
THE TASK FORCE
ON THE
FUTURE OF PROBATION
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Erie County Hall
Ceremonial Courtroom
Buffalo, New York

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SPEAKERS:

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MR. DUNNE: Good morning. I'm John Dunne, the chairman of Chief Judge Judith Kaye's Task Force on the Future of Probation in New York. Before I say anything further, it's necessary that I express particular thanks to one of our members, the Honorable Richard Kloch who has arranged for not only the opportunity to meet here but to meet in such beautiful surroundings, which suggests not only the dignity but the importance of the Criminal Justice System in our state and particularly here in this great County of Erie.

My thanks also to Robert Burns, one of our members who is the probation director for the adjoining County of Monroe who has been the principal -- I'll call him instigator of the statewide hearings which have proven after our first two sessions to be valuable to our deliberations. So I'm most appreciative of him being here.

Let us get right to the point. In February when Chief Justice Kaye prepared her State of the Judiciary, among other things she mentioned how important -- how vitally important the role of probation is in the administration of justice in our state. She recognized the strengths, but also she

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highlighted some areas where in her judgment, and being reinforced by our study, could well receive additional strengthening as well as something I think some of the other witnesses will talk about, strengthening the funding. Always a very difficult part of any discussion of improving government.

Let me first introduce to you the members of our task force, not all of whom are here. But those who are here, the Honorable John Brunetti, Justice of -- sitting in the Supreme Court from our neighbors to the east in Onondaga County. We all recognize this man who needs no further introduction, the great and distinguished District Attorney of Erie County, Frank Clark. And I'm really delighted that you're with us. As I mentioned --

MR. CLARK: Thank you.

MR. DUNNE: As I mentioned, Bob Burns is from Monroe County. To my left the Director of Division of Probation and Correctional Alternatives, Robert Maccarone, who is familiar to virtually everyone in the state who is involved in the area of probation. Sitting next to Mr. Maccarone is the director of -- pardon me -- the Commissioner of Corrections and the

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Commissioner of Probation in the great City of New York. You Buffalonians realize there is another great city in this state. Martin Horn, Marty Horn, has been a faithful participant in all of our activities. Next to Marty is our distinguished host, Judge Kloch, and then we have Ed Nowak who is a public defender in Monroe County and has a long rich history in the area of probation. And finally at the end we have the distinguished District Attorney of Albany County, David Soares. And we hope we may be joined by others, and I will present them to you as they appear.

Our first witness, and really the principal reason why we're here, to hear about the problems in this important part of the state is your very distinguished Commissioner of Probation for Erie County, George Alexander, whose broad shoulders have carried not only the weight of his office but also recent reduction of his personnel and other resources. And before you address us, I just want to compliment you and congratulate you on the great leadership you have provided for this community. Commissioner Alexander.

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2 MR. ALEXANDER: Thank you, Senator. I want to,
3 first of all, thank the members of the panel for
4 giving us an opportunity not only to express our
5 concerns about probation but give -- expressing our
6 gratitude for giving a face and a voice for
7 probation. We don't often get the opportunity to
8 talk about who we are and what it is that we do and
9 the importance of our services. If I may, I would
10 like to start out an opening statement.

11 Since its initial inception in 1841 by John
12 Augustus, probation has emerged as the most
13 effective means of counteracting criminal behavior,
14 more so than traditional and more costly
15 imprisonment and parole.

16 Probation is an important part of a large
17 complex and interdependent array of governmental,
18 non-profit, and private agencies that make up the
19 Criminal Justice System. It is the link between the
20 arresting officer, the jails, the prosecution, the
21 Courts, the prisons, and the parole system; thus,
22 probation work is not done in isolation as they are
23 effected by and have an impact on many other parts
24 of an otherwise disjointed system and process.

25 Probation enables all parties of the Criminal

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2 Justice System to make the decisions they do, from
3 bail to no bail, from incarcerating or to
4 considering alternatives, from deciding the length
5 of sentence or time on community supervision, from
6 classification, all the way to and including whether
7 to release someone to parole supervision or to deny
8 release. As there appears to be more focus on
9 reentry, a term typically associated with release
10 from prison, much of the information necessary to
11 achieve more positive results is continued in the
12 work generated by probation.

13 It has the dramatic effect on managing local
14 jail population and moving cases through the Courts
15 in an effective and expedient manner.

16 I have not even begun to talk about the
17 supervision aspect, which I shall do later if given
18 the opportunity. However, there is a misconception
19 of probation only supervises misdemeanors. Nothing
20 can be further from the truth. Probation virtually
21 supervises the same population as parole with the
22 exception of those class A and B felonies where
23 incarceration is mandated.

24 In short, probation is the sentence of choice
25 as it provides for the best opportunity for true

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2 rehabilitation, can provide a relief for other
3 components within the Criminal Justice System, and
4 has a better ability for enhancing accountability.

5 I'm ready to answer whatever questions the
6 panel may have or address any concerns that you
7 might have with respect to probation in general or
8 specifically Erie County Probation and some of the
9 challenges that we have had to face over the past
10 year or so.

11 MR. DUNNE: Well, let me get directly to the
12 challenges. I have been told that there was a
13 serious reduction in the number of probation
14 officers in your department as a result of budget
15 cuts across the board for the County. Can you tell
16 us what effect that has had in your operations and
17 the delivery of services.

18 MR. ALEXANDER: Certainly. First of all, let
19 me say, Senator, is that through these budget cuts
20 that we went from ninety-one probation officers down
21 to sixty-eight, a dramatic decrease in the amount of
22 services we were able to provide. And the results
23 of those cuts have certainly surfaced in the Court's
24 ability to sentence. And, certainly, you'll be
25 talking to one of my county colleagues, chief, a few

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2 moments from now, and he can tell you the impact
3 it's had on the local Holding Center.

4 The Holding Center right now is over capacity.
5 They're facing many different sanctions from the
6 Commission on Corrections to take away some of their
7 variances, and I think a lot of that certainly can
8 be attributed to the lack of probation officers to
9 provide opportunities to relieve the Holding Center
10 of the burden of incarcerating people longer than
11 they necessarily have to.

12 MR. DUNNE: The Holding Center, is that what we
13 old-timers used to call jail?

14 MR. ALEXANDER: Yes, sir. Yes, sir.

15 MR. DUNNE: That's county?

16 MR. ALEXANDER: Yes, sir. Those are primarily
17 pre-adjudicated individuals.

18 MR. DUNNE: Pre-adjudicated?

19 MR. ALEXANDER: Pre-adjudicated. Yes, sir.
20 You can talk to any of the Courts, the Judges.
21 Judge Kloch certainly will know firsthand the amount
22 of time we have cost the Courts in terms of not
23 enabling them to do what they need to do in a timely
24 basis, that is sentencing inmates for the crimes
25 they have committed. It was at one time an

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2 opportunity where the Courts would, from the time a
3 person was convicted to sentencing, it would allow
4 us an average of about six weeks to do an
5 investigation. Right after our massive layoffs it
6 went from six weeks to twelve weeks and in some
7 cases fourteen to sixteen weeks before we were able
8 to get a presentence investigation back to the Court
9 in order for the Court to do what they need to do.

10 Now, keep in mind that some of these
11 individuals were still in jail, and look at the cost
12 that we're putting on the local sheriff, the local
13 jail administrators, in terms of holding on to that
14 person that much longer. You look at, also, the
15 impact of not being able to deliver swift justice.
16 We're delaying the process unnecessarily because we
17 don't have the manpower to meet the mandates of the
18 Court.

19 When we look in terms of our abilities to
20 provide supervision -- and I'll be the first to tell
21 you, the first one, I think I'm very proactive in
22 terms of going out and making home visits and
23 holding defenders accountable. But one certainly
24 has to ask the question are we able to hold people
25 accountable with that drastic cut in our budget and

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2 in our manpower. We're just really making due doing
3 what we call risk management, trying to give the
4 highest level offenders the amount of attention we
5 think they would deserve. But what about the other
6 offenders who may not necessarily be on the verge of
7 recidivating, but may be some of our services such
8 as referrals, advocacy, such as trying to help
9 reintegrate and rehabilitate themselves in a more
10 positive way. And we're depriving them of their
11 particular services, and I think that we're
12 depriving probation as a profession, our full
13 professionalism as members of probation, as
14 directors of probation, as officers within the
15 probation system to do those types of jobs that we
16 need to do to really have a positive impact.

17 Probation, if funded adequately, if given the
18 staff that it should have, probably is the best bang
19 for your buck within the entire Criminal Justice
20 System. We can supervise folks. We can connect
21 people with those types of services that they need
22 in the community. With the types of drastic cuts
23 we're having now, we're just barely getting by.

24 MR. CLARK: George, I just wanted to ask. You
25 have indicated that cuts went from ninety-one to

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2 sixty-eight.

3 MR. ALEXANDER: Yes, sir.

4 MR. CLARK: Do you see any relief in that
5 number coming in the budget which is being prepared
6 for submission and vote this November?

7 MR. ALEXANDER: I had an opportunity to look at
8 our budget yesterday, and my original request this
9 year -- and, again, I know that I wasn't going to
10 get everything in one year, so it was a building
11 process -- so my original request this year was for
12 fifteen additional officers, three supervisors and
13 three clerical persons. I looked at the budget
14 yesterday. I've got five new officers; that's it.
15 And so it really, while there is some relief there
16 in terms of giving some folks back, it certainly
17 goes nowhere in terms of giving me satisfaction that
18 we have enough to adequately do the job put before
19 us.

20 MR. CLARK: How does it compare in terms of
21 your former staffing level, let's say ninety, and
22 the staffing level that we're looking at right now,
23 somewhere between sixty and sixty-five people?

24 MR. ALEXANDER: Yes.

25 MR. CLARK: In a county which is nine hundred

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2 and fifty thousand and a county with the second
3 largest urban center in the state, how do you
4 compare numbers-wise with other, let's say,
5 demographically similar counties: Westchester which
6 has about nine hundred and thirty or forty thousand
7 people, Monroe with about seven hundred and fifty
8 thousand, or maybe one of the Long Island counties
9 that have, let's say, between a million three and a
10 million five? How do you compare statistically
11 staff-wise with those counties?

12 MR. ALEXANDER: Let me say this. We started
13 out as being one of the premier departments within
14 the entire state. When I came on board in 2000, we
15 did a number of innovative different things, looking
16 at what's going on around the state and what's going
17 on in neighboring counties, and we were able to
18 duplicate that for the most part. And so we put
19 ourselves in the position where we were one of the
20 premier counties.

21 Now, in direct answer to your question,
22 Mr. Clark, is that we are dead last -- including
23 some of our smaller counties throughout the state --
24 in terms of the staff ratio in terms of the amount
25 of PS Is that each person has to complete. In terms

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2 of the officers per so many hundred thousands of
3 population, we are dead last in those statistics.

4 JUDGE KLOCH: What is the workload?

5 MR. ALEXANDER: The workload varies, and it
6 varies for this reason, that there's some cases that
7 have mandated ratios. For instance, intensive
8 supervision has a mandated ratio of, I believe,
9 thirty to one. Juvenile intensive supervision is
10 fifteen to one, and so those case loads are capped.
11 The unfortunate part about it is as we cap those
12 case loads other case loads are not capped, and so
13 they are rising anywhere up to about two hundred and
14 thirty-five to two hundred fifty cases per person.
15 And with that type of a ratio, most certainly one
16 has to ask themselves how effective is the
17 supervision that we're able to provide, that type of
18 a population with those types of statistics.

19 MR. HORN: If I may, so in the intensive
20 supervision those officers are fully funded by the
21 state, correct?

22 MR. ALEXANDER: Yes.

23 MR. HORN: And the general supervision and
24 persons are only intensive supervision if the Judge
25 has directed that they be placed on intensive

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2 supervision?

3 MR. ALEXANDER: Yes, sir.

4 MR. HORN: Could you talk a little bit about
5 the size of your general case loads?

6 MR. ALEXANDER: General case loads, again, like
7 I said, they can range anywhere from a hundred to
8 two hundred thirty-five and two hundred fifty, and
9 you get a wide gamut of different cases on that case
10 load. You've got some folks, although they may not
11 meet the mandates of the Courts in being intensive
12 supervision because of geographic in terms of where
13 they live at and in terms of family history, in
14 terms of their particular needs, they still require
15 a lot of maintenance, a lot of our input in terms of
16 making that person whole or making him less likely
17 to recidivate again.

18 When we talk about that whole idea of reducing
19 recidivism and rehabilitation -- and if I can just
20 go off on a tangent for a moment. We talk about
21 sending people to prison to rehabilitate themselves,
22 and I don't think we should kid ourselves in saying
23 that rehabilitation is going to take place in the
24 prison, because it can't just by the very nature of
25 the prisons and the things that go on in prison.

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2 The only way you can truly rehabilitate a person is
3 within the community from which he or she lives, and
4 that's what probation is able to do when properly
5 staffed, when we're properly funded. When I know we
6 have case loads of two hundred and fifty or so that
7 that becomes a mere impossibility to do, so we're
8 just doing cursory type of probation work.

9 MR. HORN: Has the amount of -- the dollar
10 amount that you receive from the state remained
11 equal?

12 MR. ALEXANDER: No. Since I came on board --
13 and when I came on board in 2000, February of 2000,
14 I believe the state reimbursement was somewhere in
15 the neighborhood of about 34 percent. Right now
16 we're hovering about 17 and 18 percent
17 reimbursement.

18 MR. HORN: But my question is: When the county
19 took its cut and you went from ninety-one officers
20 to sixty-eight officers --

21 MR. ALEXANDER: Yes.

22 MR. HORN: -- putting aside the percentage rate
23 of reimbursement, did the total dollar value of your
24 reimbursement remain the same, or did you lose state
25 dollars?

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2 MR. ALEXANDER: Well --

3 MR. HORN: Did the state step in in any way to
4 help shore you up, or was your -- did the amount of
5 money you received decrease because you were
6 spending less on salaries?

7 MR. ALEXANDER: No. The amount of money did
8 not increase.

9 MR. HORN: Did it go down?

10 MR. ALEXANDER: Yes. Yes. And it's based on a
11 proportion of the staff that we hire and what is
12 reimbursable under state rates, and as those
13 employees started to reduce the amount of
14 reimbursement, then it also dwindles as well.

15 JUDGE KLOCH: Commissioner, one thing we've
16 sort of started to become experts at is salary
17 levels throughout the state for various probation
18 departments. What is your departments starting
19 salary?

20 MR. ALEXANDER: I believe our starting salary
21 is in the neighborhood of about -- we have a
22 two-tiered system, and our system starts at a grade
23 nine, which is a training position. I believe that
24 salary is somewhere around thirty-four, thirty-five
25 thousand dollars annually. Okay. After two years a

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2 person is promoted to a full grade eleven PO, and
3 that's in the low forties.

4 JUDGE KLOCH: And just for the record, what is
5 your present department's time to provide a PSI to
6 the Court?

7 MR. ALEXANDER: Unfortunately -- and what we
8 thought we had gone beyond the curve and started to
9 bring that number down to a more manageable number,
10 but just recently I've had to go back to the Courts
11 and ask them to allow me to go back to that
12 twelve-week period for a number of different
13 reasons. I mean, we've got requirements now we've
14 got to take a look at. We've got summer vacations
15 that are certainly a part of that equation.

16 The other things that attributed to that is
17 that as we are -- we put a big push on for probation
18 officers because they're the crux of what we do, but
19 there's the other piece that we also need to have
20 that we're trying to convince our administration
21 that they need to invest in, and that's our clerical
22 staff. Because as many POs as I put on the new
23 investigation, when they can complete them all in a
24 timely manner who is going to prepare them so they
25 can get to the Courts in a timely manner? And so

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2 there's many different aspects of that problem that
3 we need to address, both the professional aspect and
4 clerical aspect. But in answer to your question,
5 we're still hovering around twelve weeks again.

6 MR. HORN: If I may, going back to the issue of
7 state funding. As I am in New York, I know you are
8 subject to regulations established by DPCA relative
9 to the Division of Probation Services. Without
10 exposing yourself to liability, would it be fair to
11 say that in Erie County you are not meeting those
12 regulatory requirements?

13 MR. ALEXANDER: Yes. In fact, if I can -- and
14 I've even written last year to Mr. Maccarone, and we
15 certainly sat down and I've had several
16 conversations with him -- he certainly understands
17 the flight that we were experiencing and was able to
18 grant us certain waivers. Some things couldn't be.

19 MR. HORN: You have received waivers?

20 MR. ALEXANDER: We have received some waivers.
21 Again, those waivers still come at a cost that we're
22 not delivering the service across the board the way
23 that we should be.

24 MR. SOARES: Sir, you talked about twelve
25 weeks. Was this twelve weeks to a prepare a

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2 presentence investigation report?

3 MR. ALEXANDER: That's twelve weeks from the
4 time that the Court sent it over to assign it to us,
5 then we assign it to an officer to go out and
6 complete the investigation to do all the nuts and
7 bolts and connect it with preparing a presentence
8 investigation report, getting it back, and getting
9 it typed, and getting it into the hands of the
10 Judge.

11 MR. SOARES: And are these investigation
12 reports for offenders who have been sentenced to
13 stay in prison?

14 MR. ALEXANDER: That's correct. Well, we do
15 presentence investigation reports across the board
16 for just about every Court. We have had to put the
17 brakes on them last year for the Town and Village
18 Courts, and certainly that came at a price as well.
19 And I can't tell you the amount of times that people
20 in -- certainly in jest, I hope -- were talking
21 about, you know, putting me in jail for not obeying
22 the Court's orders.

23 But, nonetheless, when we talked about the
24 presentencing reports, they are mandated by the law
25 for anybody who's going to jail. You could --

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2 according to the statute, no one can be sentenced to
3 a term of incarceration without a presentence
4 investigation report, and that certainly highlights
5 the magnitude of the importance of that report, that
6 if the Judge can't send somebody to jail who should
7 be in jail until we get him a report and we keep
8 asking the Judge, look, Judge, I need more time,
9 more time, more time, I need more time, how much
10 time is necessary before the Judge says, all right,
11 fine, enough is enough, I got to get this person out
12 of county jail and into corrections so he can start
13 that whole process of incarceration?

14 MR. SOARES: What are the fiscal implications
15 for that additional period of time that it is taking
16 for PSI reports to be completed on those offenders
17 that are going to state prison, because presumably
18 if you complete them within the six-week time period
19 they are sentenced and they are no longer occupying
20 space here in the county, they're not costing the
21 county any resources and they're now, you know,
22 they're being housed at the expense of the state?
23 So the additional time period that it's taking to
24 complete these PSIs are having fiscal implications
25 on the County, and you have talked earlier about the

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2 overcrowding at your holding facility. Do you have
3 an estimate, as far as numbers are concerned, for
4 the kind of expenses you have --

5 MR. ALEXANDER: I don't have an overall
6 estimate, but I can give you an example in terms of
7 what it costs on an individual basis. For instance,
8 if a person in Erie County -- and we've had a task
9 force which I am the chair of to look at the
10 overcrowding in the Holding Center -- and we have
11 estimated that it costs roughly one hundred and four
12 dollars per day to incarcerate somebody in Erie
13 County, in the local jail. If we are adding on a
14 minimum of six additional weeks to complete an
15 investigation, you multiply that six weeks, seven
16 days a week, by one hundred and four dollars a day,
17 and that gives you an idea the implication or the
18 impact that we're having on the local jail.

19 You take into consideration also that the jail
20 has other problems in terms of overcrowding and
21 dealing with some of the nuances of the local law
22 enforcement agency and the impact that they've had
23 and you see that we've put the jail now in the
24 position where they can't really meet their
25 particular mandate, and so the cost then becomes

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2 exorbitant.

3 The other part of that cost is that the jail
4 certainly -- I'm sure the chief will talk to you
5 later about that. The jail is responsible for
6 taking other classes of inmates, but if we are
7 filling them up with, just, people who are waiting
8 sentences then that is an additional cost because
9 then they face the possibility of having to ship
10 somebody else to another jail at an increased cost.
11 It's not going to cost him now one hundred and four
12 dollars a day; it's going to cost him even more.

13 The other part of the equation is those dollars
14 are not reimbursable to the counties because those
15 folks are not state ready, and until they become
16 state ready the state looks at it as being the
17 responsibility of the local jails and the local
18 correctional systems. Yes, sir.

19 MR. NOWAK: Mr. Alexander, how are you?

20 MR. ALEXANDER: Good, sir. Good to see you,
21 Mr. Nowak.

22 MR. NOWAK: Good to see you again. I would
23 like your opinion. One of the questions we're
24 looking at is should probation be housed in the
25 judiciary budget or remain in the executive budget.

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2 I'm wondering if you think -- on a theoretical
3 level, where you think it might be best placed and
4 why.

5 MR. ALEXANDER: If you asked me that question
6 in 2004, with all due respects to Judge Kloch, I
7 would have said leave me alone, probation is exactly
8 where we should be. We need to have our
9 independence; we need to be able to operate in an
10 environment that's free from judicial influence; we
11 need to maintain that degree of impartiality,
12 because that's one of the important aspects of what
13 we do is to be able to provide a PSI that's strictly
14 uninhibited by either the defense attorney or
15 prosecution attorney or the Judge himself.

16 Now, though, the situation has changed, and I
17 have to at least consider the possibility of what
18 would happen if we were under the judiciary. You
19 know, would it -- would this department have taken
20 the financial hits that it did if we were under the
21 judiciary as opposed to being under the County
22 Executive, and while I've not come to any firm
23 conclusions, I'm of the opinion that I need to
24 really look at the situation and see what's in the
25 best interests of probation in Erie County. And so

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2 to that degree, I'm certainly open to explore its
3 position under the County Executive, its present
4 structure, and under the judiciary and look at some
5 of the benefits of both.

6 MR. NOWAK: Thank you.

7 MR. BURNS: George, I was going to ask you
8 about the reaction of your administrative Judge and
9 supervising Judges of criminal and supreme, and I
10 was going to ask if the words contempt of court ever
11 came up, and you've kind of answered it. But the
12 other part of that, I was going to ask what you did
13 relative to the quality of those reports. In our
14 other hearings we've been having a lot of discussion
15 about the value of presentence reports and the
16 quality of the reports themselves. It sounds like
17 by extending the amount of time you at least tried
18 to maintain a valid report, something that could
19 significantly help the Judge with a decision. But
20 is that true, or did you have to go down to a
21 one-or-two-page factual document?

22 MR. ALEXANDER: Well, to be honest with you --
23 first of all, let me say I know it's contempt
24 threats. I wouldn't characterize them as threats.
25 I think they were more in jest, but they certainly

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2 were kind of mentioned quite frequently. Initially
3 it did cause some degree of angst, then after
4 understanding the personalities of some of the
5 Judges and whatnot, I became a little more relaxed.
6 Let me say, it's certainly not because he's here but
7 because I truly believe that Judge Kloch and
8 Judge Sharon Townsend have been very supportive to
9 my department to the extent we've sat down, had
10 personal conversations, and they've offered help in
11 many different ways as best they can keeping in mind
12 they had to run their operations as well. So they
13 have been very supportive. I think there's a number
14 of times where they could have just thrown in the
15 towel and said, all right, fine, either you're going
16 to jail or somebody's going to jail because I want
17 to get what I need to get.

18 I would say that the District Attorney has been
19 very much favorable with probation. We've sat down
20 and had conversations with him as well, and
21 everybody's come to the table and said how can I
22 help with the situation knowing they were faced with
23 certain limitations themselves with regards to the
24 presentence investigation reports. We had that
25 conversation early on with supervisors and with

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2 staff and saying what is it, can we do the short.
3 We switched to short-form PSIs, ones that contain
4 just the basic of information.

5 And one of the things that we all decided was,
6 you know, can we really put the Judges in a position
7 where they can make a fair decision based on the
8 scant amount of information, and the answer to us
9 was no. The other thing was that our
10 professionalism as probation, and we said we needed
11 to still -- despite of everything else -- provide
12 the Court with the type of information they need to
13 make adequate decisions, and so we have not scaled
14 down on our presentence investigation reports. We
15 have included and continue to include in there all
16 of the information we feel is necessary so that the
17 Court can make the proper decisions with respect to
18 the disposition of any particular matter that's
19 before it. We think we owe that to the Courts. We
20 owe that to ourselves as professionals. We owe that
21 to our community. And, to an extent, we owe it to
22 the Defendant as well to paint as best a picture as
23 to what the Judge has standing before him as we
24 possibly can.

25 JUDGE KLOCH: First of all, Commissioner, the

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2 quality of the reports has not changed, myself
3 looking at the reports that I receive from the
4 officers.

5 MR. ALEXANDER: Thank you, sir.

6 JUDGE KLOCH: I can tell you as well that these
7 officers have come into my Court and they have been
8 anything -- although very discouraged, very
9 dishearted, very saddened, almost like there's a
10 death in the family -- it almost has mobilized them
11 be more committed to their task. I have to say that
12 about your staff. They are wonderful people, and
13 the other venues that we've had so far we have had a
14 lot of discussions in regard to when a PSI should be
15 required by the Court.

16 As you know, currently in the low-level
17 convictions there can be a waiver, and there's been
18 a lot of discussion whether or not that should be
19 allowed, whether there should be a PSI in every
20 case. We've also had discussions in regard to
21 waving it for the upper level crimes if you have a
22 Defendant in front of you who's going away to state
23 prison, going away for twenty years and there's no
24 question about it, why a PSI. And we've had a lot
25 of discussion in regard to that. In fact, yesterday

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2 we had a representative from the Department of
3 Corrections who spoke about the necessity of the
4 probation report, indispensable as far as the
5 reintegration of the individual back into the
6 community and what they do in the prison setting.

7 My question to you with that long runoff is do
8 you feel that there should be any modification or
9 could be any modifications to the law in regard to
10 the requirement of having the PSI?

11 MR. ALEXANDER: The only modification that I
12 would recommend, Your Honor, would be that a
13 presentence investigation be required in every case
14 that's before the Court. That is the only way that
15 I personally feel that the Court can make the type
16 of decision it needs to make, whether it's to
17 release somebody from parole supervision, whether
18 it's to give somebody an ACD, or whether to
19 incarcerate the individual. That is the document
20 that is the road map that's going to tell you about
21 that individual.

22 One of the type of things that -- and certainly
23 for someone who may not know the contents of a
24 presentence investigation report, if you could
25 imagine -- for instance, let's take for instance a

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2 criminal case. And certainly, Judge, you're well
3 aware of this is that throughout the period of a
4 trial you have got the defense attorney making his
5 pitch in terms of what reality is; you've got the
6 prosecuting attorney making his or her pitch in
7 terms of what reality is; and then at the end of the
8 process somebody -- whether it's the Judge or Jury
9 makes a decision that a conviction is warranted.
10 But then when you think back on it, you certainly
11 have to say, well, what is it that I have. I have
12 heard this person's version; I have heard this
13 person's version. I need something that goes right
14 down the middle and gives me an impartial view in
15 terms of what is it that I really have before me and
16 what are some of the other factors, because
17 everything has certainly been influenced by the
18 people who have been presenting the case at large.
19 And that's where probation steps in and says, fine,
20 here it is, an impartial view. We weren't at trial.
21 We don't know what person said this, said that. But
22 here it is based on our thorough investigation of
23 this person's criminal history, the crime itself,
24 the social background. We have given you everything
25 you need to make a decision with regards to that

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2 person including his family life. You know, does he
3 come from a family of criminals or does he come from
4 a good family.

5 And the reason that's important, because it
6 helps in terms of trying to deliver the proper
7 sentence to that individual, also the proper level
8 of treatment if that's warranted. And so we're able
9 to come in and give a third-party unbiased view in
10 terms of what the Court actually has before it, and
11 the Court is to say, now, fine, I can put all things
12 together with regards to information I have, and I
13 can make a more adequate decision in terms of what
14 should happen with this individual, and it's a
15 decision, then, that isn't just based on things that
16 are just pulled out of the air but based on factual
17 information because we also include in the report,
18 as you well know, Judge, the basis for the
19 information that we put there.

20 MR. DUNNE: Commissioner Horn.

21 MR. HORN: Two questions, and then I would like
22 you to make an observation. I just heard what you
23 have said, and it's very persuasive. But to what
24 extent are convictions in Erie County -- what
25 percentage of them, if you know, are the result of

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2 pleas within which an agreement as to the sentence
3 has already been made in which case it begs the
4 question of how relevant the PSI is, at least for
5 the decision as to sentence if it's already been
6 agreed upon? The second question is: In the face
7 of the reduction has crime in Erie County gone up or
8 down, and are you seeing, given your position, more
9 crimes being committed? My question was that in the
10 face of this reduction of thirty percent, the
11 probation officers' high case loads, has crime in
12 Erie County gone up or down, and more specifically
13 has crimes committed by probationers gone up or
14 down? And then, finally, I would like you to
15 comment on the impact that these cuts have had on
16 your Family Court operation.

17 MR. ALEXANDER: In answer to your first
18 question, with the amount of cases that are plea
19 bargained, I think the District Attorney certainly
20 would be in agreement that the majority of cases in
21 any jurisdiction are pled out. Certainly it would
22 take up an enormous amount of time and staff on his
23 part to try each and every case. It just certainly
24 couldn't happen, and so the good majority of those
25 cases are pled out.

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2 But in response to that, that even heightens
3 the importance of the presentence investigation
4 report itself, because it contains -- to put the
5 Judge in a position to say, well, what is actually
6 before me here? I've got two individuals trying to
7 sell me something, what is behind the line of what
8 it is that you're trying to sell me? What are all
9 the elements involved? And that's the importance of
10 the presentence investigation report with regards to
11 pleas.

12 With regards to crime, I think that the quality
13 of life in Buffalo -- certainly in Erie County --
14 certainly has suffered. I don't know the exact
15 numbers. I don't have the exact numbers before me,
16 but I think that when you look in terms of violation
17 rates, when you look in terms of the number of
18 absconders that we're experiencing, certainly that's
19 attributable to the amount of POs that we have on
20 staff. And we've overheard in our department -- and
21 it's been repeated to me several times -- how
22 individuals will come in and pretty much laugh in
23 the face of the PO when the PO tells them that they
24 have to do this and that and the other. They said,
25 well, you're not going to be around that much longer

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2 anyway, why do I have to worry about you. There's a
3 certain amount of disdain they now have developed
4 because of probation and as a result a certain
5 amount of disdain they've developed towards the
6 Courts, because they're under the impression that we
7 can't enforce what the Court imposed upon us to
8 enforce. And certainly that is present and has an
9 impact on the quality of supervision.

10 MR. HORN: Let me be clear. You're saying that
11 poor probation supervision, inadequate resources,
12 diminishes the authority, the dignity of the
13 judicial system?

14 MR. ALEXANDER: Absolutely. Absolutely.

15 MR. HORN: Finally, the Family Court, the
16 impact on Family Court?

17 MR. ALEXANDER: The impact on Family Court has
18 been dramatic. Family Court deals with PINS and
19 JDs, things of that nature. We've had a tremendous
20 problem. First of all, we had to get rid of our
21 Juvenile Release Under Supervision, a
22 pre-adjudication program where we were trying to
23 prevent kids from being locked up outside of their
24 home because of whatever events they may have become
25 involved in. We had to eliminate that particular

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2 unit, still there's a mandate to prevent as much as
3 possible out-of-home placements.

4 And how do you do that and monitor those
5 individuals in the community with diminished staff
6 and then get the results that the Courts expect from
7 you? You know, my expectations of monitoring
8 juveniles is to be able to hold them accountable.
9 Say, fine, we want you in at 7 o'clock, 8 o'clock,
10 and then be able to monitor and hold that person
11 accountable. We're not able to do that. We can
12 tell the individual we want you to do X, Y, Z, but
13 it doesn't take long for them to figure out you're
14 not able to enforce X,Y, Z.

15 MR. HORN: So is it your position that the loss
16 of resources for your department has resulted in
17 unnecessary and perhaps inappropriate detention at
18 the time of kids to their detriment?

19 MR. ALEXANDER: It has. It has. One of the
20 other things through Family Court that we are often
21 given the option to detain, and I think we have been
22 using an option to detain much more than we normally
23 would have several years ago. Where we were able to
24 work with the individual and work with the family,
25 we've been trying to collaborate through Social

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2 Services and other agencies, but we're still not
3 able to do those types of things that we once were
4 able to do. Yes, sir.

5 MR. CLARK: I would just like to make one point
6 that was part of that question. Well, we probably
7 plea, you know, 90 percent or, you know, give or
8 take one or two up. I would say not five percent of
9 those pleas are agreed-upon sentences. So that if
10 we're talking about a hundred pleas, I would say
11 maybe five of those hundred are agreed-upon
12 sentences which the Court has already endorsed. The
13 other 95 are open to the Court's discretion.

14 MR. HORN: And PSI is relevant?

15 MR. CLARK: Exactly.

16 MR. DUNNE: Let me put on that, if I may,
17 Mr. Clark.

18 MR. CLARK: Yes, sir.

19 MR. DUNNE: I know that you recently served as
20 president of the State District Attorney
21 Association.

22 MR. CLARK: Yes, sir.

23 MR. DUNNE: The figure you have quoted, five
24 percent, is startling. Not criticizing one way or
25 the other, do you feel that that's the usual rate

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2 throughout the state?

3 MR. CLARK: To answer that question, I don't.
4 I think that if we probably look statewide, if we
5 start down in the metropolitan area, I would think
6 that that figure would be significantly higher,
7 four, five, six, seven, ten times more than that
8 higher because that's -- I think in many ways it's
9 with the crush of work we don't get caught up with
10 A, B, C, D. We start talking about realities one,
11 two, three, four. So that I -- and I think that
12 that probably is the tone to a greater or lesser
13 degree throughout the state. I think we probably
14 have the lowest percentage in the state and, again,
15 not criticizing.

16 One, I've been involved for thirty-five years.
17 There has been a resistance within our judiciary to
18 accept that type of arrangement. Some Judges will
19 on occasion, most don't like it. They feel that
20 it's an unwanted imposition on their discretion.
21 There are many Judges that won't take those pleas.
22 They simply won't do it. So that -- I think that
23 it's as much a product of our history as anything
24 else, but nonetheless it's a reality that we all
25 have to deal with. So it means that the probation

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2 department's reports then become that much more
3 significant to each Judge in determining whether
4 they want to come down on any particular case.

5 And I think that it has -- I mean, if we did do
6 more agreed-upon sentences, I think that it would --
7 it might speed things up a bit. But, you know, it
8 is what it is, and we've lived with it for a long
9 time, and it seemed to have worked. We're not
10 suffering in terms of pleas, but I think that
11 particularly in George's case recently the fact that
12 we don't have any expedited system has made the
13 crush of that workload that much bigger.

14 MR. DUNNE: Thank you.

15 JUDGE KLOCH: If I could. We asked this of
16 almost every probation director that appeared
17 yesterday in front of us, and I have to ask this
18 particularly coming from this area. If we strike
19 gold and if we convince the legislature in whatever
20 fashion to increase the level of financial support
21 to the local probation departments, what assurance
22 does this committee have and what assurance can we
23 give to the state legislature that it won't result
24 in a decrease of a local contribution to the
25 Probation Department, their own Probation

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2 Department, so that they can use the money instead
3 to fix roads or cut trees?

4 MR. ALEXANDER: Well, I think that, first of
5 all, the county would be less likely. I mean, they
6 are already contributing roughly 80, 83 percent of
7 our budget right now, so any savings to them
8 certainly would be of a benefit and could almost put
9 them in a position to say we can't afford to not
10 invest in the service because we're getting adequate
11 reimbursement. By the way, that's one of the
12 reasons why probation stood out so much and took
13 such a hit, because we were getting such small rates
14 of reimbursement.

15 Social services and some of our juvenile
16 components, juvenile detention, were getting as much
17 as 50 percent and in some cases 65 percent
18 reimbursement and some cases, Social Services, a
19 hundred percent. So they didn't have to take as
20 much as a hit, but when the majority of the
21 burden -- financial burden rests on the County,
22 probation said we've got to cut out our biggest
23 debt. One of them was probation. That's why we
24 took such a hit.

25 I think when you start to see such a commitment

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2 on a state level of investing dollars that, number
3 one, you're going see the county itself taking the
4 position that probation is the entity that provides
5 the best opportunity for rehabilitation, provides
6 the best opportunity for reduction of recidivism.
7 You can't afford not to invest in probation, just by
8 way of statistics in terms of recidivism.
9 Recidivism rates for probation nationwide is about
10 thirty, thirty-five percent. Compare that to parole
11 where it's more like 50 to 60 percent.

12 So you're getting a bigger bang for your buck
13 and getting an opportunity to rehabilitate a person
14 prior to going to prison. Once they have gone to
15 prison -- it's my contention that you can't
16 rehabilitate in prison, and once they come out of
17 prison that the barn door is already shut. You can
18 do what you can to maintain that person as best as
19 you possibly can, but the best opportunity for
20 rehabilitation exists at the front door.

21 So I think with the proper investment of
22 resources that we could have more manageable case
23 loads, that we can do those types of things that are
24 necessary to pay attention to detail or pay
25 attention to what are the wants and needs of

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2 probation, what are the wants and needs of the
3 victim, what are the wants and needs of the
4 community. And then when we're doing things like
5 home visits, we can take an extra look in terms of
6 what it is that we're seeing and weighing out the
7 relevance, some things that we may be overlooking
8 that might be important that could help us to deter
9 that person from future incarceration.

10 But, again, in many instance we're not able to
11 pay that close attention to detail. With proper
12 funding we can have those types of case loads that
13 are manageable and gives us an opportunity to have
14 an edge against recidivism.

15 JUDGE KLOCH: Thank you.

16 MR. BURNS: George, almost every large city,
17 large county in New York State has had its crisis
18 year where there are deep cuts, layoffs of officers,
19 and the kind of crisis that we're talking about
20 here. Yours may well have been the deepest -- and I
21 don't know if anyone has done a comparison, but it
22 sure sounds that way. During those darkest times is
23 when I would try to call you and only get voice mail
24 and be afraid that you had been let go yourself.

25 MR. DUNNE: Held in contempt.

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2 MR. BURNS: Held in contempt. When I realized
3 you were dipping into the sixties as your numbers of
4 case-bearing officers -- and in Monroe that brings
5 you almost to a level just half of what we have, and
6 you're going to hear about our crisis in a few
7 minutes -- when it got that bad, was there any
8 discussion in your office or in budget division or
9 the county attorney's office about literally
10 folding -- looking at that little piece of the
11 executive law that says something about the State of
12 New York being required to step in if a county just
13 can't deliver services? Did it reach that point?

14 MR. ALEXANDER: It did. In fact, a number of
15 the justices that I have had an opportunity to sit
16 and talk with have made mention of that on several
17 times to listen, you know. And they --
18 Mr. Maccarone may have even received some
19 correspondence from some of our local justices
20 asking for a state takeover because of their -- our
21 inability to provide the services to the level they
22 expected and then as a result their lack of
23 confidence in my department.

24 And so certainly that has been the source of
25 much conversation, the source of much angst as well.

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2 Because, I mean, in spite of everything else, in
3 spite of the cuts, no one likes to be looked upon as
4 being ineffective and not being able to deliver
5 those services. And so while I didn't take a
6 personal front to it, it certainly was something I
7 didn't like hearing, that we weren't able to provide
8 the services that we were supposed to be supplying.
9 That's something that I think every probation
10 director never ever wants to hear from anybody in
11 spite of the situation. But still it was reality,
12 and certainly the Courts had their mandates. They
13 had to do what it is that they need do, and so those
14 conversations took place several different times.

15 MR. BURNS: You know, I don't want to take away
16 from the speakers, but perhaps in November -- just
17 to make sure the Task Force is aware -- we can have
18 Bob or his counsel just give us an overview of that
19 section of law that if a county does say -- whether
20 it's a small county or a county the size of Erie,
21 I'm in crisis I cannot provide probation services,
22 is the Governor required right now to find the money
23 to come in and provide those services just so we're
24 aware with that.

25 MR. MACCARONE: Actually, I can comment on

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2 that.

3 MR. DUNNE: Please, do.

4 MR. MACCARONE: We've looked at that section of
5 the law, and I have the power as State Director to
6 render a finding that a county is not providing an
7 adequate level of services, and then it actually
8 shifts the burden to the local legislative body to
9 address that situation. So before there's any
10 takeover by the state, it requires the County to
11 address the situation as you would expect it would
12 be. So the State's position -- and this is not more
13 of a question, George, but a comment -- is we have
14 recognized that the cuts in Erie County have
15 crossed -- to some extent have gone across the
16 board. They have been certainly more egregious and
17 deep with the Department of Probation. But, let's
18 face it, Erie County has been facing a rather
19 substantial fiscal challenge, and the County
20 Executive has worked very hard, I know, with his
21 budget director to try to comply with that. One of
22 the things that I think we've got to keep in mind,
23 everybody's got to keep in mind, is that there is a
24 fiscal board in control right now managing affairs.

25 MR. ALEXANDER: Yes.

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2 MR. MACCARONE: So with respect to the County,
3 Judge Clark's question would the County
4 automatically put those revenues into probation
5 services, I'm not sure it has entirely the power to
6 do that. It has to do that with the Control Board.
7 And I have met George and I would ask -- one of the
8 questions I can ask you is the five probation
9 officers that you did get, are they targeted in any
10 one area?

11 MR. ALEXANDER: Well, yes, pretty much for
12 investigations. And that was when we had
13 conversations with the County Executive which was at
14 the behest of some of the local Judges in terms of
15 our turn-around time and the cost to the local jails
16 in terms of people that we were holding on to
17 unnecessarily, so investigations. So one of the
18 things with investigation, it certainly -- and I
19 hope to relieve the other remaining case-carrying
20 POs of investigation. Right now we're spreading
21 investigation out not only amongst our investigatory
22 staff but amongst each PO. So I'm hoping to be able
23 to pull all of that back and concentrate all the
24 PSIs in the investigations unit.

25 MR. MACCARONE: In the meetings that you and I

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2 had, it came out -- and we talked to the County
3 Executive at the behest of the administrative
4 Judge -- it became clear that the power of the
5 county -- and the committee has to be mindful -- to
6 add resources are somewhat limited, that that has to
7 be done with the cooperation and support of the
8 Financial Control Board. So right now there's some
9 things that the county is constrained in doing,
10 certainly. But, you know -- as you know, we
11 continue to monitor and look at this budget that
12 Erie County is coming up with, and in support of
13 probation services, in light of the actual services
14 that it delivers not only to the judiciary in the
15 preparation of presentence reports but your
16 department's ability to supervise offenders in
17 concert with the rules and regulations of the state
18 division.

19 MR. ALEXANDER: If I may, one of the things
20 that you had also asked earlier about the impact of
21 our department with our reduction in officers per
22 hundred thousand. I mentioned that figure earlier.
23 Per hundred thousand, we have approximately eight
24 officers, the lowest ratio throughout the state.
25 You've got ratios as high as thirty-three per

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2 hundred thousand in Albany County, but for Erie
3 County it's eight POs per hundred thousand of the
4 population which, you know, you can do the math
5 itself and it's horrendous.

6 When we're talking about the time it takes to
7 do a presentence investigation, you know, ours is
8 the worst in the state. Again, on average of about
9 ten, twelve weeks rather and you have got some in
10 Onondaga County in particular that can do it within
11 ten business days, and it shows you the disparity
12 there because of our lack of staff. When we talk
13 about the number of PSIs -- the probation
14 investigation reports assigned to each officer --
15 we've got sixty-eight per PO; again, the worst in
16 the state. The next closest to us would be
17 Westchester County that has thirty-nine per officer.
18 And so we're certainly in dire straits when it comes
19 to our ability and the workload that's been assigned
20 to us, and on top of that we're still doing things
21 like Operation Impact where we interface with the
22 local law enforcement, Project Safe Neighborhood,
23 same thing, interfacing with the federal authorities
24 and local law authorities to resist gang activity
25 and to infiltrate those areas of a high degree of

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2 importance. DNA collection, DWI supervision, a lot
3 of those specialty types of operations that we
4 continue to perform, and we perform it to the best
5 of our ability.

6 But, again, I think at some point someone has
7 to ask the question, how effective are they. You
8 know, the reduction of staff that they've had. I
9 don't want to leave here, though, with the
10 impression, though, that probation is not effective,
11 because it certainly is if given the right amount of
12 funding. If given the right amount of attention,
13 probation probably is the best opportunity you have
14 to change criminal behavior. It's the best
15 opportunity to supervise the individuals in the
16 community while they are going through the
17 rehabilitative process. It's the best opportunity
18 to bring together all elements of the Criminal
19 Justice System from the arresting officer to the
20 police to corrections to parole to everybody that's
21 involved in that whole disjointed operation. It's
22 the only entity that really brings together all of
23 those disjointed parts and has them working together
24 as a smooth congress, a smooth machine, if you will,
25 that brings everything together full circle so

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2 people have an understanding what it is that we
3 have.

4 And it's performed at that particular time at
5 the front end of the system, not at the back end.
6 That's the opportunity that we provide to the
7 community in terms of public safety, and I think
8 with given the proper staffing levels that we
9 probably provide the same, if not better, levels of
10 community safety than at the local police because we
11 know what it is that we're supervising out there,
12 and we know how to supervise.

13 MR. DUNNE: Mr. Alexander, thank you very much.
14 Before you leave, you've almost used the thirty
15 minutes allotted to you. Perhaps if there any other
16 questions or comments?

17 MR. MACCARONE: Just one final request,
18 Senator. Commissioner, do you have a copy of that
19 report comparing Erie County with the other counties
20 with respect to presentence investigation and
21 supervision?

22 MR. ALEXANDER: I do.

23 MR. MACCARONE: Do you have a copy you could
24 submit to this committee?

25 MR. ALEXANDER: I do have copies of the

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2 presentation I made this morning. I'll be happy to
3 leave that, and I'll give you copies of the staffing
4 ratio so that will be included as part of the
5 packet.

6 MR. DUNNE: Thank you very much.

7 JUDGE KLOCH: Thank you.

8 MR. ALEXANDER: Thank you all very much for the
9 opportunity. Like I say, it isn't that often we get
10 an opportunity to talk about probation and it's
11 effectiveness and importance in the Criminal Justice
12 System. So I really appreciate the opportunity and
13 the time you gentlemen took to come here to Erie
14 County and talk with us about probation.

15 MR. DUNNE: Thank you for your hospitality.
16 Our next speaker is the president of the Monroe
17 County Probation Officer's Association, is Jennifer
18 E. Ball. Good morning.

19 MS. BALL: Good morning. My name is Jennifer
20 Ball. I am a Monroe County probation officer; I'm
21 also the president of the Monroe County Probation
22 Officer's Association; and in addition, I'm also the
23 Region 6 vice-president for the New York State
24 Probation Officer's Association. I tell you this so
25 you know who I am, but I'm actually speaking to you

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2 today as a line officer.

3 I have been a probation officer for over ten
4 years. While I acknowledge that probation is not a
5 perfect system, it is right now what we have, it is
6 all we have. It is by far the first and most popular
7 sentencing choice in New York State. There are
8 currently over 8,000 adults on probation in Monroe
9 County. While there has been some emergence of
10 specialty courts, courts where case management may be
11 given, and it is seen that may be duplicating
12 probation, not everyone commits specialty crimes.

13 So as you move forward today with your research
14 regarding the future of probation, I'd like to speak
15 to you in regard to what a probation officer would
16 like.

17 First I can tell you with great certainty that
18 no probation officer got into this line of work with
19 the thought of making big money. In actuality,
20 anyone who may be interested in getting into
21 probation has several downfalls to consider. Despite
22 the stress and the danger associated with this job,
23 the local governments are still unwilling to pass the
24 25-year retirement plan that was passed at the state
25 level years ago. In addition, despite the fact that

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2 probation officers are required to hold a Bachelor's
3 degree, we are paid similarly to other county
4 employees whose education requirements are much less.
5 Our jobs are dangerous, they are stressful, and they
6 are always filled with conflict. So when you ask why
7 is it that probation officers do this job, I truly
8 believe, I speak for myself and also my fellow
9 officers, that we do this job because we want to
10 assist people in changing their lives. So I guess
11 then it comes down to what do we need in order to do
12 this?

13 Probation officers want to be competent and
14 thorough, we want to be able to respond to citizens'
15 complaints, we want to be able to talk to a victim
16 and be able to give them answers. We'd like to know
17 the particulars of our probationers' lives and cases
18 without having to refer back to the file. We also
19 would like to know what is going on with our
20 probationers on a daily basis.

21 With case loads numbering into the 150s,
22 obviously this is impossible. Reports become an
23 assembly line as we try to just move people through.
24 Officers frequently take over 35 reports on their
25 report days, that would be 35 probationers. Due to

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2 time constraints, often drug screens aren't done
3 because we have to move people in and out, a lot of
4 times questions aren't asked that would be valuable
5 questions to ask.

6 In addition, while an officer is taking those
7 reports, they can get up to 25 voice mails while
8 they're away from their desks. The majority of those
9 phone calls, quite honestly, will not be returned
10 despite a best -- the best effort of the officers.
11 That means that this is lost contact with agencies,
12 with treatment providers, possibly even with family
13 members. And it's the case load, the overwhelming
14 case load that prevents us from feeling as competent
15 and thorough as we would like to.

16 Probation officers would also like to act
17 quickly. When we receive calls from citizens or
18 family members -- say a family member calls and says
19 my husband is home right now and he's intoxicated.
20 They don't want to hear us say, well we will take it
21 up with them the next time they come in to report,
22 which is next month. They want to see us at their
23 house. They want to see us holding their family
24 member accountable.

25 When we file violations, we would like to get

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2 our information to court as quickly as possible, but
3 instead we find ourselves making copies because we
4 don't have clerks who do that for us. So we end up
5 making our own copies and delaying the entire
6 process.

7 An example would be with our electronic
8 monitoring program. Not only do we want to know that
9 a probationer is home when they're supposed to, but
10 we would also like to know that they're in treatment
11 when they're supposed to be, or they're at school
12 when they're supposed to be, and we have the
13 technology to do this. We have equipment that would
14 allow us to drive by a treatment agency and know
15 whether that probationer is inside. Unfortunately,
16 we don't have the manpower. So we do not perform
17 that duty; and as a result, if someone leaves to,
18 say, go to treatment, they could be out running the
19 streets, committing new crimes.

20 In regard to arrests, we want to know
21 immediately if our probationers are arrested, or if
22 they have warrants. Fortunately, and we are very
23 fortunate in Monroe County, we have this technology
24 and this communication right at our fingertips. We
25 also -- we end up finding out about this information

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2 oftentimes before we receive that state notification.

3 Another example would be curfews. Thanks to
4 initiatives and programs in Monroe County like Night
5 Watch, we have the ability to check on probationers
6 late into the evening and take immediate action if we
7 find that they're not home. And we are quite aware
8 that immediate sanctions are the most effective
9 sanctions.

10 As probation officers, we want the courts to be
11 responsive. We want to know that courts take our
12 violations seriously and that they're willing to act
13 on them. Some probation officers have cases where
14 there have been four or five violations of probation
15 filed on one individual, and that individual remains
16 on probation. Probationers frequently commit new
17 crimes while violations are pending, and yet they
18 remain in the community. We want to be able to
19 communicate with the courts and get our voices heard
20 often because we cannot be in court.

21 On an average general case load, if there are 30
22 or 40 violations pending, you simply cannot make
23 every court visit. Actually, within Monroe County,
24 our E-mail system and the ability to have court
25 liaisons has increased our abilities to be able to

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2 communicate with the courts.

3 Probation officers want to be respected. In
4 Monroe County we are fortunate to have very good
5 relationships with local law enforcement, and the
6 reason for that is the collaborative efforts that we
7 have, including Night Watch, Operation Impact, and
8 Cease Fire. They respect us and they respect our
9 training, and they're more willing to help provide
10 information to us, and I'll give you an example of
11 that.

12 I currently supervise a felony DWI case load.
13 This is supposed to be a more intensive case load,
14 and my numbers are approximately 110 probationers. I
15 received information that my probationer and another
16 probationer had engaged in a fight in a bar. My
17 probationer's girlfriend, who was also on probation,
18 was present that evening as well. All three
19 probationers were on for DWI, all three probationers
20 were drinking, and all three probationers did not
21 have driver's license. While no charges were filed,
22 the Monroe County deputy took an extra moment to
23 write up information and provide us with this
24 information, and that is invaluable. Even if we
25 don't have a -- a charge, we have written

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2 documentation of what actually happened. That is
3 absolutely invaluable, and that is part of a good
4 collaborative effort between law enforcement
5 agencies, which again we're very fortunate that we
6 have.

7 But above all else, probation officers want to
8 go home safe to our families. Probation supervises
9 more felonies than both parole and the Department of
10 Corrections combined. Probationers are more violent
11 now than ever in the past, many of them are on
12 probation for weapon related charges. Probationers
13 assume that we, like police, are trained and armed,
14 and they see us as a threat when we are in their
15 neighborhoods. No one on the panel today, I'm sure,
16 would deny that a bulletproof vest is a valuable
17 piece of equipment for probation officers. I'd like
18 to point out that a firearm is simply another
19 valuable tool to protect our safety. Officers run
20 into weapons in the streets, we have officers that
21 have to confiscate weapons, they run into weapons in
22 the homes, they run into weapons on probationers. So
23 our firearms training is absolutely invaluable.

24 While we work with these other agencies, whether
25 it be through Cease Fire or Night Watch, they expect

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2 us to be trained, they expect us to be knowledgeable,
3 and they expect us to be able to assist them, back
4 them up, and work with them without being a
5 liability.

6 So essentially, no matter who ultimately
7 oversees probation, we as probation officers, we need
8 resources, we need tools, and we need technology to
9 maintain quality supervision over our ever emerging
10 case loads. The future of probation must include
11 provisions for this. Thank you.

12 Do you have any questions?

13 MR. DUNNE: I'm sure we do.

14 MR. HORN: I have one question. You mentioned
15 the large number of weapons cases. Those firearms
16 cases or knives?

17 MS. BALL: Firearms.

18 MR. HORN: My understanding of the statute of
19 New York, creates a presumption of incarceration for
20 a person who either possesses firearm, uses a firearm
21 in the commission of another offense. Do you have
22 any sense about why so many more people are getting
23 probation?

24 MS. BALL: Well, I think in general more people
25 are getting probation now because of jails, because

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2 of overcrowding and because of a lot of even the
3 collaborative efforts, some of the efforts that they
4 have done impact other -- other collaborative efforts
5 have actually uncovered these weapons. So not only
6 are more people being armed, more people are being
7 arrested for that, but even while on probation we're
8 continuing, because they have a disregard for the
9 law, we're continuing to find them.

10 MR. HORN: I'm just questioning why they're
11 being sentenced to probation rather than to a period
12 of incarceration. It got harder?

13 MR. MACCARONE: Yeah, now.

14 MR. HORN: But presumably, all of these people
15 got placed on probation before the recent statutory
16 change, and my question is how does that happen?

17 MR. MACCARONE: The law does not mandate jail
18 time.

19 MR. HORN: The law says that before putting a
20 person on probation, that there has to be a finding
21 on the record that if this were to be justice and
22 that probation is the proper setting.

23 MR. CLARK: If it's pled to the D. If it's pled
24 to an E preindictment, that permits a probationary
25 sentence.

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2 MR. HORN: So a lot is pled down.

3 MR. CLARK: It could be a plea indictment E
4 felony plea, which permits the court to impose
5 probation.

6 MR. HORN: I see.

7 MR. BURNS: And to the chagrin of the district
8 attorney, that mitigating factors subdivision for the
9 D felony has been used in Monroe at least a number of
10 times with concealed handguns.

11 MR. MACCARONE: And now it's been changed.

12 JUDGE BRUNETTI: I just checked with John, it
13 hasn't been chaptered yet. They're trying to clean
14 it up.

15 JUDGE KLOCH: Officer, thank you for your
16 testimony. Do you see any problem -- yesterday we
17 heard some testimony in regard to problems with the
18 court in regard to delays in dealing with delinquency
19 applications made to the court and actually noticing
20 hearings in regard to alleged violations. Do you see
21 any problem with that in Monroe County?

22 MS. BALL: I think what we're seeing in Monroe
23 County is -- to give you an example, if I were to
24 file a violation of probation today, it would go to
25 my supervisor who would sign off on it, it would go

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2 to me to make copies of it, and then it would go to
3 our clerk to have it entered into the computer. At
4 that point she would then send it over to the court,
5 they would send us back information, and then a --
6 the delinquency would be signed. That, in itself,
7 could take several days.

8 JUDGE KLOCH: What about the court? Are you
9 delayed by the courts?

10 MS. BALL: Once we get to court, I think we've
11 seen an improvement. I think that we are seeing that
12 the court is handling cases more efficiently, trying
13 to get them disposed of more quickly, or moved on to
14 whether it be a mental health or a drug court. So I
15 think now more so than the past we're seeing a better
16 management of the cases.

17 JUDGE KLOCH: Thank you.

18 MR. MACCARONE: So Miss Ball, can you tell us
19 what time frame it really takes to get to a probation
20 violation hearing in Monroe County?

21 MS. BALL: For an officer to file one or for it
22 to actually go to the court?

23 MR. MACCARONE: To get it on the calendar to be
24 heard before the court.

25 MS. BALL: I would say -- well, to get it to the

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2 court would probably take three to four days. To
3 actually get a court date would probably be two to
4 three weeks.

5 MR. MACCARONE: Two to three weeks. I didn't
6 mean to minimize, by the way, before, the importance
7 and severity of the cases that you officers handle,
8 particularly with weapons. I think Commissioner Horn
9 makes a very good point that, in fact, many, many of
10 these weapons, firearms specifically, find their way
11 onto the ranks of probation supervision and, indeed,
12 it has been increasingly a serious population that
13 you manage. Do you have vests in Monroe County?

14 MS. BALL: Yes, we do.

15 MR. MACCARONE: Okay. And as a member of the
16 Probation Officer's Association, do you have any
17 feeling for its neighboring counties? Are they
18 similarly outfitted with protective apparel?

19 MS. BALL: I would say that they are becoming
20 more so, but there are definitely counties in -- in
21 our region that not only may they not have vests, but
22 they have to use their personal cars to do home
23 visits. They have to -- they may not have radios.
24 We are very fortunate in Monroe County, we have 911
25 as a dispatcher, so we can go out any time we like.

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2 A lot of times in the more rural counties, I know
3 that they are taking a personal car and possibly a
4 cell phone, that may work. They don't have radios,
5 they don't have the technology that minimally we all
6 need in order to be able to do the job safely.

7 MR. DUNNE: Any further questions?

8 MR. NOWAK: Just one quick question.

9 MR. DUNNE: Yes, please.

10 MR. NOWAK: Probation Officer Ball, in your
11 years of experience in Monroe County, have you seen
12 your job -- do you think it's changed from more of a
13 rehabilitative to law enforcement because of the
14 serious nature of crimes, the number of people put on
15 probation, or has it remained about the same?

16 MS. BALL: I think that overall, the
17 probationers have become more violent and we have had
18 to, as a result of that, step up our own law
19 enforcement aspects. I think that every probation
20 officer is very much capable of working with a
21 probationer in rehabilitating. But when we go out to
22 do our curfew checks or our home visits within some
23 of the worst streets in the City of Rochester, in
24 order to get home to our families, we need the vests,
25 we need the firearms, we need all of that, not to

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2 become more law enforcement or more adversarial, but
3 we need that for our own protection, just as we need
4 the 25-year retirement, which we do not have.

5 MR. NOWAK: Thank you.

6 MR. DUNNE: Any other questions? Thank you very
7 much.

8 JUDGE KLOCH: Thank you.

9 MS. BALL: Thank you.

10 MR. DUNNE: Our next witness or speaker is the
11 director of the New York State Defender's
12 Association, Mr. Jonathan Gradess. Good morning,
13 sir.

14 MR. GRADESS: Good morning, Senator. I'm going
15 to change the tone a little bit. I'm rejoicing in
16 what Commissioner Alexander said about making people
17 whole. I have been looking since last week. A
18 little bit of history, and I wanted to share some of
19 it with you because it informs my perspective. The
20 testimony in which I brought copies of today is
21 entitled returning probation to its roots. I want
22 to take us back a little bit to the 1960s. I
23 actually looked at your funding, probation's funding
24 back to the 1950s, and I'll share some perspectives
25 on that as well. But we had a Penal Law Revision

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2 Commission that met from 1964 until the new Penal
3 Law which was created in September of 1967. The
4 work of that commission continued another couple of
5 years, and then by 1971 we had on one hand a new
6 Penal Law and a new Criminal Procedure Law. And if
7 you look carefully at the two those taken together,
8 there was tremendous respect for probation at that
9 time.

10 If I recall it correctly, one could receive
11 probation for every single offense below murder
12 without exception, and the mechanisms that were put
13 into the Criminal Procedure Law were really designed
14 to call for a sentencing advocacy. They were called
15 and allowed for defense lawyers to prepare
16 presentence memoranda. The CPL consisted of and
17 allowed a presentence conference. The idea of
18 having a real process in which the formulation of a
19 sentence was not driven by the issue of
20 underfunding, not driven by mandatory sentencing,
21 not driven by the call to efficiency but driven by
22 creating a sanction that ought to be imposed on
23 people. It recognized, I think quite clearly, that
24 liberty was at stake at the time of sentence.

25 By September of 1973, all of that was gone.

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2 The Rockefeller Drug Law and the Second Felony
3 Offender Law came into existence and we started on
4 what I think has to be viewed as a downward spiral
5 for probation, and that downward spiral with the
6 creation of mandatory sentencing -- mandatory
7 sentencing, that seems somehow always to join us in
8 an election year -- in 1976, 1978, 1980, on and on
9 into the '90s when we ended up abolishing
10 indeterminate sentencing coming up with determinate
11 sentencing, having more mandatory sentences and more
12 support for it.

13 If you take a look during this period of time
14 at the state reimbursement rate, when I started with
15 the Defender's Association -- as I look at a little
16 chart that I made -- that rate was 42.5 percent.
17 Last year the final reimbursement -- state
18 reimbursement rate was 18.9 percent. That downward
19 spiral combined with mandatory sentencing, combined
20 with the cutbacks that you have been hearing this
21 morning, have set a stage for probation being
22 disrespected and have had an impact in driving the
23 quality of probation's work.

24 The thing I really wanted most of all to talk
25 to you about today in perspective, and that is the

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2 concept of probation officers, social workers versus
3 cops. I think, as you may have been discussing it
4 on this panel, my preference is for social workers.
5 I won't waste time telling you that, and I want to
6 share with you the perspective it brings me there.
7 I have had the privilege for all of the years of my
8 professional life to work for marginalized people,
9 people who are without supports who are -- I have
10 advocated for them.

11 I have represented them, and what I have
12 learned is perhaps a simple lesson that all of you
13 know, and that is that what is really needed in the
14 lives of vulnerable marginalized people is a person
15 who sees them as a human being, who treats them as a
16 human being, who declines to be expedient with them,
17 who is in cultural competence with respect to them,
18 and who serves them. That is the tradition that I
19 believe is probation's duty and calling. I believe
20 it is where probation should be when your work is
21 done. I believe it is the creative role that
22 probation should play in this state.

23 I think that as long as probation is painted
24 with a green bureaucratic dull paint of bureaucracy,
25 it will fail to do the job that it needs to do. I

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2 think that the pressures that drive it are somewhat
3 obvious. I think they come from funding, but I also
4 think they come from these other things mentioned,
5 mandatory sentencing, et cetera. But I think we
6 know -- perhaps it is a dark little secret that we
7 don't talk about enough. We know that prisons fail
8 as an institution. We know where the resources for
9 increased probation, therefore, are, and we ought to
10 think as we go forward about the infusion of
11 resources to allow probation to do its job.

12 And I want, for the purpose of this, to focus
13 precisely on the question I have now heard you
14 address for two weeks, and that is the PSI. Let me
15 ask you for one brief moment to picture that not
16 that we're in this Ceremonial Courtroom but rather
17 we're on a tier at Comstock or Attica or Auburn and
18 that we have been sentenced there and are sitting in
19 a cell and that the case loads of our lawyer are
20 ratcheted up even higher than that of probation and
21 have eliminated our communication with our counsel.
22 And we sit there isolated, but in our hearts we know
23 that somewhere in the bowels of that prison are
24 circulating some six or ten pieces of paper called
25 the P SI that absolutely control every moment of our

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2 life. And I urge you to make no mistake about the
3 significance of the PSI, particularly when you
4 consider waiver, particularly when you consider
5 whether or not we should constrain sentence
6 bargaining. More important than the DD-5 in
7 New York City, more important than the felony
8 complaint in Albany, more important than the
9 appellate brief filed in Rochester. At least for
10 those convicted, more important than the indictment.

11 The PSI is the most powerful piece of criminal
12 justice paper in this system next to the criminal
13 history report. If I have my way, I would eliminate
14 some of the reliance on criminal history reports and
15 recognize the value and power of this presentence
16 report. Nothing that you will do, I think, can
17 change that. That report, while it may not always
18 be of as much value at sentencing as it should be --
19 and I'll address that in a second,
20 Commissioner Horn -- decides classification for a
21 prisoner.

22 When a prisoner is received, it decides the
23 housing of that prisoner, and it decides the
24 programming of that prisoner. It is the document
25 that is thereafter used when risk assessments are

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2 made all along the way. It's a document that is
3 front and center for the decision of work release or
4 other questions along the continuum of DOCS
5 processes. It's the only thing that the parole
6 commissioners care about, the only one they ask
7 about, and the only one they read if they read
8 anything at all. They usually read the parole
9 summary that it's based on. That's what I mean by
10 that. Hopefully they're still reading that.

11 When a parolee is on the street, that's the
12 document that governs supervision. The problem with
13 these documents -- and I do not mean by this in any
14 way to insult probation commissioners or directors
15 or people that work at this, because I think the
16 struggle is great and I have tried to layout how the
17 resources drive this -- but these reports are
18 terribly impoverished. They are the documents that
19 govern the life of prisoners, except they are not
20 sufficiently accurate nor comprehensive to do the
21 job that they're called upon to do.

22 In this state, 97 percent of the cases are
23 disposed of by plea. Now, I could stay for many
24 hours and talk about how I would like to change
25 that, but it is the reality. We deal with human

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2 liberty every day in the courts of this state, like
3 some countries -- some Banana Republics barter over
4 fish in the marketplace. That's what we do, and we
5 do not do it well. That document ought to be more
6 accurate. It should tell a life story, but if we
7 were on that tier at Green Haven or one of those
8 prisons, we would have to be saying the document
9 which, you know, the Judge said I'm going to rely on
10 the PSI, my lawyer told me that I should be careful
11 about protecting my rights on appeal. When it was
12 written, they didn't really read it in the
13 courtroom. You know, I think there were errors in
14 it, but we didn't get any time to review it. It is
15 now governing my life. I'm on the tier at Green
16 Haven; it is governing my life. I can't see it from
17 the DOCS administration because there are
18 regulations that prevent my access to it. The law
19 in the four departments is different on even whether
20 for all those post-conviction purposes I can access
21 it, which of course would be pro se because of the
22 defects of our public defense system.

23 It's a powerful, powerful document, and the
24 resources must be invested to make it more accurate
25 and to allow it to tell the whole life story of an

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2 inmate who otherwise is known by the single worst
3 moment in his or her life, and that is wrong. I
4 want to share a perspective -- I'm urged to do this.
5 From what I heard last week, I think that what
6 happens at the time of correcting these reports --
7 what happens at the time of sentencing is an
8 abomination. And maybe Commissioner Horn will
9 remember. Years ago we had a convention down in
10 some Hudson hotel to try and reform all of
11 sentencing in New York, but my position then and now
12 is that probation reports -- and you ought to
13 consider resources to support this -- ought to be in
14 the hands of a Judge ten days before sentencing.

15 Defense lawyers ought to be reviewing those
16 reports very, very seriously with their client.
17 Their client should have access to reviewing the
18 facts in them, and what takes place at the time of
19 sentencing ought to rebut that information if it is
20 wrong and correct it. Prosecutors, Judges, defense
21 lawyers, and probation should share respective on
22 fixing those reports, and they should assure that
23 the corrected report is the document that gets to
24 the prison. There's only one thing wrong with my
25 last remarks, and that is I think there is -- I

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2 don't know a place in the State of New York where
3 all of those things happen. I have been in New York
4 City recently with one -- on one very significant
5 case where the lawyer got it that day and was -- sat
6 in the courtroom and read it line by line and went
7 back into the pen and was able to talk to his
8 client, and up against that was testimony that you
9 heard last week where rarely is an adjournment
10 either asked for or given. That's crazy. That's
11 absolutely crazy. It's crazy, and you must not --
12 you must not overlook that which will improve those
13 reports, improve that process, make them more
14 accurate. Because it's really that accuracy that is
15 going to liberate probation so that it can return to
16 its roots, because its roots are in a situation
17 where that report is really telling the whole story
18 wherein probation is an advocate, a neutral
19 advocate -- an independent advocate -- but an
20 advocate for release in appropriate cases.

21 And I share this with the idea that, for
22 example, in mandatory cases probation officers
23 shouldn't recommend sentences less than prison time
24 is also an error that flows from that. Probation
25 officers should recommend what is appropriate.

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2 There's a Court of Appeals case that says some
3 day -- People versus Brody -- we will get before
4 this Court with the appropriate case in which to
5 strike down mandatory sentencing.

6 Well, probation departments all across the
7 state say, well, this is a good way to save
8 resources. 98 percent of these cases are now
9 mandatory. We don't have to do a real report on
10 them. Well, you do. There should be a real
11 evaluation. There should be a real report, and that
12 real report should be seen not just as the vessel or
13 vehicle for sentencing but for the life of that
14 inmate. Someone who is serving hard time for twenty
15 to life will be governed by that document after you
16 all have retired from your positions.

17 So I share that with you. There's another
18 piece I would like to reach before I go. Over the
19 years I have observed in different departments in
20 this state varying fidelity to community-based
21 organizations functioning in the criminal justice
22 system. In some jurisdictions that relationship is
23 hostile. In other jurisdictions there is really
24 good integration between community-based
25 organizations and probation. I really believe that

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2 any Probation Department that is strong enough and
3 conscious enough of its own worth will reach out and
4 work with community-based organizations. I think it
5 would only be a timid department, a frightened
6 department that has things to hide, that is
7 recalcitrant in creating those relationships.

8 We have too much at stake in terms of people on
9 supervision. We just heard it from sort of two
10 professions that do this every day, that it isn't
11 just guns and bullet-proof vests. It's a case load
12 of a hundred and fifty. It's having to refer to the
13 file to know the client. We need relationships
14 between probation officers and their clients, and we
15 also need relationships between probation
16 departments and those organizations that could work
17 well with those clients that could reduce the case
18 load, that could be partners, full partners with
19 probation departments. And I would urge you to
20 reflect upon this and to share that in your report.

21 Lastly, and I think quite importantly, I want
22 to say that I believe that all of these things have
23 a direct impact on the nature of the relationship
24 between defense lawyers and probation. I heard the
25 testimony that was given to you last week. It was

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2 fairly strong, and, candidly, is characteristic of
3 the feelings of defense lawyers across this state.
4 The closer -- the defense lawyers look at their
5 cases quite simply this way: There are enough cops
6 to go around to get at their client. There's enough
7 prosecutorial fire power to get at their client.
8 Their client rides from the holding facility or from
9 Rikers Island, wherever they are, in a bus with
10 armed guards. They get into a holding pen with a
11 Court officer. They have law enforcement all around
12 them. They don't need one more adversarial agent in
13 the form of a probation officer to be greeting them.
14 They need someone who cares about them, who
15 understands them, who services them, and who is that
16 single person.

17 Now, in my mind, when I said to you earlier the
18 one thing that I have learned in all the years of
19 doing this work is that what people usually need is
20 another person. I actually meant any person. But
21 that's my experience. When one person enters the
22 life of another at the right moment in the right way
23 for the right reason, actual miracles happen. This
24 is not rocket science. This is the way the world is
25 supposed to work, and we have screwed it up. You

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2 can return it to where it should be by saying that
3 that person ought to be a probation officer and that
4 they ought to be resourced and respected but also
5 called upon to be that agent. And they must stop
6 fighting for their identity, torn between law
7 enforcement and social worker. Maybe neither of
8 those are particularly good identities.

9 What is needed is relationship supervision,
10 telling the full story, having the resources to
11 investigate, going the extra mile, being an advocate
12 in the courtroom, being in a relationship with
13 defense, sharing in certain offices. I would look
14 here at Albany. You know the perspective that the
15 prosecutor is better than the perspective of the
16 defense on this issue, so it isn't just us and them.
17 It's all of us trying to recognize that prison as
18 institutions are not really very productive. And I
19 know we have a couple of billion tied up in them and
20 we don't know what to do with them, but they don't
21 do much. They don't work well.

22 Probation has been denuded of the ability to be
23 what it should be, and I would urge you in your
24 report -- not only for the reason of bringing the
25 defense and probation back together, not only for

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2 marrying community-based organizations and
3 probation, not only for resources for probation and
4 making those resources drive accuracy in probation
5 reports and supervision, but because it's a better
6 way to take people who are marginalized in this
7 society, whose act might be a similar act of crime
8 or maybe more than one but driven by things that
9 accurate probation reports could find and make a
10 system where people -- more people are out, as now,
11 but are supervised, made whole, and don't come back
12 again. That's what the defense and the probation
13 share, and that is the perspective that I hope your
14 report can provide when you deliver. Thank you, and
15 I'll be happy to answer questions.

16 MR. DUNNE: Thank you, Mr. Gradess.

17 JUDGE KLOCH: Thank you, counsel.

18 MR. DUNNE: Yes, please. Marty.

19 MR. HORN: A couple points. Jonathan,
20 excellent presentation. Thank you, again.
21 Passionate and well stated as always, a pleasure to
22 hear you. You are aware that the Family Court Act
23 requires that the INR, which is the Family Court
24 equivalent of the PSI, be delivered to the Court no
25 less than five days prior to?

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2 MR. GRADESS: Yes, I am.

3 MR. HORN: Yes.

4 MR. GRADESS: And that would be a big
5 improvement.

6 MR. HORN: I agree. Right. To your knowledge,
7 the responsibility for providing a copy of the PSI
8 to the defense rests where under the law? Whose
9 responsibility?

10 MR. GRADESS: The Judge.

11 MR. HORN: It rests with the Judge. Given what
12 you have said about the importance of the PSI --
13 with which no one, I think, will argue -- do you
14 think that the state is paying its fair share?

15 MR. GRADESS: No.

16 MR. HORN: Given the importance that --

17 MR. GRADESS: No. I think the state has an
18 obligation to drive the quality of these reports.
19 You know, in my view -- I hate this view because I
20 train lawyers to try cases, and I would like them to
21 try more, but sentencing is the only thing we really
22 do. Let's get right down to it. That's what this
23 system does.

24 MR. DUNNE: What word was that?

25 MR. GRADESS: Sentencing. In other words, the

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2 dispositional end of this system -- and I have been
3 in foreign countries where people -- Ireland, you
4 sit in the Courts of Ireland or sit in the Courts of
5 some lower courts in England, people come in, plead
6 guilty because the real meat of the proceeding is in
7 mitigation, in the sentencing and the dispositional
8 phases. Those criminal cases are more like Family
9 Court. We should be putting resources -- equal
10 resources into the sentencing phase. It's that
11 decision that is critical, and we screw it up.

12 So whatever would drive those resources,
13 particularly raising the rate. I was -- you know,
14 at one point COPA and the New York State Defenders
15 and NYSAC came up with a rate that was -- I think it
16 was when the rates were dropping. He said there's
17 got to be a permanent 39 percent. I don't know when
18 that was, but it was a long time ago. But we have
19 long since gone below that, and I certainly would
20 defer to others here about the ultimate question of
21 where probation should land and whether the formula
22 drives counties to do one thing or another, but the
23 state is not paying --

24 MR. HORN: I want to get to that question where
25 probation should lay. Given what you said about the

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2 role that the probation officer should play, we've
3 heard a great deal stated about the importance of
4 probation officers being independent and, therefore,
5 they should not be under the Judge because that
6 would compromise their independence, yet we've also
7 heard a lot stated about how closely probation works
8 with law enforcement, Operation Impact, Operation
9 Cease Fire, joint visits, all those sorts of things.
10 In your estimation, would probation's role be indeed
11 more independent in terms of being able to render an
12 independent point of view concerning the Defendant
13 if it were not an executive branch function?

14 MR. GRADESS: Well, you'll see the outset of my
15 testimony and perhaps this is chicken-ish --

16 MR. HORN: John, I'm disappointed.

17 MR. GRADESS: I said I don't feel particularly
18 competent to address how it should land, wherever it
19 lands. And I thought about this, because if the
20 judiciary budget hydraulically drove probation
21 downward because it competed with other pieces of
22 the budget, that could be as disastrous --

23 MR. HORN: Just address the independence issue
24 if you will.

25 MR. GRADESS: Well, I think whether they're in

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2 the executive branch or in the judiciary there will
3 be problems associated with independence. I think
4 the problems are different. That's why when I
5 decided to grapple with this question I decided not
6 to answer it. I can identify the differences, and
7 they both scare the hell out of me, which is why I
8 like to hear those sort of noble officers talk about
9 independence of their functioning.

10 The executive branch function is sort of
11 self-evident. It is a -- you know, it is a DCJS
12 gubernatorial-driven -- it could still be happening.
13 Let's do things on the grounds in the jurisdiction
14 there. It's make the probation officer a cop.
15 Let's do all these things. We're all collegially
16 law enforcement; that's not the problem. The
17 problem with independence of the judiciary, as you
18 heard Steve Patteri last week, and I said holy crow
19 this is a good thing, you know, to think more about,
20 is different and more insidious in my view, I think,
21 when the judiciary thinks of probation as their guy.
22 There is a kind of an insidious power that
23 interferes with their independence, and I think we
24 see some of that in the specialty Courts. I think
25 that a number of the -- and I think the roles get

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2 blurred.

3 The best thing that I think we need to fight
4 for -- and I don't know that it is venue driven so
5 much as resource driven and function driven -- is a
6 level of independence that is client-centered, that
7 is seeing I think what I have described as the
8 purpose of probation as the goal wherever you are,
9 it means speaking up to the law enforcement or the
10 Court, whatever your place, and saying I'm here and
11 I'm not going. I know you guys had cut a deal on a
12 mandatory sentence, but this is a person we believe
13 should have probation, and here's the reason we
14 believe this person should have probation. When you
15 cut that deal you don't know, as we now know, that
16 his mother who gave birth to him when he was
17 thirteen was actually coerced into giving birth at
18 thirteen because she gave herself up to her own
19 mother's paramour so he would let his -- her mother
20 out of the closet. We've got a whole story here.
21 And that thing we thought about last week when we
22 were negotiating in that presentence conference that
23 he was the father of, you know, a child at thirteen,
24 well, my gosh, it's all different now because we've
25 done a little further investigation and this person

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2 could use X, Y, and Z. I'm giving you an actual
3 case where lousy work was done, and I'm not doing it
4 too articulate.

5 The point is there should be a real role for
6 probation to get to the underbelly of the people
7 they evaluate. They should be culturally sensitive
8 to that, not cops, and they should do it as a matter
9 of routine so that the information on which we
10 jeopardize the liberty of people -- thousands and
11 thousands of people each year -- that that is done
12 with the procedural integrity which due process
13 requires. There's no Defendant who has a due
14 process right to the actual sentence that's going to
15 be imposed but it is now clearly the law that they
16 do have a due process right to the procedural
17 integrity that leads to the sentence being imposed,
18 and we don't have procedural integrity right now.

19 MR. DUNNE: Yes, Bob Maccarone.

20 MR. MACCARONE: Thank you. Your comments are
21 always very thoughtful and powerful, and I don't
22 think anyone has spoken so eloquently about the
23 value and importance of the PSI as you have, and I
24 certainly appreciate that. I want to give you a
25 date, December 10th. That's the sixty-day time

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2 frame that the -- our investigations and report rule
3 is out for public comment in the state register. We
4 convene the statewide work group that convened for
5 almost ten months in reconsidering the
6 investigations and report process in New York State
7 and tried to work to ensure that it included the
8 best practices and evidence-based approaches towards
9 the investigation that you speak of. So I would
10 invite your comments. Certainly our counsel and
11 myself would be looking at those comments closely to
12 ensure that we have the best investigations and
13 report rule in probation.

14 Secondly, I would refer you to the NIC document
15 Tools of the Trade. It's on the NIC website, and
16 it's an important document in that -- I know I have
17 given it to the Task Force as well -- and what it
18 talks about is the evidence-based practice, the
19 medical analysis of all analyses indicates that the
20 way to change offender behavior is by, one, doing a
21 good risk and need assessment of the individual, a
22 scientific instrument that identifies the
23 criminogenic needs of those five areas that drive
24 criminal behavior attitudes, thinking, associates,
25 peers, substance abuse, and family dysfunction, that

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2 we identify those and try to develop a case plan to
3 work on those toward driving the offender's change
4 in behavior and having him or her lead a law-abiding
5 life.

6 If in fact we look at the science -- and there
7 is a science, because fifteen to twenty years ago
8 the thinking in this country was that nothing works
9 and now we know better -- then in fact the
10 distinction between social worker and police officer
11 became less important and that what we need --
12 certainly as the probation officer before you
13 testified so well -- is that certainly probation
14 officers need to be armed and have protective
15 apparel and need all the life and personal safety
16 issues to ensure their own safety and that of the
17 probationer as well, but at the same time they ought
18 to be educated and trained in how to work with
19 offenders and changing the behavior. And that's
20 certainly something our agency has done when we
21 changed the fundamentals of probation practice and
22 extended that curriculum to supervisors throughout
23 the State of New York as well as working with the
24 four or five counties including Monroe that do their
25 own training.

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2 And so what we did to ensure the fidelity of
3 that training, that it reflects evidence-based
4 practice, is we had those trainers come in and be
5 schooled in our way of training. I do want you to
6 know that we've recognized where probation is going
7 in the future. I think the PSI is placed handedly
8 into that process, and I very much appreciate your
9 comments.

10 MR. GRADESS: Thank you.

11 MR. BURNS: Jonathan, just a comment and a
12 question, and I'll always think of you as the lawyer
13 whose office is on top of a bar in Albany.

14 MR. GRADESS: I will, too.

15 MR. BURNS: I can't get that vision out.

16 MR. GRADESS: Wherever it goes.

17 MR. BURNS: I was going to mention what Bob
18 just mentioned. I just had the privilege earlier
19 this week to teach the opening session of what we
20 called Fundamentals of Probation Practice, the Basic
21 Training for Probation Officers. And if the phrase
22 balanced approach is used once, it's used hundreds
23 of times, and that's that training that Bob talked
24 about. In one of our subcommittees, a defense
25 counsel from New York City talked about that PSIs

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2 seemed to be independently done, that probation
3 officers with a slant one way or the other will
4 have -- seem to have the freedom of making those
5 PSIs anything they want them to be. And part of
6 this training is to get at the point that you have
7 to have that balanced approach, and I think you'd
8 like to see the kind of training we're giving our
9 officers right now.

10 The question is this: It's always hard for
11 someone speaking on behalf of all defense counsel or
12 speaking on behalf of all sixty-two counties, and
13 it's difficult for Jennifer to talk about other
14 probation departments and so on. When you talk
15 about inaccuracies in presentence reports, I'm
16 guessing you're not using any kind of a research
17 study that was done to really look at it, and
18 probably you are relying on anecdotal things from
19 your defenders throughout the state, but do you have
20 an idea of where those inaccuracies are? Are you
21 talking about legal history inaccuracies, felonies
22 listed as misdemeanors or the other way around, or
23 inaccuracies in not reporting a job that the
24 Defendant had? What kind of inaccuracies are you
25 talking about?

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2 MR. GRADESS: I'm talking about errors in
3 criminal history, talking about leaving out
4 significant trauma in the life of a client, talking
5 about job inaccuracies. I can -- you know
6 anecdotal, I suppose, is an appropriate term.
7 Although, after you've done thirty thousand cases,
8 the back-up center and when they include sentencing
9 it is often -- it is a sentencing question. I would
10 add to this, you know, that there's a second
11 problem. And I say it in my report, and I'm
12 certainly not leaving it out. I'm not a
13 particularly proud representative of the defense bar
14 on this issue. What should be done at sentencing by
15 probation is a whole parallel set of criticisms of
16 what should be done by the defense bar, and it is
17 often not done. Now, we would like it if we had
18 case loads of, like, one hundred and fifty. There
19 are case loads of defense lawyers that are in the
20 fifteen hundreds, ten times the amount of these. So
21 I understand the context, but nevertheless lawyers
22 frequently do not -- lawyers frequently have cut a
23 deal, do not see the probation report as
24 significant, often do not review it, don't
25 understand this continuum use of the probation

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2 report that occurs in corrections, its value,
3 classification value, programming value in the
4 least.

5 We heard last week -- you heard last week, and
6 I was listening too, that the request for
7 adjournments to review a report is often denied if
8 it is made, and it seemed unpliantly that it was not
9 often made. There's as much criticism to go around
10 on the defense side, but I think when a defense
11 lawyer is coming at this from the right place their
12 complaints have had to do with I actually have --
13 you know, some of you will remember this, I got in a
14 lot of trouble a few years ago in the Saratoga --

15 MR. DUNNE: May interrupt you, please?

16 MR. GRADESS: You certainly may.

17 MR. DUNNE: We have some witnesses who are on a
18 tight deadline.

19 MR. GRADESS: Okay. I'm actually one of them,
20 so perhaps I should be quick. I think it crosses a
21 range. A lot of it is history. A lot of it is the
22 fact that it seems like a shallow effort, and there
23 is gold in our heels that are missed. You're not
24 sort of covering the hills and valleys of your
25 client. So while that's inadequate information,

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it's paralleled by having sort of a reflection of inaccurate information. Together they're sort of deadly.

MR. DUNNE: Thank you, Mr. Gradess.

MR. MACCARONE: Thank you, John.

MR. DUNNE: The president of the Probation Officers' Association, Gregory Noyes, is our next speaker. Good morning.

MR. NOYES: Good morning. I guess I'm one of those people on a tight deadline that you talked about.

MR. DUNNE: I got the word.

MR. NOYES: Thank you for the consideration. I'm not on that tight a deadline, so I'm not really concerned too much.

I'm sort of a last-minute addition to this, we just got invited yesterday, and I am going to sort of wing it, I'm used to doing that, with some of these issues because I've been with the Probation Officer Association here in Erie County for a period of -- since I've been here as an officer, a dozen years. I head up the -- our association quite a few years.

So some of the stuff that's happening right here in Erie County, I just have to say it's a déjà vu

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2 experience for us. We kind of been beating our head
3 against the wall with the same issues, to a lesser
4 severity, for years. Some of the things that came
5 up -- I'm just going to touch on some of the things
6 that maybe have already come up because I just think
7 they're appropriate.

8 I jump right back to the previous speaker, I
9 think he was very much in tune saying it's a
10 two-sided sword as far as inadequacies or maybe
11 shortcomings of both probation officers and defense
12 attorneys when it gets down to the presentence report
13 for whatever the state can do as far as input, as far
14 as making sure people are well trained. I think that
15 it's appropriate for probation officers to be
16 independently subjective and -- and it does -- I used
17 to supervise an investigation unit in Erie County,
18 and I certainly gave a lot of investigations back
19 that I thought were not maybe completely independent,
20 that might have been biased. We try to, you know, I
21 think through training and everything else, we really
22 do want them to be independent.

23 The previous speaker, and this is off the top of
24 my head just because I wanted to address it, he
25 mentions that some of the evaluations in mandatory

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2 sentencing cases he thought might be -- it would be
3 beneficial to have those evaluations. I always
4 encouraged, and I do myself, to have investigations
5 have a full evaluation, or at least a pertinent
6 evaluation, even though it's a mandatory sentence.
7 Just because somebody's going to state prison, we
8 always look at the reports, at least we try to guide
9 our officers to look at the reports, that that report
10 is stage one of an incarceration document that's
11 going to be used by parole. I always think this is
12 handed right over to the state prison facilities to
13 determine where an appropriate facility for that
14 person is, what are his weaknesses, his strengths,
15 what are his needs in prison, what are his needs when
16 they start planning for parole.

17 So I do think -- I'm not sure what the specific
18 guidelines are as far as evaluations and mandatory
19 sentences, but I do think evaluations -- there's no
20 reason why they can't be in there. I try to include
21 them in every investigation where we evaluate it and
22 then say we defer, though, the fact that we make no
23 specific sentencing recommendation because we'll make
24 a note that it's a mandatory second felony offense,
25 we're not going to make a sentencing recommendation,

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2 but we can still evaluate the strengths and
3 weaknesses and stuff like that.

4 I wanted -- Director Alexander mentioned about
5 the comparative sides of probation departments. I do
6 have something I can submit to the court, I think
7 it's going to be redundant -- or to the court, to the
8 panel. We had done this for years, compared Erie
9 County to other probation departments.

10 You know, I guess it goes right back, I should
11 take a step back and say why am I speaking anyways.
12 I think probation is an important part of the
13 criminal justice system. When we -- I was at the
14 state probation officer conference in Albany this
15 year, and I have to say I forget the county
16 executive's name, but he did give a -- an address at
17 the luncheon, and he was the opening speaker, and he
18 mentioned his first thought was probation is the
19 corner stone of his law enforcement and criminal
20 justice system.

21 It is a system. You know, we're all part of one
22 system. I don't think you can -- if you -- you know,
23 we're based on an alternative to the jails. So if
24 you're going to have people arrested, if you're going
25 to have jail as an option, you can't put most people

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2 in jail. That's not appropriate to put most people
3 in jail. So you have to do something with them.
4 Probation, I mean we've argued this before and I
5 think New York State had the Abate Commission back in
6 1998 mention how underfunded probation was, how
7 important it was, and how much it is considered
8 always, across the United States, the rubber band of
9 law enforcement.

10 Probation departments vary in size, it took a
11 national survey, greatly. The number of probationers
12 that are supervised, it goes up and down. Some small
13 case loads, some huge case loads. Anybody from New
14 York City we expect to have larger case loads.

15 I just want to reel off numbers a little bit
16 about our comparative sizes, though. Albany County
17 happens to be the best staffed, and this is a
18 comparison by strictly number of officers and the
19 population. We use it because we use it as leverage
20 with our own Erie County Legislature. Albany County,
21 it's an opposite type of comparison than Director
22 Alexander made, but they have, as far as the New York
23 State Probation Officer Association's web page, which
24 did a December update on staffing, December of 2005,
25 Albany, I believe, has 85 officers, and that includes

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2 supervisors. Erie County, I think we're right now at
3 79. Albany County is 294,000 people in 2000. Erie
4 County is 950,000. So basically we have a smaller
5 staff than a county with one -- almost, you know,
6 one-third our population.

7 I'll have to hand this out, but this is our
8 graph, we used it with the legislature. Erie County
9 obviously is the tall one in the middle. These are
10 the ten largest counties in New York State. Erie
11 County is staffed roughly right now at -- at best,
12 one half of any other county, one-quarter of Albany.
13 I mean, it's just -- Onondaga County has
14 traditionally always had 80 or so officers. Onondaga
15 County is less than half the size of Erie County.
16 We've always said if we were fully staffed, we'd have
17 79. At our best we had 112 officers, and that was
18 approximately three years ago, and that was after we
19 had some grants that added a dozen officers, and
20 after we lobbied with the legislature and got them to
21 add in the 2002 budget, got them to add two
22 positions, we were up to 112 staff. That was just
23 before we started losing officers. If we were
24 comparable to counties like Monroe or even most of
25 the larger counties, we would have had close to 200

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2 officers. We had 112 and we were happy for it.

3 MR. DUNNE: Mr. Noyes, do you know the case load
4 in Albany County probation?

5 MR. NOYES: I don't. I don't have any
6 comparisons about case load sizes. I'll mention one
7 thing about case load sizes, and I think a lot of the
8 things we've been dealing with our own legislature,
9 it gets pretty deceptive when you start looking at
10 just simple numbers like case load sizes. It's very
11 simple for -- you know, I don't want to say simple.
12 It's much easier for a legislator or somebody to say
13 well how many cases do you have per officer? So how
14 many officers do you need? How would this compare?

15 Well one of the things that's happened in Erie
16 County since the 2005 layoffs, we had 112, we had
17 positions cut from the budget before, we then had 35
18 layoffs and went down into the 60s. One of the
19 things that's happened since then, in our Erie County
20 Legislature Public Safety Committee meeting last
21 month, Judge Franczyk from our Buffalo City Court
22 spoke along with some other judges that have been
23 advocates of probation and utilized probation
24 services. Judge Franczyk mentioned he's one of the
25 city courts that is not using probation the way he

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2 used to use it. He said he won't put anybody on
3 probation. He feels with the large case loads, why
4 should he -- he doesn't think it's a viable
5 alternative, he'll find other things, including
6 conditional discharges. I'm not saying it's across
7 the board, obviously he does use it to a limited
8 extent, but he was speaking for the lower courts, I
9 think, in general.

10 We found that our probation officers at the time
11 of the layoffs, we doubled case loads. Our
12 supervising officers had city case loads or -- or
13 outside the city, suburban case loads. What we did
14 with the layoffs is we doubled up. We took a city
15 officer and gave him a suburban case load, took a
16 suburban officer and gave him a full city case load.
17 So we doubled immediately. We had large cases before
18 then, we doubled the case load.

19 Since that time -- at that time they were huge,
20 maybe 300 people supervised by an officer. The
21 numbers have gone down because so many of the lower
22 courts have not used probation as -- as a sentence
23 because they feel that it's -- it's unfair to dump
24 300 more cases on a probation officer.

25 So to a significant degree, I think it was

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2 mentioned earlier, if it wasn't, we stopped doing
3 probation investigations for the lower courts. We
4 refused to do them for the town courts, we refused to
5 do them for the city courts, all the justice courts,
6 unless it was absolutely necessary.

7 Well, we were doing investigations before that
8 at a rate of roughly 6,000 a year, that's off the top
9 of my head, don't hold me to that number, but we used
10 to cite that number. We dropped down to doing
11 roughly half that number, and all -- most of them
12 felonies. The lower court, justice courts were not
13 comfortable sentencing somebody to probation without
14 an investigation, they knew nothing of the
15 background, they knew nothing of criminal history
16 except for something that might have come on a
17 printout with the defendant if they happened to have
18 it with the police officer when he was arrested. But
19 they knew nothing about him. They weren't going to
20 put -- they weren't comfortable, apparently, I'm
21 speaking just as a guess, they weren't comfortable
22 using probation as an alternative.

23 So what has happened since then, our supervising
24 officers have more manageable case loads. They're
25 still outrageous; but without having people sentenced

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2 to probation, what's the outcome is we have fewer
3 people on probation by far than Monroe County, who
4 used to be a comparable number. I think we're
5 currently supervising less. Well as Judge Franczyk
6 would have said -- or he did say when he spoke, what
7 I'm doing is not using probation when it should be
8 used most. When I have a first-time offender, some
9 kid that's coming into court and he's 18 years old
10 and he's probably got some problems and he's here for
11 a reason, and maybe probation would be the ideal time
12 to turn something around, I'm not going to put him on
13 probation.

14 So it's -- it's kind of a hidden cost, and it's
15 hard to -- you know, you just want to look at the
16 numbers, you could say how many cases does a
17 probation officer supervise? In Erie County it might
18 not look terrible right now because there's fewer
19 people on probation than should be.

20 Another thing the judges have done is just put
21 people in jail. You have a chance -- we -- for
22 years, anybody that's worked in probation knows an
23 officer supervising a case load, guy comes out of
24 sentencing, presentence report said don't put this
25 guy on probation, he's been on it three times before,

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2 he screwed up every time, he's not a viable
3 candidate, he walks in and says the judge put me on
4 probation, I'm being assigned. And you go, what is
5 this judge thinking about, you know?

6 The fact is the judge is thinking about the fact
7 that the guy presented as a nonviolent offender that
8 appeared to have service needs that even though he
9 could be justified in putting somebody in jail, he
10 chose to give him another chance, maybe -- maybe
11 to -- outside of our recommendation, but maybe it's
12 not a bad choice. A judge realized jail isn't the
13 place, we can't just keep going around, let's give
14 this guy maybe special conditions, maybe intensive
15 supervision, maybe ankle bracelet, maybe one more
16 shot, and that's what probation does. They can take
17 difficult cases.

18 Another type of case we get is mental health
19 cases. Courts don't know what to do with them,
20 they're a revolving door. They'll put them on
21 probation. Give them another shot, maybe try more
22 services, do something that can possibly, you know,
23 at least keep this guy out of trouble for a while.
24 Judges, I'm sure, when we talked about the cost to
25 the jails, I'm sure some judges are just saying I'm

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2 not even going to look at that, I can't really -- how
3 can I, in good conscience, when probation says
4 they're understaffed, give this guy another break?
5 He's just going to jail.

6 So I'm sure -- that's an anecdotal, just a guess
7 that a lot of judges are also not putting people on
8 probation because jail is just the logical
9 alternative and they're not going to give us a hard
10 time. They are sympathetic to our cause here.

11 I guess what I would say, because this is a
12 state group, that this is "there but for the grace of
13 God goes any county." We have been at the mercy of a
14 county budget that -- you know, forever, and our
15 staffing has always been low, and we haven't -- for
16 some reason we haven't been able to kind of up the
17 staff here. I know Nassau County had a huge layoff
18 of probation officers three years ago, and they went
19 through a fiscal crisis. They've been able to
20 restore, I believe, quite a few of those offices --
21 officers, and I can only imagine that they did it by
22 presenting a valid case for restoration of probation
23 officers. I mean, they -- they had financial
24 problems, but they actually went in when they lost
25 officers, and in talking to Nassau County, within

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2 a -- I talked to them this summer, I believe -- they
3 had gotten 30 officers back. That was a huge coup
4 for them in a fiscal crisis, but -- the one -- I'm
5 not sure what my time frame is. The one thing -- I
6 just want to touch on some of the stuff that kind of
7 came up here earlier because the questions kind of
8 jumped out.

9 As far as supervising -- supervision in the
10 community, what probation departments have done, and
11 I think that's been -- I think it's exciting to
12 probation officers, is there's so many specialized
13 programs, and that's -- that's made probation
14 interesting to probation officers and it's made it a
15 viable alternative.

16 I know Erie County has a specialized DWI unit,
17 we have -- of course ISP, we have a sex offense unit,
18 we have a domestic violence person, and we actually
19 have a grant, we worked -- I worked on the state
20 grant for the shared population, we have a mental
21 health advocate. All those specialized programs are
22 of great benefit to people on probation. The fact is
23 that having specialized units, you supervise fewer
24 people, but it's -- it's a critical thing for
25 offenders and the community both to have -- to focus

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2 on special issues.

3 And I'm going to do an anecdotal thing here that
4 some of the state people are aware of. We have a sex
5 offender program. Sex offense units are intense, and
6 of course the sex offense law has changed. People
7 are on probation for twice as long. We had two
8 officers assigned to sex offense cases. They had a
9 small case load, they're supposed to have around 30,
10 I think now our sex offender officers are supervising
11 over 60. It's much more -- much less manageable,
12 it's -- every community talks about how important it
13 is to keep an eye on sex offenders in the community,
14 and we would love to be able to do it, but certainly
15 we're not in a position to do it like it should be
16 done.

17 My anecdote here is two years ago, our -- the
18 officer that initiated our sex offender program, one
19 of the two officers, went in on a home visit. They
20 had -- they had -- they were set up to do intensive
21 home visits. She went with a partner on a home visit
22 on a weekend, went into -- registered sex offender
23 felony case, went into the house, and found -- he was
24 barred from having any pictures of children. He was
25 a pedophile, convicted, and he had pictures that were

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2 not illegal because they were cutouts from magazines.
3 Magazines as in underwear ads, different things like
4 that. He had a bulletin board, and he had pictures
5 of boys on the bulletin board. He had tape over
6 their -- over their mouths, and tape on -- and string
7 tied on -- obviously it's an unusual circumstance.

8 So they went through his house and they found he
9 had hooded masks, ropes, cords, tape in a -- in a
10 box. So they ended up discussing this with him and
11 he -- he admitted that he was fantasizing about
12 abducting a boy. He said he had been going to
13 schools and he had been building up the courage. He
14 admitted this, which is amazing that he did that
15 himself, and that he was somewhat, I think, even
16 relieved that they caught him.

17 Well, and that was our officer did -- was
18 honored in New York State as probation officer of the
19 year. She did -- they did revoke his probation,
20 there was -- he was resentenced to jail and, of
21 course, obviously this incident would have attuned
22 people in parole and whenever -- that would be part
23 of his -- his -- not a presentence report, but the
24 investigation for the violation goes with him also.
25 So as the court documents would show, the guy had

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issues that certainly needed to be addressed and -- next time they were going to release him.

This officer was one of the -- was one of the -- in the first wave of layoffs, she was laid off, and so was the other sex offender officer.

That's just an anecdotal thing of what, you know, the community, you know, it isn't about numbers and overall case loads, it's about a lot of those specialized services that are invaluable, that just can't be done. What Director Alexander mentioned, we were doing the nuts and bolts.

When we first got layoffs -- I know you're interrupting, but when we first had layoffs, all home calls for all officers were cancelled. There was absolutely no way you could do -- you had two reporting days instead of one reporting day, 300 to 400 people to supervise, to try to see them on those days, just the paperwork involved, and all home calls were cancelled.

That's my push for the state, some kind of intervention and help from the state, is when you deal with a county that has financial problems, we're at the mercy of budgets, and budgets that are local can go up and down, and it gives you very little

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2 stability in a -- in a criminal justice component
3 like probation. It makes you at the beck and call
4 and whim of local politics and local budgets and
5 fiscal crisis, where something like probation should
6 be much more universal, I believe, that's my opinion,
7 across the state. And the only way it's going to be
8 more universal and more universal in its provision of
9 services is to have the state provide some kind of
10 more universal funding. However the state does that,
11 I'm certainly in no -- no way, shape, or form able to
12 say what's the best way to do it, but I think
13 counties like Erie are the poster boy about what
14 shouldn't happen in probation, what could go wrong,
15 and it has to affect our community, even if it's only
16 anecdotal, and you have to say there must be an
17 effect. Coming up with dollars and cents, it's hard
18 to say.

19 MR. DUNNE: Well, if you can come up with how to
20 do it, please be in touch with us. 24/7. Thank you
21 very much. I understand that Judge Drury, from the
22 county court, has recessed his court to be here, and
23 I ask that we would -- thank you for your testimony,
24 and is the judge here?

25 MR. NOYES: I will just interject as one note, I

1 Speaker: Hon. Timothy J. Drury
2 could not be happier than to yield the floor to Judge
3 Drury, who is a great friend of the probation
4 department.

5 MR. DUNNE: That's good news. Thank you.

6 JUDGE KLOCH: Thank you, Officer.

7 MR. MACCARONE: Greg, I just want to
8 congratulate you and the officers for the job you've
9 done during some really unpleasant times.

10 MR. NOYES: Thank you.

11 MR. DUNNE: Judge Drury, what would be
12 convenient for you?

13 JUDGE DRURY: Hello, Mr. Dunne. How are you?

14 MR. DUNNE: Well, thank you. How are you, sir?

15 JUDGE DRURY: Good to see you. I haven't seen
16 you in twenty years. We met at the State Senate
17 when I was appointed to fill the judgeship I now
18 hold.

19 MR. DUNNE: I guess I would have been chairman
20 of judiciary then.

21 JUDGE DRURY: Sure. It was '87, so it was
22 nineteen years ago. You look well.

23 MR. DUNNE: Both of us are doing okay.

24 JUDGE DRURY: Really well. No. That's fine.
25 The only issue I bring up here is funding, and it's

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2 odd that you're here the day after our County
3 Executive has come forward with his budget. His
4 budget adds five probationers, and we're down
5 thirty-five. His commissioner behind me said that
6 we would be advocating seventeen, and this has been
7 an ongoing story for the last two years since our
8 budget crisis. Five doesn't even keep up with
9 retirements. It's a cynical move.

10 I don't know why a person -- and you have to
11 understand the background, the framework here.
12 We've been pleading. There have been articles in
13 the paper. There's been trips to the -- to our
14 legislature, which is almost entirely turned over,
15 showing them telling them what we and the Courts
16 have to undergo, what we face as a result of the
17 fact that we have lost a third of our Probation
18 Department.

19 Our time now to sentence people has been
20 increased to three months, four months, sometimes
21 five months. So we have -- you understand the term
22 state-ready prisoners who could be out of there in
23 two weeks or ten days. They wait months at a cost
24 to Erie County simply because of the cutbacks, and
25 then there's this jostling around moving people from

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2 regular case loads and to do the presentence reports
3 and then back again. The Probation Department has
4 cut the delays somewhat down to three months, but
5 three months is -- we used to live with two months,
6 we used to live with thirty days. Now it's gone
7 that far.

8 We have case loads now that are two hundred and
9 twenty people to a probation officer. They can't
10 monitor those people, and that's what we're faced
11 with now. And on top of this, after repeating this,
12 after going to the legislature and communicating
13 with the County Executive, we have his
14 recommendation of five probation officers. It's
15 cynical. It's right in our face. It doesn't care,
16 so that's my frustration because I can see it as it
17 effects my courtroom. It effects the Defendants in
18 front of me. It effects the people I put on
19 probation. I hope they do well, but we have more
20 violations of probation. There's where we are,
21 gentlemen.

22 MR. DUNNE: Judge, thank you. Would you be
23 willing to comment on the effect of these cuts with
24 regard to the delivery of services other than the
25 long-time delay from plea until the PSR is

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2 submitted?

3 JUDGE DRURY: Sure, more violations of
4 probation. That's a fact. You can't keep -- at one
5 point some of these case loads went to two hundred
6 and fifty people. They were doubled. It's come
7 down a little bit, somewhat, but they can't be
8 monitored. They can't be supervised, so we're
9 putting people on probation that don't stand a
10 chance. I could quote you, the statistics we
11 received from the State Commissioner of Probation
12 are vivid.

13 In some cases our presentence -- the delays to
14 provide pretrial is double of other counties or
15 nearly double what other counties are. What are we
16 at, sixty something? Whatever the math is, we're
17 outliers. We're extraordinary. We stand out like a
18 sore thumb, this county does, and it's not just
19 business as usual. It's not just we're the worst of
20 all these others. We're way much worse. We're off
21 the charts, and that's the fact of the matter, and
22 we looked at this. We looked at this, the
23 statistics that were provided us, and then yesterday
24 we got a recommendation for five probation officers.
25 It's maddening. It's as if we don't count anymore.

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2 MR. DUNNE: Much of the attention of our group
3 has been focused on the PSI.

4 JUDGE DRURY: Yes.

5 MR. DUNNE: Since that's an important part of
6 your responsibility as a County Court Judge, could
7 you give us a sense of how it might be improved,
8 what its weaknesses are from your standpoint in
9 helping you to make a sentencing decision?

10 JUDGE DRURY: Well, they have been abbreviated
11 over time. It used to be you would have quite a
12 compendium to the PSI, but there's a legal
13 requirement of what has to be there. It's down to
14 the minimum legal requirement: The record, the
15 family issues, the work history, substance abuse,
16 alcoholism, and a valuative analysis -- I think
17 that's what it is at the end. It's fairly
18 necessary.

19 MR. SOARES: Your Honor, I too would like to
20 share the Panel's gratitude for you being here
21 today. Given your description of the County
22 Executive's attitude towards the Criminal Justice
23 System --

24 JUDGE DRURY: Yes.

25 MR. SOARES: -- one of the questions that we're

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2 interested in providing -- one of the answers we're
3 interested in providing to Chief Judge Kaye here is
4 where does probation necessarily fit, is it a better
5 fit with the executive branch or the judicial
6 branch, and perhaps if you could shed some light on
7 that issue.

8 JUDGE DRURY: Well, it has to be distanced
9 between the Judge and the Probation Department. It
10 can't be -- I don't know. I don't know. It can't
11 be an arm -- I mean, I have to have some distance.
12 I have to deal with the credibility of the probation
13 officers when there's a violation.

14 JUDGE KLOCH: Judge.

15 JUDGE DRURY: Yet they do act for us as if I'm
16 doing it, so there is that duality.

17 JUDGE KLOCH: I know you're picking a jury and
18 working hard at that, but the prior officer who
19 testified in regard to some cases where a Judge in
20 Erie County would not place somebody on probation
21 that otherwise might be the sentenced, has that ever
22 occurred to you?

23 JUDGE DRURY: Yes. But you always err on the
24 side of rehabilitation. You try. You hope. You
25 just -- you trust that even though they are

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2 overloaded, overworked that they can still do it.

3 JUDGE KLOCH: What about CD as opposed to
4 probation? Have you ever found yourself in that
5 position, saying, well, I'm not going to incarcerate
6 but instead of a probationary sentence I'm going to
7 give you a conditional discharge?

8 JUDGE DRURY: You're asking me to turn my back
9 on something I've used for twenty-six years.

10 JUDGE KLOCH: You're saying you haven't
11 deviated from your prior --

12 JUDGE DRURY: Not appreciably, because you
13 still hope that those that would do well under
14 probation still can do it. By the way, these people
15 are good and decent probation officers. They're
16 overloaded. There's an increase in requirements as
17 a result of this the stress that they undergo. I
18 can see it. I know them. Why would you work for
19 something. You know, they are a rare breed.
20 They're interesting people. They are caring. They
21 work hard and -- but at some point you just -- this
22 is -- they're not getting the support they should
23 have. Mr. Clark?

24 MR. CLARK: Given -- what we're hearing now
25 let's -- I mean, we're talking about the situation

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2 that exists right now. There's an executive
3 recommendation that there be five more Probation
4 Department employees added, to which we all
5 recognize is a drop in the bucket. But there's no
6 guarantee they're going to get the five, either.
7 They may end up with none. Given the fact that that
8 seems to be where we're headed with all the other
9 control boards and agendas that are out there, do
10 you see this getting any better over the next one,
11 two, three, four, or even five years? And if your
12 answer is no, what suggestions would you make to us?

13 JUDGE DRURY: It's not political. The last
14 County Executive did the same thing -- never to this
15 degree. But if you shift resources and put fifteen
16 million dollars into expanding your portion of the
17 downtown center of the correction -- not even the
18 Holding Center -- the Holding Center needs it too,
19 but our campus, the community college. Fifteen
20 million goes to the community college, which is not
21 a necessity, and we have a suggestion for five
22 different officers.

23 MR. CLARK: Then what would -- if you see this
24 same situation extending not just for this year but
25 next year and the year after or the year after, what

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2 answer do we have?

3 JUDGE DRURY: Probation doesn't have a good
4 call on resources. They don't see it. When this --
5 the prior legislature and this County Executive made
6 those cuts, they didn't know what they were doing.
7 They didn't know what we faced. They didn't know
8 how we operate, and it was so handy to get rid of
9 thirty-five people, cut them right off, a third of
10 the work force. Yes, sir.

11 MR. BURNS: I hesitate to ask you this because
12 of the gentleman sitting to my right, but when the
13 cuts came -- and maybe even if you could speak to
14 the administration before the current
15 administration -- did you see commensurate cuts in
16 other agencies that served the Court, prosecutors,
17 defense, or even the employees of this courthouse
18 who take care of the building? Did you see a
19 different level of cut to the probation service?

20 JUDGE DRURY: I don't think so. The Sheriff's
21 Department took awful cuts. Their road patrol was
22 drastically eliminated. They have a hard time
23 functioning, I think, in really regarding our
24 prisoners in the Holding Center and the correctional
25 facilities, but they run against state mandates.

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2 There's only so much they can do as far as the cuts
3 go.

4 No. There was a lot of pain shared, but it was
5 just so unwise with this because you were dealing --
6 again, dealing with people that didn't know what
7 they were doing, couldn't have. A third of a
8 Probation Department that was barely functioning at
9 the time? I mean, how can you explain doubling up
10 somebody's probationary load? Oh, you can do it. I
11 mean, it's crazy. But look at the response in
12 yesterday's paper, five. We give you five after I
13 was told there was going to be seventeen, and even
14 that was half what we needed. I mean, there's
15 something wrong when you get that. Five bodies,
16 fifteen million to expand the downtown campus of the
17 correctional facility -- of the college. It's a
18 political statement. I hate to be -- introduce
19 myself into politics, but there it is. There's
20 money for that but not for this.

21 MR. DUNNE: Questions for the Judge?

22 JUDGE DRURY: Okay. Thank you.

23 MR. DUNNE: Thank you for sharing. Good to see
24 you, Judge.

25 JUDGE DRURY: All right.

1 Speaker: Anthony Mauro

2 MR. DUNNE: Well, I think the time has come
3 according to our schedule to take a lunch break
4 until one o'clock, and we have speakers -- if any of
5 them are present would they perhaps let us know?
6 Mr. Mauro from Niagara County Probation. Thank you,
7 sir. And Claudia Schultz -- well, at least
8 Mr. Mauro is here. We'll start with you at
9 one o'clock.

10 MR. MAURO: Thank you, sir.

11 MR. DUNNE: Thank you, sir.

12 (Whereupon a luncheon recess was taken.)

13 MR. DUNNE: Again, my thanks for all of you
14 being with us. Mr. Tony Mauro, who is the director
15 of the Niagara County Probation Department.

16 JUDGE KLOCH: Senator, this is my home county,
17 so I'm going to pay particular interest.

18 MR. MAURO: I also have to say that at Judge
19 Kloch's urging I am here, so --

20 MR. DUNNE: Good.

21 MR. MAURO: We had a call the other day, and I
22 was planning on submitting a statement. And after
23 speaking with Judge Kloch, I thought better of it and
24 thought maybe I should be here.

25 MR. DUNNE: We're delighted you are here.

1 Speaker: Anthony Mauro

2 MR. MAURO: Thank you. I'd like to make a short
3 statement, certainly -- then I'll try to touch on
4 everything -- or a lot of the things that are being
5 addressed here, and certainly afterwards I'll be
6 willing to expound on anything that you need at this
7 point.

8 So to give you some perspective on the size of
9 our county, population in Niagara County's about
10 220,000. We have 23 officers working for our
11 department. We have three cities in which we staff
12 an office, Niagara Falls being the largest, we have
13 12 officers in the Falls, eight officers in the City
14 of Lockport, and three officers in the City of North
15 Tonawanda. So we cover a lot of ground.

16 Anyways, I would like to take this opportunity
17 to extend appreciation to Chief Judge Kaye and the
18 task force for undertaking this important project as
19 well as to thank all members of the task force for
20 the time they have invested. I understand how
21 precious time is, and I'm sure we all appreciate it.

22 I would also like to say thank you for the
23 opportunity that we've all been given to submit
24 testimony. Since each county may differ somewhat in
25 the delivery of probation services to the community,

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2 I want to first inform the task force of the
3 activities -- some of the activities in which we are
4 involved in Niagara County, while keeping in mind
5 that the primary focus of all probation departments
6 is rehabilitation of the offender and protection of
7 the community.

8 Although the task force has thus far focused on
9 criminal court issues, it still only remains a part
10 of what we do. The probation department continues to
11 be the intake agency for Family Court issues, intake
12 consisting of making a determination on whether or
13 not issues can be resolved without court
14 intervention. In that regard, we see every
15 individual who has a custody and/or visitation
16 problem, determine whether those issues fit the
17 criteria for mediation, and either make a referral
18 for mediation or to the court for those matters that
19 cannot be resolved amicably. We also screen all
20 family offense complaints. In other words, requests
21 for Orders of Protection, and whether or not Family
22 Court would have jurisdiction over the matter. All
23 juveniles charged as juvenile delinquents must also
24 be seen by the probation department so that a
25 determination can be made on whether or not they are

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2 eligible for adjustment services.

3 PINS diversion laws enacted in the year 2005
4 have placed a tremendous burden on staff to be
5 proactive in assuring appropriate services are put
6 into place, to address the problems of youths who are
7 in danger of becoming the subject of a PINS petition.

8 All that aside, our probation officers are
9 completing custody and investigation home studies,
10 adoption home studies, and predispositional
11 investigations for those youths that have received
12 adjudication as PINS or juvenile delinquents.

13 My point is that you can't talk about what
14 probation does without taking into consideration the
15 valuable work that is done in regard to family
16 courts.

17 Now, whether we need to enumerate the multitude
18 of activities in which we are involved in regard to
19 criminal court issues or not -- I guess I will
20 anyway. We are involved in supervision of defendants
21 from pretrial to interim supervision to intensive
22 supervision, to all, quote, normal community
23 supervision activities, while utilizing referrals to
24 all available service providers and utilizing all
25 technological means by which to supervise defendants.

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2 We have isolated sex offender, domestic violence, and
3 DWI case loads to particular probation officers to
4 enhance the area -- the areas of each officer's
5 expertise. And we are involved in multiple drug
6 courts, mental health courts, and the integrated
7 domestic violence court, not to mention complying
8 with the expanded DNA registration laws. And I'll
9 give credit where credit's due because DCJS has just
10 been down to our county in the last couple days to
11 assist us in taking care of the retroactive pool of
12 DNA registrations that we have to complete. So
13 they've helped us out a lot in that regard.

14 We are providing enhanced sex offender
15 supervision services, verifying sex offender
16 addresses and address changes for the sex offender
17 registry, and providing probation officers to work
18 under Operation Impact. And again, we've received
19 money from DCJS to do that, and I appreciate that,
20 and we'll utilize every penny that we get and we'll
21 put it to good use, as well as attempting to
22 establish our own field intelligence officer for
23 Operation Impact to act as liaison to other agency
24 and field intelligence officers.

25 In attempts to pool resources with other law

1 Speaker: Anthony Mauro

2 enforcement agencies, we are conducting field work
3 with local police departments, our sheriff's
4 departments, and New York State parole officers. In
5 fact, parole utilizes our offices once a week to see
6 their offenders.

7 The investigative duties and responsibilities of
8 every probation department produce a comprehensive
9 presentence report that contains information not only
10 utilized by the sentencing courts, but by service
11 providers, licensing agencies, correction facilities,
12 and other community supervision providers. We are
13 complying with TPCA rules and regulations in regard
14 to verifying information contained in all PSIs and
15 completing those reports in a respectable, I think,
16 turnaround period of four to six weeks. These
17 mandates and/or changes to the laws for the public
18 good -- none of which I'm opposed to -- however,
19 continue to place a hardship on local probation
20 departments that I am not sure we will continue to be
21 able to absorb if we have probation officers with
22 case loads in the range of 130 to 140 persons who
23 still must continue to complete a full complement of
24 presentence investigation assignments consisting of
25 10 to 15 presentencing reports per month.

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2 While we have specialized our sex offender case
3 loads, those officers, in addition to supervising the
4 sex offenders must, by necessity, carry a nonsex
5 offender case load of another 70 to 80 offenders.
6 Laws that increase the supervision period for sex
7 offenders, and rightfully so, have added to an
8 already burgeoning case load with no end in sight.
9 The consequence is that we are left with hard working
10 probation officers stressed by the workload and
11 frustrated with the fact that they can't be as
12 proactive or as protective of the community as they
13 or I would like them to be.

14 Thus far, I haven't touched on funding.
15 Obviously it's an integral part of what we can or
16 can't accomplish. It is no secret that the state
17 funding for local probation has steadily decreased
18 from what it was in years passed. County taxpayers
19 have had to, so to speak, pick up the slack, and
20 county funds have become a larger and larger
21 percentage of a local probation department's funding
22 source. But we in Niagara County have most
23 definitely reached a saturation point and no more
24 expenses are going to be able to be absorbed by local
25 county taxpayers.

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2 Each year as director of probation I've been
3 asked to submit a budget that is lower than the
4 previous year's budget. Good luck, okay? The only
5 way that I even come close to meeting the target set
6 by the county manager without decreasing the work
7 force has been to decrease expenses while trying not
8 to affect services and to maximize revenue sources.

9 For instance, and not that these save a lot of
10 money in and of themselves, but everything adds up.
11 Purchase -- we've purchased instant drug tests
12 instead of sending every test to a lab for testing.
13 Only positive tests are now sent to a lab for
14 confirmation.

15 I've curtailed mileage expenses for officers who
16 have been using their personal vehicles by use of
17 video conferencing equipment by officers in our
18 Niagara Falls office instead of having them travel to
19 the Niagara County jail in Lockport to conduct those
20 in-person PSI interviews. We've begun to use county
21 fleet vehicles and I've requested -- made a request
22 to the county for probation specific automobiles.

23 We've also had some rigorous pursuit of fees
24 from offenders, including drug test fees, electronic
25 monitoring fees, DWI offender supervision fees, and

1 Speaker: Anthony Mauro

2 all surcharges to which probation, as the restitution
3 collection agency, is entitled. For those that don't
4 pay as ordered on their conditions of probation,
5 violations of probation are filed. Offender fees
6 that are not ordered as conditions of their sentence,
7 and who are delinquent, are referred to the county
8 attorney's office for collection, and the county
9 attorney -- the county attorney's office has been
10 pretty aggressive in obtaining civil judgments.

11 I've also recently made a recommendation to
12 county lawmakers to enact a local supervision fee law
13 for all offenders.

14 We have squeezed and tweaked the budget for as
15 much as we can get out of it, aside from finding
16 additional funding sources. But all we have done to
17 this point is delay the inevitable, to target the
18 reduction of personnel. I will say to you what I
19 said to local lawmakers when I was directed to lay
20 off a probation officer for the 2006 budget. By
21 tying my hands with less staff than is needed to
22 adequately conduct our business, my ability to say
23 that I am getting the job done is taken away from me.

24 So is the system broken? I don't think so. We
25 have a lot of good people doing an excellent job

1 Speaker: Anthony Mauro

2 given the realities of budget constraints. A
3 dedicated source of funding that does not continue to
4 strain local taxpayers would go a long way in
5 allowing us to continue doing our jobs the way we
6 know they need to be done. Certainly, the question
7 becomes where to find that dedicated source.

8 And I know that the question will be asked, so
9 is the answer to move probation under the judiciary?
10 And I ask you, are we guaranteed higher funding if
11 that were to occur? Could we maintain our autonomy
12 and objectivity were that to occur, or would someone
13 else's idea of the way we should do our job and
14 conduct our business be imposed upon us whether we
15 like it or not?

16 These are just some of the questions that must
17 be answered before I, I think, or anyone else can
18 generate a logical response. Thank you.

19 MR. DUNNE: Thank you, Mr. Mauro.

20 MR. MAURO: You're welcome.

21 MR. DUNNE: Questions?

22 JUDGE KLOCH: Yes. I'm the designated -- with
23 the commissioner, I'm the designated individual that
24 asks this question. So first of all, could you tell
25 us what the starting pay is for your officers?

1 Speaker: Anthony Mauro

2 MR. MAURO: In the \$33,000 a year range,
3 thereabouts.

4 JUDGE KLOCH: And average?

5 MR. MAURO: Average, probably officers near the
6 top of the scale, I can tell you that, will probably
7 be -- probably be in the mid 50s, after seven or
8 eight years, ten years.

9 JUDGE KLOCH: How long does it take your
10 department to prepare a PSI for court?

11 MR. MAURO: From my understanding, from speaking
12 with my supervisors and my officers, is that we're
13 turning those around in four to six weeks, some less,
14 some more. As a general range, I'd say that's pretty
15 accurate.

16 JUDGE KLOCH: And I take it based on your
17 testimony, the legislature -- the local legislature
18 really hasn't stepped in to fill the gap from the
19 declining state funding?

20 MR. MAURO: Not at all. County manager and the
21 budget director of Niagara County give targets to
22 each department for the upcoming budget year. And
23 again, each year that I've been director, I've been
24 asked to submit a budget that's lower than the year
25 before. It's -- you know, I've strained and I've

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2 tweaked and I've squeezed as much out of it as I can,
3 but it's not -- I don't -- I don't see that going
4 anywhere.

5 JUDGE KLOCH: And you're indicating local
6 supervision fees. We heard testimony yesterday from
7 some counties that, in fact, do impose that. Have
8 you looked into the legality of that with your county
9 attorney, and are you comfortable with that?

10 MR. MAURO: I've referred that to the county
11 attorney's office, they've researched it. Claude
12 Joerg assigned -- who's our county attorney, assigned
13 John Sansone to do the research on it. Mr. Sansone
14 did that research, and he is confident that we can
15 proceed.

16 MR. NOWAK: This is collecting from the general
17 population?

18 MR. MAURO: That's correct. Adult criminal
19 probationers.

20 MR. DUNNE: Any other questions?

21 MR. NOWAK: I have a question.

22 MR. DUNNE: Mr. Nowak?

23 MR. NOWAK: My question is about the fees, that
24 I think it's clearly not authorized and you're
25 preempted by state legislation from doing that. Our

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2 county was, I think, looking at it as well, others
3 have, and I think Onondaga is the only one that's
4 doing it that I'm aware of, and I don't think they
5 really collected anything yet by way of going to
6 judgments. So I was just wondering what the county
7 attorney's conclusion is.

8 MR. DUNNE: Mr. Horn?

9 MR. HORN: Two things, if you can help me with,
10 Tony. So if -- if one were trying to construct an
11 argument for why the state should bear greater
12 responsibility for the cost of probation than they
13 do, why it's in the state's interest or why it's
14 their responsibility, what argument would you give me
15 to use?

16 MR. MAURO: We're mandated by law to exist, and
17 that's an executive law. If we are to exist and we
18 have to be an integral part of the criminal justice
19 system, then I think some funding, more than we've
20 been getting in the last several years, needs to be
21 dedicated to the local department. Certainly the
22 county taxpayers have an obligation, I understand
23 that, but should that -- should they bear the -- the
24 brunt of that obligation?

25 MR. HORN: If state law didn't mandate it, would

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the county have an interest in there being a probation service in Erie County?

MR. MAURO: Good question. I don't know that they'd pay for something that wasn't mandated to be there.

MR. HORN: Are there other services that they're mandated to perform, the County Government mandated to perform that they don't get reimbursed for?

MR. MAURO: I can only speak for my department. I have some knowledge of how the Department of Social Services works. I know the funding is greater to Social Services and preventive services money than it is to us, when we do the same things and more of it. So why should the reimbursement to probation be any less than to any other department that's providing preventive services?

JUDGE KLOCH: I'm on shaky ground here if I step in and try to defend the Niagara County legislature, but there was at one point recently a debate about whether or not they were going to continue funding the task officer. I think they eventually continued that, they were convinced that it was cost effective and that it actually saved money in the long run as far as incarceration costs. Is that still the case?

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2 MR. MAURO: That's correct. Although we have
3 less personnel, the task program still exists, is in
4 existence, funded through ATI programs from DPCA,
5 reimbursed at 50 percent. So the county looks at
6 that and says hey, I can have two people for -- with
7 50 percent reimbursement as opposed to 18 to 20
8 percent, and I think it made fiscal sense to them to
9 keep the task program because they do a lot of
10 substance abuse treatment referrals and things that
11 our officers would normally have to be involved in,
12 and they take care of those things. So they are, in
13 essence, an extension of our department and of a
14 probation officer.

15 JUDGE KLOCH: I know a little bit about the task
16 program in Niagara County because, as you know, I sat
17 there on the City Court bench for 16 years and I can
18 tell you, I won't go on to specific cases, but there
19 were many where young people were diverted from a
20 lifetime of heroin addiction because of that -- that
21 department, or that program. And it was a terrific
22 program, and it was a joy working with them to save
23 young people from -- from the horror of heroin
24 addiction. And what you're telling us is that it was
25 a higher percentage of the state involvement as far

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2 as funding, that's why that program probably existed
3 in Niagara County?

4 MR. MAURO: I know it is.

5 MR. DUNNE: Well thank you very much,
6 Commissioner.

7 MR. MACCARONE: Just one question.

8 MR. DUNNE: Oh, pardon me.

9 MR. MACCARONE: Anthony, I just want to
10 congratulate you, you're a relatively new probation
11 director there, and I recognize from when my deputy
12 and I came out to visit you and speaking with you,
13 that you have some amazing good things out there,
14 even your short, brief tenure, and I encourage you to
15 increase that. You had said that your case load was
16 130 or 140 to one. That's your average case load?

17 MR. MAURO: I wouldn't say average, I'd say our
18 average is probably about 120.

19 MR. MACCARONE: 120. And in addition, did I
20 understand that each of those probation officers is
21 required to do 10 to 15 PSIs?

22 MR. MAURO: Yes. I don't have the investigative
23 supervision duties split like some counties do, so
24 all our officers will do supervision and all our
25 officers will do investigative.

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2 MR. MACCARONE: You're still able to meet the
3 contact requirements, right? What would you think --
4 what would be your recommendation, because I'm sure
5 this may become an issue for the task force at some
6 point. What would your recommendation be for a solid
7 case load on supervision?

8 MR. MAURO: The way I'd like to see it?

9 MR. MACCARONE: Right.

10 MR. MAURO: I'd say 50 to 60 cases, to be
11 proactive with those cases. And to do what we're
12 supposed to do with our offenders, and that's to try
13 to rehabilitate them, try to put the appropriate
14 services in place, and make sure that they're
15 complying with what the courts have ordered.

16 MR. MACCARONE: And what would your
17 recommendation be for presentence investigations?

18 MR. MAURO: As far as --

19 MR. MACCARONE: Per month. What do you think is
20 the right number?

21 MR. HORN: Depends on dedicated.

22 MR. MACCARONE: Right. A dedicated officer.

23 MR. MAURO: Dedicated officers?

24 MR. MACCARONE: Right.

25 MR. MAURO: Doing no supervision, doing strictly

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investigative duties? I would say they should be able to do 15.

MR. MACCARONE: 15.

MR. MAURO: 15 to 20 a month without a problem.

MR. HORN: Can I?

MR. MACCARONE: Yes.

MR. HORN: What about on the Family Court size? How big on your juvenile -- do you have separate juvenile case loads?

MR. MAURO: Yes.

MR. HORN: How big are those case loads?

MR. MAURO: Big. Probably over 100 each.

MR. HORN: By the way, how many hours a week does your PO work?

MR. MAURO: 40.

MR. HORN: So that leaves, what --

JUDGE BRUNETTI: Forty with an hour for lunch.

MR. HORN: Forty with an hour for lunch.

MR. MAURO: Right.

MR. HORN: So 35 to cover 100 cases in a week is what, like -- like 20 minutes a case?

MR. MAURO: I'm sure you understand that -- that -- that working with juveniles are a whole lot different than working with adults.

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2 MR. HORN: That's what I'm getting at.

3 MR. MAURO: And if I were to find an ideal case
4 load number for a juvenile officer, I would say 30.

5 MR. HORN: That's what I mean. Thanks.

6 MR. MAURO: Okay? Because you put in a lot more
7 time, you're dealing with schools, you're dealing
8 with parents, you're dealing with counselors. And
9 again, in order to work the case the way that these
10 cases should be worked, you got to have a manageable
11 case load.

12 MR. HORN: And you do the INRs in the Family
13 Court, the investigations for the Family Court?

14 MR. MAURO: Yes.

15 MR. HORN: And same officers do those. In
16 addition to their hundred cases, they're doing the
17 INRs?

18 MR. MAURO: Definitely.

19 MR. HORN: So you said 15 to 20, if you had a
20 dedicated investigation officer on the adult side.
21 Are the INRs more complex and time consuming?

22 MR. MAURO: Certainly.

23 MR. HORN: So what do you think the case load
24 for INRs should be?

25 MR. MAURO: Probably more in the -- if we're

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2 talking investigative?

3 MR. HORN: Yeah, just somebody just doing INRs.

4 MR. MAURO: 10 to 15.

5 MR. HORN: You're also doing juvenile intake and
6 adjustment cases, right?

7 MR. MAURO: Definitely.

8 MR. HORN: Are you doing expirations of
9 placement?

10 MR. MAURO: No.

11 MR. HORN: You don't do the ex -- the Social
12 Services agency?

13 MR. MAURO: Yes.

14 MR. HORN: How about custody and visitation and
15 adoptions?

16 MR. MAURO: We do those, yes.

17 MR. HORN: You do those in addition?

18 MR. MAURO: Yes.

19 MR. HORN: Okay.

20 MR. DUNNE: Thank you very much.

21 JUDGE KLOCH: Thank you.

22 MR. MAURO: You're welcome.

23 MR. DUNNE: Claudia Schultz is the deputy
24 administrator of the Assigned Counsel Program in
25 Erie. Good afternoon.

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2 MS. SCHULTZ: Who magically appears.

3 MR. DUNNE: Good for you.

4 MS. SCHULTZ: Good afternoon, all. As
5 Mr. Dunne said, my name is Claudia Schultz. I'm a
6 criminal defense attorney and the deputy
7 administrator of the Assigned Counsel Program here
8 in Buffalo. I want to thank you for allowing me a
9 piece of your time today, and knowing all the people
10 you have to hear from I will be brief. Of all the
11 suggestions, proposals, rumors that periodically get
12 discussed regarding the future of probation, I want
13 to comment on only a few.

14 One is the idea of targeting resources at
15 younger people. As the gentleman before me was just
16 discussing, we're wholly in support of that idea and
17 want to encourage you to take a look at that. As
18 you probably know, current research suggests that
19 young people think differently, are motivated
20 differently, respond differently to stimuli and, of
21 course, behave differently than people of more
22 mature years. These differences are developmental.
23 We believe that we have to recognize these
24 differences and develop measures and use our limited
25 resources to target that population because early

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2 intervention saves us money and resources down the
3 line.

4 Second, I know there has been some talk of
5 dedicated parts for violation of probation cases,
6 and that idea seems to be presented as a way of
7 making the system more efficient. We think that in
8 fact it would do just the opposite. The time it
9 would take for the Judge and the part to become
10 familiar with the case that another Judge had
11 already spent days, weeks, or often months on is
12 truly wasted time. The case should be before the
13 Judge who already has the knowledge of all the
14 circumstances surrounding that case. That's the
15 sentencing Judge.

16 Third, there has been some discussion of the
17 role of the presentence report in the plea
18 bargaining process. One of the questions that
19 arises is whether or not the PSR should be
20 discretionary with the Court where it is now
21 mandatory. We could not support such a proposal.
22 The PSR is fundamental to decision making at DOCS,
23 and as the gentleman before me expressed to a number
24 of other programs and agencies, the information
25 gleaned from the PSR is used to determine placement

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2 program eligibility and eventual release from
3 custody and would significantly disadvantage those
4 persons for whom one was not done.

5 Another question is should there be greater use
6 or in fact mandatory use of pre-pleading reports.
7 Again, we think not. We believe that the best use
8 of the increasingly limited resources available
9 would be to permit the officers to have a case law
10 they can adequately supervise, ,i.e., meet with
11 their probationers, provide meaningful guides. It's
12 a little appalling that I'm completely in agreement
13 with the gentleman from probation on this issue, but
14 I seem to be providing meaningful guidance, assist
15 with referrals, et cetera.

16 Every time we take officers away from those
17 positions to write more reports, case loads rise and
18 my clients suffer. And I submit that we don't need
19 to devote our resources to generating these reports,
20 pre-pleading reports, as the adversarial system
21 provides the Court with sufficient information about
22 the case to effectuate an appropriate resolution of
23 that matter.

24 Finally, there is one change we would like to
25 see in the presentence process, and that is a clear

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2 statutory procedure that would give the Defendant
3 and her attorney -- her attorney -- one, the
4 opportunity to review the PSR sufficiently in
5 advance of the sentence in order to point out
6 changes or corrections that need to be made and,
7 two, a procedure whereby changes are either ordered
8 by the Court or the denial of same is placed on the
9 record and becomes a part of the case for appeal if
10 that is necessary. Incomplete or erroneous reports
11 cannot ever be corrected later, and the collateral
12 consequences of errors in the report have a
13 significant impact given its use by DOCS, et cetera,
14 as I mentioned before.

15 In conclusion, we feel that two tweaks of the
16 current system would significantly improve
17 probation. The first is a greater emphasis on the
18 specialized probation supervision approach to use,
19 and the second is that there be a clear and specific
20 procedure to correct any inaccuracies in the
21 presentence report. Questions?

22 MR. DUNNE: Sounds to me that you have just
23 presented what we didn't give Mr. Gradess the time
24 to. Very thoughtful.

25 MS. SCHULTZ: Good.

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2 MR. DUNNE: Very, very thoughtful. May I just
3 ask about your background?

4 MS. SCHULTZ: Certainly. You actually
5 recognize my face because for the past two years I
6 have been here under the jurisdiction of
7 Judge Kloch, but the twenty-five years before that I
8 spent in Nassau County in your territory.

9 MR. DUNNE: Nice to see an old friend.

10 THE WITNESS: Thank you. Twenty-six years as a
11 defense attorney and two years as the deputy
12 administrator of Assigned Counsel.

13 MR. DUNNE: Some questions, please? Yes, Bob.

14 MR. MACCARONE: I just wanted to thank you for
15 presenting such a concise and clear presentation and
16 substantive presentation of what I think are
17 excellent recommendations. Let me ask you this:
18 From time to time there's been the recommendation
19 that we dispense with the face-to-face interview of
20 persons who have been -- who have pled guilty in
21 Court and face a substantial amount of time in state
22 prison and that is that there's a certainty that
23 they're going to be going to state prison, and I was
24 wondering what you think about that.

25 MS. SCHULTZ: I understand the tendency to do

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2 that. You know, we've already arrived at our plea
3 bargain, we know how much time -- on felonies --
4 we're talking. Obviously we know how much time the
5 Defendant is doing upstate, and you would think
6 that, therefore, you know, why are we investing
7 resources in this except for the point that I hoped
8 that I made which is that that report is used by so
9 many other people to make determinations about
10 placement in the institution, which institution they
11 go to, which programs they might or might not be
12 afforded when they actually get released, whether
13 temporary, you know, work release is available. All
14 of those kind of decisions are hugely impacted by
15 the presentence report, and I think it would be very
16 unfortunate for my clients to have some people go up
17 with one and some people go up without one or one
18 that was done without any input by the Defendant
19 himself.

20 MR. HORN: Can I ask, following on that, given
21 what you said -- and I don't disagree with it --
22 given the importance of the document to the state
23 users --

24 MS. SCHULTZ: Yes.

25 MR. HORN: -- because everything you described

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2 is really not happening in your County courthouse
3 it's all of the use that's made later --

4 MS. SCHULTZ: Well, in the cases that you
5 referenced we sort of know what's happening at the
6 end of the case. Here we don't know what's
7 happening ever after.

8 MR. HORN: So would you, therefore, agree that
9 it is?

10 MS. SCHULTZ: Not that -- pardon me, but not
11 that that never changes as a result of the PSR, but
12 I think you meant the majority of cases where we
13 know what's happening.

14 MR. MACCARONE: Just in those cases where we
15 absolutely know, and I think you've answered that.

16 MR. HORN: Given that the state has reduced its
17 funding from 47 percent reimbursement for probation
18 to under 18 percent or 18 percent, don't you think
19 that they should pay a greater share of the costs
20 since they are the major users of this very valuable
21 and important document?

22 MS. SCHULTZ: You really want me to discuss
23 funding issues?

24 MR. HORN: Yes. That's the issue.

25 MS. SCHULTZ: It may be, but that is so not my

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2 jurisdiction.

3 MR. HORN: I'm asking your opinion. You're a
4 smart person.

5 MS. SCHULTZ: I think my real bent is that I
6 have seen in my twenty-some years the Probation
7 Department I think be depleted of so many necessary
8 resources. Honestly, I don't care where it comes
9 from. What I do care about --

10 MR. HORN: When the state diminishes funding
11 from 47 percent to 18 percent, isn't the state
12 sending a message to everybody that it's not
13 important?

14 MS. SCHULTZ: And I, of course, disagree. Yes,
15 I think that is true, and I would certainly disagree
16 with its importance. I also sincerely want the
17 resources to go back to the officers so that they
18 can do what the gentleman before me was talking
19 about, actually supervise. It doesn't do any of my
20 clients any good to appear in the doorway once a
21 month, once a week, once a whatever, see no one,
22 have a relationship with no one, be guided by no
23 one. If they didn't need that, they should have
24 gotten a CD. They don't need to be on probation.

25 MR. MACCARONE: Can I just ask a follow-up --

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2 and that is because you raised it, which is an
3 excellent point -- and that is in what percentage of
4 cases if you can quantify -- this may be difficult
5 to do -- on those cases that are going to state
6 prison, there's no question that it's a mandated
7 second-felony offender case, that this individual is
8 going --

9 MS. SCHULTZ: Lots of people go up who aren't
10 PFO's.

11 MR. MACCARONE: I know. But in those cases, in
12 how many of those circumstances where they're going
13 to state prison will that PSI influence the ultimate
14 sentence, which will be the ultimate --

15 MS. SCHULTZ: I think it is -- at times I do
16 think the percentage is small, because for the most
17 part there shouldn't be -- if the system is working
18 properly and both counsel know what they are talking
19 about; frankly, there shouldn't be lots of surprises
20 in the Court. If the DA had talked to the
21 Complainant and the family and et cetera and brings
22 that to the Court and I bring my client to the
23 Court, there shouldn't be lots of surprises. There
24 sometimes are. Okay.

25 MR. MACCARONE: But that can weigh in favor of

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2 the Defendant as well?

3 MS. SCHULTZ: It can. It doesn't always,
4 but --

5 MR. DUNNE: Yes, Bob.

6 MR. BURNS: As you work with Judges in Nassau
7 and here in Erie, say, talking about a presentence
8 report or dealing with a violation of probation,
9 would it matter to you at all if that probation
10 officer's salary was in some way derived from OCA,
11 the Unified Court System, or the fact that it's
12 currently in the executive branch? Would it matter
13 to you at all where that funding came from?

14 MS. SCHULTZ: Yes. I think it would be -- this
15 is my personal opinion. I don't know that this is
16 the Assigned Counsel opinion. I think it would be a
17 terrible idea to attach probation to the judiciary.
18 They are not an arm of the judiciary. I don't think
19 they think of themselves as an arm of the judiciary.
20 When it gets to the sentencing process, I think
21 we're three bodies before the Court. And none of
22 them should be attached to the Court -- not me, not
23 the District Attorney's office, not the Probation
24 Department.

25 MR. BURNS: Thank you.

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2 MR. DUNNE: Judge.

3 JUDGE KLOCH: Yeah. A non-related question,
4 but an observation. Counselor, to let you know how
5 it's important that you and people like you came
6 forth to testify, at the beginning of the hearing
7 process in New York I looked over to one of my
8 neighbors who was a colleague on the bench and said,
9 you know what we have to do, we have to tweak the
10 statute in regard to deviating and waiving the PSI
11 to make it easier for the Probation Department.
12 And, boy, over the course of the last several
13 hearings, I have been educated.

14 MS. SCHULTZ: We blasted you back.

15 JUDGE KLOCH: I've been educated accordingly,
16 so I thank you.

17 MS. SCHULTZ: Thank you. Thank you all.

18 MR. HORN: A couple questions. The law
19 presently allows for a waiver of the probation
20 report where a non-incarcerative sentence is to be
21 imposed or a sentence of less than ninety days.

22 MS. SCHULTZ: Correct.

23 MR. HORN: If the probation report is so
24 important, should we not require it before we place
25 a person in the community on probation?

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2 MS. SCHULTZ: So what you're saying is the part
3 of your questioning, the part of the statute that
4 says if we're all in agreement -- the Court, the
5 DA's office, and myself -- if we're all in agreement
6 that a probationary report would be appropriate --

7 MR. HORN: -- should be waived there might be
8 something -- you said there might be something that
9 would come out. You said before that in this course
10 of negotiating this complex plea on a person that's
11 going to state prison, where the sentence is going
12 to plea is going, but you said, well, maybe
13 something will come out. But the same is true here,
14 is it not?

15 MS. SCHULTZ: It's true, but first of all --

16 MR. HORN: Are we jeopardizing the community by
17 placing the person on probation without knowing --

18 MS. SCHULTZ: First of all, we're not talking
19 about felonies when we talk about that statute. A
20 felony requires a PSR.

21 MR. HORN: Well, in any felony that doesn't
22 require imprisonment, you can waive the probation
23 report.

24 MS. SCHULTZ: Is that true, Ed? I think that's
25 true.

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2 JUDGE BRUNETTI: I think it's true.

3 JUDGE KLOCH: John Brunetti is the expert.

4 JUDGE BRUNETTI: No. No. Take that off.

5 MR. HORN: I think if the report is so
6 important, if we shouldn't be making these decisions
7 of mandatory imprisonment of plea bargain --

8 MS. SCHULTZ: There are a couple things. There
9 are two things. One --

10 MR. HORN: -- you would put a person in the
11 community without the benefit of a PSI?

12 MS. SCHULTZ: Two things. One is I think that
13 I emphasized the importance -- as you noted, I think
14 that I emphasized the importance of the report later
15 after the sentence, which is why I think we can't do
16 away with it. That's number one. But number two, I
17 think one of the reasons that there are very few
18 surprises in the presentence report is we have
19 typically discussed at length, possibly ad nauseam,
20 the facts of the case, the facts of my client, and
21 the facts of the Complainant, et cetera, et cetera.
22 And I think one of the reasons there aren't
23 surprises is that we talk to the Court until the
24 Court at least -- if not all of us -- feels
25 comfortable with that.

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2 MR. HORN: Yet you wouldn't waive it?

3 MS. SCHULTZ: And yet I wouldn't waive it,
4 because if my client is going to state prison then
5 DOCS wants to see it, and the Temporary Release
6 Program wants to see it, and the Drug Program wants
7 to see it, and the release people, parole, wants to
8 see it. And I can't, therefore, do without it.

9 MR. HORN: Fine. If the individual is placed
10 on probation and absconds, what record do we have of
11 the individual? What if they never even make their
12 first report to their probation officer, what record
13 do we have about this individual? In the absence of
14 a PSI, if you have waived the PSI, placed the person
15 on probation, and then five years later he's picked
16 up on a warrant -- the Judge has long since retired,
17 and now Judge Kloch has this individual -- how do
18 you know who this individual is?

19 JUDGE BRUNETTI: It just occurred to me, too,
20 where are the conditions?

21 MR. HORN: Yeah. How do you decide what
22 conditions to put on the individual?

23 MS. SCHULTZ: All I can tell you is in my
24 twenty-five years we have been allowed to waive a
25 report about, I don't know, maybe three times. So

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2 it's not something that routinely occurs.

3 MR. HORN: I'm asking you philosophically. In
4 jurisdictions like New York City it's waived all of
5 the time or much of the time.

6 MS. SCHULTZ: Those people aren't typically
7 placed on probation.

8 MR. HORN: Yes. In case you didn't waive it.

9 MS. SCHULTZ: All I can say is I think that a
10 Court -- it would surprise me if in many situations
11 a Court would be comfortable doing that without the
12 PSI. I don't really know that. I never worked in
13 the City, but -- and I know that they have the
14 numbers to press things they had and to press things
15 ahead and do differently than we do here or even in
16 Nassau, but I would say if we all believe we know
17 enough about that case to think that the Defendant
18 requires community supervision, doesn't get a CD and
19 doesn't need to go to jail, we're probably not
20 tremendously wrong about that.

21 MR. HORN: I hate to be argumentative, but you
22 say all that is true and a person is going to
23 prison, so why do you need a PSI?

24 MS. SCHULTZ: Because we use it for many, many
25 things once he goes to prison.

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2 MR. HORN: As we do once he's placed on
3 probation.

4 MS. SCHULTZ: Well, we -- Ed, bail me out here.

5 MR. NOWAK: My comment would be the first thing
6 a probation officer should do in getting the case is
7 to do their own PSI.

8 MR. HORN: What if he doesn't show up for
9 arrival, report?

10 MR. NOWAK: Then you're going to have a
11 violation filed, and what are you going to do?

12 MR. HORN: Social history.

13 MR. NOWAK: You'll have your PSI for not
14 showing up, and the ninety days --

15 MR. DUNNE: If I may, I think our discussion
16 here is premature, and it should be reserved for the
17 final battle.

18 JUDGE KLOCH: That's why the Senator put me
19 between them.

20 MR. HORN: One final question. We've heard how
21 dire the situation is here in Erie County. The case
22 loads are up in the two hundreds, and probation
23 supervision exists in name only. Does that give
24 Judges in Erie County pause and cause them to be
25 reluctant to use probation as a sanction? Have you

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2 seen an increase in the use of imprisonment because
3 probation is not seen as an effective sanction?

4 MS. SCHULTZ: Yes. We do believe that
5 happened.

6 JUDGE KLOCH: And I can add to that as somebody
7 that actually sentences in this county, I bet
8 there's been -- since the budget impact -- about
9 twenty people that I provided for conditional
10 discharge who I would definitely put on probation if
11 the probation officers weren't overloaded.

12 MS. SCHULTZ: And I think it goes both ways. I
13 certainly have seen a number of cases where my
14 client is incarcerated where I don't think that
15 would have happened.

16 JUDGE KLOCH: I think that's true, too. But
17 let me tell you these cases. These would be cases
18 where you have somebody who gets involved in
19 gambling and in order to feed that habit steals
20 twenty-five thousand dollars from their employer and
21 is caught and no prior criminal record. You know,
22 they're coming forward. I'm not going to put him in
23 jail. You know, they have the restitution money
24 from mom or dad or wherever. I tell them if they
25 come up with all the money I'll give them a

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2 conditional discharge. That person should be seen
3 by a probation officer to deal with the dependency
4 that caused the theft in the first place, but in
5 Erie County, because of my concern for the case
6 loads of the probation officer, I put my own neck on
7 the line and give that person the conditional
8 discharge.

9 MS. SCHULTZ: I'm proud of you, Judge --

10 MR. DUNNE: Any other --

11 MS. SCHULTZ: -- because I think too many cases
12 go the other way.

13 JUDGE BRUNETTI: Just if all three parties
14 agree -- the Judge and the two lawyers -- the PSR
15 can be waived in C, D, or E felonies which are not
16 mandatory jail, where it's a time-served sentence or
17 probation or a report has been prepared in the
18 preceding twelve months or probation is revoked. So
19 it can be waived for felonies, any grave felony
20 where probation is an eligible sentence.

21 MR. DUNNE: Good. Thank you, counselor.

22 MS. SCHULTZ: Thank you so much.

23 MR. MACCARONE: Thank you.

24 MR. DUNNE: In light of Miss Schultz recent
25 comment, it's only appropriate that we have a late

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2 starter here. Richard Donovan, who is the
3 Undersheriff for Erie County, has offered to speak,
4 and I appreciate it. You've been very patient
5 listening to our --

6 MR. DONOVAN: Thank you, Senator, I appreciate
7 it. I'm going to direct my comments a little
8 differently because, as you said before, Senator, we
9 have a traditional jail here in Erie County and we
10 also have a correctional facility, and we staff both
11 facilities. Obviously they're -- the sentenced
12 prisoners are held in one part of our correctional
13 facility, but we have overflow capacity in there.
14 The capacity of our two jails, our maximum facility
15 capacity in our two facilities in Erie County is
16 1527. We are presently housing, I'd say,
17 approximately 1650 prisoners in both sentence and
18 presentence categories.

19 JUDGE KLOCH: I'm sorry, what did you say the
20 capacity was?

21 MR. DONOVAN: Our capacity is 1527 based on the
22 State Commission of Corrections maximum facility
23 capacity statistics. As of October 12th, the sheriff
24 was ordered by the State COC to reduce that to 1527.
25 We have no ability to do that at this point, so we

1 Speaker: Richard Donovan

2 are violating the state COC order. And the only
3 reason I'm bringing this out is -- we'll get to the
4 other things that my testimony will address. So we
5 are in noncompliance with it. They said that they're
6 giving us a little bit more time to come up with
7 some -- some resolution. Without coming to a
8 resolution, that's where I'm addressing my comments
9 towards the probation officers and how they're
10 important to us in this -- in this facilities, in
11 keeping ours under the maximum facility capacity.

12 Obviously we talked about the presentencing
13 investigations, and that's very, very important
14 because we have state readies that are ready to go.
15 Between state readies, parolees that are not being
16 held on any other charges, and parolees that are held
17 on additional charges, and we are somewhere in the
18 200 range. We probably are, in pleas, I was -- I
19 didn't have a chance to do all my research, so if I'm
20 off a little bit on my research I apologize and I can
21 get the figures if there's anybody that really wants
22 to know the exact number. But between the people
23 that are waiting for sentencing reports, parole --
24 parolees that have no additional charges, and
25 parolees that have additional charges but still are

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2 under the state division of parole, somewhere in the
3 vicinity of 200.

4 So we need help as far as our facility, and I've
5 been on a lot of committees. I've been on committees
6 for alternatives to incarceration, I'm on committees
7 for overcrowding, I'm on committees for committees
8 that have committees, the same as everybody else
9 here, and I'm not -- you know, I'm not crying on your
10 shoulders. But the most important thing that we come
11 in all of these is the help of probation. We can use
12 their help whether it's -- it's day reporting before
13 they come into our holding center, whether it's
14 having input on bail and giving us recommendations on
15 somebody should be allowed out on bail. And the
16 tendency that's happening in Erie County, it's
17 happening across the state, is that county
18 facilities, they're increasing, the county facility
19 population's increasing, the state facilities are
20 decreasing. There's a lot of beds across the state,
21 and I'm sure you're picking that up from all your
22 testimony you're covering across the state.

23 So the only thing I'm saying is that we can use
24 it, you know, with the conditional day monitoring,
25 day reporting, the ankle bracelets, all this comes

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2 back to having somebody that can watch these people,
3 and that's where it falls to probation. And we are,
4 in Erie County, we got hit. I know everybody, you
5 know, cried, we all got budget cuts that hit really
6 bad. Our staffing in our correctional facility, in
7 our jail, is about 100 under where we should be at.
8 And we've been embarrassed, we've had a lot of
9 problems with our department. But when it comes down
10 to it, my recommendation would be to, obviously, with
11 probation, is to, you know, increase the help on the
12 front end of it so these people aren't coming into
13 our jails.

14 I think 51 percent are remanded back, somewhere
15 around 50 to 60 percent, when they go to a City Court
16 judge, are being remanded back into our custody
17 without bail without the prebails. So that's coming
18 in, you know, we're getting that. And there's no
19 help for the judges. The judges are in bad shape.
20 If they're not getting help from probation to say
21 who's a good bail risk, you know, we're getting that
22 population on the front end, we're also not getting
23 the population on the rear end.

24 Which would lead me to my -- the recommendation
25 that my sheriff, Sheriff Howard, would make is that,

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2 you know, in this, as far as presentence reports, his
3 recommendation is that -- that we try to change the
4 legislation that a presentence report will be done
5 within 30 days, an extension with just cause for over
6 30 days by the judge. And I know that will put a lot
7 more responsibility on the probation officers with
8 their workload, but we have to have something that
9 makes this, you know, makes this whole system work.

10 I've been on these alternatives to incarceration
11 committees. I found out in one of the counties, I
12 believe it's Bronx in New York City, they have the
13 presentencing reports in three days. We go -- we go
14 four months and sometimes more, and those people are
15 sitting up there, you know, taking -- taking --
16 they're ready to be sentenced on state charge, you
17 know, and it's just waiting that report.

18 So I guess that's my plea to it on that. And
19 the one recommendation that the sheriff had, if that
20 could go in the record, is 30 days, try to get that
21 changed to 30 days with, obviously, just cause, and a
22 judge could extend it. But have something, there's
23 some bite to it, and make the counties do what we
24 have to do.

25 MR. DUNNE: Let me ask you, as undersheriff, is

1 Speaker: Richard Donovan
2 supervision of the jail your responsibility?

3 MR. DONOVAN: It is. The -- I'm kind of new to
4 the jailing bit. I've been in law enforcement for
5 about 34 years, but the last -- almost about last
6 year or so, as undersheriff, the jail management
7 division falls under my responsibilities.

8 MR. DUNNE: What effect has this overpopulation
9 had on your ability to operate the facilities?

10 MR. DONOVAN: It's had a devastating effect.
11 Our morale is as low as it's ever been. We are
12 understaffed by about 100. We have two different
13 titles in our jail management, which makes it a
14 little more complicated than in other counties. We
15 have correction officers and we have deputy sheriff
16 officers, and we combine services. The county at one
17 time had the correctional facility; and subsequently
18 the correctional facility and the holding center jail
19 went together, merged under our office. So with the
20 understanding we're understaffed in supervisors,
21 we're understaffed in deputies.

22 We are constantly cited by the Commission on
23 Corrections, the State Commission on Corrections, you
24 know, that would be a whole hearing unto itself
25 because, you know, there's different standards across

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2 the state. You know, other places that are
3 overpopulated are allowed to double bunk. The state
4 is allowed to double bunk, Erie County is not allowed
5 to double bunk. You know, we are under some
6 restrictions. But when it gets back to it, you know,
7 the State COC thinks because they feel we need better
8 facilities, and we need -- we need more staffing, and
9 it really gets down to staffing.

10 MR. DUNNE: Does the combination of
11 overpopulation and understaffing interfere at all
12 with the access of probation officers to presentence
13 incarcerated individuals in connection with
14 preparation of their reports?

15 MR. DONOVAN: No, I think -- I think we do a
16 pretty good job with that. We've got a very close
17 working relationship here with both probation and
18 with, you know, assigned counsels, you know, trying
19 to get there. But there can be delays, I'm sure
20 there will be complaints from a lot of people. We do
21 a pretty good job of it, but, you know, that's one of
22 the priorities we have is letting people get there to
23 talk to them.

24 MR. DUNNE: Thank you. Questions?

25 MR. NOWAK: The statistic that concerned me was

1 Speaker: Richard Donovan

2 you said -- I want to make sure I have it right. You
3 take a population that's in custody over for their
4 first court appearance, and are you saying 50 percent
5 come back to you still in custody?

6 MR. DONOVAN: Fifty-one. Fifty percent or more.

7 MR. NOWAK: Wow. Is there -- was the pretrial
8 services -- is there a pretrial service organization,
9 not for profit, in Erie County?

10 MR. DONOVAN: I think it falls --

11 MR. NOWAK: Within probation?

12 MR. DONOVAN: Probation, yeah.

13 MR. NOWAK: Is that where the cuts were made?

14 MR. DONOVAN: There's cuts all across, I mean,
15 so everything's been affected by that. That's one of
16 the things we're working on is reducing the amount of
17 people that are being sent back, you know, and right
18 now with Operation Impact, with things going on,
19 there's some cases where they're sending them. But
20 it's over 50 percent once they get over to City Court
21 that return to us.

22 MR. NOWAK: From the first appearance in court
23 they still stay in custody to the tune of more than
24 50 percent?

25 MR. DONOVAN: That's correct.

1 Speaker: Richard Donovan

2 MR. SOARES: In addition to the local -- housing
3 in your local county jail, are you housing any
4 federal inmates?

5 MR. DONOVAN: We do house federal inmates, which
6 has been a problem. What happened was years ago,
7 before I was in this, and so I may have some of my
8 facts, I stand to be corrected or take me on and tell
9 me I'm way off on it, but we accepted \$5 million from
10 the Feds several years ago to do some reconstruction
11 in the jail. So, you know, and plus they pay over a
12 hundred dollars -- I think they pay about a hundred
13 dollars a day. So we do accept federal prisoners,
14 but we had an agreement standing to have some
15 construction in the jail, capital management. The
16 short answer is yes, we do take federal prisoners.

17 MR. SOARES: What I'm trying to get at is I know
18 from my county, Sheriff's Department actually makes a
19 profit from housing federal inmates. And it appears
20 here that your ability to generate revenue from
21 housing federal inmates is impeded by the fact that
22 you have all of these local prisoners who are state
23 prison ready but no PSIs are being done.

24 MR. DONOVAN: Definitely. It costs us about
25 \$110 a day, it's an approximate, to house them. For

1 Speaker: Richard Donovan

2 the state readies. And parole, parolees is another
3 issue. The parolees is 30-some dollars a day, just
4 got raised to \$38 a day.

5 MR. SOARES: There's a double whammy as far as
6 the -- the implications, fiscal implications. State
7 ready prisoners you're not -- you got state ready
8 prisoners the state should be housing, it's costing
9 local county housing, but you also have federal
10 inmates that you could be earning --

11 MR DONOVAN: That we could be earning money,
12 yes. And they contribute significantly to us in
13 helping us with construction costs to make that
14 arrangement.

15 MR. CLARK: Dickey, how much has -- has there
16 been an impact on your jail overtime budget based
17 upon the cuts made to the probation department?

18 MR. DONOVAN: Significant. Significant impact
19 on --

20 MR. CLARK: Give some idea of how that -- how
21 that came about.

22 MR. DONOVAN: Whatever it is, you know, when you
23 figure out per day, without them doing it, the people
24 that could be held there, I'd have to -- you know, I
25 mean I would imagine it's, you know, in the million

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2 or something like that, altogether, over the last two
3 or three years. But as I said, I'm not a real good
4 stat guy. If I had my time to do the research on my
5 stats, I'd throw them out. But I haven't had that
6 chance. But it's been significant.

7 MR. CLARK: Let me put this this way: Aren't
8 you criticized all the time for having your overtime
9 budget go well beyond predicted standards, and more
10 so due to the cuts made in the probation department?

11 MR. DONOVAN: Definitely. There's a
12 correlation.

13 MR. CLARK: Do you have any control over that at
14 all?

15 MR. DONOVAN: No control whatsoever.

16 MR. MACCARONE: You may have some control
17 because you're housing federal inmates, correct? So
18 how many federal inmates do you have?

19 MR. DONOVAN: I'd have to find out for you. Not
20 that many, not that many. There is a federal
21 detention facility in Batavia that -- you know, that
22 is up and running. We do house -- it's usually
23 marshal cases and people that are awaiting trial in
24 the federal courts here that are in there. I think
25 it's probably in -- I think it's around 30, but I can

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2 get back to you if you give me that, I'll find out
3 when I leave here.

4 MR. MACCARONE: Can you tell me the percent of
5 cases -- you said your population today was 1650.

6 MR. DONOVAN: Approximately 1650, yes.

7 MR. MACCARONE: 1650. And what's the percent of
8 your pretrial population in that correctional
9 facility on any given day? Do you have an idea?
10 Because I know you report that --

11 MR. DONOVAN: We report that on a daily basis,
12 as I said. It's significant.

13 MR. MACCARONE: I don't have that information at
14 hand. We had it and I sent it to the probation
15 department and the alternatives to incarceration
16 community and the local administration.

17 MR. DONOVAN: I know we report it to the State
18 COC on a daily basis.

19 MR. MACCARONE: The reason is because we send
20 that state-wide report each month that we receive
21 from the COC to all of our alternatives to
22 incarceration programs in our probation departments
23 because that's the population we ought to be working
24 to address.

25 My other question is, I'd be somewhat surprised

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2 if you had a large state ready prison population
3 given that the DOCS facilities are so low in
4 population, there's not a sizeable state ready
5 population across the state. I know counties have
6 sued the state in the past; and with the lowered
7 population at DOCS, that issue's been addressed. I
8 don't think there's a significant delay in New York
9 City. I'm more inclined to think that your
10 population is comprised of parolees and those
11 specifically who have pled, awaiting sentencing, and
12 I know you've said you don't have that number right
13 now, but I think our task force would be very
14 interested in knowing that precise number of persons
15 who have pled guilty and are awaiting time in your
16 facility for that sentencing event.

17 MR. DONOVAN: Yeah, and that's where the
18 population is, the people who have been sentenced,
19 are waiting for the report. So the way I believe is
20 so until they have that, they're ready to go, but
21 they can't be until it's done, yeah.

22 MR. MACCARONE: So can we ask for that
23 information?

24 MR. DONOVAN: Sure.

25 MR. MACCARONE: Because that would be very

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2 helpful.

3 MR. DONOVAN: Who should I send it to? Right to
4 the chair?

5 MR. DUNNE: Mr. Burns?

6 MR. BURNS: Don't send it to me.

7 MS. WALSH: I'll give you a card.

8 MR. MACCARONE: Just one last question, and that
9 is how many staff did you realize a reduction when
10 the cuts were made in Erie County?

11 MR. DONOVAN: Well, we -- we had probably,
12 outside of probation, we're probably comparative, we
13 got hit, I think, the hardest in the Erie County
14 government, that's a debatable thing. We lost
15 correction officers, deputy sheriff officers, which
16 both -- do our both jail management division and our
17 own jail was affected, but we lost -- there were 12
18 actual layoffs, but with positions and that, we lost
19 over -- we're a hundred under right now, a hundred
20 under what our staffing should be.

21 MR. MACCARONE: Thank you.

22 MR. BURNS: That was going to be my question.
23 In probation, we're jealous of all of our partners,
24 except for Assigned Counsel, when it comes to
25 staffing levels and resources. And we're always

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2 jealous of our sheriff's correctional facilities
3 because of the commissioner of corrections that will
4 come down upon the county structure if you don't
5 staff in accordance with their -- their standards.
6 How long will that 100 corrections officers staff be
7 allowed to continue by the state, and what will
8 commissioner of corrections do if it continues on
9 from month-to-month?

10 MR. DONOVAN: The way I understand it is in the
11 letter I read, they will go to a Supreme Court Judge
12 and get an order, an Article 78, ordering us to
13 reduce our population by the 150 that we are. And
14 then the next one would be probably contempt citation
15 against the sheriff and the county executive for not
16 obeying that order. We have a public safety
17 committee on the Legislature that's been a lot better
18 than when these first cuts hit. So we are working
19 closely with them.

20 We did come up with a plan for at least -- we've
21 come in some compliance with State COC on increasing
22 the -- the amount of officers. We are still having a
23 lot of problems with supervision, increasing
24 supervision.

25 So the big thing we're hitting here in Erie

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2 County right now is, you know, getting to that number
3 and also getting adequate supervision. We are --
4 we're not abiding by the orders of the State COC and
5 that. So the next thing would be obviously -- I
6 think would be to go to court sometime -- some date
7 in October, or at least had told us they may do that.
8 Then they would give us an order; and then if we
9 didn't obey the order, then, you know, obviously the
10 contempt citation.

11 But the thing as we researched it, with 150
12 prisoners less -- or over what we have to do, there's
13 no -- there's no facility this side of Syracuse that
14 could take on that kind of volume. Chautauqua
15 County, they're over their variances. They've been
16 allowed variances over their maximum facility
17 capacity.

18 So, you know, we're talking about taking 150
19 people, trying to spread them out across the state,
20 and who knows where -- you know, where you can put 30
21 or 40 or 50, and -- besides the -- whatever they
22 would charge us. We have no contracts in place for
23 that. We are trying to get that. We made
24 suggestions and made recommendations to the
25 legislature, we better have some contracts, you know,

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2 for this type of situation, but, you know, when you
3 get into taking them downstate, as far as we probably
4 have to go to get rid of the hundred and some people,
5 and access, you know, with the transportation costs
6 and everything, and the overtime costs that we would
7 incur, plus, you know, the contract themselves, you
8 know, I stand before, you know, this body here and
9 say, you know, somebody's paying for it. We're all
10 paying for it some way, whether pay for it in state
11 or the Feds or local taxes, we're going to pay for
12 that. Somebody's going to pay for it. And Erie
13 County residents here are at a breaking point with
14 this. So it's going to be -- it's going to be very
15 damaging. You know, we're not talking five people,
16 we're talking at any time 100 to 150.

17 MR. DUNNE: Thank you. Thank you very much, Mr.
18 Donovan.

19 MR. DONOVAN: Thank you.

20 MR. DUNNE: And you will get us that
21 information?

22 MR. DONOVAN: I will get you that information.
23 Can I just -- run it by me one more time.

24 MR. NOWAK: You got a card there?

25 MR. DONOVAN: And you wanted to know, I'm

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2 sorry --

3 MR. MACCARONE: Exactly the number of persons in
4 your correctional facility today --

5 MR. DONOVAN: That are state ready?

6 MR. MACCARONE: No. That are -- that have pled
7 guilty, are awaiting sentencing.

8 MR. DONOVAN: Okay.

9 MR. MACCARONE: And if you have anything on time
10 frame of those individuals, how long they've been
11 detained, that would be helpful as well.

12 MR. DONOVAN: Did somebody else want to know how
13 many we had in federal? How many federal prisoners?

14 MR. SOARES: I had asked that question.

15 MR. DONOVAN: Would you like to know that?

16 MR. SOARES: Please.

17 MR. DONOVAN: Okay. I should have that for you
18 by the end of the day. Thank you.

19 MR. DUNNE: The supervising attorney of the
20 appeals unit for the Legal Aid Bureau of Buffalo,
21 Barbara J. Davies is our next speaker. Good
22 afternoon.

23 MS. DAVIES: Good afternoon. The Legal Aid
24 Bureau of Buffalo is a not-for-profit organization
25 that represents over thirteen thousand indigent

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2 Defendants annually in Buffalo City Court. Our
3 agency is also assigned by the Appellate Division
4 Fourth Department to represent on direct appeal all
5 indigent Defendants convicted in Erie County
6 Superior Courts.

7 MR. DUNNE: May I direct you -- would you
8 adjust the microphone so we might hear you better?

9 MS. DAVIES: New York State law requires that
10 the county ensure that indigent criminal defendants
11 are provided with assigned appellate counsel. Erie
12 County fulfills its obligation by contracting with
13 the Legal Aid Bureau to perform this important and
14 highly specialized legal work. The Legal Aid Bureau
15 is assigned annually to approximately a hundred and
16 seventy-five felony appeals.

17 Our responsibilities include securing the
18 transcripts of every court proceeding as well as all
19 of the other legal documents that are part of the
20 record. The Legal Aid Bureau staff attorney
21 assigned to a given case discerns the viable legal
22 issues, researches those issues, and writes an
23 appellate brief for filing with the Appellate
24 Division.

25 Unless the trial Judge imposed the minimum

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2 sentence upon our client, one of the issues in our
3 brief will necessarily be an argument that the
4 sentence is harsh and excessive and should be
5 modified by the Appellate Division to a lesser term.
6 In order to prepare this argument, the Legal Aid
7 Bureau relies to an enormous extent on the
8 information contained in the presentence report
9 required by Criminal Procedure Law 390.20, and that
10 is prepared by the Probation Department.

11 We want to go on record before this commission
12 to oppose any change that would reduce the current
13 requirement for a presentence report for defendants
14 convicted of felonies. This presentence report is
15 our only source of information about our client's
16 background, including his childhood and current
17 family situation, any physical and psychological
18 disabilities, and his educational and work history.

19 Ideally every attorney would prepare his or her
20 own sentencing memorandum for submission to the
21 trial Judge, which memorandum would then be
22 available to the appellate counsel for the appeal.
23 However, the vast majority of attorneys -- both
24 assigned and retained representing defendants at
25 trial -- do not have the time and resources to

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2 engage in the extensive research and writing that a
3 comprehensive sentencing memorandum would entail.

4 Therefore, as assigned appellate counsel for
5 Erie County's indigent criminal defendants, the
6 Legal Aid Bureau attorneys are extremely dependent
7 on the presentence report prepared by the Probation
8 Department. Without access to the information
9 contained in the presentence report, our ability to
10 provide effective appellate representation to our
11 clients would be severely compromised.

12 Anyone have any questions?

13 JUDGE KLOCH: I have more of a comment.
14 Counselor, first of all, I mentioned to Ms. Schultz
15 how important it was for me to hear what the Defense
16 Bar had to say on this, and I certainly have been
17 educated. Also, on a personal note, you will be
18 glad to know that sitting for me to sign in Niagara
19 Falls is an order, a memorandum and sample letters,
20 in regard to dispensing with the necessity for the
21 individual orders in order to obtain the presentence
22 report.

23 MS. DAVIES: Right. We've talked about that in
24 our meetings.

25 JUDGE KLOCH: It's sitting there in Niagara

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Falls, so that should be signed by the end of the week.

MS. DAVIES: That will be streamlined for us.

JUDGE KLOCH: I'm sorry for the delay.

MS. DAVIES: That's all right. Any questions?

MR. DUNNE: Yes, please.

MR. HORN: So your function is required by state law?

MS. DAVIES: Yes.

MR. HORN: The money for that function comes from where?

MS. DAVIES: We get our money from the county.

MR. HORN: Is the county reimbursed by the state?

MS. DAVIES: The county -- no. No. The county is not reimbursed by the state. It's county law 18(b) that requires that.

MR. HORN: The county provide the service?

MS. DAVIES: The county provides the services at the trial level and appellate level.

MR. HORN: And there's no reimbursement?

MS. DAVIES: There are various programs. There's certain drug money and different --

MR. NOWAK: There's an Indigent Defense Fund

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2 the state does based --

3 MR. HORN: Is there a percentage, or is that
4 targeted for special projects?

5 MS. DAVIES: I think it's targeted for special
6 projects.

7 MR. HORN: More like DCPA's intensive
8 supervision?

9 MR. MACCARONE: It's like aid to prosecution is
10 aid to defense?

11 MS. DAVIES: Yes. It's aid to defense.

12 MR. HORN: Nonetheless, counties basically bear
13 most of the cost?

14 MS. DAVIES: Yes. And the county contracts
15 with the Legal Aid Bureau, a not-for-profit
16 organization. Each county is free to provide these
17 services in any way it chooses. For example, Munroe
18 County has a public defender office that is a county
19 agency as opposed to a contract agency.

20 MR. HORN: So, theoretically, county law could
21 require counties to provide probation service in the
22 same respect and not reimburse it at all?

23 MS. DAVIES: Presumably our interest -- I know
24 you asked one of the earlier speakers, our interest
25 is not so much who pays for it, it is just that we

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2 have the presentence report so that we can do our
3 work as appellate attorneys.

4 MR. HORN: Let me ask you as a practicing
5 attorney -- you've probably been a defense
6 attorney -- the same question I asked Ms. Schultz.
7 Given everything you said about the importance of
8 the PSI -- which I don't disagree -- and given that
9 the law allows the waiver of the PSI for a person
10 who is not going to receive a sentence of
11 incarceration or may be placed on probation, don't
12 the arguments that you make about the importance of
13 the PSI suggest that that loophole should be closed?

14 MS. DAVIES: Yes. We believe it should be
15 closed, because very often we will -- if the person
16 violates probation, for example, and then is
17 sentenced to a term of incarceration and then
18 appeals that, we are assigned to that appeal and we
19 need the presentence report to prepare our appellate
20 brief arguing that the sentence is harsh and
21 excessive.

22 MR. HORN: Thank you.

23 MR. DUNNE: Mr. Nowak.

24 MR. NOWAK: One quick question. When you
25 indicated that it is your sole source and that

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2 there's a lack of memorandum from defense counsel,
3 how about input from your clients that say what's
4 contained in the PSI may or may not be accurate?
5 And I understand as an appellate counsel, while I'm
6 asking the question that you can't change the PSI,
7 it's too late.

8 MS. SCHULTZ: It's too late now.

9 MR. NOWAK: Do you tell your clients, sorry, it
10 doesn't matter, it's too late? Do you get a lot of
11 complaints about accuracies of the PSIs?

12 MS. DAVIES: We do get some complaints about
13 the accuracy of information in the PSI, but
14 unfortunately it is too late, and the time to
15 correct it -- I believe there was some discussion.
16 Ms. Schultz mentioned there should be some
17 correction at the sentencing level, and I would
18 believe it would have to be something more concrete.
19 You will see very conscientious defense attorneys
20 will inform the trial Judge, Judge, I want to take
21 issue with things that are on such and such a page
22 of the presentence report, and I want this on the
23 record on the transcript because it follows my
24 client to the correctional facility. But I must
25 say, that is extremely rare.

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2 JUDGE KLOCH: That's one thing I found out from
3 this process -- that probably John Brunetti knew
4 about, but I had to be educated by this -- is that
5 at sentence I always say the same thing, have you
6 received the probation report, counsel, have you
7 reviewed it with your client, any corrections,
8 additions, deletions you want to propose to the
9 report, and often the defense counsel will place
10 that on the record.

11 MS. DAVIES: And that is what he should be
12 doing --

13 JUDGE KLOCH: Yes.

14 MS. DAVIES: -- ideally.

15 JUDGE KLOCH: What happens then? Is that ever
16 reflected? Does that ever follow that individual
17 into --

18 JUDGE BRUNETTI: No. No.

19 JUDGE KLOCH: -- into his period of
20 incarceration?

21 JUDGE BRUNETTI: I can tell you what I do. I
22 literally -- this may sound stupid, but I personally
23 take a magic marker, and I change it. I then give
24 it to my Court Clerk to make three copies, and I
25 insert it, because the deputies are waiting right

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2 there, because they need -- the Sheriff's Department
3 needs that PSR to transport the Defendant. And so I
4 do a cut and paste right then and there. As the
5 lawyers who have been testifying have mentioned,
6 making a stenographic record of it is worthless.

7 MS. DAVIES: It is.

8 JUDGE KLOCH: I told you Brunetti would know
9 about that.

10 JUDGE BRUNETTI: But you should see my cut and
11 paste. It's very nice.

12 MS. DAVIES: Thank you very much.

13 MR. DUNNE: Before you go, personally I would
14 like to ask you about the Appellate Division Fourth
15 Department. I know it's going to have a new
16 presiding justice.

17 MS. DAVIES: Yes.

18 MR. DUNNE: Would you give me some sense of how
19 sympathetic or receptive the Court has been to
20 basically your argument of excessiveness of sentence
21 or any other point you might be able to raise on
22 appeal?

23 MS. DAVIES: It's very hard to be an attorney
24 for convicted defendants, and it is rare
25 unfortunately. I'm speaking for my clients now. It

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2 is rare that the Appellate Division will reduce a
3 sentence, but it does happen, and it's gratifying to
4 us as defense attorneys when it does happen. It's
5 not impossible for it to happen. It does happen
6 that the Court will find that a sentence is harsh
7 and excessive. It is not the norm, and I think --
8 and I think it's -- and perhaps if -- well, that's
9 why I'm here, because if the presentence report is
10 done away with, we lose so much of our resources to
11 be able to make that argument at all. And our
12 clients really expect that argument to be made, and
13 as effective counsel that argument should be made.

14 JUDGE KLOCH: They just remanded one back.
15 They reversed it when the sentencing Judge after he
16 gave the Defendant the ability to speak said I can't
17 believe what you have just said. Comparing this to
18 Nazi Germany, I'm going to increase the sentence I
19 was going to give you. And the Appellate Division
20 looked at that and said that was wrong and returned
21 it for resentencing.

22 MR. DUNNE: We can't let you get away,
23 Mr. Maccarone.

24 MR. MACCARONE: I just want to thank you for
25 coming, because I think this appellate angle on this

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2 is just so important, that normally we think about
3 the use of the PSI by, of course, the Court as the
4 primary customer for it and secondarily the state
5 agencies, but the appellate practice is something
6 else. I just want to run something by you because
7 you rely so heavily on the PSI. From time to time
8 it's been suggested that we eliminate the interview
9 associated with the Defendant at the time of the
10 preparation of presentence investigation, and I'm
11 wondering if you find that information garnered as a
12 result of that information helpful?

13 MS. DAVIES: It can be, because that is the
14 moment the client or Defendant will very often
15 express remorse to the probation officer, and that
16 is something that we rely upon in our brief, and
17 it's a candid and thoughtful exchange between the
18 probation officer and the client. Now, some clients
19 take that opportunity to express their innocence --
20 they continue to proclaim that they did not commit
21 the crime -- others express remorse. Others will
22 explain about their drug addiction or horrible
23 upbringing, but I think that that would be a shame
24 if that were eliminated.

25 MR. MACCARONE: It sounds like you find that

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2 information garnered taken at that time to perhaps
3 be the most candid?

4 MS. DAVIES: Yes. Right. It is. But all of
5 the other -- probation officers make recommendations
6 to the Judge, which we do not necessarily agree with
7 the ultimate recommendation in terms of the
8 sentence, but it's the raw material about our
9 client's background, his substance abuse, his
10 learning disabilities, all of those things that we
11 rely on very much in writing our brief, as well as
12 you mentioned about the information that he told the
13 probation officer on the face-to-face basis.

14 MR. MACCARONE: Thank you. That's very
15 helpful.

16 MR. DUNNE: Thank you, again. Good luck in
17 your work. It's tough.

18 MS. DAVIES: Thank you. It is.

19 MR. DUNNE: The vice-president of CSEA Probation
20 Unit, Lisa Geier, is our next speaker. I know you're
21 used to working on Friday afternoons, so it's just --

22 MS. GEIER: Yes. Thank you very much. I wanted
23 to start by saying that today's my ninth anniversary
24 as a probation officer.

25 JUDGE KLOCH: Happy anniversary.

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2 MS. GEIER: Thanks. Tuesday was my 23rd
3 anniversary as a civil servant. I entered civil
4 service to help people, and I find that that has been
5 hampered dramatically in the last year and a half in
6 Erie County. I would like to add that my duties have
7 become -- have gone from probation officer to
8 basically a fireman. I put out fires daily. I
9 cannot do my job properly. I feel it's had a
10 profound factor in the lives of the people that I
11 work with.

12 Some of our clientele do want to change, and I
13 have been hindered with being able to do that. When
14 our layoffs occurred last year, our home calls were
15 dramatically affected. I am one of two intensive
16 supervision officers in the adult division. We had
17 four prior to the layoffs. When intensive
18 supervision began in Erie County, we had 11. If we
19 could, in an ideal world, make every one of us an
20 intensive supervising officer, we could be effective.

21 The quality of our reports are known across the
22 state. I've had parole officers tell us that Erie
23 County, bar none, are the best presentences in New
24 York State. I've tried not to hamper my quality of
25 those. As a result -- my presentences take one to

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2 two days minimum on my day. We are not supposed to
3 do presentences as an intensive officer. I do a
4 minimum of five a month. That's two weeks out of my
5 month that I'm doing presentences.

6 Because I am an intensive officer, I get the
7 second felony offenders, I get the persistent felony
8 offenders. They often have 20 pages of legal
9 history, minimum, in our reports. I often hand in
10 reports that are 20 to 25 pages long. I take that
11 job seriously. My interviews are minimum of one to
12 two hours long because of the background information.
13 I write my reports first and foremost for my judges,
14 secondly for parole and corrections, because everyone
15 relies on our reports dramatically. I try to be
16 accurate. I tell my -- the people that I interview,
17 if I'm wrong, make sure your attorney states that on
18 the record. Because of the volume, I'm sure I'm
19 wrong often.

20 The nonfunded mandates that I've experienced in
21 the last nine years have hampered us tremendously.
22 The sex offender programs are critical; however, they
23 make the officers go out and quarterly verify their
24 addresses, make them -- make sure that the
25 registrations are correct, and it increases the

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2 public concern that comes in to us daily asking for
3 information on the notifications that go out to them
4 in the community from the school districts. They
5 also have access to the websites, that increases our
6 phone calls. I'm lucky if I leave a day with less
7 than 30 to 50 phone calls a day that I need to
8 address.

9 I agree with Mr. Alexander this morning, that
10 every case, if possible, should have a presentence
11 investigation. It is critical what we provide.

12 Now granted, the defense attorneys don't always
13 agree with our recommendations, but we take them
14 seriously, and some days we agonize over them.

15 Because of our cuts, I've often had to say
16 incarceration rather than probation because I know
17 our department cannot provide for the people that we
18 need to provide for. So as a result, if their legal
19 history has been very extensive, or they failed at
20 probation a number of times, or parole, before this,
21 I have to err on the side of incarceration as my
22 recommendation. Our main concern is the safety of
23 the community, and if that is at the freedom of some
24 people, they made a choice to commit their crimes.
25 And I don't always feel good about recommending

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2 incarceration, but I know that our specific
3 department cannot help some of these people because
4 we don't have those resources.

5 Excuse me. I'd like to comment on since the
6 layoffs. We noticed within a month of our layoffs
7 that our jail listing, which we get pretty much every
8 day -- at least four or five days a week, we get the
9 updated jail listing. The jail listing numbers
10 increased by about 100 prisoners a day within a month
11 of our layoffs. Given the fact that a prisoner costs
12 approximately \$110 a day, as Undersheriff Donovan
13 stated, we have presented to our legislature and in a
14 lawsuit that we as officers filed to try and get the
15 layoffs to be -- to be prevented last year, we have
16 presented that probation -- to fund probation, our
17 cost is \$6 a day to keep someone on probation. We
18 are so cost effective and we can be so effective in
19 helping people, but we can't under the circumstances
20 that we now live. Unfortunately --

21 MR. DUNNE: May I interrupt you? That \$6 a day
22 is based upon what kind of case load?

23 MS. GEIER: That would just be the cost that we
24 were operating on with approximately 100 to 110
25 officers that we utilized. Mr. Noyes, that spoke

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2 earlier this morning, he was one of the people that
3 was able to compile that figure when we were so
4 adamantly stressing to the legislature and the county
5 executive almost two years ago why we are not the
6 place to have our cuts made as dramatically as we
7 did. One-third of our budget was a horrendous
8 amount. When you figure that we lost under \$3
9 million in our budget with these cuts, the jail
10 population had to increase that, at least to 10
11 million. Where was the cost benefit? That was part
12 of the politics explained in our loss. People made
13 decisions that didn't know what we did for a living,
14 and it's hurt society, it's hurt our ability to do
15 our job, and things were sacrificed for a bottom
16 line, balancing of a budget.

17 The judges have seen it, and we appreciate their
18 support, because we know that they know what our
19 struggle is. And they have come to bat for us often;
20 unfortunately, it has fallen on deaf ears in our
21 county.

22 Due to our cuts, as I said before, a typical
23 presentence investigation will take me one to two
24 days minimum. Now, part of our duties are we send
25 our own letters, we copy the district attorney's

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2 files because we don't have enough clerical staff.
3 So they are paying good money for us to go over to
4 the District Attorney's Office and make copies of the
5 information we need. We have to interview, again,
6 anywhere from 30 minutes to two hours would be an
7 adequate interview. We prepare the documentations
8 for dictation, and then we have to correct our own
9 reports. All of this takes time. And when you add
10 in the investigations, it removes us from being able
11 to supervise properly.

12 Just as an example, two weeks ago I was
13 attempting to have one of my probationers arrested on
14 an Order of Protection that he was -- I was in belief
15 of him violating for a domestic violence case that
16 was not my probation case. I found out through
17 working with a detective of a village police
18 department that the Order of Protection had not been
19 registered. Instead of being able to, the next day,
20 be able to go to the judge for the domestic violence
21 bureau to inquire as to why that order had not been
22 registered so that I could get it enforced and put
23 him into custody, I had to work on two presentence
24 investigations that were due the following Monday.
25 That probationer was murdered two days later.

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2 In conclusion, I would like to say that should
3 the Office of Court Administration take over
4 probation, it is critical that we remain law
5 enforcement aspects to our job. Unfortunately, our
6 population has changed dramatically, even in the nine
7 years I've been a probation officer. They are more
8 dangerous, they are more willing to hurt or kill or
9 maim.

10 We deal with -- when I was getting my Master's
11 degree, I came across the statistics that we deal
12 with approximately 5 percent of the population who
13 commit 95 percent of the crimes. That is critical,
14 that we maintain some aspect of law enforcement in
15 order to be able to keep us safe, as we already heard
16 from some of the other officers, as well as to let
17 them know that we mean business and that the court
18 order is critical for them to follow.

19 We would also ask that no matter which branch we
20 are funded under, whether it's the executive or the
21 judicial, that the need for mandatory expectations to
22 be performed by the probation department needs to be
23 established and funding provided by one entity across
24 the board, whether that means establishing a minimum
25 case load standard, establishing ratios of

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2 presentences to officers, or other methods, we need
3 to revise it and we need to revise it now.

4 One suggestion to keep us a little more
5 independent from the judicial branch is possibly that
6 instead of doing presentence investigations we do
7 preplea investigations, that way we don't know where
8 it's heading. Oftentimes we get an investigation
9 request and the plea agreement is written on our
10 request. So that does drive us, as much as we don't
11 always want that to, sometimes that will help us in
12 how we write our report. If we changed it to a
13 preplea investigation, that would remove us from
14 possibly influence one way or another.

15 To end, I would say that if you need a pilot
16 county to attempt to be under the Office of Court
17 Administration, we would like to volunteer Erie
18 County as the county to do so. We need help. We're
19 in critical condition.

20 MR. DUNNE: Have you cleared that with the
21 governing body?

22 MS. GEIER: No, that's speaking as an officer.

23 MR. DUNNE: Questions?

24 JUDGE KLOCH: Well, Officer, we work together --

25 MS. GEIER: Yes.

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2 JUDGE KLOCH: -- and I know how dedicated and
3 talented you are. You were here this morning, I said
4 to the Commissioner that, you know, after the
5 cutbacks, looking from the bench and looking at you
6 officers, it was almost like somebody in the family
7 had died. Would you agree with that?

8 MS. GEIER: Totally. Totally.

9 JUDGE KLOCH: And what you're indicating here is
10 that because of that cutback, there's been cases
11 where instead of recommending supervision, you
12 recommended incarceration.

13 MS. GEIER: Yes, I have.

14 JUDGE KLOCH: Are you saying that because of
15 these cutbacks, that there were situations imposed
16 upon you by these cutbacks where a particular
17 defendant in Erie County was not provided with the
18 same considerations or the same rights that were
19 provided to that -- or that would have been provided
20 to that individual prior to that?

21 MS. GEIER: In my personal experience, yes, that
22 I would have had to lean towards incarceration based
23 on our circumstances.

24 JUDGE KLOCH: Thank you.

25 MR. DUNNE: Any other questions?

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2 MR. HORN: Yeah. So as president -- you're the
3 president of the local --

4 MS. GEIER: Vice-president.

5 MR. HORN: Vice-president of the local union.
6 Has your union, in the course of trying to avoid
7 these cuts or deal with it, either previous to it or
8 subsequently, your union, your members, your
9 leadership, so to speak, lobbied in the county
10 legislature or the state legislature or both?

11 MS. GEIER: Yes. Actually, we have been
12 probably a thorn in our county legislature's side.
13 We made sure that we were always present at the open
14 forums they had prior to budget voting in 2004,
15 November of 2004, where the cuts were presented at
16 that time by the county executive. We filed our own
17 lawsuit, at the cost of over a hundred dollars per
18 person, because we felt so impassioned that we should
19 have -- a mandatory minimum should be established.
20 We have the New York State Probation Officer's
21 Association, we have members, and I'm a member of it,
22 we have a board member in our staff.

23 MR. DUNNE: Your president is a member of this
24 task force.

25 MS. GEIER: Yes. Yes. And we have been very

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2 vocal. In fact, people are amazed at how vocal the
3 probation department has become because of these
4 cuts.

5 MR. HORN: Here's my question: What kind of
6 reception did you get -- I'm sure you got a courteous
7 reception, but what kind of an attitude towards
8 probation? I mean, when you talk to the county, when
9 you talk to the county executive or you talk to the
10 county executive -- or the county legislature, what
11 do they say? Do they say, we're very sorry, we
12 recognize this is a county function? Or do they say,
13 this is something the state should be paying for?
14 And if you talk at the state level, what do they say?
15 Do they say, yes, we're very sympathetic, but this is
16 the county's problem? Do you get any sense of --
17 that people are sort of passing the orphan back and
18 forth and nobody wants the hot potato?

19 MS. GEIER: Yes, that's exactly what happened.
20 We got a lot of sympathy from our legislature of two
21 years ago who said basically their hands were tied.
22 They had to do cuts, they had to commit the cuts, and
23 we were almost used as a scare tactic, it appeared,
24 the cuts went towards -- dramatically towards law
25 enforcement. Our belief in general was that it was

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the hope that the community would say no, you can't cut there. But a lot of the community doesn't realize how much we actually do for a living and how effective we are in all the communities. We got a lot of lip service, we got a lot of genuine concern, but the bottom line resulted in a third of our department going out the door on March 15th.

MR. HORN: And how about the state level?

MS. GEIER: The state level I'm not involved with, so I would not be able to speak on that.

MR. DUNNE: Mr. Maccarone?

MR. MACCARONE: One question on this.

MS. GEIER: Yes.

MR. MACCARONE: Did I hear that you have to -- you go into the District Attorney's Office to make copies of documents?

MS. GEIER: Of the files, yes.

MR. MACCARONE: Is that a traditional practice in how you collect the documents?

MS. GEIER: That always has been in the nine years that I've been a probation officer, that has been a function of ours. But mainly it's because the clerical staff, there's not enough clerical staff to take over that function. And some people would say

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2 that they would prefer to do it because they know
3 what they're looking for in -- regarding the
4 documentation. So there's a lot of different views
5 on that. But bottom line is that we're the ones that
6 do it.

7 MR. MACCARONE: Thank you.

8 MR. DUNNE: Again, thank you very much.

9 MS. GEIER: Thank you very much.

10 MR. DUNNE: The next three speakers are
11 identified as probation officers for Erie County. I
12 don't know if they want to appear singly or jointly,
13 but I'll leave it to you. Let's start with
14 Mr. William Pitt, probation officer of Erie County.
15 Good afternoon, sir.

16 MR. PITT: Good afternoon, everyone. Good
17 afternoon, Judge Kloch. I recognize some of the
18 names, if not the faces. I'm glad I got here just
19 as Lisa was finishing up, because some of the
20 questions that I heard were questions that I could
21 really answer, particularly yours about what kind of
22 contacts we made with the legislature, state
23 representative, and so on over the years.

24 Since 1989 or 1990, I have attended more
25 meetings of this kind than there are chairs in this

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2 room. I have spoken to pretty much everybody who is
3 active in the county, most of the decision makers in
4 the state. Not in the last few years. I have
5 decided to spend some time, actually, with my family
6 before my grandchildren grow up. I think you had
7 asked -- one of you gentlemen had asked about what
8 kind of reception we have been getting.

9 MR. MACCARONE: Yes.

10 MR. PITT: I can tell you now, I pretty much
11 got out of this about a year and a half or two years
12 ago, but pretty much the reception year after year
13 and decade after decade was pretty much the same
14 reception, and that is a polite response, a lot of
15 head nodding, a lot of good solid hand shakes and
16 we're in your corner and then nothing has happened.

17 In the early 1990s we mounted, I guess what you
18 would call, a full court press regarding state
19 reimbursement. That took eight months. We
20 interrelated with most of the other counties in the
21 state. I can't remember the names of the people now
22 it's so long ago, but we were successful. It's the
23 only time in the history of the state that
24 reimbursement for probation has ever gone up. We
25 think that year it was 1991 or 1992 we were slated

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2 for a 98 thousand dollar cut and we got a 440
3 thousand dollar increase, so a swaying of more than
4 a half million dollars in every single county across
5 that state. All of that money went to the general
6 funds, none of it state probation. I remember some
7 conversations before and then after with some of my
8 fellow men from New York. What I essentially said
9 was I told you so, but we tried any way and that was
10 the result.

11 I'm here today mostly because I'm one of the
12 more senior people in the department. You can
13 probably tell by looking at me. There will be one
14 more, somebody who's even more senior later on who
15 can answer questions on electronic monitoring in
16 Erie County, I suppose, if you needed it. I can
17 give you history on how money has worked,
18 supervision worked, presentence has worked here over
19 the last more than two decades.

20 In the adult division I've done pretty much
21 everything there is to do. I've never worked in
22 juvenile, but I've done presentence reports,
23 supervision of various kinds, you know, specialized
24 case loads, large case loads. Right now I have
25 what's probably the largest case load in

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2 Erie County. Before the layoffs I had approximately
3 one hundred and forty cases which, compared to other
4 counties, was very high. It was also somewhat high
5 here; although, not spectacularly. So after the
6 layoffs it went immediately to about two hundred and
7 ninety, and then it rose into the mid three
8 hundreds. I know because I actually stopped one day
9 and counted that I got to three fifteen, and it went
10 above that. I just didn't bother counting anymore.

11 Greg Noyes was here this morning, and he
12 mentioned, I believe, that some of the Judges in the
13 county have stopped using probation. That's
14 primarily not the Supreme and County Court Judges,
15 that's Town and Village Judges, one City Court Judge
16 that I know of in Buffalo. But a lot of the towns
17 and villages have either dramatically reduced their
18 reliance on probation or eliminated it altogether.

19 Now, my case -- now, I mentioned this for a
20 couple of reasons. One is from this point on asking
21 about case load sizes is no longer pertinent because
22 intake is going to be going down. Intake has gone
23 down. I don't know what directly you have to say
24 about that, but I can see it in my own observation.
25 I'm now getting primarily intake from transfers from

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2 other counties. That's probably two thirds or more
3 of the intake that I get these days. I had some of
4 the larger towns in Southern Erie County. Some of
5 those towns are not using probation at all.

6 I don't want to single out too many, but one
7 particular town, a large town in Southern Erie
8 County, I have a young woman on probation from a
9 Judge, from Judge Troutman, in County Court, a drug
10 possession case. While on probation this young
11 woman got arrested and convicted for drunk driving,
12 which of course relates to drug use in terms of
13 treatment, and the sentence of the Town Court on
14 that misdemeanor DWI case was conditional discharge.
15 That's happening over and over and over again. The
16 three primary choices that Judges have at any
17 sentencing, except the mandatory commitments of
18 course, are a discharge, probation, or jail. When
19 you eliminate probation or greatly reduce probation,
20 then you increase intake in jail and you increase
21 the number of people who receive conditional
22 discharges.

23 As a taxpayer, I'm concerned with the extra
24 money that is being spent on the Holding Center and
25 the correctional facility in Alden. As a citizen

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2 and as a family man, I'm very upset about the number
3 of cases that are going to conditional discharges,
4 primarily DWI cases. I see it all the time. When
5 I'm in Town Courts on other business and I stop in
6 to see what's going on, and it's one case -- one DWI
7 case after another that are going to conditional
8 discharge. This is dangerous.

9 The intake at the Holding Center -- I'm sure
10 you gentlemen have looked into already or will be.
11 In 1991 I had a meeting with Dennis Gorski, at that
12 time, and in 1992 with Dennis Gorski and Jim Kane
13 regarding what was going to be happening at the
14 Holding Center. At that time, in the early '90s,
15 the county was earning money by renting out cell
16 space. We were already being reduced a little bit
17 at a time through attrition and through vacancy
18 control and, you know, we predicted for the County
19 Executive then that if that continued that the
20 county would no longer be making money, the county
21 would be spending money. That took two years to
22 come true, and it's continued on ever since.

23 It amazes me -- no, it doesn't amaze me
24 anymore. It used to amaze me that people who
25 actually run things have absolutely no idea how

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2 things actually work. You know, probation is the
3 gate keeper for much of the Criminal Justice System.
4 What happens with us determines what happens with
5 the Holding Center, correctional facility, and it
6 determines what happens out on the streets.

7 As most of you know, particularly those of you
8 who are local -- I'm sure that the DA knows this --
9 that there is a great problem in Buffalo regarding
10 gangs and gun violence. This isn't the first time
11 this has happened. It happened in the early 1990s
12 as well, and it was able to be dealt with in the
13 early '90s, and probation was a part of it back
14 then. Back then we were able to make a great many
15 home calls. Lisa is an ISP unit. I think there's
16 just -- she and Brian are the only two people left,
17 right, the only two people left in ISP. When I
18 started here there were eleven, and now there are
19 two.

20 Those are relatively small case loads compared
21 to mine of two to three hundred, and with case loads
22 of those sizes in the early 1990s people were able
23 to make a great many home calls at night, and they
24 were able to seize guns, able to interface with the
25 Buffalo police on a routine basis -- routine and

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2 first-name basis, which is more important than any
3 kind of administrative orders or imperatives. And
4 over a period of time, those gangs at the time back
5 then was the Tenth Street Boys and the Goodyear
6 Crew. Between prison and killings and essentially a
7 few of them living long enough to age out, those
8 gangs sort of dissipated, dissolved, and they never
9 entirely went out of business they just changed
10 names a little bit, but the massive violence in the
11 early 1990s, that came to an end.

12 We could be doing that again, but we don't have
13 anybody to do it with. It would be, actually, with
14 the numbers of people we have on probation in
15 Buffalo, we have dozens if not hundreds of gang
16 members on probation right now. We should be able
17 to identify those people with our contacts at the
18 Buffalo Police Department and should be able to deal
19 with them and either encourage them by strictly
20 enforcing probation that they better change their
21 ways or they have a realistic expectation of going
22 to prison or actually following through with the
23 violations of getting them in prison and off the
24 streets and away from the guns which they use to
25 shoot people.

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2 There doesn't seem to be any sort of actual
3 interest in this county in actually doing anything.
4 There's an interest in talking about doing things.
5 There's an interest in buying equipment. Equipment
6 requires manpower to run and judgment to use, but
7 primarily the Criminal Justice System relies on
8 manpower. We just don't have it in this county, and
9 we're not going to be getting it.

10 I recall reading a few weeks ago that Mr. Clark
11 was talking about felony DWI enforcement and
12 expecting a large increase in more severe
13 sentencings. That would also effect probation,
14 since if he wanted to prosecute more aggressively
15 there would be more people going to jail on some of
16 these cases, but there would also be more people
17 coming on probation as well. Mike Canazzi who
18 should be here in a little while is in the DWI unit.
19 He'll talk to you about his case load and electronic
20 monitoring. I was in the DWI unit fifteen years
21 ago. Back then we had sixty-five cases apiece.
22 That was considered to be a heavy workload. With
23 Mike's case load, I would guess you could add a
24 hundred to that.

25 What's happening in Erie County is dangerous to

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2 the people of Erie County. I know the Commission
3 is -- this Panel is primarily interested in
4 presentence reports and getting the paperwork and
5 the investigations done so the Courts can move, but
6 I would hope that the Commission also considers and
7 gives very heavy consideration to the reality of
8 what happens after sentencing. What good is
9 sentencing if nothing happens afterwards, and that's
10 essentially the end of my speedily prepared
11 comments.

12 MR. DUNNE: Well, they were very well thought
13 through, Mr. Pitt. And just speaking personally,
14 I'm grateful for your dedication. Let me ask you,
15 are you armed?

16 MR. PITT: No. No. I had been for twenty
17 years, but there was serious health problems in my
18 family, and I decided it's better for me not to
19 carry the gun.

20 MR. DUNNE: Can you tell me what proportion of
21 your officers are armed?

22 MR. PITT: At this point, the overwhelming
23 majority are.

24 MR. DUNNE: Thank you.

25 MR. PITT: When I came in this department, I

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2 was in the first group of people that became armed,
3 and as I used to say when I started probation, I
4 took a pen out and said this is my tool. Now, this
5 is my tool. As Lisa was saying, although I have an
6 extremely high case load, I have -- I shouldn't say
7 more mild mannered people, but I had the kind of
8 case load that Lisa has now. In years past, after
9 fifteen years, ten years of dealing with people in
10 the inner city, members of those kinds of gangs, the
11 tough guys in the suburbs just don't really impress
12 me all that much.

13 MR. DUNNE: Thank you. Questions, please?

14 JUDGE KLOCH: Again, Officer, I -- we've worked
15 together, and I know what a dedicated and talented
16 guy you are. Lisa previously indicated that there
17 were times that she would prepare a PSI where she
18 would recommend incarceration where prior to the
19 cutbacks she would have made a recommendation of
20 probation. Because of the cutbacks she's no longer
21 able to supervise all of these individuals. Have
22 you been in that same situation where you have made
23 recommendations for incarceration where prior
24 previously before the cutbacks you would have
25 recommended probation?

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2 MR. PITT: Of course, yes. I mean, when you
3 say you're recommending somebody, I mean, you always
4 have, like, a bell-shaped curve of cases which are
5 not all that bad, cases which are horrible, and the
6 majority of cases which are in the middle. But on
7 those cases in which there is -- jail is justifiable
8 or probation is justifiable, if there is actual
9 supervision when you know that an individual is
10 going to go on a case load of somebody who has one
11 hundred and seventy-five or two hundred, two hundred
12 and fifty cases, you know it's not really going to
13 take place, and then a responsible person has to
14 choose jail in order to protect the community.

15 JUDGE KLOCH: Are you saying that because of
16 these cutbacks that were imposed upon you that there
17 are certain defendants now in Erie County being
18 sentenced that were not given the same rights or
19 consideration as they might have been given prior to
20 this?

21 MR. PITT: Well, in terms of rights and
22 consideration, they're given the same rights and the
23 same consideration, but with the resources not
24 available they are not getting the same kind of
25 recommendations as they would have gotten years ago

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2 when resources were available.

3 JUDGE KLOCH: So the bottom line is you're
4 considering whether to put this person on probation
5 or to make a recommendation of incarceration now?
6 Based upon the cutbacks, you're saying I can't
7 consider probation because I don't have the time to
8 spend with this individual?

9 MR. PITT: Yes. We need to go one step beyond
10 that as well, and that's to the violations of
11 probation. It had been more or less a professional
12 standard that -- of course, you have major
13 violations in which physical injury is done to
14 someone, you know, a felony is committed, someone is
15 caught with a major amount of drugs, a person is a
16 drug dealer, but the overwhelming majority of
17 violations aren't quite that drastic.

18 In the past it was routine to bring someone
19 back before the authority of the Court and then give
20 them the opportunity to come back in compliance.
21 Sometimes it would be that opportunity, it would be
22 an extended period of time three months, four
23 months, five months, maybe six months. Now you just
24 can't afford someone. By the time they get to us,
25 they've already had their second chance. Now, with

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2 us they are getting -- they can consider do we give
3 them a third chance, well more and more you have to
4 say no and this recommendation of the violation
5 would have to be imprisonment.

6 JUDGE KLOCH: Have you seen an increase in the
7 number of violations filed?

8 MR. PITT: I have got a full-size file drawer
9 this deep that I can't get one more file in, and
10 those are all violations. I never counted them how
11 many would fit -- forty, fifty, sixty. I have no
12 idea how many violations I have got going right now
13 plus all the cases piled up on my floor because I
14 don't have any space to put them and I haven't had a
15 chance to review them.

16 JUDGE KLOCH: Does that mean that's more or the
17 same?

18 MR. PITT: It's more.

19 JUDGE KLOCH: After the cutback it's more?

20 MR. PITT: It's more.

21 JUDGE KLOCH: Thank you.

22 MR. DUNNE: Any other questions? Mr. Pitt,
23 thank you very much, sir.

24 MR. PITT: Thank you.

25 MR. DUNNE: Is Michael Canazzi, the probation

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2 officer from Erie County --

3 MR. CANAZZI: I'm here.

4 MR. DUNNE: Good afternoon, sir. Mr. Burns will
5 take over from here.

6 MR. CANAZZI: Okay? Yeah, my name's Mike
7 Canazzi. I've been with the Erie County Probation
8 Department now for a little over 35 years, which
9 makes me top seniority in the place, whatever that
10 says about me.

11 Before I start anything about DWI unit and
12 electronic monitoring, I'd just like to mention when
13 I started in '71, the department had over 100
14 officers and about one-quarter of the volume of
15 cases. And the department had a policy, and the
16 policy was that no one was supposed to have more than
17 60 cases, okay? You got 60 cases, you got a visit
18 from your supervisor who said, close some, transfer
19 some, do you need some help? What's going on? Are
20 you doing your job?

21 If you were stupid enough to hit 70, you got a
22 personal visit from the director who said 70 is
23 impossible, you shouldn't have it, what's wrong? Do
24 you need help in your area? Do you need to be a
25 little more efficient? What are you going to do?

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2 Clock goes ahead 35 years, you get 200 cases,
3 nobody bats an eye. So it's -- it's supposed to be
4 okay, make due what you can do, and we have
5 substantially less than 100-some officers we had
6 then. So that is a problem I should mention.

7 For the last 15 years I've been in the felony
8 DWI unit, which handles repeat offenders. They've
9 all been on at least once before, some of them in
10 jail for felony DWIs. Ostensibly we're supposed to
11 give them very intensive supervision, watching them a
12 lot. When the unit was started in '91, the policy
13 was no more than 50 cases per officer. I only had 40
14 because I was doing electronic monitoring for them
15 also.

16 Now, last year, after the layoffs, I was up over
17 200. And when you see an order come from the court
18 that says intensive DWI supervision, you realize you
19 don't even know who half these guys are anymore. I
20 used to take pride in the fact that I knew these
21 people when they walked in and I knew -- I remembered
22 what they were doing. Maybe it's old age, but right
23 now, I got to get out and look at the sign-in sheet
24 to figure out who is this guy. And then I have to
25 say, what am I working with him on? What is it? You

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2 don't remember.

3 We'd like to keep them coming in on an intensive
4 basis, I like to keep them no more than every couple
5 of weeks, but when my case load got up to about 200,
6 you find that you'd have to see 70 a day, and that's
7 impossible. You can't, no way. So you start to
8 spread them out, every four weeks, every couple
9 months, and even then you're seeing 30 and 40. It's
10 my report day today, I've seen already about 25,
11 probably there will be probably in the 30s, close to
12 40 by the end of the day. It's hard to even know
13 what you're doing with these people. And when you're
14 supposed to be intensive, that's really tough.

15 We used to have a little overtime to get out and
16 surprise them at home, see if they're drunk, see if
17 they're driving. I used to sit in front of house,
18 I'd get complaints, and they'd say this guy's driving
19 every day at such and such a time. We'd go out
20 there. They give you a little overtime to do it.
21 That's all gone in the last few years.

22 With regard to the electronic monitoring, we
23 started that intensively in 1991. We use the BI
24 equipment. And initially we got a grant from the
25 Stop DWI program to get 40 units. The thought was

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2 that DWI people usually can't hurt you too much if
3 they can't leave the house and drive. Also, too, if
4 they're home at night and on weekends, you know you
5 can find them there, you can surprise them and see if
6 they're drinking. So that took off pretty well. And
7 later on, the Department kicked it up for juveniles
8 and for intensive supervision and whatnot. We had
9 gotten up to as high as 165 units of which we, before
10 the layoffs, we were running 120 to 140 people under
11 electronic monitoring at any one time.

12 Well, when we lost 45 percent of our staff last
13 March, everything sort of fell apart. There was no
14 one down in the juvenile division, because we lost a
15 lot of young people down there who could do the
16 monitoring, so it fell down to a point where we might
17 have any more than 50, 60 people on at any time,
18 which in a way was a godsend because about four years
19 ago when the finances got sort of difficult, that
20 they weren't maintaining the equipment anymore.

21 You find when you use this electronic monitoring
22 equipment, what they do is -- it's like a car
23 dealership. They make a few bucks on the car, but
24 their big, big profit is on maintenance, and you have
25 to have a maintenance contract. The company designs

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2 and makes its own equipment, you can't buy parts or
3 get anything anywhere else.

4 So about four years ago they decided that we
5 can't afford maintenance anymore. So now if any of
6 the equipment goes, it's thrown in a junk pile. It's
7 a loss. We got about -- 160, we probably have about
8 40 units totally disabled, and others I don't even
9 know, I don't have the time, I can't keep track of
10 what's working and not working.

11 Recently we got about 38 new units because the
12 units we were using now are out of date, they weren't
13 going to repair them anymore. We've gotten a few
14 grants that allowed us to buy some more equipment,
15 the newer stuff, and they keep coming up with newer
16 things, the global position satellite stuff, things
17 like that. But we haven't had the money for them
18 yet. My director has told me they're trying to get
19 some money to buy 100 new units plus 50 GPS units to
20 help overly -- crowding in the jails and things like
21 that.

22 The problem is -- I've told them, is that you
23 got to get more officers for this, too, because the
24 problem is that when you start to monitor their
25 movements, it's going to take more time.

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2 A person reports to you, you're responsible for
3 the report. Are you working? Are you in counseling?
4 Are you paying your fines? That stuff. And you
5 can't know what else they're doing unless you're out
6 there. Once you put a transmitter on their ankle,
7 now all of a sudden you're responsible for their
8 movements, and you've got to respond to it.

9 Up until about four years ago, we had a little
10 bit of overtime where we were in seven days a week to
11 check, to make sure of what's going on. I would come
12 in on Sunday, I would look and I would see that so
13 and so has been out past curfew. I'd call them or
14 he'd be calling, his voice sounded like he had been
15 drinking or something not right, I'd run out to his
16 house on a Sunday, see what's going on. Caught a lot
17 of people that way, made them worry.

18 Since 2002, all that dried up, and now we go
19 three and four days without even checking on them, if
20 it's a long weekend, things like a holiday weekend.
21 Once in a great while they'll have a little extra
22 money from Stop DWI or somebody, some -- to do some
23 night calls and weekend calls, but that's pretty much
24 gone. So I think the effectiveness is down
25 considerably from what it used to be.

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2 And when you're responsible for someone with
3 these things, if they get into trouble by being out
4 at night or something, then they can blame you for
5 it, because they're going to say, hey, you should
6 have done something, you knew they were out breaking
7 curfew. Why didn't you do something? Well, when you
8 have 200 cases, it's tough -- you got to make a list
9 of which ones do I violate first? Who do I go after?
10 What's the greatest risk? And so you get really
11 worried.

12 One of the big things we worry about nowadays,
13 that one of the guys that you're not properly
14 supervising will kill somebody, and all of a sudden
15 there's going to be lawsuits and threats. I don't
16 want to lose my job after 35 years because I got too
17 many cases to respond to them. And I don't trust the
18 county to take responsibility for it and say oh, it's
19 our fault, we're not staffing you right. They'll try
20 to blame us.

21 So that's sort of where we are right now. It's
22 not been too good, especially the last six years, but
23 it's been declining since the '80s. Ever since the
24 cutbacks in state funding, the counties have been
25 reluctant to make up the difference.

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2 I used to be very active with the Probation
3 Officer's Association a few years back, and we would
4 talk to the legislators, and they were sympathetic,
5 but they would tell us right out, our constituency
6 wants less taxes, not more probation officers.

7 So I would think that -- as a matter of fact,
8 I'm not going to mention any names, but I've had a
9 few legislators tell me flat out that hey, the courts
10 need you guys, let them pay for it. That was their
11 attitude. So what are you going to do? I'm just at
12 the lower end of the ladder at this kind of thing.
13 We're trying to do the job. I sort of enjoy it at
14 times, but lately my wife tells me retire, get out,
15 it's not worth it. And unless they're going to do
16 something, it's -- that's the attitude you're dealing
17 with. It's strictly one of cut taxes; and somebody
18 else wants it, let them pay to it. That's where
19 we're at right now. I don't know -- any questions
20 you might have at this stage?

21 MR. CLARK: Mike, just -- The Buffalo News did
22 an article the last week in which they'd shown that
23 between 2005 and 2006, roughly the time that these
24 drastic budget cuts happened, the number of felony
25 arrests for DWIs this year are up almost 25 percent

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2 over last year. Do you see any correlation between
3 that drastic rise -- by the way, with the same number
4 of arrests, but, you know, with same number of
5 prosecuted -- but the number of prosecutions are way
6 up. Do you see any correlation between that figure
7 and your inability to monitor as closely as you have
8 in the past?

9 MR. CANAZZI: It's hard for me to say. I
10 haven't had an awful lot of my probationers -- I've
11 had a fair amount of them getting rearrested, yes.
12 Right now I have about 11 pending violations based on
13 new arrests. So yeah, they're there. I'm not sure
14 exactly what causes that, whether it's because we're
15 not supervising them well enough or because
16 there's -- police are just arresting more and you're
17 prosecuting them more? Difficult. But I do have a
18 lot of pending violations, and I have a list of
19 several that I should get at for minor reasons like
20 not reporting enough and that. If there's a new
21 arrest, we violate almost immediately. And yeah,
22 that has gone up in the last year, I've noticed that.
23 And -- and we've had a lot of them on our case load.
24 I suppose maybe if we were out there working a little
25 more, they wouldn't have the opportunity to do that.

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2 But that's for sure, we noticed it.

3 And our number -- I should say that when we
4 started this unit in '91, there were six officers in
5 it, each with about 50 cases. That went down over a
6 period of years to four, and then with the layoffs it
7 was down to three, then back to four, then down to
8 three, now we're back up to four again. And it makes
9 it tough. So what happens now is when the felonies
10 come in, there's not enough of us to take them all
11 because the last summer I looked at it, we had 800
12 and some felony DWIs and about another 1100
13 misdemeanor DWIs, and there's no way we could handle
14 all 800 felonies, so we have to select the felony
15 DWIs that we'll take. But it hardly makes much
16 difference if I supervise about 200 or if the regular
17 case load supervises about 2- or 300. So they're not
18 getting much more supervision than they are now. So
19 it's tough to really take this thing seriously
20 anymore the way things have been going.

21 MR. DUNNE: Mr. Burns?

22 MR. BURNS: Doing -- doing anything different on
23 a report day other than grabbing a sandwich is a real
24 feat, so thank you for coming over on your report
25 day.

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2 You were probably just kidding, but trying to
3 remember names and what you were supposed to do with
4 this guy with a case load of 200 has nothing to do
5 with the age of the officer, I'm sure you know that.

6 MR. CANAZZI: I'm being a little facetious about
7 that. I feel that way sometimes.

8 MR. BURNS: Looking at Jennifer with a little
9 over 100, you know, there's no way Jennifer can
10 remember those officers, and you're 22, 21 years old?

11 MS. BALL: Just about 21.

12 MR. CANAZZI: I tell you, it was a shock when my
13 partner retired in May of last year, she said enough
14 of this nonsense, I'm going. And I picked up 55 of
15 her cases, which put me over 200. And that first
16 day, 75 came in. By noon, I had 40, and I went out
17 to the 20 still out there and I said, give me your
18 names, go home. I've had it. Come back next week.
19 I said, I don't even know who I've seen so far today.
20 So that's --

21 MR. BURNS: I certainly agree more officers are
22 the answer. I don't mean to imply that by my
23 question. But you know that some counties are using
24 kiosk systems, systems where instead of an officer,
25 as long as there's a careful way of assigning people

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2 to that kiosk, automation through some great
3 technology that has been developed will act as that
4 reporting agent with some -- with some efforts to
5 make sure that we don't miss people who need to see
6 an officer. Is that something that you think should
7 be looked at when a county like Erie is in crisis
8 because of 200-plus cases? And is it something that
9 you're aware of if Erie's looked at it?

10 MR. CANAZZI: Well yeah, it could help. We
11 initially had -- a few years ago we instituted a -- a
12 report-by-mail system for the people who didn't seem
13 to need the supervision. They also got a kiosk
14 that -- well, you got to buy a lot of them. Because
15 we have one in the building where we are now, and the
16 problem with it is that building shuts down at five,
17 and we got people 35 miles away in other areas of the
18 county that can't get to it. Kiosk system, to me,
19 isn't as good as the call-in system. But -- I'll get
20 to why we don't have the call-in system. But for
21 kiosk system to work, you have to have several of
22 them in different areas of the county to let people
23 get to them a little easier. Because when you have a
24 building that has to shut down because there's no
25 security after five, people just can't get down here

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2 and report to it.

3 I like the idea of the call-in. BI has a very
4 elaborate call-in system where they immediately trace
5 where your call's coming from, they do a voice
6 verification, and they take information, and they'll
7 record it for you on computer.

8 The problem with that is -- comes with finances.
9 Apparently in the last couple of years the county has
10 been unwilling to get involved in contracts. If they
11 got the money they'll buy something like a kiosk,
12 flat out. But when it comes to something like that
13 kind of report by phone or whatever, you have to sign
14 a contract with the company over a period of years,
15 and they have not wanted to do that. So this has
16 created a problem with what you can do. That kiosk
17 has broken down many times, we have problems with it,
18 I don't believe there's any maintenance on it.

19 And this is a problem we have, like I say, with
20 the electronic monitoring. They get grants, they'll
21 buy units by the bushel. But they're reluctant to
22 pay for the maintenance on them because with 165
23 units it was about 32,000 a year for maintenance.
24 That's how they make their money, I would imagine.
25 Once you don't have that, you're out of luck, you

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2 just don't get anything done.

3 But yeah, I think that's a good idea. I like
4 the phone-in one they have. They have some really
5 good programs. BI is excellent for their stuff.
6 Once you get into any kind of talk about a contract
7 over a period of years, they don't want to hear it.
8 It's all grant money or nothing.

9 So we got one kiosk. If we had half a dozen of
10 them it might be better, we can place them all around
11 where people can go to them day or night. The
12 report-by-mail thing was okay until we got over a
13 thousand people reporting by mail and we didn't have
14 the people to actually read the mail. Really, I mean
15 we had one -- one probation assistant doing that and
16 he and then she got to a point where it was, like,
17 what am I going to do with this stuff, it's piling up
18 to the ceiling they're coming in so fast. So volume
19 affects even that. But it's a very good idea if we
20 can get the money to do it. Contracts over any
21 period of time is something the last few years they
22 don't want to hear it, whether it's maintenance or
23 anything.

24 MR. DUNNE: Mr. Canazzi, in the spirit of
25 fairness, would you accept a comment from

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2 Commissioner Horn?

3 MR. HORN: I agree with him. I think the
4 phone-in system, a well designed one, is excellent as
5 well. In New York City we use kiosks, but he's
6 absolutely right, we've had problems with congestion,
7 large number of offenders waiting to use them in
8 lines. But in each of our five offices, four large
9 boroughs in New York City, we each have five kiosks
10 in each office and four in Staten Island. So we've
11 got, what, 24 units out there and we have a
12 maintenance contract.

13 MR. CANAZZI: We have one in Erie County and
14 it's not maintained.

15 MR. HORN: But it enables us to supervise 75
16 percent of our case load, that's over 25,000 people
17 reporting to kiosks. And for low-risk offenders, for
18 offenders who have been on probation satisfactorily
19 for two or three years, for the balance of their term
20 on probation it works fine. And in fact, no
21 disrespect to the officers, but they keep more
22 accurate records. The records are very accurate.

23 If I may ask one question, though?

24 MR. DUNNE: Please.

25 MR. HORN: If I may, and I am privileged to call

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2 you a colleague. Your presentation, your demeanor,
3 your attitude is an exemplar of the probation parole
4 officers I've known throughout my career. I want to
5 thank you.

6 Let me ask you if I can, let me take you back to
7 the thrilling years of yesteryear -- thrilling days
8 of yesteryear, '71, early on when your case loads
9 were manageable. Let me ask you this: Is your
10 authority relative to a probationer, to a person on
11 probation, your authority, your ability to make that
12 person do something, or to revoke their probation, or
13 to enforce a rule, any greater than the authority
14 which the judge who places that individual on
15 probation grants you?

16 MR. CANAZZI: Well, it depends on how you handle
17 the people; but definitely if you have judges that --
18 that will back you solidly on things, you feel a
19 little more comfortable.

20 MR. HORN: Your authority flows from --

21 MR. CANAZZI: Oh yes, certainly. And a lot of
22 times the probationers, if they've been around a
23 little, know what judges they don't want to mess
24 around with. So if you say, hey, this is what you
25 got to do, and they know it's a judge that isn't

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2 going to fool with them, they pay a lot more
3 attention. I don't want to go back in front of him,
4 I'll do what you say, yeah.

5 MR. HORN: Does probation work better when the
6 judge who placed the person on probation takes a
7 continuing and active interest in the enforcement of
8 those conditions and -- and says I impose those
9 conditions and I intend for them to be followed?

10 MR. CANAZZI: What do you mean continue?

11 MR. HORN: Ongoing interest, that if -- a judge
12 to whom you can go and say Johnny's not complying
13 with the curfew you imposed.

14 MR. CANAZZI: That certainly would help, yes.
15 But a lot of times, too, it's the officer. You learn
16 how to deal with people over the years, they learn
17 not to give you too much trouble. I just haven't had
18 too much trouble with that. I have a way of dealing
19 with them, I guess, at times where I say hey look, I
20 don't care, I don't care whether you go to jail or
21 not. But I got an order here that says you're going
22 to do this, that. If you don't do it --

23 MR. HORN: My point is they know -- let me give
24 you an example. If a youngster is drinking beer
25 underage or smoking marijuana and knows that a

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2 particular judge isn't going to revoke probation,
3 then your authority to enforce that condition is
4 diminished, is it not?

5 MR. CANAZZI: Right. When I had a regular case
6 load for many years where you had a mixture of cases
7 from justice courts and whatnot, a lot of them --
8 like, say, town justice that isn't very tough on
9 people, they would all know and they would just laugh
10 at you. But I have nothing but felonies now, DWIs --

11 MR. HORN: I understand.

12 MR. CANAZZI: -- and most of the judges there
13 are not to be messed around with, and they know that.
14 But yeah, it happens a lot. Like Bill Pitt before
15 me, he's got cases there with some of the judges that
16 just keep putting them on, and you don't even bother
17 violating because you know nothing will happen. It's
18 a waste of your time.

19 MR. HORN: My point is, the only authority you
20 have is really the authority that the judge grants
21 you to exercise on his or her behalf.

22 MR. CANAZZI: Right. I think the personality of
23 the officer has a little bit to do with it. You can
24 sometimes con them into thinking you have power you
25 don't have.

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2 MR. HORN: Right. You can bluff.

3 MR. DUNNE: Any other questions of Mr. Canazzi?
4 Thank you very much, sir.

5 MR. CANAZZI: Okay. Thank you.

6 MR. DUNNE: The schedule shows that Brian James
7 was to appear, but on his behalf Scott Smith, I
8 believe a probation officer from Erie County, is our
9 next speaker.

10 MR. SMITH: I do have handouts, but only one
11 copy.

12 MR. DUNNE: I suppose you can give it to our
13 stenographer.

14 MR. SMITH: Good afternoon. My name is Scott
15 Smith. I'm a probation officer here in Erie County.
16 I've been a probation officer here for about twelve
17 years. I am also the president of the CSEA
18 probation section here in Erie County representing
19 our department.

20 For the last several hours I have been going
21 over the budget for the upcoming year which was just
22 released, I believe, yesterday. It's disturbing.
23 One of the things in looking at past budgets is that
24 even predating the current administration here in
25 Erie County there was always an effort to show the

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2 united front in that the directors of departments
3 and what they requested in the budget was always the
4 same number as what the County Executive requested
5 to the legislature. There was never anything that
6 we could see that a director said I need ten staff
7 and they were overruled and there was less staff
8 requested or sent to the legislature. This is the
9 exception. Mr. Alexander requested, I believe,
10 fifteen probation officer positions in the budget.
11 The item that was requested by the County Executive
12 was five.

13 One of the things in the information I passed
14 along is a table I had been keeping of the number of
15 funded probation officer positions. The current
16 number that are going to be funded, at least at this
17 point in the '07 budget, is less than what we funded
18 in 1998, and the table will show the variations.

19 I believe a question was posed to Mr. Alexander
20 earlier with regard to increased funding by the
21 state and what would prevent the localities from
22 diminishing their support for probation. I think it
23 would be diminished. I don't have any doubt that
24 the local share would be reduced if the state
25 increased their reimbursement rate. I have seen

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2 nothing in this county within recent years to show
3 that they have any commitment to probation
4 supervision.

5 One of the things that I point to is that in
6 2002 there was a statewide retirement incentive. We
7 retired twenty-one probation officers all at one
8 time, talking senior people. We did not replace six
9 of those positions ever. They were deleted when we
10 had the budget crisis that we had in '05. We had a
11 commitment in writing from the current County
12 Executive that all those positions would be
13 refilled. We had that commitment within six months
14 of the layoffs. It never happened. They were
15 deleted from the budget never to be seen again. So
16 I don't -- I truly don't believe that you are going
17 to see the commitment here in the locality.

18 I have thought hard about why the state
19 reimburses probation so poorly. My theory is that
20 it's supposed to be a no-brainer, probation is
21 cheaper than incarceration. The county is picking
22 up a hundred percent of incarceration costs. I
23 guess if I was a governor I would say, you know,
24 look, counties, you have got an option here that is
25 much cheaper, it's paid partially by the state but

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2 it certainly is cheaper than what you're going to
3 pay to incarcerate somebody, you should fully fund
4 it. It's a no-brainer to me. Apparently it's not
5 picked up by this county and several other counties
6 across the state.

7 I don't know that I have anything else to say.
8 I think you have probably heard it. You have heard
9 numbers. I work closely with Greg Noyes who was
10 here earlier. I have left some of the tables that I
11 keep with the budget, but we are under the gun here.
12 Do you have any questions for me?

13 MR. HORN: Yeah. We've heard -- thank you very
14 much. We've heard -- earlier people have said that
15 it would be important for there to be mandated
16 standards, case load standards, case load size.

17 MR. SMITH: Right.

18 MR. HORN: Presumably those would carry with
19 them minimum contact standards, so if the case load
20 is such and such, there would be an expectation that
21 there would be so many contacts with the
22 probationer, that there would be so many field
23 visits or whatever.

24 MR. SMITH: Right.

25 MR. HORN: It has been my experience in dealing

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2 with this that when you try to impose those
3 standards on probation officers that what is a
4 reasonable mix of case load size and contact
5 standards is the subject of a great deal of
6 argumentation. Union officials typically don't like
7 minimum case load contact standards, and I'm just
8 wondering whether you feel now in retrospect in
9 light of the cuts whether minimum standards would be
10 of benefit and what the mix of case load and contact
11 standards without, you know, nailing it down or
12 holding you to anything, what your view of that
13 would be? What's a reasonable expectation for a
14 probation officer with a case load size? We've
15 heard suggestions that sixty for an average general
16 supervision case load might be appropriate. How
17 many contacts would it be reasonable to expect a
18 probation officer to make with a case load of sixty?
19 How many office visits, home visits, collateral
20 contacts and so on?

21 MR. SMITH: On a standard type of case load, a
22 nonspecialty, you're not dealing with sex offenders
23 or multiple felony DWIs. You know, certainly
24 maintaining a weekly report date, either downtown or
25 in the community, would still be important, still

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leaving four days to get out into the community. It certainly wouldn't be too much to expect at least a call every month or two.

MR. HORN: A call?

MR. SMITH: A home call.

MR. HORN: A home visit once a month?

MR. SMITH: Correct.

MR. HORN: And what, a monthly office visit?

MR. SMITH: At minimum.

MR. HORN: Okay.

MR. SMITH: Even where we are right now, that's the minimum standards we maintain is a -- an office call.

MR. HORN: You can't possibly be meeting them with the case loads that you have.

MR. SMITH: Yes. I mean, with the exception of kiosk or level-four supervision cases, and I probably got one of the largest case loads in the county.

MR. HORN: So I'm confused. With a case load of two hundred, you can make a home visit a month?

MR. SMITH: I'm not making home calls, no. I'm the office visits.

MR. HORN: Okay. So you're not making the home

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2 visits once a month.

3 MR. MACCARONE: What's the current case load?

4 MR. SMITH: My current case load size, roughly
5 one hundred and fifty.

6 MR. MACCARONE: And what's the breakdown on the
7 level of supervision on those cases?

8 MR. SMITH: Between intensive and MAC?

9 MR. MACCARONE: You have an ISP case load?

10 MR. SMITH: I don't have an ISP.

11 MR. MACCARONE: Level one.

12 MR. SMITH: I probably see --

13 MR. MACCARONE: Level one, level two, level
14 three, what's the breakdown?

15 MR. SMITH: I would say probably twenty-five
16 percent between level one and level two, and I
17 would -- I probably have about another twenty-five
18 percent coming in monthly, so I quite honestly don't
19 look to see what our level ones and level fours that
20 a lot of it depends on how they're doing.

21 MR. MACCARONE: You have level fours as well?

22 MR. SMITH: In the computer there are level
23 fours, and I see them monthly, but they aren't any
24 mail-in supervision or anything like that. I see
25 them on a monthly basis.

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2 MR. DUNNE: Any other questions? Again, thank
3 you very much.

4 JUDGE KLOCH: Thank you.

5 MR. DUNNE: Is there anybody else who wants to
6 participate, speak at this public hearing.

7 Let the record show, if I might, please,
8 Undersheriff Richard Donovan, in responding to one of
9 our questions, gives the following information. He
10 was asked who -- prisoners who have pled guilty or
11 have been convicted and are awaiting sentence being
12 held in the county facility, the number is 45.

13 Question of how many federal prisoners are being
14 held, 46 on federal charges, broken down into 41 what
15 he describes as marshal holds, and 5 immigration
16 holds.

17 Once again, thank you, the hospitality of Erie
18 County, our good friend Judge Kloch for making these
19 arrangements, and this session is concluded. Thank
20 you very much.

21 JUDGE KLOCH: Before we leave.

22 MR. DUNNE: Yes.

23 JUDGE KLOCH: What's the schedule?

24 MR. DUNNE: The next -- the next meeting of the
25 Probation Task Force will be on November 13th in

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Albany, I believe it's a Monday.

JUDGE KLOCH: Is there something set for the
9th?

MR. DUNNE: Oh, pardon me, pardon me.

(Discussion off the record.)

(Public hearing concluded.)

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