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TASK FORCE ON THE FUTURE OF PROBATION

PUBLIC HEARING before the Task Force

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

TASK FORCE Members Present:

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

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25

1 Chairman

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

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

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

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

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

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

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

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

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

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

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

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

15 MR. IUSI: Yes.

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

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

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

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

1 Iusi

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

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

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

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

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

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

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

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

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

1 Iusi

2 court system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Number 5. Upward modification of

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

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

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

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

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

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

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

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

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

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

24 THE CHAIRMAN: Thank you, Mr. Iusi.
25 Before we get to your grilling I'd like

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

9 COM. HORN: Both actually.

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

16 Supreme Court Justice Joseph
17 Corriero.

18 Mr. Soares would like to pose
19 questions.

20 BY MR. SOARES:

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

1 Iusi Q&A

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

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

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

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

23 BY HON. KLOCH:

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

1 Iusi Q&A

2 probation officer in New York?

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

5 Q. What's the average?

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

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

11 A. Yes, sir.

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

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

25 Q. Do you think there should be a statutory

1 Iusi Q&A

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

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

10 COM. KLOCH: Thank you, sir.

11 BY COMMISSIONER HORN:

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

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

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

24 HON. KLOCH: 40 percent.

25 A. 40 percent.

1 Iusi Q&A

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

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

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

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

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

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

25 Q. You have a great District Attorney.

1 Iusi Q&A

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

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

4 CHAIRMAN: Please, no demonstrations.

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

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

15 THE CHAIRMAN: Judge Brunetti.

16 BY HON BRUNETTI:

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

1 Iusi Q&A

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

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

7 Q. Yes. Exactly where it was from.

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

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

1 Iusi Q&A

2 in calendaring date.

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

9 THE CHAIRMAN: Yes, Mr. Maccarone.

10 BY MR. MACCARONE:

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

20 A. That's correct.

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

1 Iusi Q&A

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

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

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

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

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

24 MR. MACCARONE: Thank you.

25 THE CHAIRMAN: Robert Burns.

1 Iusi Q&A

2 BY MR. BURNS:

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

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

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

1 Iusi Q&A

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

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

9 THE CHAIRMAN: Mr. Rinaldi.

10 BY MR. RINALDI:

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

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

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

1 Iusi Q&A

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

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

8 THE CHAIRMAN: Ms. Ginsburg?

9 BY HON. CORRIERO:

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

13 A. Yes, sir.

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

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

1 Iusi Q&A

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

5 BY MS. GINSBURG:

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

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

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

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

1 Iusi Q&A

2 A. Not to properly do it.

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

5 A. In terms of dollars?

6 Q. In terms of everything.

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

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

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

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

25 However I think that instead of me working with

1 Iusi Q&A

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

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

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

1 Iusi Q&A

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

9 THE CHAIRMAN: Commissioner Horn.

10 BY COM. HORN:

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

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

20 Q. You would say it has adequately?

21 A. Has not.

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

1 Iusi Q&A

2 A. Correct.

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

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

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

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

15 COM. HORN: Thank you.

16 BY MR. MACCARONE:

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

1 Iusi Q&A

2 probation directors uniformly?

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

6 MR. MACCARONE: Thank you.

7 BY THE CHAIRMAN:

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

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

25 Q. Would it impose any kind of additional

1 Iusi Q&A

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

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

8 Q. Yes, sir.

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

10 THE CHAIRMAN: Mr. Soares.

11 BY MR. SOARES:

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

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

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

1 Iusi Q&A

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

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

15 THE CHAIRMAN: Bob Burns.

16 BY MR. BURNS:

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

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

1 Iusi Q&A

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

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

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

1 Iusi Q&A
2 the needs are and also satisfying what's needed in
3 their community.

4 It would not only be just increasing
5 probation officers but would be also maybe
6 contracting for services, mental health services,
7 that would make the job more complete and
8 certainly more easy for our probation officers.
9 So I think they would take that holistic approach
10 and see what they have in the county and look at
11 it from a few angles.

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

19 MR. IUSI: Thank you for your time.

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

1 Winter

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

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

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

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

25 Family Court Intake - provides pre-

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

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

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

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

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

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

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

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

1 Winter
2 probation and address neighborhood
3 concerns.

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

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

1 Winter

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

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

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

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

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

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

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

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

1 Winter

2 Last year we collected \$411,130 in
3 restitutions to victims. We have
4 participated in these programs because
5 we are committed to public safety and it
6 is the right thing to do. Currently we
7 are stretched very very thin. We cannot
8 do any more. For all of this our state
9 aid has dwindled to less than 20 percent.

10 Talk a little bit to you about
11 Juvenile Justice. Research shows that
12 there is no benefit in sending Juvenile
13 Delinquents and Persons In Need of
14 Supervision to out-of-home placements.
15 In fact, these placements often have a
16 negative effect on kids, making their
17 behavior worse when they return to the
18 community. Our city police department
19 calls these placement crime schools.
20 John Johnson, the Director of the Office
21 of Children and Family Services calls
22 his department's institutions, his 80
23 and 80 Plan: \$80,000 per year and 80
24 percent failure rate.

25 Since 1995 we've significantly

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

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

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

25 Juvenile probation officers perform

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

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

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

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

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

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

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

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

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

16 MARY WINTER: Absolutely.

17 THE CHAIRMAN: Judge Corriero?

18 HON CORRIERO: No.

19 THE CHAIRMAN: Nancy?

20 MS. GINSBURG: I have a few questions.

21 BY MS. GINSBURG:

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

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

1 Winter Q&A

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

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

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

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

21 A. No.

22 BY HON. CORRIERO:

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

1 Winter Q&A

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

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

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

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

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

1 Winter Q&A

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

10 BY MS. GINSBURG:

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

14 A. I like it.

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

19 A. Right.

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

22 A. No.

23 Q. -- known for that.

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

1 Winter Q&A

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

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

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

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

21 THE CHAIRMAN: Joe.

22 BY MR. RINALDI:

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

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

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

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

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

1 Winter Q&A

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

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

14 THE CHAIRMAN: Bob.

15 BY MR. BURNS:

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

1 Winter Q&A

2 16 to 18 year olds?

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

9 THE CHAIRMAN: Bob Maccarone.

10 BY MR. MACCARONE:

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

16 A. They're part of our budget.

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

18 A. Yes.

19 Q. In fact you benefit in some capacity?

20 A. Yes.

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

1 Winter Q&A

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

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

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

1 Winter Q&A

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

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

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

22 THE CHAIRMAN: Judge Brunetti.

23 HON BRUNETTI: No.

24 THE CHAIRMAN: Mr. Soares.

25 BY MR. SOARES:

1 Winter Q&A

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

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

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

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

1 Winter Q&A

2 things, addresses and you know, other information.

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

4 required paperwork is overwhelming. But simply

5 that juvenile justice side with the Office of

6 Children and Family Services is.

7 Q. Still boils down to personnel and

8 resources?

9 A. Absolutely.

10 THE CHAIRMAN: Commissioner Horn.

11 COM. HORN:

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

13 colleague. I usually call Mary to find out how

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

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

16 is the starting salary here?

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

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

19 supervising probation officers, and that's because

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

21 some overtime. We require everyone to work at

22 least 14 hours a month outside the normal working

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

24 Friday and Saturday nights. And when they get to

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

1 Winter Q&A

2 get time and-a-half.

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

5 A. Half.

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

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

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

17 A. Right.

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

20 BY HON KLOCH:

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

1 Fitzpatrick

2 the court?

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

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

7 A. Four weeks.

8 HON. KLOCH: Thank you.

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

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

25 And Robert, so you don't interrupt

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

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

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

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

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

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

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

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

1 Fitzpatrick

2 office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Fitzpatrick

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

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

1 Fitzpatrick
2 these men and women.
3 And frankly I think it's a good
4 thing that we do, because it's
5 reflective of the change in attitude
6 over the last several decades that
7 incarceration really ought to be
8 reserved for the incorrigible. And
9 society - our society ought to recognize
10 the treatment and preventative measures
11 for many non-violent offenders, makes
12 much more sense.
13 Unfortunately we have a bad habit in
14 state government, we respond to crisis.
15 And it would seem that it's almost
16 mandatory today if you're going to get a
17 new law passed it's got to be named
18 after a dead person. That's not the way
19 to do business. The primary focus of
20 our probation department in Onondaga
21 County is to see that no new victims are
22 created. And I hope this Task Force can
23 in a united way collectively communicate
24 to a new administration in Albany that
25 probation is a system that produces

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

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

17 BY HON. KLOCH:

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

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

1 Fitzpatrick Q&A

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

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

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

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

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

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

25 THE CHAIRMAN: May I ask the witness

1 Fitzpatrick Q&A

2 to continue.

3 HON. KLOCH: Go ahead.

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

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

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

1 Fitzpatrick Q&A

2 HON BRUNETTI: I never used one.

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

5 HON. KLOCH: Thank you.

6 MR. HORN: I apologize.

7 THE CHAIRMAN: Commissioner.

8 BY COM. HORN:

9 Q. Let me pursue --

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

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

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

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

25 Does your office routinely or occasionally

1 Fitzpatrick Q&A

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

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

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

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

19 Q. You like the statute as it is?

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

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

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

1 Fitzpatrick Q&A

2 bad guy but my case still stands, okay.

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

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

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

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

1 Fitzpatrick Q&A

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

6 MR. MARKS: Sorry I'm late.

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

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

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

18 MR. SOARES: Talking about you, sir.

19 MR. FITZPATRICK: Thank you, brother.

20 THE CHAIRMAN: Judge?

21 HON BRUNETTI: No.

22 MR. MACCARONE: I'm fine.

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

25 BY MR. BURNS:

1 Fitzpatrick Q&A

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

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

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

1 Fitzpatrick Q&A

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

7 THE CHAIRMAN: Yes, Joe.

8 BY MR. RINALDI:

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

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

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

25 Q. I have one concern. You had mentioned

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

5 A. Right.

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

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

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

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

1 Fitzpatrick Q&A

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

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

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

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

1 Fitzpatrick Q&A

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

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

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

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

24 MR. RINALDI: Thank you.

25 THE CHAIRMAN: Ms. Ginsburg?

1 Fitzpatrick Q&A

2 MS. GINSBURG: No.

3 THE CHAIRMAN: Judge Corriero.

4 BY HON. CORRIERO:

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

14 A. Absolutely.

15 Q. It works both ways?

16 A. Absolutely.

17 Q. Works to the benefit of the defendant?

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

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

1 Hogan

2 documents?

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

6 THE CHAIRMAN: Thank you very much.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Hogan Q&A

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

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

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

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

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

17 BY MR. MARKS:

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

1 Hogan Q&A

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

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

12 MR. SOARES: Yes.

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

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

1 Hogan Q&A

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

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

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

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

1 Hogan Q&A

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

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

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

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

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

1 Hogan Q&A

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

3 THE CHAIRMAN: Judge Corriero.

4 BY HON CORRIERO:

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

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

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

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

1 Hogan Q&A

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

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

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

1 Hogan Q&A

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

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

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

21 BY HON. KLOCH:

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

1 Hogan Q&A

2 officers.

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

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

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

1 Hogan Q&A

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

5 Q. Well, can DOCs do that?

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

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

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

24 A. Yes.

25 BY MR. SOARES:

1 Hogan Q&A

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

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

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

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

1 Hogan Q&A

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

5 THE CHAIRMAN: Commissioner Horn.

6 BY COM. HORN:

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

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

22 Q. But the PSI is for the judge.

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

1 Hogan Q&A

2 that PSI report and we rely on it.

3 Q. So all I'm asking is, in your opinion
4 should the statute that permits waiver of the PSI,
5 where a sentence of less than ninety days
6 incarceration is being imposed, where there's been
7 a plea to that sentence, should that sentence,
8 should that waiver be allowed or should the PSI be
9 required before you can accept, before the judge
10 can impose a sentence, including a sentence to
11 place the person on probation? Or is your
12 objection to it based on the fact it might slow
13 down your ability to take plea bargains?

14 A. If the sentence is less than ninety days
15 we have all agreed we have the paperwork in the
16 file. I think you should be able to waive that
17 low level PSI. The judge's comment was in the
18 inverse.

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

21 A. Right. 15 to 20 years I think you have
22 a different obligation because there is a
23 procedural due process right now.

24 Q. Today this individual is coming back
25 into your community, you're agreeing to this

1 Hogan Q&A

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

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

12 Q. Do you sign off on every plea?

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

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

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

21 Q. You get my point?

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

1 Hogan Q&A

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

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

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

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

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

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

1 Hogan Q&A

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

4 A. I'm not waiving that felony.

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

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

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

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

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

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

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

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

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

1 Perretta

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

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

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

1 Perretta

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Perretta

2 than 30 cases.

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

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

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

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

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

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

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

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

1 Perretta

2 them.

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

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

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

1 Perretta Q&A

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

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

10 BY THE CHAIRMAN:

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

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

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

1 Perretta Q&A

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

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

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

13 THE CHAIRMAN: All right, thank you.

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

15 BY HON KLOCH:

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

18 A. 34,000.

19 Q. And average?

20 A. Maybe 42,000.

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

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

25 Q. And in a perfect world do you feel

1 Perretta Q&A

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

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

4 where your judge needs a PSI sooner we can

5 accommodate it.

6 Q. Now, have you heard this fascinating

7 discussion with the two District Attorney's before

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

9 you have a high level crime, criminal being

10 sentenced to a lengthy period of time pursuant to

11 either a Ferrar plea or sentence commitment made

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

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

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

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

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

17 significant savings of time would that be for

18 your department.

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

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

21 investigation, ever. Because I asked the justices,

22 the judges and the district attorney not to allow

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

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

25 on low level, because there is always something

1 Perretta Q&A

2 somebody doesn't know.

3 Q. I know you said --

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

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

9 A. Everybody. Everybody.

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

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

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

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

22 HON. KLOCH: Thank you.

23 BY COM. HORN:

24 Q. What is your average caseload size?

25 A. 100. I appeared before my board of

1 Perretta Q&A

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

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

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

8 Q. And how many staff do you have?

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

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

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

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

1 Perretta Q&A

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

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

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

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

1 Perretta Q&A

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

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

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

11 THE CHAIRMAN: Mr. Soares?

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

14 THE CHAIRMAN: Judge.

15 BY HON CORRIERO:

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

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

1 Perretta Q&A

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

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

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

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

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

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

1 Perretta Q&A

2 ing how do deal with violations of probation?

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

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

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

6 What I may tolerate some other county may not

7 tolerate. I know what the tolerance of my

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

9 to get to where everybody has to do everything a

10 certain way and that it will work.

11 THE CHAIRMAN: Ms. Ginsburg.

12 MS. GINSBURG: No.

13 BY MR. RINALDI:

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

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

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

17 mentioned you like to see a Declaration of

18 Delinquency done in 24 hours and VOPs done within

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

20 judiciary it would be faster or easier to do that

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

22 Those are two of yours proposals.

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

24 can do now. Those are things that actually

25 tomorrow Judge Kaye could issue a directive

1 Perretta Q&A

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

6 THE CHAIRMAN: Bob.

7 BY MR. BURNS:

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

1 Perretta Q&A

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

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

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

17 HON. BRUNETTI: County?

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

1 Perretta Q&A

2 to be one person.

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

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

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

20 MS. GINSBURG: I do have a question.

21 THE CHAIRMAN: Ms. Ginsburg.

22 BY MS. GINSBURG:

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

1 Perretta Q&A

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

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

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

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

1 Perretta Q&A

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

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

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

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

1 Perretta Q&A

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

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

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

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

1 Perretta Q&A

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

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

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

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

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

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

1 Perretta Q&A

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

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

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

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

22 THE CHAIRMAN: Judge?

23 HON BRUNETTI: No.

24 BY MR. SOARES:

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

1 Perretta Q&A

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

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

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

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

1 Perretta Q&A

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

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

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

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

1 Perretta Q&A

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

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

8 MR. SOARES: Thank you.

9 THE CHAIRMAN: Any other questions?

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

16 (Recessed for lunch then Hearing continued).

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

1 Rosenthal

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

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

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

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

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

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

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

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

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

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

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

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

1 Rosenthal

2 this defendant's reintegration?

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

4 One, it is done by a thorough and

5 complete understanding of the scholarly

6 work that is out there. But it is also

7 done by embracing all of the research.

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

9 based in our work. And there have been

10 calls in some corners where evidence-

11 based sentencing is what works in our

12 sentencing.

13 For the most part the judiciary has

14 been called upon to sentence with the

15 notion of just deserts in mind or

16 sending a message in mind or making the

17 punishment fit the crime. And I suppose

18 and certainly talked to judges about how

19 do you go about this decision? The most

20 difficult decision in the case, with

21 those concepts in mind, there is no real

22 outcome based analysis. They just send

23 the message that the punishment, and I'm

24 not even quite sure how you would do

25 this, did the punishment fit the crime?

1 Rosenthal

2 A very difficult analysis.

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

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

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

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

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

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

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

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

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

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

11 Is this resource intensive?

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

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

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

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

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

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

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

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

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

7 THE CHAIRMAN: Thank you.

8 Questions? Robert.

9 BY MR. MACCARONE:

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

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

1 Rosenthal Q&A

2 alcohol. Many of them use our own instruments.

3 I think your agency does a very thorough job of

4 how you assess individuals certainly, and the

5 resources you bring to bear in preparing a

6 special advocacy based individual case plan.

7 But I would look toward the community, the

8 ADI and the community, corrections community in

9 endorsing the risk and needs. So we become more

10 exacting in determining what those criminogenic

11 needs are and developing effective based plans to

12 address those opportunities.

13 Is that something your agency would accept

14 and endorse? Do you think that is something that

15 most community correction agencies are willing to

16 do as they move forward in becoming more

17 effective?

18 A. I think that implicit in my comments are

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

20 sentencing, to figure out how to do our work

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

22 the data to see the results of certain sentences.

23 Certainly for some crimes, particularly non-violent

24 crimes, non-incarcerative sentences as compared to

25 incarcerative in the Oregon experiment have proved

1 Rosenthal Q&A

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

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

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

1 Rosenthal Q&A

2 about the outcomes in the broader sense.

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

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

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

1 Rosenthal Q&A

2 Thank you.

3 THE CHAIRMAN: Questions for Mr.

4 Rosenthal? Mr. Horn.

5 BY COM. HORN:

6 Q. Two questions. One, do you believe the
7 judges are adequately trained to perform their
8 sentencing function? Or to function in this world
9 you describe, new world, it would require more
10 training, more understanding to sentence
11 particularly this model?

12 A. I won't hedge my bet on this one.
13 Judges are undertrained in the area of sentencing,
14 not provided information --

15 HON. BRUNETTI: I don't think we are
16 trained at all, are we?

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

18 Q. My point is --

19 A. Absolutely implicit in your question is
20 that we're going to have to go about our business
21 in a different way and provide information and
22 training to judges so that we move from it just
23 being an art form to being more of a science.

24 Q. And my second question is, given the
25 vast majority of sentences in this state are the

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

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

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

1 Rosenthal Q&A

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

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

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

25 And I think that we all benefit when

1 Rosenthal Q&A

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

5 THE CHAIRMAN: Mr. Soares.

6 BY MR. SOARES:

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

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

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

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

1 Rosenthal Q&A

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

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

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

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

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

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

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

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

25 THE CHAIRMAN: Yes, Bob Burns.

1 Rosenthal Q&A

2 BY MR. BURNS:

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

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

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

23 THE CHAIRMAN: Judge Corriero.

24 BY HON. CORRIERO:

25 Q. It seems to me your analysis of the

1 Rosenthal Q&A

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

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

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

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

1 Rosenthal Q&A

2 process to the extent that it's necessary.

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

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

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

22 MR. ROSENTHAL: I have not.

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

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

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

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

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

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

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

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

1 Frank Justice

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Frank Justice

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Over the years requirements placed

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

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

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

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

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

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

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

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

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

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

19 BY HON. KLOCH:

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

22 A. Excuse me, sir?

23 Q. Starting salary for your officers?

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

1 Frank Justice Q&A

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

5 Q. What's the average salary?

6 A. 35,000.

7 Q. And the caseloads?

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

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

25 So when I give you the case load average of

1 Frank Justice Q&A

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

5 BY COM. HORN:

6 Q. No dead cases?

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

8 HON. KLOCH: Thank you.

9 THE CHAIRMAN: Any other questions?

10 BY MR. HORN:

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

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

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

1 Frank Justice Q&A

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

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

5 A. The other two --

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

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

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

18 BY HON. KLOCH:

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

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

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

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

14 MR. SOARES: Making no admissions
15 here.

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

18 THE CHAIRMAN: There are two New
19 Yorks.

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

24 BY THE CHAIRMAN:

25 Q. Are you telling us you have problems

1 Frank Justice Q&A

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

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

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

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

22 May I finish answering your question?

23 BY HON KLOCH:

24 Q. Please.

25 A. Prior to the layoffs, when you lose

1 Frank Justice Q&A

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

3 We were meeting a five week time frame by and

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

5 investigations to six weeks, justice courts

6 investigations to eight weeks. The judges were

7 fine with that.

8 Now we were able to bring some staff

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

10 court, with that asterisk in regard to the

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

12 we have no control over that. Other counties are

13 really good at responding also.

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

15 those done in four weeks, people incarcerated.

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

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

18 can proceed to sentencing, they can get out and

19 we can start our process with them.

20 HON. KLOCH: Thank you.

21 THE CHAIRMAN: Any other questions?

22 Okay, thank you again, Mr. Justice.

23 Our next witness is Anthony Annucci,

24 Counsel to the New York Department of

25 Correctional Services. Mr. Annucci,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 We may see someone who has a

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

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

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

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

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

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

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

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

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

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

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

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

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

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2 relevant.

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

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

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

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

11 So to close I think it's crucial
12 that everybody understands how important
13 the pre-sentence report is to the work
14 we do. If for whatever reason the pre-
15 sentence report were to be eliminated
16 from the documents that come with an
17 inmate it would in effect be like asking
18 a driver to drive blindfolded. He could
19 not have insight into the background of
20 the individual to determine what his
21 security and classification needs are.
22 Or to understand what his program needs
23 are.

24 And our core mission is to take
25 every individual, provide a place of

1 Annucci Q&A
2 confinement and programs of treatment
3 that are designed to allow that
4 individual to leave prison as a law
5 abiding citizen. And the pre-sentence
6 report is a critical document to help us
7 complete that. I'll be happy to answer
8 any questions.

9 BY THE CHAIRMAN:

10 Q. Thank you, Mr. Annucci. I was rather
11 disappointed after a similar formal invitation to
12 the chairman of the parole board Mr. Dennison, and
13 a series of telephone calls to him, resulted in no
14 appearance here to discuss the next step of how
15 the PSR relates to parole.

16 Maybe from your knowledge could you
17 tell us what the relationship is between DOCs and
18 parole and how the PSR figures into that. I
19 don't expect you would, but if you do, I would
20 appreciate your sharing that.

21 A. We work very well with the parole
22 officer, Division of Parole. They have a parole
23 office at all of our institutions. In those cases
24 where an individual is going to actually appear
25 before the Parole Board, that won't be the case in

1 Annucci Q&A
2 the determinant sentence, but it continues to be
3 the case in an indeterminate sentences of
4 imprisonment. Parole officers will review the
5 file and prepare case summaries for the
6 commissioners that come to our institutions and
7 then determine whether or not someone is going to
8 be released on parole.

9 They look at the entire record. They
10 will look at what programs the individual has
11 participated in, they will look at what his
12 record of behavior has been with us. They will
13 have access to our computer records, they will
14 know whether or not someone has engaged in
15 serious acts of misbehavior, whether they've had
16 recommended losses of good time. They will know
17 what types of programs the individual has partici-
18 pated in. And they will make that information
19 available to the commissioners.

20 And I think the information that is in
21 the pre-sentence report, especially anything
22 relative to crime victims and their view of the
23 matter, is very heavily weighed by them. I know
24 they have a separate process by which they have
25 information communicated to them by the crime

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2 victim. But it also could be part of the
3 pre-sentence report.

4 So I think it's fair to say based upon
5 my own personal knowledge of how they operate,
6 and I certainly know that Chairman Horn has his
7 own experience with the board from many years
8 ago, he can add to this, but it is very very
9 important to their work that the pre-sentence
10 report have the offenses prescribed, what the
11 attitude of the defendant was at the time, what
12 his insight was, and where he currently is in the
13 grand scheme of things. I think it weighs
14 heavily in their ultimate decision as to whether
15 or not to release the individual.

16 Q. Another question, if I may. And once
17 again, this may not be your responsibility. Have
18 you heard any expression or concern that the
19 quality of the PSR from the 62 different counties
20 varies and some are inadequate? Go ahead.

21 A. Yes. I can't speak to whether or not
22 specific counties are better than others. I know
23 this is a large state, we have 62 counties, but I
24 know that that's been a concern that sometimes the
25 pre-sentence report may be of poor quality, give

1 Annucci Q&A
2 minimal information. And other times there is a
3 good deal of information contained in the
4 pre-sentence report.

5 The only thing I can continually
6 emphasize, since we rely so much on it, we urge
7 wherever possible that we get as much information
8 as possible in the pre-sentence report because it
9 is so important to the work we do.

10 THE CHAIRMAN: Thank you. Questions?

11 BY MR. MARKS:

12 Q. Just with regard to the importance of
13 the pre-sentence report. Actually question for
14 Marty, would a local correctional official be
15 saying the same thing on this topic as you are?

16 A. I could only guess they probably would.
17 They get individuals that are sentenced to
18 definite sentences of a year or less. I think the
19 maximum could have consecutive sentences, so they
20 might hold somebody for two years. But informa-
21 tion is important to the work of any correctional
22 administrator whether you're going to have
23 somebody 15 to life or for one year or less.

24 I could see where the Conditional
25 Release Commission would rely heavily on the

1 Annucci Q&A

2 pre-sentence report. So I don't have firsthand
3 knowledge of that, but just based on my general
4 correctional experience I would think it would be
5 pretty relevant.

6 COM. HORN: For the record there are
7 no commissioners, that is now handled by
8 the State Board of Parole.

9 MR. SOARES: I was going to answer a
10 question that most of the local and
11 county correctional facilities now have
12 hired information officers, intelligence
13 officers rather, specifically to gather
14 intelligence and share intelligence with
15 the local law enforcement partners. I
16 know that they rely on PSI for that very
17 purpose. You take and collate and
18 disseminate.

19 THE CHAIRMAN: Mr. Burns.

20 BY MR. BURNS:

21 Q. Thanks for coming. We have had several
22 subcommittees talking about DOCs and I'm glad you
23 took the time out to come here. Notwithstanding
24 the pre-sentence reports that are a little more
25 than a face sheet, which is probably on the low

1 Annucci Q&A
2 end of the ones that are helpful to you, do you
3 have, knowing that most pre-sentence reports have
4 information about the offense and that what the
5 victim had to say about it and how the defendant
6 described the offense, the analysis of that rap
7 sheet that you have from your own means, a social
8 history, analysis of what's going on and then a
9 recommendation, do you know what parts of that PSR
10 your corrections people or your security people,
11 your program people zoom right in on? Do they
12 just immediately turn to one or two areas? Are
13 there parts of that report that are completely
14 superfluous and not useful to DOCs?
15 A. Let me answer by saying probably the
16 thing that's more important than the others is the
17 description of the offense itself. That's
18 probably the crucial aspect of the pre-sentence
19 report. I don't think there is any parts of it
20 that are unimportant. I think the social history
21 is important. The employment history is important.
22 Because it all leads into ultimately the program
23 decisions that we're going to make about the
24 individual and how he's going to be affected while
25 he's incarcerated with us.

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2 So I don't think there is a lot of
3 superfluous information or information that would
4 really be irrelevant. Since we're so dependent
5 upon it we virtually have nothing else other than
6 that, I would hesitate to characterize any aspect
7 of it as being irrelevant.

8 Often times if, for example, if it's
9 seemingly a low level sex offense, like attempted
10 sex abuse in the first degree, but the pre-
11 sentence report is telling us that what really
12 happened here was an indictment of rape in the
13 first degree, and is being allowed to plead
14 guilty to this. And maybe it was a very serious
15 offense here, but the District Attorney for a
16 variety of reasons didn't feel he could get a
17 conviction, so he's offering a plea to a less
18 serious sex offense. That's very relevant for us.

19 And it might be relevant for such, and
20 it might be relevant for a whole number of
21 reasons. So the more that kind of information is
22 in the pre-sentence report the better we can
23 make, ultimately, decisions that are directly
24 related to public safety.

25 THE CHAIRMAN: Mr. Horn.

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2 COM. HORN:

3 Q. Request your indulgence, I have a series
4 of questions. I have known Tony for a number of
5 years and consider him a friend. Given that
6 disclosure. I think you have done an excellent
7 job explaining, no one disagrees how important the
8 PSI is. Given how important it is, given the
9 critical role that it plays as you so well
10 described it, and allowing that it might even be
11 of utility to county jails, how do you then
12 explain why the state has so seriously diminished
13 price, it's willingness to pay for it?

14 A. I'm sorry, the price?

15 Q. The state's reimbursement to probation
16 which includes reimbursements for pre-sentence
17 investigation has diminished from 50 percent to 17
18 percent. So if it's so important to the state why
19 isn't the state willing to pay for it?

20 A. I'm not sure that's a question that's in
21 my bailiwick, Commissioner Horn.

22 Q. Is there any knowledge do you have in
23 general, how many commissioners --

24 A. Three, now four.

25 Q. Have any of them testified before the

1 Annucci Q&A

2 legislature with respect to how important the
3 probation pre-sentence report is and why it would
4 be important to provide adequate funding for it?

5 A. I believe probably Commissioner Conklin
6 has in the past.

7 Q. God bless him. Let me ask you this, if
8 there was no pre-sentence report what would the
9 cost, ball park, to the Department of Corrections
10 be, correctional services, to get the information
11 you say is so critical in some other fashion?

12 Would there be another way to get it? Could
13 parole obtain it for you?

14 A. It would be impossible for us to get the
15 information.

16 Q. Could parole do the investigation for
17 you? They're in the communities.

18 A. I think their specialty is very
19 different. The pre-sentence report is garnered by
20 having relationships, from my knowledge of how to
21 get police information, court information.

22 Q. But don't parole officers do that when
23 there is a violation of parole?

24 A. I'm not sure. Perhaps they do. But I
25 think the probation officers obviously are very

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2 skilled at what they do. They know how to access
3 various channels. When you see a good pre-
4 sentence report it does touch all the bases and is
5 very very valuable for the criminal justice system
6 that has the defendant from that point forward.

7 Q. When an individual is delivered to your
8 custody from a county, be that a classification
9 process, they go either to downstate or Ulster?

10 A. From New York City.

11 Q. They get on the bus, they're seen by a
12 classification analyst, you have to process them
13 for classification, that analyst meets with the
14 inmate face to face.

15 A. Correct.

16 Q. What does that classification analyst
17 ask the inmate, the newly committed inmate?

18 A. The classification analyst reviews basic
19 tenants of what's going to happen to him, explains
20 all the various programs, he explains his sentence
21 calculations, whether presumptive release for
22 non-violent felons, then fits the inmates view on
23 the offense.

24 Q. He asks him what is the inmate's side of
25 the story?

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2 A. Exactly. If the individual at that
3 point in time is saying something like or acting
4 defiant, that I'm not guilty, I only pled guilty
5 because my lawyer told me to plead guilty and I
6 don't think the system is fair. Or he has no --
7 or he minimizes what he did and the effect on the
8 victim, that portrays an individual that has a
9 long way to go before he might be suitable for
10 release.

11 So his reaction at that point in time,
12 as I described earlier, is like a photograph.
13 It's a snapshot that will follow him. The
14 interview could have been eight years ago but if
15 you did ask me to look up this inmate today I
16 open up my computer and look at the screen and
17 looking at the interview that happened eight
18 years ago. He may have changed, he may have
19 gotten insight into things.

20 Q. That's what he said on the day when he
21 came in?

22 A. Yes.

23 Q. With respect to the description of the
24 crime and the underlying elements of the crime
25 that may not be as reflected in the conviction

1 Annucci Q&A

2 offense or the plea, as Mr. Burns said there is
3 another source of that information, that is
4 information obtained in the accusatory instrument,
5 in the police complaint, and are there not in the
6 21st century alternative means of obtaining that
7 in a more efficient fashion?

8 A. I don't know if there are alternative
9 means to obtain it more efficiently. I think it
10 would take a tremendous amount of leg-work to get
11 that information unless there are electronic
12 databases.

13 Q. If I said to you, for example, that the
14 police complaint in New York City is contained in
15 their omni form system, the online booking system,
16 could that theoretically be transmitted to you
17 electronically? Because in my experience that
18 what probation officers do is they copy either
19 from the accusatory instrument or the police
20 complaint and that becomes the description of the
21 offense that you rely on so heavily. So why not
22 just cut out the middle man?

23 A. My understanding is we believe that that
24 initiative is underway.

25 Q. And would you view that as an

1 Annucci Q&A

2 improvement?

3 A. If it electronically gets us the same
4 information that we currently are getting and it
5 saves probation some time and effort, and we
6 ensure that it's actually getting to us the same
7 time the inmate is getting to us, I think that
8 would work.

9 Q. So if you could get that and if you're
10 interviewing the newly committed inmate yourself,
11 there is probably very little in the probation
12 report that if you really thought about it you
13 couldn't do without?

14 A. I would not underestimate the social
15 history, what his work history has done, how many
16 dependents he has. Things of that nature are very
17 relevant to us.

18 Q. One last question. Given how important
19 you believe it is, do you believe the state should
20 be paying a fair price for this service they're
21 receiving from counties?

22 A. I would invoke the Fifth Amendment on
23 that.

24 COM. HORN: Therein lies the
25 problem. You are executive branch, are

1 Annucci Q&A

2 you not?

3 MR. ANNUCCI: Last time I looked.

4 THE CHAIRMAN: Regardless of your

5 last answer we're most grateful you're

6 here, thank you very much.

7 BY MR. RINALDI:

8 Q. I'm sorry, don't mind if I ask you a

9 question or two. You said there is some

10 information that you would like to have or that

11 you're supposed to receive, like the sentencing?

12 A. Minutes.

13 Q. And other things that are supposed to be

14 sent to your agency?

15 A. Yes, it's required by the Criminal

16 Procedure Law that within thirty days of sentence

17 the sentencing minutes are supposed to be

18 transcribed and mailed to us. And we're currently

19 working with OCA to try to figure out why that

20 doesn't always happen and what counties are in

21 better compliance than others.

22 Q. But if I understood you correctly, the

23 only documents you're pretty much guaranteed to

24 have is the commitment documents, commitment order,

25 the rap sheet and the pre-sentence investigation?

1 Annucci Q&A

2 A. Correct, that is what physically arrives
3 when the individual is delivered to the reception
4 center. Those documents have to be included or we
5 will not accept custody of the individual. With
6 New York City we have a screening unit on Rikers
7 Island that correctly directs everybody to down-
8 state or Ulster or makes sure all the documents
9 are there. Sentencing minutes separately get
10 mailed to us. When they do arrive we put them in
11 the file. If they never get there we have no way
12 of tracking why they didn't come to us.

13 Q. Forgive my ignorance, what agency is
14 responsible for getting you the information you're
15 not getting now?

16 A. On which issue?

17 Q. You said sentencing minutes or things
18 like that you're not getting in a timely manner
19 normally?

20 A. The sentencing minutes are created by
21 the courts, and I assume it's either --

22 HON BRUNETTI: It's an
23 administrative thing, the clerk's office
24 reminds the court reporter in an indi-
25 vidual case. I'm not familiar with

1 Annucci Q&A

2 what's being done on a generalized basis.

3 MR. BURN: And the court reporter

4 can't testify here.

5 HON. BRUNETTI: Mr. Drury is always

6 in compliance.

7 BY MS. GINSBURG:

8 Q. Can I ask a follow up question. If you

9 get a PSR that is primarily focused on the crime

10 and there is little to nothing on the social work

11 history, what's the difference in the programming

12 decision that you make as opposed to when you get

13 a more complete PSR?

14 A. Well, I mentioned four or five types of

15 programs that we will assign to an inmate, and if

16 he fails to complete them. Like aggression

17 replacement therapy or drug treatment. I think

18 you can easily identify from the description of

19 the offense pretty much whether or not there is a

20 program need for that.

21 But I also mentioned vocational training.

22 And that won't be in the description of the

23 offense, or academic education. The pre-sentence

24 report indicates that the individual did complete

25 high school and got his high school degree from

1 Annucci Q&A

2 PS 120 in the Bronx, whatever. We'll try and
3 follow up with that. And make sure that that did
4 in fact happen.

5 So outside the four corners of the
6 description of the offense, this other
7 information, the employment history, social
8 history, and academic education is relevant for
9 the other program needs that we identify.

10 Q. I just have one more question. Do you
11 ever receive pre-sentence or pre-pleading reports
12 prepared by the defense with the package?

13 A. Yes, that can be done and that will
14 accompany the rest of the documentation and that
15 will be part of the inmate's institutional file as
16 well.

17 BY MR. BURNS:

18 Q. Since this isn't part of our charge I
19 want to make sure I heard you correctly. Are
20 Homeland Security getting copies of the pre-
21 sentence reports?

22 A. Correct.

23 Q. Just where DOCs sees a potential alien
24 problem or all PSRs?

25 A. When an individual comes into our

1 Annucci Q&A

2 custody and he's interviewed, if we have any
3 inkling that he's foreign born we will give that
4 information to BICE agents, who then separately
5 interview the individual to determine if he is
6 foreign born, confirm that and determine what his
7 alien status is. Namely, is he an illegal alien,
8 Mariel Cuban, illegal resident?

9 They will administratively determine,
10 okay, this individual is subject to deportation
11 proceedings. If he is, at some point in time
12 right back in our reception centers we'll bring
13 the individual back, he will then have an adminis-
14 trative proceeding before a judge to potentially
15 have an order of exclusion or deportation issued
16 against him.

17 And because we have a special law in
18 this state allows the Board of Parole to issue a
19 conditional parole for deportation only, and do
20 it before the individual inmate has served his
21 entire minimum sentence if it's a non-violent
22 offense, such as a drug offense. Many individual
23 inmates want to get that order of exclusion
24 against them to potentially get deported to their
25 home countries. Once they're deported they are

1 Goldner
2 free, they are not transferred to the prison
3 system of their country of origin they are simply
4 deported.

5 A number of other individuals of course
6 want to stay in this country and want to
7 challenge the order of deportation, and it's not
8 considered final until their conviction is
9 considered final.

10 So if they have a challenge to their
11 conviction before the Appellate Division BICE
12 officials cannot physically deport that individual.
13 But once that individual, once he's released from
14 prison, if he's got that order against him and
15 he's an aggravated felon they will take him into
16 custody and he will remain in their custody until
17 the matter is finally adjudicated.

18 THE CHAIRMAN: Thank you very much.

19 Jane E. Goldner is the Director of
20 Probation Cortland County. Welcome.

21 JANE GOLDNER: Cortland county is
22 the county directly south of Onondaga,
23 where we are now. My name is Jane
24 Goldner, I'm the Director of Cortland
25 County Probation Department. I started

1 Goldner
2 working in the probation profession in
3 November 1981. So next month will be my
4 25th year anniversary. For 7 years I
5 was a probation officer. The next 14 as
6 a probation supervisor. And the past
7 almost four years as the probation
8 director.

9 Before my employment at the proba-
10 tion department I have to admit I knew
11 little to nothing about the probation
12 profession. But during these past years
13 I have had quite an education. I have
14 learned a great deal about the judicial
15 system and my community.

16 The probation department has
17 contacts, as expected, with court,
18 judges, clerks, attorneys, police and of
19 course probationers. The probation
20 department also has frequent contact
21 with teachers, school counselors,
22 principals, employers, neighbors,
23 ministers, doctors, case workers,
24 therapists, nurses, store owners,
25 victims, family members, girlfriends,

1 Goldner
2 boyfriends, siblings, bar owners,
3 sometimes the bar owners are the
4 siblings, bankers, friends and former
5 friends, the list goes on and on.

6 Probation gets involved in people's
7 lives. We get to know our clients and
8 their environment. We establish a
9 respectful rapport with them. We are
10 not their friends but we certainly are
11 not their enemies.

12 Our number one goal is the
13 protection of the community; and very
14 close behind is the goal to assist the
15 client to become productive law abiding
16 citizens.

17 The three main functions of
18 probation are investigation, supervision
19 and family court intake. The important
20 factors of the investigation responsi-
21 bility is that the probation department
22 is the objective neutral party providing
23 background information and analysis and
24 recommendations to the courts for
25 disposition. The courts rely on the

1 Goldner
2 thorough and accurate reports from the
3 probation department for judicial
4 decision-making.

5 The other important news of the
6 reports is for case planning, whether it
7 is by probation officers and case
8 workers or by correction officers and
9 parole officers, the information in the
10 probation report is the foundation for
11 planning for the client.

12 In small Cortland County, with a
13 population of just under 50,000, we
14 conducted over 600 investigations during
15 2005. The supervision of clients is
16 what I call the meat and potatoes of
17 probation. The courts can sentence
18 persons to probation for terms of one
19 year to ten years, and in limited
20 circumstances to lifetime probation.

21 During a term of probation the
22 client may be required to participate in
23 alcohol/drug treatment, abstain from
24 alcohol/drugs, be tested for alcohol and
25 drugs, pay restitution, pay child

1 Goldner
2 support, pay fines, provide DNA, attend
3 school, work steadily, stay away from
4 certain people, perform community
5 service, attend sex offender treatment,
6 reside in approved residence, use an
7 ignition interlock, be on electronic
8 monitoring, and of course report to a
9 probation officer.

10 For many clients being on probation
11 can be overwhelming. For others the
12 probation officer's first task is to
13 what I call welcome the client, because
14 they're underwhelmed about being on
15 probation. The probation officer
16 monitors the client's behavior through
17 meetings with the clients and contacts
18 with other sources, home visits and
19 other out-of-the-office contacts assist
20 the probation officer to know what is
21 really going on.

22 Steering the client to the most
23 appropriate programs and making sure the
24 client attends is a constant duty.
25 Change is a difficult task for most

1 Goldner
2 people, and the probation officer offers
3 encouragement and reminders to clients
4 as they make the changes needed to be
5 successful on probation and in the
6 community.

7 Approximately two-thirds of the
8 probationers in Cortland County have
9 conditions of probation regarding
10 alcohol and drug issues. This popula-
11 tion is typically very resistant to
12 change. And the amount of work and
13 confrontation to address alcohol and
14 drug addiction is huge.

15 During the course of last year 970
16 persons were on probation in Cortland
17 County, with a typical daily case load
18 of 600. Approximately 15 percent or 90
19 percent in any given time, have a
20 violation of probation pending in
21 Cortland County. Some clients are
22 continued on probation after a violation
23 proceeding while others are sentenced to
24 incarceration, because they did not
25 utilize the opportunity to make changes

1 Goldner
2 and remain in the community.
3 A sentence of probation is definite-
4 ly the sentence of choice compared to
5 incarceration. In Cortland County on
6 any particular day the county jail has
7 approximately 35 sentenced inmates and
8 another 40 unsentenced. With 600 on
9 probation on any given day you can
10 easily see that probation is the heavily
11 used sentence.

12 With our society's increasing
13 awareness in the fields of mental
14 health, drug addiction, domestic
15 violence and sex abuse issues to name a
16 few, the courts are more and more likely
17 to sentence a person to probation to
18 address these issues rather than
19 incarceration or a fine that would not
20 look at the underlying problems.

21 The courts are aware that in most
22 cases until the underlying issues are
23 treated the person will likely return to
24 court again and again. A term of
25 probation is the best chance to offer

1 Goldner
2 the person the opportunity to make
3 changes.

4 The third probation function is
5 Family Court intake, which involves the
6 probation department's efforts to assist
7 families and individuals in resolving
8 matters without the need for Family
9 Court involvement. Probation depart-
10 ments work with juvenile delinquents,
11 and many still work with persons in need
12 of supervision. Most of the juveniles
13 are between the ages of 12 and 16. As
14 we know, I believe we all know, the teen
15 years can be very challenging both for
16 the teenager, their families.

17 Recently the probation officer and
18 the DSS caseworker in Cortland County
19 assigned to work with PINS describe that
20 with a great deal of their time it is
21 actually spent on what they call crash
22 courses in parenting. Many of the
23 families have few or poor parenting
24 skills. And often the problems they
25 encounter stem from this situation.

1 Goldner

2 There is a great need for timely
3 service intervention, especially mental
4 health services. The probation depart-
5 ment is aware that court intervention is
6 needed at times. However, most young
7 people are better served by resolving
8 matters within their own families and
9 without the court being involved.

10 I have a motto in my office that
11 reads: Make decisions in your house,
12 not the court house. I did come up with
13 that myself. As I have described - as I
14 have described the probation department
15 gets deeply involved in the lives of
16 certain community members with the
17 purpose of protecting the community and
18 assisting the community members to
19 become productive law abiding citizens.

20 In order to accomplish this proba-
21 tion employees need to be knowledgeable
22 about community resources, interpersonal
23 relationships, family dynamics, mental
24 health issues, alcohol and drug issues,
25 the court process, criminal and family

1 Goldner
2 law, probation rules and regulations, as
3 well as having the verbal and writing
4 skills to communicate information
5 effectively.

6 Probation staff members tend to be
7 very practical, reasonable and common
8 sense people. Probation really is
9 behind the scenes as compared to other
10 parts of the justice system, especially
11 the courts and police. Until probation
12 is involved with a person or family most
13 are not aware of probation's role.

14 In order to carry out the
15 responsibilities of the probation
16 department well trained staff with
17 reasonable workloads is essential. The
18 best way to accomplish this would be New
19 York State becoming a true partner with
20 each county and funding probation
21 services at 50 percent. This would
22 recognize that the counties have
23 historically stepped up and performed
24 the increasing state mandates, but the
25 ability to continue to do so is

1 Goldner Q&A
2 diminished without the state meeting the
3 counties halfway. A true 50/50
4 partnership is the best way to ensure
5 that the hands-on grass roots work of
6 probation continues in order to keep our
7 community safe. Thank you for your
8 attention this afternoon.

9 THE CHAIRMAN: Thank you very much
10 Director Goldner. Some questions?

11 BY HON. KLOCH:

12 Q. What is the salary of your officers?

13 A. The starting salary is I think about
14 32,000.

15 Q. And the average?

16 A. The average right now -- well, because I
17 have a number of senior probation officers, the
18 average is probably about 37.

19 Q. And how long does it take your
20 department to provide a PSI to the Court?

21 A. Most of the courts in our county give us
22 five to six weeks. However, if the person is in
23 jail they usually -- it's about three weeks.

24 HON. KLOCH: Thank you.

25 THE CHAIRMAN: Yes, please.

1 Goldner Q&A

2 BY COM. HORN:

3 Q. Your caseloads are how many?

4 A. For each officer you mean?

5 Q. Roughly, yes.

6 A. Some people take over the
7 investigations, but generalized caseload is about
8 between 55 and 60 probationers, plus they do an
9 average of 7 to 8 investigations a month. But
10 most of the officers do mix activities.

11 Q. And what is the mix on your supervision
12 caseload, if you know what percentage are
13 misdemeanors and what percentage felonies?

14 A. It's almost 50/50. A little less. Last
15 I looked I think it was like 48 percent were
16 felons and 52 percent misdemeanors.

17 Q. And in your estimation, do you believe
18 that the current status quo, the current
19 organizational arrangements will provide you with
20 a level of support you require to provide quality
21 probation services?

22 A. You mean the county legislature that
23 receives it?

24 Q. At the state level. I mean clearly if
25 you've got caseloads of 50, even if you're doing

1 Goldner Q&A

2 the PSI, your county has stepped up to the plate
3 and filled the hole that the loss of state funding
4 created. So do you have any reason to believe
5 that the current organizational arrangement at the
6 state level would yield any further support for
7 your probation service?

8 A. Well, I think that at this point there
9 is so many added responsibilities, it seems like
10 over the last few years there's been so many more
11 things. Just this DNA for example, it ended up in
12 our county that probation was determined to be the
13 agency to collect it from all the people being
14 sentenced to conditional discharge where DNA is
15 responsible.

16 So now we have had to set up a whole
17 system to make sure we're notified of those people.
18 So I would like to see the state division become
19 stronger and have more support in the way of
20 funding is really what we need. Because I think
21 the crucial thing for probation to do a good job
22 is to have the manageable case load. Because all
23 the things I cited take time. There is no
24 getting around the time that you need to get to
25 know people, to get out there in the community,

1 Goldner Q&A

2 to make the home visits, to get in touch with
3 victims, to talk to the school people. That's
4 what it's all about.

5 Q. I understand that before you, as you
6 heard, I asked the last witness it, if he thought
7 given how important the PSI is to state
8 corrections whether he should pay more for it and
9 he pleaded the Fifth. Confirming my belief that
10 no appointed state official is going to speak
11 contrary to what's contained in the governor's
12 budget.

13 Does not that, in your estimation,
14 suggest that as long as the executive of DPCA,
15 irrespective of who it is, Bob is a fine fellow,
16 is subject to the governor's office and in
17 addition to the budget that his or her ability to
18 advocate for additional funding for probation is
19 going to be limited?

20 A. I agree. I think it is limited, yes.
21 And I think if it was set at 50 percent instead of
22 the way it is now that can be up to 50 percent.
23 That I mean all we've seen over the years has
24 continually gone down and down. I think it was in
25 the high 40 percent when I first started and now

1 Greene
2 it's in the 30 percent and now in the 20s and now
3 in the teens. I don't know what happens when we
4 get to the single digit.

5 COM. HORN: Thank you.

6 THE CHAIRMAN: Any other questions?
7 Again, thank you very much.

8 THE CHAIRMAN: Warren Greene is the
9 Director of Probation of Fulton County.

10 WARREN GREENE: You have three
11 county names there.

12 HON. BRUNETTI: Yes, very funny.

13 WARREN GREENE: I also have to say
14 that when I was called to make the
15 appointment I think I was the first one
16 who called and the woman who was very
17 nice to me said, you know, where would
18 you like to go in order? I said, I
19 don't want to go first because first
20 person is going to get their responses
21 over all. I said you can put me anywhere
22 else. So I end up being last. So here
23 I am. By this time I think the fact
24 that I'm going to actually read mine is
25 probably cruel and unusual punishment at

1 Greene

2 3 o'clock.

3 THE CHAIRMAN: Glad to hear you.

4 WARREN GREENE: The fact of the

5 matter is though for the last 15 years

6 I've wanted to scream from the highest

7 hilltop over some of my frustrations

8 over what's been going on. As I came

9 here today I remember a line I once

10 heard, you raise your voice when you

11 should reinforce your argument. So I

12 want to basically just read what I have

13 to say and then I'll take any questions.

14 As a matter of fact these are my crib

15 notes, these are answers to questions

16 that you folks have been asking right

17 along.

18 In any case, by way of introduction

19 my name is Warren Greene and I have

20 worked for the Fulton County Probation

21 Department in various capacities for a

22 bit over 30 years. The first five years

23 of my employment was a little different

24 than most because I worked actually for

25 Fulton and Montgomery Counties as we

1 Greene
2 were combined with Warren County under
3 what was called Direct Services as it
4 was called at that time. Our three
5 counties were sort of an experiment.
6 Where we were run directly by the State
7 of New York. But then along came OPEC,
8 and some of the problems that ensued.
9 And so because of the budget crunches we
10 were all turned back to our individual
11 counties. I have been the director of
12 Fulton County probation since 1988.

13 I would like to take this
14 opportunity to thank Judge Judith Kaye
15 for being the catalyst for this
16 discussion. In her state of the OCA
17 speech earlier this year, her remarks
18 concerning probation as a whole I felt
19 were, for the most part, accurate and
20 insightful. I would also like to thank
21 her for establishing this task force
22 which is looking from the future of
23 probation and how it can best serve the
24 communities it represents.

25 I would also like to thank and

1 Greene
2 acknowledge the distinguished panel in
3 general and would like to further
4 acknowledge a few specific members. I
5 have only had the pleasure of meeting
6 the Task Force Chairman, former Senator
7 John Dunn, on one occasion, but found
8 him to be thorough, considerate and
9 every bit the gentleman that, by
10 reputation, I had heard him to be.

11 Four of my colleagues serve on the
12 Task Force, three of which I have come
13 to know very well over the years. Pat
14 Aikens, Rocco Possi, and Bob Burns are
15 all directors/commissioners for whom I
16 have the highest regard. I had the
17 pleasure of meeting Marty Horn several
18 weeks ago for the first time, and it was
19 interesting to hear from him about the
20 New York City perspective, which it
21 still is.

22 Over the last several years I have
23 come to know Bob Maccarone, the
24 executive director of DPCA. I have
25 found him to be a passionate leader with

1 Greene
2 the best interests of probation at the
3 center of his approach while at the same
4 time being open and accessible to the
5 needs of the individual probation
6 departments.

7 Regardless of Judge Kaye's
8 motivation in forming this Task Force I
9 am grateful for the opportunity to both
10 speak and submit written testimony
11 regarding the future of probation. I
12 fully realize that one of the elements
13 under consideration is the possible
14 acquisition of probation by OCA over an
15 extended period of time for the purpose
16 of regulatory control. I hope to
17 address my thoughts regarding this later
18 in my testimony, but I feel strongly
19 that the fundamental, systematic,
20 inadequacies plaguing probation at the
21 current time outweigh who may serve as
22 our regulatory agency.

23 As you are aware, probation is a
24 little known and less understood agency
25 within the criminal and juvenile justice

1 Greene
2 system. I believe that part of our
3 overall problem has stemmed from our own
4 inability to adequately define ourselves
5 as the result of the various roles we
6 play in both systems. As New York's
7 justice system currently exists, we play
8 an integral part in both the criminal
9 and juvenile justice systems. Intake,
10 supervision and investigations, as have
11 previously been discussed, are the
12 cornerstones of our work. We gather
13 information for the courts, supervise
14 offenders who are court ordered and play
15 a significant role in various family
16 court matters.

17 Probation's mission is somewhat
18 bifurcated in that on the one hand it's
19 about rehabilitating the offender while
20 on the other hand insuring the public
21 safety of our communities. One thing
22 seems intuitively obvious to me, that is
23 you can't have one without the other.
24 In that regard, probation at all times
25 strives to have a balanced approach as

1 Greene
2 to how we deal with offenders under
3 supervision.
4 Because of some of the concerns and
5 issues that have been raised I sense
6 that there is a premise that probation
7 is somehow broken. I strongly believe
8 that this premise is totally false. I
9 further believe that what is broken is
10 the state bureaucratic system that
11 should have been supporting us over the
12 past 15 years. By surviving what I
13 consider to be this dysfunctional state
14 system only serves as proof as to how
15 resilient, although admittedly
16 inconsistent, probation has shown itself
17 to be. Due to the lack of state
18 commitment, we have found ourselves in
19 the unenviable and uncomfortable
20 position of chasing money through
21 various grants. And in so doing we have
22 become reactive rather than proactive.
23 This in turn I believe has led to more
24 pronounced differences from county to
25 county than existed in the past.

1 Greene

2 In my opinion, the Division of
3 Budget policy regarding probation, being
4 a local and not a joint state/local
5 concern has eroded us to the point where
6 we are today. All one needs to do is
7 refer to Governor Pataki's first few
8 budgets to see where, in consecutive
9 years, his administration attempted to
10 totally eliminate all reimbursement to
11 probation. Only due to the fact that
12 local probation directors and
13 commissioners aggressively contacted
14 their local state assemblymen and
15 senators were we restored, albeit at an
16 ever-declining rate.

17 As you can see from the chart which
18 we have submitted to the Task Force, our
19 reimbursement rate has declined from an
20 ongoing 46.5 percent through the 1980s
21 and early '90s down to approximately the
22 17 percent that it is today. As a
23 result, we have been forced to live with
24 lower revenues every year, while at the
25 same time having increased mandates

1 Greene

2 placed upon us.

3 The most accurate analogy I have
4 heard that conveys our present state is
5 that we are like a rubber band that has
6 been stretched to the point of breaking.

7 All one needs to do is look at the
8 position New York City, Nassau County
9 and Erie County, for examples, find
10 themselves in today to know this to be
11 true. Around the state counties have
12 been faced with a choice, a choice of
13 increasing local property taxes to pay
14 for the continuation of existing proba-
15 tion services or laying off personnel or
16 finding grants to supplement or supplant
17 our funding shortfalls.

18 As a result of probation having to
19 live with lower revenues and increased
20 mandates on the yearly basis, we have
21 been forced into a couple of inescapable
22 realities. Number 1: What is it that
23 you don't want me to do? And Number 2:
24 What kind of consistent outcomes would
25 you expect from an agency that has been

1 Greene
2 allowed to languish behind other
3 entities in both the criminal and family
4 court systems?

5 I believe it was in the third grade
6 that I learned why there was a need for
7 government. Primarily the need is for
8 the whole to be greater than the sum of
9 its parts. One of the other things we
10 learned in elementary school is that
11 among the top priorities of any govern-
12 ment is, and should be, the protection
13 of its citizens. In this regard I
14 believe it has been unconscionable for
15 the State of New York to allow an
16 integral cog in our juvenile and
17 criminal justice system to erode to the
18 point where we need a task force such as
19 this to address this issue today.

20 One of the topics which appears to
21 be important to the Task Force is a
22 question of whether or not a purpose of
23 probation is to reduce the risk of
24 recidivism. This has been a question
25 for as long as I have worked in this

1 Greene
2 profession, and in truth, I have yet to
3 hear a common definition that everyone
4 can agree upon. At the one end of the
5 extreme would be the recidivism only
6 happens while a person is currently
7 serving their sentence, while the other
8 extreme would be that the term
9 recidivism can mean any rearrest during
10 the person's lifetime.

11 I believe it would be fair to say
12 that, depending on your definition, a
13 certain percentage of recidivism will
14 occur irrespective of what type of
15 sentence is imposed by the court, be it
16 a conditional discharge, probation,
17 specialty courts or incarceration. My
18 belief is that recidivism, no matter how
19 it is defined, is only one reason for
20 our existence. Until there is a
21 consensus as to the true meaning of
22 recidivism, I believe that it is time to
23 move forward in what should be the true
24 role of probation. And I believe it was
25 Commissioner Horn who may have said

1 Greene
2 this, so I maybe plagiarizing, but
3 between conditional discharge and
4 incarceration there is an obvious need
5 for a just sentence that takes into
6 account both the offender's and the
7 community's well-being. This is the
8 balanced approach that probation
9 provides.

10 Like recidivism success or failure
11 for someone under probation supervision
12 is not always the black and white issue
13 it may appear to be. As an example, a
14 probation officer learns that a convict-
15 ed sex offender serving a probation
16 sentence is grooming a potential victim.
17 If the officer finds grounds to violate
18 the offender's probation on a
19 technicality, that probationer may very
20 well have his probation revoked and be
21 incarcerated. Although probation in
22 this case did not change the offender's
23 behavior, it did possibly prevent a
24 victim from being victimized. Some
25 members of the public would see this

1 Greene
2 incident as a success for probation
3 while others might view it as a failure
4 since the offender's behavior did not
5 change. I personally would view it as a
6 success due to the fact that probation
7 was able to intervene and protect the
8 community.

9 I believe that there is a strong
10 need for probation to be an autonomous
11 entity within the criminal and justice
12 systems. As stated previously, I under-
13 stand that part of the Task Force's
14 mission is to consider whether OCA
15 acquisition of probation would have the
16 desired effect of strengthening
17 probation. At the present time, I
18 believe it is impossible for anyone to
19 accurately predict what may occur, since
20 we have little information in this
21 regard. I have seen no organizational
22 charts or descriptive commentary on how
23 this would be achieved.

24 However, I fully understand where
25 various probation departments may differ

1 Greene
2 on this aspect of the Task Force's
3 mission. We all see things through the
4 lenses of our own experience, and there-
5 fore, what may be seemingly important
6 for New York City may be different from
7 Fulton County's perspective.

8 From my own perspective I believe
9 that there is an inherent conflict of
10 interest with OCA assuming regulatory
11 control over probation. A prime example
12 of this would be in the area of
13 investigations, whereby the criminal
14 justice system is best served having
15 probation be an independent third party
16 as per our recommendations to the court.

17 As an example, as it currently
18 stands, probation can make recommenda-
19 tions which may differ from plea
20 agreements made by the court, the
21 district attorney and the defense
22 attorney. Although these disagreements
23 do not occur often in my county, I do
24 believe they are an integral part of the
25 balance within the system which may not

1 Greene
2 occur if we are under the auspices of
3 OCA. Furthermore, I believe it is
4 interesting to note that there is no
5 discussion concerning OCA acquiring
6 district attorneys or public defenders
7 that are under their umbrella for some
8 of the same conflicts of interest I
9 believe exist between the courts and
10 probation.

11 From my perspective there are
12 several solutions short of regulatory
13 control in which OCA could play an
14 important part. For example, I believe
15 that OCA could offer probation much
16 support by prioritizing areas such as
17 violations of probation and detainer
18 warrants. For example, by promulgating
19 standards and goals for VOPs that
20 include more efficient timelines within
21 which these cases are disposed,
22 offenders would have a similar
23 experience to those presently served by
24 OCA's specialty courts.

25 In my experience over 30 years, I

1 Greene
2 have developed, what I like to refer to
3 as my 20/60/20 rule. In this rule, the
4 top 20 percent of probationers in all
5 probability will not find themselves in
6 legal difficulties again, regardless of
7 what experience they have under
8 supervision.

9 The middle 60 percent are those
10 people who have areas of need such as
11 employment issues, substance abuse
12 issues, mental health issues, and
13 etcetera, which if addressed properly
14 have the potential to assist these
15 individuals in leading law-abiding lives.

16 The bottom 20 percent, appear to be
17 those individuals who are criminally
18 oriented and are very likely to offend
19 again, regardless of what court ordered
20 sentence was imposed. Unfortunately,
21 these are the individuals who take up a
22 great majority of our time, to the
23 detriment of the 60 percent where our
24 focus should be. If OCA promulgated
25 more stringent standards and goals as to

1 Greene
2 the time required for VOP dispositions,
3 this would be a tremendous help towards
4 strengthening probation.

5 In addition, OCA could act as an
6 advocate by strongly indicating to the
7 executive and legislative branches of
8 state government that probation is an
9 integral part of the justice system and
10 that we are in dire need of more
11 adequate funding in order to carry out
12 our responsibilities.

13 More funding could address two
14 primary needs of probation. Those being
15 smaller caseloads, particularly in those
16 counties that have a significant number
17 of layoffs over the past several years,
18 and a better opportunity to provide
19 programming in individual counties which
20 makes sense for their own populations.

21 In addition, I believe that OCA
22 could be the catalyst for a revision of
23 the Family Court Act, which has not had
24 a complete examination since its
25 inception in the early 1970s. In recent

1 Greene
2 years there have been some changes in
3 areas such as PINS law in order to more
4 adequately reflect the times within
5 which we live. I believe it is apparent
6 to most people who deal with the Family
7 Court Act on a daily basis that there
8 are other areas of this important act
9 that also need to be addressed.

10 I believe that in addition to the
11 previously mentioned possibilities of an
12 OCA response, a legislative response to
13 our dilemma would be in the area of
14 Section 246 of the Executive Law. As
15 the law now stands, probation can be
16 reimbursed up to 50 percent by the
17 state, but apparently has no minimum
18 amount associated with this law.

19 My recommendation would be that a
20 floor be established at 33 1/3 percent
21 contingent on agreed upon caseload
22 standards. In this way local probation
23 departments would at least know what the
24 reimbursement rate could not fall below
25 while at the same time realize higher

1 Greene Q&A
2 amounts if they chose to go into
3 specialized areas authorized by our
4 regulatory authority.

5 In conclusion, I would argue that
6 all one needs to do is to look at the
7 numbers of people who are incarcerated,
8 you can see the numbers right over
9 there, or serving a sentence of
10 probation to conclude that incarceration
11 is the alternative to probation and not
12 the other way around as is customarily
13 presented.

14 THE CHAIRMAN: Thank you, Director
15 Greene. Questions?

16 BY HON. KLOCH:

17 Q. I'm not going to disappoint you. I'm
18 going to ask you what is the salary of your
19 probation officers?

20 A. Beginning salary is somewhere around
21 \$32,000. And the average is probably around
22 38,000 because we have people who worked there for
23 many years and get longevity.

24 Q. And what period of time does it take for
25 your department to prepare a PSR?

1 Greene Q&A

2 A. I would say the average is five weeks,
3 as you heard from some of the other people. We
4 can do them quicker if the county jail administra-
5 tor calls me and says Warren, we've got a guy
6 we've got to get out of here, we'll do it in two
7 weeks or one week if we have to. I would say the
8 average is probably five. Probably goes four to
9 six.

10 As I think Frank Justice said, some of
11 that depends on whether or not the person
12 actually shows up on the day they're supposed to
13 show up in our office. That would be one thing.
14 The other thing would be how quickly the victims
15 get back to us. We try and hold them up to the
16 bitter end to try to get a victim impact
17 statement included in the investigation.

18 Q. I know the Commissioner is going to ask
19 us, what is the case load?

20 A. I could ask you one more question. I
21 think I'm the first person to ask a question, if I
22 could be so bold.

23 Q. I may take the Fifth.

24 A. What would you see, you've asked us
25 about how long it would take for us to do certain

1 Greene Q&A

2 things, how long do you think it should take a
3 court from the time a violation of probation is
4 filed with the court to the disposition of that
5 VOP?

6 Q. In my court?

7 A. In courts in general.

8 Q. Well, I can only speak to my court.
9 It's very quick. Usually there is the arraignment
10 on that, I set it for a hearing a couple weeks
11 down the road.

12 A. We had a wonderful defense attorney who
13 is now a Supreme Court Justice, and when he was a
14 defense attorney he would adjourn the matter to
15 the point where by the time they were finally
16 heard I don't think any of us even remembered why
17 we brought the person in for a violation of
18 probation in the first place. But I have to say I
19 think different courts act differently in how they
20 handle VOPs.

21 Q. My own thinking is there a violation?

22 Yes, no. We can fool around with what is going to
23 be the impact of the violation. Is he going to
24 admit? We're going to have a hearing. And then
25 you know, we can take it from there what the

1 Greene Q&A

2 repercussion is.

3 A. I would just like to say I think one
4 response from OCA would be to set some kind of
5 standard within which they should be heard.

6 Q. I heard what you and all the other
7 directors said and I have taken it to heart.

8 A. My case load size. I'm very similar to
9 Ms. Goldner, 55 to 60. We do probably, I guess
10 five investigations on top of that. And then on
11 top of that each officer has probably three to
12 five ongoing intake cases. So we have a small
13 department we're not broken into units.

14 BY COM. HORN:

15 Q. So the county has stepped up to plug the
16 hole left by the loss of state aid?

17 A. Yes, they have, mainly because I've gone
18 in and tried to a make --

19 Q. You're persuasive?

20 A. -- the value of our department. Yes.

21 Q. You talked about standards and goals.
22 What about standards and goals with respect to
23 when sentence should be imposed following a
24 conviction. Do you think that this is an area
25 where OCA should have standards and goals? And if

1 Greene Q&A

2 they did, that would not -- would not that
3 necessarily drive the timeliness of your PSI,
4 create a requirement for the PSI to be in?

5 A. I'm not sure, because from county to
6 county probably things work a little differently.
7 I know my own county, both of my County Court
8 judges give us the sentencing date.

9 Q. To your knowledge, are there standards
10 and goals?

11 A. To my knowledge, no.

12 Q. For the imposition of sentence following
13 conviction?

14 A. I don't know of any.

15 Q. If there were, let's just say that the
16 expectation was that the sentence to be imposed is
17 within thirty days of conviction unless the Judge
18 shows on the record whatever, had a reason to
19 adjourn it with a high mark. Would that not
20 require you, me, to get our PSI in at least 24
21 hours before that thirty days?

22 A. Yes.

23 COM. HORN: That might fix the
24 judge's problem.

25 HON. KLOCH: Sure. In Erie County

1 Greene Q&A
2 you heard before, four months, six
3 months. And the judges there are
4 frustrated by the length of time for the
5 sentences.

6 WARREN GREENE: I'm well familiar
7 with Erie County. I offered George
8 Alexander a job as my driver.

9 HON. KLOCH: Will he take it?

10 WARREN GREENE: I think he would
11 take it at this point.

12 HON. KLOCH: Thank you.

13 THE CHAIRMAN: Any other questions?

14 Mr. Burns.

15 BY MR. BURNS:

16 Q. Just a question on, there's been no
17 substantive discussion among the Task Force about
18 any full takeover of the probation system and
19 officers by the state. But since you are the last
20 living state probation officer --

21 A. Relic, yes.

22 Q. -- from your experience when you were a
23 state probation officer, working for state judges,
24 anything you can draw from that brief pilot
25 experience that things were different because you

1 Greene Q&A

2 were both in the state system?

3 A. You know, it's funny, I thought it
4 worked well. We were under, along with being
5 state run, we were state paid as well. So you
6 know, we had a lot of very bright high end
7 officers, the best of us. But I have to say that
8 I thought it worked well because on procurement of
9 different things that you need for the office you
10 could do it as a group entity.

11 I think that what was supposed to have
12 happened was the state was supposed to have taken
13 over and we were going to be broken into regions
14 and maybe four to six, no four to six counties
15 per region and have an administrator over the
16 individual region. For the shorter period of
17 time that I was there unfortunately OPEC had
18 already kind of hit, so things were already going
19 downhill.

20 But I was involved in it for three to
21 four years. I thought for those three to four
22 years until the crisis really hit I thought it
23 worked fairly well. You know, all probation
24 directors know the problems that we go through
25 when somebody lives right over a county line and

1 Greene Q&A

2 you're always going back and forth and back and
3 forth between what county is really going to do
4 this or what county is going to do that and who's
5 going to be supervising and all those questions.
6 This way it limited that. You would still have
7 some on the edges of each region but within the
8 region you could work more fluently. I thought
9 it worked rather well.

10 BY THE CHAIRMAN:

11 Q. Mr. Greene, speaking of history and
12 knowledge, expressed only by old fossils, let me
13 identify myself and plead guilty that I was the
14 sponsor of the legislation which changed in '72
15 the way we operated. And part of it, the law was
16 referred to by you, since the legislation
17 specifically provided that enjoined counties could
18 combine, as you described, three counties had.
19 Could you tell us anything from that experience
20 and why the experiment was abandoned?

21 A. It was abandoned really because of
22 budgetary concerns of the state. The state was in
23 crisis I think because of energy concerns over OPEC.

24 Q. Tell me what, prior to its termination
25 what success you had in any specific way in terms

1 Greene Q&A

2 of delivering services?

3 A. The delivering of services, as I said to
4 Bob, was I think they worked because we were able
5 to go across county lines without having to go
6 through some of the mechanics that we go through
7 now. Now if you're asking another probation
8 department, let's say to do an investigation, we
9 have to contact the other probation department,
10 send all the materials to them. They have to then
11 make sure to verify the fact the person is
12 actually living there. Usually we have to get an
13 adjournment for the court because it will take
14 that much longer to get it back from one county to
15 the other county and then to the court. So those
16 things create problems.

17 I think in a regionalized approach some
18 of those problems, not all, but some of those
19 problems were minimized. So I saw it as a pretty
20 good approach.

21 THE CHAIRMAN: Thank you.

22 WARREN GREENE: I know you were also
23 behind I think New York City being
24 consolidated.

25 THE CHAIRMAN: The result of the

1 Greene Q&A

2 Tombs riot.

3 WARREN GREENE: I thought so.

4 BY MR. BURNS:

5 Q. Do you recall, again it was not a long
6 period of time, but do you recall officers working
7 for the three counties who had knowledge of their
8 communities or were you getting transfers from
9 state employees who lived and grew up elsewhere in
10 the state and really had no knowledge of your
11 community and your resources and your services?

12 A. No, the people who worked in the three
13 counties actually lived in those three counties.
14 Although I personally, even though I lived in, I'm
15 a life long resident of Fulton County, I was
16 actually assigned the western end of Montgomery
17 County. So I was assigned someplace else.

18 But I don't think it took too long to
19 establish a satellite office out there, and I
20 think like any good probation officer would, I
21 went around and introduced myself to the various
22 police agencies and to the school administrators
23 and that sort of things. So it worked out well.

24 THE CHAIRMAN: Thank you. Are there
25 any members of the public who have been

1 Greene Q&A
2 here would care to make a statement,
3 testify for the Task Force? Hearing
4 none, we'll declare this meeting closed.

5 With the great sense of gratitude to our
6 colleague/senator Judge Brunetti.

7 * * * *

8 C E R T I F I C A T E

9 This is to certify that I am a
10 Certified Shorthand Reporter and Notary
11 Public in and for the State of New York,
12 that I attended and reported the above
13 entitled proceedings, that I have
14 compared the foregoing with my original
15 minutes taken therein and that it is a
16 true and correct transcript thereof and
17 all of the proceedings had therein.

18

19

20 _____
 John F. Drury, CSR, RPR

21

22 Dated: October 24, 2006

23

24

25