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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 34

HUDSON (NICOLE),

Appellant.

265 East 161st Street
Bronx, New York
March 12, 2026

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Official court Transcriber



1 CHIEF JUDGE WILSON: Next case on the calendar is
2 People v. Hudson.

3 MS. DEYOUNG: Good morning, Your Honors. May it
4 please the court. Paris DeYoung of the Legal Aid Society,
5 here on behalf of the appellant, Ms. Nicole Hudson. I'd
6 like to request five minutes for rebuttal, please?

7 CHIEF JUDGE WILSON: Yes.

8 MS. DEYOUNG: Thank you.

9 In crafting the DVSJA, the legislature made clear
10 that judges, not prosecutors, must be given the ultimate
11 authority to consider a survivor's abuse history in
12 determining an appropriate sentence. And by demanding that
13 survivors waive their right to these determinations - - -

14 JUDGE TROUTMAN: How is this different from other
15 instances where people waive rights?

16 MS. DEYOUNG: It's an excellent question. So
17 Your Honors have said that defendants can waive very
18 important rights, but there are some narrow exceptions to
19 that. When we look at, I think, Rudolph gives a pretty
20 clear sort of outline, as does Nunez, which says, you know,
21 we can have a statutory mandate that weighs in favor of
22 nonwaivable, or public policy consideration to justify - -
23 -

24 JUDGE HALLIGAN: So which one - - -

25 JUDGE CANNATARO: Do statutory mandates weigh in

1 favor, or do statutory mandates just direct?

2 MS. DEYOUNG: I would say - - -

3 JUDGE CANNATARO: And really, I'm asking the
4 question about "must" and "may" and things like that.

5 MS. DEYOUNG: Yes. So when it comes to - - - I
6 think there are some, you know, rights that are, you know,
7 mandated, your right to a jury trial; your right to
8 prosecution by information, you can waive that. And so I
9 think, certainly, in Rudolph the "must" language was really
10 foundational. But there are other sort of exceptions, and
11 that's where I think public policy really comes in.

12 JUDGE HALLIGAN: And which argument are you
13 making here? Statutory or public policy, or both?

14 MS. DEYOUNG: We are making both, Your Honor.
15 And the reason for that - - - so the Rudolph - - -

16 JUDGE HALLIGAN: And what exactly is the
17 statutory argument? There isn't - - -

18 MS. DEYOUNG: Yes.

19 JUDGE HALLIGAN: - - - the mandatory language
20 that we see in the YO statute.

21 MS. DEYOUNG: So Your Honor, there - - - you're
22 correct in saying that there is no "must". That's not the
23 language that we're seeing here. However - - -

24 JUDGE HALLIGAN: So you're relying upon - - -
25 upon a determination upon a hearing?

1 MS. DEYOUNG: Yes. So the court, upon a
2 determination following a hearing. Our read of that is
3 that a court cannot deny a survivor a hearing once it is
4 timely been requested.

5 JUDGE HALLIGAN: So in - - - I think that when
6 we're talking about resentencing, right?

7 MS. DEYOUNG: Yes.

8 JUDGE HALLIGAN: 440.47 sets up some threshold
9 requirements of corroboration, right?

10 MS. DEYOUNG: That's correct.

11 JUDGE HALLIGAN: When you're talking about a
12 sentence that is being handed down after the statute was
13 passed - - -

14 MS. DEYOUNG: Yes.

15 JUDGE HALLIGAN: - - - is there no requirement
16 for corroboration?

17 MS. DEYOUNG: So it is our position that in order
18 to get access just to be heard, right? Just to have that
19 initial hearing, there is no threshold that needs to be
20 established.

21 JUDGE HALLIGAN: So what does that hearing have
22 to entail? Not in the resentencing, but in the - - -

23 MS. DEYOUNG: Right. In the 60.12 context.

24 JUDGE HALLIGAN: - - - sentencing context?

25 MS. DEYOUNG: So it's going to depend on each

1 case what the actual hearing looks like.

2 JUDGE HALLIGAN: Yeah. But let's assume, okay.
3 Here, it looked to me like there were some supporting
4 materials that were provided, right?

5 MS. DEYOUNG: Yes.

6 JUDGE HALLIGAN: But what about a case - - - I
7 think you're taking the position that a hearing is
8 mandatory upon request, period. If that's right, and
9 defense counsel says I'd like a hearing - - -

10 MS. DEYOUNG: Yes.

11 JUDGE HALLIGAN: - - - but doesn't have these
12 supporting materials, what's a judge supposed to do?

13 MS. DEYOUNG: Right. So in a case, and I think
14 this is something that my opponent brings up a lot, what
15 happens if the courts are suddenly flooded with these
16 frivolous 60.12 hearings? If, for example, a defendant
17 asks for a hearing and they have nothing to present,
18 especially as to those first two prongs, that hearing is
19 going to be over before it even started. And the statutory
20 language actually lays out - - -

21 JUDGE HALLIGAN: So your view is that a judge has
22 discretion to deal with it in a fairly summary fashion if
23 there's no supporting evidence regarding the claim of being
24 a victim of domestic violence, et cetera?

25 MS. DEYOUNG: That's exactly right, Your Honor.

1 Because trial courts have the right to sort of manage the
2 scope of the hearing once it has been granted. And so
3 that's not diminished in any way here.

4 JUDGE HALLIGAN: And does it - - - in the case of
5 a plea bargain, it seems to me that it would probably have
6 to take place, I think, after the plea has been entered.
7 After the allocution and the plea's been accepted, because
8 it's tied to the offenses. Do you agree with that?

9 MS. DEYOUNG: It's an excellent question. I will
10 say I am familiar with one case. The New York Law Journal
11 actually published an article on it where there was a 60.12
12 hearing prior to the plea. I think that's very likely.

13 JUDGE HALLIGAN: And how does that work? I mean,
14 how do you know, prior to - - -

15 MS. DEYOUNG: Right.

16 JUDGE HALLIGAN: - - - the acceptance of a plea,
17 what the offenses are? Because I do think that - - -

18 MS. DEYOUNG: Right.

19 JUDGE HALLIGAN: - - - the statute tethers
20 eligibility to specific offenses, right?

21 MS. DEYOUNG: Yes. And I would agree with Your
22 Honor, that that - - - I answer that way because I am aware
23 of at least one example. I don't think that's going to be
24 practical in many cases. And certainly because - - -

25 JUDGE HALLIGAN: Then how does that affect the

1 negotiating process? So the People make an offer with the
2 - - - and the defendant evaluates the offer with the
3 understanding that the defendant may then seek a hearing
4 after allocution and acceptance of the plea, and so then
5 those numbers may change? Is that the way you envision it
6 unfolding?

7 MS. DEYOUNG: In a world where there was the
8 60.12 hearing prior to the plea?

9 JUDGE HALLIGAN: No. After.

10 MS. DEYOUNG: After the plea?

11 JUDGE HALLIGAN: Which seems to me far more
12 likely, as I think you agree?

13 MS. DEYOUNG: Absolutely, yes.

14 JUDGE HALLIGAN: So is what happens that there is
15 agreement, as there is in any plea, then, against the
16 backdrop of some understanding that maybe all that will
17 change if there's a hearing?

18 MS. DEYOUNG: So that is how it is working in
19 practice, Your Honor. Yes. What I will say - - -

20 JUDGE GARCIA: Do you think - - -

21 MS. DEYOUNG: - - - though, is I think - - -

22 JUDGE GARCIA: Counsel, I'm sorry.

23 MS. DEYOUNG: Yes.

24 JUDGE GARCIA: Do you think that because this
25 really involves numbers, not status, right?

1 MS. DEYOUNG: Yeah.

2 JUDGE GARCIA: So you're basically seem to be
3 asking us to remove a chip that can be bargained, right?
4 So in this case, serious assault, the person's paralyzed.
5 It's not the abuser - - -

6 MS. DEYOUNG: Right.

7 JUDGE GARCIA: - - - People offer five years
8 agreed-upon sentence on the condition that you withdraw
9 this motion. Now we're going to say you can't do that.

10 MS. DEYOUNG: Yes.

11 JUDGE GARCIA: So now the People come in and say,
12 no, five years - - -

13 MS. DEYOUNG: Right.

14 JUDGE GARCIA: - - - and we'll give you ten. You
15 make your motion. Maybe you get that cut down to five.
16 Maybe you don't.

17 MS. DEYOUNG: Uh-huh.

18 JUDGE GARCIA: And you say, no, no, no, I want
19 the five. So - - - but unfortunately, the Court of Appeals
20 won't let me do that.

21 MS. DEYOUNG: So it's a great question. And it's
22 one that this court has actually already grappled with and
23 decided. And we know that by looking at Rudolph. So - - -

24 JUDGE GARCIA: No. But Rudolph is status, right?
25 Rudolph is a status case, not a number case, right?

1 MS. DEYOUNG: No, Your Honor.

2 JUDGE GARCIA: Rudolph is, you can have a chance
3 to get this conviction be not a conviction.

4 MS. DEYOUNG: Right.

5 JUDGE GARCIA: Not a felon.

6 MS. DEYOUNG: Right.

7 JUDGE GARCIA: Right? And there's different
8 language in there.

9 MS. DEYOUNG: Correct.

10 JUDGE GARCIA: So now we're expanding Rudolph to
11 cover another chip, let's say. A very different chip. A
12 number chip. So what's the justification for removing that
13 from your ability - - -

14 MS. DEYOUNG: Removing the chip?

15 JUDGE GARCIA: - - - to get this five-year plea?

16 MS. DEYOUNG: Right. So Your Honors, I brought
17 up - - - I brought up Rudolph because Justice Graffeo's
18 concurrence took that same position of, I think that young
19 people should have the right to bargain YO determinations
20 away.

21 JUDGE GARCIA: And we struck the balance that way
22 under that statute with that - - -

23 MS. DEYOUNG: Right.

24 JUDGE GARCIA: - - - language for that status
25 designation.

1 MS. DEYOUNG: Right.

2 JUDGE GARCIA: Why should we do that, one,
3 without the language; two, on a number bargaining chip in
4 this case?

5 MS. DEYOUNG: So Your Honor, I think there are
6 several reasons why this shouldn't be bargained away. And
7 the primary one is that this is really a false promise the
8 prosecutors are offering survivors when they are saying,
9 okay, waive your right to a 60.12 hearing. They can only
10 make an offer to write the statutory minimum.

11 What survivors are being asked to waive are these
12 sentencing ranges that are so significant that when we
13 actually boil it down to what's being given away, right?
14 What they're losing - - -

15 JUDGE GARCIA: Seems like a five-year - - -

16 MS. DEYOUNG: - - - is so much more significant.

17 JUDGE GARCIA: - - - plea here was a significant
18 reduction as to what your client was facing?

19 MS. DEYOUNG: It was a significant reduction for
20 the charges without looking at the DVSJA ranges she was
21 eligible for. So she actually got, under this plea deal,
22 the maximum that she could have received under the DVSJA.

23 JUDGE GARCIA: Right.

24 MS. DEYOUNG: So there is a real chance that had
25 she gone to a hearing - - -

1 JUDGE GARCIA: And what was the maximum she could
2 have received under the charges?

3 MS. DEYOUNG: So twenty-five and five, your
4 Honor.

5 CHIEF JUDGE WILSON: Could I ask a question?

6 JUDGE GARCIA: Are you asking for your plea back?

7 MS. DEYOUNG: No, we are not, your Honor. It was
8 very clear on the record, just like it was in Rudolph, that
9 she understood, you know, what she was giving up. We are
10 simply asking that this court send it back for a hearing.

11 JUDGE CANNATARO: And when you say no, do you
12 include the sentencing portion of the plea as well?

13 MS. DEYOUNG: So - - - so - - -

14 JUDGE CANNATARO: Do you still get the benefit of
15 that bargain, and then a DVSJA on top of that?

16 MS. DEYOUNG: It is our position that she is
17 entitled - - - any survivor is entitled to seek 60.12
18 following a bargained-for plea. My opponent would argue
19 that the only way to access a 60.12 hearing is to go to
20 trial, or to plead guilty to the entire indictment.

21 JUDGE TROUTMAN: But if you have a bargained-for
22 plea - - -

23 MS. DEYOUNG: Yes.

24 JUDGE TROUTMAN: - - - each side is entering into
25 the agreement with the understanding - - - the People

1 entered into it with the understanding that the sentencing
2 range was X.

3 MS. DEYOUNG: Right.

4 JUDGE TROUTMAN: Pleas are, of course, approved
5 by the court. And she gets - - - she or he gets to plead
6 guilty to perhaps a lower offense - - -

7 MS. DEYOUNG: Right.

8 JUDGE TROUTMAN: - - - than if they pled to the
9 entire indictment, correct?

10 MS. DEYOUNG: Yes. That's correct.

11 CHIEF JUDGE WILSON: Could I - - -

12 JUDGE TROUTMAN: So why is it not fair for the
13 People to be able to say, well, if this is going to happen
14 - - - this hearing is going to happen, we get to take back
15 our plea?

16 MS. DEYOUNG: So Your Honor, we maintain that the
17 prosecution in that situation would, under Farrar, have the
18 right to request to withdraw their consent to the plea. So
19 there really - - -

20 CHIEF JUDGE WILSON: So a related question.

21 MS. DEYOUNG: - - - isn't a risk here.

22 CHIEF JUDGE WILSON: Could they offer a
23 conditional plea upfront not conditioned on waiving the
24 hearing, but conditioned on the outcome of the hearing?

25 MS. DEYOUNG: So saying that we would withdraw?

1 CHIEF JUDGE WILSON: We - - - we'll offer you
2 eight years if it turns out that when you go through the
3 hearing and you don't get the DVSJS - - - JA treatment, and
4 if you do get the treatment, then we have the right to
5 withdraw our plea?

6 MS. DEYOUNG: I think that would be in line with
7 Farrar, Your Honor. Absolutely.

8 And I'd like to pivot - - -

9 JUDGE CANNATARO: Hold on. Could I just ask you
10 what would be the benefit? You know, in terms of our
11 strong support for plea bargaining and - - -

12 MS. DEYOUNG: Certainly.

13 JUDGE CANNATARO: - - - and all the efficiencies
14 that we can create, what would be the benefit of doing it
15 that way? As opposed to just letting - - -

16 MS. DEYOUNG: The benefit of allowing them.

17 JUDGE CANNATARO: - - - the defendant bargain
18 their right as part of the process?

19 JUDGE RIVERA: If I can just add to that? What's
20 - - -

21 MS. DEYOUNG: Yes.

22 JUDGE RIVERA: - - - the incentive for the
23 prosecutor to do that? I see the incentive for the
24 defendant. What's the prosecutor for - - - the prosecutor
25 incentive?

1 MS. DEYOUNG: So Your Honors, I think I want to
2 take a bit of a step back and say that, again, I think
3 Farrar protects the prosecutor's interests here. But this
4 legislation isn't about offering the prosecution an
5 opportunity and right to get at these sort of pleas that
6 they've always gotten. It's trying to carve out a space
7 for survivors to have this evaluation that the law has
8 denied them or has failed to give them in the first
9 instance. And so - - -

10 JUDGE CANNATARO: I can't really dispute that
11 statement.

12 MS. DEYOUNG: Right.

13 JUDGE CANNATARO: There is a policy behind the
14 statute itself. But if we're - - - you know, the original
15 question was the broader policy of encouraging parties to
16 negotiate resolutions to their cases and strike equitable,
17 we hope - - -

18 MS. DEYOUNG: Bargain.

19 JUDGE CANNATARO: - - - plea bargains.

20 And this seems to, on several levels, including
21 the one that Judge Rivera mentioned, this seems to cut
22 against that a little bit.

23 MS. DEYOUNG: So Your Honor, this is - - - this
24 sort of brings me to what I would say, the meat and
25 potatoes of my argument, which really are these public

1 policy considerations. And this court has said that when
2 there is a societal interest, right, that transcends the
3 needs of any individual criminal defendant, if that - - -
4 that weighs against waivability, and we have that in spades
5 here.

6 And I'm - - - would like to sort of go through a
7 couple of those with you all.

8 JUDGE HALLIGAN: Before you do, can I just ask
9 you - - -

10 MS. DEYOUNG: Yes.

11 JUDGE HALLIGAN: - - - I want to make sure I
12 understand your answer to the Chief Judge's question. So
13 your position is that on the front end, the People can
14 offer a conditional plea to X years and with - - - with the
15 understanding that, if following allocution and acceptance
16 of the plea, that the court decides that the DVSJA track is
17 warranted, that then that the People can withdraw their
18 offer?

19 MS. DEYOUNG: So that is - - -

20 JUDGE HALLIGAN: Is that - - -

21 MS. DEYOUNG: - - - generally what - - - yes.

22 JUDGE HALLIGAN: - - - correct?

23 MS. DEYOUNG: That is generally what Farrar
24 stands for. However, there is language - - -

25 JUDGE HALLIGAN: So what - - - what sort of

1 incentives does that set? I mean, you're telling us, I
2 think, that there is a strong public policy - - -

3 MS. DEYOUNG: Yes.

4 JUDGE HALLIGAN: - - - in allowing the
5 opportunity for a defendant to show that their conduct was
6 affected by their status as a domestic violence victim. In
7 that circumstance, do you think that the People are going
8 to withdraw that offer in some significant number of cases?

9 MS. DEYOUNG: So it's an excellent question. And
10 what I will say is this, when we look at - - - and I know I
11 use Rudolph, but I think it's the best sort of analogy that
12 we have. We didn't see a flood of, like, post YO grant
13 trials. We know under Farrar that the People do, in some
14 cases, have the opportunity to request - - -

15 JUDGE HALLIGAN: I'm not - - -

16 MS. DEYOUNG: - - - I understand.

17 JUDGE HALLIGAN: I'm not - - - I'm not - - -

18 MS. DEYOUNG: However - - -

19 JUDGE HALLIGAN: - - - asking about the Flood
20 question. I'm saying in whatever the subset of cases are -
21 - -

22 MS. DEYOUNG: Right.

23 JUDGE HALLIGAN: - - - where there is a viable
24 claim to DVSJA track - - -

25 MS. DEYOUNG: Sure.

1 JUDGE HALLIGAN: - - - you have no concerns about
2 your view that the People can withdraw the plea?

3 MS. DEYOUNG: So Your Honor, I certainly have
4 concerns. I think that operates in direct defiance of
5 statute.

6 JUDGE HALLIGAN: But you think that is - - -

7 MS. DEYOUNG: However - - -

8 JUDGE HALLIGAN: - - - is materially better than
9 allowing the defendant to negotiate the potential waiver of
10 that track in the first instance? I guess that's what I'm
11 asking.

12 MS. DEYOUNG: I do, Your Honor. Absolutely.

13 JUDGE GARCIA: Why is that?

14 MS. DEYOUNG: Because what we're looking at, the
15 question isn't, right, like, how can a survivor, you know,
16 choose to engage? It's who holds the power to access that
17 hearing. And by allowing prosecutors - - -

18 JUDGE HALLIGAN: And who holds that power? I
19 mean, it - - - I don't know why it's a discussion of the
20 prosecutor holding that power versus the survivor. Like,
21 why is she being cut out of this equation? She can ask for
22 a hearing or not, depending on what her situation is, and
23 she can decide whether or not to waive that hearing or not.
24 Like, why is she being underestimated in this?

25 MS. DEYOUNG: So Your Honor, there's several

1 reasons why allowing prosecutors to condition their pleas
2 on waiver, go directly against sort of the heart of the
3 statute. And I want to talk a little bit about coercion
4 here - - -

5 JUDGE HALLIGAN: But I think if it went against
6 the heart of the statute, the legislature would have been
7 more clear and written a statute like they did in the YO.
8 And I think they made a deliberate choice not to do that.

9 And I understand what you're saying about
10 Rudolph, but I think Rudolph was really rooted in the
11 statutory language, not in a public policy argument.

12 MS. DEYOUNG: So I will agree that Rudolph did
13 spend a lot of the decision talking about the must
14 language. And I agree, we believe that we do have implicit
15 in the language of the statute, that statutory mandate.

16 But in any event, this court has said repeatedly
17 that a statutory mandate isn't the only avenue by which we
18 choose to protect certain rights from waivability. And we
19 know that public policy considerations, especially those -
20 - -

21 JUDGE SINGAS: But when we're doing a statutory
22 interpretation, we're looking at the words that are on the
23 page. And I think the legislature knows how to do it,
24 that's what we usually say. And if they wanted to do it,
25 they could have, and they didn't in this case. So how do

1 we get around that?

2 MS. DEYOUNG: So Your Honor - - -

3 JUDGE RIVERA: If I can just add at the same
4 time, there's an amendment to the CPL where they use that
5 mandatory language - - -

6 MS. DEYOUNG: Exactly, Your Honor.

7 JUDGE RIVERA: - - - I thought.

8 MS. DEYOUNG: Yes.

9 JUDGE RIVERA: It does seem that your - - - what
10 I understood to be your statutory interpretation - - -

11 MS. DEYOUNG: Yes.

12 JUDGE RIVERA: - - - argument seems to have quite
13 the hill to climb.

14 MS. DEYOUNG: Well, Your Honor, I think the
15 strongest - - - I think what Your Honors was speaking about
16 is that the strongest textual signpost that we have about
17 how the 60.12 hearing is meant to be mandatory under the
18 statute, is that 440.47 has this corroboration requirement
19 that the legislature did not choose to include in 60.12.

20 And what we have to read from that is the
21 legislature knew when and how to impose a corroboration
22 requirement where they wanted one. They also knew when and
23 how to use discretionary language where they wanted to.
24 That's that "may" language. And we only see the "may"
25 language come into the picture, as with YO, after that

1 initial eligibility determination has been made by the
2 court. And that's what we're trying to protect here.

3 JUDGE TROUTMAN: You started - - -

4 JUDGE CANNATARO: Counsel, can I - - -

5 JUDGE TROUTMAN: - - - to refer to coercion.

6 MS. DEYOUNG: Yes, Your Honor. So there are
7 several reasons why this statute, in particular, deserves
8 additional protection. And I just want to start by - - -
9 and this is sort of in response to this idea of like, well,
10 survivors can just, you know, go to trial; they can plead
11 guilty to the entire indictment; nothing's really lost
12 there. And we want to push back on that.

13 So just as an initial matter, right? Survivors
14 of domestic violence are going to have a much harder time
15 navigating plea negotiations because they struggle to
16 manage power dynamics in a way that the average person
17 otherwise would. And I think an important piece of this is
18 that if we look to a survivor who has a right to a 60.12
19 hearing - - -

20 JUDGE RIVERA: But - - - but - - -

21 MS. DEYOUNG: - - - being told - - -

22 JUDGE RIVERA: - - - many, many defendants have
23 difficulty with the plea-bargaining process, and that's why
24 you have, hopefully, a very skilled defense lawyer to help
25 not only in the bargaining process, but in finding ways to

1 discuss that with their client.

2 MS. DEYOUNG: Certainly. So - - - but Your
3 Honors, again, this legislation was written to protect - -
4 -

5 JUDGE RIVERA: We don't want to infantilize
6 survivors of domestic violence - - -

7 MS. DEYOUNG: Of course, not.

8 JUDGE RIVERA: - - - correct?

9 MS. DEYOUNG: Certainly not.

10 JUDGE RIVERA: Okay.

11 MS. DEYOUNG: It's something that I think is
12 important - - -

13 JUDGE CANNATARO: Wouldn't it actually empower
14 them, to allow them to use this as part of their
15 negotiation toolkit?

16 MS. DEYOUNG: Your Honor, that's not what we're
17 seeing. No. What - - - what - - -

18 JUDGE CANNATARO: Well, actually, I know I just
19 asked you a question and you were answering it, but since
20 you said it's not what we're seeing. I want to know before
21 you leave the stage. Do you have any notion of how many
22 60.12 waivers have already been entered into?

23 MS. DEYOUNG: Your Honor, I don't have a clear
24 number. But what I do know, and this is - - - you know, I
25 would urge Your Honors to look at the institutional

1 provider's amicus brief. They attached waivers that we're
2 seeing across the state, right: Erie, Niagara, Suffolk,
3 Tioga County.

4 And what I want to impress upon Your Honors today
5 is that what we're looking at when we're seeing these
6 waivers happening across the state is going to be the
7 functional nullification of 60.12. We are simply not going
8 to see 60.12 hearings happening anymore.

9 JUDGE RIVERA: Well, let me ask you if - - - if
10 we're not persuaded by your argument: the fact that this
11 kind of what you're describing, this tidal wave of these
12 demands for these waivers and these kinds of cases imposed
13 on - - -

14 MS. DEYOUNG: Right.

15 JUDGE RIVERA: - - - domestic violence survivors,
16 wouldn't that suggest that the legislature would
17 automatically step in?

18 MS. DEYOUNG: So Your Honor - - -

19 JUDGE RIVERA: If you're right about the policy
20 that animates the legislature with the statute.

21 MS. DEYOUNG: So what I can say is this. I know
22 that there are several people in this room who were part of
23 drafting the DVSJA.

24 JUDGE RIVERA: Yes.

25 MS. DEYOUNG: There were several - - - you know,

1 sort of, I think, foundational errors in how it was
2 drafted, but the wheels of the legislature move very
3 slowly. And we are seeing survivors, including Ms. Hudson,
4 right, be denied this opportunity to have this hearing that
5 we feel the legislature fought so hard for them to have.
6 And we just don't think that prosecutors should be - - -

7 JUDGE SINGAS: She wasn't really - - -

8 MS. DEYOUNG: - - - be the gatekeeper.

9 JUDGE SINGAS: - - - she wasn't denied the right
10 to have the hearing. Had she requested the hearing, she
11 would have had the hearing. And on some level, I think the
12 judge appreciated her experience and what she went through.
13 Because I think under normal circumstances, a five-year
14 plea would not have been what a judge would have
15 recommended or approved in a case like this, which was
16 pretty heinous. The injuries were very dramatic and life-
17 altering.

18 I think the fact that she got five years was
19 probably the judge internalizing all of that, regardless of
20 whether there was a formal hearing or not, and saying, I'm
21 going to approve this plea. Because I think otherwise I
22 don't think this plea would have happened.

23 MS. DEYOUNG: So Your Honor, I just want to take
24 a step back and say that, you know, a court or a
25 prosecutor's cursory evaluation of a survivor's history of

1 abuse is not, and it cannot, replace this multi-factored
2 analysis that the legislature has said in order for us to
3 properly sentence survivors of domestic violence, this is
4 the evaluation that must be done. That didn't happen here.

5 Now, it's true that she did get a lower sentence.
6 But as I mentioned earlier, she got the maximum that she
7 could have gotten under the DVSJA. And yes, this crime,
8 there was devastating consequences. However, the
9 legislature understood that the types of crimes we were
10 going to be dealing with in the DVSJA were going to have
11 devastating consequences, right? We're talking about
12 violent felonies in most cases.

13 And so the legislature decided that even in cases
14 where that is happening, survivors are entitled to these
15 much, much lower sentencing ranges. And we believe that
16 Ms. Hudson is certainly could have - - -

17 JUDGE CANNATARO: Isn't that all part of the
18 consideration that goes into the dealmaking process? I
19 mean, part - - - I would think, if you were a defendant
20 entering into a negotiation with your representative, you
21 would assess whether you can get the hearing; what your
22 chances are of prevailing at the hearing; and then, if you
23 do, what sort of reduction you might be looking at.

24 And you know, I don't know that I would have
25 weighed the possibilities as sanguinely as you do. But you

1 have to admit, it's a pretty good deal, isn't it? Or is
2 that just she - - - you think she could have done better?

3 MS. DEYOUNG: I absolutely think she could have
4 done better, Your Honor. We have, you know, facts in this
5 case that show that she was being attacked by two separate
6 abusers when this crime happened. And again, she got the
7 absolute maximum she could have gotten under the DVSJA.

8 CHIEF JUDGE WILSON: But couldn't - - -

9 JUDGE TROUTMAN: And why do you say that by
10 permitting waivers, that you would effectively void the
11 statute?

12 MS. DEYOUNG: So that's because we know that
13 ninety-eight percent of felony cases here in New York are
14 handled by guilty plea, which means that the vast majority
15 of survivors that come through the criminal justice system
16 are not going to have access to a 60.12 waiver. Because
17 what we are seeing in practice across the State - - - and
18 again, those are the waivers that are attached to the
19 institutional provider's brief - - - we're seeing that when
20 prosecutors catch wind that a survivor is a defendant in a
21 case and might have a 60.12 hearing, they're thinking about
22 waiver. They're trying to waive it. That's the instinct.

23 And what that's doing, right, in direct defiance
24 of the whole purpose of the statute - - -

25 JUDGE SINGAS: I think I have to push back on you

1 on that. I don't think that's the instinct. I think if
2 defendants request hearings, prosecutors conduct hearings.
3 I've been involved in many. I've heard of many. I don't
4 think the instinct is, no, we're not going to have this
5 hearing because it's a bargaining chip.

6 I think if a defendant has evidence to provide,
7 and wants to proffer that evidence, I think there's a forum
8 to do so. And I think it is being exercised.

9 MS. DEYOUNG: Respectfully, Your Honor, that was
10 the case in Ms. Hudson's case. She had a full application,
11 and the prosecution did not allow that hearing to go
12 forward, despite Mrs. Hudson's clear interest in having
13 one. And - - -

14 JUDGE RIVERA: But the prosecution's offers, as
15 you say, the high end of what it would be under the
16 statute. So it is hard to say that the prosecutor didn't
17 take into account.

18 I understand your position. But the statute says
19 the judge has to do this, not a prosecutor. I fully
20 appreciate that. I'm not suggesting otherwise.

21 MS. DEYOUNG: Certainly.

22 JUDGE RIVERA: But it does seem to cut, at least
23 in this case, somewhat against your argument that these are
24 blanket per se policies across the board, regardless of the
25 individual defendant situation.

1 MS. DEYOUNG: Well, even if they weren't, even if
2 we were only seeing this in a handful of cases, it is still
3 our position that that cuts directly against what the
4 legislature intended here. Which is that survivors of
5 domestic violence are entitled to a neutral arbiter looking
6 at these sort of statutorily determined factors.

7 JUDGE RIVERA: So then we're back to the
8 statutory language that, I think, as I said before, you got
9 a high - - - you got quite the hill to climb on the
10 statutory argument.

11 MS. DEYOUNG: So Your Honor, even if that's true
12 - - -

13 JUDGE RIVERA: I'm just speaking for myself. I'm
14 not speaking for anyone else on this panel.

15 MS. DEYOUNG: And I appreciate that opinion.

16 Even if we were to say - - - even if, Your Honors
17 were to say we - - - we think this is a discretionary
18 statute; we're not seeing that same statutory mandate for
19 Rudolph. There is still an avenue for Your Honors to
20 protect 60.12 hearings. And that's that Nunez language.
21 That's that Seaberg language that says, look, if we have a
22 societal interest - - - if a public policy consideration
23 implicates a societal interest that transcends the
24 individual needs of any criminal defendant, we can protect
25 it.

1 And Your Honors, we have that - - -

2 JUDGE HALLIGAN: If we did that - - -

3 JUDGE RIVERA: And is that because the
4 legislature - - - if I think I'm getting the point you're -
5 - -

6 MS. DEYOUNG: Yes.

7 JUDGE RIVERA: - - - trying to get to with this.
8 Because the legislature, through the statute, has
9 identified what animates that. Has identified a particular
10 category or subcategory of defendants who systematically,
11 not - - - individually, yes, but as a systematic - - -
12 systematically are treated unfairly, more harshly, at the
13 sentencing phase, and that's what they were trying to get
14 to.

15 MS. DEYOUNG: I think that's one of the many
16 things they were trying to get to. But when I - - - when
17 we think about sort of how is society impacted outside of
18 just that individual defendant, which seems to be the
19 language this court has put forward, the legislative
20 history is just rife with examples of how these hearings
21 are also offering relief to our communities at-large. And
22 we have to look to that language where it says we're
23 reducing intergenerational trauma; we're making sure
24 parents and children don't get separated; we're starting to
25 sew back together these, like, rifts in our communities

1 that domestic violence has continued to sort of rip into
2 the fabric of our society.

3 And so that language, I think, makes evident that
4 the legislature wasn't just here to offer a benefit to
5 survivors. They were looking at how do we benefit and how
6 do we start to cure New York, as a whole, from what
7 domestic violence has done to it over the past.

8 JUDGE RIVERA: By earlier release because the
9 sentences are reduced - - -

10 MS. DEYOUNG: So Your Honor - - -

11 JUDGE RIVERA: - - - perhaps with probation?

12 MS. DEYOUNG: I'm so glad that you brought that
13 up. Because - - -

14 JUDGE CANNATARO: Well, hold on. Before you
15 answer. I just - - - I thought you were saying it's the
16 hearings themselves that provide that relief, not - - - not
17 the opportunity for a reduced sentence? Or is it what
18 Judge Rivera just said?

19 MS. DEYOUNG: Sorry. Could you repeat the
20 question?

21 JUDGE CANNATARO: I understood your last comment
22 to be that there's some sort of cathartic, beneficial
23 byproduct of being able to have these hearings?

24 MS. DEYOUNG: Right.

25 JUDGE CANNATARO: It helps the community. It

1 airs the issue. You know, I can't repeat exactly what you
2 said.

3 MS. DEYOUNG: Yes. Yes.

4 JUDGE CANNATARO: But there is a good in the
5 hearing. But now, I'm - - - maybe it's you - - - what
6 you're really saying is that there's a good in a reduced
7 sentence?

8 MS. DEYOUNG: So Your Honor, I don't think those
9 are mutually exclusive.

10 JUDGE CANNATARO: No.

11 MS. DEYOUNG: I will say the - - - we - - - when
12 I tried to, like, distill down what the public policy is of
13 this statute. The problem they were trying to fix is that
14 Jenna's Law, that had been on the books for twenty years,
15 wasn't offering sentencing relief to survivors.

16 However, I think there are benefits that can come
17 that are very significant even in the absence of a third-
18 prong finding of - - - of unduly harsh.

19 So - - - and I'd just like to speak a little bit
20 about that. Because certainly, we know there are benefits
21 that come with sentencing reduction, certainly, the
22 community benefits that I just discussed. But we also know
23 that these determinations from a judge, again, even without
24 a finding that this was an unduly harsh sentence, bring
25 about these other benefits that can't be denied.

1 And the survivor affidavits that were submitted.
2 And I'd like to just name them, because - - - what a brave
3 thing: Kearra Bailey, Zachary Gibian, and Patrice Smith.
4 They talked about these other sort of collateral benefits.
5 And that was - - - and they got that all through this
6 determination. So we're talking about housing benefits.
7 They were able to attach these determinations to their
8 housing applications. Talking about - - -

9 JUDGE RIVERA: That's if they succeed. I - - -
10 perhaps I've misunderstood Judge Cannataro's inquiry here.
11 But that - - - isn't that, if indeed, maybe, I
12 misunderstood - - - succeed through the hearing process and
13 get a sentence that is reduced based on the sentencing
14 scheme set up under the act, versus just the - - - fact of
15 a hearing?

16 MS. DEYOUNG: So - - -

17 JUDGE RIVERA: Right?

18 MS. DEYOUNG: Yeah. I - - - I understand the
19 question.

20 JUDGE RIVERA: The fact of the hearing itself,
21 regardless of the outcome. And even if there's not a
22 positive outcome - - -

23 MS. DEYOUNG: Right.

24 JUDGE RIVERA: - - - has some other benefits. I
25 think - - -

1 MS. DEYOUNG: Absolutely.

2 JUDGE RIVERA: - - - if I understood Judge
3 Cannataro's inquiry.

4 MS. DEYOUNG: Right. And I realize that I sort
5 of, like, pivoted the question a bit.

6 So my answer was that, even without a sentence
7 reduction, if the court says on just a factor 1 and 2, you
8 met that standard, right? We know you were a survivor of
9 domestic violence. We believe that was a significant
10 contributing factor to your crime. But we think you got a
11 fair sentence, all things considered. There's still power
12 in that determination.

13 And to the other question, which is - - -

14 JUDGE RIVERA: What is power?

15 MS. DEYOUNG: - - - what if you fail?

16 JUDGE RIVERA: But what's the benefits you're
17 talking about?

18 MS. DEYOUNG: So - - -

19 JUDGE RIVERA: I understand there's power.

20 MS. DEYOUNG: Right. In addition to housing,
21 right? And relief under the Debt Bondage Repair Act.
22 Because these determinations, just having a judge
23 acknowledge your survivor-hood - - -

24 JUDGE RIVERA: I see what you - - -

25 MS. DEYOUNG: - - - and the tie to the crime, has

1 carried weight for people. And I think the other piece of
2 this that I just want to touch on briefly is - - - and this
3 is also straight from the legislative history - - - is
4 regardless, I think, frankly, if the judge ultimately
5 agrees that you're entitled to 60.12 relief, you're having
6 your day in court. You are having a judge hear about your
7 history of domestic violence. You're being heard. And for
8 a lot of survivors, certainly the ones who submitted
9 affidavits, that has been an incredibly healing thing for
10 them.

11 And that's actually straight in the legislative
12 history. The legislative history says judges historically
13 have been doling out punishment when they should have been
14 doling out health care and assistance. And I think what
15 the DVSJA offers is judges the opportunity to be part of
16 fixing that problem, not being part of the problem.

17 But that can take many forms depending on the
18 outcome. But I think, no matter what, a survivor having a
19 chance to go to a hearing and to have her story heard by a
20 judge, carries enormous power that weighs in favor of
21 waivability.

22 JUDGE SINGAS: I don't think anybody here
23 disagrees with those statements at all. I'm just saying
24 that the statutory scheme is such that the defendant has to
25 ask for it. It's not a mandatory hearing. And that's what

1 we're grappling with here.

2 MS. DEYOUNG: Certainly. So Your Honor is spot
3 on that the sort of only, I would say, practical difference
4 by application between YO and 60.12 is that it is not - - -
5 a 60.12 hearing is not compelled in every case where it is
6 not requested. However, that is really a distinction
7 without a difference because that distinction is rooted in
8 the unique vulnerabilities of the vulnerable group that the
9 legislature was trying to protect.

10 When we look at YO, that's birth date, right?
11 That just is what it is for the most part. There's some
12 categorical restrictions, but it's birth date. When we
13 look at someone's identity as a survivor, the only way the
14 parties are going to be made aware of that is if the
15 survivor comes forward with that information herself. And
16 so because it's sort of this self-identifying factor,
17 that's why the legislature made a request by the defendant
18 a trigger for that determination to be made.

19 And that operates, you know, very closely within
20 sort of these broader goals of the statute, which was to
21 make sure that survivors get, like, a sliver of that
22 autonomy that they've historically been denied. So we
23 would never want a survivor to - - -

24 JUDGE CANNATARO: And what happens to the - - -

25 MS. DEYOUNG: - - - be forced to have a hearing.

1 JUDGE CANNATARO: - - - survivors who don't self-
2 identify?

3 MS. DEYOUNG: It's an excellent question. So I
4 think there's sort of two ways to answer that. There could
5 be a survivor who chooses not to self-identify because
6 they're not interested in going through a hearing process,
7 because it can be incredibly retraumatizing. And we are -
8 - - that is completely and entirely their right. If they
9 don't choose to request it for whatever reason, or they
10 choose to withdraw from that process, then that's the end
11 of the road for them.

12 If, however, a survivor, for example, is not made
13 aware of the - - -

14 JUDGE SINGAS: Hold on. Is it the end of the
15 road for them? Because I think your position is that they
16 could come in years later and say, you know what, I should
17 have had that hearing and I didn't waive it, and I'd like
18 to have it now. Are you envisioning that?

19 MS. DEYOUNG: No, we're not, Your Honor.

20 JUDGE SINGAS: So there's a time frame attached
21 to this?

22 MS. DEYOUNG: We see this as sort of like a
23 forfeitable right if it comes from the defendant
24 themselves. So if the defendant does not request it prior
25 to sentencing, and there was a reason that they chose not

1 to pursue it, then they're not going to have an avenue to
2 seek - - - and there's actually a case - - - it's People v.
3 Smalls, but it was from 2015, Third Department. So before
4 the DVSJA was passed. That actually grappled with that
5 same thing and basically said, look, a survivor is now
6 asking for a 60.12 sentence, but she never asked for it
7 before. We're not going to allow her to do that. We think
8 that's in line with our read of the statute, which is
9 really rooted - - -

10 JUDGE RIVERA: Well, how is that, given what you
11 just said? I don't - - - I actually don't even understand
12 that position.

13 MS. DEYOUNG: So - - -

14 JUDGE RIVERA: I - - - I understood your position
15 all the way up to that.

16 MS. DEYOUNG: So Your Honor, our position is that
17 - - -

18 JUDGE RIVERA: If indeed the legislature has
19 recognized, as you're saying, these unique circumstances -
20 - -

21 MS. DEYOUNG: Yes.

22 JUDGE RIVERA: - - - and impacts on a survivor.

23 MS. DEYOUNG: Right.

24 JUDGE RIVERA: That may mean that survivor, at
25 the time, that the system - - -

1 MS. DEYOUNG: Right.

2 JUDGE RIVERA: - - - requires that they make a
3 decision, they're not ready. But with time, they become
4 ready. Where in the statute - - - where did the
5 legislature say, you know what, we don't care about that,
6 we're okay with the systemic coercion in that case?

7 MS. DEYOUNG: In that case?

8 JUDGE RIVERA: I'm not understanding you.

9 MS. DEYOUNG: Your Honor, I think there are
10 limitations just based on, you know, what your colleague is
11 pointing out, which is that there are not always going to
12 be opportunities for a survivor to seek this on appeal,
13 because there is that initial request - - -

14 JUDGE RIVERA: But that's the reason you're now
15 imposing on - - - on the statute. We - - - did I miss
16 something? Did we opine on this?

17 MS. DEYOUNG: You have not opined on this, Your
18 Honor.

19 JUDGE RIVERA: Okay. So then why - - -

20 MS. DEYOUNG: This is sort of what we believe to
21 be, like, the reasonable interpretation of this language
22 that - - - you know, it is upon this request by a defendant
23 for them to get a hearing. However, we would obviously be
24 in favor of survivors being able to access 60.12 hearings
25 whenever they are ready to have them.

1 But we appreciate that there might be some
2 restrictions that Your Honors are interested in posing to
3 restrict sort of, you know - - -

4 CHIEF JUDGE WILSON: I don't - - - you haven't
5 asked us - - -

6 MS. DEYOUNG: - - - how many cases come through
7 this court.

8 CHIEF JUDGE WILSON: - - - right? I mean, this
9 sort of run afoul of our ordinary preservation rules, I
10 think, right? And you've asked us to - - -

11 MS. DEYOUNG: Right.

12 CHIEF JUDGE WILSON: - - - hold this as not
13 waivable, but I don't think there's been any request that
14 we adjudicate - - - and it probably isn't raised in this
15 case - - - that issue.

16 MS. DEYOUNG: That's correct. So it - - -
17 because in this case it was so clearly preserved she made a
18 60.12 application, that was not an issue that we needed to
19 raise before this court, you know. We would certainly be
20 open, because our view is that survivors determine - - -
21 you know, they're entitled to these hearings. If there was
22 a way around that, we, of course, would be very - - -

23 JUDGE RIVERA: So then you're not - - -

24 MS. DEYOUNG: - - - in favor, but - - -

25 JUDGE RIVERA: - - - taking a position that it's

1 forfeited based on this Third Department case?

2 MS. DEYOUNG: So it is more - - - that is rooted
3 more in our understanding of how this sort of distinction
4 between how YO operates and how - - -

5 JUDGE RIVERA: Oh.

6 MS. DEYOUNG: - - - 60.12 operates. And I think
7 what we want to really emphasize here is that we're trying
8 to empower survivors to make the choice to pursue these
9 hearings when it works for them. And we want to recognize
10 that there may be cases where a survivor does not want to
11 pursue a hearing because of how challenging that might be
12 for them or other circumstances. And we want to make sure
13 that the power to make that determination stays with the
14 survivor, and not with the prosecutor being able to sort of
15 control that.

16 JUDGE RIVERA: So there's no argument here? It's
17 a little bit close to, I think, what Chief Judge Wilson was
18 asking. There's no argument here that, even if we upheld
19 the waiver, that the waiver would not encompass a request
20 for a hearing years down the road?

21 MS. DEYOUNG: Can you repeat the question?

22 JUDGE RIVERA: That argument's not on the table?

23 MS. DEYOUNG: That argument - - -

24 JUDGE RIVERA: Is not presumed - - -

25 MS. DEYOUNG: - - - is not on the table in this

1 particular case, but of course - - -

2 JUDGE RIVERA: Yes. It's not preserved. That's

3 - - -

4 MS. DEYOUNG: - - - it's - - - right. But Your
5 Honors would be, certainly, well within your rights to talk
6 about it, if you would like to expound on that.

7 CHIEF JUDGE WILSON: I think we're going to let
8 your colleague expound on his side of this.

9 Thank you.

10 MS. DEYOUNG: Thank you, Your Honor.

11 CHIEF JUDGE WILSON: Her side. I'm sorry.

12 MS. JOYCE: It's okay.

13 MS. JOYCE: Good morning, Your Honors. May it
14 please the court. Jean Joyce for the Brooklyn DA's office.

15 Your Honors, this is an entirely voluntary
16 proceeding - - -

17 JUDGE RIVERA: Can I ask you, is there - - -
18 because I think there might have been some difference of
19 position in the briefing. Is it the District Attorney's
20 Office for Kings County - - - is it their position that
21 this is a per se - - - this is a policy that you always ask
22 for these waivers? You make the pleas for this category of
23 defendants - - - you make the waivers a prerequisite to the
24 plea?

25 MS. JOYCE: No, Your Honor. The District

1 Attorney does not have a per se policy.

2 JUDGE HALLIGAN: Are there cases in which you
3 have not sought a waiver?

4 MS. JOYCE: Yes. And there are a couple - - -
5 there are a couple in our brief where - - -

6 JUDGE RIVERA: That post-date this case?

7 JUDGE HALLIGAN: Right.

8 MS. JOYCE: Yes. In fact, we have not been
9 seeking waivers in most cases. We have been looking into
10 waivers in our most serious crimes, such as homicide cases.
11 Where, for example, if we were to plead down one count down
12 to a man 1 and offer something like eighteen years, and
13 then the defendant - - -

14 JUDGE HALLIGAN: So some waivers, but not a
15 blanket policy?

16 MS. JOYCE: Correct. We do not have a blanket
17 policy.

18 JUDGE SINGAS: Does your - - -

19 JUDGE HALLIGAN: Can I ask you about - - -

20 JUDGE SINGAS: - - - does your office have those
21 hearings? Are they conducting these hearings?

22 MS. JOYCE: Yes, we are having hearings.

23 JUDGE SINGAS: Okay.

24 MS. JOYCE: Yes. There are 60.12 hearings
25 happening, and there are motions for those hearings.



1 JUDGE HALLIGAN: But you opposed one here?

2 MS. JOYCE: Yes. We absolutely opposed the
3 hearing in this case. We considered all of the defendant's
4 mitigating evidence. She put in a very extensive pre-
5 pleading - - -

6 JUDGE TROUTMAN: What about the claim that by
7 exacting the waiver, you are preventing the court from
8 considering an alternative sentencing scheme that the
9 legislature intended to be available, subject to the
10 criteria being established?

11 MS. JOYCE: Right. So that expansion of the
12 judge's power to consider lower sentences once the hearing
13 happens, exists. And we are not preventing any defendant
14 from the opportunity to obtain that hearing. The ways to
15 do that, though, are typically not going to be on a plea.

16 JUDGE TROUTMAN: So you're - - -

17 JUDGE HALLIGAN: So can I ask you about that?
18 What - - - what I find hard to understand about your
19 position, is that I think that for anyone who is seeking
20 resentencing, doesn't matter whether it was after a jury
21 trial or a guilty plea; is that right?

22 MS. JOYCE: That's correct.

23 JUDGE HALLIGAN: And so then, I think also that
24 if you go to trial today, after the law went into effect,
25 you can seek a hearing if you're convicted, yes?

1 So what's carved out then, are all of the guilty
2 pleas, whatever the percentage is - - - ninety-six, counsel
3 said ninety-eight, whatever the number is, but some very
4 significant number - - - only prospectively? Only from the
5 date the statute went into effect. And I guess it seems to
6 me that if the legislature wanted to exempt this big chunk
7 of cases from this new sentencing regime, that it would
8 have said so and it didn't say so.

9 So how are we to make sense of that?

10 MS. JOYCE: So they - - - just by the fact that
11 most people plead guilty, I don't think they have exempted
12 - - -

13 JUDGE HALLIGAN: Well, your position, as I
14 understand it, is that there can be a waiver in the context
15 of a guilty plea, right? And that there is no right to a
16 request - - - well, you can request, but there's no right
17 to a hearing in that context, and that the statutory
18 provision doesn't apply because it's been waived.

19 And it sounds like there's some difference of
20 opinion about - - - or maybe it's a factual, you know,
21 dispute about how broadly waivers are being sought. But if
22 waivers are broadly sought, then it seems to me that the
23 effect will be to, essentially, excise a very significant
24 number of cases going forward from potential relief under
25 the statute.

1 And I would have guessed that the legislature
2 would have said that, or in the legislative history, we
3 would see some discussion, some colloquy, that would make
4 that point more clearly. Because it's such a significant
5 number of the cases.

6 So can you help me understand that?

7 MS. JOYCE: So first of all, significant number
8 of defendants plead guilty rather than exercise their
9 constitutional right to a trial. And that doesn't mean
10 that trials aren't important. It's one of our most
11 fundamental rights.

12 JUDGE HALLIGAN: Sure. But it is a very
13 significant number of the cases that are - - - that may
14 well not be eligible, depending on how broadly waivers are
15 employed for this type of relief.

16 MS. JOYCE: Well, again, defendants are eligible
17 for a hearing if they either work out a plea with the
18 People permitting a hearing, and/or if they plead to the
19 indictment, or if they go to trial.

20 But yes, if we negotiate a waiver, then no, the
21 defendant - - -

22 JUDGE HALLIGAN: Do you think the legislature - -
23 - is there anything you've seen in the legislative history
24 to indicate the legislature saw this question and meant to
25 address it, or do you think they didn't think about it?

1 MS. JOYCE: Unfortunately, they only addressed
2 trials. In the Assembly debates, there were questions
3 about, well, what happens if a defendant raises their
4 justification defense at trial, or their EED defense, are
5 they still able to bring a motion if they are found guilty?
6 And the answer was yes.

7 JUDGE CANNATARO: Somewhat relatedly, Ms. Joyce.

8 I can't - - - you know, because Rudolph has been
9 cited, I know that YO is being compared to this as somehow
10 structurally similar. I can't think of any other similar,
11 you know, either sentence or status-reducing statute, which
12 we might be able to compare to make a determination of how
13 to extract whether it was meant to be mandatory or
14 waivable.

15 Are you aware of any other good comparators
16 beyond YO?

17 MS. JOYCE: Well, YO is the main one. I mean,
18 you could also compare the waiver on appeal of an excessive
19 sentence claim. Because the Appellate Division has a
20 constitutional authority to consider, in the interest of
21 justice, the excessiveness of any defendant's sentence.

22 JUDGE CANNATARO: But that's like giving up a
23 legal right. And we've said in the context of plea
24 bargaining, you can negotiate away legal rights - - - you
25 know, even really important ones, for the benefit of a good

1 deal.

2 But this is sort of, like, a procedural process.
3 It has a somewhat different flavor to me. And maybe that's
4 a meaningless distinction, but it's a little different.

5 MS. JOYCE: It is a little bit different in that
6 you can bring at the hearing, you can provide evidence that
7 would support your claim. But at the same time, the
8 Appellate Division can review the entire record in an
9 excessive sentence claim and conclude that whatever the
10 trial court did was inappropriate and - - -

11 JUDGE RIVERA: But - - - but - - -

12 MS. JOYCE: - - - lessen that sentence.

13 JUDGE RIVERA: - - - the problem I have with that
14 example is, as you were just now pointing out, very
15 individually fact-driven, right? It's the unique
16 circumstances of that defendant that counsel is arguing
17 about. Defense counsel is trying to advocate based on the
18 unique circumstances of that individual, in addition to the
19 nature of the crime, and perhaps, the victims who have
20 suffered as a consequence of the crime.

21 And now, obviously, under this statute that we're
22 discussing, it is about the individual, right? The
23 survivor's circumstances, I don't want to say suggest
24 otherwise. But it strikes me that the legislature is doing
25 more than trying to give relief to any particular

1 individual, right? Their - - - I understand what the
2 legislature's purpose here is to address what it identified
3 as a systemic harm. And that that's the systemic harm - -
4 - there's lots of systemic harm that they're identifying
5 that survivors, in particular, suffer under the legal
6 system. And they took up the harm related to the
7 sentencing scheme. The what they viewed as harsh
8 sentences.

9 That strikes me as not just about the individual,
10 but a larger systemic issue that they're trying to deal
11 with concerning the way the criminal legal system
12 functions. And maybe that's where the public policy fits.
13 That can't be waivable if they're trying to address a
14 systemic problem within our system.

15 MS. JOYCE: Well, in terms of the relief that's
16 granted, what is granted is lesser sentences, shorter
17 sentences, or probation. And that is no different than
18 what any defendant is seeking when they are plea
19 bargaining: a short - - - the best possible outcome for
20 their situation.

21 So yes, the - - - there is a policy in this
22 statute that is seeking to redress the harm that comes to
23 defendants who are themselves abuse victims. But the
24 legislature didn't say anything in the statute to indicate
25 that this was the type of right that was either mandatory

1 or nonwaivable, like, you know - - -

2 JUDGE RIVERA: That's what I'm saying. If
3 legislature views this as a systemic problem, and it's
4 trying to address how that systemic defect - - - let me
5 call it that - - - impacts a particular class of
6 defendants, seems allowing waiver would undermine that
7 broader goal of eliminating the systemic defect.

8 MS. JOYCE: Well, the legislature is fully
9 capable of putting in a requirement into the statute that
10 says this is a right that's not waivable. And they did so
11 in the very same month that they passed this statute in
12 passing 245.25.

13 JUDGE RIVERA: Yes, I agree with you. That is a
14 very compelling argument with respect to the interpretation
15 of the statute. I'm asking about the public policy
16 question.

17 MS. JOYCE: Right. So in terms of public policy
18 - - -

19 JUDGE RIVERA: And the entire framing of the - -
20 - right? The entire framing of the statute?

21 MS. JOYCE: In terms of public policy, there are
22 many, many significant and important constitutional rights
23 that are waivable. And this court, by contrast, has
24 defined a very narrow category of rights that are
25 nonwaivable, which fall into two related categories. But

1 they really boil down to - - -

2 JUDGE RIVERA: But let - - - I guess what I'm
3 saying is the waiver of those kinds of rights. And help me
4 here, I'm really trying to make my way through this.
5 Waiver of these other kinds of very, very important rights,
6 how does that - - - or would that undermine some other
7 effort to address something that's wrong with the system?

8 I mean, you've already got the Supreme Court,
9 this court, other courts, who say there's a real benefit to
10 waivers for the system. Right? And I think this, in part,
11 the argument is this is not one of those times when you get
12 the benefit, or there's a greater benefit that outweighs
13 the benefit that you usually get from waivers.

14 MS. JOYCE: Well, I disagree because there can be
15 a - - - an enormous benefit - - -

16 JUDGE RIVERA: Okay.

17 MS. JOYCE: - - - if you get a very low offer
18 from the People. Because for various reasons, we do not
19 want to bring our paralyzed victim back to court to testify
20 at a hearing when we could have had a trial and had her
21 testify, where we consider all of the mitigation in the
22 defendant's pre-pleading memorandum. So it is another - -
23 -

24 JUDGE CANNATARO: So you're saying it's - - -
25 you're not giving up the benefits afforded to you under

1 60.12, you're really just using them in a different way?

2 MS. JOYCE: I think that's correct, Your Honor.

3 JUDGE GARCIA: What's the range here if it goes
4 back for - - - and the hearing's successful, what's the
5 range?

6 MS. JOYCE: If she goes back for a hearing and is
7 successful, the range could be as low as probation or a
8 definite sentence of one year or a determinate sentence of
9 between one and five years. So five is the max.

10 CHIEF JUDGE WILSON: So just to focus on your
11 understanding of the statute a little bit. Do you agree
12 that if a defendant requests the hearing, they get it
13 automatically, or no?

14 MS. JOYCE: I don't agree with that. But I also
15 don't think that you necessarily have to set out what
16 threshold requirements would obtain in this case because -
17 - -

18 CHIEF JUDGE WILSON: Do you think the answer to
19 that question affects waivability at all?

20 MS. JOYCE: No. I mean, I think there could be a
21 reading of the statute. I don't - - - I would not propose
22 that you adopt it, but you could read it to say every
23 defendant gets this. The court has to look at - - - upon a
24 determination following a hearing, when the court is
25 imposing sentence, it must consider this. But that would

1 be absurd because - - -

2 JUDGE RIVERA: Well, if they request it?

3 MS. JOYCE: Well, there's no statutory language
4 reflecting a timely request. That's not in there. The
5 only language that could be interpreted is this awkward
6 phrasing, "upon a determination following a hearing".

7 So first, the court has to consider, do I need to
8 make a determination? And what is "upon a determination"?
9 Well, I think that means - - - and it's common sense that
10 it would mean on the occasion that a determination happens,
11 or when a determination occurs. So that suggests that it
12 does not happen in every case.

13 But even if you were to say, oh, every defendant
14 can have this hearing just upon request, that doesn't mean
15 it's not waivable. Because - - -

16 CHIEF JUDGE WILSON: No. I guess my question was
17 not quite that. It was whether, if you concluded that it
18 might be a little weight on the scale on the public policy
19 argument in trying to figure that out. That's sort of my
20 question.

21 MS. JOYCE: I suppose.

22 CHIEF JUDGE WILSON: Does it - - - is it totally
23 indifferent or does it have some bearing?

24 MS. JOYCE: Well, if you compare it to the 720.20
25 sub 1 language, it's very different. YO determinations

1 must be - - - must be had as long as the defendant fits
2 into the age-range and is convicted of the crime.

3 Here, again, it would boil down to this "upon a
4 determination" language. And there's just nothing in the
5 statute that says every defendant must have this.

6 JUDGE CANNATARO: So in the situation where a
7 defendant asked for it, as this defendant did, why would an
8 office like yours oppose that request?

9 MS. JOYCE: Well, for the very simple reason that
10 the People's consent to any plea bargain is required. And
11 - - -

12 JUDGE CANNATARO: Oh, so it was about the deal?
13 It wasn't an argument, like, you're not a domestic violence
14 survivor or something like that? This - - - it was based
15 on the fact that you - - - that there was an agreement in
16 place?

17 MS. JOYCE: Well, we hadn't made the agreement
18 when she made the request. You know, I think we made a
19 much higher offer to her initially. I think it was fifteen
20 years. And at some point, she made the request. And then
21 plea negotiations happened, and we arrived at this
22 determination.

23 So whether we thought she was going to - - - I
24 don't think we thought she would make out at the hearing,
25 frankly. I think we thought it was a weak case for a

1 hearing. So there is that - - -

2 JUDGE TROUTMAN: But you indicate that after you
3 received certain information during the plea bargaining
4 process, you went from in excess of ten years, in the
5 teens, to the five year. Why? If you thought it was a
6 weak case for a hearing?

7 MS. JOYCE: Well, there are other reasons why we
8 might not want to have a hearing and - - - which are
9 resources, bringing the victim and the family members back
10 to court to have this hearing that we think is not
11 necessarily - - -

12 JUDGE TROUTMAN: Who's the burden on, if there
13 were a hearing?

14 MS. JOYCE: The burden's on the defendant. And
15 that is another point that I think is relevant to - - -

16 JUDGE HALLIGAN: Just to go back to what you just
17 said. But if the survivor has requested the hearing, you
18 would take the position that it would nonetheless be in the
19 survivor's interest not to have the hearing because it
20 would revictimize them? Maybe the survivor would be best
21 positioned to make that judgment.

22 MS. JOYCE: I meant the victim of the crime would
23 be - - -

24 JUDGE HALLIGAN: I see.

25 MS. JOYCE: - - - traumatized by coming to court.

1 JUDGE TROUTMAN: But is that person necessarily -
2 - - unless the People feel that that impacts the
3 determination of the court - - - that person doesn't
4 necessarily have to testify in all instances. And in fact,
5 in this case, the alleged victim wasn't the perpetrator.
6 So it - - - this is unique. It's different.

7 MS. JOYCE: Well, no, Your Honor. Because - - -

8 JUDGE TROUTMAN: What I'm saying to you, if she
9 had stabbed the man or ran over the man who she claimed was
10 the perpetrator of years of domestic violence, that's a
11 different situation, and the manner in which a hearing
12 would be undertaken is different. Victims come and testify
13 at felony hearings all the time. It's not necessarily an
14 extended trial, but it's that which is necessary to mete
15 out the People's burden in that instance. So why is this
16 so onerous?

17 MS. JOYCE: Well, I think on prong 3 of the
18 statute, the court has to consider the nature and
19 circumstances of the crime. And so that could be a sort of
20 mini-trial on what happened and who was the victim and what
21 were the circumstances and - - -

22 JUDGE TROUTMAN: And it could be. But many
23 trials are not necessarily four weeks or eight hours' worth
24 of evidence being produced. Not in all instances.

25 MS. JOYCE: Right. Well, it is our experience

1 that many of these 60.12 hearings are quite involved and
2 require document production and many other - - -

3 JUDGE TROUTMAN: But then doesn't that mean that
4 it - - - the justice is working so that the court makes an
5 informed decision? Because quite frankly, after all of
6 that production takes place, the court can say no, correct?

7 MS. JOYCE: That's true. The court can say no.
8 And after all of that, the People can move to withdraw
9 their consent. So our position is, is it a good idea that
10 we go through this process, that ultimately - - -

11 JUDGE TROUTMAN: Is it not a good idea - - -

12 MS. JOYCE: - - - we won't agree to.

13 JUDGE TROUTMAN: - - - that a court be well
14 informed before it pronounces sentence upon any person?

15 MS. JOYCE: Yes, absolutely. The court - - - and
16 the court can say the sentence is too harsh or too lenient,
17 and therefore - - - you know, you could move to withdraw
18 your plea.

19 JUDGE GARCIA: Counsel, could this defendant in
20 this situation also ask the Appellate Division to reduce
21 the sentence in the interest of justice? Or is that not
22 available here?

23 MS. JOYCE: This defendant is at the minimum for
24 - - -

25 JUDGE GARCIA: So there's no reduction - - -

1 MS. JOYCE: She - - -

2 JUDGE GARCIA: - - - even on the Appellate
3 Division's interest of justice authority?

4 MS. JOYCE: She did ask for - - - I believe she
5 asked for a reduction on the post-release supervision.

6 JUDGE GARCIA: My question is, is that avenue
7 generally available, despite the fact you don't have this
8 hearing?

9 MS. JOYCE: Without a hearing or findings, I
10 don't believe so.

11 JUDGE GARCIA: Appellate Division - - -

12 MS. JOYCE: Right.

13 JUDGE GARCIA: - - - excessive justice authority
14 not available to reduce a sentence?

15 MS. JOYCE: Not to a DVSJA sentence without a
16 determination.

17 JUDGE GARCIA: No, no. Just - - -

18 MS. JOYCE: Just generally speaking?

19 JUDGE GARCIA: Generally.

20 MS. JOYCE: Oh, sorry. Yes. I mean, an
21 appellate division could reduce the sentence if you're not
22 at the minimum. Yeah.

23 JUDGE RIVERA: Don't you ask them to waive it?
24 Don't you ask them to waive that consideration - - -

25 MS. JOYCE: Right. I mean, that's - - -



1 JUDGE RIVERA: - - - as part of the waiver
2 negotiations on the plea?

3 MS. JOYCE: That is another thing that can be
4 bargained for. If a defendant does not want to waive their
5 right to a - - - to - - -

6 JUDGE RIVERA: Consideration of an excessive
7 sentence?

8 MS. JOYCE: Yeah. They can - - -

9 JUDGE RIVERA: Harsh.

10 MS. JOYCE: They can ask for that. That's just
11 one of the conditions that we typically ask for because,
12 again, we're trying to protect the - - - what we believe is
13 the appropriate sentence in light of the plea bargain.

14 If there are no further questions.

15 CHIEF JUDGE WILSON: Thank you.

16 MS. DEYOUNG: Okay. Just a few things to start
17 off, Your Honor.

18 JUDGE HALLIGAN: Counsel, can I just ask you
19 briefly about your - - -

20 MS. DEYOUNG: Yes.

21 JUDGE HALLIGAN: - - - reliance on Seaberg and
22 Nunez?

23 MS. DEYOUNG: Yes.

24 JUDGE HALLIGAN: So the types - - - the very
25 narrow class of claims that are carved out there: speedy

1 trial; I think legality of a sentence - - -

2 MS. DEYOUNG: Yeah.

3 JUDGE HALLIGAN: - - - competence, those - - - I
4 don't think any of those are interests that are statutorily
5 created, which I think is what we have here.

6 MS. DEYOUNG: That's correct.

7 JUDGE HALLIGAN: Wouldn't that be a real
8 expansion of that understanding of what constitutes a
9 narrow class?

10 MS. DEYOUNG: I don't believe so Your Honor. And
11 - - -

12 JUDGE HALLIGAN: But you would be asking us, I
13 take it, to take cognizance of an interest that is created
14 by statute specifically?

15 MS. DEYOUNG: Yes, Your Honor, that is true. I
16 do think, though, the language in Nunez, particularly
17 around constitutional speedy trial, actually focuses on the
18 same sort of factor that I'm asking Your Honors to focus on
19 here. Which is what is society's greater interest in
20 preserving this right?

21 JUDGE HALLIGAN: But if the statute had not been
22 enacted, I take it you wouldn't have a Seaberg Nunez
23 argument at all, right?

24 MS. DEYOUNG: Well, of course. Right.

25 JUDGE HALLIGAN: Okay.

1 MS. DEYOUNG: Yeah. All of our claims are rooted
2 in the legislative history and why the statute came into
3 being.

4 But Justice Halligan, to your point earlier, I
5 just want to offer a little bit more information on how
6 440.47 operates, because I think Your Honor's point is very
7 important. Which is that - - - so 440.47 allows for
8 resentencing, as Your Honor pointed out, even for survivors
9 who took a negotiated plea, that took into account
10 explicitly their history of domestic violence. And that's
11 the Liz L. case.

12 So certainly, the legislature didn't intend for
13 one group of survivors to get sort of the benefit of
14 negotiated plea, plus a hearing, but not other survivors.
15 And that cut off - - - so 440.47 only applies to folks who
16 were already had been sentenced at the time of the
17 legislation's enactment.

18 And so to adopt my opponent's position here would
19 be to offer a benefit to any survivor who just happened to
20 have a case that came through earlier than when the
21 legislation passed. And we just don't think that the
22 legislature intended to draw that line.

23 I also just wanted to address my opponent's
24 position that the legislative history only speaks to trials
25 - - -

1 JUDGE CANNATARO: I'm sorry. Can I just stop you

2 - - -

3 MS. DEYOUNG: Yes.

4 JUDGE CANNATARO: - - - on this legislative
5 intent question? It would seem to me that you might draw
6 that line if you're a legislature, because for all the
7 other people, they have an active ability to seek the
8 hearing. So you don't need to create a mechanism for a
9 post-plea hearing, or post-sentence hearing, as the case
10 may be.

11 MS. DEYOUNG: The focus, Your Honor, is more
12 about, are negotiated pleas allowed prior to the same
13 determination? And under 440.47 the courts have said yes,
14 if you had a negotiated plea that took into account your
15 abuse history - - -

16 JUDGE CANNATARO: Is it really key to the plea?
17 I don't have it in front of me, but I thought it was more
18 key towards the sentence. You have a sentence; you think
19 you have the statutory right to a reduction in the
20 sentence, but you've already - - - it's already been
21 imposed upon you, so now you can come back and ask for a
22 reconsideration under these new factors. Does it - - - is
23 it really related to a plea per se?

24 MS. DEYOUNG: Your Honor, I'm not sure I fully
25 grasp the question. But I think what we're trying to focus

1 on is that - - -

2 JUDGE GARCIA: Is that your ability to bargain
3 that chip, when that sentence was imposed?

4 MS. DEYOUNG: Right. It wasn't available at the
5 time.

6 JUDGE GARCIA: Right.

7 MS. DEYOUNG: And that may be what - - -

8 JUDGE GARCIA: So that sentence doesn't factor
9 into the prosecutor saying, I'll give you five years and
10 reduce these sentences, and you give up that.

11 MS. DEYOUNG: I think the important part is that
12 the abuse history in these cases was considered by the
13 prosecution, and that is what my opponent is raising here,
14 is that, look, you can - - -

15 JUDGE GARCIA: Right. In your own - - -

16 MS. DEYOUNG: - - - bargain for it, the
17 prosecution can consider it.

18 JUDGE GARCIA: - - - calculation in arriving at a
19 number, right? But now you're giving that to a court under
20 this statute, and they said you never had that ability,
21 that leverage because we're giving you a tool. So we're
22 giving you that tool retroactively, in effect, to go back
23 and now make that argument.

24 That's a very different consideration than, you
25 had that ability, you bargained it, and now I want it

1 again.

2 MS. DEYOUNG: So I understand Your Honor's
3 position. And my response to that is that the legislature
4 - - - so in addition to this 440.47, which I agree, there
5 are some sort of foundational differences there that Your
6 Honors may find unconvincing. But I think what is
7 convincing and hard to deny, is that the legislative
8 history here clearly anticipated survivors going through
9 the plea process, engaging in negotiated pleas, and moving
10 forward to 60.12.

11 And so - - - and where we see that is all of this
12 legislative history talking about how we want survivors to
13 take accountability for the crimes they have committed. We
14 want to encourage - - - we're not saying they're not
15 responsible. We want to encourage them to accept
16 responsibility. And that language, that's not trial
17 language, right? That's guilty plea language. And so we
18 know - - - and also, you know, for what it's worth, we did
19 have an amicus brief from legislators that said, we
20 certainly thought that this would follow negotiated pleas,
21 and we believe that's appropriate, certainly, in this case.

22 Your Honors, I also - - -

23 JUDGE GARCIA: Do they point to anything in the
24 legislative history, other than their thoughts, that
25 supports that view, specifically, that this was considered?

1 MS. DEYOUNG: So Your Honor, the primary - - - I
2 mean, they rely certainly on the sponsors - - - all of the
3 same sources that we rely on, sponsors memorandum; Senate
4 minutes; Assembly minutes.

5 JUDGE GARCIA: So this - - -

6 MS. DEYOUNG: They don't speak to this sort of
7 acceptance of responsibility.

8 JUDGE GARCIA: - - - so what, in your view, does
9 that add, that amicus brief?

10 MS. DEYOUNG: So Your Honor, I think what it adds
11 is - - - you know, the obviously, well-educated and
12 interested opinion of a group of people that were
13 responsible for the crafting of this act. But - - -

14 JUDGE GARCIA: So their individual view on what
15 it meant?

16 MS. DEYOUNG: No, Your Honor. So this court has
17 made clear in the new rule that you all brought down
18 recently, that - - -

19 JUDGE GARCIA: I guess my question really is, do
20 they point to something you don't in the history?

21 MS. DEYOUNG: No, Your Honor. I believe that
22 everything that I have pointed to is, is sort of what they
23 also rely on.

24 Your Honors, I also just want to briefly address
25 my opponent's, I think, sort of primary argument here.

1 Which is if you want a hearing, you go to trial or you
2 plead guilty to the entire indictment.

3 I've already touched base a little bit on that
4 sort of - - - the coercive nature of plea bargaining,
5 especially for survivors. But there are these two other
6 sort of circumstances that we're seeing in practice that I
7 just want to draw Your Honors' attention to, of why
8 negotiated pleas are particularly important for survivors
9 of domestic violence.

10 And one is that a lot of survivors are women with
11 children at home, and they are trying to make a decision
12 between going to trial or pleading guilty to the entire
13 indictment, risking decades in prison, knowing that if they
14 don't succeed at a 60.12 hearing, right, their children can
15 end up in the hands of their abuser. And that's exactly
16 what happened in Ms. Hudson's case.

17 And this other thing that we are seeing in
18 practice, and there's a devastating example of this in the
19 institutional provider's amicus brief - - - it's A-39 to A-
20 40 of their appendix - - - and I think this is really
21 relevant to this political moment.

22 Which is that we are seeing prosecutors offer
23 noncitizen survivors, plea deals with a waiver of their
24 right to 60.12, that are immigration-safe. And when, in
25 this example, right here in this courtroom - - - this

1 courtroom - - - this courthouse, defense counsel comes in
2 and says, I think my client is - - - a new defense counsel
3 - - - says I think my client's entitled to 60.12. The
4 prosecutor says, hold on a second, I made this plea deal.
5 She was going to waive 60.12 as a result. And also as a
6 reminder, counselor, you're getting an immigration benefit
7 as a result, because we're pleading her down from the top
8 count.

9 What happened? Defense counsel never filed a
10 60.12 application. And of course not. Because what
11 survivor is going to choose pleading guilty to the top
12 count that makes her mandatorily deportable, just for the
13 chance to go to a hearing that she may or may not win, to
14 get a sentence reduction.

15 So Your Honors, is what we're seeing is a deep
16 and pervasive chilling effect on these hearings and what
17 the legislature intended for these hearings to look like,
18 and that's happening statewide.

19 CHIEF JUDGE WILSON: Thank you.

20 MS. DEYOUNG: Thank you.

21 (Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Hudson (Nicole), No. 34 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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