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TASK FORCE ON THE FUTURE OF PROBATION

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PUBLIC HEARING before the Task Force

conducted at the Room 400 of the Onondaga County  
Court House, 401 Montgomery Street, Syracuse, New  
York, before, JOHN F. DRURY, CSR, RPR, Notary  
Public in and for the State of New York, on  
October 18, 2006.

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TASK FORCE Members Present:

- JOHN R. DUNNE, ESQ. Chairman
- LAWRENCE K. MARKS, Administrative Director OCA
- HON. RICHARD C. KLOCH, Erie Cnty Admin. Judge
- MARTIN F. HORN, NYC Com Probation/Corrections
- P. DAVID SOARES, DA Albany County
- Hon. JOHN J. BRUNETTI, Justice Onondaga County
- ROBERT M. MACCARONE, Div of Prob. Alternatives
- ROBERT J. BURNS, Director of Prob. Monroe Cnty
- JOSEPH RINALDI, President Prob. Officers Assoc
- NANCY GINSBURG, Legal Aid Society, NYC
- Hon. MICHAEL CORRIERO, Supreme Court Justice

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1 Chairman

2 THE CHAIRMAN: Good morning, I'm  
3 John Dunn, Chairman of the Chief  
4 Justice's Task Force on the Future of  
5 Probation in New York State. I want to  
6 thank you for being here. I want to  
7 thank our host, John Brunetti, for  
8 having made the arrangements to be here  
9 in this magnificent courtroom and to  
10 provide an open forum for as many people  
11 who are interested. We're here for the  
12 day. If you see us leave we're headed  
13 to Buffalo for a hearing tomorrow.

14 We're here with a great opportunity,  
15 I'm told maybe somewhat without  
16 precedent, many of us old enough in the  
17 room to remember, any official body  
18 taking a close look at probation,  
19 recognizing the importance of probation,  
20 evaluating the current programs and  
21 finding out how we can make probation  
22 even better as an instrument of the  
23 criminal justice system.

24 When Chief Justice Kaye issued her  
25 State of the Judiciary in February, she

1           Chairman  
2           referred to probation being operated and  
3           administered locally is critically over-  
4           burdened, under-financed, many probation  
5           agencies have too few officers, case  
6           workers and too little technology to  
7           enforce probation conditions. I would  
8           guess that the witnesses today will put  
9           some meat on that skeleton.

10          To address the issue of strengthen-  
11          ing probation she announced the forma-  
12          tion of this Task Force, and she  
13          concluded it is time for a new era of  
14          state responsibility for probation. You  
15          will help us to achieve the goal that I  
16          have an idea our Chief Judge had in  
17          mind.

18          Let me introduce the Task Force. To  
19          my right, District Attorney of Albany  
20          County, my dear friend, David Soares.  
21          To my immediate left is Judge John  
22          Brunetti, as you know sits here in  
23          Onondaga County as Supreme Court Judge,  
24          has been a strong arm of this Task  
25          Force. In fact he's done so much legal

1           Chairman  
2           research I almost think he's a law  
3           clerk, but those were early days weren't  
4           they, John?

5           To the Judge's left is Robert  
6           Maccarone, the Director of Division of  
7           Probation and Correctional Alternatives.  
8           And he has provided invaluable  
9           information and guidance to the work of  
10          the Task Force, and I know that he will  
11          continue in that role as we seek our  
12          objective. Robert Burns is the  
13          Probation Director at Monroe County.  
14          Everybody knows the director as one of  
15          not only the best informed but one who  
16          shares his wisdom and experience with so  
17          many colleagues.

18          And we are also joined very  
19          fortuitously by a new member of our Task  
20          Force, Mr. Joseph Rinaldi, who is the  
21          President of the Probation Officers  
22          Association. He undertook that  
23          responsibility after we formed the Task  
24          Force. He indicated an interest in  
25          joining with us, and the Chief Justice

1           Chairman  
2           appointed him. It's great to have you  
3           on board, Joe.

4           And to my immediate far right is  
5           Judge Kloch, from Erie County, he's the  
6           Administrative Judge of the 8th  
7           District, he will be hosting our hearing  
8           tomorrow and he has been very helpful to  
9           us in giving some guidance for our  
10          operations.

11          So without further ado I would like  
12          to ask Mr. Bob Iusi to come forward, you  
13          will speak on behalf of the Conference  
14          Administrators, isn't that correct?

15          MR. IUSI: Yes.

16          THE CHAIRMAN: Let me just point  
17          out, if you will, this Task Force has no  
18          set agenda. So that we're here to  
19          develop information and we're looking to  
20          you as experts. Our questions are for  
21          the purpose of getting information and  
22          not challenging. And I want you to know  
23          that that's the spirit of our conduct  
24          today. That might be difficult for some  
25          of you who make your living in trial

1 Iusi  
2 court but you'll just have to bear with  
3 us. Good morning.

4 MR. IUSI: Good morning, my name is  
5 Robert Iusi, I'm the Probation Director  
6 of the Warren County Probation Depart-  
7 ment, and the second vice-president of  
8 the Council of Probation Administrators,  
9 commonly referred to as COPA. This  
10 morning I will be giving testimony on  
11 behalf of COPA. And I would like to  
12 point out that we provided the panel  
13 with written testimony.

14 I'd like to take a few minutes of  
15 time this morning to touch on a few key  
16 issues which are important to our  
17 organization. On behalf of our  
18 organization allow me to commend Judge  
19 Kaye for her vision in establishing this  
20 Task Force on the Future of Probation,  
21 and for supporting that vision with the  
22 necessary human and financial capital.  
23 I'd also like to thank Senator Dunn and  
24 members of the Task Force for their time  
25 and commitment to this endeavor.

1 Iusi

2 I'd like to start off by emphasizing  
3 the purpose of the Task Force and the  
4 reason why we're here this morning at  
5 this public hearing is to address the  
6 issue of strengthening probation in New  
7 York State. And to do that I think we  
8 need to take a historical perspective  
9 and take a walk back in time.

10 Now this morning we won't go back to  
11 1841 with John Augustus, however I'd  
12 like to go back to 1964 and read a quote  
13 that defines the purpose of probation.

14 This quote was coined by a predecessor  
15 and it reads as follows: "Probation is  
16 a planned program designed to protect  
17 the community by re-educating the  
18 offender to the acceptance of  
19 responsibility for his actions, teaching  
20 him to live with others with minimum  
21 friction, and guiding him in his conduct  
22 so that he will become a responsible  
23 citizen. It provides support in  
24 assisting him to conform to the demands  
25 of society. In Family Court the emphasis

1           Iusi  
2           is upon trying to preserve family life."  
3           Now as we look at that definition  
4           what does that tell us? Well, it tells  
5           us 40 years later that we're doing  
6           pretty much the same thing. Now granted  
7           the scope of our work is expanded with  
8           the numerous tasks and responsibilities  
9           that have been heaped upon our member  
10          departments over the past 20 years. The  
11          definition also tells us that the work  
12          in probation involves all of the courts,  
13          not just criminal courts.

14          The definition talks about preserv-  
15          ing family life and Family Court, and I  
16          think it's important to note that  
17          probation work goes through all of the  
18          court systems: family court, local  
19          criminal courts, and our supreme courts.

20          Also if we look at that definition  
21          we can pull out a couple key factors.  
22          It talks about probation protecting the  
23          community. It talks about acceptance of  
24          responsibility, talks about rehabilita-  
25          tion, talks about an offender living in

1           Iusi  
2           society with a minimum of friction, and  
3           it also emphasizes preserving family  
4           life and family court.

5           Probation has always been a balanced  
6           approach and we've always balanced  
7           community protection versus the offender  
8           needs. That holds true today. As we  
9           also look through history there's been  
10          three historical cornerstones of  
11          probation that have remained the same  
12          despite our increased duty. They are:  
13          Intake, investigation, and supervision.

14          Now let's go back and talk about  
15          intake for a minute. What is intake?  
16          Intake is diverting cases from family  
17          court, person in need of supervision,  
18          and juvenile delinquents. In New York  
19          State annually we divert over 40,000  
20          cases. What does the number of 40,000  
21          cases mean in family court? Well,  
22          arguably family court is our most  
23          backlogged court. So if we add 40,000  
24          cases statewide we're going to over-  
25          burden an already over-burdened family

1           Iusi  
2           court system.  
3           And when we talk about that number  
4           in terms of dollars we all know for  
5           youth to get placed it needs to be  
6           petitioned into court. By diverting  
7           those numbers from family court, if we  
8           just take a small fraction of those  
9           numbers we'd save a tremendous amount of  
10          dollars both locally and state. We all  
11          know that juvenile placements are more  
12          expensive than incarcerating adults. So  
13          the sheer work of probation by diverting  
14          those cases saves all the taxpayers  
15          dollars.

16          Also if we look at that number, what  
17          does that mean in human life? Well, the  
18          definition of probation talked about  
19          preserving life with respect to family  
20          court. So by good probation work,  
21          working with the family, working with  
22          the youth we've provided a stable  
23          foundation, we're keeping the family  
24          intact. We're providing the solid  
25          foundation for that youth to survive in

1           Iusi  
2           society. So in terms of human value the  
3           work that we do in family court I would  
4           argue it was priceless.

5           Investigation. Investigations done  
6           by the probation department are pre-  
7           sentence investigations, pre-plea  
8           investigations, and pre-dispositional  
9           investigations for family court. Our  
10          investigations are the most comprehens-  
11          ive collection of information in the  
12          legal system. Probation investigations  
13          are objective, they're impartial and  
14          they evaluate the facts. Probation is  
15          the neutral fact-finder. We provide  
16          comprehensive and accurate information  
17          to the courts so recommendations can be  
18          done.

19          In New York State we produce over  
20          130,000 investigations annually. It's  
21          also important to note that our pre-  
22          sentence investigations will follow  
23          individuals to the Department of  
24          Correctional Services. State inmates.  
25          Dangerous people. It has been told that

1           Iusi  
2           the pre-sentence investigation is the  
3           most important part of an inmate's  
4           processing.

5           So when we look at our investiga-  
6           tions not only are we collecting  
7           information for the courts to make  
8           decisions, our pre-sentence  
9           investigations are important to other  
10          state agencies. Without our investigat-  
11          ive work the court system wouldn't be  
12          what it is today.

13          Supervision. Probation is best  
14          recognized by this function. Supervision,  
15          that's where probation is protecting the  
16          community. We have a coordinated  
17          community response and our work is  
18          preventative in nature. We're certainly  
19          a victim center, especially with regards  
20          to the domestic violence and sex  
21          offenders. We collect over \$16 million  
22          annually with restitution and we  
23          disburse that. \$16 million makes a lot  
24          of people whole in New York State. I  
25          think we can argue that victims are an

1           Iusi  
2           important part of our life, however our  
3           supervision has been redefined over the  
4           years by new pieces of legislation.  
5           Examples are DNA, sex offenders, domes-  
6           tic violence, DWI, interim supervision.

7           I'd like to point out that our  
8           cornerstones withstood the test of time,  
9           whether you come from a big county,  
10          small county, you're upstate, you're  
11          downstate, you're east or west. I would  
12          argue that the major role of probation  
13          is to contribute most of the information  
14          and much of the thinking that goes into  
15          the decision in the legal system and to  
16          plan the details required by that  
17          decision.

18          Defining success. How do we define  
19          success in probation? Recidivism is a  
20          word that is tossed out. Lot of people  
21          like to talk about recidivism. But  
22          there is a common definition of  
23          recidivism? Is it a rearrest? Is it a  
24          new conviction? Is it a sentence?  
25          Defining success is important and

1           Iusi  
2           talking about recidivism is equally  
3           important, however we need to be on the  
4           same page when we talk about recidivism  
5           and when we use that definition.

6           Violations of probation. Are they a  
7           failure? Let's take a couple examples  
8           and look at the work that we do in  
9           probation.

10          Sex offenders. Sex offenders are a  
11          hot topic, they're in our news, they're  
12          in our newspapers, they're in our  
13          community. They're on our streets.  
14          They may even be your neighbors. Say  
15          for example, we have an individual  
16          sentenced to probation regarding sex  
17          offense. He has conditions of probation  
18          to stay away from kids under the age of  
19          17, conditions to stay away from school,  
20          conditions to stay away from playgrounds,  
21          amusement parks.

22          Say through good probation work,  
23          when I talk about good probation work I  
24          mean supervision, unannounced home  
25          visits, collaboration with police

1           Iusi  
2           agencies, collaboration with treatment  
3           agencies, surveillance, even talking to  
4           your neighbors. We find that that  
5           individual has been grooming, the sex  
6           offender, a potential 'nuther victim.  
7           We bring that individual back to court  
8           on a technical violation, meaning he  
9           violated the terms of his probation.

10          And that individual is taken off the  
11          streets. Is that a failure? I don't  
12          think so.

13          The examples we can go through with  
14          the whole gamut of work within the  
15          criminal justice system, domestic  
16          violence, offenders stalking victims,  
17          DWI. If you come before a rural or  
18          suburban county, probably 28 to 30  
19          percent of our caseload consists of DWI.  
20          I would argue that an individual driving  
21          a vehicle intoxicated is like shooting a  
22          bullet down the street, you never know  
23          what it's going to hit.

24          Again, through good probation works,  
25          checking the treatment agency,

1           Iusi  
2           unannounced home visits, bar sweeps that  
3           we're taking are able to take that  
4           individual off the street consuming  
5           alcohol and probably driving his  
6           vehicle, we bring him back to court on a  
7           technical violation. Whether he's  
8           incarcerated or whether the violation  
9           was an impetus of change, is that a  
10          failure? Again, I don't think so.

11          Probation utilizes best practices,  
12          supervision of treatment, and offenders  
13          have always coordinated with respect to  
14          what we have. We collaborate with all  
15          services in our community. And if we  
16          want to talk about the defining success  
17          we can point to some numbers.

18          As we sit here today in Syracuse,  
19          New York, I'd like to point out that  
20          there are more people under probation  
21          supervision than are incarcerated in our  
22          state prisons and on parole. Think  
23          about that, in New York State, a state  
24          that prides itself on state-wide policy.  
25          The reason we talk about primarily going

1           Iusi  
2       down, we have more people in New York  
3       State on probation than any other  
4       sentence. It's been said that probation  
5       is an alternative to incarceration. I  
6       would argue that incarceration is an  
7       alternative to probation.

8           Addressing the systematic  
9       inadequacies, remember that word,  
10      systematic inadequacies, to address that  
11      I think we start with two things:  
12      funding and case-load. Probation  
13      probably could be best described like a  
14      rubber band. We stretch as much as  
15      possible to accommodate good policy and  
16      legislative initiatives over the past 10  
17      to 15 years. Again, examples are DWI  
18      legislation, interim probation, sex  
19      offender registry, Sexual Reform Act and  
20      DNA. We believe that these policies are  
21      certainly good. However, probation has  
22      never been funded to do this work.

23           Probation is like a rubber band, it  
24      keeps expanding, but I think we're  
25      getting to the point where it's about

1           Iusi  
2           ready to break. Probation is the most  
3           cost effective sanction and is a  
4           sanction of choice. 50 percent of our  
5           criminal work is with felons, who  
6           potentially otherwise could be  
7           imprisoned and then be a direct  
8           responsibility to the state, certainly  
9           at a high cost.

10          Unfunded mandates come with most  
11          pieces of legislation. And then  
12          mandates equal new crime which equal new  
13          work for probation; again, without any  
14          money. How have we been negatively  
15          affected by the lack of funding? We  
16          could point out the probation officers  
17          being laid off recently in Erie County  
18          where 40 percent of their staff was laid  
19          off. There was no case load size. We  
20          have no caps, non-mandated services to  
21          family court have been cut.

22          Our mission changed depending on the  
23          hot political topic. Again DNA, sex  
24          offenders, Operation IMPACT. Our  
25          community gets hurt when probation is

1           Iusi  
2           not adequately funded. Remember there  
3           are more people on probation than any  
4           other sentence. They live in our  
5           communities. And when we don't fund our  
6           probation department our communities get  
7           hurt.

8           What could we do with adequate  
9           funding? Well, for starters we get case  
10          loads to a reasonable size. Currently  
11          the average in New York State is 120 to  
12          1; that's certainly not responsible.  
13          They should be at a minimum of 60 to 1.  
14          All counties would have the ability to  
15          provide the same level of consistent  
16          services on a needed basis. Probation  
17          wouldn't have to chase dollars via  
18          grant, via a political hot topic. We  
19          could provide services based on  
20          community needs. Think about that, on  
21          community needs. We would have the  
22          opportunity to be proactive versus  
23          reactive.

24          What changes can we make to assist  
25          probation and implement these? How do

1           Iusi  
2           we address the systematic challenges?  
3           To start that conversation, it's simple,  
4           resources. Probation state aid has  
5           decreased from 46.5 percent to 17 percent  
6           over the past decade. Without proper  
7           funding probation departments cannot  
8           fulfill their obligation to protect the  
9           community while providing good  
10          supervision to the offenders, simply  
11          impossible.

12          Work load standards. Currently we  
13          have none. The majority of probation  
14          officers in New York State supervise  
15          over 100 offenders, some counties have  
16          200. That certainly is not in the best  
17          interest of society.

18          Number 3. Advocacy. We continue to  
19          have funding cuts or at best a stagnant  
20          stream from Albany, when we're asked to  
21          do more. Recently we passed the DNA  
22          law, and probation steps up to the plate  
23          by collecting 4 or 5,000 samples within  
24          a short period of time. Probation has  
25          always stepped up to the plate regarding

1           Iusi  
2           public policy. Probation simply needs  
3           to be heard. We need an advocate. We  
4           need a voice. Speedy resolutions of  
5           violations of probation.

6           Number 4. When individuals are in  
7           the court system and before they're  
8           adjudicated, convicted, they have  
9           standards and goals with respect to time  
10          periods. When we file a violation there  
11          are no time periods. And our  
12          violations, these are people that have  
13          already committed crimes, particularly  
14          felons. They commit new crimes, they  
15          violate technical conditions of  
16          probation, we bring it back to court and  
17          they linger. There is no standards and  
18          goals. We think that needs to be  
19          addressed.

20          Detainer warrants. Taking dangerous  
21          individuals off the street who violate  
22          immediately. Parole has that function.  
23          Why would we keep dangerous offenders on  
24          our streets?

25          Number 5. Upward modification of

1           Iusi  
2           conditions without further court hearing.  
3           Probation needs the ability to do the  
4           job for the duration of the sentence.  
5           Probation is not static, change is  
6           constant. We need the ability to work  
7           with our offenders as things change.  
8           We're certainly not looking to usurp the  
9           court in any fashion, the court would be  
10          advised of what we're doing and  
11          certainly we would have the opportunity  
12          to bring an individual back at any  
13          point. But we need that ability. Also  
14          this won't contribute to the backlog of  
15          our court system.

16          Number 6. As required pre-sentence  
17          investigations on all cases. This we  
18          talked about, information is powerful.  
19          Why would we make a decision without  
20          information? And if we're putting  
21          people on probation without the benefit  
22          of the pre-sentence investigation our  
23          officers know nothing of this individual.  
24          They know nothing of the crime. They  
25          don't know where he lives. They don't

1           Iusi  
2           know who his associates are. They know  
3           nothing about him. Putting people on  
4           probation without a pre-sentence  
5           investigation puts our probation  
6           officers in danger.

7           Number 7. Revamping the Family  
8           Court Act. I believe that was last  
9           addressed some time in the '70s, however  
10          in the past few years we've had a couple  
11          reforms with regards to the PINS laws,  
12          PINS 18 and PINS Reform Act. Probation  
13          has stepped up on each case to meet  
14          those challenges. But if we're going to  
15          look at the family court and we're going  
16          to modify what we do with PINS or even  
17          JD shouldn't we look at that  
18          holistically?

19          Our Family Court Act is in conflict  
20          with itself. The maximum age on the JD  
21          is 16 while the PINS is 18. That  
22          doesn't make sense.

23          In summary, probation is the  
24          backbone of the legal system. The state  
25          depends on probation departments to

1           Iusi  
2       carry out its philosophical approach to  
3       criminal justice. Again, thank you for  
4       providing us with the opportunity to  
5       express our views, we trust that they  
6       will be viewed in the most constructive  
7       and collaborative light. We are all in  
8       this together and we need to ensure that  
9       probation is administered in the most  
10      professional manner possible with the  
11      same commitment demonstrated more than  
12      150 years ago by John Augustus.

13       As you can see, to my left we have  
14      some charts which talk about the overall  
15      impact of unfunded mandates on the  
16      probation officer's time. And the other  
17      one talks about adult offenders served.

18      As my colleagues come up today I would  
19      like you to take a look at these charts  
20      and listen to what they have to say.

21      The information they will talk about is  
22      also powerful. Thank you. I would be  
23      happy to answer any questions.

24           THE CHAIRMAN: Thank you, Mr. Iusi.

25      Before we get to your grilling I'd like

1 Iusi Q&A  
2 to introduce some of the members of the  
3 Task Force that have since joined us.  
4 The Honorable Martin Horn, in New York  
5 City, is both the Commissioner of  
6 Probation and the Commissioner of  
7 Corrections. What hat are you wearing  
8 today, Marty?

9 COM. HORN: Both actually.

10 THE CHAIRMAN: To my right we've  
11 been joined by Nancy Ginsburg, she is  
12 the director of the legal project at  
13 Legal Aid Society of New York City,  
14 pardon me, and very strong advocate of  
15 addressing the problems of youth.

16 Supreme Court Justice Joseph  
17 Corriero.

18 Mr. Soares would like to pose  
19 questions.

20 BY MR. SOARES:

21 Q. First of all I would like to thank you,  
22 you're doing a wonderful job in presenting the  
23 issues facing you in your challenges of probation.  
24 You mentioned or talked about a number of  
25 different issues. You talked about the three

1 Iusi Q&A

2 functions, the three primary functions that  
3 probation is responsible for: The intake, the  
4 investigation and supervision.

5 If we had to start somewhere to address these  
6 issues where would you advise us to start? Would  
7 it be intake, providing more resources for invest-  
8 igation or providing more resources for  
9 supervision?

10 A. I think we should start with  
11 supervision. I think if we look at the new  
12 mandates and the work that we do, a lot of it is  
13 direct supervision. We're asked to supervise  
14 expanded caseload, domestic violence issues  
15 produce more numbers, sex offenders.

16 In terms of probation has been expanded with  
17 respect to that. Misdemeanor from three to six,  
18 felony from six to ten. Caseloads, as I  
19 mentioned, are an average of 120 to 1 and some  
20 places they're 200. We need more people to  
21 supervise our offenders, that's where I would  
22 start.

23 BY HON. KLOCH:

24 Q. Thank you for your testimony, we all  
25 appreciate it. What is the starting salary for a

1 Iusi Q&A

2 probation officer in New York?

3 A. Salary for starting probation officer in  
4 Warren County is approximately \$38,000.

5 Q. What's the average?

6 A. The average is not much higher sadly,  
7 say about 40,000, for people that have been there  
8 20 years.

9 Q. Do you use an interim probation in  
10 Warren County?

11 A. Yes, sir.

12 Q. And you sort of work hand in hand with  
13 work load, standards, and certainly funding, but  
14 what do you think is a reasonable period of time  
15 for a probation department to prepare a PSI?

16 A. I can speak of my experience and I come  
17 from the benefit of the county that has a very  
18 good criminal justice system where people work  
19 hand in hand. My county has been generous to keep  
20 me staffed. We do it within four weeks. However,  
21 that's probably not the case throughout the state  
22 where some people may not enjoy what I enjoy. So  
23 in some places it may be six weeks, it may even be  
24 longer.

25 Q. Do you think there should be a statutory

1 Iusi Q&A

2 requirement for a period of time where a PSI  
3 should be delivered? Right now it says reasonable.

4 A. Not at this point. I think we need to  
5 address the systematic inadequacies with respect  
6 to that. I think if we're putting time periods on  
7 pre-sentence investigations and we do nothing to  
8 address the systematic inadequacies then we are  
9 accomplishing nothing.

10 COM. KLOCH: Thank you, sir.

11 BY COMMISSIONER HORN:

12 Q. Couple questions. On your chart you  
13 show terms of supervision as unfunded mandate.  
14 I'm wondering since if you hire staff to supervise  
15 people on interim supervision why is that any more  
16 an unfunded mandate than regular supervision?

17 A. I think we probably haven't had the  
18 ability to hire additional people to take on the  
19 burden of supervision. So we're doing it with the  
20 instant resources.

21 Q. Let's talk about that for a minute. So  
22 funding has gone down from 46 percent to 17  
23 percent. Erie County laid off whatever, 40 POs?

24 HON. KLOCH: 40 percent.

25 A. 40 percent.

1 Iusi Q&A

2 Q. Case loads 120 to 1, you say they should  
3 be 60 to 1. Yet crime has gone down in the state.  
4 So what difference does it make?

5 A. Well, I would point to the fact that it  
6 has gone down, but if we take a look at probation  
7 we've done the same thing with the same amount of  
8 resources. And we talked about recidivism, and so  
9 I would argue if we had additional resources and  
10 additional probation officers that would supervise  
11 less people that probably the crime rates would  
12 continue to go down.

13 Q. Would they go down even further and  
14 faster?

15 A. Having not empirical data to talk on  
16 that I would think that yes, it would.

17 Q. And just a follow up question. The  
18 caseload in Warren County, what's the breakdown  
19 between, you said state-wide it was 50/50,  
20 felonies and misdemeanors. What is it in Warren  
21 County?

22 A. Warren County is pretty close to 50/50.  
23 That's only because our District Attorney is  
24 aggressive going after felony crimes.

25 Q. You have a great District Attorney.

1 Iusi Q&A

2 She's even called me in New York City on that.

3 A. She'll be here later to talk.

4 CHAIRMAN: Please, no demonstrations.

5 Q. But the benefit, who benefits when  
6 misdemeanors are placed on probation, does the  
7 state benefit or the county benefit?

8 A. Well, I think that they both benefit.  
9 Certainly the county benefits because we're not  
10 incarcerating people in the local jail, but if we  
11 look to the rehabilitative aspects of probation  
12 and able to accomplish that on misdemeanors maybe  
13 we prevented a felony where they go on the state  
14 level.

15 THE CHAIRMAN: Judge Brunetti.

16 BY HON BRUNETTI:

17 Q. In Judge Kaye's state of the state she  
18 said that consistent enforcement policies vary  
19 from county to county. We heard testimony last  
20 week that was completely divergent in terms of  
21 policies for seeking violations; completely  
22 opposite. Now, is it the position of your  
23 organization that such policies should remain  
24 localized or should they be dictated by a  
25 centralized oversight which would thereby treat

1 Iusi Q&A

2 people equally situated similarly just like we  
3 judges have to treat them similarly whether  
4 they're in Erie or the Bronx?

5 A. I think the testimony you're talking  
6 about was probably from Suffolk and Nassau County.

7 Q. Yes. Exactly where it was from.

8 A. I think in the State of New York, the  
9 size of New York, with the major metropolitan  
10 areas, suburban areas and rural areas, I think  
11 that that needs to be left to the local departments.  
12 Because what happens on Long Island and New York  
13 City doesn't necessarily happen in Albany or  
14 Warren County. And the method of using the  
15 violations is certainly different in certain  
16 instances.

17 HON. BRUNETTI: But I've gotten the  
18 impression of us talking here that in  
19 some respects it is influenced by the  
20 receptiveness or the non-receptiveness  
21 of the Judge in the court system to  
22 promptly process the violation of  
23 probation and not issue warrants rather  
24 than notices to appear, and if notice to  
25 appear are issued then there is a delay

1 Iusi Q&A

2 in calendaring date.

3 So I'm not so sure it's a function  
4 in the entirety of a policy borne of  
5 deliberate choice but rather a reaction  
6 to in some instances the delay of  
7 getting the VOP signed and processed I  
8 think maybe. Thank you.

9 THE CHAIRMAN: Yes, Mr. Maccarone.

10 BY MR. MACCARONE:

11 Q. Bob, I just want to thank you, I think  
12 your comments were excellent and well delivered,  
13 as always. With respect to, I want to pick up on  
14 Judge Brunetti's comment on the violations. And I  
15 did also hear the disparity practice, but it seems  
16 to me that practice lies with the courts and not  
17 probation. I think what you're saying is that  
18 probation needs the discretion to determine when a  
19 violation is appropriate. Is that right?

20 A. That's correct.

21 Q. You had said something earlier before  
22 about recidivism, there are different indicators  
23 of recidivism one could use, and we have had some  
24 interesting conversations even on the Task Force  
25 about recidivism, rearrest from misdemeanors, some

1 Iusi Q&A

2 with, particularly in large jurisdictions might  
3 argue clearly that is strictly a function of  
4 enforcement. Perhaps zeroing in and targeting  
5 prior probations.

6 But felony arrests seems to be a good  
7 indicator, rearrest seems to be an indicator and  
8 incarceration. My point being I think is that  
9 you can use any indicator, but what probation  
10 really needs is a standard of some sort, a  
11 consistent standard to judge itself. And as of  
12 now the division has recently shared recidivism  
13 data with the department to do that. Do you find  
14 that a value?

15 A. I do. And again I think if we talk  
16 about recidivism that it needs to be standard and  
17 needs to be consistent. That way we can evaluate  
18 ourselves.

19 Q. Can you tell us what the caseload size  
20 is in your county, Warren County?

21 A. The caseload size, I think our county is  
22 approximately 65 probationers to one probation  
23 officer.

24 MR. MACCARONE: Thank you.

25 THE CHAIRMAN: Robert Burns.

1 Iusi Q&A

2 BY MR. BURNS:

3 Q. Our system is not easy to describe our  
4 problems, our problems aren't easily described,  
5 the disparity is difficult to define. You did a  
6 great job putting all of that together. Actually  
7 I have several questions but I'll try to just hit  
8 you with one, in the interest of time.

9 In the middle of your remarks as we talked  
10 about the deficits and the problems and the  
11 caseload sizes and the reduced funding and so on  
12 you said the golden words, we need an advocate.  
13 Any suggestions? And pretend that Mr. Maccarone  
14 is not sitting in the room, that he's out in the  
15 hallway or something like that. But any  
16 suggestions, any state-wide changes? Any changes  
17 in the way we deliver services? Any law changes  
18 that could enhance that advocacy for probation?

19 A. I think the matter where probation's  
20 position on the state level they need a strong  
21 state regulatory agency. I think that if we  
22 expect probation to have certain standards, in  
23 particular funding, we need strong regulations as  
24 a practice. And wherever that may be then the  
25 state needs to also fund that regulatory agency

1 Iusi Q&A

2 and staff it, so we can do the proper work.

3 Again, some counties don't have the resources  
4 to train people and we look for currently DPCA to  
5 do that. If they're unable to do it, you know,  
6 then it's a hodgepodge. So I think that wherever  
7 we're -- wherever one would want to put probation  
8 it needs a strong funded regulatory agency also.

9 THE CHAIRMAN: Mr. Rinaldi.

10 BY MR. RINALDI:

11 Q. One question for you, sir. You did  
12 mention numbers currently 120 to 1 on average were  
13 supervision, and you're recommending, 60 to 1. Is  
14 that an overall goal or do you recognize the need  
15 for specialized caseloads for certain populations,  
16 like sex offenders?

17 A. We do recognize the importance of  
18 specialized caseloads and we talk about the number  
19 of 60 to 1. That would be our basic generic case-  
20 load. But we do recognize that with specialized  
21 caseloads sex offenders, DWI, domestic violence,  
22 they may need to be reduced and not be as high as  
23 60 to 1. I think that's clear.

24 Q. Do you have an idea what the number, if  
25 the generalized caseload do you think should be 60

1 Iusi Q&A

2 to 1, what do you think a specialized caseload  
3 should be?

4 A. I would say depending on what we're  
5 talking about. You take sex offenders, for  
6 example, then it should be in the neighborhood of  
7 25 to 1 if we're going to do our job properly.

8 THE CHAIRMAN: Ms. Ginsburg?

9 BY HON. CORRIERO:

10 Q. I'm sorry, I was not here for the  
11 beginning of your remarks, but you did refer to  
12 the family court?

13 A. Yes, sir.

14 Q. And you pointed out the discrepancy in  
15 jurisdiction in PINS and juvenile delinquents, but  
16 I'm not sure I follow your argument. Were you  
17 arguing that the jurisdiction of the juvenile  
18 delinquents should be extended to 18 or PINS  
19 reduced to 16?

20 A. I think that needs to be looked at. I  
21 think that it may possibly be the case. I'm not  
22 in a position to say that a JD should be 18 or a  
23 PINS should be 16. I know the PINS shouldn't be  
24 25. But I think that they all need to be -- that  
25 needs to be looked at and probably needs to be the

1 Iusi Q&A

2 same age, if we have it in the Family Court Act,  
3 if we want to talk about consistency among our  
4 youth and how we deliver services.

5 BY MS. GINSBURG:

6 Q. I'm wondering if over time you've seen  
7 the characteristics and the needs of the  
8 population coming onto the probation load changing,  
9 and if you have what those changes have been?

10 A. We have. There has been several changes.

11 We can start with we deal with more serious  
12 offenders or more dangerous. Lately we talk about  
13 mental health, people with occurring disorders,  
14 that's a huge population. I think we can argue on  
15 most caseloads 70 percent of the people that we  
16 work with have some type of mental illness and  
17 substance abuse. So not only do they commit more  
18 serious crimes, not only are they more dangerous,  
19 not only do they have a larger criminal record,  
20 their family lives are more dysfunctional, they  
21 come with severe issues, and in the best of times  
22 are difficult to supervise.

23 Q. I'm assuming you feel that you don't  
24 have the resources to address those needs at this  
25 point?

1 Iusi Q&A

2 A. Not to properly do it.

3 Q. So what do you believe you would need to  
4 appropriately address those needs?

5 A. In terms of dollars?

6 Q. In terms of everything.

7 A. I think if we started by reimbursing the  
8 probation at 50 percent regarding the state level  
9 I think that would go to start correcting the  
10 issues that occurred over the years I think. That  
11 most of us know that our local governments were  
12 hurting and they've been shouldering the burden of  
13 probation supervision over time. And they just  
14 can't do it all with spiraling Medicaid/retirement  
15 costs. So something has to give, and typically it  
16 gives in departments like probation.

17 So if we had a 50 percent state reimbursement,  
18 that would go, you know, a long way with helping  
19 our county to support probation. And once we  
20 have the officers we can deal with those issues.

21 Q. What additional services would you buy  
22 with that additional money?

23 A. Myself I would, in Warren County we have  
24 caseloads that are, I think that are pretty good.

25 However I think that instead of me working with

1 Iusi Q&A

2 65, if I was able to get them down maybe to 50,  
3 that's even better. I know 60 is a great goal but  
4 if you're going to ask me what I like, I would  
5 better like to get it to 50 to 1 and I want to do  
6 different things with my PSIs, whether I get the  
7 position or not it's that important to me.  
8 Hopefully I get that position through my local  
9 government which thinks that things are easier for  
10 me. If I don't I'm going to have to shift some  
11 caseloads, which is going to take my caseloads  
12 number from 65 to 1 to probably 75.

13 And the other thing too we talked about,  
14 investigations. Warren County is an hour north  
15 of Albany, we're a small rural community and we  
16 complete over 600 pre-sentence investigations a  
17 year. To me that's a lot. I see what they do.  
18 And that's not even counting family court and  
19 custody and adoptions.

20 If I had more probation officers I wouldn't  
21 be asking them to supervise the amount of people  
22 we have, especially with their difficulties, and  
23 then ask them to do five or six pre-sentence  
24 investigations and sometimes ten when it gets  
25 busy.

1 Iusi Q&A

2 So I would work on reducing my caseloads,  
3 implementing specialized probation programs  
4 within the needs of my community and collaborate  
5 with who I have to see what we need. Because I  
6 don't make all the decisions and I certainly  
7 don't know everything in our community, but I  
8 think that's what we can do with it.

9 THE CHAIRMAN: Commissioner Horn.

10 BY COM. HORN:

11 Q. Bob, I think in answer to Bob Burns  
12 questions and follow up questions you raised good  
13 points, advocacy and who pays, and good  
14 reimbursement. Is it COPAs position that the  
15 executive branch of the state government has  
16 effectively advocated for adequate reimbursement  
17 of probation services in the last several years?  
18 Is that COPAs position?

19 A. I think that's fair to say.

20 Q. You would say it has adequately?

21 A. Has not.

22 Q. Has not. If the state reimbursed your  
23 county at 50 percent what guarantee is there that  
24 the county would not simply -- that your budget  
25 would remain flat?

1 Iusi Q&A

2 A. Correct.

3 Q. What guarantee is there that the county  
4 would just take the difference and use it to fund  
5 other things, reduce the property tax burden?

6 A. That's a good point. I think that if  
7 possible that with the increase in state aid that  
8 it would have to be some specific language that is  
9 used to enhance probation services.

10 Q. So you would endorse some sort of  
11 maintenance of effort requirement?

12 A. Absolutely. And that's a good point  
13 because a lot of counties would do that to reduce  
14 the property tax burden.

15 COM. HORN: Thank you.

16 BY MR. MACCARONE:

17 Q. Because you are representing COPA I want  
18 to spend a little more time on this. Have the  
19 members of the Council Of Probation Administrators  
20 as a group reached any agreement with their own  
21 localities that if the state were to increase aid,  
22 following up on Commissioner Horn's question, that  
23 you have some assurance that these dollars would  
24 go into additional resources and officers? Has  
25 that inquiry been made across the state by

1 Iusi Q&A

2 probation directors uniformly?

3 A. That hasn't. And safe to say at this  
4 point, we just struggle to keep what we have. But  
5 that hasn't been talked about with respect to COPA.

6 MR. MACCARONE: Thank you.

7 BY THE CHAIRMAN:

8 Q. I have just one question please. You  
9 addressed the pre-sentence investigation in the  
10 report. Subject of considerable comment at our  
11 hearings last week. Can you tell me, if you know,  
12 do all county probation departments and the  
13 criminal courts make those reports available to  
14 defense attorneys?

15 A. I don't know if all counties do but I  
16 would suspect that the guess would be that they  
17 are given to courts, and a defense attorney may be  
18 able to get a copy from the court. I can speak  
19 for what I do in my county. We make copies, we  
20 make three copies, one for the Court, one for the  
21 District Attorney and one for defense counsel.  
22 And the Court then gives them to those parties. I  
23 would say in most places the defense attorney  
24 probably does have a copy.

25 Q. Would it impose any kind of additional

1 Iusi Q&A

2 burden on probation if we were to recommend a  
3 specific time period rather than a reasonable  
4 opportunity, specific time period for the report  
5 to be given to defense counsel?

6 A. You're talking just about for the report  
7 to be given to the defense counsel?

8 Q. Yes, sir.

9 A. I don't think that's unreasonable.

10 THE CHAIRMAN: Mr. Soares.

11 BY MR. SOARES:

12 Q. Just touching on the issue of increased  
13 presentence investigation reports and the reliance  
14 on the PSI, so many different agencies, could you  
15 comment on technological capacity and the infra-  
16 structure in these various probation departments  
17 that actually get these PSIs done, is there a need  
18 there for improving technology and resources to  
19 the probation officers for accomplishing this  
20 important task?

21 A. I think that any resources we give to  
22 doing that, especially with technology, I mean a  
23 lot of the work is interviewing. But after you're  
24 done interviewing the report needs to be prepared.

25 I can't speak on behalf of all the departments

1 Iusi Q&A

2 but if the departments are supported with  
3 automation, that would certainly make it go faster.  
4 And which is the case we're working on in New York  
5 State. And if all counties had the ability to use  
6 computers, which I'm uncertain that a lot do,  
7 because they don't have the resources, that speeds  
8 it up.

9 I think that most people probably use word-  
10 processors, but I think the technology with  
11 respect to probation would be the actual finished  
12 product and how do you produce it, how do you cut  
13 down on clerical time, how do you do that? I  
14 think that would be helpful.

15 THE CHAIRMAN: Bob Burns.

16 BY MR. BURNS:

17 Q. Just on the 50 percent funding, just a  
18 quick follow up. Assuming the system was brought  
19 back to a 50 percent partnership by the state, 50  
20 percent funding to localities, and Senator Dunn in  
21 fact has the 50 percent funding in his briefcase,  
22 so we're just waiting for the mechanics of how to  
23 get that out.

24 And I know you can't speak for every county,  
25 but to the extent you're speaking for COPA today

1 Iusi Q&A

2 do you think that most probation departments,  
3 assuming there was language saying you had to  
4 enhance probation services we talked about a  
5 moment ago, and I'll note there have been  
6 assembly bills that have done just that, that  
7 have required it, I don't think they went  
8 anywhere over the years, would require more  
9 money, it did not go to the general fund, do you  
10 think most probation departments, most counties  
11 would simply hire more officers?

12 Or in responding to your comment about the  
13 balanced approach that strict supervision without  
14 services we know fails, do you think a lot of  
15 counties would also bolster services, mental  
16 illness treatment, job recruitments, substance  
17 abuse treatment. Or do you think there would be  
18 a mix of adding to staff and buying additional  
19 services?

20 A. I think that most directors, in my  
21 experience, and I'm not just saying this, most of  
22 the directors are very intelligent and committed  
23 hard working individuals, want to do the best job  
24 possible. I think they would start by looking at  
25 their caseload, evaluating, assessing, seeing what

1                   Iusi Q&A  
2 the needs are and also satisfying what's needed in  
3 their community.  
4     It would not only be just increasing  
5 probation officers but would be also maybe  
6 contracting for services, mental health services,  
7 that would make the job more complete and  
8 certainly more easy for our probation officers.  
9 So I think they would take that holistic approach  
10 and see what they have in the county and look at  
11 it from a few angles.

12                THE CHAIRMAN: So you have used up  
13 just about your 30 minutes and we  
14 appreciate your coming here and giving  
15 us insight. If it's convenient for you  
16 to remain for a while, listen to some of  
17 the other testimony I think it would be  
18 helpful.

19                MR. IUSI: Thank you for your time.

20                THE CHAIRMAN: Particularly pleased  
21 to have the Commissioner of Probation of  
22 our host county here, Mary Winter, who  
23 is one of the recognized experts and  
24 advocates for probation in the state.  
25 Commissioner, thanks for being with us.

1 Winter

2 MARY WINTER: I'm Mary Winter, I'm  
3 the Commissioner of Probation, I'm  
4 responsible for probation services here  
5 in this county. And as well as for  
6 secure and non-secure detention for  
7 juvenile delinquents and Persons In Need  
8 of Supervision.

9 I want to thank Judge Kaye for  
10 authorizing this Task Force. I want to  
11 thank Senator Dunn, who has called and  
12 talked to me about the Task Force, as  
13 well as Judge John Brunetti, who has  
14 kept me updated on what is happening.

15 The mission of the Onondaga County  
16 Probation Department is to create a  
17 safer community by a commitment to long  
18 term public safety and prevention of  
19 victimization. Our goal is to  
20 ameliorate the conditions that brought  
21 the offender to the attention of the  
22 criminal or juvenile justice system.

23 To accomplish this our probation  
24 department has three mandated functions:

25 Family Court Intake - provides pre-

1           Winter  
2           adjudicatory services in matters  
3           regarding Juvenile Delinquents and  
4           Persons In Need of Supervision.  
5           Criminal and Social Investigations -  
6           where we provide the courts with the  
7           relevant social and legal information in  
8           order to aid in judicial decision-making.  
9           It is a critical base for probation  
10          officers to begin rehabilitative work  
11          with new probationers. And it's an aid  
12          if an individual is sentenced to a  
13          dispositional agency, such as a  
14          detention center or correctional  
15          facility, the investigation assists in  
16          classification and treatment planning.  
17          It provides Supervision where an  
18          individual is convicted or adjudicated  
19          by court and remains in the community  
20          under certain conditions. The purpose  
21          is to assist the offender in changing  
22          their behavior so that they are no  
23          longer involved in the criminal or  
24          juvenile justice system and to help them  
25          become law abiding citizens. We also

1           Winter  
2           have a - provide Pretrial Release  
3           services within our probation department.

4           So I want to give you a little idea  
5           from the base from a local perspective  
6           of what it was like when I started in  
7           probation 30 years ago, and what it's  
8           like now.

9           At that time, Probation was an  
10          office-based operation with little or no  
11          special programs. No social service  
12          agencies wanted to work with us,  
13          thinking they might be tainted by our  
14          law enforcement role. Most law  
15          enforcement agencies did not want to  
16          work with us, thinking they might be  
17          tainted by our social work role. We did  
18          make home visits, but other than that we  
19          really did not do any community work.  
20          At that time our caseload was about 60.  
21          For this staying in the office work we  
22          received state aid at the rate of 46  
23          and-a-half percent.

24          Today we strive to balance our dual  
25          role of law enforcement and human

1           Winter  
2           service provider. We are a strong  
3           partner with a variety of agencies and  
4           projects and could work with even more  
5           if we had additional resources. Our  
6           department continues to move from office  
7           based to community-based supervision.

8           Our population is increasingly  
9           dangerous, violent and gang-involved.  
10          Our caseload size is about 100. We meet  
11          with probationers in a variety of  
12          settings that include our office,  
13          community reporting offices, their homes  
14          and even on the streets where we work  
15          with a variety of police agencies. So  
16          I'll give you an example of a few of the  
17          activities we regularly perform:

18          Our START project, which is called  
19          Surveillance Treatment And Rehabilita-  
20          tion Together, and our Project Weed and  
21          Seed initiative teams probation officers  
22          with police agencies and community  
23          leaders in making home visits, curfew  
24          and bar checks and neighborhood  
25          walk-throughs to enforce conditions of

1           Winter  
2           probation and address neighborhood  
3           concerns.

4           We have developed a Community  
5           Deployment Team. This is a special  
6           trained group of probation officers who  
7           are armed and who volunteer to  
8           participate in a wide variety of  
9           community-based projects. That could be  
10          anything from going out on a police  
11          detail, making -- going out on a sex  
12          offender detail where we would make home  
13          visits with parole officers, to walking  
14          through a community field days to try  
15          and help the police keep the peace and  
16          watch out for our probationers.

17          Onondaga County Probation is one of  
18          eleven partners in Operation IMPACT, a  
19          crime fighting initiative of Governor  
20          Pataki and DCJS Director Chauncey  
21          Parker. This project, which is chaired  
22          here by the District Attorney's office,  
23          who is going to speak to you today,  
24          seeks to develop and implement  
25          strategies to reduce street crime.

1 Winter

2 To meet the goals of this partner-  
3 ship, probation officers work with other  
4 law enforcement agencies in a variety of  
5 details including probation/parole/  
6 police home visits, buy/bust details,  
7 traffic stops, ABC checks and search  
8 warrants. From January through August  
9 of this year 28 different probation  
10 officers participated in 49 details  
11 involving 849 hours of service to the  
12 community. This year, thanks to the  
13 efforts of our state director Robert  
14 Maccarone, IMPACT will fund a Field  
15 Intelligence Officer for our department.  
16 And as to one of your questions I heard  
17 before, the requirement was that that be  
18 a brand new officer. And before I  
19 signed onto this I received the  
20 agreement of our budget department that  
21 that money would not just be placed to  
22 an existing probation officer.

23 We work with the Violence Inter-  
24 vention and Prevention Strategy, a  
25 collaborative of community agencies to

1           Winter  
2           intervene with youth who are involved in  
3           street gangs, violence and drugs.

4           More recent effort is our Operation  
5           Watchdog. This is a joint effort with  
6           the Syracuse Police Department to  
7           determine if DWI probationers are  
8           driving. Probation officers follow  
9           probationers that they don't know out of  
10          the office. If they are found to be  
11          driving, the Syracuse Police Department,  
12          who is right nearby, and we radio them,  
13          they ticket them and a violation of  
14          probation is filed. To date we've had  
15          37 tickets for AUO. The really good  
16          news is that 239 were found not driving.  
17          So we're really happy when we catch  
18          probationers doing the right thing not  
19          just the wrong thing.

20          We have an in-house GED program.  
21          This is really great. As most of you  
22          probably know that the most significant  
23          factor that will determine if you will  
24          ever go to state prison is years of  
25          education. And we have a partnership

1           Winter  
2           with the Syracuse School District. And  
3           a teacher is placed in our office 3 days  
4           per week and so far we have had 170  
5           GEDs. She works with anybody, some of  
6           the kids that come in, some of them  
7           can't read at all and some of them in a  
8           few weeks are ready to take the test.

9           We have an in-house employment  
10          project that's a local program called  
11          JOBSplus. Staff come to our office and  
12          teach soft skills, resume writing and  
13          etcetera to probationers in group and  
14          individual sessions. Currently I've  
15          been working with our Jail Population  
16          Task Force on our over-crowding in our  
17          Justice Center, which is our local jail.

18          So beginning in July we started an  
19          administration project, we began working  
20          on weekends, with probation assistants  
21          working on weekends in the courtroom so  
22          we can try to maximize the number of  
23          people on Pretrial Release. And since  
24          July our caseload has risen from 773 to  
25          over 1,000 on Pretrial.

1 Winter

2 Last year we collected \$411,130 in

3 restitutions to victims. We have

4 participated in these programs because

5 we are committed to public safety and it

6 is the right thing to do. Currently we

7 are stretched very very thin. We cannot

8 do any more. For all of this our state

9 aid has dwindled to less than 20 percent.

10 Talk a little bit to you about

11 Juvenile Justice. Research shows that

12 there is no benefit in sending Juvenile

13 Delinquents and Persons In Need of

14 Supervision to out-of-home placements.

15 In fact, these placements often have a

16 negative effect on kids, making their

17 behavior worse when they return to the

18 community. Our city police department

19 calls these placement crime schools.

20 John Johnson, the Director of the Office

21 of Children and Family Services calls

22 his department's institutions, his 80

23 and 80 Plan: \$80,000 per year and 80

24 percent failure rate.

25 Since 1995 we've significantly

1           Winter  
2           reduced the number of out-of-home  
3           placement of Juvenile Delinquents and  
4           Persons In Need of Supervision by the  
5           introduction of a variety of researched,  
6           evidence-based practices shown to  
7           improve outcomes for juvenile  
8           delinquents.

9           In 1995 we placed 170 kids in  
10          extremely expensive out-of-home  
11          placements. In 2005 we placed 40. So  
12          far this year we've placed 18. That's  
13          in an area that, you know, our juris-  
14          diction is about 400,000 people here.

15          Our entire Juvenile Justice Unit as  
16          well as the evidence-based programs that  
17          we sponsor, programs such as Functional  
18          Family Therapy, Multisystemic Therapy  
19          are funded by the Department of Social  
20          Services. Our state aid is 65 percent.  
21          Because of this aid we're now able to  
22          front load all of our JD and PINS  
23          diversion services with these evidence  
24          based family intervention programs.

25          Juvenile probation officers perform

1           Winter  
2           all of their work in schools and in the  
3           community. No kids even come into our  
4           office, because of the literature which  
5           talks about the negative effects of  
6           mixing the younger people with the older  
7           people and the more hardened criminals.  
8           Where all these programs cost a fraction  
9           of placement they are still very  
10          expensive. We could never have funded  
11          them if we had to do it with 80 percent  
12          local dollars.

13          So how can you help us? Resources.  
14          We need more funding and request that  
15          New York State increase our state aid to  
16          50 percent the maximum allowed by law.  
17          Additionally, we ask that any mandates  
18          imposed by the state come with  
19          appropriate funding. The burden should  
20          not be absorbed by counties. The  
21          imposition of interim supervision,  
22          increased probation terms for sex  
23          offenders, and DNA collection are  
24          examples of mandates imposed on us  
25          without funding from the state.

1           Winter  
2           When interim supervision started,  
3           whatever year that was, we would  
4           regularly get a few cases, a handful of  
5           cases, it was doable; there would be  
6           three or four at a time, and there was  
7           good reason behind it. Now there is 90.  
8           It's become a new favorite of my friends  
9           on the County Court bench. It's a whole  
10          caseload for somebody. So someone who  
11          was doing some other work now is doing  
12          that. When it gets spread even more  
13          it's going to be another caseload for  
14          someone. And additionally what it does  
15          is the person often spends the whole  
16          year on interim supervision and then  
17          they're placed on probation. So then  
18          they have another year. So the term of  
19          probation is longer.

20          Many Upstate New York counties have  
21          enacted local laws to collect fees from  
22          probationers and defendants. These fees  
23          are crucial to our survival. Last year  
24          here in Onondaga County we collected  
25          \$430,000. We have been unsuccessful so

1           Winter  
2           far in getting state legislation passed  
3           to support our local laws. Many  
4           probationers can afford these fees  
5           easily. This is the part of restorative  
6           justice as probationers give back by  
7           paying for a small part of their  
8           supervision.

9           Workload standards. It is only  
10          common sense that large probation  
11          caseloads are not in the best interests  
12          of public safety. There are workload  
13          standards everywhere. The Commissioner  
14          of Corrections has standards that are  
15          tightly regulated as do all the private  
16          agencies with whom I work. Caseloads of  
17          60 to 1 would be a reasonable amount.

18          Advocacy. Your advocacy on our  
19          behalf is needed. Probation is the  
20          sentence of choice in New York State.  
21          There are more people under probation  
22          supervision than on parole and in DOCs  
23          combined. Probation protects your  
24          community because of the passion and  
25          commitment I see probation officers

1 Winter Q&A  
2 bringing to their jobs every day.  
3 Probation officers are also community  
4 residents who have a stake in making our  
5 streets safe for their own loved ones.  
6 Probation protects our community.  
7 We need to add your voice and that of  
8 others to help and support probation  
9 services in New York State. Thank you  
10 very much.

11 THE CHAIRMAN: Thank you,  
12 commissioner. One question that I have.  
13 I believe it's Arizona which has a  
14 statute, specific caseload limitation.  
15 Would you advocate that for New York?

16 MARY WINTER: Absolutely.

17 THE CHAIRMAN: Judge Corriero?

18 HON CORRIERO: No.

19 THE CHAIRMAN: Nancy?

20 MS. GINSBURG: I have a few questions.

21 BY MS. GINSBURG:

22 Q. I'm wondering, since you reduce the  
23 number of kids in out-of-home placement whether or  
24 not you have done studies for that population?

25 A. We have not yet. I'm hoping to find

1 Winter Q&A

2 someone to do them, but we have no capacity in  
3 county government for longitudinal studies. I  
4 would like to get some. You know, we are doing a  
5 lot of work right now particularly with detention  
6 reform with the Institute of Justice. They have  
7 been working with us for two years, so as much  
8 help as I can get from them on that, I'm hoping  
9 they'll help us with it.

10 Q. I have one question about fees. You  
11 indicated that many probationers can afford the  
12 fees, but I'm assuming there is a sizable  
13 population who cannot afford those fees. And what  
14 happens to them?

15 A. Then they don't have to pay. We have  
16 probation officers who just have to tell us what  
17 their income is. If you're on public assistance,  
18 you have other hardships then we waive the fees.

19 Q. There is no judgment entered for those  
20 people?

21 A. No.

22 BY HON. CORRIERO:

23 Q. Relating back to what Nancy asked you, I  
24 think you are of course to be commended for the  
25 reduction in out of court cases. Very significant.

1 Winter Q&A

2 And I wonder, how do you attribute that reduction?

3 Is it because the probation officers who are  
4 working in the community and the school have a  
5 smaller caseload or do you have additional - any  
6 additional resources. How could you define that?

7 A. Definitely the introduction of the MSP,  
8 evidence based program. The intensive family  
9 based intervention. We have really looked at the  
10 research and what works and doesn't work. So we  
11 have introduced those programs. We've stopped  
12 doing those programs that don't work.

13 We have stopped taking kids and scaring them  
14 in Auburn prison, we used to do that. We've  
15 stopped, we can't -- I hope nobody is here from  
16 the sheriff's office, they wouldn't like this,  
17 but we try not to get our kids doing DARE because  
18 you know, it has the opposite effect. So we  
19 really look at that literature. We do no longer -  
20 do no group work with kids because the literature  
21 says that is not a safe or good thing to do, so  
22 we don't do any of that. We really looked at  
23 that.

24 And because of the 65 percent funding from  
25 state our caseload for our juvenile probation

1 Winter Q&A

2 officers are 25 to 30. You know, they are never  
3 in the office. They are always out and in the  
4 schools. If I have even more of them, you know,  
5 I don't have a probation officer for every single  
6 school, you know, middle school and high school  
7 in the city of Syracuse, if they could have two  
8 or three of the schools, would love to have one  
9 in every school.

10 BY MS. GINSBURG:

11 Q. I have one follow up question, I'm  
12 sorry. But given that the 16 to 18 year olds, I  
13 know nobody likes this question --

14 A. I like it.

15 Q. -- and there are a lot of them in  
16 criminal and Supreme Court, and you've had success  
17 with those alternative programs for the younger  
18 kids in family court?

19 A. Right.

20 Q. Has there been any effort to extend  
21 those efforts to the kids who are --

22 A. No.

23 Q. -- known for that.

24 A. Would like to have a youth services  
25 department. Right thing to do. 16 years old

1 Winter Q&A

2 don't look any different than the 15 year olds.  
3 They get thrown in with the adults. They're  
4 really quite unsuccessful. Really would love to  
5 do that. But no money to do it.

6 Q. Any insight as to why it might be so  
7 unsuccessful on probation?

8 A. The kids we see now they're just so  
9 different, you know, they're in gangs, they have  
10 weapons. They're starting to disconnect from  
11 their family. I think if we had more of the  
12 family based intervention it would help. It could  
13 help them try to be more connected to their  
14 families.

15 But now they're stuck in a caseload of a  
16 hundred. They drop out of school. You know they  
17 don't, the last time I asked how many 16 or 17  
18 year olds were in school I was just depressed.  
19 Not many. They don't go. They work at low level  
20 jobs, they see no hope, they see no future.

21 THE CHAIRMAN: Joe.

22 BY MR. RINALDI:

23 Q. I have a couple questions for you. You  
24 said 30 years ago when you started things were a  
25 lot different. I'm just curious if you think, you

1 Winter Q&A  
2 mentioned several programs that you're doing, your  
3 department is doing, and I think it's a wonderful  
4 thing. Do you think we have gone too far one way  
5 or the other? Sounds like you've done programs  
6 specialized on both ends, I'm just curious in your  
7 opinion you've gone too far one way or the other?

8 A. I think we can even go further. There  
9 is a lot more programming, particularly in criminal  
10 courts that I wish I could do. We have a sex  
11 offender unit but they still have 75 cases; that's  
12 scary to me. Combined sex offenders, domestic  
13 violence unit.

14 So we try to get some standardized practice  
15 but there is too many cases. And I know I had  
16 talked to, I called all the probation officers in  
17 the unit in maybe a year ago to talk to them  
18 about what we could do to better handle the sex  
19 offenders. They said lower cases. I don't seem  
20 to have the ability to have anybody give me money  
21 to do that.

22 Q. One other question pertaining to fees  
23 itself. I know statewide there are a lot of DWI  
24 and a few others, I'm just curious what local laws  
25 or fee sections do you get?

1 Winter Q&A

2 A. We collect provision fees from every  
3 adult probationer, \$30 a month who can afford to  
4 pay, along with the DWI, that's a local law. We  
5 do adoption investigations, not a lot of them but  
6 if you can pay, which almost everybody can, they  
7 pay \$500 for that. If the petitioner in a custody  
8 or visitation case we collect \$300 for that.

9 We'd like to collect more. We'd like to  
10 collect for electronic monitoring, like to  
11 collect for pre-sentence reports. But I don't  
12 think we would get another local law passed  
13 without some enabling state legislation.

14 THE CHAIRMAN: Bob.

15 BY MR. BURNS:

16 Q. Mary, and you're doing a great job, no  
17 doubt, I think Onondaga is probably the second  
18 best Upstate program. But as juvenile probation  
19 officers are working exclusively in schools and  
20 community settings is there an unintended result  
21 where we're creating a separate juvenile probation  
22 department or have you been able to craft  
23 mechanisms so that they are part of the overall  
24 agency, that there is information that is  
25 exchanged, they're aware of what's going on with

1 Winter Q&A

2 16 to 18 year olds?

3 A. I think as much as I can. We have a  
4 Juvenile Justice Unit, we have to have that  
5 particularly because of the funding, but trying to  
6 standardize the practice. But we also have people  
7 that transfer back and forth between units. So we  
8 try and not have people only know one function.

9 THE CHAIRMAN: Bob Maccarone.

10 BY MR. MACCARONE:

11 Q. Mary, wonderful response as always.  
12 Just parroting what Bob says, you do a wonderful  
13 job in here in Onondaga County. The fees, do you  
14 get to keep them or do they go into the county  
15 treasury?

16 A. They're part of our budget.

17 Q. So they're part of an offset?

18 A. Yes.

19 Q. In fact you benefit in some capacity?

20 A. Yes.

21 Q. I would like you to comment on this  
22 situation that you and about 29 other counties  
23 find yourselves in, in accepting the juvenile  
24 justice money from other state agencies because of  
25 the fact that it is a higher reimbursement rate.

1 Winter Q&A

2 But with that being caught in this situation  
3 with trying to administer and comply with their  
4 requirements for completing I guess the Connect  
5 System, and then at the same time trying to  
6 utilize our risk need instrument and the situation  
7 there, because I think that would be very helpful  
8 for this Task Force to hear.

9 A. The requirements to receive the 65  
10 percent funding are crushing. There is a state-  
11 wide information system and case management system  
12 called Connection. Every one is required to do  
13 it. All probationers are required to put their  
14 cases on Connection. And the idea started out I  
15 think as a good idea, that everybody, if you had a  
16 child protective case and you had a probation case  
17 and you had cases the Salvation Army people would  
18 be able to coordinate, better look at each others  
19 work, etcetera.

20 What it turned out to be is a time consuming  
21 paperwork computerwork nightmare. The amount --  
22 the probation officers, some of them actually  
23 love the juvenile justice work, telling me that  
24 they're going to have to get out because they  
25 can't tolerate the paperwork.

1 Winter Q&A

2 Additionally, we have our own risk assessment  
3 instrument. We have a risk assessment unit  
4 system we want to use but we had to curtail back  
5 on it and not use the entire system because we  
6 are tied to this money, and tied to using the  
7 state system.

8 We would like to be able to come to some  
9 agreement with the Office of Children and Family  
10 Services and so that we could substitute a more  
11 appropriate youth oriented risk assessment  
12 instrument for theirs. But that has not happened  
13 yet.

14 I am privileged to have been appointed by the  
15 Governor to the Office of Children and Family  
16 Services Advisory Board, so at least, you know, I  
17 do get to talk to them. And I don't think  
18 they've totally rejected the idea of coming to  
19 some kind of a compromise. But any influence and  
20 help would - that would also be great. Because  
21 several of us are really struggling with it.

22 THE CHAIRMAN: Judge Brunetti.

23 HON BRUNETTI: No.

24 THE CHAIRMAN: Mr. Soares.

25 BY MR. SOARES:

1 Winter Q&A

2 Q. Ms. Winter, thank you very much for your  
3 presentation here this morning. You just  
4 mentioned the paper problem many of your probation  
5 officers are experiencing. Do you have a  
6 recommendation or solution in mind for that?

7 A. Generally we're very automated in our  
8 department overall. We have no support staff.  
9 Now many of my staff will say that's not a great  
10 thing. They do all 100 percent of their own work.  
11 And I do also.

12 Since I have an opportunity, wanted to talk  
13 about our investigation workload, which is also  
14 huge. The officers do 25 to 30 pre-sentence  
15 investigations per month. It's probably a little  
16 under double what I used to do maybe 18, 20 years  
17 ago. Now it's just I have to concentrate on  
18 supervision. So they get the short end of it,  
19 unfortunately. Along with they do all their own  
20 work.

21 On the positive side we have a very good  
22 automated system that is very helpful. Tie into  
23 our local CHAIRS system, which is the sheriff's  
24 department record keeping system; we tie into  
25 that. Our system updates their records regarding

1 Winter Q&A

2 things, addresses and you know, other information.

3 I don't, myself don't think that the probation-

4 required paperwork is overwhelming. But simply

5 that juvenile justice side with the Office of

6 Children and Family Services is.

7 Q. Still boils down to personnel and

8 resources?

9 A. Absolutely.

10 THE CHAIRMAN: Commissioner Horn.

11 COM. HORN:

12 Q. Mary, I'm honored to call you a

13 colleague. I usually call Mary to find out how

14 she's doing, this, that and the other thing. Let

15 me ask you a couple questions. First of all, what

16 is the starting salary here?

17 A. About \$40,000. The average probation

18 officer makes about \$48,000 a year. That's

19 supervising probation officers, and that's because

20 they get about \$3,500 extra a year for working

21 some overtime. We require everyone to work at

22 least 14 hours a month outside the normal working

23 hours and 7 of those have to be after 7:00 p.m. on

24 Friday and Saturday nights. And when they get to

25 work those 6:00 p.m. to Saturday night hours they

1 Winter Q&A

2 get time and-a-half.

3 Q. Thank you. And what percentage of your  
4 caseload is felony supervision caseload?

5 A. Half.

6 Q. Half felony, half misdemeanors. And  
7 again, would it be your position that the  
8 executive branch has adequately supported  
9 probation services historically or advocated for  
10 adequate funding for probation?

11 A. Well, considering that we've had our  
12 funding more than halved I would have to say no.

13 Q. And just one final question. Just to  
14 clarify the issue with respect to the Connection  
15 System, you said only those probation departments  
16 that take OCFS funding have to accept that?

17 A. Right.

18 COM. HORN: We're dealing with that in  
19 NYC and I sympathize with you completely.

20 BY HON KLOCH:

21 Q. Commissioner, thank you for your  
22 testimony, and apparently Onondaga County has more  
23 than an impressive court house, they have an  
24 impressive department. Can I ask you how long  
25 does it take your department to provide a PSI to

1           Fitzpatrick

2 the court?

3     A. Six weeks, but we're thinking we may  
4 have to extend it even more.

5     Q. What do you think is a reasonable period  
6 of time in the perfect world?

7     A. Four weeks.

8           HON. KLOCH: Thank you.

9           THE CHAIRMAN: Thank you very much,  
10 Commissioner. We are equally fortunate  
11 to have with us the distinguished  
12 District Attorney of the host county,  
13 Mr. William Fitzpatrick, who has been a  
14 leader in the profession and leader of  
15 his fellow law enforcement. Welcome,  
16 Bill. Good morning.

17           MR. FITZPATRICK: Good to see you,  
18 John, been a while. Thank you very much  
19 for the opportunity to address you. My  
20 name is Bill Fitzpatrick, since January  
21 1st of '92 I've been the DA of this  
22 county. Previous to that I was in  
23 private practice, and previous to that I  
24 was the chief assistant DA here.

25           And Robert, so you don't interrupt

1           Fitzpatrick  
2           me, I'll say that Mike Green is the  
3           finest DA Upstate, Mr. Soares Number 2,  
4           Kate Hogan is Number 3; I'm somewhere  
5           down near the bottom.

6           I don't want to be long, just give  
7           you a few short points of interest  
8           addressing what policies or legislative  
9           recommendations you eventually make.  
10          And I would be remiss if I didn't echo a  
11          lot of the comments I just heard by  
12          stating how fortunate I am as DA to work  
13          with Mary Winters. She's very  
14          dedicated, she's innovative, and most  
15          importantly from my perspective, very  
16          amenable to listening to new ideas. She  
17          works very very closely with my office  
18          in fulfilling our primary function,  
19          which is the public safety of the people  
20          in this county.

21          I think it's important to begin by  
22          focussing on, you know, what exactly is  
23          the purpose of probation. Many of us  
24          you know could simply say as being part  
25          of the system, well probation, that's a

1           Fitzpatrick  
2           dodge, it's a slap on the wrist, it's a  
3           waste basket approach. And nothing  
4           could be further from the truth. I  
5           think we all know that.

6           On the contrary, it's an integral  
7           part of the criminal justice system or  
8           the victim justice system as I call it.  
9           It's the original alternative to prison.  
10          It's our way of saying to a defendant,  
11          okay, technically you are eligible for  
12          jail or prison. But here's an  
13          opportunity to address some issues in  
14          your life, in your family life, your  
15          personal life that may have caused you  
16          to commit a crime.

17          And it's a recognition which I think  
18          is a positive goal for society, that the  
19          defendant who has been convicted of a  
20          crime is not a lost cause. And it just  
21          makes better policy sense to try to  
22          integrate or reintegrate that individual  
23          into society.

24          I'll give you a perfect example in  
25          how it works, how my office has worked

1           Fitzpatrick  
2           closely with Mary's department. April  
3           of 1992 my office started Project PROUD,  
4           Prosecutors Response to Offenders Using  
5           Drugs. It was the first time an Upstate  
6           county had begun a program to divert  
7           non-violent drug offenders from prison.  
8           I know that it is expanded throughout  
9           probably 90 percent of the state today.  
10          We have now had the functioning drug  
11          court for the last I don't know, John,  
12          six or seven years in Onondaga County.  
13          But I want to emphasize it occurred  
14          in this county and it was a politically  
15          unsavory thing to do from some even in  
16          law enforcement. Some people on the job  
17          for four months, I said we're going to  
18          keep people out of prison. And I  
19          couldn't have done it without the access  
20          and the cooperation of the local  
21          probation department who monitored these  
22          defendants to make sure they stayed in  
23          treatment. And made sure that they  
24          follow through on their responsibilities  
25          to the contract they laid out with my

1           Fitzpatrick

2           office.

3           All of this is tempered by the  
4           reality of what I said earlier, that  
5           whatever we may do in terms of  
6           alternative to incarceration, our Number  
7           1 job is public safety. Both my office  
8           and the probation department. And let  
9           me just lay out what I think would be  
10          some common sense recommendations.

11          Now Number 1, and I echo what Mary  
12          said, and I'm sure a number of other  
13          people say about resources. Clearly  
14          probation officers, and my personal  
15          experience has been, the probation  
16          officers are overworked and overloaded.  
17          I don't need to bore you with or beat  
18          the obvious into you. If a person is  
19          handling way way too many cases some  
20          people are going to fall through the  
21          cracks and it defeats the entire purpose  
22          of probation, the probation system.

23          It shouldn't come as a shock to any  
24          of you that people in government are  
25          going to be asking for more money. But

1           Fitzpatrick  
2           the answer is that, yes, they are asking  
3           for more money but this is a case where  
4           it's justified. And it's going to save  
5           money in the long run and in the long  
6           term. I don't really think it's open to  
7           much serious debate.

8           What begs the question is where is  
9           the money going to come from? David,  
10          make sure that nobody suggests an aid to  
11          prosecution as an alternative source.

12          But, let's do, obviously no one is going  
13          to raise your taxes, as the TV has been  
14          telling me for the last several months,  
15          so let's do a couple things.

16          Let's recommend a systematic review  
17          of all grant money that flows into each  
18          particular county. Chauncey Parker, who  
19          is the current Director of Division of  
20          Criminal Justice Services has this great  
21          policy where he notifies us, the 62  
22          elected DAs, of any money that comes  
23          into our county that is either directly  
24          or indirectly related to criminal  
25          justice. And then we will in turn

1           Fitzpatrick  
2           respond to him and say, you know, quite  
3           frankly, Commissioner, this program  
4           isn't working.

5           And it just galls me, we have this,  
6           Mary alluded to it earlier, we have in  
7           Onondaga County, particularly in the  
8           city of Syracuse, Violence Intervention  
9           and Prevention Program. Every year,  
10          every year I have to meet with the  
11          director and his or her assistants and  
12          we have to try to scratch and scrounge  
13          and find grant money and so forth and so  
14          on. It's just galling to me that we  
15          have to do that. There ought to be a  
16          review of all these member items and  
17          grants and so forth and so on.

18          One program shouldn't be defeated  
19          because they don't have the person. I  
20          wouldn't know how to write a grant if  
21          you put a gun to my head, but some  
22          people have that talent. That shouldn't  
23          be the criteria. The criteria should  
24          be, is the program working? Clearly  
25          probation is working.

1           Fitzpatrick  
2           Listen to some of the things that  
3       Mary talked to you about. It saves  
4       money in ways that aren't always  
5       measurable. People in government say,  
6       well how many dollars did you save? How  
7       do you put a dollar amount on people  
8       that don't go to prison? People whose  
9       lives aren't ruined? People who  
10       suddenly begin to realize the error of  
11       their ways and become productive  
12       citizens. People that aren't victimized  
13       or aren't murdered. Those are difficult  
14       concepts to put into financial terms of  
15       they ought to make sense to the people  
16       in the legislative branch that deal with  
17       financial matters.

18           The second thing I would suggest,  
19       increase funding from non-indigent  
20       defendants. The money not being thrown  
21       into a general fund somewhere but  
22       specifically earmarked for probation.

23           Thirdly and I know that there is  
24       some resistance to this, but there was  
25       an experiment in the state as we're all

1           Fitzpatrick  
2           aware with the death penalty. And the  
3           Capital Defenders Office was located,  
4           and somehow we managed to come up with I  
5           don't know how much money has been spent  
6           on it to date, but no longer a need for  
7           it. Quite frankly I don't see there is  
8           going to be a need for it in the  
9           foreseeable future. Why couldn't that  
10          money be put together for use for  
11          reinvesting in probation?

12          Lastly, aside from just diverting  
13          from other things that don't work I look  
14          into innovative ways that whoever the  
15          new Attorney General is, he or she could  
16          work with local DAs office to prosecute  
17          and combat Medicaid fraud. I suspect, I  
18          can say without fear of contradiction,  
19          that the savings we might realize in  
20          that area will total well, well into the  
21          millions if not billions of dollars if  
22          we do it in a coordinated and right way.

23          The second recommendation I have is  
24          that maintenance of Project IMPACT. I'm  
25          going to assume that all of the panel is

1           Fitzpatrick  
2           familiar with that. I'm not going to  
3           reiterate what Commissioner Winter has  
4           already said to that. But think about  
5           it. That this is suddenly treated as a  
6           novel and unique approach. That law  
7           enforcement agencies would actually work  
8           together in combatting crime. That's a  
9           very frustrating thing for me to have to  
10          say as District Attorney. But you  
11          wouldn't believe how much time I spend  
12          trying to get different police agencies  
13          just in a room together, not even  
14          getting on the same computer system or  
15          systematically reviewing reports,  
16          sharing intelligence, sharing data and  
17          so forth and so on. That stuff has to  
18          stop.

19          The great way to make sure it stops  
20          is to continue Project IMPACT and make  
21          sure that's funded. And I want to  
22          emphasize too that the probation  
23          department's Project IMPACT isn't just  
24          to arrest people and find people in  
25          violation but it's also to bring a

1           Fitzpatrick  
2           unique perspective to the table.  
3           For example, let's say the young man  
4           is acting out on the city street, acting  
5           somewhat irrationally. A city police  
6           officer's first reaction might be going  
7           to arrest him and take him right to jail.  
8           With the probation officer's input  
9           he might be familiar with that  
10          individual, he might know that the  
11          individual has a mental health problem  
12          or has a seriously deteriorating  
13          situation at home, and is able to bring  
14          that perspective to the other law  
15          enforcement agencies involved and wind  
16          up with that person maybe being treated  
17          at the local Hutchings facility or not  
18          being taken to jail, maybe contacting  
19          the family member and seeing, making  
20          sure that the person is taking his or  
21          her medication or any other of a dozens  
22          of other ways.  
23          The third thing that I'd recommend  
24          is that there has to be uniform sharing  
25          of intelligence amongst law enforcement

1           Fitzpatrick  
2           agencies, including probation officers.  
3           Probation officers should be a source of  
4           intelligence for other law enforcement  
5           agencies. And should be allowed to  
6           share juvenile records with appropriate  
7           law enforcement agencies, particularly  
8           the District Attorney's office. I can't  
9           think of anything more ridiculous than  
10          myself or Dave Soares having to pre-try  
11          a case and the defendant is 16, and we  
12          look to the Judge, and the Judge says,  
13          well what's this person's background?  
14          And we have to say, Judge, we don't know  
15          but he's charged with this particular  
16          type of crime. Then several months or  
17          weeks later we find out the person has a  
18          slip of juvenile arrests and we would  
19          have handled the case completely  
20          differently and much more appropriately  
21          had we been informed about that  
22          defendant, but for safety as well.  
23          Probation officers can also be and  
24          they are in this county an effective  
25          tool in suppressing gang activity. In

1           Fitzpatrick  
2           our county we have asked some members of  
3           the judiciary to mandate as terms and  
4           conditions of probation that those who  
5           we have identified as gang members who  
6           are on probation participate in various  
7           special programs and measures.

8           And these include such things as  
9           mandatory attendance at victim impact  
10          sessions. We are attempting to produce  
11          a summit where we would bring gang  
12          members in, they will actually hear  
13          from, in most cases, mothers of murdered  
14          victims. Let them hear first-hand about  
15          the impact that they have on the society  
16          that they live in. And again also not  
17          just for suppression but for inter-  
18          vention and prevention. To talk to  
19          people from the various social agencies  
20          about job training, about drug counsel-  
21          ing about alcohol counseling, about  
22          finishing school, about opportunities  
23          that they may simply not be aware exist  
24          other than a life of joining a  
25          particular gang.

1           Fitzpatrick

2           Fourthly, a coordination of  
3           rehabilitative efforts. The probation  
4           department of every county, all 62  
5           counties in New York State, in my  
6           judgment, should be a coordinator of  
7           rehabilitative efforts for those who  
8           have entered the criminal justice system.  
9           It's like a spider web sometimes, so  
10          many different agencies, mental health  
11          agencies, drug counselors so on and so  
12          forth. They're all well intended and  
13          all doing great work. Wouldn't it be  
14          better to be under the umbrella of one  
15          particular agency where everyone can  
16          make sure that the individual receives  
17          the proper treatment that he or she  
18          needs.

19          Listen to what Mary just told you  
20          about increased caseloads, having to  
21          deal with drug courts, mental health  
22          courts. We have an IDV court here in  
23          this county. They have to deal with DNA  
24          collection, sex offender treatment and  
25          so forth and so on. We ask very much of

1           Fitzpatrick

2           these men and women.

3           And frankly I think it's a good  
4           thing that we do, because it's  
5           reflective of the change in attitude  
6           over the last several decades that  
7           incarceration really ought to be  
8           reserved for the incorrigible. And  
9           society - our society ought to recognize  
10          the treatment and preventative measures  
11          for many non-violent offenders, makes  
12          much more sense.

13          Unfortunately we have a bad habit in  
14          state government, we respond to crisis.  
15          And it would seem that it's almost  
16          mandatory today if you're going to get a  
17          new law passed it's got to be named  
18          after a dead person. That's not the way  
19          to do business. The primary focus of  
20          our probation department in Onondaga  
21          County is to see that no new victims are  
22          created. And I hope this Task Force can  
23          in a united way collectively communicate  
24          to a new administration in Albany that  
25          probation is a system that produces

1           Fitzpatrick Q&A  
2           results and should be adequately funded  
3           and supported.  
4           I thank you for the opportunity to  
5           address you, and I want to commend our  
6           very very proactive Chief Judge Judith  
7           Kaye for once again, as she has  
8           throughout her tenure, seeking to  
9           improve the institutions of state  
10          government and not simply saying, let's  
11          do this because we've always done it  
12          this way, but rather being very pro-  
13          active as such is reflected by your  
14          presence here today.

15          THE CHAIRMAN: Thank you, Mr.  
16          Fitzpatrick. Any questions?

17 BY HON. KLOCH:

18        Q.    Counselor, where there is a Ferrar or  
19    sentencing commitment by the court and no question  
20    about it the defendant is going away to state  
21    prison. Do you see any function that a PSI serves?

22        A.    It does, and I'll tell you why. If it's  
23    going to be -- can I qualify it by the type of  
24    sentence that is agreed to? If it's going to be  
25    something lengthy, if I appear in front of Judge

1 Fitzpatrick Q&A

2 Brunetti and it's a murder case and I have  
3 difficulties with the case and we agree to  
4 Manslaughter in the First Degree and it's 20  
5 years. Then there might be a need for an  
6 abbreviated pre-sentence report. One that isn't  
7 as in intensive as Ms. Winters' officers might  
8 normally do.

9 Q. Let me stop you there. Do you find that  
10 there is such a thing as an abbreviated report in  
11 Onondaga County?

12 A. We have done them, but I think Judge --

13 HON. BRUNETTI: Sometime we'll ask  
14 for a short, I call it a short form  
15 report, which may not include the  
16 interview of the defendant, but it  
17 includes the rap sheet, a restitution  
18 issue or, you know, that's what we call  
19 it.

20 MR. HORN: By the way, DPCA requires  
21 face to face interview of the defendant  
22 in every PSI.

23 HON BRUNETTI: I'm just saying,  
24 that's what I do.

25 THE CHAIRMAN: May I ask the witness

1 Fitzpatrick Q&A

2 to continue.

3 HON. KLOCH: Go ahead.

4 A. I sit in front of the Judge, we've got a  
5 case we agree to let's say the probationer is  
6 sentenced to a drastically reduced sentence  
7 because we are under a misimpression about the  
8 defendant's background. We get a rap sheet and I  
9 know that Commissioner Parker has been working  
10 very very hard over the years to make them more  
11 understandable. I've been in the business 25  
12 years, and sometimes you look at these things and  
13 you just missed -- not miss things that are in  
14 front of you, but it might not reflect the  
15 conviction in Tennessee or might not reflect a  
16 conviction in another state that often times the  
17 probation department will pick up on.

18 Q. All right. And lastly without risking  
19 probation directors and commissioners jumping out  
20 the window, last week in New York City the issue  
21 of pre-plea PSI was brought up. You were talking  
22 about sharing intelligence. Do you think that  
23 perhaps PSI should be pre-plea?

24 A. I'm not a big fan of those. Some judges  
25 in the past have used those in my county.

1 Fitzpatrick Q&A

2 HON BRUNETTI: I never used one.

3 MR. FITZPATRICK: I don't find them  
4 to be effective.

5 HON. KLOCH: Thank you.

6 MR. HORN: I apologize.

7 THE CHAIRMAN: Commissioner.

8 BY COM. HORN:

9 Q. Let me pursue --

10 A. Thank you for doing that, if I do that  
11 I'm in deep water for the rest of my political  
12 career here but, thank you.

13 COM. HORN: Hopefully I won't appear  
14 in front of Judge Brunetti.

15 Q. I would like to follow up that line of  
16 questioning though. The law does not permit  
17 waiver of the PSI, wherein a sentence of  
18 incarceration is to be imposed there may be a  
19 short form that might be agreed upon.

20 However, where you have entered into a plea  
21 agreement and the plea agreement provides that  
22 the sentence will be a sentence of probation or a  
23 non-incarcerative sentence, or a sentence less  
24 than ninety days, a PSI is not required.

25 Does your office routinely or occasionally

1           Fitzpatrick Q&A

2   waive PSI, given what you've said about the  
3   importance of them?

4    A.   To be honest with you we would do that,  
5   we have done that.  Again, I get back to, you  
6   know, the situation I was just describing where  
7   you know, I don't want to be in the situation  
8   where I agree to something or one of my assistants  
9   obviously agrees to something then I find out we  
10  made a terrible error, this person isn't the  
11  person we think he or she is.

12   Q.   My question is, do you think that the  
13  current law permitting waiver of the PSI, where a  
14  sentence of more than ninety days is not going to  
15  be imposed, should stand or that it should be  
16  required in all cases?

17   A.   No, I think it should stand.  I have no  
18  problem.

19   Q.   You like the statute as it is?

20   A.   I like the statute as it is; if you can  
21  waive it in certain circumstances.

22   Q.   That doesn't seem a little inconsistent  
23  given what you said?

24   A.   If we would recommend something like  
25  that, I might point out the person is a very very

1 Fitzpatrick Q&A

2 bad guy but my case still stands, okay.

3 Q. Given the potential law enforcement  
4 then, given that Commissioner Winters staff is  
5 going to have to supervise this individual,  
6 wouldn't it be better if they knew something about  
7 the individual before the sentence of probation  
8 was imposed?

9 A. Yes, I agree with you. I agree with  
10 that. I apologize if I'm flip-flopping here but  
11 you're hitting me with these questions and now  
12 that I reflect on that, yes, I would want to know  
13 who's getting sentenced to probation.

14 Q. And one other question, obviously a lot  
15 of this is about money, there is a lot of agree-  
16 ment that probation should be properly funded, the  
17 state should reimburse a greater proportion of it  
18 given that in county government there is obviously  
19 a lot of comity between you and Commissioner  
20 Winter, would you support a maintenance of effort  
21 provision so if the state increased probation  
22 reimbursements it would not reduce the county's  
23 total dollar contribution to probation?

24 A. Absolutely. Robbing Peter to pay Paul  
25 is not a good way to run government.

1 Fitzpatrick Q&A

2 THE CHAIRMAN: Before we go further  
3 we've been joined by Lawrence Marks, who  
4 is the Administrative Director of the  
5 Office of Court Administration.

6 MR. MARKS: Sorry I'm late.

7 THE CHAIRMAN: I know you had other  
8 commitments. Mr. Soares.

9 MR. SOARES: Discussing about who  
10 the best DA was, he first took the stand  
11 here, I think there is no question Mr.  
12 Green may be 1, and Ms. Hogan Number 2.  
13 There is no doubt as to who is the most  
14 handsome District Attorney.

15 MR. FITZPATRICK: Are you talking  
16 about yourself David? Being a little  
17 vein.

18 MR. SOARES: Talking about you, sir.

19 MR. FITZPATRICK: Thank you, brother.

20 THE CHAIRMAN: Judge?

21 HON BRUNETTI: No.

22 MR. MACCARONE: I'm fine.

23 MR. BURNS: I'll pass along the top  
24 10 to Michael when I see him.

25 BY MR. BURNS:

1           Fitzpatrick Q&A

2       Q.   Would it matter to you, either as chief  
3 law enforcement officer or as a prosecutor and ADA  
4 in a courtroom, would it matter to you if the  
5 probation officer performing the pre-sentence  
6 investigation, probation officer filing a  
7 violation of probation worked under the judicial  
8 part of our system through the Unified Court  
9 System or worked for our local county executive or  
10 that the funding came either through the executive  
11 branch of state government or it came through OCA  
12 through the Unified Court System?  Would it be  
13 troubling at all?  Would it be okay?  Would it  
14 matter to you at all?

15       A.  My opinion is that the probation  
16 department should be a branch of the executive.  
17 It's the executive branch that is charged with the  
18 function of public safety and I think that's where  
19 the jurisdiction should lie.  I can see a lot of  
20 areas of probation were taken over as it is in  
21 some states by the judicial branch, I can see a  
22 lot of problems resulting from that.

23       It would be difficult for just off the top of  
24 my head, you know, a probation officer who has to  
25 report to a Judge is now appearing in front of a

1           Fitzpatrick Q&A

2 Judge and saying this person violated and should  
3 be put in jail. I think that should be a  
4 function of the executive branch with the D.A.'s  
5 office as the instrumentality of putting on the  
6 proof during the violation of probation hearing.

7           THE CHAIRMAN: Yes, Joe.

8 BY MR. RINALDI:

9 Q. Thank you for your testimony. I'm  
10 curious, some of your recommendations you talked  
11 about the oddness of the law enforcement community  
12 actually working together. And I'm glad to hear  
13 you think it's a good thing, we're starting to do  
14 that now through Project IMPACT.

15 I'm very curious if you think the intelli-  
16 gence started to be gathering is going to be  
17 impacted if probation is moved into the judiciary  
18 or stays in the executive branch, if you think  
19 that would have impact?

20 A. I think it would be, quite frankly  
21 again, similar to what I set to Commissioner Burns,  
22 I think it would be easier to transfer, the  
23 information would be a lot easier if it were to be  
24 maintained under the executive branch.

25 Q. I have one concern. You had mentioned

1           Fitzpatrick Q&A  
2 about the sharing of intelligence especially in  
3 juveniles. I understand your office is concerned  
4 with the protection of the community?

5     A. Right.

6     Q. But in the Family Court section, the  
7 primary focus is always the best interests of the  
8 child. Don't you see that as a kind of conflict  
9 there?

10    A. You know, somebody at some point, I hope  
11 there is some commission has got to review the  
12 Family Court Act, and maybe make some changes to  
13 the way Family Court functions in this state.

14    It's interesting, just before I came to  
15 testify here I just was at a presentation by  
16 Phillippe Ubninski. I don't know if anybody knows  
17 Phillippe used to work for the Codes Committee in  
18 Albany. He developed a computer program that  
19 allows all resource school officers to share  
20 intelligence in a particular school district about  
21 kids.

22    Now why do I mention that? Because in Cayuga  
23 County, primarily in the city of Auburn, they've  
24 cut their number of juvenile delinquency arrests  
25 as a result of school activity almost in half

1           Fitzpatrick Q&A

2   since they started doing this. What's the  
3   benefit of it? The school resource officer who  
4   may be on the job for a month comes and meets  
5   little Joey, who has just gotten into a fight at  
6   school.

7    So the old way is we're going to take Joey,  
8    maybe file a PINS petition, maybe place him  
9    somewhere and so forth and so on. The new way is  
10   you know what, this is the fourth time this week  
11   or this month that Joey has been bullied by  
12   somebody. And why is that? Because he lives in  
13   a different neighborhood or he doesn't want to  
14   join this particular gang. And it just makes the  
15   dynamics and the interaction of the school  
16   resource officer much much more effective.

17    I appreciate very very much, you know, it's  
18    kind of like the DNA argument; I'm on the state  
19    Forensic Science Commission, we hear the argument  
20    all the time, no, we can't collect DNA because  
21    we'll invade their privacy and so forth and so  
22    on.

23    The reality of it is the technology is there  
24    to invade a person's privacy. No crime lab in  
25    the State of New York is qualified to take a DNA

1 Fitzpatrick Q&A

2 sample from anybody and find out what that  
3 person's future health is going to be like. All  
4 they can do is find 13 locations on a particular  
5 scale and tell you that this is or isn't the  
6 person that deposited that at the crime scene.

7 I'm very very sensitive, I consider myself  
8 the chief law enforcement officer and the chief  
9 civil libertarian for Onondaga County as well,  
10 and I'm very very sensitive to privacy rights and  
11 so forth and so on.

12 There ought to be stringent, effective  
13 coercive sanctions for anybody that were to  
14 violate, whether it's a person's DNA privacy or a  
15 person's juvenile history unless it's related to,  
16 you know, whatever statutory recommendations you  
17 make.

18 In other words, I should know that the 16  
19 year old who is being prosecuted by my office for  
20 let's say an Assault Third that may or may not be  
21 a sexual crime in nature is a serial sexual  
22 offender. I should know that. So I can  
23 appropriately deal with his particular case.

24 MR. RINALDI: Thank you.

25 THE CHAIRMAN: Ms. Ginsburg?

1 Fitzpatrick Q&A

2 MS. GINSBURG: No.

3 THE CHAIRMAN: Judge Corriero.

4 BY HON. CORRIERO:

5 Q. Thank you very much. I just want to  
6 stay for a moment on the idea of the transfers of  
7 information from family court to drug court.  
8 Would you agree also that by your having this  
9 information and you have a 16 year old, and you  
10 can confirm that that 16 year old has never been  
11 in trouble before, that that would be very much an  
12 important part of the equation for you as if that  
13 person had a prior bad act?

14 A. Absolutely.

15 Q. It works both ways?

16 A. Absolutely.

17 Q. Works to the benefit of the defendant?

18 A. More information I have the better I can  
19 do in appropriating what I believe is a just  
20 result for the defendant.

21 Q. And so you think it would be helpful if  
22 probation departments, in preparing probation  
23 reports for a 16, 17 and 18 year olds, had more  
24 clearly defined routes of access to the family  
25 court to provide to the Judge reviewing those

1 Hogan

2 documents?

3 A. Absolutely. And were able to share that  
4 information with the appropriate law enforcement  
5 agencies, particularly my office.

6 THE CHAIRMAN: Thank you very much.

7 MR. FITZPATRICK: Senator, good to  
8 see you. Thank you very much and good  
9 luck on your charge.

10 THE CHAIRMAN: Kate Hogan, District  
11 Attorney of Warren County is our next  
12 witness, and thank you very much for  
13 joining us.

14 KATE HOGAN: Thank you Senator, I  
15 was very happy to follow DA Fitzpatrick  
16 because he gave you a very comprehensive  
17 overview perspective of the District  
18 Attorney as it interacts with the  
19 probation department. I'm glad DA  
20 Soares is on your Task Force.

21 When I first received notice of the  
22 public hearing I usually jettison those  
23 things in the garbage can. But I called  
24 my probation director and said I want to  
25 go testify. I really feel that the

1           Hogan  
2           probation department has been so wholly  
3           underfunded that it is only through the  
4           dedication of -- Bob Iusi is my  
5           probation director, and no offense  
6           Director Burns, but he is the Number 1  
7           director in the state. And I mean that  
8           seriously.

9           Judge Plumadore called me once and  
10          said, Kate, how long does it take you to  
11          get a probation report? I said four  
12          weeks. And he said, what? And I said  
13          four weeks, our turn-around is four  
14          weeks. I said, actually I can call I  
15          said, and get it in two days, ten days,  
16          whatever it is I can get it if it's a  
17          huge issue, I can get it done. He  
18          explained to me that's extraordinary.

19          There was a court he was concerned  
20          about where the delay was four months.  
21          Now I don't know if that's a personality  
22          conflict, I have to believe that it's  
23          funding. And for a long time the D.A.s  
24          Association, the D.A.'s offices are  
25          getting grants and there is no core

1                   Hogan  
2           layer to the probation department. And  
3           Bill Fitzpatrick just told you how  
4           integrated we are. They are the nexus  
5           to preventing incarceration. I want my  
6           caseload to go down. I want to put  
7           myself out of business. The way I do  
8           that is working hand-in-glove with Bob  
9           Iusi as the Director of Probation.

10           So I wanted to speak to you one,  
11           first of all advocate for proper funding.  
12           Advocate that they have the 50 percent  
13           mandated from the state. Advocate that  
14           the local match cannot be diminished. I  
15           also am going to keep it very limited as  
16           to my recommendations.

17           I don't have to sing Bob Iusi's  
18           praises, be assured, even when there  
19           isn't money there we have a sexual  
20           offender assault coalition where we meet  
21           with the prosecutors, probation officers  
22           and sex offender treatment providers.  
23           We meet on a monthly basis because we  
24           have a lot of sex offenders, where we  
25           have a young victim; maybe a four or

1           Hogan  
2       five year old victim. There is no  
3       medical corroboration, there is no  
4       confession. And you're going to go to  
5       trial where the defendant is presumed  
6       innocent and has to be proven guilty  
7       beyond a reasonable doubt. What verdict  
8       are you going to get in that case?  
9       You're going to get a not guilty. And  
10      he is a known predator.

11       So what do you do? You make a deal  
12      with the devil. You say, I'll give you  
13      a six 10 slip. Six months incarceration  
14      in the Warren County jail and 10 months  
15      of probation supervision. That puts a  
16      lot of pressure on Bob Iusi and his  
17      department. Because they know the stats  
18      on sexual predators. They know the  
19      recidivism rate.

20       So Bob Iusi and I talked about how  
21      are we going to protect Warren County  
22      residents from these people when we know  
23      full well, if we had more evidence I  
24      would want that person in state prison.  
25      And that's how we started the sex

1           Hogan  
2       offender - our coalition. And we are  
3       trying, we're trying to get money so  
4       that they can hire a special probation  
5       officer to just handle that caseload.  
6       But even without the money he's doing  
7       the job.  
8           There is a give-take ratio that you  
9       have in life. You're supposed to be  
10      giving more than you're taking. The  
11      probation department is constantly  
12      giving more than they're taking to the  
13      point where it isn't right. And I think  
14      that if there is anything that this Task  
15      Force can do that would have a huge  
16      impact directly and immediately on the  
17      lives of the people in the county for  
18      public safety it would be to ensure that  
19      the probation department, even if you  
20      don't get the 50 percent, whatever you  
21      get is going to be an improvement in  
22      what they have. Because 17 percent  
23      isn't just ridiculous, it's insulting.  
24      And it's an insult to every probation  
25      department in this state. So that's my

1           Hogan  
2       first real pitch.  
3           I want you to be passionate about  
4       our going for that. I also want you to  
5       be passionate about remembering the  
6       importance of the synergy. You saw Mary  
7       and Bill how they get along, hand in  
8       hand, glove in glove. The same thing  
9       with Bob Iusi and I. I can pick up the  
10      phone and talk to him. We know Warren  
11      County and what works in Warren County  
12      and what our issues are.  
13           Onondaga is bigger and has different  
14      issues, and Mary and Bill know how to  
15      fight for Onondaga. Please, please be  
16      cautious when you make any recommenda-  
17      tions with respect to adding a  
18      bureaucracy, I've never seen one  
19      bureaucracy that increases innovation.  
20      I have never seen one bureaucracy where  
21      people are encouraged to think out of  
22      the box.  
23           If you talk about centralizing  
24      probation you are going to limit and  
25      restrict the innovation of those

1 Hogan  
2 individual probation departments. Those  
3 directors know their county. Fund them  
4 properly and let them be their managers.

5 Last night Warren Buffett and Bill  
6 Gates were on PBS, and they were  
7 interviewed, they were at the University  
8 of Nebraska. And Warren Buffett was  
9 asked, how do you get production out of  
10 your people? And he said, I trust my  
11 managers. I let my managers manage.  
12 And are they going to make mistakes?  
13 Sure. But I trust them and I want them  
14 to be able to manage.

15 I think it's very analogous with the  
16 probation department. The probation  
17 director, Burns, knows Monroe County,  
18 Iusi knows Warren County. We need to  
19 let our people manage their own county.

20 So my two points for this are: Fund  
21 them appropriately, and be tremendously  
22 cautious with respect to any  
23 recommendation you make on bureaucracy.

24 Bill Fitzpatrick hit everything  
25 substantively on the programs and how

1 Hogan Q&A

2 it's a benefit for us in the criminal  
3 justice system. And practically how you  
4 get the money, I really don't care.

5 That's up to people that are in a  
6 different position than I am. I'm in  
7 Warren County trying to make it safe for  
8 the community, and I need my probation  
9 department to be better funded. Thank  
10 you very much, and I know lunch is  
11 coming so I'm trying to be quick.

12 THE CHAIRMAN: Well, no, you're  
13 better than lunch.

14 MS. HOGAN: Aren't you kind, Senator.

15 THE CHAIRMAN: That's a wonderful  
16 presentation, thank you. Any questions?

17 BY MR. MARKS:

18 Q. You're saying funding is so critical.  
19 Do you think that under the current structure  
20 where probation is largely funded by the  
21 localities, by the counties, and then this other  
22 share with the state reimburses. But the history  
23 of that has been on a steady decline for several  
24 decades. You say that we should all be passionate  
25 about funding for probation, but how can that

1 Hogan Q&A

2 happen? We can all be passionate, it's important,  
3 but under this current structure do you think that  
4 probation will ever be adequately funded?

5 A. I think that there are discretionary  
6 funds that you can divert to probation. I think  
7 that DA Fitzpatrick had a very good idea on the  
8 CDO. The Capital Defenders Program is now  
9 defunct. No purpose in having a CDO when there is  
10 no death penalty. I think it's in the millions  
11 of dollars. Do you remember that number?

12 MR. SOARES: Yes.

13 A. That's an astronomical amount of money.  
14 They're reducing the aid to prosecution, and to  
15 probation services while having a defunct death  
16 penalty and funding the CDO office. Whatever  
17 change that you can make, we don't have a local  
18 law where we charge probationers if they're not  
19 indigent. If that is what it takes to start  
20 getting us to be as aggressive as possible to get  
21 funding.

22 But I think that the discretionary grant  
23 funds that are out there needs to be evaluated  
24 and probation has to be incorporated in this. I  
25 get \$70,000 in the road to recovery. That's six

1 Hogan Q&A

2 months residential inpatient program, into a  
3 halfway house, then they're out into the public.  
4 I have incorporated that into my drug treatment  
5 court.

6 My drug treatment court wouldn't be effective  
7 if I didn't have probation officers who are  
8 watching them like hawks. All of these people  
9 are fighting addiction. What's keeping them from  
10 straying on the road is knowing that someone is  
11 watching over them. So Bob Iusi has people who  
12 are working overtime.

13 I divert some of my Road to Recovery money to  
14 Bob Iusi, with Chauncey Parker's permission. I  
15 said to him, it's not fair that probation is  
16 getting nothing out of it when they're doing the  
17 work. I don't go out on Saturday night at eleven  
18 and check up on those people, it's one of Iusi's  
19 people who do that. So I do that sua sponte  
20 because I think that's the right thing to do.

21 I think we should start looking at DA programs  
22 and saying how are you going to collaborate with  
23 probation? If you collaborate with probation  
24 here's the money that we can give you. There is  
25 a lot of ways to skin a cat and a lot of ways to

1 Hogan Q&A

2 get the funding so that programs that are not as  
3 accessive are redirected and probation is given  
4 some of those monies.

5 Q. Just to follow up then. If centralized  
6 bureaucracy was the means to ensure better  
7 understanding of probation, I don't know that it  
8 is, but let's just assume that it was, that would  
9 ensure, facilitate more adequate funding for  
10 probation. Is that a price worth paying?

11 A. Why do you think that centralized  
12 bureaucracy would give you better funding? Why  
13 would you need to centralize it to fund better?  
14 Wouldn't you necessarily incur a higher cost?

15 Because if you have a centralized bureaucracy  
16 you're going for a centralized support staff. You  
17 don't need that. I am the front line, I drove  
18 three hours here from Lake George, New York, so  
19 you could see how front line this is. Just forget  
20 creating another layer. The last thing we need in  
21 this world is another layer of government.

22 Let the people who are working in the front  
23 line do their job and fund them. I'm not sure  
24 how an additional secretary and a staff in Albany  
25 is going to increase the monies to the probation

1 Hogan Q&A

2 front line. And that's what I think is paramount.

3 THE CHAIRMAN: Judge Corriero.

4 BY HON CORRIERO:

5 Q. I know you appeared before me as a  
6 assistant district attorney in Kings County, it  
7 wasn't until you began to speak that I began to  
8 realize how effective and persuasive you were  
9 then; much more so now I imagine.

10 But I wonder if you can take what you're  
11 saying and look at it from another perspective.  
12 Do you think that, and I agree with you, I  
13 understand the value of keeping this kind of  
14 front line relationship with your probation  
15 director and yourself, but what if the funding  
16 aspect of probation was separated from the  
17 administration aspect of it.

18 One of the overall questions we have to  
19 consider is where would probation best be served  
20 in terms of the bureaucrat structure, if you  
21 will. And one of the suggestions is why not  
22 revert back to the concept that probation was an  
23 arm of judiciary.

24 Now I wondered if your relationship with your  
25 present probation director as well as yourself,

1 Hogan Q&A

2 as well as the chief judge of your county, all  
3 three of you require this effort to deal with  
4 probation that might enhance the advocacy of  
5 probation.

6 A. I did appear before you in Brooklyn.  
7 And when I was in Brooklyn it was 1988, and it was  
8 that height of the crack epidemic. The only thing  
9 I knew about probation was that these people would  
10 come in sometimes and say that we'll throw the  
11 book in with the plea. That was my extent of  
12 probation.

13 So the reason I'm so passionate about  
14 probation from a Warren County perspective is  
15 that it was as Bill Fitzpatrick described, if  
16 there is accounting and there are standards and  
17 it is a control that is hugely effective as a  
18 prosecutor, and from the judge's perspective.  
19 Our judge in Warren County is Judge John Hall.  
20 And I touched base with him before I came here,  
21 and I said, your Honor, how do you feel about  
22 this? And what do you think? And he told me he  
23 liked having an independent perspective. So  
24 that it wasn't, he didn't want anyone to feel  
25 like they were just writing a report in a certain

1 Hogan Q&A

2 direction to make him happy. Every report I get  
3 from probation doesn't say what I want it to say.  
4 I think that there is an element of independence  
5 that allows the court to be able to look at the  
6 PSI, and when the defense and the prosecution are  
7 butting heads, say, I have an outside source that  
8 I've looked to.

9 If it is under OCA rule and it is part and  
10 parcel of the judge, it doesn't have that same  
11 ring of independence. And so you know the DAs  
12 don't get what they want all the time from  
13 probation, defense attorneys don't always get  
14 what they want. And it allows the judge and at  
15 least Judge Hall said he prefers to have it  
16 incorporated so I can look at it and say here's  
17 another independent voice, and I'm going with  
18 that recommendation.

19 THE CHAIRMAN: Thank you. Any other  
20 questions?

21 BY HON. KLOCH:

22 Q. First counselor, talking about the phone  
23 call from Judge Plumadore, I'll let you know in  
24 Erie County you're talking four to six months of  
25 getting a PSI. That's because of the cutback in

1 Hogan Q&A

2 officers.

3 A. I'm glad you raised that, I talked to  
4 Frank Clark before I came here because he is in a  
5 different situation. And this Task Force has to  
6 address, you know, the five boroughs and Long  
7 Island and Erie County are different. There is 62  
8 counties in this state. If you eliminate the five  
9 borough problems, Long Island and Erie County,  
10 you're down to 54. And I want to be the voice of  
11 one of the 54. So that whatever changes you make  
12 don't just fix it for those six or eight.

13 Q. But what I want to get to is the  
14 discussion that I had with Mr. Fitzpatrick and the  
15 Commissioner here chimed in in regard to the  
16 necessity for a PSI. Seems to me like it may be  
17 as the George Castanza of statutes should be the  
18 opposite way.

19 Where now we have the ability to dispense  
20 with the PSI at say low level crimes where you're  
21 talking about a probation or a limited period of  
22 incarceration, but where there is a Ferrar plea  
23 or been a sentence commitment the guy is going  
24 away 15 to 20 years, what good is it for me to  
25 see a PSI before I send him away?

1 Hogan Q&A

2 A. You know, I think that ultimately at the  
3 end of 15 to 20 years he will be eligible for  
4 parole.

5 Q. Well, can DOCs do that?

6 A. You know, I really, I don't feel  
7 strongly about it one way or the other to be  
8 perfectly frank. When they say will you waive a  
9 PSI. It's usually directed at the defense  
10 attorney, not the DA. We don't take a position on  
11 that normally. So usually it's the defense  
12 attorney.

13 We can speed up the sentencing, will you  
14 waive the PSI? Yeah, sure, no problem, judge.  
15 That's the context in which we're normally, it  
16 normally comes up in Warren County. I'm not sure  
17 the impact of allowing the PSI, making them  
18 mandatory would be on the system. I don't know  
19 how much additional work that would be - or not  
20 allowing them to be waived. How much -- you're  
21 saying it should be waived and only required --

22 Q. Maybe we should ask one of the next  
23 directors.

24 A. Yes.

25 BY MR. SOARES:

1 Hogan Q&A

2 Q. I would like to touch on that issue  
3 because I think Mr. Iusi addressed it earlier,  
4 that PSI, the importance of a PSI is not just for  
5 the sentencing of that defendant but in an era, in  
6 this generation we're talking about intelligence  
7 driven law enforcement and prosecution, that PSI  
8 serves a greater purpose than just informing that  
9 judge on what he or she needs to know prior to  
10 sentencing.

11 That PSI following that defendant into the  
12 state system where they are and they need to know  
13 exactly where to separate these folks.

14 A. That PSI is sent to the Upstate New York  
15 Regional Intelligence Center to be put into a  
16 greater database. That PSI is critical. Not only  
17 for that particular defendant, that function of  
18 sentencing, but also continue that pool of  
19 information that we need today.

20 I also think from a due process perspective  
21 if they're eligible for parole. Eventually, your  
22 Honor, they're going to be eligible for parole.  
23 I think the PSI needs to be part and parcel so  
24 that their attorney has something to work off of  
25 where they're making their parole argument, that

1 Hogan Q&A

2 was my first reaction to it. I think it would be  
3 required simply for the parole process if nothing  
4 else.

5 THE CHAIRMAN: Commissioner Horn.

6 BY COM. HORN:

7 Q. Pursuing that line of reasoning. I  
8 think what we're trying to get at is, and you  
9 started the getting, it gets to plea bargaining.  
10 The law says that the decision to place a person  
11 on probation should be based on the fact that the  
12 interest of justice required it and the person can  
13 profit from being placed on probation. How can  
14 that decision knowingly be made absent the  
15 preparation of the PSI?

16 A. Honestly, I think you do need a PSI. I  
17 think you need the paperwork in your files. In a  
18 county like Warren County I probably, by the time  
19 they're getting on felony probation, I may have  
20 personally prosecuted the person once or twice  
21 before.

22 Q. But the PSI is for the judge.

23 A. Correct, but what I'm saying is, yes, I  
24 agree that the PSI is for the judge, but also for  
25 the DA and the defense attorney. We all look at

1 Hogan Q&A

2 that PSI report and we rely on it.

3 Q. So all I'm asking is, in your opinion

4 should the statute that permits waiver of the PSI,

5 where a sentence of less than ninety days

6 incarceration is being imposed, where there's been

7 a plea to that sentence, should that sentence,

8 should that waiver be allowed or should the PSI be

9 required before you can accept, before the judge

10 can impose a sentence, including a sentence to

11 place the person on probation? Or is your

12 objection to it based on the fact it might slow

13 down your ability to take plea bargains?

14 A. If the sentence is less than ninety days

15 we have all agreed we have the paperwork in the

16 file. I think you should be able to waive that

17 low level PSI. The judge's comment was in the

18 inverse.

19 Q. I'm asking the opposite of the judge's

20 question.

21 A. Right. 15 to 20 years I think you have

22 a different obligation because there is a

23 procedural due process right now.

24 Q. Today this individual is coming back

25 into your community, you're agreeing to this

1 Hogan Q&A

2 person to being placed on probation without the  
3 benefit of all this information, you say is it  
4 going to be important 15 years from now?

5 A. What I'm saying to you is my community  
6 is so small that I could look at someone and say I  
7 have no problem with that person being on  
8 probation. He strictly has DWIs, this is - he had  
9 his first misdemeanor and we gave him outpatient  
10 rehab, we'll put him on misdemeanor with three  
11 years probation.

12 Q. Do you sign off on every plea?

13 A. No, but I'm held accountable for every  
14 plea.

15 Q. Does your assistant DA who is in the  
16 courtroom consent to the plea know the cases that  
17 well? Like somebody just hired or moved up from  
18 Albany County because you pay better?

19 A. No, David has stolen people from me  
20 because of pay.

21 Q. You get my point?

22 A. No, I do get your point. Honestly I  
23 think that the PSI is a great tool. I think in  
24 the context of the felony, 15 to 20, you have a  
25 due process obligation. Would it be desirable?

1 Hogan Q&A

2 Yes. Is it going to create such an overload to  
3 the system? I don't know. I think empirically  
4 that's what you would want to look at. Is this  
5 waiver requirement where we're looking at it on  
6 the low level misdemeanors, is it saving us so  
7 much time that it's something that is of value  
8 systemically?

9 Q. How can a judge know the person. The  
10 judge may not know the individual that well.  
11 Maybe you prosecuted the person in a town court,  
12 or perhaps the person is known --

13 A. Commissioner, I know you've been to  
14 Bolton Landing, you've got to come to Glens Falls,  
15 it's not that much bigger.

16 Q. Let's take Albany. We're talking about  
17 a state law?

18 A. No, and I'm trying to tell you that  
19 there is, you know, we all know that plea  
20 bargaining is a necessity. And the question is,  
21 systemically you need to look, as the Task Force,  
22 how much work is this going to impose on the court  
23 system? And is it worth having the risk of the  
24 waiver on the low level case?

25 Q. Well, we're putting felons on probation.

1 Hogan Q&A

2 It's not a low level case. In New York City  
3 people plead guilty.

4 A. I'm not waiving that felony.

5 Q. In New York City people are pleading and  
6 getting probation for weapons offenses and sex  
7 offenses, being placed on probation without the  
8 benefit of a pre-sentence investigation. Would  
9 you say that in the interest of justice, the  
10 interest of public safety is well served by that  
11 practice?

12 A. I think that it -- you should not waive  
13 on felony.

14 Q. And therefore would you agree that the  
15 law should be changed to prevent the waiver on a  
16 felony where a sentence of less than ninety days,  
17 including probation is being considered?

18 A. Sure. That I think should be the law.  
19 Again, you're trying to balance and you're trying  
20 to say systemically how much of a risk is this to  
21 the public at large versus how much of a burden is  
22 it to the system? Because I appreciate the  
23 concern that you're not going to be able to get  
24 money for everything. So I mean I think that's  
25 something that you should look at. I would agree

1 Perretta  
2 with you on felonies, I don't agree with you on  
3 misdemeanors.

4 HON BRUNETTI: John Dunn appointed  
5 me temporary chairman. Any other  
6 questions? If not, thank you very much.  
7 And the next speaker is Francine  
8 Perretta, probation director from St.  
9 Lawrence County. How are you?

10 FRANCINE PERRETTA: Fine, thank you.  
11 Good afternoon I guess almost. Thank  
12 you for the opportunity to speak to you.  
13 I actually have two testimonies. This  
14 testimony is my serious testimony.

15 HON BRUNETTI: One is the truth and  
16 one is a lie?

17 FRANCINE PERRETTA: This is my  
18 serious testimony, well researched and  
19 well thought out; and this is my  
20 passion. Probably most people in this  
21 room who know me will guess which one  
22 I'm going to do. My passion. Hope it's  
23 not a big surprise there for people. So  
24 I really want to speak to you from my  
25 heart. Like Kate just did.

1 Perretta

2 I've been doing this job for a long  
3 time probably as long as anybody in this  
4 room. Longer than most. I'm an orange  
5 on the personality scale. That means I  
6 like change. Not always the love of my  
7 department but works well in the  
8 criminal justice system. I've seen a  
9 lot of it over my 30 years in this  
10 profession, some good, some not so good.

11 I've heard and I've seen the state  
12 aid go from 46 1/2 to less than 18  
13 percent. Seen caseloads go from 35 to  
14 135. I've seen the county, my county  
15 where murder was relatively unheard of,  
16 today we're in our fourth week of a  
17 murder trial, one of three murder  
18 trials.

19 I've seen a local justice system  
20 fall into disarray with more and more  
21 untrained local justices being elected  
22 every day. I've seen JDs whose crime  
23 was taking their father's car for a joy  
24 ride to JDs whose crime now is sexual  
25 assault at a knifepoint.

1 Perretta

2 I've seen a basic three tier court  
3 system: county, justice, family, grow  
4 into so many boutique courts that  
5 sometimes I don't even know how many  
6 there are, and I have no idea how we're  
7 going to service them.

8 Through all of this I have remained  
9 as my colleagues have, very passionate  
10 and committed to probation and to the  
11 justice system. You've heard today, you  
12 heard last week and you're going to hear  
13 tomorrow, that many of us have dedicated  
14 huge chunks of our lives to this  
15 profession, and I'll tell you, we  
16 haven't done it because of the money.  
17 We've done it because it's our career  
18 and it's our passion. As it is with our  
19 officers.

20 You've heard what the basic salary  
21 is across the state. People aren't  
22 getting rich being probation officers.  
23 But they are dedicated and they're there  
24 because they want to help people. And  
25 it's their career path. Do I consider

1           Perretta  
2           us to be the experts in the probation  
3           system? You're damn right I do. Do I  
4           think that we know how to help  
5           strengthen probation in the State of New  
6           York? I do.

7           You see, it's like Bob Iusi's said,  
8           he didn't quite use the terminology, but  
9           the topic of probation is not  
10          politically sexy, nor does it generate  
11          overwhelming support. For years my  
12          colleagues and I have gone on to Albany  
13          on Lobby Day. We go down there, and  
14          there are the libraries, there are  
15          thousands of them. And there are the  
16          nurses and there is hundreds of them.  
17          And there is probation. We all  
18          together, all of us county probation  
19          directors equal 57. That's what we go  
20          to Albany with. So you know, we're  
21          caught between a rock and a hard place  
22          in probation.

23          If you'd just put yourselves in our  
24          shoes for a minute, many of you wear our  
25          shoes but the rest of you think of this.

1           Perretta  
2       We are all in favor of good public  
3       policy. No question about it. Like DNA  
4       collection. Like Sex Offender  
5       Registration. But then we have to  
6       implement those policies with no  
7       resources. So what do we do? Of course  
8       we do it. Because we are your county  
9       probation directors. Because it is our  
10      passion. Because it is our career,  
11      because we are there to protect our  
12      communities. So we do it and we do it  
13      to the best of our ability.

14           But a time comes when enough is  
15      enough. My colleagues will tell you  
16      that when the DNA collection came down  
17      my vote was, just say no. And it wasn't  
18      because I'm opposed to DNA collection,  
19      it's because I'm opposed that no one  
20      thought it was going to take more  
21      officers time to collect DNA.

22           So all that stretching of that  
23      rubber band that Bob talked about, I'm  
24      at my limit. And so I said no. I went  
25      to my county and I said look, there is

1           Perretta  
2           this new mandate, cannot do it. I  
3           cannot ask my officers to do one more  
4           thing. And my county jail nurse takes  
5           DNA in my county. It's not that we  
6           don't think it's good public policy,  
7           because we do. But we found some other  
8           way to do it.

9           I consider myself extremely lucky,  
10          I'm actually from Upstate New York. The  
11          farthest north that you can go along the  
12          St. Lawrence River. I have a wonderful  
13          County Court Judge, Family Court Judge,  
14          Surrogate Court Judge and Supreme Court  
15          Judge. I admire them, we're friends,  
16          we've been a team for many years. And  
17          they're all very supportive of probation.

18          My District Attorney, I couldn't ask  
19          for a greater District Attorney that  
20          supports the work we do. And I think  
21          when we talk about success, if you look  
22          across the state I would venture to say  
23          that in 85, 90 percent of the cases  
24          judges accept the recommendations of  
25          probation departments who conduct PSIs

1           Perretta  
2           for them. In my county I think it's  
3           even higher than 90 percent. That shows  
4           I think, their trust in the probation  
5           system.

6           Are there problems in the system?  
7           Sure. I think our local justice system  
8           is outdated. Happen to come from a  
9           county where there are 32 towns and  
10          villages, well over 70 courts. You talk  
11          about stretching the rubber band when  
12          you talk about the district attorney's  
13          office, the public defenders office, the  
14          conflict offenders office and the  
15          probation officer and the sheriff's  
16          transporting prisoners, we're stretched.

17          So I actually think this number of  
18          legislative proposals and I actually  
19          think there is a number of things that  
20          can be done that don't necessarily  
21          require legislation.

22          For instance, mandating having the  
23          Office of Court Administration mandate  
24          that Declaration of Delinquency be  
25          signed within 24 hours of being received

1           Perretta  
2           by the Court. 24 hours, not 24 days,  
3           not 24 months. Violations of probation  
4           being heard within 5 days. You know, we  
5           think that a violation of probation is,  
6           that you heard Bob talk about this, I  
7           don't think it's bad.

8           We file a technical violation of  
9           probation because we're protecting our  
10          communities. When they sit and sit and  
11          sit in courts, not scheduled, not heard,  
12          we are doing a major disservice to our  
13          counties. Probation directors should be  
14          given the authority to issue a warrant  
15          when courts are not in session when  
16          public safety dictates. Think of it.  
17          Parole officers have this authority and  
18          your county probation directors do not.

19          Mandates should be imposed upon  
20          local justice courts that require them  
21          to notify probation within 48 hours of  
22          any disposition that affects us. You  
23          know, having 70 of them, could be a year  
24          before I'm notified someone is under my  
25          supervision, and it's normal to be more

1 Perretta

2 than 30 cases.

3 Mandated PSIs in all cases,  
4 especially where probation is being  
5 considered. So that someone off the  
6 street doesn't walk into our office one  
7 day and say hi, I'm under your probation  
8 supervision, and you have no idea who  
9 they are or what they've done.

10 Workload standards so that officers  
11 can do the job expected of them by the  
12 courts and by the public. Think of it.  
13 You heard the speaker before me; the  
14 Commissioner of Corrections has workload  
15 standards. We happen to be looking at  
16 building a new jail, every day they come  
17 in and say, we need more officers  
18 because, you know, we've got this  
19 cellblock that does this and that.

20 DSS has mandated caseloads. Parole  
21 has mandated caseloads. Why should  
22 probation not have mandated caseloads?  
23 Makes no sense at all. You get the idea.

24 I think we've been very thoughtful  
25 with some concrete ideas of how to

1           Perretta  
2       improve the system. So I was very  
3       excited when the Task Force came along,  
4       and been doing this job a long time --  
5       I've only spoken to one other Task  
6       Force, that was on PINS 18, not a  
7       pleasant experience for a probation  
8       director. But beside itself I was very  
9       happy that this Task Force came along.  
10      And I remain hopeful that after this  
11      hearing and reading all the testimony  
12      and listening to myself and my  
13      colleagues that you'll come away with  
14      recommendations that do just that.  
15      Strengthen probation.  
16      I personally think that the easy way  
17      out is to move us under another branch  
18      of government. I think that's the easy  
19      way out. I think it is short sighted.  
20      If you look carefully at the advent of  
21      boutique courts, counties were ordered  
22      to participate, some counties didn't  
23      need boutique courts, but we have them  
24      anyway. And when they first started,  
25      can you imagine, can you imagine a

1           Perretta  
2           county where a boutique court is set up  
3           that does not involve the probation  
4           department? How absolutely ludicrous is  
5           that?

6           You have to have probation. It's  
7           just, there is just - they're a key part  
8           in the criminal justice system. So I  
9           don't know why we weren't on the list.  
10          I don't know why we weren't participants.  
11          I assume someone in the court system  
12          felt probation was broken or  
13          dysfunctional or unable to fulfill our  
14          role. But the fact of the matter is  
15          probation is not broken. We are simply  
16          underfunded. We are the hub of the  
17          system. We are the sanction of choice.

18          You heard it over and over and I'm  
19          sure you'll continue to hear it. I  
20          think that the court system has enough  
21          issues of their own right now. I say if  
22          they go out and fix the local justice  
23          system, the local justice county - local  
24          justice system in the counties, that  
25          that would be a major accomplishment for

1 Perretta

2 them.

3 I know that you've spoken to someone  
4 in Arizona, and I can tell you I'm  
5 personally acquainted with the Arizona  
6 system. And I think Arizona probation  
7 is under the Superior Courts. Superior  
8 Courts in Arizona don't supervise  
9 misdemeanors, and they don't supervise  
10 pretrial programs. Two important things  
11 that we do in probation.

12 Have to tell you that in Arizona the  
13 probation is seen as a step-child of the  
14 judicial system. They're underfunded  
15 and overworked. Sound familiar? I  
16 think so. We don't need to be anyone's  
17 step-child. We need a strong voice. We  
18 need allies, we need advocacy, we need  
19 legislation to help strengthen what we  
20 do and what we do well.

21 And I think you have the unique  
22 opportunity to help us make a difference.  
23 So please, I ask you to give careful  
24 consideration to my testimony and the  
25 testimony of my colleagues across the

1 Perretta Q&A

2 state and listen to us because we are  
3 the people who do the job. Thank you  
4 very much.

5 THE CHAIRMAN: Thank you Ms.  
6 Perretta. I'm not sure any of my  
7 colleagues are brave enough to ask you a  
8 question. Let me try. A very simple  
9 one.

10 BY THE CHAIRMAN:

11 Q. We've repeatedly heard that burden of  
12 requiring probation to do the DNA checks. Can you  
13 help me, just tell me how it works?

14 A. Well, in my county it's simple. We  
15 schedule every Wednesday from twelve to six at the  
16 county jail, and the nurse does the DNA and  
17 submits it. In other counties it's not so simple  
18 because it's left up to the individual probation  
19 officers to do that.

20 Again, just one more unfunded mandate. One  
21 more thing in their busy day already that's added  
22 to it. So in my county it is very simple. Every  
23 Wednesday from twelve to six the nurse is in,  
24 what used to be our Day Reporting Center, we  
25 direct all offenders sentenced during that week

1 Perretta Q&A

2 to a term of probation to appear there and give  
3 DNA.

4 Q. I was led to believe that at the initial  
5 meeting between the probationer and the probation  
6 officer it was a very simple process that could be  
7 done during the course of the interview. Is that  
8 not so?

9 A. I'm sure it could be done during the  
10 course of the interview, all I'm saying it's one  
11 more thing to be done during the course of the  
12 interview.

13 THE CHAIRMAN: All right, thank you.

14 HON. KLOCH: Senator, I'm not afraid.

15 BY HON KLOCH:

16 Q. First of all, starting salary for your  
17 officers?

18 A. 34,000.

19 Q. And average?

20 A. Maybe 42,000.

21 Q. And how long does it take your  
22 department to prepare a PSI for the Court?

23 A. Four weeks in County Court, six weeks in  
24 local justice courts.

25 Q. And in a perfect world do you feel

1 Perretta Q&A

2 that's adequate or a reasonable period of time?

3 A. I do, and obviously if there is a case

4 where your judge needs a PSI sooner we can

5 accommodate it.

6 Q. Now, have you heard this fascinating

7 discussion with the two District Attorney's before

8 you about when to get a PSI. And the fact that if

9 you have a high level crime, criminal being

10 sentenced to a lengthy period of time pursuant to

11 either a Ferrar plea or sentence commitment made

12 by the judge where he's going away, no question

13 about it, and why should we get a PSI for that?

14 Number 1, I'm going to ask you that.

15 And if it wasn't required, if the judge

16 could provide for a waiver of that, how much of a

17 significant savings of time would that be for

18 your department.

19 A. Well, we have a really good system in

20 our county and no one goes without a pre-sentence

21 investigation, ever. Because I asked the justices,

22 the judges and the district attorney not to allow

23 that to happen. And I did that because I think

24 it's critical that an investigation be done. Even

25 on low level, because there is always something

1 Perretta Q&A

2 somebody doesn't know.

3 Q. I know you said --

4 A. We find that out and that's why it's  
5 important that someone else know that during  
6 sentencing.

7 Q. I know you said low level mandate its  
8 got that but what about that high level?

9 A. Everybody. Everybody.

10 Q. And if it could be waived, would it be  
11 any significance to your department if the high  
12 level sentences could be waived as far as PSI,  
13 would it mean anything to you?

14 A. Wouldn't mean anything to me because  
15 people who know me know that I don't always follow  
16 the rule. I would go to my judge and tell him,  
17 don't waive it.

18 Q. I mean as far as hours of your probation  
19 officers having to dedicate to preparing those  
20 high level PSIs, would it mean anything?

21 A. No, I don't think so.

22 HON. KLOCH: Thank you.

23 BY COM. HORN:

24 Q. What is your average caseload size?

25 A. 100. I appeared before my board of

1 Perretta Q&A

2 legislators last night, was actually granted two  
3 probation officers to try to bring those caseloads  
4 down.

5 Q. So that will bring it to a hundred?

6 A. No, it's a hundred now. Might break it  
7 down to ninety.

8 Q. And how many staff do you have?

9 A. I have 19 supervising probation  
10 officers; staff of 46.

11 Q. And what is the percentage of your  
12 caseload that your - supervision caseload that's  
13 felonies and what percentage is misdemeanor?

14 A. I'm with everybody else, just about  
15 50/50.

16 Q. Interesting. And let me ask you this,  
17 you've been around, you've seen the state funding  
18 diminish, I know how you feel about it. You said  
19 that simply rearranging the deck chairs on the  
20 Titanic would be the simple solution. But what  
21 makes you think that if nothing changes with  
22 respect to the organization or perhaps the  
23 organizational location of the DPCA - let's assume  
24 a world in which you continue to be a county  
25 executive branch function in companion with your

1           Perretta Q&A  
2 county judges, free to give your agency's, your  
3 officers opinions to judges. But the regulations,  
4 the training, and the funding that you receive  
5 from DPCA still came to a DPCA but DPCA was part  
6 of the judiciary rather than executive.

7     If that didn't change what makes you think  
8 the world would get better? What evidence do you  
9 have that the executive branch at the state level  
10 of government has ever, Republican or Democratic,  
11 shown any interest in improving or increasing the  
12 funding for probation services?

13     A. Well, I'm optimistic. I think that with  
14 the type of panel that's sitting here before me  
15 today that if we have a voice, a voice that's  
16 heard, that we can turn the tide. I believe that.

17     So I don't know the DPCA needs to go under the  
18 court. I think DPCA funded the way they're  
19 supposed to be funded and then fund local  
20 probations, I think that can work just fine. I  
21 think we haven't been heard. I think there aren't  
22 enough of us to be heard and we're not a real  
23 popular topic. I think the more people we have  
24 that speak on our behalf and can go out and speak  
25 on our behalf publicly and to the legislators, I

1 Perretta Q&A

2 think - I think they'll listen. The squeaky wheel  
3 gets the grease or whatever that is.

4 Q. But no governor of recent memory has  
5 asked for increased funding as part of the  
6 executive budget?

7 A. But why? Because no one jumps up and  
8 down and screams for us. That's what we need, we  
9 need people to be our advocates, that's what I  
10 think.

11 THE CHAIRMAN: Mr. Soares?

12 MR. SOARES: I'm one of the folks  
13 that have tried.

14 THE CHAIRMAN: Judge.

15 BY HON CORRIERO:

16 Q. Thank you very much for your passion, I  
17 understand where it's coming from. In one of the  
18 major tensions between the judges and probation  
19 department is this area of violation of probation.  
20 And you mentioned some, you referred to standards.  
21 What criteria do you use to determine whether or  
22 not someone should be violated?

23 A. Well, we have technical violations and  
24 then rearrest violations. So in our county, our  
25 policy is that everybody who does something that

1 Perretta Q&A

2 has a re-arrest, the court is notified. We don't  
3 necessarily file a Declaration of Delinquency at  
4 that time or a violation of probation. But they  
5 all are brought in for what we call administrative  
6 reprimand. The same with any technical violation.

7 So we don't always file a violation of  
8 probation or Declaration of Delinquency, we do it  
9 when we need to do it, but everybody comes in for  
10 an administrative reprimand. And the Judge has  
11 the final say.

12 I could say to the judge, look, this DWI, we  
13 caught him driving, he's been drinking, we've got  
14 him back into treatment and we think that, you  
15 know, he's in a 30 day program, we've administra-  
16 tively adjusted that technical violation for the  
17 time being. The judge says fine or the judge  
18 says, you know what, I've warned him twice, bring  
19 him back; and we bring him back.

20 Q. What about for example, somebody  
21 smoking, a 16 year old smoking marijuana?

22 A. I would not bring that person back  
23 before the judge, necessarily.

24 Q. Do you think that uniformity in  
25 standards state-wide would be helpful in determin-

1 Perretta Q&A

2 ing how do deal with violations of probation?

3 A. I don't really think so. I think it's

4 got to be, I think it's much too individual for

5 that and I think it's much too local for that.

6 What I may tolerate some other county may not

7 tolerate. I know what the tolerance of my

8 community is. So I don't know that there is a way

9 to get to where everybody has to do everything a

10 certain way and that it will work.

11 THE CHAIRMAN: Ms. Ginsburg.

12 MS. GINSBURG: No.

13 BY MR. RINALDI:

14 Q. I appreciate you're an orange, I

15 suspected you for a long time, and I'm the blue.

16 People can't find hard to believe about me. You

17 mentioned you like to see a Declaration of

18 Delinquency done in 24 hours and VOPs done within

19 5 days. Don't you think if we were under the

20 judiciary it would be faster or easier to do that

21 than if we were separate now? I'm just curious.

22 Those are two of yours proposals.

23 A. I have no - I have no, there's things we

24 can do now. Those are things that actually

25 tomorrow Judge Kaye could issue a directive

1 Perretta Q&A

2 telling people this is what we're going to do. We  
3 don't need to go someplace else to have that done.  
4 So I don't know that it's necessary to accomplish  
5 that goal by going under the court system.

6 THE CHAIRMAN: Bob.

7 BY MR. BURNS:

8 Q. Francine, do state division of budget  
9 folks in both parties under both governors or the  
10 last several governors, and I know you know this  
11 because like I have, you have talked to them, two  
12 phrases come to mind. One, that it's probation is  
13 a local problem, that's why we're cutting you.  
14 And the second is that, we've cut you to the bone  
15 from 46 to 17. And by and large with the  
16 exception of the crisis in Erie and my own cuts a  
17 few years ago in Monroe, and what occurred in  
18 Nassau a number of years ago, by and large judges  
19 are still pleased with services from probation,  
20 probation officers still step up to the plate.  
21 Any comments on that to the extent that that  
22 same argument might occur even if probation was  
23 switched from one branch to the other, that we  
24 seem to still get the same services even when we  
25 cut drastically. Any comments on that?

1 Perretta Q&A

2 A. I'll speak from my experience. You know  
3 my caseloads used to be in the 30s then they got  
4 to the 60s, and now they're 90 and a hundred. And  
5 so those cutbacks, that's exactly what's happened  
6 with those cutbacks. So you've had no increases  
7 in staff because there is no money for it. So the  
8 probation officers and other staff continue to do  
9 more and more and more with less.

10 So I think if you looked at it generally as  
11 is the work getting done? Probably. Because  
12 probation officers are stretching as far as they  
13 can stretch.

14 You know, Rocco Possi couldn't be here today  
15 but he and I sit on the Public Safety Task Force  
16 for the New York State Council of -

17 HON. BRUNETTI: County?

18 A. County Government, Association of County  
19 Government, thank you. We met a few weeks ago in  
20 Lake George. We were handed a list of the new  
21 legislation, the new bills. They were 14 new  
22 crimes. 14 new crimes. Well, even if there is  
23 one person that commits each crime that's 14 new  
24 people that could end up in the criminal justice  
25 system. We know that probably is just not going

1 Perretta Q&A

2 to be one person.

3 So things just keep happening that are beyond  
4 our control that makes us have to keep doing more  
5 and more and more with less. So I think counties  
6 have, you know, I'll speak for my county, I'm so  
7 fortunate that they haven't cut me, but I am very  
8 good at writing grants. I'm very good at chasing  
9 the money, you know. I'm not proud of it but I  
10 am good at it. That's how I saved officers.

11 When we were going to lose 3 officers I went  
12 out and got some federal grant for something and  
13 said, okay, we can do this and we can move this  
14 around and make this work. And that's what a lot  
15 of my colleagues had to do.

16 If you look at probation budgets I bet there  
17 is not money in the state that doesn't have an  
18 infusion of money from somewhere else to make up  
19 that shortfall.

20 MS. GINSBURG: I do have a question.

21 THE CHAIRMAN: Ms. Ginsburg.

22 BY MS. GINSBURG:

23 Q. I know we all like to believe that you  
24 can do more and more with less, but coming from an  
25 under-funded Public Defenders Office I know that

1 Perretta Q&A

2 there are limits to that statement. And I'm  
3 interested in your response to the question that I  
4 asked earlier as to whether or not you're seeing  
5 the people coming onto your load, onto your  
6 caseload as having more complicated problems and  
7 requiring more advanced - either your probation  
8 officers needing more advanced training or more  
9 advanced degrees or skill sets. And whether or  
10 not it's really possible to do what you need to do  
11 for people with serious mental illness, serious  
12 drug abuse, serious dysfunctional family  
13 background with what you have now?

14 A. Good question. Yes, I think the makeup  
15 of the probationer has changed completely in the  
16 last, even in the last 10 years. So I think  
17 people are, have many more complex problems. The  
18 drug of choice might have been alcohol or  
19 marijuana, now it's crack cocaine and heroin and  
20 methamphetamine.

21 So yes, I totally agree that the people are  
22 more complicated. And I think it's been a  
23 challenge for probation to keep up with those  
24 types of issues and the training with our probation  
25 officers. I've been very fortunate, we just had

1           Perretta Q&A  
2 a \$250,000 sex offender management grant. So we  
3 were able to go with a county with no treatment,  
4 no specialized supervision, no specialized  
5 investigation from the police, no specialized  
6 prosecution, having none of that, to having that.  
7 But we had to find a different way to do it other  
8 than the normal channels.  
9     So I think probably you listen to Mary  
10 Winters and you listen to Bob and you listen to  
11 some other probation directors, I think we have  
12 had to get really creative how we do that and how  
13 we pull in other resources. I think we probably  
14 are the best collaborators in any county.  
15 Because we have had diminishing resources and we  
16 have to go out and find those services for our  
17 people somewhere.  
18     They shouldn't be in jail because there is  
19 not enough mental health counseling for them. So  
20 we really have to be creative and find ways to  
21 service them with the cooperation of other agencies.  
22           THE CHAIRMAN: Bob Maccarone.  
23 BY MR. MACCARONE:  
24     Q. Francine, I want to thank you, your  
25 comments were excellent as always and certainly we

1 Perretta Q&A

2 know of your passion. You said your caseloads are  
3 currently at 100 and you got a couple probation  
4 officers hopefully last night as a result of your  
5 testimony. Where do you think caseloads ought to  
6 be across the state?

7 A. I would be in heaven if we were at 60.  
8 I think that's -- I sit on a Board and we're doing  
9 some workload standards and I think 60 is a number  
10 that, I actually think probably they came up with  
11 50, but I think 60 is probably a number that's  
12 been used. And I think that's probably a good  
13 caseload size. Recognizing people are in  
14 different categories in that 60. So you have  
15 people you see once a week, once every two weeks,  
16 once a month.

17 Q. Francine, you know as I do, that in  
18 lowering the caseloads in and of itself doesn't  
19 necessarily result in better outcomes. But  
20 certainly to do more with offenders we need more  
21 time which relates to lower caseloads.

22 What would you like to do with offenders if  
23 in fact you had the benefit of a funding level  
24 that brought the supervision caseload down to 60  
25 to 1?

1 Perretta Q&A

2 A. Well, I think there is a number of  
3 things we can do and I think you have to look at  
4 it as a coordinated community response. I think  
5 it's not just about putting more probation  
6 officers on the streets. I think the people you  
7 have under your supervision need treatment. What  
8 I would love to have is a couple alcohol  
9 counselors on my staff. So I get somebody new and  
10 they need an evaluation, bang it's done.

11 So I think there is some other unique  
12 things. You heard Kate talking about thinking  
13 outside the box, I think there is a number of  
14 things you can do if you had increased resources.  
15 I don't know that I would necessarily double my  
16 staff but I may increase my staff and put in  
17 other services that are needed for the offenders  
18 and the families and the kids.

19 Q. In a related question, what are you  
20 doing in terms of PSIs per month right now with  
21 your staff? How many are they required to do and  
22 similarly how many would you think would be an  
23 appropriate number to do if in fact those two are  
24 different?

25 A. I think very similar to Mary. I think

1 Perretta Q&A

2 we used to do about 18 a month, I think we're up  
3 to like 32 a month. So it's not --

4 Q. What do you think is a good number?

5 A. I think the 18 was doable. We really  
6 could keep up with that. I think what it forces  
7 us to do now, and I have a limited investigation  
8 staff, and they also do custody investigations and  
9 visitation investigations and adoption  
10 investigations, so they do a little bit of both.

11 Q. I know you have a national model when it  
12 comes to sex offender management up in St.  
13 Lawrence and I congratulate you on that. Just one  
14 note on the DNA. You were a strong voice with the  
15 directors. I think it's important too.

16 Also however, that the state this year did  
17 allocate one million dollars to reimburse proba-  
18 tion departments for the collection of DNA samples  
19 from the current load of probationers, not going  
20 forward, it's the only criminal justice discipline  
21 within the state that did receive specialized  
22 funding for DNA collection, as you know.

23 A. Yes, and when you think about DNA and  
24 you think about that \$50 fee that offenders are  
25 supposed to pay you know, easily part of that

1 Perretta Q&A

2 money could go to probation to help fund that  
3 extra cost.

4 Q. And lastly, how do you feel about fees  
5 and do you charge them in St. Lawrence?

6 A. I do charge fees. I charge fees for DWI  
7 offenders, for drug and alcohol testing and for  
8 custody and visitation and adoption investiga-  
9 tions. I think that I've been in Albany lobbying  
10 for years trying to get the comprehensive fees so  
11 that you can charge fees for, you know, G P S, you  
12 know it used to be \$4.00 a day for me to put  
13 somebody on electronic monitoring, now it's \$7.50  
14 a day to put them on G P S. A lot of those people  
15 could afford to pay that. I would love to be able  
16 to put that cost onto them or where they can  
17 afford to pay that, but we don't have the ability  
18 to do that. So I think it's needed. I just don't  
19 know how we're going to get it.

20 MR. MACCARONE: Thank you for your  
21 thoughtful testimony.

22 THE CHAIRMAN: Judge?

23 HON BRUNETTI: No.

24 BY MR. SOARES:

25 Q. I'll take the opportunity now and be

1 Perretta Q&A

2 very brief. Two things in Albany County, the role  
3 of the probation officers are changing every day.  
4 Now there is a proliferation of handguns, the gang  
5 violence we are seeing, we're using probation  
6 officers in tactical street level operations,  
7 they're out there with their vests and handguns  
8 and putting themselves in danger. That's  
9 happening every single day.

10 I know that our probation officers, our  
11 probation director is experiencing some of the  
12 same problems that are articulated here. If  
13 they're out on the street they're not managing  
14 the caseload and something has to be done with  
15 those people that they're supervising.

16 I don't know if that's happening in St.  
17 Lawrence, but if it is I would like for you to  
18 talk about that a little bit.

19 And my second question about the boutique  
20 courts that you mentioned. Are you getting in  
21 addition to the courts becoming boutique courts,  
22 are you getting the boutique probation officers,  
23 so to speak, that requires much more intense  
24 supervision, supervising a sex offender, domestic  
25 violence requires much more intense supervision.

1 Perretta Q&A

2 Are you finding that you're getting resources to  
3 meet those needs placed on your organization  
4 right now from the quote unquote boutique courts?

5 A. The first question I'm probably fair and  
6 impartially unique from, I'm the largest county in  
7 the state of New York, so I have five offices not  
8 just one. And those five offices encompass large  
9 masses of area. So my officers are, have a  
10 combination of office and field visits. And  
11 sometimes they have to drive an hour to see their  
12 clients. So we try to do some of both.

13 We are not armed with guns, but we have an  
14 incredible relationship with all of our 200 law  
15 enforcement officers, so if we need help they're  
16 our backup. We do bar sweeps with them. We do  
17 home checks with them. We do - on Halloween make  
18 sure all the sex offenders are confined to their  
19 homes, so we use them in that instance.

20 I think that what's happening with the  
21 boutique courts, if they're going to be  
22 successful you need probation. And so I've had  
23 to divert probation officers who supervise a  
24 regular caseload to supervising half a regular  
25 caseload and now a domestic violence caseload or

1 Perretta Q&A

2 a drug court caseload. So I've had to divert  
3 them from.

4 That's why other people's caseloads go up to  
5 a hundred. There has been no resources at all to  
6 the probation department for any of those courts,  
7 not that I'm aware of anyway. Not in my county.

8 MR. SOARES: Thank you.

9 THE CHAIRMAN: Any other questions?

10 Thank you very much. We will take a  
11 half hour break, probably our  
12 stenographer (court reporter) needs it  
13 more than anyone else. We will resume  
14 at 1:15, and I appreciate you witnesses  
15 being patient with us.

16 (Recessed for lunch then Hearing continued).

17 THE CHAIRMAN: Like to resume the  
18 hearing, please. The next witness is a  
19 very distinguished member of the bar, a  
20 writer on various variety of subjects  
21 related to criminal justice. We're  
22 delighted, Alan Rosenthal, Director of  
23 Justice Strategies - Center for  
24 Community Alternatives is here. Good to  
25 see you back here.

1 Rosenthal

2 MR. ROSENTHAL: I want to thank the  
3 Task Force and Judge Kaye and Senator  
4 Dunn for taking up this issue. It's one  
5 that's so important to the criminal  
6 justice system. As Marsha Weisman  
7 introduced CCA to the Task Force last  
8 week, let me again simply remind you and  
9 not go into detail that we have focused  
10 our motion over the last twenty years on  
11 seeking alternatives to incarceration  
12 within the - and being consistent with  
13 public safety.

14 And to a large extent the work that  
15 we've done has brought us at times into  
16 being allies with probation, sharing  
17 work and information. And I think that  
18 I'm going to be very narrow and focused  
19 in what I discuss.

20 We're at an important crossroads,  
21 not just because the Task Force has  
22 convened, but because the legislature  
23 has put forward a very interesting  
24 challenge. And the challenges may be a  
25 whole lot of to do about nothing. Or we

1           Rosenthal  
2           can meet that challenge in a very pro-  
3           active way. As you all know the Penal  
4           Law was amended this summer effective on  
5           June 7th, whereby the sentencing goal of  
6           promoting re-entry and reintegration was  
7           included as a goal in our sentencing  
8           model.

9           Been around long enough to be  
10          familiar with the more traditional  
11          goals, but now we have before us a  
12          challenge. And I think it's a challenge  
13          for the judiciary, it is a challenge for  
14          probation, it is a challenge for defense  
15          counsel, and it is a challenge for  
16          corrections. We can either ignore that  
17          challenge and simply treat this new goal  
18          as so much cotton candy or we can  
19          embrace it and try and do things  
20          differently.

21          I'd like to focus on how we might  
22          strengthen probation's role in how to  
23          address this. And I'm not going to at  
24          all address probation's role in a  
25          supervisory sense. I'm sure you've had

1           Rosenthal  
2           many speakers address that. I'd like to  
3           narrow it simply to the role that  
4           probation plays in this state much more  
5           than others, whereas they aren't as  
6           lucky in other states, the role of the  
7           probation report, the PSI has fallen  
8           into, I won't say disfavor, but disuse  
9           in many states.

10          I've actually been very surprised to  
11          find how under-utilized it is. In New  
12          York it still plays a very significant  
13          role. And I think that the change in  
14          the Penal Law sets the stage with  
15          appropriate resources for it to better  
16          inform judicial decisions about what  
17          will work for the defender -- the  
18          defendant, before the court in a  
19          particular instance and what is likely  
20          to promote their reintegration back into  
21          society.

22          That is a subject that I have  
23          thought hard and long about as I've  
24          worked with the New York State Bar  
25          Special Committee on Collateral

1           Rosenthal  
2           Consequences, and just recently released  
3           the draft within the last couple of  
4           months of our work on re-entry and  
5           reintegration, the road to public  
6           safety. I truly believe that. I think  
7           that it is at the heart of what the best  
8           of what probation can offer, particular-  
9           ly in the art and/or science of  
10          sentencing.

11          In a minute or two I want to talk  
12          about the experience in another state  
13          where they looked at this in a very  
14          similar way. They've done it in the  
15          goal of public safety. But as Oregon  
16          has added the goal of public safety to  
17          their sentencing goals, it very much is  
18          about reentry and reintegration.

19          How do we tackle the very high  
20          recidivism rate which impacts of course  
21          on public safety? In order to do this  
22          probation will be called upon to provide  
23          more information to judges as they try  
24          to figure out what's the appropriate  
25          sentence, what sentence will promote

1 Rosenthal

2 this defendant's reintegration?

3 I think that it's done in two ways.

4 One, it is done by a thorough and

5 complete understanding of the scholarly

6 work that is out there. But it is also

7 done by embracing all of the research.

8 More and more we've come to be evidence-

9 based in our work. And there have been

10 calls in some corners where evidence-

11 based sentencing is what works in our

12 sentencing.

13 For the most part the judiciary has

14 been called upon to sentence with the

15 notion of just deserts in mind or

16 sending a message in mind or making the

17 punishment fit the crime. And I suppose

18 and certainly talked to judges about how

19 do you go about this decision? The most

20 difficult decision in the case, with

21 those concepts in mind, there is no real

22 outcome based analysis. They just send

23 the message that the punishment, and I'm

24 not even quite sure how you would do

25 this, did the punishment fit the crime?

1 Rosenthal

2 A very difficult analysis.

3 But if we shift to an evidence based  
4 analysis of what sentences are working  
5 with what defendants, under what  
6 circumstances? If we really begin to  
7 track that data, that places both the  
8 judge and probation in a much better  
9 position to be able to analyze and  
10 undertake what I consider to be the  
11 public safety function of probation, how  
12 to reduce recidivism or how to move  
13 somebody off the life criminal track.

14 So I'd like to talk for a minute  
15 about one state's experience. I have to  
16 laugh only because as I began to  
17 theorize this several years before the  
18 state passes legislation, it never  
19 occurred to me, look at what's going  
20 object in other states.

21 Written our initial theoretical  
22 paper a couple years ago about what  
23 would integrated sentencing be and what  
24 would it mean? More recently I came  
25 upon the Oregon experience. A state as

1           Rosenthal  
2           far away from New York as a state might  
3           be. But one that took that same step to  
4           look at how do we take it, make real  
5           efforts to reduce recidivism.

6           A couple of the changes that  
7           occurred in Oregon as they redirected  
8           their sentencing model, one was an  
9           initiative that came out of their  
10          judicial conference in 1997. And  
11          certainly many of the judges in New York  
12          do this, but for us to embrace the Penal  
13          Law and what's being offered, it needs  
14          to be done in every case.

15          What their judicial conference  
16          resolution spoke to was that judges  
17          should consider and invite advocates to  
18          address the likely impact of the choices  
19          available to the judge in reducing  
20          future criminal conduct. In Multnomah  
21          County the judges moved so far in 2002  
22          to actually request of their county  
23          probation department that they include a  
24          box in the probation report that  
25          addressed the ways that the recommended

1           Rosenthal  
2           sentence would be likely to increase  
3           public safety and reduce recidivism, and  
4           why. The "and why" is not a question  
5           that is particularly addressed in  
6           probation reports.

7           There is usually an analysis of the  
8           offense conduct, background information  
9           of the offender. A recommendation as to  
10          an appropriate sentence. But we haven't  
11          used the best of what I think probation  
12          has to offer. There is a wealth of  
13          experience in probation departments  
14          among probation officers and I think  
15          that the answering of the why question  
16          based upon their experience, their  
17          reading, their training and current  
18          research would be an invaluable asset to  
19          judges.

20          In more recent times it actually  
21          enacted in January 1st of 2006, Oregon  
22          changed their statute based upon the  
23          Multnomah model to require in every  
24          probation report that they provide an  
25          analysis of what disposition is most

1           Rosenthal  
2       likely to reduce the offender's criminal  
3       conduct, explain what that disposition  
4       -- explain why that disposition would  
5       have that effect and provide an  
6       assessment of what's available to the  
7       offender of any relevant program or  
8       treatment in or out of custody, whether  
9       provided by the department or any other  
10      entity.

11           Is this resource intensive?

12      Absolutely. Will probation departments  
13      look at a recommendation or a state law  
14      that would change how reports are  
15      written and wonder how will we have the  
16      resources to do it? I think that that's  
17      a fair question. And with the  
18      legislature setting the tone for us to  
19      shift our model, absolutely we have to  
20      shift resources to probation to be able  
21      to help answer that question.

22           The final piece of the Oregon  
23      experience that I want to bring to your  
24      attention is what they call their  
25      sentencing support technology, is their

1           Rosenthal  
2           effort to collect all of the data across  
3           law enforcement lines, computerize it,  
4           so that at the time of sentencing both  
5           probation and the judge can call upon  
6           the years of experience that go into the  
7           database, telling them not what sentence  
8           to impose, not to mimic the sentences of  
9           the past, but what the reduction, what  
10          the effect on the reduction of  
11          recidivism has been among defendants of  
12          similar characteristics, similar crimes,  
13          and across a wide array of sentences.

14          Long time incarceration, on to  
15          community service. That's one of the  
16          things that is lacking, and it's  
17          certainly a tool that probation would  
18          benefit from in being able to make much  
19          more helpful recommendations to the  
20          judiciary.

21          I have narrowed my comments to those  
22          two points. I know that Marsha Weisman  
23          addressed a wider array of what changes  
24          and possibilities the new statute might  
25          hold but I wanted to focus your

1           Rosenthal Q&A  
2           attention on these two things and the  
3           Oregon experience.

4           THE CHAIRMAN: Thank you, Mr.  
5           Rosenthal. The subject of the  
6           accessibility of the PSR to defense  
7           counsel was brought to my attention by a  
8           very thoughtful article you published in  
9           December of 2000. Since that time have  
10          you seen an improvement in the  
11          availability of those reports to defense  
12          counsel in a timely fashion?

13          MR. ROSENTHAL: I must say that the  
14          practice has changed and improved. But  
15          in some jurisdictions the courts  
16          interpretation of what seemed to be a  
17          very clear statute, and on the books  
18          since 1975, the interpretation in some  
19          jurisdictions is that defense counsel  
20          can read but not obtain a copy. And  
21          it's, I think that it undermines the  
22          ability of defense counsel to review  
23          carefully with the defendant. The  
24          defendant in many cases being in the  
25          best position to be able to point out to

1           Rosenthal Q&A  
2           their counsel some of the nuances of the  
3           report, some issues that need to be  
4           addressed. And so it's helped but it  
5           certainly hasn't unanimously changed the  
6           practice.

7           THE CHAIRMAN: Thank you.

8           Questions? Robert.

9 BY MR. MACCARONE:

10        Q. I was very interested in your comments,  
11        Mr. Rosenthal, about evidence-based risk assess-  
12        ment. And the outcomes, looking at the various  
13        sentences, both probation, community based,  
14        etcetera. The state division of probation and  
15        correctional, as you know, funds probation, and  
16        correctional alternative programs is moving toward  
17        a risk assessment, new compass risk assessment for  
18        probation departments. In fact we're beta testing  
19        that in four counties and I expect to make that  
20        available to counties throughout the state before  
21        the end of this year.

22        One of the challenges I think is extending  
23        that opportunity to community correction agencies  
24        as well. We fund 40 pretrial service programs,  
25        12 defender based advocacy programs, 50 drug and

1 Rosenthal Q&A

2 alcohol. Many of them use our own instruments.

3 I think your agency does a very thorough job of

4 how you assess individuals certainly, and the

5 resources you bring to bear in preparing a

6 special advocacy based individual case plan.

7 But I would look toward the community, the

8 ADI and the community, corrections community in

9 endorsing the risk and needs. So we become more

10 exacting in determining what those criminogenic

11 needs are and developing effective based plans to

12 address those opportunities.

13 Is that something your agency would accept

14 and endorse? Do you think that is something that

15 most community correction agencies are willing to

16 do as they move forward in becoming more

17 effective?

18 A. I think that implicit in my comments are

19 the need for all of us, when it comes to

20 sentencing, to figure out how to do our work

21 better. And we can't do that without collecting

22 the data to see the results of certain sentences.

23 Certainly for some crimes, particularly non-violent

24 crimes, non-incarcerative sentences as compared to

25 incarcerative in the Oregon experiment have proved

1           Rosenthal Q&A

2 much more effective in reducing recidivism.  
3 Allowing more resources to be applied to critical  
4 defendants who are not as susceptible to change or  
5 reintegration based upon counseling, based upon  
6 program participation.

7           I think that the result, and I'm trying  
8 to answer your question in a broader way, is if  
9 we collect the data globally and certainly DPCA I  
10 think has done a good job in trying to lead the  
11 way, this is a direction we need to go in. If we  
12 collect it globally, not just for an organization  
13 here or probation, but so that what we're putting  
14 into the hands of the judges, probation, all of  
15 the information that is available as to what has  
16 worked under these circumstances. It allows a  
17 much more rational use for our correctional  
18 resources, our probation resources and our  
19 community resources.

20           To this point, and with all due respect  
21 to the judges and former judges on this Task Force,  
22 I think that there is the part of Judge Marcus'  
23 writings, written probably the most prolifically  
24 about the Oregon experience, we have come to this  
25 point sentencing by hubris, knowing very little

1 Rosenthal Q&A

2 about the outcomes in the broader sense.

3 We know in the broader sense that we  
4 have in this country a high recidivism rate. But  
5 we know very little about it as it relates to  
6 sentencing and types of sentencing and programs.  
7 I think that ought to be on our wish list. I  
8 think it would help, and I think that Alternatives  
9 to Incarceration is prepared to play a role in  
10 that. But I think that the data really does need  
11 to be collected globally.

12 MR. MACCARONE: As just a short  
13 follow up, I want to advise you it's not  
14 a question that, as you know we've moved  
15 toward all of our 170 community based  
16 agencies toward performance-based  
17 contracting. In the last three years as  
18 an initial step in moving towards  
19 evidence-based practice.

20 Pleased to advise you that we will  
21 be sending our recidivism data for each  
22 of the Alternatives to Incarceration  
23 Program to examine as well. So it's the  
24 next step in quality assurance, and I  
25 very much appreciate your comments.

1 Rosenthal Q&A

2 Thank you.

3 THE CHAIRMAN: Questions for Mr.

4 Rosenthal? Mr. Horn.

5 BY COM. HORN:

6 Q. Two questions. One, do you believe the

7 judges are adequately trained to perform their

8 sentencing function? Or to function in this world

9 you describe, new world, it would require more

10 training, more understanding to sentence

11 particularly this model?

12 A. I won't hedge my bet on this one.

13 Judges are undertrained in the area of sentencing,

14 not provided information --

15 HON. BRUNETTI: I don't think we are

16 trained at all, are we?

17 MR. ROSENTHAL: Okay, I'll go there.

18 Q. My point is --

19 A. Absolutely implicit in your question is

20 that we're going to have to go about our business

21 in a different way and provide information and

22 training to judges so that we move from it just

23 being an art form to being more of a science.

24 Q. And my second question is, given the

25 vast majority of sentences in this state are the

1           Rosenthal Q&A  
2 result of plea bargains, and if the goal is that  
3 the sentence be based upon some prognostication  
4 about how the sentence was served to reduce  
5 recidivism or to promote effective reintegration  
6 or so on, doesn't that suggest that no sentence  
7 agreement should be made unless and until this  
8 broadened PSI has been submitted, would have to be  
9 submitted before any plea agreement to be entered  
10 into or any sentencing agreement?

11       A. I think that that's correct. And I  
12 think that is part of what changes the role of  
13 defense counsel. And it's part of what changes  
14 the role of prosecutors. And what probably on the  
15 plea bargaining level, may draw judges back into  
16 the process, as we've taken considerable  
17 discretion away from judges, and certainly the  
18 plea bargaining process does a lot of that.

19           It needs to be rethought. Because if a  
20 substantial part of the goal is the reintegration  
21 of this individual, you can't make these  
22 decisions out of the thin air. And sometimes I  
23 think that we do. We look at the crimes and say,  
24 boy that's a bad crime. This is an appropriate  
25 sentence. But there is more to it than that.

1 Rosenthal Q&A

2 And I see it from our perspective, we  
3 do particularly in Onondaga County but outside as  
4 well, we do defense-based reports. More and more  
5 attorneys are using our reports at an early stage  
6 at the pre-plea stage. Both to better inform the  
7 court about the individual and the circumstances  
8 and to better inform the prosecutors in the case.

9 In some ways it's an uneven playing  
10 field for probation. Because if the only report  
11 that's there, and not to say that our reports  
12 aren't absolutely objective and accurate, but if  
13 the only report there at the plea bargaining  
14 stage is the defender-based report and not  
15 probation, it's not well balanced.

16 But let me go to the other side of the  
17 coin, which is in the vast majority of cases  
18 there is not a defender, a defendant's pre-  
19 sentence memorandum as contemplated under the  
20 statute. So in the vast majority of cases, I  
21 mean I would venture a guess of well over 90  
22 percent what the judge has in hand or what the  
23 prosecution has at hand is just -- not just, but  
24 only the probation input.

25 And I think that we all benefit when

1 Rosenthal Q&A

2 both are there to be assessed and appreciated by  
3 the prosecution, by the judge and a sharing of  
4 that information.

5 THE CHAIRMAN: Mr. Soares.

6 BY MR. SOARES:

7 Q. Sir, you mentioned the need for  
8 additional training or new training vis-a-vis for  
9 judges, prosecutors and defense attorneys under  
10 this evidence-based analysis. Where does the  
11 victim fit in this scenario here? And  
12 particularly with this Oregon experiment, where  
13 did the victim fit in that experiment?

14 And also, how would you describe your  
15 sentencing guidelines as compared to the State of  
16 New York. How would you compare Oregon?

17 A. Let me take the victim first. I have a  
18 little bit of information both of what I  
19 envisioned in New York and how it has gone in the  
20 Oregon experiment, and let me duck the second  
21 question because I don't have enough information  
22 to compare the guidelines of the two states.

23 First I think that we can do better in  
24 New York. In the Oregon scheme it seems to me  
25 that they're brought into the process and their

1 Rosenthal Q&A

2 views, opinions, about the reintegration of the  
3 person are front and center.

4 The other aspect of Oregon that jumps  
5 out at me that's a little different than New York  
6 is that their code fully embraces, where  
7 warranted, restorative justice. In that context  
8 that's something for the victim to opt into or  
9 opt out of. And I think that's the way that it  
10 always would have to be in looking at a  
11 restorative justice model. I think that we can  
12 do better about restoring victims. Having them  
13 have a better understanding of the process. And  
14 why reintegration of the offender may be in their  
15 best interests.

16 I'll capture, I'm going to give you a  
17 very short experience that we had. A case long  
18 before I came to CCA, did use the services of CCA  
19 when I went to see a young man who was involved  
20 in a serious crime. From the day I talked with  
21 him all that he wanted to talk about was writing  
22 a letter of apology to the victim. It's what his  
23 parents wanted to talk to me about.

24 We withheld doing that, I had him draft  
25 it. There is a part of me that doesn't want to

1           Rosenthal Q&A  
2 step on the prosecutor's toes. There is always  
3 the question of contacting somebody and providing  
4 information inappropriately. We asked that the  
5 apology letter be forwarded to the victim by the  
6 prosecution. It didn't happen.

7           When we appeared for sentencing the  
8 judge called me into chambers and said, look at  
9 this letter that I've received from the victim.  
10 And in words it was, this person had never  
11 apologized to me, and I will forever be looking  
12 over my shoulder worrying whether he's going to  
13 come back to get me.

14          This was the furthest thing from this  
15 young man's mind. Just would not, could not  
16 happen. And yet here was the victim who one,  
17 never had the benefit of the apology except in  
18 the courtroom at the last minute. And never got  
19 to lift the burden of fear from her. And that's  
20 the burden that results when one is the victim of  
21 a crime.

22          So I think that it's important that we  
23 figure out ways to do that and to do it much  
24 better. I think probation can help in that.

25          THE CHAIRMAN: Yes, Bob Burns.

1 Rosenthal Q&A

2 BY MR. BURNS:

3 Q. In the states that are deemphasizing  
4 pre-sentence investigations and reports, probably  
5 not, but are you seeing that because of some cost  
6 benefit analysis that says because of plea  
7 bargaining there is no benefit from the work that  
8 is into it or are they just budget cutting?

9 A. I don't think it's a cost benefit  
10 analysis, I think it's a cost analysis. I think  
11 there is very little attention to the benefit  
12 that's gained from these reports. And it is a  
13 failure to understand how important a role these  
14 reports can play to judges, for judges in the  
15 sentencing process.

16 My opinion is that it's been a change  
17 for the worst and made judges already difficult  
18 job much more difficult. I don't know how you do  
19 that without some vary essential information.  
20 And now in this age of trying to consider  
21 reintegration as a goal it makes no sense to take  
22 away that tool.

23 THE CHAIRMAN: Judge Corriero.

24 BY HON. CORRIERO:

25 Q. It seems to me your analysis of the

1 Rosenthal Q&A

2 value of the pre-sentence report to the judge is  
3 equally if not more applicable to the concept of a  
4 pre-plea investigation. So do you have an opinion  
5 as to that with respect to the necessity, for  
6 example, I believe Marty asked you about how  
7 important it would be for the judge to have that.

8 And since most of the dispositions are  
9 as a result of plea bargaining wouldn't it be more  
10 appropriate to have this information in the pre-  
11 pleading report prepared by the probation  
12 department before the final decision is made?

13 A. In some jurisdictions and being more  
14 familiar with Upstate than downstate, in some  
15 jurisdictions that is the order of the day. In  
16 some counties, and again it may be because they're  
17 smaller and have the resources to do it. But in  
18 every case a pre-plea report is ordered.

19 If I were sitting in the judge's chair  
20 I would be very reluctant to be engaged into the  
21 plea bargaining process without having that.  
22 It's one tool that I wouldn't want to be without.  
23 So to the extent that we have the resources to do  
24 that I think it makes for a smarter sentencing.  
25 And a smarter way to go about our plea bargaining

1 Rosenthal Q&A

2 process to the extent that it's necessary.

3 Q. As a practical matter it makes that  
4 difficult by virtue of the charging discretion of  
5 the prosecutor, very often judges are placed in a  
6 very awkward position, the prosecutor will come  
7 down on a countering position that says a specific  
8 amount. So the pre-plea investigation becomes not  
9 part of the equation.

10 A. And which leads to some very bizarre  
11 results where you might find somebody, simply to  
12 avoid the judge's hands being tied, pleading to,  
13 as I saw one very recently in Manhattan, a hundred  
14 counts on an indictment. I'm not sure that we're  
15 serving justice in that way with the hundred  
16 concurrent sentences simply to avoid the very  
17 problem that you've described. Thank you.

18 THE CHAIRMAN: Just one other,  
19 please. You mentioned Oregon, have you  
20 been in touch with the commissioner of  
21 corrections in Oregon?

22 MR. ROSENTHAL: I have not.

23 THE CHAIRMAN: Well the reason I  
24 ask, I've spoken with him on the phone,  
25 but he was a legislator who drew up the

1           Frank Justice  
2           plan, got it enacted into legislation  
3           and then he had the good fortune of  
4           having the governor call him and say, I  
5           want you to be the commissioner of  
6           corrections to carry out this program.

7           MR. ROSENTHAL: Now you're stuck  
8           with what you've asked for.

9           THE CHAIRMAN: Any other questions?  
10          Thank you very much, hope you'll  
11          continue to do the good work.

12          Frank Justice, the Director of  
13          Probation of Steuben County.

14          MR. FRANK JUSTICE: Thank you very  
15          much. Before I start I would like to  
16          make something clear, I was born and  
17          raised in Georgia. And when I'm nervous  
18          sometimes I revert back to my southern  
19          accent. So you have to excuse me.

20          HON. BRUNETTI: You must be nervous  
21          then.

22          MR. JUSTICE: I've been here 29  
23          years. You may ask me why I'm here.  
24          Well, I once heard it said if you can  
25          make it here you can make it anywhere.

1 Frank Justice

2 THE CHAIRMAN: They're talking about  
3 New York City, not Upstate New York.

4 MR. JUSTICE: That brings me to my  
5 other subject. There is another New  
6 York, and I am from Steuben County. So  
7 I have a prepared statement and I will  
8 read that if it's all right with you  
9 folks. Thank you.

10 First I would like to thank the  
11 members of the Task Force for the  
12 opportunity to appear before you today  
13 to discuss current operations and the  
14 future of probation in New York State.

15 I would also like to take this  
16 opportunity to thank you for taking  
17 interest in our profession, that for  
18 many years has dealt with the pain of an  
19 ever decreasing rate of funding while at  
20 the same time watching our caseloads or  
21 workloads grow.

22 Probation is a vital service, vital  
23 to the courts, the community, victims,  
24 and the offenders. Probation is a  
25 system that in theory may be involved in

1           Frank Justice  
2           an individual's life from birth to death.  
3           Services within probation depart-  
4           ments include custody investigations,  
5           adoption investigations, diversion for  
6           persons in need of supervision,  
7           diversion for juvenile delinquents, free  
8           dispositional investigations, criminal  
9           court pretrial diversion, pre-sentence,  
10          pre-plea investigations, an intensive  
11          supervision, criminal court supervision  
12          including supervision at differing  
13          levels depending on the offender's level  
14          of risk within the community, intensive  
15          supervision for those offenders  
16          designated as bound for incarceration,  
17          that's state incarceration, community  
18          service, electronic home monitoring,  
19          alcohol and substance abuse intervention  
20          program, a program currently being used  
21          to support county court drug court in  
22          Steuben County with no additional  
23          funding, home and employment visits, DNA  
24          collection, urinalysis, sexual offender  
25          changes in address, collateral contact

1           Frank Justice  
2           with service providers, schools, police,  
3           significant others, and where welcomed,  
4           victims, interstate transfers,  
5           intrastate transfers, collection of  
6           fees, collection of restitution.

7           We in Steuben County have been  
8           working diligently regarding the Persons  
9           In Need of Supervision and have felt  
10          strong collaboratives with agencies such  
11          as mental health, the Department of  
12          Social Services, alcohol and substance  
13          abuse, schools, parent advocacy groups  
14          and the Center for Dispute Settlement.

15          The Steuben County Probation  
16          Department developed a pre-PINS process  
17          designed to provide parents with  
18          information necessary prior to  
19          finalizing their decision to move  
20          forward with the PINS process. This  
21          pre-PINS process is also supportive in  
22          that referrals are made to various  
23          agencies in attempts for families to  
24          self-resolve issues. We believe  
25          government can't fix families. If we

1           Frank Justice  
2           have to be involved we have to be  
3           involved. But they can fix their own  
4           problems better than we can.

5           The outcome of these efforts is that  
6           over the past three years an average of  
7           81 percent of PINS matters successfully  
8           completed the diversion process and were  
9           diverted from the courts.

10          Now, you may ask me, how many PINS  
11          cases do you deal with a year? Anywhere  
12          from 200 to 250. We also deal with a  
13          group that we call information onlies.  
14          That's around 300 a year. In working  
15          with juvenile delinquents in utilizing  
16          the strong collaboratives previously  
17          mentioned we developed a juvenile  
18          delinquents education program.

19          This program provides a consistent  
20          process for each involved youth, which  
21          involves victim/offender mediation if  
22          the victim is so inclined, anger  
23          management, a thinking errors program  
24          and restorative justice. The result of  
25          this program is that 81 percent of all

1           Frank Justice  
2 juvenile delinquency matters are  
3 diverted from the courts.

4           That 81 percent is somewhat corrupt.  
5 It's corrupt in that we don't deal with  
6 juvenile delinquents who present with  
7 sexual offenses. We believe that matter  
8 is a psychiatric issue or a mental  
9 health issue and needs to go before a  
10 court for the services to be provided.

11          Furthermore, the time frame allotted  
12 for diversion is not conducive to  
13 dealing with that issue. Both of the  
14 aforementioned programs were developed  
15 and exist due to strong local  
16 commitments on the part of each involved  
17 agency. These programs seek to maintain  
18 family interests or working through  
19 dysfunctional areas in their lives.

20          Steuben County believes that there  
21 are youth who need to proceed to court  
22 due to a need for a higher level of  
23 care. However, these youth do not  
24 represent the majority. I believe these  
25 programs represent examples of best

1           Frank Justice  
2           practice. It is unfortunate while the  
3           community seeks creative programs to  
4           assist these individuals and their  
5           families no additional funding is  
6           offered by the state, with the exception  
7           of our collaboratives through the  
8           Department of Social Services.

9           And you've heard testimony prior in  
10          regard to the work we have to do in  
11          addition to receiving that funding. And  
12          the criminal court arena in Steuben  
13          County operates a Pretrial Release  
14          Program. This consists of daily visits  
15          Monday through Friday to screen new  
16          detainees in the jail and interview  
17          those eligible for release by the  
18          courts. After the interview the  
19          information gathered is verified,  
20          criminal histories are screened and  
21          through the use of an assessment tool, a  
22          recommendation regarding release is made  
23          to the court of jurisdiction.

24          At any given time this program is  
25          responsible for 90 to 100 individuals.

1           Frank Justice  
2           Offenders released under the Pretrial  
3           Release may be required to obtain an  
4           evaluation and may be placed on  
5           electronic home monitoring. Over the  
6           past three years 98 percent of the  
7           offenders recommended for release who  
8           were released have appeared for their  
9           next court date without incident. The  
10          other two percent represents people that  
11          were released based on someone else's  
12          recommendation and they did incur  
13          problems. It should be noted that this  
14          population generally cannot make bail.

15          During 2005 Steuben County probation  
16          was ordered to complete 908 criminal  
17          court investigations. Now that's a  
18          combination of pre-sentence, pre-plea.  
19          This represents a 30 percent increase  
20          since 2001. Investigations, and I also  
21          need to say we have contiguous counties,  
22          judges in other counties order the  
23          department within that county to do the  
24          investigation, however they don't do  
25          that if it's a resident of our county.

1 Frank Justice

2 And it works the opposite way also. If  
3 they're a resident of our county and  
4 they're not in jail those investigations  
5 are sent to us.

6 84 percent of those investigations  
7 were completed within said time frames,  
8 although staff was - in the probation  
9 department had been reduced by three  
10 positions in 2003 due to budget cuts  
11 primarily due to the Medicaid issue.

12 Equally as incredible is the fact  
13 that within this time frame state  
14 reimbursement for probation continued to  
15 increase. (Sic)

16 The combination of the number of  
17 investigations, sentencing time frames  
18 and a reduction in staff compromises  
19 quality work, diminishes the content of  
20 the document, and in cases has not  
21 allowed probation to advocate as much as  
22 we would have liked for a victim.

23 Steuben County is responsible for  
24 well over 1,000 probationers over the  
25 course of any one year. As of the end

1           Frank Justice  
2           of September 2006 we were responsible  
3           for 833 individuals, which makes up  
4           about 870 cases, having been sentenced  
5           for a variety of acts from petit larceny  
6           to rape. Statistically speaking 60  
7           percent of these probationers have been  
8           convicted of felonies and 40 percent  
9           have been convicted of misdemeanors.

10          Steuben County works closely with  
11          the courts and offers alternative  
12          programming and specialized caseloads.  
13          This is true with the intensive  
14          supervision program, electronic home  
15          monitoring, community service, and the  
16          alcohol and substance abuse intervention  
17          program.

18          With the advent of drug courts in  
19          the county we were one of the first  
20          agencies contacted by our county court  
21          judges. And we assumed a role in the  
22          process. This was done with the  
23          understanding that the probation  
24          department would lose the degree of  
25          valuable flexibility, however potential

1           Frank Justice  
2           funding was on the horizon. We applied  
3           for the grant, we were not allowed to  
4           have the grant. We were denied the  
5           grant so the funding never materialized.  
6           Yet we continued to play a vital role in  
7           the county drug court process while  
8           suffering the loss of flexibility.

9           The loss of flexibility has to do  
10          with the alcohol and substance abuse  
11          intervention program being an internal  
12          program that is funded through task  
13          funding, and we are one of I believe  
14          seven counties that acquired that  
15          funding.

16          That allowed for a core probation  
17          officer at a regular caseload who was  
18          having problems with somebody who had  
19          drug or alcohol issues and was beyond  
20          the scope of the normal supervision to  
21          convert that case over to the  
22          specialized program who operated, the  
23          senior officer there operated with a  
24          case load of around 28 cases. And this  
25          person was able to get special attention

1           Frank Justice  
2           that way. But with the advent of drug  
3           court and the senior officers and then  
4           drug court he no longer has time for  
5           that, we lose the flexibility.

6           It should be noted that we were not  
7           able to assist the two city courts in  
8           the county. Francine has the biggest  
9           county, I think we're the third largest  
10          county in the state. Population of  
11          99,000 people, but the third largest  
12          county. I have three offices; we can't  
13          do everything. There are some points in  
14          which we have to draw a line. So we  
15          serve the county court drug court but  
16          not the city court drug court. The  
17          reason for this was a lack of funds.

18          Sometimes I'm of the impression that  
19          when probation is not able to respond  
20          due to lack of resources, our comment  
21          that we can't is interpreted as we  
22          won't. And that's far from the truth.  
23          We're always willing to serve, if we're  
24          able to do that.

25          Over the years requirements placed

1           Frank Justice  
2           on probation officers by our customers  
3           have increased. The public does not  
4           understand why some offenders are not  
5           either in jail or state prison, and  
6           demand a greater degree of public  
7           protection. The New York State  
8           legislature continues to enact laws,  
9           most of which represent good public  
10          policy but fails to support those laws  
11          with funding. This leaves the courts  
12          and probation departments in a position  
13          of having to seek out scarce local  
14          resources to address issues.

15          Imagine being in a county as large  
16          as we are, I need positions but I'm in  
17          competition with the commissioner of  
18          public works. Folks want their roads  
19          paved, they want their potholes filled.  
20          The criminal justice system had been  
21          neglected and ignored.

22          County executive and local  
23          legislators recognize staffing issues  
24          faced by probation departments but  
25          cannot understand why a reasonable level

1           Frank Justice  
2           of physical support is not provided by  
3           the state.

4           Probation within Steuben County and  
5           the state of New York realizes a  
6           plethora of services. Our goal is to  
7           alter the pattern of behavior that  
8           brought the probationer before the  
9           court. The guiding force in all  
10          instances is the orders and conditions  
11          of probation as set by the courts. Our  
12          job is to ensure those conditions are  
13          met, ensure they are properly monitored,  
14          and to the best of our ability secure  
15          the safety of the community.

16          If a probationer responds well to  
17          supervision and adheres to the orders  
18          and conditions of probation, that is a  
19          test. If the probationer does not  
20          respond well, represents a threat and is  
21          removed from the community, that is also  
22          a test. Every instance falling between  
23          those two scenarios is a case in  
24          progress with the probation officer  
25          working diligently, not as an officer of

1 Frank Justice Q&A  
2 the court, not as a police officer, but  
3 as a probation officer.

4 And in conclusion, it is difficult  
5 to understand why a service with the  
6 largest number of criminal offenders  
7 understands its charge is so neglected.  
8 The neglect is not only an abhorrent  
9 lack of funding but also a degree of  
10 failure to consider thoughts, ideas from  
11 professionals within the field regarding  
12 legislative change and program  
13 initiatives.

14 Again, I wish to thank the members  
15 of the Task Force for your time and  
16 patience. Thank you.

17 THE CHAIRMAN: Thank you, Mr.  
18 Justice. Questions?

19 BY HON. KLOCH:

20 Q. I have a couple. Starting pay for your  
21 officers?

22 A. Excuse me, sir?

23 Q. Starting salary for your officers?

24 A. Approximately \$30,000. But that's, most  
25 of my officers, a lot of the people who apply come

1 Frank Justice Q&A

2 up, want to come upstairs from Child Protective  
3 Services. So I actually can't hire them for any  
4 less than what they made.

5 Q. What's the average salary?

6 A. 35,000.

7 Q. And the caseloads?

8 A. My caseloads in Steuben County, if  
9 you'll allow me to explain. Probation has at  
10 times on its caseload what are known as  
11 administrative cases, there are absconders,  
12 transfers to other states wherein jurisdiction is  
13 retained by that county always. The court has the  
14 right to retain jurisdiction in regard to a  
15 transfer to another county.

16 Explaining that to my local legislature  
17 they allowed me to have the a probation assistant  
18 position, which oversees those cases. We are  
19 required under rule to ensure that periodic  
20 reports are gathered, we're required under rule  
21 to do records check to see if we can find the  
22 absconder; and that person does that very very  
23 well. That removes a certain degree of cases  
24 from us.

25 So when I give you the case load average of

1 Frank Justice Q&A

2 76 in our county they're all individuals that the  
3 officers are seeing. They are no administrative  
4 cases.

5 BY COM. HORN:

6 Q. No dead cases?

7 A. No, dead cases, all live case.

8 HON. KLOCH: Thank you.

9 THE CHAIRMAN: Any other questions?

10 BY MR. HORN:

11 Q. Quickly, you talked about competition  
12 with the Department of Public Works. So if state  
13 reimbursement for probation were to increase from  
14 17 percent to 50 percent what assurance is there  
15 that your budget would not remain the same and the  
16 county just diminish its contribution and use it  
17 to fill the potholes?

18 A. By way of example, I've asked for three  
19 positions this year. One is strictly dedicated to  
20 a county purpose in regard to the time frame of  
21 completing jail PSIs, and we wish to reduce that  
22 time frame down significantly. And the county is  
23 willing to bear that burden.

24 Q. There is a benefit for the county to do  
25 that?

1 Frank Justice Q&A

2 A. But they're willing to bear that burden  
3 also.

4 Q. They're going to save a lot more money?

5 A. The other two --

6 Q. That's not an answer to my question.

7 A. The other two positions are to reduce  
8 the caseload size with the funding level as it is  
9 now. So the county has already made its  
10 commitment in processing these three positions  
11 based on the information they have, without a  
12 higher degree.

13 But it makes our job as commissioners  
14 and as directors much more difficult when we're  
15 in competition with say a Commissioner of Social  
16 Services who is receiving 65/35 funding and we're  
17 receiving less than 20 percent.

18 BY HON. KLOCH:

19 Q. I've got one question then for you.  
20 What is the period of time between - that it takes  
21 to provide that PSI to the court?

22 A. Prior to 1993 we were meeting a five  
23 week time frame. Now I think we should all put an  
24 asterisk next to time frames. Some cases we need  
25 to ask adjournments for because we need to speak

1           Frank Justice Q&A  
2 to the victims. And the victims are under no  
3 obligation to meet a time frame, but we assume and  
4 maybe it's wrong that we assume this, but we  
5 assume that this information on the victim's part  
6 is important to the process for the judge. It  
7 takes us time to make contact. They're under no  
8 order whatsoever.

9           It takes us time to compile  
10 restitution when somebody has written checks on a  
11 thousand different places. Or kids that play  
12 mailbox baseball - I don't know if you know what  
13 that is.

14           MR. SOARES: Making no admissions  
15 here.

16           COM. HORN: I'm from New York City,  
17 I don't know what that means.

18           THE CHAIRMAN: There are two New  
19 Yorks.

20       A. And there is 70 different victims. When  
21 you have complicated embezzlement cases or  
22 equivalent to embezzlement it takes time to get  
23 that information right, and back.

24 BY THE CHAIRMAN:

25       Q. Are you telling us you have problems

1 Frank Justice Q&A

2 getting the cooperation or involvement of victims  
3 in gathering sufficient information for the PSI?

4 A. Senator, I think that would be true for  
5 everyone. For the victim the process may have  
6 started six months ago. They have talked to  
7 several different people during this process.

8 Now the probation department is coming  
9 in late in the process and they may feel as  
10 though they have already given this information  
11 before. So we're constantly dealing with that.

12 We do a large degree of public relations  
13 in our field. There are victims who think  
14 restitution was ordered, they know it was  
15 ordered, they have an order from the court; so  
16 probation department is supposed to write them a  
17 check tomorrow. And we have to do the public  
18 relations in regard to the amount, the time frame  
19 and the payment schedule that was set by the  
20 court. So we do a lot of public relations in our  
21 business.

22 May I finish answering your question?

23 BY HON KLOCH:

24 Q. Please.

25 A. Prior to the layoffs, when you lose

1 Frank Justice Q&A

2 three people out of your rotation that's a lot.

3 We were meeting a five week time frame by and

4 large, but the layoffs, I had to move county court

5 investigations to six weeks, justice courts

6 investigations to eight weeks. The judges were

7 fine with that.

8 Now we were able to bring some staff

9 back. We're back at five weeks mostly for county

10 court, with that asterisk in regard to the

11 victims or if it's a transfer to another county

12 we have no control over that. Other counties are

13 really good at responding also.

14 For the jail PSI we we're trying to get

15 those done in four weeks, people incarcerated.

16 Either number one, they're going to state prison

17 or number two, we need to get the PSI done so we

18 can proceed to sentencing, they can get out and

19 we can start our process with them.

20 HON. KLOCH: Thank you.

21 THE CHAIRMAN: Any other questions?

22 Okay, thank you again, Mr. Justice.

23 Our next witness is Anthony Annucci,

24 Counsel to the New York Department of

25 Correctional Services. Mr. Annucci,

1           Annucci  
2           thank you very much for accommodating us  
3           on short notice. Last week following  
4           our New York hearing there was so much  
5           discussion with regard to the PSR and  
6           its value to the Department of  
7           Corrections, but we didn't have many  
8           specifics. I extended an invitation to  
9           Acting Commissioner LeClair, and with  
10          his cooperation you are here today, and  
11          we appreciate that. Welcome.

12          MR. ANTHONY ANNUCCI: Thank you very  
13          much, Chairman Senator, members of the  
14          Committee some of you I know, some I  
15          don't know. My name is Anthony Annucci,  
16          I'm the Deputy Commissioner and Counsel  
17          for the New York State Department of  
18          Correctional Services. I've been asked  
19          specifically to address today on behalf  
20          of the department the importance of the  
21          pre-sentence report to the work we do.

22          The Department is responsible for  
23          the safe and humane confinement of every  
24          individual committed to the state prison  
25          system. That is everyone either

1           Annucci  
2 convicted of a felony or adjudicated a  
3 Youthful Offender who receives an  
4 indeterminant or determinat sentence of  
5 imprisonment.

6           Presently we have an inmate  
7 population of 63,300 spread throughout  
8 70 different correctional facilities in  
9 New York State. Every month between  
10 1,500 and 2,200 new individuals arrive  
11 at our reception center. From that  
12 number about 1,500 on average are new  
13 commitments; the rest are returned  
14 parole violators. So with every new  
15 commitment there is a pre-sentence  
16 report.

17           Periodically I'm asked to do a  
18 continuing legal education presentation  
19 to various associations, like bar  
20 association and district attorney  
21 associations. So I prepare a standard  
22 CLE for what I call a practical  
23 understanding of the state prison system  
24 for the court practitioner. The way I  
25 always start out is telling whoever it

1           Annucci  
2           is, the DAs, defense lawyers and judges,  
3           how from their system, how things works.

4           In my view, because I was a law  
5           secretary for four years, what actually  
6           happens and what accompanies the  
7           defendant to stay in prison. Because  
8           the starting point in a Supreme Court or  
9           whatever action forum the matter is  
10          disposed of everything is done on the  
11          record. It's spelled out with enormous  
12          specificity.

13          Your starting point is an indictment  
14          that sets forth all of the different  
15          crimes the accused faced, and it spells  
16          out exactly each and every element the  
17          accused is charged with. And ultimately,  
18          if there is a plea negotiation the  
19          defendant stands up in open court, is  
20          not only advised of his rights but he  
21          has to explain on the record exactly  
22          what it is that he did that warrants his  
23          plea of guilty, whether it's robbery  
24          first degree, rape in the first degree,  
25          whatever it is, he is spelling out in

1           Annucci  
2           detail what he did that now is going to  
3           lead to that felony disposition and  
4           sentence.

5           And then of course at the time of  
6           sentence there is also an exchange, the  
7           actual sentence is imposed. There may  
8           be other relevant information that's  
9           stated on the record that ultimately  
10          will become part of the sentencing  
11          minutes.

12          What do we get when an inmate is  
13          delivered to our custody at a reception  
14          center? Let me tell you what we don't  
15          get. We don't get the indictment. We  
16          don't get the plea minutes and we don't  
17          get the sentencing minutes. None of  
18          those documents accompany an individual  
19          when he arrives at a reception center.

20          The three documents that we do get  
21          are the commitment documents, which  
22          spells out exactly what the crime of  
23          conviction is, and what the sentence is.  
24          The law also specifies that when the  
25          clerk fills the commitment document out

1           Annucci  
2           he's also supposed to at least list the  
3           Penal Law Section and subdivision of the  
4           offense for which the accused has been  
5           convicted. So for example, if it's  
6           robbery in the first degree and it's  
7           subdivision 4, displays what appears to  
8           be a handgun, that's supposed to be  
9           noted as 160.50 (4). Doesn't always  
10          happen but at least that tells us with a  
11          little degree of specificity which  
12          subdivision of robbery in the first  
13          degree the individual is now convicted  
14          of. It also spells out the sentence and  
15          any surcharges, fines, etcetera, that  
16          were also imposed.

17          We get the criminal history record,  
18          the rap sheet. We have that printed up  
19          and that tells us with some degree of  
20          accuracy what the individual's criminal  
21          history record is. And then of course  
22          we get the pre-sentence report.

23          And for me to say that is a vital  
24          document is an understatement. This is  
25          the key document that accompanies an

1           Annucci  
2           individual to state prison that tells us  
3           so much information about which we will  
4           now make a whole series of decisions and  
5           determinations; starting with security  
6           classification. Whether or not the  
7           individual needs to start out in a  
8           correctional facility that is maximum  
9           security, medium security or minimum  
10          security.

11          A lot of which is determined by the  
12          length of sentence and the proximity to  
13          the parole eligibility date or earliest  
14          release date. A lot of information is  
15          driven by the background, what the  
16          individual's record is, etcetera.

17          I mentioned earlier the sentencing  
18          minutes. They are supposed to be  
19          transcribed, they are supposed to be  
20          sent to us. It is a very hit and miss  
21          proposition as to whether the sentencing  
22          minutes ultimately are sent to us. But  
23          they are separately mailed by the court  
24          when they are sent to us. They don't  
25          arrive with the defendant, the accused,

1           Annucci  
2           the convicted, at the time of reception.  
3           Ultimately they will make their way into  
4           the inmate's file if they were  
5           ultimately mailed to us but I can only  
6           tell you it's hit or miss as to whether  
7           there's total compliance with that. And  
8           there are several initiatives we're  
9           working on to try to achieve total  
10          compliance with that.

11          At the reception center we make  
12          copies of the pre-sentence report. We  
13          make a copy for the inmate's institu-  
14          tional file that will follow him at  
15          whatever correctional facility he is  
16          housed at, and we also will send one to  
17          our central office file. That's how we  
18          keep track of the inmate and all  
19          relevant information.

20          We also make a copy and give it to  
21          the division of parole. And we  
22          routinely now give it to the Office of  
23          Mental Health. And in addition, we also  
24          make a separate copy for what we call  
25          the guidance and counseling file.

1           Annucci  
2           That's the file where program's staff  
3           monitor the progress of the inmate in  
4           assigned programs throughout his period  
5           of incarceration.

6           Now in addition to classification  
7           and security information the pre-  
8           sentence report is also relied on by us  
9           for us to determine what program needs  
10          the individual inmate has. And those  
11          needs are then identified and he will be  
12          expected to fulfill those needs to  
13          participate in programs that address  
14          those needs. And there will be  
15          consequences for the intentional failure  
16          on his part to comply with those  
17          programs.

18          So for example, we might identify an  
19          individual as needing drug treatment or  
20          vocational training or academic  
21          education. An individual that comes to  
22          us and does not have a GED or high  
23          school diploma will be required to  
24          participate in academic education until  
25          he achieves the GED.

1           Annucci

2           Sex offender counseling is another  
3 program. And of course there is  
4 transitional services which every inmate  
5 goes through, but that's not driven by  
6 the content of the pre-sentence report.  
7 The pre-sentence report will tell us  
8 about the background of the offender, we  
9 will then look at that and look at the  
10 description of the offense and then  
11 determine what program needs the  
12 individual inmate has. And we're not  
13 bound by the four corners of the actual  
14 crime of conviction.

15          For example, someone is convicted of  
16 grand larceny, and the pre-sentence  
17 report says it happens the defendant was  
18 trying to support a drug habit by  
19 engaging in stealing. We will assign  
20 that individual or identify a drug  
21 treatment need for that individual, and  
22 that he will be expected to participate  
23 in a drug treatment program while he's  
24 confined.

25          We may see someone who has a

1           Annucci  
2           background as a helper or plumber or  
3           electrician, whathaveyou. We then may  
4           require that person to complete a  
5           vocational training program while he's  
6           with us.

7           If the description of the offense  
8           indicates misconduct of a sexual nature  
9           had taken place, for example, in a  
10          burglary conviction if it's described  
11          that the defendant also looked like he  
12          was trying to commit a sex crime,  
13          ordered the resident of the apartment to  
14          get undressed, then was interrupted and  
15          his actual conviction is burglary, we  
16          may still then say that that individual  
17          has to participate in sex offender  
18          counseling. And this has been litigated  
19          and we have been upheld, our authority  
20          has been upheld by the courts as being  
21          very broad to determine what the program  
22          needs of an individual inmate are.

23          And we rely very much on what's in  
24          the description of the offense and the  
25          pre-sentence report. So what I advise

1           Annucci  
2       defense lawyers especially, is that you  
3       have an obligation to your client at  
4       time of sentencing, one day before, to  
5       read very carefully what is in that  
6       pre-sentence report. Because if there  
7       is anything that you feel is erroneous  
8       or mistaken or unfair to your client,  
9       the time to correct it is at the time of  
10      sentencing with the judge. Because once  
11      it is delivered to us we take it exactly  
12      as it is. We do not make any changes.  
13      And then the inmate is in a difficult  
14      situation if there is erroneous  
15      information in there.

16           And I also again reiterate to them  
17      how important it is and how we rely on  
18      that information for making so many  
19      decisions.

20           I mentioned that there were  
21      consequences for an inmate for failing  
22      to participate in programs. Every  
23      inmate, whether he has an indeterminate  
24      or determinate sentence of imprisonment  
25      has a conditional release date. And

1           Annucci  
2           whether or not an inmate will remain  
3           incarcerated with us beyond his or her  
4           conditional release date is totally  
5           dependent upon his or her behavior while  
6           incarcerated with us. Nothing that  
7           happened beforehand, not the position of  
8           the judge, the district attorney, the  
9           community, the media has anything to do  
10          with whether or not the inmate will  
11          remain incarcerated beyond his  
12          conditional release date.

13          It is totally driven by whether or  
14          not he or she will lose good time. You  
15          lose good time for engaging in a disci-  
16          plinary infraction or not participating  
17          in the program that we have designed.  
18          Every single inmate, it's right in the  
19          law, Correctional Law Section 805.  
20          Every inmate gets assigned a program of  
21          work and treatment when they come to the  
22          Department of Correctional Services. So  
23          every inmate's needs are identified. We  
24          rely on the pre-sentence report for  
25          that.

1           Annucci

2           And if the individual inmate, while  
3           he's incarcerated doesn't complete those  
4           program needs, with the one caveat, that  
5           he did have the opportunity to partici-  
6           pate, and if he doesn't participate but  
7           it's through no-fault of his own, either  
8           he's injured, in an outside hospital or  
9           he never got a prison where they did  
10          conduct the sex offender counseling  
11          program, then of course we will not hold  
12          that against him. But we will hold him  
13          accountable for failing to participate  
14          in programs that are available to them  
15          and that they don't make use of.

16          The pre-sentence report, as I  
17          mentioned, is not only very important  
18          for this agency, it's also important for  
19          the work we do with other agencies.  
20          Obviously it's very important for the  
21          Division of Parole. They get a copy at  
22          the same time that we get the inmate.  
23          So they maintain an institutional parole  
24          file on the individual, and that  
25          pre-sentence report is a part of that.

1           Annucci

2           And as I also advise defense counsel,  
3           in effect that's like a snapshot. You  
4           take a picture of the client during the  
5           time he's interviewed by the probation  
6           officer, and that snapshot, his attitude  
7           whether he has insight into his  
8           misbehavior or his background or what  
9           led him to be convicted. That follows  
10          him to the state prison system as well  
11          as his initial interview at a reception  
12          center. That is then entered into your  
13          computer.

14          So if I look up an inmate today I  
15          will see his attitude when he walked  
16          into reception center the same that if I  
17          pick up his pre-sentence report and see  
18          how the probation officer has described  
19          his attitude. That too will come  
20          across.

21          We share this information with the  
22          Office of Mental Health because they're  
23          responsible for delivering all mental  
24          health services to inmates in our  
25          system, and that information is very

1           Annucci

2           relevant.

3           The pre-sentence report is also  
4           relevant because the Office of Mental  
5           Health has a new initiative we're  
6           working jointly on, that's the civil  
7           commitment of certain sex offenders  
8           still considered to be mentally ill and  
9           in need of involuntary care and  
10          treatment. And the pre-sentence report  
11          is one of a number of several critical  
12          documents that we give to them when  
13          they're examining individuals for civil  
14          commitment.

15          We also work with the federal  
16          agencies now called the Bureau of  
17          Immigration and Customs Enforcement, it  
18          used to be known as the INS. We have a  
19          significant amount of inmates who are  
20          foreign born, and therefore subject to  
21          being deported based upon the fact that  
22          they are convicted of a criminal offense.

23          If that criminal offense is also  
24          viewed or deemed to be an aggravated  
25          felony under the federal law it may lead

1           Annucci  
2           to an order of deportation or exclusion.  
3           BICE officials have offices in our  
4           facilities, we have immigration judges  
5           that conduct immigration hearings, and  
6           we turn over a number of records to them  
7           as part of this processing. Pre-  
8           sentencing report is another crucial  
9           document they rely upon to help make  
10          their case.

11          So to close I think it's crucial  
12          that everybody understands how important  
13          the pre-sentence report is to the work  
14          we do. If for whatever reason the pre-  
15          sentence report were to be eliminated  
16          from the documents that come with an  
17          inmate it would in effect be like asking  
18          a driver to drive blindfolded. He could  
19          not have insight into the background of  
20          the individual to determine what his  
21          security and classification needs are.  
22          Or to understand what his program needs  
23          are.

24          And our core mission is to take  
25          every individual, provide a place of

1           Annucci Q&A  
2           confinement and programs of treatment  
3           that are designed to allow that  
4           individual to leave prison as a law  
5           abiding citizen. And the pre-sentence  
6           report is a critical document to help us  
7           complete that. I'll be happy to answer  
8           any questions.

9 BY THE CHAIRMAN:

10        Q. Thank you, Mr. Annucci. I was rather  
11        disappointed after a similar formal invitation to  
12        the chairman of the parole board Mr. Dennison, and  
13        a series of telephone calls to him, resulted in no  
14        appearance here to discuss the next step of how  
15        the PSR relates to parole.

16            Maybe from your knowledge could you  
17        tell us what the relationship is between DOCs and  
18        parole and how the PSR figures into that. I  
19        don't expect you would, but if you do, I would  
20        appreciate your sharing that.

21        A. We work very well with the parole  
22        officer, Division of Parole. They have a parole  
23        office at all of our institutions. In those cases  
24        where an individual is going to actually appear  
25        before the Parole Board, that won't be the case in

1           Annucci Q&A  
2 the determinant sentence, but it continues to be  
3 the case in an indeterminate sentences of  
4 imprisonment. Parole officers will review the  
5 file and prepare case summaries for the  
6 commissioners that come to our institutions and  
7 then determine whether or not someone is going to  
8 be released on parole.

9           They look at the entire record. They  
10 will look at what programs the individual has  
11 participated in, they will look at what his  
12 record of behavior has been with us. They will  
13 have access to our computer records, they will  
14 know whether or not someone has engaged in  
15 serious acts of misbehavior, whether they've had  
16 recommended losses of good time. They will know  
17 what types of programs the individual has partici-  
18 pated in. And they will make that information  
19 available to the commissioners.

20           And I think the information that is in  
21 the pre-sentence report, especially anything  
22 relative to crime victims and their view of the  
23 matter, is very heavily weighed by them. I know  
24 they have a separate process by which they have  
25 information communicated to them by the crime

1           Annucci Q&A

2 victim. But it also could be part of the  
3 pre-sentence report.

4           So I think it's fair to say based upon  
5 my own personal knowledge of how they operate,  
6 and I certainly know that Chairman Horn has his  
7 own experience with the board from many years  
8 ago, he can add to this, but it is very very  
9 important to their work that the pre-sentence  
10 report have the offenses prescribed, what the  
11 attitude of the defendant was at the time, what  
12 his insight was, and where he currently is in the  
13 grand scheme of things. I think it weighs  
14 heavily in their ultimate decision as to whether  
15 or not to release the individual.

16       Q. Another question, if I may. And once  
17 again, this may not be your responsibility. Have  
18 you heard any expression or concern that the  
19 quality of the PSR from the 62 different counties  
20 varies and some are inadequate? Go ahead.

21       A. Yes. I can't speak to whether or not  
22 specific counties are better than others. I know  
23 this is a large state, we have 62 counties, but I  
24 know that that's been a concern that sometimes the  
25 pre-sentence report may be of poor quality, give

1           Annucci Q&A  
2 minimal information. And other times there is a  
3 good deal of information contained in the  
4 pre-sentence report.

5           The only thing I can continually  
6 emphasize, since we rely so much on it, we urge  
7 wherever possible that we get as much information  
8 as possible in the pre-sentence report because it  
9 is so important to the work we do.

10           THE CHAIRMAN: Thank you. Questions?

11 BY MR. MARKS:

12       Q. Just with regard to the importance of  
13 the pre-sentence report. Actually question for  
14 Marty, would a local correctional official be  
15 saying the same thing on this topic as you are?

16       A. I could only guess they probably would.  
17 They get individuals that are sentenced to  
18 definite sentences of a year or less. I think the  
19 maximum could have consecutive sentences, so they  
20 might hold somebody for two years. But informa-  
21 tion is important to the work of any correctional  
22 administrator whether you're going to have  
23 somebody 15 to life or for one year or less.

24           I could see where the Conditional  
25 Release Commission would rely heavily on the

1           Annucci Q&A

2 pre-sentence report. So I don't have firsthand  
3 knowledge of that, but just based on my general  
4 correctional experience I would think it would be  
5 pretty relevant.

6           COM. HORN: For the record there are  
7 no commissioners, that is now handled by  
8 the State Board of Parole.

9           MR. SOARES: I was going to answer a  
10 question that most of the local and  
11 county correctional facilities now have  
12 hired information officers, intelligence  
13 officers rather, specifically to gather  
14 intelligence and share intelligence with  
15 the local law enforcement partners. I  
16 know that they rely on PSI for that very  
17 purpose. You take and collate and  
18 disseminate.

19           THE CHAIRMAN: Mr. Burns.

20 BY MR. BURNS:

21 Q. Thanks for coming. We have had several  
22 subcommittees talking about DOCs and I'm glad you  
23 took the time out to come here. Notwithstanding  
24 the pre-sentence reports that are a little more  
25 than a face sheet, which is probably on the low

1                   Annucci Q&A  
2 end of the ones that are helpful to you, do you  
3 have, knowing that most pre-sentence reports have  
4 information about the offense and that what the  
5 victim had to say about it and how the defendant  
6 described the offense, the analysis of that rap  
7 sheet that you have from your own means, a social  
8 history, analysis of what's going on and then a  
9 recommendation, do you know what parts of that PSR  
10 your corrections people or your security people,  
11 your program people zoom right in on? Do they  
12 just immediately turn to one or two areas? Are  
13 there parts of that report that are completely  
14 superfluous and not useful to DOCs?  
15       A. Let me answer by saying probably the  
16 thing that's more important than the others is the  
17 description of the offense itself. That's  
18 probably the crucial aspect of the pre-sentence  
19 report. I don't think there is any parts of it  
20 that are unimportant. I think the social history  
21 is important. The employment history is important.  
22 Because it all leads into ultimately the program  
23 decisions that we're going to make about the  
24 individual and how he's going to be affected while  
25 he's incarcerated with us.

1           Annucci Q&A

2           So I don't think there is a lot of  
3 superfluous information or information that would  
4 really be irrelevant. Since we're so dependent  
5 upon it we virtually have nothing else other than  
6 that, I would hesitate to characterize any aspect  
7 of it as being irrelevant.

8           Often times if, for example, if it's  
9 seemingly a low level sex offense, like attempted  
10 sex abuse in the first degree, but the pre-  
11 sentence report is telling us that what really  
12 happened here was an indictment of rape in the  
13 first degree, and is being allowed to plead  
14 guilty to this. And maybe it was a very serious  
15 offense here, but the District Attorney for a  
16 variety of reasons didn't feel he could get a  
17 conviction, so he's offering a plea to a less  
18 serious sex offense. That's very relevant for us.

19           And it might be relevant for such, and  
20 it might be relevant for a whole number of  
21 reasons. So the more that kind of information is  
22 in the pre-sentence report the better we can  
23 make, ultimately, decisions that are directly  
24 related to public safety.

25           THE CHAIRMAN: Mr. Horn.

1           Annucci Q&A

2   COM. HORN:

3    Q.   Request your indulgence, I have a series  
4   of questions. I have known Tony for a number of  
5   years and consider him a friend. Given that  
6   disclosure. I think you have done an excellent  
7   job explaining, no one disagrees how important the  
8   PSI is. Given how important it is, given the  
9   critical role that it plays as you so well  
10  described it, and allowing that it might even be  
11  of utility to county jails, how do you then  
12  explain why the state has so seriously diminished  
13  price, it's willingness to pay for it?

14   A.   I'm sorry, the price?

15   Q.   The state's reimbursement to probation  
16  which includes reimbursements for pre-sentence  
17  investigation has diminished from 50 percent to 17  
18  percent. So if it's so important to the state why  
19  isn't the state willing to pay for it?

20   A.   I'm not sure that's a question that's in  
21  my bailiwick, Commissioner Horn.

22   Q.   Is there any knowledge do you have in  
23  general, how many commissioners --

24   A.   Three, now four.

25   Q.   Have any of them testified before the

1           Annucci Q&A

2 legislature with respect to how important the  
3 probation pre-sentence report is and why it would  
4 be important to provide adequate funding for it?

5     A. I believe probably Commissioner Conklin  
6 has in the past.

7     Q. God bless him. Let me ask you this, if  
8 there was no pre-sentence report what would the  
9 cost, ball park, to the Department of Corrections  
10 be, correctional services, to get the information  
11 you say is so critical in some other fashion?

12 Would there be another way to get it? Could  
13 parole obtain it for you?

14     A. It would be impossible for us to get the  
15 information.

16     Q. Could parole do the investigation for  
17 you? They're in the communities.

18     A. I think their specialty is very  
19 different. The pre-sentence report is garnered by  
20 having relationships, from my knowledge of how to  
21 get police information, court information.

22     Q. But don't parole officers do that when  
23 there is a violation of parole?

24     A. I'm not sure. Perhaps they do. But I  
25 think the probation officers obviously are very

1           Annucci Q&A

2 skilled at what they do. They know how to access  
3 various channels. When you see a good pre-  
4 sentence report it does touch all the bases and is  
5 very very valuable for the criminal justice system  
6 that has the defendant from that point forward.

7       Q. When an individual is delivered to your  
8 custody from a county, be that a classification  
9 process, they go either to downstate or Ulster?

10      A. From New York City.

11      Q. They get on the bus, they're seen by a  
12 classification analyst, you have to process them  
13 for classification, that analyst meets with the  
14 inmate face to face.

15      A. Correct.

16      Q. What does that classification analyst  
17 ask the inmate, the newly committed inmate?

18      A. The classification analyst reviews basic  
19 tenants of what's going to happen to him, explains  
20 all the various programs, he explains his sentence  
21 calculations, whether presumptive release for  
22 non-violent felons, then fits the inmates view on  
23 the offense.

24      Q. He asks him what is the inmate's side of  
25 the story?

1           Annucci Q&A

2       A.   Exactly. If the individual at that  
3 point in time is saying something like or acting  
4 defiant, that I'm not guilty, I only pled guilty  
5 because my lawyer told me to plead guilty and I  
6 don't think the system is fair. Or he has no --  
7 or he minimizes what he did and the effect on the  
8 victim, that portrays an individual that has a  
9 long way to go before he might be suitable for  
10 release.

11       So his reaction at that point in time,  
12 as I described earlier, is like a photograph.  
13 It's a snapshot that will follow him. The  
14 interview could have been eight years ago but if  
15 you did ask me to look up this inmate today I  
16 open up my computer and look at the screen and  
17 looking at the interview that happened eight  
18 years ago. He may have changed, he may have  
19 gotten insight into things.

20       Q.   That's what he said on the day when he  
21 came in?

22       A.   Yes.

23       Q.   With respect to the description of the  
24 crime and the underlying elements of the crime  
25 that may not be as reflected in the conviction

1           Annucci Q&A

2 offense or the plea, as Mr. Burns said there is  
3 another source of that information, that is  
4 information obtained in the accusatory instrument,  
5 in the police complaint, and are there not in the  
6 21st century alternative means of obtaining that  
7 in a more efficient fashion?

8       A. I don't know if there are alternative  
9 means to obtain it more efficiently. I think it  
10 would take a tremendous amount of leg-work to get  
11 that information unless there are electronic  
12 databases.

13      Q. If I said to you, for example, that the  
14 police complaint in New York City is contained in  
15 their omni form system, the online booking system,  
16 could that theoretically be transmitted to you  
17 electronically? Because in my experience that  
18 what probation officers do is they copy either  
19 from the accusatory instrument or the police  
20 complaint and that becomes the description of the  
21 offense that you rely on so heavily. So why not  
22 just cut out the middle man?

23      A. My understanding is we believe that that  
24 initiative is underway.

25      Q. And would you view that as an

1           Annucci Q&A

2   improvement?

3     A.   If it electronically gets us the same  
4   information that we currently are getting and it  
5   saves probation some time and effort, and we  
6   ensure that it's actually getting to us the same  
7   time the inmate is getting to us, I think that  
8   would work.

9     Q.   So if you could get that and if you're  
10  interviewing the newly committed inmate yourself,  
11  there is probably very little in the probation  
12  report that if you really thought about it you  
13  couldn't do without?

14    A.   I would not underestimate the social  
15  history, what his work history has done, how many  
16  dependents he has. Things of that nature are very  
17  relevant to us.

18    Q.   One last question. Given how important  
19  you believe it is, do you believe the state should  
20  be paying a fair price for this service they're  
21  receiving from counties?

22    A.   I would invoke the Fifth Amendment on  
23  that.

24           COM. HORN: Therein lies the  
25    problem. You are executive branch, are

1           Annucci Q&A

2           you not?

3           MR. ANNUCCI: Last time I looked.

4           THE CHAIRMAN: Regardless of your

5           last answer we're most grateful you're

6           here, thank you very much.

7 BY MR. RINALDI:

8       Q. I'm sorry, don't mind if I ask you a

9       question or two. You said there is some

10       information that you would like to have or that

11       you're supposed to receive, like the sentencing?

12       A. Minutes.

13       Q. And other things that are supposed to be

14       sent to your agency?

15       A. Yes, it's required by the Criminal

16       Procedure Law that within thirty days of sentence

17       the sentencing minutes are supposed to be

18       transcribed and mailed to us. And we're currently

19       working with OCA to try to figure out why that

20       doesn't always happen and what counties are in

21       better compliance than others.

22       Q. But if I understood you correctly, the

23       only documents you're pretty much guaranteed to

24       have is the commitment documents, commitment order,

25       the rap sheet and the pre-sentence investigation?

1           Annucci Q&A

2       A.   Correct, that is what physically arrives  
3 when the individual is delivered to the reception  
4 center. Those documents have to be included or we  
5 will not accept custody of the individual. With  
6 New York City we have a screening unit on Rikers  
7 Island that correctly directs everybody to down-  
8 state or Ulster or makes sure all the documents  
9 are there. Sentencing minutes separately get  
10 mailed to us. When they do arrive we put them in  
11 the file. If they never get there we have no way  
12 of tracking why they didn't come to us.

13      Q.   Forgive my ignorance, what agency is  
14 responsible for getting you the information you're  
15 not getting now?

16      A.   On which issue?

17      Q.   You said sentencing minutes or things  
18 like that you're not getting in a timely manner  
19 normally?

20      A.   The sentencing minutes are created by  
21 the courts, and I assume it's either --

22           HON BRUNETTI: It's an  
23           administrative thing, the clerk's office  
24           reminds the court reporter in an indi-  
25           vidual case. I'm not familiar with

1           Annucci Q&A

2           what's being done on a generalized basis.

3           MR. BURN: And the court reporter

4           can't testify here.

5           HON. BRUNETTI: Mr. Drury is always

6           in compliance.

7 BY MS. GINSBURG:

8       Q. Can I ask a follow up question. If you

9       get a PSR that is primarily focused on the crime

10       and there is little to nothing on the social work

11       history, what's the difference in the programming

12       decision that you make as opposed to when you get

13       a more complete PSR?

14       A. Well, I mentioned four or five types of

15       programs that we will assign to an inmate, and if

16       he fails to complete them. Like aggression

17       replacement therapy or drug treatment. I think

18       you can easily identify from the description of

19       the offense pretty much whether or not there is a

20       program need for that.

21           But I also mentioned vocational training.

22       And that won't be in the description of the

23       offense, or academic education. The pre-sentence

24       report indicates that the individual did complete

25       high school and got his high school degree from

1           Annucci Q&A

2 PS 120 in the Bronx, whatever. We'll try and  
3 follow up with that. And make sure that that did  
4 in fact happen.

5           So outside the four corners of the  
6 description of the offense, this other  
7 information, the employment history, social  
8 history, and academic education is relevant for  
9 the other program needs that we identify.

10       Q. I just have one more question. Do you  
11 ever receive pre-sentence or pre-pleading reports  
12 prepared by the defense with the package?

13       A. Yes, that can be done and that will  
14 accompany the rest of the documentation and that  
15 will be part of the inmate's institutional file as  
16 well.

17 BY MR. BURNS:

18       Q. Since this isn't part of our charge I  
19 want to make sure I heard you correctly. Are  
20 Homeland Security getting copies of the pre-  
21 sentence reports?

22       A. Correct.

23       Q. Just where DOCs sees a potential alien  
24 problem or all PSRs?

25       A. When an individual comes into our

1           Annucci Q&A

2 custody and he's interviewed, if we have any  
3 inkling that he's foreign born we will give that  
4 information to BICE agents, who then separately  
5 interview the individual to determine if he is  
6 foreign born, confirm that and determine what his  
7 alien status is. Namely, is he an illegal alien,  
8 Mariel Cuban, illegal resident?

9           They will administratively determine,  
10 okay, this individual is subject to deportation  
11 proceedings. If he is, at some point in time  
12 right back in our reception centers we'll bring  
13 the individual back, he will then have an adminis-  
14 trative proceeding before a judge to potentially  
15 have an order of exclusion or deportation issued  
16 against him.

17           And because we have a special law in  
18 this state allows the Board of Parole to issue a  
19 conditional parole for deportation only, and do  
20 it before the individual inmate has served his  
21 entire minimum sentence if it's a non-violent  
22 offense, such as a drug offense. Many individual  
23 inmates want to get that order of exclusion  
24 against them to potentially get deported to their  
25 home countries. Once they're deported they are

1                   Goldner  
2 free, they are not transferred to the prison  
3 system of their country of origin they are simply  
4 deported.

5           A number of other individuals of course  
6 want to stay in this country and want to  
7 challenge the order of deportation, and it's not  
8 considered final until their conviction is  
9 considered final.

10          So if they have a challenge to their  
11 conviction before the Appellate Division BICE  
12 officials cannot physically deport that individual.  
13 But once that individual, once he's released from  
14 prison, if he's got that order against him and  
15 he's an aggravated felon they will take him into  
16 custody and he will remain in their custody until  
17 the matter is finally adjudicated.

18           THE CHAIRMAN: Thank you very much.

19           Jane E. Goldner is the Director of  
20 Probation Cortland County. Welcome.

21           JANE GOLDNER: Cortland county is  
22 the county directly south of Onondaga,  
23 where we are now. My name is Jane  
24 Goldner, I'm the Director of Cortland  
25 County Probation Department. I started

1           Goldner  
2           working in the probation profession in  
3           November 1981. So next month will be my  
4           25th year anniversary. For 7 years I  
5           was a probation officer. The next 14 as  
6           a probation supervisor. And the past  
7           almost four years as the probation  
8           director.

9           Before my employment at the proba-  
10          tion department I have to admit I knew  
11          little to nothing about the probation  
12          profession. But during these past years  
13          I have had quite an education. I have  
14          learned a great deal about the judicial  
15          system and my community.

16          The probation department has  
17          contacts, as expected, with court,  
18          judges, clerks, attorneys, police and of  
19          course probationers. The probation  
20          department also has frequent contact  
21          with teachers, school counselors,  
22          principals, employers, neighbors,  
23          ministers, doctors, case workers,  
24          therapists, nurses, store owners,  
25          victims, family members, girlfriends,

1           Goldner  
2       boyfriends, siblings, bar owners,  
3       sometimes the bar owners are the  
4       siblings, bankers, friends and former  
5       friends, the list goes on and on.

6           Probation gets involved in people's  
7       lives. We get to know our clients and  
8       their environment. We establish a  
9       respectful rapport with them. We are  
10      not their friends but we certainly are  
11      not their enemies.

12          Our number one goal is the  
13      protection of the community; and very  
14      close behind is the goal to assist the  
15      client to become productive law abiding  
16      citizens.

17          The three main functions of  
18      probation are investigation, supervision  
19      and family court intake. The important  
20      factors of the investigation responsi-  
21      bility is that the probation department  
22      is the objective neutral party providing  
23      background information and analysis and  
24      recommendations to the courts for  
25      disposition. The courts rely on the

1           Goldner  
2           thorough and accurate reports from the  
3           probation department for judicial  
4           decision-making.

5           The other important news of the  
6           reports is for case planning, whether it  
7           is by probation officers and case  
8           workers or by correction officers and  
9           parole officers, the information in the  
10          probation report is the foundation for  
11          planning for the client.

12          In small Cortland County, with a  
13          population of just under 50,000, we  
14          conducted over 600 investigations during  
15          2005. The supervision of clients is  
16          what I call the meat and potatoes of  
17          probation. The courts can sentence  
18          persons to probation for terms of one  
19          year to ten years, and in limited  
20          circumstances to lifetime probation.

21          During a term of probation the  
22          client may be required to participate in  
23          alcohol/drug treatment, abstain from  
24          alcohol/drugs, be tested for alcohol and  
25          drugs, pay restitution, pay child

1 Goldner  
2 support, pay fines, provide DNA, attend  
3 school, work steadily, stay away from  
4 certain people, perform community  
5 service, attend sex offender treatment,  
6 reside in approved residence, use an  
7 ignition interlock, be on electronic  
8 monitoring, and of course report to a  
9 probation officer.

10 For many clients being on probation  
11 can be overwhelming. For others the  
12 probation officer's first task is to  
13 what I call welcome the client, because  
14 they're underwhelmed about being on  
15 probation. The probation officer  
16 monitors the client's behavior through  
17 meetings with the clients and contacts  
18 with other sources, home visits and  
19 other out-of-the-office contacts assist  
20 the probation officer to know what is  
21 really going on.

22 Steering the client to the most  
23 appropriate programs and making sure the  
24 client attends is a constant duty.  
25 Change is a difficult task for most

1           Goldner  
2           people, and the probation officer offers  
3           encouragement and reminders to clients  
4           as they make the changes needed to be  
5           successful on probation and in the  
6           community.

7           Approximately two-thirds of the  
8           probationers in Cortland County have  
9           conditions of probation regarding  
10          alcohol and drug issues. This popula-  
11          tion is typically very resistant to  
12          change. And the amount of work and  
13          confrontation to address alcohol and  
14          drug addiction is huge.

15          During the course of last year 970  
16          persons were on probation in Cortland  
17          County, with a typical daily case load  
18          of 600. Approximately 15 percent or 90  
19          percent in any given time, have a  
20          violation of probation pending in  
21          Cortland County. Some clients are  
22          continued on probation after a violation  
23          proceeding while others are sentenced to  
24          incarceration, because they did not  
25          utilize the opportunity to make changes

1           Goldner  
2           and remain in the community.  
3           A sentence of probation is definite-  
4           ly the sentence of choice compared to  
5           incarceration. In Cortland County on  
6           any particular day the county jail has  
7           approximately 35 sentenced inmates and  
8           another 40 unsentenced. With 600 on  
9           probation on any given day you can  
10          easily see that probation is the heavily  
11          used sentence.

12          With our society's increasing  
13          awareness in the fields of mental  
14          health, drug addiction, domestic  
15          violence and sex abuse issues to name a  
16          few, the courts are more and more likely  
17          to sentence a person to probation to  
18          address these issues rather than  
19          incarceration or a fine that would not  
20          look at the underlying problems.

21          The courts are aware that in most  
22          cases until the underlying issues are  
23          treated the person will likely return to  
24          court again and again. A term of  
25          probation is the best chance to offer

1           Goldner  
2           the person the opportunity to make  
3           changes.

4           The third probation function is  
5           Family Court intake, which involves the  
6           probation department's efforts to assist  
7           families and individuals in resolving  
8           matters without the need for Family  
9           Court involvement. Probation depart-  
10          ments work with juvenile delinquents,  
11          and many still work with persons in need  
12          of supervision. Most of the juveniles  
13          are between the ages of 12 and 16. As  
14          we know, I believe we all know, the teen  
15          years can be very challenging both for  
16          the teenager, their families.

17          Recently the probation officer and  
18          the DSS caseworker in Cortland County  
19          assigned to work with PINS describe that  
20          with a great deal of their time it is  
21          actually spent on what they call crash  
22          courses in parenting. Many of the  
23          families have few or poor parenting  
24          skills. And often the problems they  
25          encounter stem from this situation.

1 Goldner

2 There is a great need for timely  
3 service intervention, especially mental  
4 health services. The probation depart-  
5 ment is aware that court intervention is  
6 needed at times. However, most young  
7 people are better served by resolving  
8 matters within their own families and  
9 without the court being involved.

10 I have a motto in my office that  
11 reads: Make decisions in your house,  
12 not the court house. I did come up with  
13 that myself. As I have described - as I  
14 have described the probation department  
15 gets deeply involved in the lives of  
16 certain community members with the  
17 purpose of protecting the community and  
18 assisting the community members to  
19 become productive law abiding citizens.

20 In order to accomplish this proba-  
21 tion employees need to be knowledgeable  
22 about community resources, interpersonal  
23 relationships, family dynamics, mental  
24 health issues, alcohol and drug issues,  
25 the court process, criminal and family

1           Goldner  
2       law, probation rules and regulations, as  
3       well as having the verbal and writing  
4       skills to communicate information  
5       effectively.

6           Probation staff members tend to be  
7       very practical, reasonable and common  
8       sense people. Probation really is  
9       behind the scenes as compared to other  
10      parts of the justice system, especially  
11      the courts and police. Until probation  
12      is involved with a person or family most  
13      are not aware of probation's role.

14          In order to carry out the  
15      responsibilities of the probation  
16      department well trained staff with  
17      reasonable workloads is essential. The  
18      best way to accomplish this would be New  
19      York State becoming a true partner with  
20      each county and funding probation  
21      services at 50 percent. This would  
22      recognize that the counties have  
23      historically stepped up and performed  
24      the increasing state mandates, but the  
25      ability to continue to do so is

1 Goldner Q&A  
2 diminished without the state meeting the  
3 counties halfway. A true 50/50  
4 partnership is the best way to ensure  
5 that the hands-on grass roots work of  
6 probation continues in order to keep our  
7 community safe. Thank you for your  
8 attention this afternoon.

9 THE CHAIRMAN: Thank you very much  
10 Director Goldner. Some questions?

11 BY HON. KLOCH:

12 Q. What is the salary of your officers?

13 A. The starting salary is I think about  
14 32,000.

15 Q. And the average?

16 A. The average right now -- well, because I  
17 have a number of senior probation officers, the  
18 average is probably about 37.

19 Q. And how long does it take your  
20 department to provide a PSI to the Court?

21 A. Most of the courts in our county give us  
22 five to six weeks. However, if the person is in  
23 jail they usually -- it's about three weeks.

24 HON. KLOCH: Thank you.

25 THE CHAIRMAN: Yes, please.

1 Goldner Q&A

2 BY COM. HORN:

3 Q. Your caseloads are how many?

4 A. For each officer you mean?

5 Q. Roughly, yes.

6 A. Some people take over the  
7 investigations, but generalized caseload is about  
8 between 55 and 60 probationers, plus they do an  
9 average of 7 to 8 investigations a month. But  
10 most of the officers do mix activities.

11 Q. And what is the mix on your supervision  
12 caseload, if you know what percentage are  
13 misdemeanors and what percentage felonies?

14 A. It's almost 50/50. A little less. Last  
15 I looked I think it was like 48 percent were  
16 felons and 52 percent misdemeanors.

17 Q. And in your estimation, do you believe  
18 that the current status quo, the current  
19 organizational arrangements will provide you with  
20 a level of support you require to provide quality  
21 probation services?

22 A. You mean the county legislature that  
23 receives it?

24 Q. At the state level. I mean clearly if  
25 you've got caseloads of 50, even if you're doing

1 Goldner Q&A

2 the PSI, your county has stepped up to the plate  
3 and filled the hole that the loss of state funding  
4 created. So do you have any reason to believe  
5 that the current organizational arrangement at the  
6 state level would yield any further support for  
7 your probation service?

8 A. Well, I think that at this point there  
9 is so many added responsibilities, it seems like  
10 over the last few years there's been so many more  
11 things. Just this DNA for example, it ended up in  
12 our county that probation was determined to be the  
13 agency to collect it from all the people being  
14 sentenced to conditional discharge where DNA is  
15 responsible.

16 So now we have had to set up a whole  
17 system to make sure we're notified of those people.  
18 So I would like to see the state division become  
19 stronger and have more support in the way of  
20 funding is really what we need. Because I think  
21 the crucial thing for probation to do a good job  
22 is to have the manageable case load. Because all  
23 the things I cited take time. There is no  
24 getting around the time that you need to get to  
25 know people, to get out there in the community,

1 Goldner Q&A

2 to make the home visits, to get in touch with  
3 victims, to talk to the school people. That's  
4 what it's all about.

5 Q. I understand that before you, as you  
6 heard, I asked the last witness it, if he thought  
7 given how important the PSI is to state  
8 corrections whether he should pay more for it and  
9 he pleaded the Fifth. Confirming my belief that  
10 no appointed state official is going to speak  
11 contrary to what's contained in the governor's  
12 budget.

13 Does not that, in your estimation,  
14 suggest that as long as the executive of DPCA,  
15 irrespective of who it is, Bob is a fine fellow,  
16 is subject to the governor's office and in  
17 addition to the budget that his or her ability to  
18 advocate for additional funding for probation is  
19 going to be limited?

20 A. I agree. I think it is limited, yes.  
21 And I think if it was set at 50 percent instead of  
22 the way it is now that can be up to 50 percent.  
23 That I mean all we've seen over the years has  
24 continually gone down and down. I think it was in  
25 the high 40 percent when I first started and now

1                   Greene  
2 it's in the 30 percent and now in the 20s and now  
3 in the teens. I don't know what happens when we  
4 get to the single digit.

5                   COM. HORN: Thank you.

6                   THE CHAIRMAN: Any other questions?  
7 Again, thank you very much.

8                   THE CHAIRMAN: Warren Greene is the  
9 Director of Probation of Fulton County.

10                  WARREN GREENE: You have three  
11 county names there.

12                  HON. BRUNETTI: Yes, very funny.

13                  WARREN GREENE: I also have to say  
14 that when I was called to make the  
15 appointment I think I was the first one  
16 who called and the woman who was very  
17 nice to me said, you know, where would  
18 you like to go in order? I said, I  
19 don't want to go first because first  
20 person is going to get their responses  
21 over all. I said you can put me anywhere  
22 else. So I end up being last. So here  
23 I am. By this time I think the fact  
24 that I'm going to actually read mine is  
25 probably cruel and unusual punishment at

1           Greene

2           3 o'clock.

3           THE CHAIRMAN: Glad to hear you.

4           WARREN GREENE: The fact of the

5           matter is though for the last 15 years

6           I've wanted to scream from the highest

7           hilltop over some of my frustrations

8           over what's been going on. As I came

9           here today I remember a line I once

10          heard, you raise your voice when you

11          should reinforce your argument. So I

12          want to basically just read what I have

13          to say and then I'll take any questions.

14          As a matter of fact these are my crib

15          notes, these are answers to questions

16          that you folks have been asking right

17          along.

18          In any case, by way of introduction

19          my name is Warren Greene and I have

20          worked for the Fulton County Probation

21          Department in various capacities for a

22          bit over 30 years. The first five years

23          of my employment was a little different

24          than most because I worked actually for

25          Fulton and Montgomery Counties as we

1           Greene  
2           were combined with Warren County under  
3           what was called Direct Services as it  
4           was called at that time. Our three  
5           counties were sort of an experiment.  
6           Where we were run directly by the State  
7           of New York. But then along came OPEC,  
8           and some of the problems that ensued.  
9           And so because of the budget crunches we  
10          were all turned back to our individual  
11          counties. I have been the director of  
12          Fulton County probation since 1988.

13          I would like to take this  
14          opportunity to thank Judge Judith Kaye  
15          for being the catalyst for this  
16          discussion. In her state of the OCA  
17          speech earlier this year, her remarks  
18          concerning probation as a whole I felt  
19          were, for the most part, accurate and  
20          insightful. I would also like to thank  
21          her for establishing this task force  
22          which is looking from the future of  
23          probation and how it can best serve the  
24          communities it represents.

25          I would also like to thank and

1           Greene  
2           acknowledge the distinguished panel in  
3           general and would like to further  
4           acknowledge a few specific members. I  
5           have only had the pleasure of meeting  
6           the Task Force Chairman, former Senator  
7           John Dunn, on one occasion, but found  
8           him to be thorough, considerate and  
9           every bit the gentleman that, by  
10          reputation, I had heard him to be.

11          Four of my colleagues serve on the  
12          Task Force, three of which I have come  
13          to know very well over the years. Pat  
14          Aikens, Rocco Possi, and Bob Burns are  
15          all directors/commissioners for whom I  
16          have the highest regard. I had the  
17          pleasure of meeting Marty Horn several  
18          weeks ago for the first time, and it was  
19          interesting to hear from him about the  
20          New York City perspective, which it  
21          still is.

22          Over the last several years I have  
23          come to know Bob Maccarone, the  
24          executive director of DPCA. I have  
25          found him to be a passionate leader with

1           Greene  
2           the best interests of probation at the  
3           center of his approach while at the same  
4           time being open and accessible to the  
5           needs of the individual probation  
6           departments.

7           Regardless of Judge Kaye's  
8           motivation in forming this Task Force I  
9           am grateful for the opportunity to both  
10          speak and submit written testimony  
11          regarding the future of probation. I  
12          fully realize that one of the elements  
13          under consideration is the possible  
14          acquisition of probation by OCA over an  
15          extended period of time for the purpose  
16          of regulatory control. I hope to  
17          address my thoughts regarding this later  
18          in my testimony, but I feel strongly  
19          that the fundamental, systematic,  
20          inadequacies plaguing probation at the  
21          current time outweigh who may serve as  
22          our regulatory agency.

23          As you are aware, probation is a  
24          little known and less understood agency  
25          within the criminal and juvenile justice

1           Greene  
2           system. I believe that part of our  
3           overall problem has stemmed from our own  
4           inability to adequately define ourselves  
5           as the result of the various roles we  
6           play in both systems. As New York's  
7           justice system currently exists, we play  
8           an integral part in both the criminal  
9           and juvenile justice systems. Intake,  
10          supervision and investigations, as have  
11          previously been discussed, are the  
12          cornerstones of our work. We gather  
13          information for the courts, supervise  
14          offenders who are court ordered and play  
15          a significant role in various family  
16          court matters.

17          Probation's mission is somewhat  
18          bifurcated in that on the one hand it's  
19          about rehabilitating the offender while  
20          on the other hand insuring the public  
21          safety of our communities. One thing  
22          seems intuitively obvious to me, that is  
23          you can't have one without the other.  
24          In that regard, probation at all times  
25          strives to have a balanced approach as

1           Greene  
2           to how we deal with offenders under  
3           supervision.  
4           Because of some of the concerns and  
5           issues that have been raised I sense  
6           that there is a premise that probation  
7           is somehow broken. I strongly believe  
8           that this premise is totally false. I  
9           further believe that what is broken is  
10          the state bureaucratic system that  
11          should have been supporting us over the  
12          past 15 years. By surviving what I  
13          consider to be this dysfunctional state  
14          system only serves as proof as to how  
15          resilient, although admittedly  
16          inconsistent, probation has shown itself  
17          to be. Due to the lack of state  
18          commitment, we have found ourselves in  
19          the unenviable and uncomfortable  
20          position of chasing money through  
21          various grants. And in so doing we have  
22          become reactive rather than proactive.  
23          This in turn I believe has led to more  
24          pronounced differences from county to  
25          county than existed in the past.

1           Greene

2           In my opinion, the Division of  
3           Budget policy regarding probation, being  
4           a local and not a joint state/local  
5           concern has eroded us to the point where  
6           we are today. All one needs to do is  
7           refer to Governor Pataki's first few  
8           budgets to see where, in consecutive  
9           years, his administration attempted to  
10          totally eliminate all reimbursement to  
11          probation. Only due to the fact that  
12          local probation directors and  
13          commissioners aggressively contacted  
14          their local state assemblymen and  
15          senators were we restored, albeit at an  
16          ever-declining rate.

17          As you can see from the chart which  
18          we have submitted to the Task Force, our  
19          reimbursement rate has declined from an  
20          ongoing 46.5 percent through the 1980s  
21          and early '90s down to approximately the  
22          17 percent that it is today. As a  
23          result, we have been forced to live with  
24          lower revenues every year, while at the  
25          same time having increased mandates

1           Greene

2           placed upon us.

3           The most accurate analogy I have  
4           heard that conveys our present state is  
5           that we are like a rubber band that has  
6           been stretched to the point of breaking.

7           All one needs to do is look at the  
8           position New York City, Nassau County  
9           and Erie County, for examples, find  
10          themselves in today to know this to be  
11          true. Around the state counties have  
12          been faced with a choice, a choice of  
13          increasing local property taxes to pay  
14          for the continuation of existing proba-  
15          tion services or laying off personnel or  
16          finding grants to supplement or supplant  
17          our funding shortfalls.

18          As a result of probation having to  
19          live with lower revenues and increased  
20          mandates on the yearly basis, we have  
21          been forced into a couple of inescapable  
22          realities. Number 1: What is it that  
23          you don't want me to do? And Number 2:  
24          What kind of consistent outcomes would  
25          you expect from an agency that has been

1           Greene  
2           allowed to languish behind other  
3           entities in both the criminal and family  
4           court systems?

5           I believe it was in the third grade  
6           that I learned why there was a need for  
7           government. Primarily the need is for  
8           the whole to be greater than the sum of  
9           its parts. One of the other things we  
10          learned in elementary school is that  
11          among the top priorities of any govern-  
12          ment is, and should be, the protection  
13          of its citizens. In this regard I  
14          believe it has been unconscionable for  
15          the State of New York to allow an  
16          integral cog in our juvenile and  
17          criminal justice system to erode to the  
18          point where we need a task force such as  
19          this to address this issue today.

20          One of the topics which appears to  
21          be important to the Task Force is a  
22          question of whether or not a purpose of  
23          probation is to reduce the risk of  
24          recidivism. This has been a question  
25          for as long as I have worked in this

1           Greene  
2           profession, and in truth, I have yet to  
3           hear a common definition that everyone  
4           can agree upon. At the one end of the  
5           extreme would be the recidivism only  
6           happens while a person is currently  
7           serving their sentence, while the other  
8           extreme would be that the term  
9           recidivism can mean any rearrest during  
10          the person's lifetime.

11          I believe it would be fair to say  
12          that, depending on your definition, a  
13          certain percentage of recidivism will  
14          occur irrespective of what type of  
15          sentence is imposed by the court, be it  
16          a conditional discharge, probation,  
17          specialty courts or incarceration. My  
18          belief is that recidivism, no matter how  
19          it is defined, is only one reason for  
20          our existence. Until there is a  
21          consensus as to the true meaning of  
22          recidivism, I believe that it is time to  
23          move forward in what should be the true  
24          role of probation. And I believe it was  
25          Commissioner Horn who may have said

1           Greene  
2           this, so I maybe plagiarizing, but  
3           between conditional discharge and  
4           incarceration there is an obvious need  
5           for a just sentence that takes into  
6           account both the offender's and the  
7           community's well-being. This is the  
8           balanced approach that probation  
9           provides.

10          Like recidivism success or failure  
11          for someone under probation supervision  
12          is not always the black and white issue  
13          it may appear to be. As an example, a  
14          probation officer learns that a convict-  
15          ed sex offender serving a probation  
16          sentence is grooming a potential victim.  
17          If the officer finds grounds to violate  
18          the offender's probation on a  
19          technicality, that probationer may very  
20          well have his probation revoked and be  
21          incarcerated. Although probation in  
22          this case did not change the offender's  
23          behavior, it did possibly prevent a  
24          victim from being victimized. Some  
25          members of the public would see this

1           Greene  
2       incident as a success for probation  
3       while others might view it as a failure  
4       since the offender's behavior did not  
5       change. I personally would view it as a  
6       success due to the fact that probation  
7       was able to intervene and protect the  
8       community.

9           I believe that there is a strong  
10       need for probation to be an autonomous  
11       entity within the criminal and justice  
12       systems. As stated previously, I under-  
13       stand that part of the Task Force's  
14       mission is to consider whether OCA  
15       acquisition of probation would have the  
16       desired effect of strengthening  
17       probation. At the present time, I  
18       believe it is impossible for anyone to  
19       accurately predict what may occur, since  
20       we have little information in this  
21       regard. I have seen no organizational  
22       charts or descriptive commentary on how  
23       this would be achieved.

24           However, I fully understand where  
25       various probation departments may differ

1           Greene  
2           on this aspect of the Task Force's  
3           mission. We all see things through the  
4           lenses of our own experience, and there-  
5           fore, what may be seemingly important  
6           for New York City may be different from  
7           Fulton County's perspective.

8           From my own perspective I believe  
9           that there is an inherent conflict of  
10          interest with OCA assuming regulatory  
11          control over probation. A prime example  
12          of this would be in the area of  
13          investigations, whereby the criminal  
14          justice system is best served having  
15          probation be an independent third party  
16          as per our recommendations to the court.

17          As an example, as it currently  
18          stands, probation can make recommenda-  
19          tions which may differ from plea  
20          agreements made by the court, the  
21          district attorney and the defense  
22          attorney. Although these disagreements  
23          do not occur often in my county, I do  
24          believe they are an integral part of the  
25          balance within the system which may not

1           Greene  
2           occur if we are under the auspices of  
3           OCA. Furthermore, I believe it is  
4           interesting to note that there is no  
5           discussion concerning OCA acquiring  
6           district attorneys or public defenders  
7           that are under their umbrella for some  
8           of the same conflicts of interest I  
9           believe exist between the courts and  
10          probation.

11          From my perspective there are  
12          several solutions short of regulatory  
13          control in which OCA could play an  
14          important part. For example, I believe  
15          that OCA could offer probation much  
16          support by prioritizing areas such as  
17          violations of probation and detainer  
18          warrants. For example, by promulgating  
19          standards and goals for VOPs that  
20          include more efficient timelines within  
21          which these cases are disposed,  
22          offenders would have a similar  
23          experience to those presently served by  
24          OCA's specialty courts.

25          In my experience over 30 years, I

1           Greene  
2           have developed, what I like to refer to  
3           as my 20/60/20 rule. In this rule, the  
4           top 20 percent of probationers in all  
5           probability will not find themselves in  
6           legal difficulties again, regardless of  
7           what experience they have under  
8           supervision.

9           The middle 60 percent are those  
10          people who have areas of need such as  
11          employment issues, substance abuse  
12          issues, mental health issues, and  
13          etcetera, which if addressed properly  
14          have the potential to assist these  
15          individuals in leading law-abiding lives.

16          The bottom 20 percent, appear to be  
17          those individuals who are criminally  
18          oriented and are very likely to offend  
19          again, regardless of what court ordered  
20          sentence was imposed. Unfortunately,  
21          these are the individuals who take up a  
22          great majority of our time, to the  
23          detriment of the 60 percent where our  
24          focus should be. If OCA promulgated  
25          more stringent standards and goals as to

1           Greene  
2           the time required for VOP dispositions,  
3           this would be a tremendous help towards  
4           strengthening probation.

5           In addition, OCA could act as an  
6           advocate by strongly indicating to the  
7           executive and legislative branches of  
8           state government that probation is an  
9           integral part of the justice system and  
10          that we are in dire need of more  
11          adequate funding in order to carry out  
12          our responsibilities.

13          More funding could address two  
14          primary needs of probation. Those being  
15          smaller caseloads, particularly in those  
16          counties that have a significant number  
17          of layoffs over the past several years,  
18          and a better opportunity to provide  
19          programming in individual counties which  
20          makes sense for their own populations.

21          In addition, I believe that OCA  
22          could be the catalyst for a revision of  
23          the Family Court Act, which has not had  
24          a complete examination since its  
25          inception in the early 1970s. In recent

1           Greene  
2       years there have been some changes in  
3       areas such as PINS law in order to more  
4       adequately reflect the times within  
5       which we live. I believe it is apparent  
6       to most people who deal with the Family  
7       Court Act on a daily basis that there  
8       are other areas of this important act  
9       that also need to be addressed.

10       I believe that in addition to the  
11       previously mentioned possibilities of an  
12       OCA response, a legislative response to  
13       our dilemma would be in the area of  
14       Section 246 of the Executive Law. As  
15       the law now stands, probation can be  
16       reimbursed up to 50 percent by the  
17       state, but apparently has no minimum  
18       amount associated with this law.

19       My recommendation would be that a  
20       floor be established at 33 1/3 percent  
21       contingent on agreed upon caseload  
22       standards. In this way local probation  
23       departments would at least know what the  
24       reimbursement rate could not fall below  
25       while at the same time realize higher

1           Greene Q&A  
2           amounts if they chose to go into  
3           specialized areas authorized by our  
4           regulatory authority.

5           In conclusion, I would argue that  
6           all one needs to do is to look at the  
7           numbers of people who are incarcerated,  
8           you can see the numbers right over  
9           there, or serving a sentence of  
10          probation to conclude that incarceration  
11          is the alternative to probation and not  
12          the other way around as is customarily  
13          presented.

14          THE CHAIRMAN: Thank you, Director  
15          Greene. Questions?

16 BY HON. KLOCH:

17        Q. I'm not going to disappoint you. I'm  
18 going to ask you what is the salary of your  
19 probation officers?

20        A. Beginning salary is somewhere around  
21 \$32,000. And the average is probably around  
22 38,000 because we have people who worked there for  
23 many years and get longevity.

24        Q. And what period of time does it take for  
25 your department to prepare a PSR?

1           Greene Q&A

2       A. I would say the average is five weeks,  
3 as you heard from some of the other people. We  
4 can do them quicker if the county jail administra-  
5 tor calls me and says Warren, we've got a guy  
6 we've got to get out of here, we'll do it in two  
7 weeks or one week if we have to. I would say the  
8 average is probably five. Probably goes four to  
9 six.

10       As I think Frank Justice said, some of  
11 that depends on whether or not the person  
12 actually shows up on the day they're supposed to  
13 show up in our office. That would be one thing.  
14 The other thing would be how quickly the victims  
15 get back to us. We try and hold them up to the  
16 bitter end to try to get a victim impact  
17 statement included in the investigation.

18       Q. I know the Commissioner is going to ask  
19 us, what is the case load?

20       A. I could ask you one more question. I  
21 think I'm the first person to ask a question, if I  
22 could be so bold.

23       Q. I may take the Fifth.

24       A. What would you see, you've asked us  
25 about how long it would take for us to do certain

1                   Greene Q&A

2 things, how long do you think it should take a  
3 court from the time a violation of probation is  
4 filed with the court to the disposition of that  
5 VOP?

6       Q. In my court?

7       A. In courts in general.

8       Q. Well, I can only speak to my court.  
9 It's very quick. Usually there is the arraignment  
10 on that, I set it for a hearing a couple weeks  
11 down the road.

12      A. We had a wonderful defense attorney who  
13 is now a Supreme Court Justice, and when he was a  
14 defense attorney he would adjourn the matter to  
15 the point where by the time they were finally  
16 heard I don't think any of us even remembered why  
17 we brought the person in for a violation of  
18 probation in the first place. But I have to say I  
19 think different courts act differently in how they  
20 handle VOPs.

21      Q. My own thinking is there a violation?

22 Yes, no. We can fool around with what is going to  
23 be the impact of the violation. Is he going to  
24 admit? We're going to have a hearing. And then  
25 you know, we can take it from there what the

1                   Greene Q&A

2   repercussion is.

3     A.   I would just like to say I think one  
4   response from OCA would be to set some kind of  
5   standard within which they should be heard.

6     Q.   I heard what you and all the other  
7   directors said and I have taken it to heart.

8     A.   My case load size. I'm very similar to  
9   Ms. Goldner, 55 to 60. We do probably, I guess  
10  five investigations on top of that. And then on  
11  top of that each officer has probably three to  
12  five ongoing intake cases. So we have a small  
13  department we're not broken into units.

14  BY COM. HORN:

15    Q.   So the county has stepped up to plug the  
16  hole left by the loss of state aid?

17    A.   Yes, they have, mainly because I've gone  
18  in and tried to a make --

19    Q.   You're persuasive?

20    A.   -- the value of our department. Yes.

21    Q.   You talked about standards and goals.  
22  What about standards and goals with respect to  
23  when sentence should be imposed following a  
24  conviction. Do you think that this is an area  
25  where OCA should have standards and goals? And if

1                   Greene Q&A

2 they did, that would not -- would not that  
3 necessarily drive the timeliness of your PSI,  
4 create a requirement for the PSI to be in?

5     A. I'm not sure, because from county to  
6 county probably things work a little differently.  
7 I know my own county, both of my County Court  
8 judges give us the sentencing date.

9     Q. To your knowledge, are there standards  
10 and goals?

11    A. To my knowledge, no.

12    Q. For the imposition of sentence following  
13 conviction?

14    A. I don't know of any.

15    Q. If there were, let's just say that the  
16 expectation was that the sentence to be imposed is  
17 within thirty days of conviction unless the Judge  
18 shows on the record whatever, had a reason to  
19 adjourn it with a high mark. Would that not  
20 require you, me, to get our PSI in at least 24  
21 hours before that thirty days?

22    A. Yes.

23           COM. HORN: That might fix the  
24 judge's problem.

25           HON. KLOCH: Sure. In Erie County

1           Greene Q&A

2           you heard before, four months, six  
3           months. And the judges there are  
4           frustrated by the length of time for the  
5           sentences.

6           WARREN GREENE: I'm well familiar  
7           with Erie County. I offered George  
8           Alexander a job as my driver.

9           HON. KLOCH: Will he take it?

10          WARREN GREENE: I think he would  
11          take it at this point.

12          HON. KLOCH: Thank you.

13          THE CHAIRMAN: Any other questions?

14          Mr. Burns.

15 BY MR. BURNS:

16        Q.    Just a question on, there's been no  
17        substantive discussion among the Task Force about  
18        any full takeover of the probation system and  
19        officers by the state. But since you are the last  
20        living state probation officer --

21        A.    Relic, yes.

22        Q.    -- from your experience when you were a  
23        state probation officer, working for state judges,  
24        anything you can draw from that brief pilot  
25        experience that things were different because you

1                   Greene Q&A

2   were both in the state system?

3     A.   You know, it's funny, I thought it  
4   worked well. We were under, along with being  
5   state run, we were state paid as well. So you  
6   know, we had a lot of very bright high end  
7   officers, the best of us. But I have to say that  
8   I thought it worked well because on procurement of  
9   different things that you need for the office you  
10  could do it as a group entity.

11           I think that what was supposed to have  
12  happened was the state was supposed to have taken  
13  over and we were going to be broken into regions  
14  and maybe four to six, no four to six counties  
15  per region and have an administrator over the  
16  individual region. For the shorter period of  
17  time that I was there unfortunately OPEC had  
18  already kind of hit, so things were already going  
19  downhill.

20           But I was involved in it for three to  
21  four years. I thought for those three to four  
22  years until the crisis really hit I thought it  
23  worked fairly well. You know, all probation  
24  directors know the problems that we go through  
25  when somebody lives right over a county line and

1                   Greene Q&A

2 you're always going back and forth and back and  
3 forth between what county is really going to do  
4 this or what county is going to do that and who's  
5 going to be supervising and all those questions.  
6 This way it limited that. You would still have  
7 some on the edges of each region but within the  
8 region you could work more fluently. I thought  
9 it worked rather well.

10 BY THE CHAIRMAN:

11       Q. Mr. Greene, speaking of history and  
12 knowledge, expressed only by old fossils, let me  
13 identify myself and plead guilty that I was the  
14 sponsor of the legislation which changed in '72  
15 the way we operated. And part of it, the law was  
16 referred to by you, since the legislation  
17 specifically provided that enjoined counties could  
18 combine, as you described, three counties had.  
19 Could you tell us anything from that experience  
20 and why the experiment was abandoned?

21       A. It was abandoned really because of  
22 budgetary concerns of the state. The state was in  
23 crisis I think because of energy concerns over OPEC.

24       Q. Tell me what, prior to its termination  
25 what success you had in any specific way in terms

1           Greene Q&A

2 of delivering services?

3       A. The delivering of services, as I said to  
4 Bob, was I think they worked because we were able  
5 to go across county lines without having to go  
6 through some of the mechanics that we go through  
7 now. Now if you're asking another probation  
8 department, let's say to do an investigation, we  
9 have to contact the other probation department,  
10 send all the materials to them. They have to then  
11 make sure to verify the fact the person is  
12 actually living there. Usually we have to get an  
13 adjournment for the court because it will take  
14 that much longer to get it back from one county to  
15 the other county and then to the court. So those  
16 things create problems.

17       I think in a regionalized approach some  
18 of those problems, not all, but some of those  
19 problems were minimized. So I saw it as a pretty  
20 good approach.

21       THE CHAIRMAN: Thank you.

22       WARREN GREENE: I know you were also  
23 behind I think New York City being  
24 consolidated.

25       THE CHAIRMAN: The result of the

1                   Greene Q&A

2           Tombs riot.

3                   WARREN GREENE: I thought so.

4 BY MR. BURNS:

5       Q. Do you recall, again it was not a long  
6 period of time, but do you recall officers working  
7 for the three counties who had knowledge of their  
8 communities or were you getting transfers from  
9 state employees who lived and grew up elsewhere in  
10 the state and really had no knowledge of your  
11 community and your resources and your services?

12       A. No, the people who worked in the three  
13 counties actually lived in those three counties.  
14 Although I personally, even though I lived in, I'm  
15 a life long resident of Fulton County, I was  
16 actually assigned the western end of Montgomery  
17 County. So I was assigned someplace else.

18           But I don't think it took too long to  
19 establish a satellite office out there, and I  
20 think like any good probation officer would, I  
21 went around and introduced myself to the various  
22 police agencies and to the school administrators  
23 and that sort of things. So it worked out well.

24                   THE CHAIRMAN: Thank you. Are there  
25 any members of the public who have been

1           Greene Q&A  
2           here would care to make a statement,  
3           testify for the Task Force? Hearing  
4           none, we'll declare this meeting closed.

5           With the great sense of gratitude to our  
6           colleague/senator Judge Brunetti.

7                   \* \* \* \*

8                   C E R T I F I C A T E

9           This is to certify that I am a  
10          Certified Shorthand Reporter and Notary  
11          Public in and for the State of New York,  
12          that I attended and reported the above  
13          entitled proceedings, that I have  
14          compared the foregoing with my original  
15          minutes taken therein and that it is a  
16          true and correct transcript thereof and  
17          all of the proceedings had therein.

18

19

20                   \_\_\_\_\_  
                  John F. Drury, CSR, RPR

21

22          Dated: October 24, 2006

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