that should be looked at
9 is what kind of sentences best promote employment?
10 What sentences best promote family stability? What
11 kind of information does a judge need so that a person
12 convicted of a crime can resume his or her civic
13 responsibilities as soon as possible?

14 Under the new law, we think that it's
15 imperative that the presentence report begin to include
16 information on the collateral consequences of a
17 conviction. This can be accomplished by including
18 information about what kinds of consequences apply to
19 which kinds of convictions and sentences.

20 Probation should inquire as to the
21 defendant's ability to pay fines and fees and other
22 financial penalties to make sure that a defendant is
23 not saddled with financial responsibilities that he or
24 she will simply be unable to satisfy.

25 The presentence report should also contain

26 information about certificates of relief from civil

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2 disabilities so that the defendant can resume a
3 law-abiding and productive law as soon as possible. In
4 order to do this, Probation must be adequately funded
5 so it can properly discharge these new
6 responsibilities.

7 Public protection is a public good. And must
8 be funded as such. It should be part of -- adequately
9 funded by the State through general tax-levied funds.
10 The underfunding of Probation over the last decade has
11 created situations where probation departments have
12 been forced to rely on fees, including in some countys'
13 fees that exceed those authorized by the State
14 legislature. This over-reliance on fees to fund
15 Probation puts probation departments in the position of
16 actually exacerbating the financial consequences of a
17 conviction rather than helping people overcome these
18 barriers.

19 The majority of people on probation are poor,
20 with little ability to pay for these every-increasing
21 financial penalties. The financial penalties then show
22 up on someone's credit rating, serving to be a bar for
23 renting an apartment, buying a car, often needed to get
24 to a job, and even getting a job itself because
25 employers are increasingly using credit histories to

26 determine whether or not they're going to hire someone.

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2 Adequate funding for probation is one part of
3 ensuring that, in the future, Probation can take up its
4 new tasks under this new sentencing law. Effective
5 partnering with community agencies and organizations is
6 another. Community organizations can play a useful
7 role working with probation in helping develop
8 reintegrative sentencing programs, helping to share
9 information about the defendant's circumstances and
10 what kinds of resources would be available in the
11 community either at a probation sentence or at the time
12 of release.

13 So I would close by saying that the future of
14 probation is upon us. It began June 7th, 2006. We
15 have an opportunity in New York State to pioneer a new
16 perodime of criminal justice. And probation is clearly
17 one of the key actives in our ability to do so. To do
18 that, it needs training so that it could be an
19 effective resource for the Court and the correction
20 system, adequate funding and an open door to partnering
21 with the community.

22 I thank you for the time to speak to you
23 today. And if you have any questions, I'm glad to
24 answer them if I can.

25 COMMISSIONER DUNNE: Thank you very much,

26 Ms. Weissman.

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2 Tell me, where is your organization active?

3 MS. WEISSMAN: We have offices here in the
4 City, in Manhattan and Brooklyn, and in Syracuse, New
5 York.

6 COMMISSIONER DUNNE: I think you were here
7 during the testimony by the two parole directors this
8 morning.

9 MS. WEISSMAN: No, I was not.

10 COMMISSIONER DUNNE: One of them said that
11 representatives from groups such as yours were actually
12 in and with the Department to make their services
13 available. Have you had an experience like that?

14 MS. WEISSMAN: I think, frankly, it varies by
15 jurisdiction. I know, for example, in New York City we
16 work closely with Probation and Parole. In Upstate
17 jurisdictions we do as well. But in others it's sort
18 of Probation is its own entity and I think does less
19 reaching out into the community. So it's really a
20 jurisdiction-by-jurisdiction so -- instead of
21 interactions.

22 COMMISSIONER DUNNE: Okay. Thank you.

23 Questions?

24 Judge Corriero.

25 JUDGE CORRIERO: Marsha, thank you very much

26 for that presentation.

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2 I would like to know how you view your
3 relationship with Probation because I've heard it said
4 that, very often, organizations such as yours are in
5 competition for the same funding. And do you find that
6 to be the case and do you have any suggestions that
7 might remedy that situation?

8 MS. WEISSMAN: Well, the answer to that is
9 yes and no.

10 Certainly when alternative to incarceration
11 programs began in 1980, that was certainly the case and
12 there was a lot of tension between probation
13 departments and not-for-profit organizations. Over the
14 years, I think that that has largely gone away. And I
15 think that's been through some good work on the part of
16 DCPA to bring us together at different points in time.

17 The issue is that there's simply not enough
18 resources for community corrections as a field. And we
19 have worked hard in the ATI community to not put our
20 needs as programs against Probation Department's needs
21 as programs.

22 There's no question in my mind that Probation
23 is the lynch pin of the community correction system.
24 It supervises more people than ATI organizations will
25 ever supervise. It has a different mission and focus.

26 It's sort of the generalist, if you will, of the

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2 community corrections world. I think that sort of the
3 missed opportunity in New York over the last decade or
4 so has been that we do have some of the most creative
5 innovative programs in the country and that we haven't
6 figured out a way of really supporting them, of
7 bringing them up to scale and really then developing
8 ways to sort of delineate what Probation does best and
9 what ATI organizations do best.

10 COMMISSIONER DUNNE: Yes. Commissioner Horn.

11 COMMISSIONER HORN: Two questions, Marcia.

12 You spoke at length about the PSI.

13 Question one:

14 Given everything you said about the PSI and
15 given that State law now allows for the PSI to be
16 waived where incarceration is not going to be the
17 sentence, where probation is going to be the sentence,
18 would you recommend that that law be changed, that the
19 PSI cannot be waived in any case?

20 MS. WEISSMAN: I would. I think that the
21 presentence investigation report should be done in
22 every case.

23 COMMISSIONER HORN: Including those where
24 probation is the outcome?

25 MS. WEISSMAN: (Nodding.)

26

Yes.

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2 COMMISSIONER HORN: And my second question
3 is, given everything you said about the PSI and given
4 that probably 95, maybe 98, percent of all sentences in
5 the State are imposed as a result of a plea agreement
6 in which the sentencings were relatively a forgotten
7 conclusion, to what extent is everything you said
8 confirmation that the primary user and beneficiary, if
9 you will, systemically of the PSI is the State,
10 Corrections, Parole and so on? And to that extent,
11 does that argue that the cost of preparing PSIs is
12 primarily a State responsibility? What's the county's
13 interest in it?

14 MS. WEISSMAN: Well, I would answer that
15 question in two ways.

16 First, I actually think, and this sort of
17 echos some of the testimony I gave at the Commission on
18 Indigent Defense, I think that more should be done at
19 the front end, and that would be at the pretrial stage,
20 at the pre-bargaining stage, to get good information
21 and good planning to a judge to see if the sentence can
22 be effective. And as an organization that does a lot
23 of defense-based advocacies, I certainly wouldn't want
24 to give up on having some influence over the sentence,
25 even if it comes earlier in the process. And I think

26 it reflects what I said in my testimony that reentry

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2 begins at arrest. And all of the stages along the way
3 can affect what the length of the sentence is and what
4 happens to the person.

5 But that said, more practically, I do think
6 that it is a State function. And I'll stop there --

7 COMMISSIONER HORN: Thank you.

8 MS. WEISSMAN: -- because you have a smile on
9 your face.

10 JUDGE BAMBERGER: The presentence report in
11 many cases is prepared way before the defendant is
12 released. It could be ten years. It could be
13 fifteen years. Could be seven years. The situation
14 with respect to the defendant's personal conditions
15 obviously changes. People die. People leave. People
16 disappear. Neighborhoods change. Whatever. Who is
17 responsible for doing the investigation that has to
18 take place prior to -- just prior to the release of the
19 offender if probation is not involved, and I assume
20 that parole doesn't view that as its function, the
21 information is presented to parole, but they don't go
22 and look for it?

23 MS. WEISSMAN: Right.

24 In our experience what happens with the
25 parole process is someone appears before the Board to

26 see whether they're going to get parole or not. And

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2 really all the Parole Board, in most instances, has
3 before it is the presentence investigation that hasn't
4 been updated and that, from day one, spent most of its
5 time analyzing the offense. There's very little time
6 looking at what has transpired in the years that
7 somebody has served a sentence.

8 Now, institutional parole officers are
9 responsible for getting together a rudimentary parole
10 release plan. But in our experience in most instances,
11 it's just that rudimentary. And I can contrast the
12 work that we do. We're funded by the State Department
13 of Health to do essentially reentry planning for
14 prisoners who are HIV positive. And the amount of work
15 that we do in creating essentially a reentry plan is
16 really something that's needed for every single person
17 walking out those prison doors.

18 JUDGE BAMBERGER: So any recommendation from
19 this Commission should not relate to Probation or
20 probation function, but relate to a new function in a
21 court with the new provision which requires a reentry
22 situation, and there's a provision in the statute that
23 says corrections, I think it's corrections, people have
24 to make -- collect this information to enable a full
25 package to be -- I forget what the statute language is.

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2 somebody be advocating something which is separate from
3 the Probation Department?

4 MS. WEISSMAN: I think it's a combination.

5 Because I think that at the time of sentencing it's the
6 Probation Department that prepares the presentence
7 investigation report. And that, we would argue, that
8 under the new law, that report should say something
9 like this person, you know, is going to serve a
10 five-year sentence during which time, based on our
11 analysis of the offense behavior and needs and
12 assessment, this person should get a G.E.D. while
13 incarcerated, participate in a drug treatment program,
14 gain some employment skills, right, and participate in
15 a family reunification counseling. I'm sort of making
16 this up.

17 And then when someone comes up for parole,
18 right, I'm not saying it stops there, but, at least,
19 starts there. You have this sort of staying ten years
20 ago at the time you committed your offense, you had all
21 of these issues. And you were recommended that you do
22 X, Y and Z. Have you done that? All right?

23 From that point, it also becomes -- I think
24 it's everybody's responsibility, but it becomes a
25 Corrections responsibility and a Parole responsibility

26 to make that reentry plan meaningful. Corrections,

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2 while somebody is serving their sentence. People have
3 goals and objectives that they're working on while
4 they're serving their sentence. Parole, to consider
5 those very carefully and to think about what resources
6 need to be in the community to continue whatever needs
7 to be continued.

8 COMMISSIONER DUNNE: Yes.

9 MR. POZZI: I don't think we can lose site of
10 the point that the use of that PSI is also valuable at
11 the county level with the number of people who are
12 being released out of the local facilities. I know
13 it's a very valuable piece of information from my
14 reentry program of the Westchester facilities. It's
15 just not utilized by the States.

16 MS. WEISSMAN: Right.

17 In our experience, Westchester can be
18 different. We don't have experience. People serve can
19 a local sentence. They go in and get out and get out
20 without being, for the most part, under any
21 supervision. And that's sort of -- the information in
22 that report is not useful. I mean, it could be useful,
23 but it really isn't necessarily practically used for
24 any purpose.

25 COMMISSIONER DUNNE: Judge Carter.

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2 My experience is a little bit different. I
3 heard this figure 95 percent of the sentences are
4 predetermined as a result of plea bargaining. In
5 Nassau County, the judge would give a cap or
6 commitment. And then what will happen is the PSR will
7 come in to enable the judge to find out whether or not
8 he can abide by that commitment. If that commitment
9 and the PSR is unrealistic, either PSR recommends
10 straight probation, we're thinking about six months or
11 probation, or the PSR saying something along the lines
12 this defendant deserves more than five years
13 determined. The judge will then give the defendant the
14 opportunity to withdraw the plea in the case of the
15 negative to his position or, the other case, to go
16 actually reduce his commitment.

17 So I'm not fully in agreement with the fact
18 the only people served by the PSR are the State
19 correctional people.

20 MS. WEISSMAN: I think in the City more cases
21 are disposed of by plea bargaining than Upstate or
22 outside of the city. There is either a sentence of no
23 more than or sometimes we'll see with the presentence
24 report recommends --

25 JUDGE CARTER: Out in Nassau we have certain

26 alternative programs. They will actually submit a

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2 report in conjunction with the PSI. Is that what your
3 organization does as well?

4 MS. WEISSMAN: That's one of the things we do
5 as well.

6 JUDGE CARTER: Who pays for that?

7 MS. WEISSMAN: We have a State grant that
8 pays for that, for people who are indigent.

9 Thank you, Bob.

10 COMMISSIONER DUNNE: Yes, please.

11 MR. NOWAK: I'd like to follow up on the
12 point you made about the financial pressures on the
13 Probation Department which then allows them now to
14 start charging fees, and your comment that may be
15 sometimes an excess of their authority.

16 What kind of fees have you seen so that our
17 Commission is aware of that? What may be an excess of
18 authority?

19 JUDGE BRUNETTI: You want me to handle this,
20 Marcia?

21 Onondaga County passed a local law and I
22 wrote a letter in 1996 telling them it was illegal, and
23 I got an opinion from a court administrative telling me
24 it was illegal, and then there was opinion by the
25 Attorney General's office saying it is illegal to go

26 beyond the local law as a violation of the Municipal

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2 Home Law Rule. The State legislature only allows that
3 by local law in a DWI article 31 case. And they
4 continue to do it. I have a handout I give to
5 probationers telling them about it. I have given
6 directions to them not to collect one cent supervision
7 fees until all of the restitution is paid and a variety
8 of other directives. I have also informed defendants
9 they can't be sent to jail and -- if and when the
10 Onondaga County sues and enforces the law subject to a
11 judgement, and that's the extent of it. I'm told that
12 it's also in some other counties, that that's the short
13 history of it. I have all the documents that deal with
14 it.

15 MS. WEISSMAN: The problem with it becoming a
16 judgement is that it goes on the credit rating and it
17 gives some hint that it's something involved with the
18 courts and the criminal justice system, and that really
19 sends up a red flag to an employ --

20 JUDGE BRUNETTI: That won't occur because
21 it's never been enforced, ever.

22 JUDGE BAMBERGER: That red flag is flying
23 just because of surcharges, victim fees, DNA fee,
24 anyway.

25 MS. WEISSMAN: Right.

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2 piece to the puzzle. All of those things become civil
3 judgement.

4 MS. WEISSMAN: Yes.

5 MR. NOWAK: I would appreciate any comments
6 you have that you provide the service that you do here
7 in New York City and in Onondaga County to the
8 indigent. Comparable agencies in other counties
9 throughout the State help defense in terms of advocacy
10 for the clients in the sentencing phase. And what is
11 your understanding of what happens in terms of advocacy
12 for defendants? Number of indigent providers do their
13 own internal sentencing memorandum for poor clients.

14 MS. WEISSMAN: Well, I think that we're the
15 only agency that works in Upstate, New York doing this.
16 We're not restrictive to Onondaga County, but we are
17 restricted by the amount of resources that we have.
18 And so we can do very few cases.

19 Our experience working with defense attorneys
20 is that they either rarely have the time to do that
21 because of their own caseload issues or, in some
22 instances, and, again, I sat through some of the
23 testimony on the indigent defense, they -- frankly,
24 they don't think it's part of their job. They just
25 don't do it. They don't think about it. They don't

26 think about their clients in that way.

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2 MR. NOWAK: Thank you.

3 COMMISSIONER MACCARONE: If I might volunteer
4 some answers.

5 Our agency funds 12 defender-based staff
6 advocacy programs statewide. I think Marcia probably
7 does more in that area particularly, certainly than any
8 of the other 11 programs.

9 DCP is now embarking working with the
10 defender-based advocacy, perhaps, to establish
11 statewide standards for defender-based advocacy
12 programs statewide.

13 COMMISSIONER DUNNE: All right. Very
14 revealing.

15 Any other questions?

16 Once again, Ms. Weissman, thank you.

17 MS. WEISSMAN: Thank you.

18 COMMISSIONER DUNNE: Ms. DiFiore, would you
19 want to care to join us here?

20 Steven J. Pittari is the Chief Attorney and
21 Executive Director of The Legal Aid Society of
22 Westchester County.

23 Good afternoon, sir.

24 MR. PITTARI: Good afternoon, Senator Dunne,
25 and Members of the Commission.

Let me just explain to you what, initially,

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2 as Chief Attorney of The Legal Aid Society of
3 Westchester County, our office defends felony cases
4 throughout all of our courts, both local and superior.

5 In Westchester County, the misdemeanor cases
6 and violations are handled by the 18B panel. I also
7 serve as Administrator of the 18B Panel. I don't
8 assign the cases and I don't supervise the cases. And
9 I don't remove the attorneys from the panel. The Bar
10 Association does that. So there's no conflict there.

11 But I'm in the process of -- we're keeping records for
12 the county in terms of number of assignments, vouchers
13 paid, et cetera, et cetera. But I do hear on -- very
14 often from the 18B attorneys with regard to probation
15 and other issues like that.

16 I would say, also, I have got to recognize
17 here, that we have -- our district attorney definitely
18 is prosecuting violation of probation cases. I've
19 practiced in Westchester County since 1969. And from
20 1969 through now there was only one short period of
21 about two and a half years or so when the district
22 attorney, a prior district attorney, for her own
23 particular reasons, refused to prosecute violation of
24 probation cases. But I can assure you that under the
25 current district attorney and under a prior district

26 attorney, the district attorney's office was very

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2 affirmatively prosecuting violation of probation cases.

3 What I would like to say initially here is

4 that I believe that probation should be under the realm

5 of the judiciary, not the executive branch. I know

6 what it says in the -- as someone previously referred

7 to in the website of our Probation Department that they

8 are a law enforcement agency. In fact, I looked at

9 websites of other probation departments and I know that

10 many of them acknowledge that they're peace officers.

11 I've never formally heard one acknowledge themselves as

12 a law enforcement agency. And it seems to me in the

13 course of the time that I've been practicing in

14 Westchester, as I said, since 1969, that there has been

15 a tremendous shift in the concept of a probation

16 department as an impartial agency to what is now become

17 a law enforcement agency. In saying this, I'm quite

18 aware that we have with us our Director of Probation

19 and Commissioner of Corrections, Rocco Pozzi, and we

20 have here Robert Maccarone, both of whom were very,

21 very instrumental and very important in setting up

22 numerous alternatives to incarceration programs. In

23 fact, under both of their leadership, I think

24 Westchester was probably one of the -- perhaps the most

25 - I don't about New York City, but certainly in the

26 areas outside of New York City - very affirmative

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2 organization in setting up ATI programs.

3 But, I'm just an old-fashioned lawyer. So
4 when it comes to looking at what the function of
5 probation is, I have to look at the statutes and the
6 practice commentary and some of the Court of Appeals
7 decisions.

8 Now, when I do that, I discover that both
9 under the old code of criminal procedure, which I've
10 practiced for a few years under, but also under the
11 new -- new "criminal procedure law," which started in
12 1971, there were many things that were changed in the
13 new criminal procedure law, among which were the right
14 for the district attorney and defense attorney to
15 submit presentence memorandum.

16 Now, the practice commentary and the cases
17 regarding it would say, well, that's a very adversarial
18 proceeded heat. The defense can submit their report.
19 A prosecutor can submit a presentence report. However,
20 we need an impartial body. And it says that impartial
21 body is going to be the Probation Department. They're
22 not supposed to be an adversarial body. They're
23 supposed to submit an impartial fact-based report to
24 the judge to help the judge in pronouncing sentence.
25 That's their role. Or at least it's supposed to be

26 their role.

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2 As I said, I've seen a tremendous shift in
3 that. And Rocco Pozzi, who commented earlier, part of
4 the reason for that shift, unfortunately, might be that
5 there is so much more money out there, certainly from
6 the Federal Government, perhaps from the State
7 Government, more in the law enforcement realm and not
8 so much in the Social Services type realm. Whether
9 that will change in future elections, who knows. But I
10 think it is very important for judicial independence
11 and for the proper role of the judges, that they be in
12 charge, or that the judiciary be in charge of the
13 Probation Department.

14 I agree with what some of the other speakers
15 said. I will not want to see that happen if it is
16 going to cause a tremendous loss in funding. I mean,
17 it's got to be both things. The funding has to remain
18 or be enhanced. However, the role is probably that of
19 the judiciary to figure out on framing the sentence,
20 what the proper sentence is supposed to be, how to take
21 in the individual cases involved, the issues of
22 rehabilitation, of societal responsibility. Those are
23 all the responsibility of the judges. And the judges
24 have to be protected, if you will, from efforts that
25 can sometimes occur because of whether it's a Law &

26 Order mentality time, whether it's election time when

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2 you have County officials or State officials running
3 for relatively short terms, two years, four years, and
4 are responding very much to the headlines where that
5 role becomes very much distorted as opposed to judges,
6 particularly on Superior Court, who are there for ten
7 years, fourteen years, et cetera, depending on county
8 or state. Whether it's a County Court or Supreme Court
9 Judge.

10 I have some of the commentary here. I've
11 seen over the years an attitude that says these soft
12 judges are placing too many people on probation. They
13 should be sent up to state prison and we don't like
14 very much trying to supervise them while they're on
15 probation. That was something that was very rare when
16 I started out. That's something that you hear much,
17 much too often nowadays, certainly from probation
18 officers. Many of the -- many others, probation
19 officers, are, quite frankly, dissatisfied by that.
20 But they feel they are -- cannot change things or
21 they're not going to take the chance of speaking out,
22 but they do talk to us privately, okay?

23 The role in the presentence report, in
24 particular, is critically important that that be a fair
25 and impartial or fact-based report because that does --

26 that probably, as our Court of Appeals said a couple of

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2 years ago, that probably is the most important document
3 that follows a person through both at the sentencing
4 phase and at the post, the correctional phase. That
5 presentence report is following them forever.

6 COMMISSIONER DUNNE: Sorry for the
7 interruption.

8 Do you, as a matter of right, get an
9 opportunity to see that presentence report that's given
10 to the Judge?

11 MR. PITTARI: Yes, we do now. We didn't
12 until about 1975. When it was at the discretion of the
13 judge. And some judges would allow us to see it. But
14 most would not at the time. But since approximately
15 1975, under the law, we are allowed to see the
16 presentence report. We're supposed to have it at least
17 24 hours in advance of the sentencing.

18 MR. NOWAK: Do you get those in advance, that
19 far in advance, in Westchester County?

20 MR. PITTARI: Yes. We'll get them the day
21 before. Sometimes we might get them a little earlier.
22 It depends on the judge essentially. Probation can
23 deliver them to the Judge earlier. Some of the judges
24 can give it to us earlier so we had -- we have a chance
25 to respond to it.

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2 sorts of case law that says if you see anything wrong
3 in the probation report, misstatements of facts about
4 the client's record or his background or whatever, you
5 must correct it at the time of sentence or before
6 sentence.

7 There are Appellate cases that say you cannot
8 go back after sentence has been pronounced and do an
9 article 78 or some other kind of proceeding to correct
10 the mistakes in that report after the fact. So it is
11 very critical that we see that report in advance.

12 I know that courts and stipes under the
13 direction of OCA, et cetera, have strict standards and
14 goals and things, but I have no objection at all to
15 giving probation departments that can be understaffed
16 more time to commit resources to that presentence
17 report. Take as much time as they want, really, to
18 make sure there's a complete report and get it to the
19 parties, and this would be both the defense and
20 prosecution, well in advance of sentencing, okay? But
21 a slight legislative change could be made to bring it
22 there.

23 Yes, sir.

24 JUDGE KLOCH: S&G is not impacted by
25 post-disposition. By that I mean, post-plea periods of

26 time. Once a plea has been taken, there's been a

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2 conviction, S&G stops. So, you know, a sentence can
3 take forever. It doesn't violate S&G.

4 MR. PITTARI: I know that. But I know also
5 that I have sat in many meetings, and you gentlemen
6 have also, where this has been discussed with judges
7 saying we still have to move things fast.

8 I agree with you that it is supposed to stop
9 at sentencing time, but there is still tremendous
10 pressure from certain administrators to get things
11 moving. And I would like to see more time.

12 If -- I think I made my main point and why I
13 think that Probation should be under the realm of the
14 judiciary. So I'll leave anything you want for any
15 further questions.

16 COMMISSIONER DUNNE: Thank you.

17 Questions of Mr. Pittari?

18 Ms. DA?

19 MS. DiFIORE: No questions.

20 JUDGE CORRIERO: I have a question.

21 Thank you very much for your presentation and
22 point of view.

23 How would the Probation Department under the
24 jurisdiction of the judiciary preserve its
25 impartiality, as you put it, or its impacts? How would

26 it do that? How would it function?

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2 MR. PITTARI: Actually, they would preserve
3 it, theoretically, in the same way that the judiciary
4 is supposed to preserve it. I mean, isn't it the
5 standard that judges are supposed to be impartial?
6 They're not supposed to be in favor of the defense or
7 the prosecution, okay? They're supposed to apply the
8 law. They're supposed to use their discretion to
9 sentence individuals as individuals based on the crime,
10 et cetera. So I see it being perfectly in sync with
11 the role of the judiciary, okay? That the Probation
12 Department should have -- should be an impartial
13 fact-finder. I mean, the legislature and the executive
14 branches don't have -- aren't under the constraint of
15 impartiality as we all know. Many legislatures, many
16 executives feel they can comment on anything and they
17 don't have to -- they can take one side or the other.

18 The judiciary is supposed to be impartial.
19 So the people that work -- that I feel should work
20 under the judiciary are supposed to have that
21 impartiality.

22 JUDGE CORRIERO: So the issue that has been
23 raised and discussed about the conflict of interest in
24 terms of the violations, you don't see that as a
25 conflict at all?

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2 at all. Our prosecutor, she and her predecessors,
3 except for that one short period of time, they can very
4 affirmatively prosecute violations of probation and
5 they do a very good job at it. So I don't see that
6 being a conflict at all.

7 JUDGE BAMBERGER: What about jurisdictions in
8 which the prosecution of probation violation occur with
9 the participation of the Probation Department and not
10 the District Attorney's office? Do you have a problem
11 with that?

12 MR. PITTARI: Well, the Probation Department,
13 if they want to file a violation, either file the
14 violation or go to the judge and ask the judge to file
15 the violation. It happens one of two ways. Then it
16 appears on the court calendar and the district attorney
17 comes in and prosecutes it.

18 JUDGE BAMBERGER: That's not the practice in
19 every county, though. Although maybe in some.

20 MR. PITTARI: I know it has been except for
21 that short period of time. At the time of practice in
22 our county.

23 JUDGE BAMBERGER: I think people have the
24 sense that the Probation Department becomes an
25 adversary party when they make a sentence

26 recommendation, probation, imprisonment. Except in

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2 those cases where imprisonment is mandatory.

3 Would it fit your vision of the Probation

4 Department being an arm of the court if that

5 recommendation section of the presentence report is

6 omitted so that Probation makes no recommendation, but

7 just lists the information that they have collected?

8 MR. PITTARI: No. I think Probation can

9 make, can and should make, a recommendation because

10 they're giving the Court some guidance, all right? As

11 long as it's fact-based and analytical and as long as

12 it's not a boilerplate recommendation, okay? And it's

13 not -- I've got to tell you, quite frankly, in recent

14 years, we've seen some boilerplate recommendations that

15 have said, okay, all conditions under such and such,

16 all special conditions under this program or that

17 program must, must be enforced. Even if it doesn't fit

18 the individual. Things like that don't make much sense

19 to me and I don't think they're much good for anything

20 except causing a probationer to possibly violate

21 probation. But I have seen, I have heard, I have been

22 in a room where people have, quite frankly, bashed

23 judges. I mean, people from the executive branch, from

24 the government have bashed judges for not following all

25 of those recommendations even when it doesn't fit. And

26 judges are sometimes afraid not to follow those

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2 recommendations because they say, well, if anything
3 does happen here, then the Probation Department and the
4 executive will say, oh, we told the judge that he
5 should do this and -- in that case, and he shouldn't do
6 it and, you know, that's why he must be admonished or
7 whatever, okay?

8 Sentencings have to be all right. There's a
9 societal interest, but there's also -- it's very
10 important the sentencings have to be framed toward the
11 individual who is being sentenced. Certainly, you
12 know, you can go into a variety of things, I've seen
13 things, that just don't fit certain conditions that are
14 absurd. I've heard Probation Officers disrespect
15 judges in a way that I would hope, in my 37 years of
16 practice, have never disrespected a judge in a public
17 forum just because the Judge says, no, I think
18 condition X is inappropriate, I'm not go going to apply
19 that condition. I've had probation officers tell a
20 judge well, then, you can't put the man on probation
21 because our Probation Department won't accept him
22 unless you impose all of these conditions. Well, that
23 is absolutely absurd. In my view. You have to
24 remember you're talking to a defense attorney here.

25 (Whereupon, the following was transcribed by

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1 THE CHAIRMAN: Judge Kloch.

2 JUDGE KLOCH: Thank you, Counselor, for
3 your testimony.

4 But I take it, based on your comments,
5 that you would be opposed to any modifying of the
6 requirement of a PSI to allow it to be within the
7 discretion of the Court?

8 MR. PITTARI: Well, certainly, once again,
9 I deal always in felony cases. So I think it -- it's
10 always appropriate, in a felony case, to have that
11 PSI, to -- the question with regard to the judge from
12 Nassau, when you were saying how is sentence
13 pronounced, how do your judges pronounce sentence, it
14 varies. Some of them will put a top range on the
15 sentence and may come down. Some of the others do
16 not. Or sometimes some judges will put a top range
17 on it. But we know from experience that that's going
18 to be the range. So we tell our client, "He said
19 that's going to be the top range, but that's what
20 it's going to be, it's going to be three years" or

21 "it's going to be a year in the pen," or whatever.

22 Some judges are more flexible on that.

23 I know it was -- you know, it was very

24 prominent a bunch of years ago to take judicial

25 discretion away from judges. I don't -- I'm not in

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1 favor of that. I want the judges to have the maximum
2 discretion. If the judge does something -- something
3 wrong, if he does something that we think is
4 inappropriate for sentencing or something, okay, we
5 can appeal that, for example, okay, there's a method
6 by which we can do something there, if we feel
7 offended by it.

8 But I'm in favor of that maximum
9 discretion.

10 JUDGE KLOCH: Okay.

11 THE CHAIRMAN: Questions?

12 COMMISSIONER HORN: Given your last
13 statement -- the law now allows the probation
14 reporting to be waived where it's not going to be
15 incarceration without the benefit of the PSI, whereas
16 the sentence requires PSI. There is now judicial
17 discretion.

18 Do you believe there should be discretion
19 to waive the PSI where a judge is going to be
20 imposing incarceration and will you advocate
21 continuing to allow discretion where the judge is not
22 going to order incarceration?

23 MR. PITTARI: I think I told you before
24 that I first started out in practice under the Code

25 of Criminal Procedure. And under the Code of

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1 Criminal Procedure, judges could sentence people
2 without the requirement of the probation report. And
3 I sat through all too many sentences where these
4 would be mostly on felonies that were reduced to
5 misdemeanors where the judge had to -- could sentence
6 up to a year in jail. I found all too many judges
7 just sentencing to that year in jail, not considering
8 the possible benefits of probation, for example. So
9 I think that the pre-sentence report was an
10 affirmative thing that was good for both my clients
11 and society.

12 COMMISSIONER HORN: So you're saying it
13 should be required?

14 MR. PITTARI: I would not like to see
15 somebody being able to, in five minutes after a plea
16 bargain, and this used to happen, sentence somebody
17 immediately to jail or not make a promise on a
18 reduced plea. And five minutes after, with -- you
19 know, they heard the little pitch from the defense
20 attorney, they heard what the DA had to say and the
21 judge said, "A year, a year, a year, a year." I
22 don't like to see that.

23 COMMISSIONER HORN: On the other side, do
24 you believe that the probation report -- the current

25 statute, which allows for waiver of the probation

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1 report where incarceration is not imposed, should
2 that be the case?

3 MR. PITTARI: Where incarceration is not
4 imposed?

5 You're talking about placing -- being
6 placed on probation?

7 COMMISSIONER HORN: Should they not be --

8 MR. PITTARI: I think it's important that
9 you should have the pre-sentence report.

10 COMMISSIONER HORN: Thank you.

11 THE CHAIRMAN: Okay. Thanks again,
12 Mr. Pittari.

13 MR. MACCARONE: Thank you, sir.

14 THE CHAIRMAN: Timothy Rountree is the
15 attorney in charge of Queens County Criminal Defense
16 Division for the Legal Aid Society of New York.

17 A patient man.

18 Thank for you being with us today.

19 MR. ROUNTREE: Thank you.

20 Good afternoon.

21 Once again, my name is Tim Rountree. I'm
22 the attorney in charge of the Queens County Office of
23 the Legal Aid Society Criminal Defense.

24 THE CHAIRMAN: Is it correct you're

25 filling the large shoes of your predecessor?

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1 MR. ROUNTREE: Yes, I am.

2 THE CHAIRMAN: Is he here?

3 MR. ROUNTREE: He's here.

4 The Legal Aid Society welcomes the
5 opportunity to testify before the Task Force on the
6 future of probation concerning proposals to improve
7 probation services in New York State.

8 Since 19 -- 1876, the Legal Aid Society
9 has provided free legal services to New York City
10 residents who are unable to afford private counsel.
11 Annually, through our criminal, civil and juvenile
12 offices, our staff handles about 275,000 cases for
13 poor families and individuals. The services we
14 provide reflect the entire gamut of our clients'
15 needs, from immigration representation for the newest
16 arrivals to health care benefits for the oldest New
17 Yorkers.

18 By contract with the City, the Society
19 also serves as the primary defender of poor people
20 prosecuted in the State court system. The Criminal
21 Defense Division, or CDD, which represents more than
22 210,000 clients each year on charges ranging from the
23 most serious first degree murder charges to low-level
24 violations of the New York City Administrative Code,

25 has been at the forefront of efforts to reduce

1 recidivism. Not only have we worked collaboratively
2 with judges, prosecutors and other criminal justice
3 agencies to develop specialized court parts focusing
4 on drug treatment, domestic violence and juvenile
5 crime, but the CDD has also developed innovative,
6 defense-based initiatives that have been proven
7 successful at diverting clients from crime without
8 compromising the delivery of zealous legal
9 representation.

10 For example, the Criminal Defense
11 Division's Juvenile Offender Project has a remarkable
12 track record of changing clients' lives for the
13 better.

14 In a study done of our youngest clients,
15 three years after their sentencing, at which time
16 80 percent of them were diverted from incarceration,
17 only 10 percent of them had been convicted for
18 re-arrests for felony offenses.

19 Similarly, the Division's MICA program,
20 the Mental Illness Chemically Affected Clients
21 program project, which is funded by a federal grant,
22 assists seriously mentally ill, substance-abusing
23 clients to secure community-based psychiatric and
24 drug treatment services, housing, vocational training

25 and benefits following release from jail. Clients

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1 who work with the project have a 40 percent reduction
2 in recidivism over those who refuse services or
3 withdraw from the program.

4 Given the breadth of legal services we
5 provide, the Society is in a unique position to
6 testify about proposals to improve probation. Many
7 of our cases result in a sentencing of probation --
8 a sentence of probation, rather.

9 We also represent many of the people who
10 are accused of violating the terms of probation.

11 As it has been traditionally defined,
12 there is no small measure of contradiction in the
13 function of probation. It serves an extension of the
14 police department through such activities as
15 monitoring for criminal activity, mandatory
16 reporting, home inspection and revocation of
17 probation when there is evidence of criminal activity
18 or a violation of the probation rules. It also
19 serves as a kind of social services provider, as it
20 interacts with a very needy population for which
21 access to essential services is often the best way to
22 prevent future crimes. Probation supervision
23 provides the critical opportunity to link individuals
24 with social service programs, such as drug or mental

25 health treatment, and education and vocational

1 training.

2 The New York City Department of Probation

3 mission statement reflects these competing goals.

4 That mission statement says -- this is somewhat

5 unlike Westchester County, but the New York City

6 Department of Probation mission statement says:

7 "The business of the New York City

8 Department of Probation is protecting the community

9 by intervening in the lives of offenders, holding

10 them accountable and serving as a catalyst for

11 positive change. We act in collaboration with the

12 community and other justice partners. We provide

13 information and services to the courts, give victims

14 a voice in the justice system and help strengthen

15 families."

16 We recognize the inherent challenges the

17 Probation Department, in fact, faces in attempting to

18 meet the wide-ranging goals with limited funding.

19 Many of the recent developments of the law have added

20 to the responsibilities of the police function of the

21 Department of Probation.

22 In addition to monitoring and reporting,

23 the Department now requires DNA samples of its

24 eligible population, performs drug testing of

25 probationers and participates in sweeps, such as the

1 recent Operation Predator, which, together with the
2 Department of Homeland Security, targeted and
3 arrested people on probation eligible for
4 deportation. These developments have further
5 entrenched the Probation police function.

6 Our experience, unfortunately, has been
7 that the enforcement role is improvised or emphasized
8 at the expense of service provision. It is our
9 belief, however, that service provision enhances
10 enforcement. We have seen that, through referrals to
11 social service providers, our clients have addressed
12 significant problems, such as substance abuse,
13 homelessness, mental illness and lack of education
14 and job training, that put them at risk for
15 re-offending.

16 Stabilizing our clients with social
17 services greatly decreases their likelihood to
18 re-offend, which is beneficial to them, their
19 families and the larger community.

20 We urge the Probation Department to
21 reclaim its mission of serving as a catalyst for
22 positive change by focusing on accurate needs
23 assessment and training of its officers in available
24 services and provider systems.

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1 receive a sentence of probation are very similar to
2 our general client population. They are, above all,
3 poor. Many are without the most -- many are without
4 or go without most things that we consider as the
5 prerequisite in life, a job, a home, decent medical
6 care and a functional family. A disproportionate
7 number are mentally ill, which often goes
8 undiagnosed, and the underlying reason for drug and
9 alcohol abuse. Or they have special needs, such as
10 mental retardation, teen pregnancy and a learning
11 disability, including serious medical conditions, low
12 education levels, drug or alcoholism. Because of the
13 high level of stress inherent in their lives, our
14 clients tend to rebuff directives -- the directives
15 provided to them in an antagonistic setting and are
16 more likely to respond when they believe they are
17 being treated respectfully.

18 For many probationers, the provision of
19 appropriate services or treatment is the cheapest and
20 most effective way to prevent future crimes. Sound
21 reasons of fiscal policy, public safety and simple
22 humanity dictate that treatment should be provided
23 within the community-based health and human services
24 system, rather than waiting for a violation and

25 admission to the more expensive and less effective

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1 correctional system.

2 We would like to share a few stories which
3 highlight some of the problematic experiences our
4 clients have had within the Probation Department.
5 These, unfortunately, are representatives of a much
6 larger number of similar experiences.

7 In one case, a teenage client reported to
8 her probation officer on her assigned day. She
9 brought her two-week old baby with her because she
10 could not locate child care services. Her probation
11 officer told her to leave because it was against
12 their rules for her to bring the newborn into the
13 office. She was told that she would be marked as
14 having missed her probation appointment. An agency
15 that cared about providing services would have seen
16 this as an opportunity to help the mother and child
17 and perhaps even inquire about artificial barriers to
18 services which the Probation Department itself could
19 have helped with. The Department could only see a
20 rule violation.

21 It is often difficult to get Probation --
22 for a probation officer to help, even when the
23 services are requested.

24 A mildly retarded client was recently put

25 on the kiosk hand reporting system. He aged out of

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1 the special needs school and was having trouble
2 accessing services at home. His father repeatedly
3 reached out to the Probation Department, but no one
4 responded to his requests. The client was violated
5 and incarcerated until a plan could be worked out by
6 defense counsel.

7 In another case, an HIV-positive client
8 was sentenced to probation for drug possession, his
9 first conviction. He lived in California and
10 probation was transferred there. He enrolled in a
11 residential supportive living program and provided
12 monthly reports to his New York probation officer
13 until he was assigned a probation officer in
14 California. After his California probation officer
15 retired, he continued to send reports to New York.
16 Four years and ten months into his five-year
17 probationary period, the New York City Department of
18 Probation filed a violation of his probation on his
19 failure to report and verify his residence. His
20 social security and disability payments were stopped
21 because New York had issued a warrant for his arrest.
22 He contacted the New York probation officer to whom
23 she had -- he had been sending his reports and she
24 said she could do nothing. He borrowed money to come

25 to New York. After asking for a one-month

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1 adjournment to write an updated report for the Court,
2 the new probation officer assigned to the case
3 refused to speak with defense counsel and did not
4 corroborate the written information provided by the
5 client about his residence or the services he was
6 receiving in California before the hearing. Despite
7 the information provided by the client that he was in
8 a stable residence, receiving services and had
9 remained crime free, the probation officer still
10 recommended incarceration for failure to report. The
11 Court disagreed and terminated probation.

12 Sometimes the Department does try, but the
13 effort shows a lack of commitment and good planning.

14 The Manhattan Probation Department in
15 Supreme Court set up a specialized program to work
16 with juveniles aged 13 to 15. We found that our
17 young clients who had succeeded in complying with the
18 rules in private alternative to incarceration
19 programs reacted poorly to the antagonistic
20 environment of the probation program. Our clients
21 reported feeling that the probation officers were
22 hostile and not addressing their needs. This program
23 was disbanded after one year.

24 In the preparation of its pre-sentence

25 reports, the Probation Department should play the

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1 role of a neutral reporter to the Court. It does
2 not. In too many cases, the Department fails to
3 explore service alternatives to incarceration and
4 it's increasing -- and it is increasing the
5 recommendation of incarceration. The reports
6 themselves often fail to address any mitigating
7 circumstances of a crime. The presumptive penalty is
8 incarceration.

9 For mentally ill clients, probation
10 officers sometimes justify their recommendations that
11 they will be safer in jail.

12 In a recent case, incarceration was
13 recommended for a 17-year-old young man who had a
14 sexual relationship with a 16-year-old girl three
15 months before her 17th birthday.

16 In its role as neutral evaluator,
17 Probation needs to step back from the presumptive
18 sentence and consider individual circumstances of
19 each case.

20 Additionally, Title 9 of the New York Code
21 Rules and Regulations, Section 350.9 subsection
22 (a)(1)(I), provides that:

23 "In the absence of a Court-requested date
24 for submission, for all adult criminal cases, the

25 probation report shall be submitted to the Court

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1 sufficiently in advance of one court day prior to the
2 disposition, except if waived by the parties."

3 This mandate is really -- this mandate is
4 rarely, if ever, followed by New York City Department
5 of Probation.

6 The importance of the probation report is
7 not fully recognized in the lives of our clients.
8 For those of our clients who serve periods of
9 incarceration, the pre-sentence report affects which
10 facilities they are sent to, which programs they're
11 allowed to participate in while incarcerated and
12 release decisions that are made.

13 In addition to providing victim impact
14 statements, probation officers should include any
15 mitigating circumstances that bear upon the manner in
16 which the crime is committed. Probation officers
17 should be open to receiving and incorporating
18 information provided by defense counsel about their
19 clients.

20 It is critical to the courts and future
21 programming decisions by the Department of
22 Correctional Services and the Department of Parole
23 that the information in probation reports provided is
24 accurate and complete so that our clients are not

25 prejudiced by them after sentence.

1 When used as a sentence disposition in
2 criminal cases, the best use of probation is as an
3 alternative to incarceration. Probation must be a
4 viable disposition in cases where incarceration is a
5 real possibility.

6 For example, we have advocated for
7 Rockefeller drug law reform that allows first-time
8 offenders convicted of class B level felonies, which
9 are often street sale of cocaine or heroin, to
10 receive a sentence of probation conditioned on a
11 completion of a drug treatment program.

12 Greater sentencing flexibility for the
13 courts designed to get more people into treatment
14 will necessitate greater responsibility for the
15 Department of Probation. We would like to see a
16 Department that is more willing and able to assume
17 such responsibility.

18 Now, we recognize that the Department has
19 taken steps to provide quality services. A good
20 example in the New York City Family Court is the
21 Esperanza Program, which provides an alternative to
22 incarceration rather than placing children in
23 facilities run by the Office of Children and Family
24 Services. The challenge is to expand such

25 alternatives beyond this small program to more

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1 juveniles and to the adult court system. We should
2 make this approach an integral part of probation and
3 not the rare exception.

4 The delivery of or referral to essential
5 services must become a higher priority within the
6 entire Department, which has lagged far behind more
7 modern innovations, such as the drug courts, in the
8 delivery of services.

9 We have found that, over the last ten
10 years, our client base presents with greater needs
11 than in the past. The recognition of many of these
12 problems, as outlined above, require education in
13 specific fields, training and experience.

14 We encourage the Probation Department to
15 emphasize the needs assessment component of its work
16 so that probationers can be referred to appropriate
17 services, allowing them to get back on the right
18 track.

19 Probation also needs to learn about the
20 complex systems, for example, school, housing,
21 benefits that support poor people, in order to enable
22 it to make appropriate service referrals. The
23 Department of Probation should work collaboratively
24 with service providers, defense counsel and the

25 courts in creating service plans for probationers.

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1 The Department needs people whose specific
2 mission and training are to deliver and refer and be
3 educated in referral to quality services.

4 One recent effort that ended in failure,
5 the Manhattan Program for the Mentally Ill, was
6 probably the right idea but staffed with the wrong
7 people. It might have worked if it were staffed by
8 MSW social workers and mental health professionals
9 with experience in working with mentally ill people.

10 Other states have managed to accomplish
11 this. In Arizona, for instance, specially trained
12 probation officers are part of a team in the local
13 mental health court and often assist the Court in
14 making appropriate referrals.

15 With such a large percentage of mentally
16 ill people under probation supervision, this type of
17 expertise should be available as needed in every
18 probation officer -- to every probation officer.

19 Referral to appropriate drug treatment
20 providers would occur far more frequently by
21 Probation if the referral were done by MSW-trained
22 social workers whose job it is to know the services
23 available in the local community of the probationer.
24 Training should make them aware that one drug

25 treatment program is not the best choice for

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1 everyone. These experts could refer the client to
2 the best available program to suit his or her needs.

3 We agree that more resources for the
4 Department are essential. Without a change of
5 priorities, however, these resources will be wasted.

6 In the course of our representation, the
7 Legal Aid Society lawyers and social workers become a
8 part of a support network for our clients. Often
9 defense counsel and social workers have been in a
10 relationship with the client and the client's family
11 for months and sometimes years and, as a result of
12 their involvement in the case, they're involved and
13 have much more insight, which could aid Probation in
14 investigating and helping to assist with pre-sentence
15 reports and develop strategy for supervision.

16 Despite this, Probation seems to view us
17 as an enemy. Officers refuse to take our calls,
18 decline to call us back and, in some cases, hang up
19 on us.

20 The refusal to recognize the important
21 role of defense counsel is nowhere more apparent than
22 in the revocation process. When a decision is made
23 to revoke probation, defense counsel receives a
24 notice of a date for a hearing. In a clear violation

25 of due process, the Department routinely fails to

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1 provide any specific notice as to the reason for the
2 hearing. It is only when defense counsel gets to the
3 hearing that actual notice is given. We have
4 repeatedly requested notice of the charges and have
5 been advised that this is too cumbersome for the
6 Department to send both the notice of the hearing and
7 of the specific charges for the violation of
8 probation. Our calls requesting notice before the
9 hearing are often ignored.

10 Lack of notice works to the detriment of
11 everyone. Many cases can be resolved with some work
12 by defense counsel, for example, by finding more
13 appropriate programs that is acceptable to the Court.

14 In the current practice, defense counsel
15 is often forced to choose between requesting an
16 adjournment, thereby allowing the client to go to
17 jail, and accepting some quicker disposition.

18 We propose that Criminal Procedure Law
19 410.40 be amended to include a requirement of notice
20 of the charges to the defendant and counsel. The
21 present statute requires only a notice to appear.

22 The statute should read:

23 Criminal Procedure Law 410.40. Notice to
24 appear.

The Court may, at any time, order that a

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1 person who is under a sentence of probation or of
2 conditional discharge appear before it. Such an
3 order may be in the form of a written notice,
4 specifying the time and place of appearance and
5 providing notice of the reason for the belief that a
6 condition of the sentence has been violated, mailed
7 to or served personally upon the defendant as the
8 Court may direct.

9 When the order is in the form of such a
10 notice, failure to appear as ordered, without reason
11 or cause, therefore, constitutes a condition of the
12 conditions of the sentence, irrespective of whether
13 such requirement is specified as a condition thereof.

14 Thank you for the opportunity of sharing
15 our comments with you.

16 THE CHAIRMAN: Thank you.

17 Any questions?

18 MR. MACCARONE: Will you be providing
19 copies of that?

20 COMMISSIONER HORN: Do you have an opinion
21 as to whether or not Probation should be under the
22 Judiciary or should be part of the executive branch.

23 MR. ROUNTREE: I've given it some personal
24 thought. I think that it would be a good idea if it

25 would be supervised by the Judiciary.

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1 Right now, I think, for all parties
2 involved, knowledge is power, and the more knowledge
3 you have through pre-sentence reports, input from
4 defense counsel, it puts the judge in a much better
5 place to make a decision as to what happens to a
6 client. I disagree that, in some ways, there's no
7 need for probation and the pre-sentence report. In
8 many cases, the sentence is undecided. The judge
9 doesn't know what sentence he or she wants to impose.

10 And I think having the judge involved in that up
11 front makes it much easier, in case there is a
12 violation down the road, in helping that judge make a
13 decision ultimately.

14 THE CHAIRMAN: Mr. Rountree, since this is
15 a hearing on record, and since the New York City
16 Probation -- Legal Aid Society is such an important
17 player in the criminal justice scene, your opinion
18 with regard to the appropriate placement of Probation
19 in the Judiciary, is that your personal opinion or is
20 that a position of the Legal Aid Society?

21 MR. ROUNTREE: That's my personal opinion.
22 I'm not privy to what the policy would be after the
23 powers that be at Legal Aid thought about that. I'm
24 only speaking from my personal experience as a staff

25 attorney, as a supervising attorney with the Legal

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1 Aid Society, now someone who is an attorney in charge
2 of an office.

3 THE CHAIRMAN: That's fine.

4 Judge Bamberger?

5 JUDGE BAMBERGER: When a lawyer
6 representing a client reads the pre-sentence report
7 and finds an error, factual error, in it, do you have
8 a procedure for handling that?

9 MR. ROUNTREE: Well, there is a
10 recommendation that we train our lawyers to engage
11 in.

12 The first problem is, many times we don't
13 see the report until the day of sentencing and,
14 actually, at the moment of sentencing. We walk into
15 a courtroom and the case is on for sentencing and we
16 ask the clerk for a copy of the probation report. We
17 don't get it in advance.

18 JUDGE BAMBERGER: You don't ask for an
19 adjournment of a half an hour, an hour from the judge
20 to read the report with your client?

21 MR. ROUNTREE: In those rare instances
22 where we do ask, more likely than not, the judge will
23 not give us time to -- we have time before the case
24 is called to look at it, but we can't peruse it and

25 go over it with a fine tooth comb, as we would like

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1 to do. We're just not given that time.

2 JUDGE BAMBERGER: You find the general
3 practice of the judge is not to give you a short
4 adjournment so you can go over the report?

5 MR. ROUNTREE: That's true. We won't get
6 a short adjournment, no.

7 JUDGE BAMBERGER: My second question is,
8 when you get the report, assuming that you have an
9 opportunity to read it, if you see something that you
10 know is incorrect factually, what procedure do you
11 use to bring that to the judge's attention?

12 MR. ROUNTREE: Our lawyers are trained and
13 we insist that they bring it to the Court's attention
14 and make a record, actual record, of any
15 inconsistencies or inaccuracies about the report.

16 JUDGE BAMBERGER: And you have to order
17 the transcript of that proceeding to attach it to the
18 report and pay for it?

19 MR. ROUNTREE: We have to attach it.

20 JUDGE BAMBERGER: And you have to pay for
21 that?

22 MR. ROUNTREE: Yes.

23 JUDGE BRUNETTI: In a State sentence case,
24 the court reporter is required by law to generate the

25 minutes.

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1 JUDGE BAMBERGER: It doesn't always happen
2 and it may not be part of the sentencing procedure.

3 MR. ROUNTREE: If we give a transcript
4 order request for that proceeding, the court reporter
5 is going to say, "Where's our money?"

6 JUDGE BAMBERGER: My next question is,
7 have you ever asked the Probation Department or --
8 the judge to ask the Probation Department to take the
9 report back and make a physical change in your
10 report, thereby obviously having to adjourn the
11 sentence?

12 MR. ROUNTREE: I'm not aware of an
13 instance where the Court had made a physical change.

14 JUDGE BAMBERGER: The Court doesn't do it.
15 The Court sends it back to Probation for Probation to
16 make the change.

17 I know because I tried them both.

18 MR. ROUNTREE: I'm not aware of instances
19 of that.

20 I guess, if there was a glaring
21 inconsistency or problem that really would impact on
22 the client, you could request that.

23 There have been times when a probation
24 report, particularly if it's been updated, the case

25 has been on many times, and there perhaps has been a

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1 new arrest, and the Court asks for an updated report,
2 and if information is not included in that, the judge
3 wants to make sure that information is there, they
4 have to order an updated report and that information
5 is then put in there.

6 JUDGE BAMBERGER: Okay. The problem with
7 -- there are two ways, actually, that I did it. I
8 directed the Probation Department to make a factual
9 change. They will not change opinion, but they will
10 change factual errors. That requires an adjournment
11 of the sentence and thereby an ordering of the
12 transcript to go -- but even on the date of sentence,
13 the court reporter has to get those minutes out
14 before the end of the court day, because the
15 defendant is sent out with his pre-sentence report or
16 her pre-sentence report. And if the minutes are not
17 attached at the time that the report and the
18 defendant go out, the minutes don't get -- are likely
19 not to get connected, once it gets to the Department
20 of Corrections.

21 MR. ROUNTREE: Right.

22 JUDGE BAMBERGER: So I'm actually making
23 this record to indicate that problems in the
24 pre-sentence report -- and thank for you helping

25 me -- are really catastrophic and very difficult to

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1 deal with and, in many cases, the Probation
2 Department is uncooperative, at least in my
3 experience, in making changes to factual errors in
4 the pre-sentence report.

5 MR. ROUNTREE: Can I just make an
6 additional comment on that?

7 I know it's gotten better in some
8 jurisdictions, some boroughs, where the lawyers are
9 getting the probation reports the day of sentence.

10 But, certainly, it would be extremely beneficial if
11 we get them within 24 hours. We would save time, we
12 could catch those problems with the report and not
13 have to make a record, not necessarily have to raise
14 the issue at the last minute.

15 I know, in other places, and I practice in
16 Queens now, we're not even getting the probation
17 report. Some court clerks are, in fact, saying to us
18 we can't have a copy of them. So they let us read
19 them and they order us to give them back.

20 JUDGE BAMBERGER: You can't take them away
21 from the desk.

22 MR. ROUNTREE: Yes.

23 JUDGE BAMBERGER: Yes, that happens.

24 THE CHAIRMAN: Yes, Judge?

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1 for your remarks.

2 And it's apparent from your remarks that
3 the Legal Aid Society's relationship with individual
4 members of the Probation Department have deteriorated
5 and have become strained, and I think that's a fair
6 characterization of what you said.

7 How would you remedy that situation?

8 MR. ROUNTREE: Well, certainly, I think
9 there are problems in some boroughs. The
10 relationship is better in some boroughs, not so good
11 in others.

12 I've had the benefit to be able to
13 practice in Manhattan, Queens and Brooklyn and --
14 with the exception of the Bronx. And I think there
15 has to be a change in attitude to the function of
16 Probation, how they work with defense counsel, you
17 know. We're all -- we have our role. The goal here
18 is to help the person who the Court -- the judge
19 thinks should be on probation.

20 JUDGE CORRIERO: Can you suggest a
21 specific apparatus in order to open the lines of
22 communication?

23 MR. ROUNTREE: I think what I've seen work
24 in Queens, and I refer to Queens only because we have

25 many problems, in some courts, like IDV Court,

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1 Domestic Violence Court, Queens Treatment Court, QTC,
2 Mental Health Court, we bring many parties together
3 and actually we get in a room and we talk about how
4 we're going to go forward. And we don't make a
5 decision until everyone has input.

6 And I think I've seen that, in the
7 beginning, when you put people in a room that have
8 differences, that have diverse backgrounds and
9 interests and goals, it's a little bit standoffish.

10 But, over time, you find out you're really on the
11 same page. You can be on the same page.

12 I think, to start, you get people in a
13 room talking about how to make the system better.

14 JUDGE CORRIERO: Thank you.

15 MR. ROUNTREE: It goes a long way.

16 THE CHAIRMAN: Questions?

17 COMMISSIONER HORN: It's part of the
18 record you made about the clients.

19 I have one observation and one question.

20 The observation is this. The statute
21 requires that pre-sentence investigation be delivered
22 to the Court the day prior to sentencing. In fact,
23 probation pre-sentence reports in New York City are
24 delivered to the court clerks electronically by

25 e-mail. So we have a record of when they were

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1 delivered to the clerk's office. So if you have a
2 problem with obtaining them, I suggest to you the
3 problem rests with the court clerks and not with
4 Probation, number one.

5 Number two, have you ever -- I've been
6 Director of Probation for almost five years. Have
7 you ever or your colleagues ever requested a meeting
8 with me to address the concerns that you enumerated
9 this morning? Simply a yes-or-no question.

10 MR. ROUNTREE: I have not.

11 THE CHAIRMAN: Question?

12 MR. BURNS: I didn't hear the very end of
13 the judge's question. If mine is exactly the same,
14 just tell me.

15 I was going to ask you if you would
16 consider the concerns you have, the anecdotal
17 situations with the kiosk and so on, can you describe
18 how any of those might be resolved if, in fact, there
19 was a shift from executive branch of the City to the
20 statewide court system? Would you see any or all of
21 those kinds of problems being easier to resolve?

22 MR. ROUNTREE: I think many of the
23 problems stem from the fact that our clients come
24 with a whole host of problems from, you know, being

25 drug-addicted, alcoholism, homelessness, mental

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1 health issues. If there was a recognition that these
2 people are struggling with these problems, like the
3 woman with her child or the mentally ill person with
4 the kiosk, that they're not always going to be able
5 to do what's asked of them the way a particular
6 probation officer requested, because a variety of
7 issues is going on with them. If there was a
8 recognition and appreciation of those things and some
9 flexibility, not to excuse inappropriate behavior or
10 illegal behavior or bad behavior, but a recognition
11 that many of these clients come with debilitating
12 issues that cause them not to be -- you know, someone
13 decided they should be on probation for a reason.
14 So, if there was a recognition at some point there's
15 a need to be flexible and not have such rigid rules
16 which impede them getting the services that they so
17 desperately need.

18 COMMISSIONER POZZI: Since we are on the
19 record, I want to make a statement about the PSI
20 statewide. Just to put in the record, there are
21 thousands and thousands of PSIs that are prepared
22 every year and, of course, a certain percentage of
23 them are going to have some factual mistakes. But I
24 would say, overall, the effort that is put out by the

25 probation officers in this state is outstanding and

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1 the quality of the reports are also outstanding. I
2 think it's been a great aid to the judges, to the
3 Probation Department and to the correction facilities
4 putting in the information that we are able to
5 provide, even with the limited resources.

6 THE CHAIRMAN: Again, Mr. Rountree, thank
7 you and the Legal Aid Society for such a thoughtful
8 presentation.

9 MR. ROUNTREE: Thank you.

10 THE CHAIRMAN: Are there any other members
11 of the public who wish to be heard at this hearing?

12 Are there any comments by any of the
13 members of the Task Force before we recess to
14 Syracuse next week?

15 This meeting is adjourned and thank you.

16 Sir?

17 MR. O'GRADY: I would like to say
18 something, if you don't mind.

19 THE CHAIRMAN: Would you please step up
20 and identify yourself.

21 MR. O'GRADY: I'm Probation Officer Rob
22 O'Grady with Westchester County Department of
23 Probation.

24 And I have a couple of observations.

I didn't plan on speaking here today, so I

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1 thank you for your patience. It's been a long day.

2 A couple things.

3 One is about the PSIs. Commissioner Pozzi
4 just touched on it lightly. I'm a line PO. I work
5 in a DWI unit. I've been doing this for ten years.
6 I worked mostly with misdemeanors over the last ten
7 years, probably about 80 percent of the cases I've
8 dealt with. So many times I don't get a PSI when I
9 get the case. Sometimes I do. It's really, really
10 essential. It's a wealth of knowledge for probation
11 officers, once somebody is sentenced to probation, to
12 have that PSI. There's a wealth of knowledge in
13 there. Without that, they walk in cold. We have a
14 rap sheet, that's it, and instant offense. But a
15 PSI, even at a misdemeanor level, is so important to
16 the line PO. I mean, that's what this is all about.

17 I'm a line PO. Without me and Officer
18 Sierra, none of us would be sitting here today. This
19 is what it's about.

20 Also, another thing has come up.
21 Impartiality, you know, will we be more impartial
22 under the Judiciary or under the executive branch.
23 Right now, again, line PO, I'm not a PSI writer. I
24 have written some over the years. Or whether --

25 violation of probation, whether working with

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1 attorneys -- I've been doing this ten years. There's
2 a lot more experience here today. I've heard very
3 little -- we're critiquing the future of probation
4 and the critique is a criticism, positive or
5 negative. I've heard very little positive things
6 that we do every day, whether it's the law
7 enforcement side or whether it's, you know, get --
8 driving someone to Rockland State Hospital because
9 they have a .3 BAC at 11:00 o'clock in the morning.
10 We do that. Whether it's driving them to the
11 hospital for emergency psych services. We do that.
12 We do all of that. We do the law enforcement side,
13 yeah, we are law enforcement.

14 Last week I was crawling around on my
15 hands and knees searching for weapons. I got a
16 shotgun and two rifles out of this very dangerous
17 person's apartment. He had nothing but misdemeanor
18 cases. He has conditions of probation that state he
19 is not allowed to have any type of firearm. That's
20 an order from the Court. It was a good condition,
21 because the guy is a drug dealer. We charged him
22 with criminal possession of controlled substance in
23 the fifth, criminal possession of marijuana. We
24 charged him with drug paraphernalia. This guy has a

25 long history. And, thankfully, it was the PSI that

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1 tipped me off that this guy was dangerous and that he
2 may have weapons.

3 I'm trying to get him into treatment. He
4 was released. His pending cases -- while all that's
5 pending, I'm trying to get him out. He said to me
6 yesterday, he said, "I've been an alcoholic since I'm
7 14. I can't do it. I know treatment won't help me.
8 AA won't help me." I said, "Well, that's a defeatist
9 attitude, you know. I know it's hard. I know it's a
10 struggle. But that's a defeatist attitude." And I'm
11 lending him support. His wife was there. I said, "I
12 will drive you, I will literally drive you to the
13 treatment agency, if you want. I'll do whatever it
14 takes."

15 So, yeah, you know, I don't have, you
16 know, I don't have -- I mean, as a citizen of
17 Westchester County, you know, I have a stake in it,
18 that I want this DWI offender, this drug addict to do
19 well. Will he do well? Will he make it? I don't
20 know. I don't have a crystal ball.

21 But, you know, we are impartial. If he
22 goes to -- if he is incarcerated, I still get paid
23 every two weeks. Does it benefit me? Do I get one
24 less case? I am -- no, I'm going to get another

25 case. There's no two ways about it.

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1 So those are the couple things that stood
2 out.

3 Really, the PSI very, very valuable.

4 Another thing that stood out, does the
5 number of violations of probation, does that measure
6 the Probation Department's success? You know, kind
7 of like the Commissioner of Nassau County said, does
8 recidivism measure Probation Department success?
9 Well, does a violation of probation? Maybe, maybe
10 not.

11 I mean, sometimes the turnaround is, when
12 I've arrested somebody on a 410.50 Criminal Procedure
13 Law, 410.50 violation of probation, arrest them, take
14 them right before the judge, all of a sudden they
15 start to get it and they're my model probationer for
16 the next three years.

17 Just keep that in mind.

18 Thank you for your time.

19 THE CHAIRMAN: Thank you.

20 JUDGE KLOCH: If I can make a comment on
21 that.

22 Officer, I've been on the bench over
23 20 years. I've worked with I don't know how many
24 probation officers in a number of cases. And I've

25 also found probation officers terrific, hard working,

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1 helpful to the Court. I've never in the 20 plus
2 years I have been on the bench ever had a bad
3 experience with a probation officer.

4 So I think we're all cognizant of that.
5 And that's coming from the bench, not from anybody
6 who's just paid for doing probationary work.

7 So I don't think that this Task Force has
8 any goal to look at negative things about probation.
9 It's really here to try to make probation better and
10 to serve, in addition to other people, probation
11 officers.

12 THE CHAIRMAN: I think that's the right
13 note on which to conclude this hearing.

14 Certified to be a true and
15 accurate transcript of the
16 foregoing proceedings

16

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Toni Figueroa, RMR, CRR, CSR
Anne Marie Scribano, RPR

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