

IN THE MATTER OF:
NJSB SUBCOMMITTEE ON JUDICIAL
INDEPENDENCE IN THE MUNICIPAL
COURTS HEARING

Transcript of Proceedings
Monday, May 2, 2016

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B E F O R E:

- HON. LAWRENCE LAWSON
HON. BONNIE GOLDMAN, (ret.)
HON. FRANK ZINNA, (ret.)
PATRICIA QUELCH, ESQ.
ARNOLD FISHMAN, ESQ.
JON-HENRY BARR, ESQ.
MICHAEL TESTA, JR., ESQ.
BARBARA UNGAR, ESQ.
ROBERT PINIZZOTTO, ESQ.

SCHULMAN, WIEGMANN & ASSOCIATES
CERTIFIED COURT REPORTERS
216 Stelton Road, Suite C-1
Piscataway, New Jersey 08854
732-752-7800 Fax 732-752-7166

1 TRANSCRIPT of the stenographic notes of
2 the proceedings in the above-entitled matter, as
3 taken by and before CARYN L. KELLNER, a Certified
4 Shorthand Reporter and Notary Public of the State of
5 New Jersey, held at Rowan University, Chamberline
6 Student Center, Room 221, 201 Mullica Hill Road,
7 Glassboro, New Jersey, on Monday, May 2, 2016,
8 commencing at 5:18 in the evening.

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1 MS. UNGAR: Good evening, everybody. My
2 name is Barbara Ungar. I'm the chair of the
3 municipal court practice section of the state bar
4 association. I'm also the chair of the subcommittee
5 on municipal court judicial independence that's
6 conducting these hearings.

7 Before we begin I'd like to just
8 introduce some of our subcommittee members. So we
9 have Honorable Lawrence Lawson, who is to my right,
10 assignment judge from Monmouth County. We have Judge
11 Bonnie Goldman, a retired judge from down here. We
12 have Judge Frank Zinna, a retired -- also both of
13 them previously presiding municipal court judges. We
14 thank them for being here on the subcommittee.

15 Patricia Quelch is next and then we have
16 Arnold Fishman, a defense attorney, then J.H. Barr,
17 also a former prosecutor and past president of the
18 prosecutor's association, and Rob Pinizzotto, a
19 defense attorney as well as a former prosecutor. And
20 we also expect Michael Testa, who is coming from the
21 south. He may be a little late.

22 So welcome everybody. Before we begin I
23 just want to give a little background of how we got
24 here. By way of background, the formation of this
25 subcommittee on judicial independence in the

1 municipal courts, back in 2013, the New Jersey State
2 Bar Association created a task force to study
3 judicial independence. And that association/task
4 force was comprised of approximately 14 members.
5 There were public hearings held throughout the State
6 of New Jersey by the task force on judicial
7 independence to consider the rest of judicial
8 independence in the State of New Jersey.

9 The task force prepared a report that
10 detailed recommendations for protection of the future
11 continued judicial independence in the courts. Many
12 of the recommendations contained in that report were
13 ultimately adopted by the New Jersey State Bar
14 Association. In the report of the task force on
15 judicial independence issued in May of 2015, the task
16 force recognized that municipal courts are charged
17 with the responsibility to judge traffic offenses,
18 disorderly persons offenses, petty disorderly persons
19 offenses and violations of municipal ordinances.
20 They also handle instances of alleged domestic
21 violence and certain housing matters. All of these
22 matters may lead to the imposition of fines along
23 with other associated penalties.

24 The manner in which such issues are
25 disposed of can and often does have a significant

1 impact upon a municipality's budget and financial
2 strength. The task force also acknowledged that a
3 comprehensive study of the interrelationship that may
4 exist between the municipal court's financial
5 performance and the length of the municipal court's
6 judges' services requires extensive time and
7 resources and should be conducted by the bar
8 association. The task force recommended that the New
9 Jersey State Bar Association create a subcommittee
10 charged with a singular focus to address judicial
11 independence in the municipal courts.

12 The task force further recognized that
13 the municipal court is the court where most people
14 and most citizens come into contact. It's integrity,
15 both actual and perceived, is critical to the
16 public's acceptance of its determination which must
17 be made without regard to whether findings of guilt
18 and imposition of fines served to assure a
19 continuation of a judge's position. In the fall of
20 2015 the New Jersey State Bar Association, through
21 its officers, trustees and the municipal court
22 practice section created a subcommittee addressing
23 judicial independence in the municipal courts. The
24 subcommittee and judicial independence in the
25 municipal courts determined that it was necessary to

1 gather and compile anecdotal information and further
2 examine these issues.

3 The New Jersey State Bar Association
4 with officers, trustees and the municipal court
5 practice section approved of the scheduling of four
6 public hearings throughout the state. The dates of
7 the hearings thus far have been April 4th, 2015,
8 which was held at the law center, today's hearing at
9 Rowan University here in Glassboro, New Jersey, May
10 19th, 2015 at the Borgata Hotel, which will be where
11 the annual meeting of the state bar association
12 convention will be held in Atlantic City, New Jersey,
13 and finally June 6, 2015, at Seton Hall Law School in
14 Newark, New Jersey, to address judicial independence
15 in the municipal courts.

16 During the public hearings it's
17 anticipated that the New Jersey State Bar Association
18 subcommittee on judicial independence in the
19 municipal courts will consider the impact that
20 physical constraints may have on the municipal courts
21 as well as the interrelationship that may exist in
22 the lack of uniformity throughout the state in the
23 appointment and reappointment of the municipal court
24 judges. The hearings will also address the impact of
25 judicial independence in the lack of uniformity

1 throughout the state upon the judicial salaries and
2 lack of tenure of the judges in the municipal courts.

3 The goal of the public hearings is to
4 obtain anecdotal information from the members of the
5 bar, the judiciary and members of the public in an
6 effort to enhance the operation of the municipal
7 courts and thereby ensure the independence of the
8 municipal courts in the state. It is our ultimate
9 goal through the process of conducting these four
10 public hearings throughout the State of New Jersey
11 and recommendations being made by the subcommittee on
12 judicial independence on the municipal courts to the
13 state bar association's officers and trustees and
14 through its municipal court practice section that it
15 will ultimately lead to the enhancement of continued
16 future independence of the municipal court judiciary
17 and to benefit the public at large.

18 So without further ado, I'm going to
19 turn the program over to Judge Lawson, who's agreed
20 to preside over the hearings. We have a procedure in
21 place as far as taking all of you, your testimony,
22 which I appreciate all of you coming, and I'll turn
23 it over to Judge Lawson. And I'll be sitting at the
24 end so I'll be able to interject with any questions
25 or comments.

1 JUDGE LAWSON: Thank you very much,
2 Barbara. And welcome to everyone here today. On
3 behalf of the judges and attorneys on the panel, it's
4 my pleasure to welcome each of you here today. We
5 want to thank you for taking the time to share with
6 us your thoughts and recommendations on this very
7 important subject. As you know, and as Barbara
8 stated, the municipal court really sets the stage for
9 and is the face of the judiciary. Many times an
10 individual will never see the inside of a superior
11 court or an appellate division or the supreme court.
12 And how they're treated in municipal court will
13 describe and paint for everyone the judiciary. If
14 they have a good experience, they will like the
15 judiciary. If they have a bad experience, then they
16 will paint the judiciary with that brush and it will
17 a bad experience.

18 So, therefore, again, we thank you for
19 the time -- for taking the time to share with us your
20 thoughts and recommendations on this very important
21 subject. The goal of the public hearing is, one, to
22 collect information from lawyers, retired judges and
23 members of the community to evaluate the current
24 status and independence of the municipal courts.
25 Two; to study and evaluate what steps can be taken to

1 ensure the independence of the municipal courts. And
2 three; to make recommendations to the state bar
3 association and to the judiciary.

4 In order to proceed in an orderly manner
5 the following process shall apply. One; the names of
6 the speakers will be called in the following order;
7 the first person to have contacted the state bar
8 association in writing or by telephone prior to the
9 hearing. Second, the speakers will be called based
10 on the time of their arrival and signing in with
11 Cheryl. When your name is called, please come
12 forward to the front table, speak into the microphone
13 and state your name, occupation and town where you
14 live.

15 We're going to allow each speaker
16 roughly ten minutes to make a presentation. We ask
17 that people in the audience do not talk during the
18 presentation as we have a court reporter here and we
19 want it to be free from any comments. From time to
20 time members of the committee may wish to ask a
21 question of a speaker in order to clarify something
22 that he or she has said or to ask a follow-up
23 question. Questions from the committee are designed
24 to gather information in order to improve the quality
25 of the committee's recommendations. If you don't

1 understand a question, please let me know and I will
2 ask the person asking the question to provide
3 clarification.

4 We ask members of the audience not to
5 comment when a speaker is presenting testimony before
6 the committee. Anyone present today or if you know
7 anyone who would like to submit written comments or
8 materials for the committee to consider, you're
9 invited to do so. The proceedings today are being
10 recorded and the transcript will be prepared.

11 To begin, it's my pleasure to call Mr.
12 Jim Gerrow to come forward. Please state your name,
13 occupation, where you reside and give us your
14 comments, Mr. Gerrow.

15 MR. GERROW: Thank you, your Honor. My
16 names is James Gerrow. I'm an attorney of counsel
17 with the firm of Sitzler & Sitzler.

18 MR. LAWSON: You can sit there. Make
19 yourself comfortable.

20 MR. GERROW: If you give me a
21 microphone, you know what happens. As I said, my
22 name's James Gerrow. I'm an attorney of counsel with
23 the firm of Sitzler & Sitzler in Hainesport, New
24 Jersey, and I reside in the City of Burlington.

25 I made a few notes for my appearance

1 here today. I didn't want to just speak stream of
2 consciousness, but quite frankly, that's what it is.
3 I have to give you fair warning; the last time I
4 testified regarding this matter was in 2009, at what
5 was known as the LUARCC Commission, which was the
6 Local Unit Alignment Reorganization and Consolidation
7 Commission that Governor Corzine had put in place
8 regarding the unification of various and sundry
9 municipal departments. I note, because I brought the
10 press clipping with me, that the spokesperson for the
11 New Jersey Administrative Office of the Courts,
12 Winnie Comfort, bristled at the notion that what
13 Gerrow said is happening in New Jersey. So fair
14 warning about what I said at that time.

15 By way of background, I've been
16 practicing law now for over 41 years. I started out
17 in the private sector. I was a municipal prosecutor
18 and a defense attorney in municipal courts for the
19 first eight years of my practice. In those days
20 Private State versus Clark, we could do both. It was
21 a wonderful time. I think that after that I went to
22 the Burlington County Prosecutor's Office where I
23 served as the third in command under a variety of
24 titles, for most years as the executive assistant
25 prosecutor for 25 years. I returned after I retired

1 in December of 2007. January 1st of 2008 was the
2 first day of my retirement, I then returned to the
3 private practice of law and I'm back in the municipal
4 courts again.

5 What I have to say really -- talk about
6 the South Jersey municipal courts because on the day
7 that I testified before that committee I was co-chair
8 of the judiciary committee of the Burlington -- or
9 the state bar association, although we didn't speak
10 on behalf of the bar as an organization, we were
11 asked to go and testify. He was from North Jersey
12 and his experience was different than mine. But in
13 my experience, what has happened and ironically, I've
14 seen that the earlier courts may very well -- and
15 that's when I started out, in 1975, actually
16 practicing in those courts -- may have been fairer
17 than the courts that we see today. And I think it's
18 ironic in a way and I'll try and explain what I mean
19 by that.

20 But today we have municipal courts that
21 I see dominated by two forces. The forces are those
22 of the people who appoint the judges, the
23 prosecutors. And my remarks go as much to
24 prosecutors today as they do to municipal judges.
25 They go to the people who appoint and also the law

1 enforcement within that particular municipality. And
2 I say that because, now, we used to joke in
3 Burlington County that there was one courthouse --
4 and this was even back in the '70s -- that was --
5 should have been named in honor of a judge because it
6 was a house that this particular judge built. That
7 municipality had the New Jersey Turnpike, the
8 Interstate 295, a variety of state routes running
9 through it and it was a busy court, lots of fines,
10 costs, et cetera. But that we talked about was
11 regarding one court. Now I see that, quite frankly,
12 as regarding virtually all of our municipal courts,
13 from my experience.

14 I have grave concerns about a number of
15 issues that we are going to confront in the very near
16 future. First of all, I'd divide the municipal
17 courts up into the motor vehicle branch and the quasi
18 criminal or criminal branch. I have concerns about
19 bail reform which is to take effect in January of
20 this coming year. And I say that because my own
21 personal view, my opinion is that unless once and for
22 all someone seriously takes the rules of court into
23 account, the rules of court on the issuance of
24 process, we're going to have a system that is going
25 to be broken from the start.

1 For years and years our supreme court,
2 through its you rules and through it's opinions, has
3 talked about the difference that should be given to
4 the issuance of summonses. That does not take place
5 in our municipal courts. Time and time again I see
6 complaints that should have been issued on summonses,
7 put on warrants. And why? I personally believe it's
8 because police influence is involved. And I say
9 this, too, as a former prosecutor from the inside in
10 the county prosecutor's office. There I was in -- I
11 had responsibility for our litigation section. Part
12 of that litigation section was our appellate bureau
13 which handled municipal court appeals.

14 In the time that I was there I reviewed
15 literally hundreds of municipal court transcripts.
16 And I -- many of my remarks are based upon what I saw
17 there. I also had responsibility, oversight of the
18 municipal prosecutors and got calls from people who
19 had concerns about that. But what I've seen over the
20 years and what I see now, especially since the
21 financial crisis that has struck so many of our New
22 Jersey municipalities, I see these courts as what
23 they do primarily is to bring forward lines of people
24 and bring them forth to pay their fines, pay their
25 costs, or whatever.

1 When I first started out as a prosecutor
2 I spoke to pro se defendants. Now, of course, you
3 see them lined up in the hallways of courthouses
4 throughout the State of New Jersey. And they're
5 going to speak to the prosecutor and try and get some
6 assistance, first of all from the prosecutor, because
7 most of them have no idea about why they're there or
8 what the nature of the charges are. But hopefully to
9 work out their matter as well so that they can then
10 go forward into the courtroom. And what happens
11 there? Well, fines and costs are imposed.

12 I really see a number of problems with
13 the way we conduct the courts. The fact that judges
14 are part-time and the municipalities do not want to
15 add court dates to their schedule has gotten us to
16 the point, in South Jersey at least, where most of
17 our courts are in the daytime. People have to take
18 off from work. People have to have family issues,
19 someone has to take care of the children, and they
20 have to appear.

21 I was a -- I traveled to night courts.
22 When I first started out, that's virtually what all
23 our courts were. And, of course, my wife didn't
24 accept the fact that I was gone virtually every night
25 of the week, but I was in court. When I say I was a

1 municipal prosecutor, I prosecuted simultaneously
2 about five municipalities in Burlington County. And
3 I was in every other municipal court in Burlington
4 County and elsewhere during that period of time. But
5 when I was a prosecutor, in one particular court I
6 remember this in light of what Barbara said at the
7 beginning of the session, the judge and I had an
8 agreement. And that agreement was that we would
9 first call cases where the State was either going to
10 dismiss the charge or we were going to find people
11 not guilty on a recommendation of the prosecutor.
12 And we did that because we wanted people to
13 understand and appreciate that you did get a fair
14 shake in the municipal court.

15 This was not a municipal court where we
16 just processed guilty pleas, where we imposed fines
17 and costs, but that we would actually and were
18 supposed to seek justice. I say that in that era,
19 perhaps those courts were fairer because I really
20 believe that the attorneys who were the judges had
21 much more respect for them than they do today. I
22 think that the government bodies and the police
23 departments -- and again, the South Jersey experience
24 is such that unless you went to the urban areas,
25 unless you went into Camden City's or down into some

1 of the areas in Cumberland County, perhaps Millville
2 and otherwise, you had a court system that was more
3 rural in nature. In Burlington County we have 41
4 municipalities. That's a lot of municipalities.
5 Many are covered by the state police. But many have
6 their own municipal departments. But those municipal
7 departments were not like and are not like municipal
8 departments of today.

9 There's been a maturation -- a maturing,
10 I should say, of law enforcement in New Jersey. With
11 that there are professionals who are in that arena.
12 And now chiefs and public safety directors in the
13 south are much more like their counterparts in the
14 north where they have tremendous power. And they
15 exert that power to the point where I believe that we
16 should probably call these courts "police courts"
17 because in the end that's what they started as and
18 that's what they are now.

19 One of the things that I saw also from a
20 prosecutor's point of view in a county prosecutor's
21 office, we utilized law -- local law enforcement in
22 our investigation. I, for approximately 16 years,
23 was involved in the investigation of homicide cases,
24 the one that was in charge of the major crimes unit
25 in the Burlington County Prosecutor's Office. We

1 knew how to use the local law enforcement, and dare I
2 say it, to have those warrants issued when we needed
3 them issued and utilized those warrants in a variety
4 of ways when we had suspects in those cases. That is
5 to say, we could get warrants when we wanted to.

6 I talk about the issues of bail reform
7 because, again, what I have seen is that the use of
8 municipal court judges and also municipal court
9 administrators by the police to obtain warrants just
10 to show people that they can do it and just to get
11 somebody in jail for a little while is just a plague
12 in our system. It happens far too often. Again,
13 I've seen countless complaints that really should
14 have been issued on summonses and they're not. And
15 when it comes to bail reform, that is going to be a
16 terrible, terrible thing if that influence continues.

17 One of the things that we need to do is
18 we need to protect the municipal court judges and the
19 municipal court administrators. And I understand the
20 supreme court is contemplating some rule changes in
21 that regard. I understand the attorney general is
22 contemplating some guidelines in that regard to
23 instruct law enforcement on when to use warrants and
24 when not to use warrants. Those guidelines, quite
25 frankly, cannot come too soon. But the fact that

1 judges are part-time and the fact that we take those
2 judges from sectors where most have little, if any,
3 criminal law experience is a concern. Some of us are
4 old enough to remember when the last vestiges of the
5 county court system went their way. The
6 juvenile/domestic relations court, the county
7 district court, finally, unification, long after the
8 constitution of 1947 finally took place. And again,
9 there has been a maturing of our courts with the
10 centralized governments of our courts. They are,
11 quite honestly, you know, a source of pride and I
12 think so for all of us, with one exception, and that
13 exception, again, I believe is the municipal court.

14 I think it's time now to have those
15 courts mature. I called for consolidation of those
16 courts when I testified in April of 2009. But quite
17 honestly, I am an abolitionist. I believe we need --
18 and the world being what it is, it may not take place
19 in my lifetime, but one of the reasons I continue to
20 practice law is, A) to try and do what I did from the
21 inside when I was a prosecutor, which is change the
22 system, change the way police officers operate. And
23 number two, continue to try to evoke change in the
24 system where we need it.

25 The criminal justice system needs

1 change. The municipal court system needs change.
2 The municipal courts are creatures of statute.
3 Tomorrow the legislature could pass a statute and
4 they could abolish municipal courts. That's not
5 something they're going to do, but it's something
6 that they need to move toward. I believe that we
7 need courts that are county based. I -- five
8 minutes? Does that mean I have five minutes left
9 or --

10 JUDGE LAWSON: You can come back after
11 we get everyone --

12 MR. GERROW: Well, I don't want to come
13 back after Mr. Ramsey. He came with his own
14 PowerPoint. Had I know he was going to be here, I
15 would have had my PowerPoint. In any event, I will
16 say what I have to say about the abolition of this
17 court. I really think that we need to have it
18 regionalized. If it cannot be on a county basis,
19 then it needs to be on some type of regional basis.
20 I believe the appointing authority has to go beyond
21 the municipal governing bodies. Whether you want to
22 give that authority and power to the governor, make
23 the governor of the State of New Jersey more powerful
24 than he or she already is or to give it to the county
25 freeholders, it needs to be someplace else than where

1 it is now.

2 I see good people who are trying to do
3 the right thing as judges, and also as prosecutors,
4 but they are constrained. They're constrained by the
5 fact that they would like to be reappointed. They
6 enjoy what they're doing. They're trying to do
7 public service, trying to give themselves to the
8 communities in which they sit. But there is that
9 feedback that one gets. There's feedback that comes
10 from the governing body, one from the revenue sheets
11 and are we producing. And two, always from law
12 enforcement. The chief or public safety director,
13 whoever it might be, will be reporting back on the
14 complaints about that municipal court judge.

15 We no longer have in our municipal
16 courts, like we no longer have in our superior court,
17 a system of trials. The United State Supreme Court
18 recognized that in two decisions a few years ago when
19 they, for the first time, moved back the time when
20 attorneys are accountable for effective assistance
21 from the time when an individual is charged and we
22 move forward into the court system to the point where
23 we negotiate a plea. They understand this is a
24 system of pleas. In the federal courts, the supreme
25 court told us that 97 percent of their cases are

1 pleas. And the state courts nationwide, 94 percent.

2 In municipal court trying a case is
3 something I have not done in municipal court since I
4 started practicing again. I used to try cases every
5 night. I tried cases as a prosecutor. I tried cases
6 as a defense lawyer. Every time we went to municipal
7 court, if we couldn't resolve the matter there was a
8 trial. It doesn't happen anymore. And as I said,
9 what concerns me is when I go into those courts --
10 and I was in one last Thursday. The line of people
11 waiting to see the municipal prosecutor. And there
12 go the lawyers, all walking in and doing their
13 business.

14 I try to take time to tell those people
15 standing in line, I say, You understand; right? You
16 heard what the judge said about why we go first?
17 It's not because we dress like this. It's not
18 because we're better than anybody else. But there's
19 a court rule that says that we go first because we
20 have to be in other municipal courts. And on that
21 very day I had to be in two other municipal courts
22 when I left that one. But I try to do that in every
23 court that I go to. Why? Again, because I believe
24 that the municipal courts in New Jersey are the place
25 where most people come in contact with the justice

1 system. They form their opinions on the justice
2 system in those municipal courts. And from my
3 perspective, I would not like them to believe that
4 that's what all our courts are like.

5 I would hope that somehow they would get
6 the opportunity to view other courts and to see what
7 they're really like in the State of New Jersey.
8 Again, one of the things that I think that's
9 important, and I'm not trying to take away from
10 anyone who has sat as a municipal court judge in
11 municipal courts, I believe we need full-time
12 municipal court judges. I believe we need full-time
13 municipal prosecutors. Those have to be insulated,
14 again, from the concern about production of money and
15 the concern that you're going to lose your job if you
16 do the right thing. If you dare grant a motion to
17 suppress evidence, or you dare to find someone not
18 guilty that the police have a strong desire on the
19 other hand to find guilty.

20 So that, essentially, is my pitch today.
21 We need to rise above the money crunch. I know that
22 in funding the bail the reformat, there are bills
23 pending in the legislature now to fund that and to
24 get it funded on the backs of people who appear in
25 our courts every day. There are more fee increases

1 beckoning those who are in the civil courts, those
2 who are in all our courts, and again, those
3 defendants who appear in municipal court. So we tax
4 these people when they come into our courts. And we
5 try to fund the system on their backs because New
6 Jersey has seen fit for a number of years to no
7 longer fund its municipal courts from the general
8 treasury, but to try and pass these laws which
9 increase fees so that it can be a self-sustaining
10 system. Quite frankly, that's what the municipal
11 courts are. Now they're not only a self-sustaining
12 system, but they're a revenue making system and it's
13 time we moved to another system. Thank you.

14 JUDGE LAWSON: Thank you, Mr. Gerrow.
15 Does anyone have any questions? Mr. Pinizzotto.

16 MR. PINIZZOTTO: Jim, I actually
17 stumbled upon your comments to the LUARCC Commission
18 and I also saw that the ANC representative, I think
19 you used the word "bristled" at the thought that
20 courts were revenue generated municipalities. I also
21 came across a couple of other articles from other
22 representatives from the AOC at various committees
23 and functions.

24 Do you believe there's a disconnect
25 between the reality of what and you and I perceive of

1 municipal courts versus what the AOC believes is
2 happening? And if so, why the disconnect?

3 MR. GERROW: I think the disconnect is
4 such that the AOC cannot admit to what the reality is
5 because, obviously -- the AOC is, as I find it, a
6 conservative organization. Of course, I come from
7 the county Martin L. Haines, Jr. and we have no love
8 for the AOC. The numbers game that they created
9 everywhere -- they created it in the criminal arena,
10 they created it in the municipal court arena. There
11 is a disconnect. They need to see the reality of it.
12 And unless and until, I guess, we can convince them
13 what the reality is, they're not going to acknowledge
14 that it exists. They're not.

15 I have tremendous faith in this chief
16 justice. I think he's done tremendous things with
17 the court. I also believe that he -- his heart and
18 his head are in the right place. And if we can
19 present to them not only anecdotal testimony such as
20 mine, but venues that would support this, we may be
21 able to see a change.

22 JUDGE LAWSON: Thank you, Mr. Gerrow.

23 MS. UNGAR: I have a question. Jim, I
24 know you have quite a bit of experience both as a
25 prosecutor and as a defense attorney. My question to

1 you is, in your experience going back to municipal
2 courts, how much have you, in your perception, in
3 dealing with the courts, in dealing with motions or
4 trying to address cases, how much financial pressure
5 and constraints have you seen in your experience on
6 both sides? And how has it impacted municipal
7 courts? If you have any examples or anything that
8 you have experienced --

9 MR. GERROW: One of the things that I
10 see wherever I go is that when I sit down with a
11 municipal prosecutor to negotiate a case, sitting
12 right next to them is a representative of the local
13 police department who they have to look to to say, is
14 that okay or is that not okay.

15 MR. LAWSON: Are you kidding me?

16 MR. GERROW: I kid you not. Because
17 this happens in any number of municipal courts in the
18 State of New Jersey. If you don't want me to talk --
19 I don't have much time left, but if you want me to
20 talk about prosecutors and the pressure that's upon
21 them in the municipal courts, it's the same thing.
22 It's probably even worse because, again, many times
23 they're being baby-sat. Where I find that the most
24 justice, these days, by the way is in those
25 municipalities that only the state police patrol

1 because you don't have to answer to the local police.

2 And the state police have the arrogance
3 to send to their barracks, and I have copies of the
4 memorandum where they're no longer going to provide
5 discovery to defense attorneys in municipal court
6 unless and until they get a Holup order, so -- and I
7 have Holup orders signed in municipal court recently.
8 After seven attempts the prosecutor showed me the
9 email -- seven attempts by the prosecutor. They
10 never provided him with the discovery, which is fine
11 for me, I'm a defense attorney. I don't mind a
12 dismissal. I think they're great.

13 But that's -- the problem as I see it is
14 that even in those cases where we have legitimate
15 defenses and where it is worthy of a dismissal,
16 you're still getting your request by the prosecutors
17 for the dismissal with costs, much like the driving
18 without a -- operating without a license, something
19 along those lines where if you can produce it, these
20 complaints could be dismissed, but upon payment of
21 costs. I think there's a tremendous emphasis on
22 bonds and disorderly persons offenses cases. I have
23 seen municipal courts -- I won't name them. But I
24 know where judges don't know what the minimum fine
25 is. They have no conception.

1 And again, what you have are -- these
2 are not criminals, they're motor vehicle complaints.
3 These are everyday citizens who unfortunately have
4 run afoul with a police officer. And now they're in
5 a court and they have children to support, they may
6 be unemployed, and all you're doing is trying to
7 extract more money from them. I see it,
8 unfortunately, all the time. And when I go there,
9 that's -- that's one of the things that I like to do
10 in the courthouse, is observe. Because -- and I stay
11 sometimes after my case is called just to observe
12 some more about what's happening. And that's what
13 I'm seeing. It's just a press for money all the
14 time.

15 MS. QUELCH: Mr. Gerrow, are you seeing
16 occasions where municipal prosecutors can't prove the
17 case for whatever reason and there's some -- a
18 missing element, and instead of dismissing it the
19 municipal prosecutor's trying to talk you into having
20 your client plead guilty to an ordinance violation?

21 MR. GERROW: Well, an ordinance
22 violation is a key for the -- for the local courts
23 because all the money goes into the local
24 municipality. Yes. I mean, I've seen cases where I
25 come into a court, and again, there is no way if this

1 goes to trial and I get a fair trial that this case
2 is going to survive. But again, that's not what
3 these courts are about. I'm going to have to come
4 back how many times to get a trial? I remember
5 coming back to one court on five different occasions
6 when I was supposed to be going to trial on a date
7 certain and it didn't happen. Ultimately in that
8 case it was dismissed. But again, part of the
9 problem, as I see it, is that you're asking lawyers
10 -- and again, we take into account the fees that we
11 charge individuals when we represent them. And we
12 cannot overlook that fact.

13 I mean, we see throughout the United
14 States now, the move to allow paralegals to form
15 their own organizations and, in essence, practice law
16 in various areas. It's a huge issue on the American
17 Bar Association. But if you're trying to charge a
18 reasonable fee, many times you take into account what
19 municipal court it is because, you know, if I -- if I
20 sign on in this municipal court, I'm going to be back
21 half a dozen times. If I sign on in this municipal
22 court, as a reasonable prosecutor, I might be able to
23 get by with one or two at the most. But I do see the
24 ever increasing desire to make sure that there's
25 money being paid somewhere. And that's -- that's

1 sad.

2 JUDGE LAWSON: Mr. Fishman.

3 MR. FISHMAN: I go back 51 years. I was
4 admitted in '65. Back in '65, if you took an appeal
5 to the then county court it was not De Novo on
6 record, it was De Novo. There was no record.
7 Municipal court judges had one municipality, maybe
8 two, and had a thriving practice. And the fee -- the
9 income generated from that one municipal court
10 judgeship was miniscule, not important to him. It
11 was the prestige of being a judge that was important
12 to him.

13 Today while we talk about having
14 part-time judges, we don't. We have full-time
15 judges. They just sit in multiple municipalities.
16 They make their livings as municipal court judges and
17 their practices, such as they are, is really
18 sidelined. Isn't that part of the problem that the
19 income generated by them by being a municipal court
20 judge is entirely too important to them for them to
21 ignore the pressure that existed way back in 1965 to
22 generate income and keep the police happy? And all
23 the pressures that exist today existed then. The
24 difference is that the income is more important to
25 today's judge than it was to the guys that we used to

1 know.

2 MR. GERROW: I mean, I agree with you
3 wholeheartedly. And there's been a consolidation of
4 the number of municipal court judges in terms of how
5 many municipalities I have. And I think a lot of
6 that goes to the fact that this judge has made or has
7 a reputation for being one to produce revenue.
8 That's my own view of that. I mean, I -- a friend of
9 mine, a personal friend, I've known him since I
10 started practicing law, is a municipal court judge.
11 His salary is probably triple that of the chief
12 justice of the State of New Jersey. I often kid him
13 about that, that when I go down to the New Jersey
14 State Bar Association annual meeting I'm going to
15 remind the Chief Justice of his name.

16 MR. FISHMAN: Harry Supple ruined it
17 all.

18 MR. GERROW: Harry Supple was a judge in
19 Burlington County. And Harry Supple had the distinct
20 honor of being known as "Hanging Harry." But, you
21 know, with Hanging Harry, the one thing about him was
22 this; that he did not impose jail sentences. What he
23 imposed, though, were fines, and big fines. I mean,
24 that was -- that's where, God rest his soul -- now
25 he's riding motorcycles somewhere in heaven. But he

1 -- you're right.

2 MR. FISHMAN: And the other thing was
3 when you had a traffic ticket and you went to court,
4 the expectation was you went to court for a trial
5 that day. And that expectation has gone away. Dave
6 Keco (phonetic) created the liaison officer. And he
7 finished what -- the destruction that Harry Supple
8 started. When you go to court today for the first
9 time, there is no expectation of a trial. They look
10 at you like you have two heads.

11 MR. GERROW: It's so true. I mean,
12 there is no such thing as a trial on the first
13 appearance. And I come back very often for
14 proceedings that I've known only in the superior
15 court. Oh, we're going to come back for a status
16 conference. Wait a minute. Why is that? And we're
17 going to come back for a pretrial conference. And
18 we're going to -- and all of it, in my mind is,
19 again, onerous on the people that I represent. I
20 mean, how can we possibly charge them a reasonable
21 fee if I know I'll be back so many times before
22 trial?

23 JUDGE LAWSON: We'll take one more
24 question because we have some speakers and then at
25 the end we ask that the speakers stick around in case

1 there's some more questions.

2 MR. BARR: Actually, Judge Lawson, I
3 have two questions, but they're fairly brief. I'd
4 ask you to indulge me. I've been a municipal
5 prosecutor for 15 years. And I found within your
6 comments -- I disagreed with one thing for everything
7 I agreed with. One of the issues that you've just
8 touched upon, however, and you're the first witness
9 to do so, is pointing out something that's become a
10 pet peeve of mine, and that is the virtual
11 elimination of night courts as municipal courts.

12 I've always supported night courts. And
13 I've supported them for two reasons, one selfish and
14 one unselfish. The unselfish reasons is my
15 compensation as a municipal prosecutor on an hourly
16 basis is rather dismal. And if I am not in my office
17 during the day when I am billing clients big hourly
18 fees, I'm really losing money essentially during the
19 day as a municipal prosecutor. But if I'm a
20 municipal prosecutor at night when I really wouldn't
21 be working on those cases, it's an extra income and
22 it's a positive thing for me.

23 The unselfish thing reason is, and this
24 is something I have -- I have implored by municipal
25 judges and by municipal court administrators in the

1 counties where I have prosecuted is we are not -- we
2 are -- as municipal courts we are supposed to be a
3 community serving a judiciary branch of the
4 government. We are not doing our communities a
5 service by eliminating nighttime courts. You're
6 absolutely correct. We are inconveniencing thousands
7 of people every year, as I see it, so that a
8 municipal judge and maybe two or three court clerks
9 don't have to work at night. That's really what it
10 boils down to. And I have had a friendly but a
11 strong disagreement with my municipal judges and my
12 municipal court administrators about this very issue.

13 My question to you is if in fact we went
14 to a regional system, how would that really
15 necessarily mean we bring back a mix of evening and
16 daytime court and a system that's more convenient?
17 Wouldn't people still not want to work at night?
18 Again, I'm talking about judges and/or court staff.

19 MR. GERROW: But I think, however, when
20 you have that type of system, you have the ability to
21 say that there is going to be a staff that works
22 during the day and there's going to be a staff that's
23 going to have evening hours, perhaps. And you can
24 certainly -- when I was in the prosecutor's office,
25 one of the things that we did was the administration.

1 And one of the things that we talked about was, of
2 course, with the detectives' contracts being what
3 they are, how will we negotiate when you swap hours.
4 Because, for example, I mean, a narcotics detective
5 doesn't work a lot during the day, especially under
6 cover, they're kind of out at night. But we actually
7 negotiated the ability to set their hours. And I
8 think you can do that, I really do. I think you can
9 have -- you can accommodate those people who would
10 prefer to appear during the day and those people who
11 would prefer to be there at night. And I think if
12 you have full-time staff, full-time judges, full-time
13 prosecutors, full-time administrators, I think you
14 can do that. I really do.

15 MR. BARR: The one follow-up was with
16 respect to police department representatives, the
17 same issue, would that necessarily reduce or
18 eliminate police officers' efforts to influence the
19 prosecutor in the local courts? Maybe you could
20 reduce it, but I don't think it would eliminate it.

21 MR. GERROW: I think there's always
22 going to be an attempt by the police to influence the
23 prosecutors decisions on a local level and on a
24 county level as well. But the one thing that
25 prosecutors are supposed to be doing, as trite as it

1 sounds, the United States Supreme Court told us we're
2 not there to seek convictions, but we're there to
3 seek justice. And many, many times that is telling a
4 police officer, Hey, look, you made a mistake here.
5 Countless times one of the things that I always got
6 was the irate phone call from a local chief or
7 executive officer saying, Why did you guys downgrade
8 this case? Well, you know, it's things like if, you
9 know, if you kept the Fourth Amendment in mind, you
10 know, we might have had some evidence on which we
11 could have prosecuted this case.

12 But they have to be -- it's as much an
13 educational process with the local police department.
14 They have to be told when they make a mistake so the
15 hope is that they won't make it again. But I really
16 don't think that full-time prosecutors will be
17 influenced in that regard and they will do the right
18 thing.

19 Okay. I'm giving this back to you. I
20 know you've heard enough from me.

21 JUDGE LAWSON: Thank you.

22 MS. GOLDMAN: Judge Lawson, can I just
23 say, that he found my mother not guilty of a parking
24 ticket after a 45-minute trial.

25 MR. PINIZZOTTO: Oh, she was the one.

1 MS. GOLDMAN: She was the one.

2 MR. GERROW: I have to share one other
3 story before we move on, sir.

4 MR. LAWSON: Go ahead.

5 MR. GERROW: Judge Supple was sitting in
6 municipal court when my former boss, a superior court
7 judge who started out as a county court judge, came
8 into court. It was a rear-end. The judge had
9 rear-ended somebody. Judge Supple simply asked, "How
10 fast was that car going when he backed into you,
11 Judge?"

12 JUDGE LAWSON: Thank you very much. And
13 I would ask that you stick around. I know some other
14 panel members will have some questions.

15 MR. GERROW: Mr. Testa's chomping at the
16 bit.

17 MR. LAWSON: Well, Jim will stick around
18 for that. Thank you very much for that testimony.
19 At this time I call upon Paul Cantanese to give us
20 his testimony. Mr. Cantanese.

21 MR. CANTANESE: Thank you, Judge Lawson.
22 Good evening. My presentation I don't think will be
23 as quite as long as Mr. Gerrow's.

24 JUDGE LAWSON: Could you tell us where
25 you practice, please.

1 MR. CANTANESE: Certainly. My name is
2 Paul Cantanese. A little bit about my background; I
3 was a municipal court judge in South Brunswick
4 Township, in Lawrence Township and in Hamilton
5 Township. South Brunswick, Middlesex County,
6 Lawrence Township is in Hamilton Township, and Mercer
7 County. And I was a judge for about 20 years and I
8 also served with both Judge Zinna and Judge Goldman,
9 as the presiding judge of municipal court in Mercer
10 County. And I also served as the chair of the comp
11 presiding judges at the state level.

12 I'm going to speak to you, of course,
13 about independence in municipal courts and also the
14 need for some type of tenure or some type of
15 stability for municipal court judges. And I think
16 it's important for us to understand that in New
17 Jersey, making dramatic changes in municipal courts
18 is not something that's going to readily occur.
19 There have been attempts over the years to do
20 something.

21 As Bob Ramsey and I were talking
22 earlier, the Constitution of 1947 sort of set up the
23 courts. And we had the legislature authorize the
24 municipal courts. And it's been almost 70 years.
25 There really haven't been a lot of changes in 70

1 years. And a lot has changed in our world in 70
2 years, but the courts really haven't changed that
3 much. We all know that judges need to be free to
4 decide their cases based on the law and the facts
5 only. They shouldn't be influenced directly or
6 indirectly by the executive branch or the legislative
7 branch. And when we're talking about municipal
8 courts we're really talking about the police
9 department and, of course, we're also talking about
10 the town council or the administration for the
11 municipality.

12 So it sounds easy, but it really isn't.
13 And as all of you know, a municipal court judge gets
14 appointed for a three-year period. And he or she has
15 to stand for reappointment at the end of that
16 three-year period. And it's usually not based upon
17 the quality of the job they've done, but rather it
18 depends upon politics and the political whim of the
19 party that happens to be in power at the time of the
20 reappointment. I always followed the politics of the
21 town in which I was sitting as a judge, not because I
22 lived in any of those towns, I didn't, but because I
23 knew that if there was a change in the mayor or a
24 change to maybe the township committee so that a
25 different party was in control, it was a good

1 likelihood that when I was up for reappointment I
2 would not be reappointed.

3 And I need to confess to you that there
4 were certain cases that I knew had the attention of
5 the municipality. And I never succumbed to any
6 thoughts that deciding a case a certain way would
7 help me with my reappointment, but I knew in the back
8 of my mind that if I decided a case adverse to the
9 municipality that there were going to be some unhappy
10 elected officials. And the same holds true for the
11 police department. A "not guilty" finding in a
12 matter is sometimes viewed as a personal affront to
13 the police officer. And if you don't have strong
14 leadership at the police department starting with the
15 chief, then you, as a judge, could find yourself in a
16 situation where disparaging comments would be made
17 about you, directly to you sometimes or indirectly
18 around the municipal building.

19 And as we discussed earlier, we had the
20 issue of fines and penalties. Towns rely on the
21 revenue of the court to help with their budgets. The
22 more revenue, the less they need to raise taxes on
23 the citizens who are going to reelect them. Some
24 towns actually look every year to see how much you've
25 generated in fines and penalties and they consider

1 that in determining whether you should be
2 reappointed. So how do we deal with that? You know,
3 we're of politics but we can't be political as
4 judges. And we're confronted with wanting to do a
5 good job but always having in the background, how is
6 someone going to perceive what I'm doing. And the
7 judges really shouldn't have to worry about that.
8 They should be worrying about doing what is right, as
9 we talk about individual justice in individual cases.

10 So one way to do this is with tenure.

11 The problem is, as I started my comments, is that
12 things change very slowly. And I think that it's not
13 realistic to have an expectation that in the next few
14 years there will be an integration of the municipal
15 courts with state-wide system of full-time judges,
16 full-time prosecutors and tenure for municipal court
17 judges. So I did a little research looking at what
18 they do around the country. California has done
19 that. They've integrated the municipal courts into a
20 statewide system and it seems to be working for them.
21 In some places, no tenure, the judge gets appointed
22 for a year and then next year they have police courts
23 in some places. Some type of hybrid type tenure,
24 maybe that might work in New Jersey.

25 So my thought was, let's have this whole

1 rule which everybody's so concerned with. Let's have
2 that initially. Have a judge appointed for a
3 three-year term initially. But at the end of that
4 three-year term or before that term is up, let's then
5 evaluate that judge and have that done by a merit
6 panel. It could involve the assignment judge. Or
7 even better, let's have a panel of citizens, maybe
8 town representatives, maybe bar association
9 representatives who, if the judge expresses a desire
10 to be reappointed, would interview that judge and
11 then make a recommendation to the assignment judge as
12 to whether that judge should be retained. And the
13 retention would not be for life. You fix the term.
14 Maybe it's going to be eight years, seven years, ten
15 years. And the judge is going to be up for retention
16 every ten years.

17 Now, the advantage of that is, of
18 course, that the judge doesn't have to worry every
19 year what's going to happen. Once the judge gets
20 appointed initially, the town's really sort of out of
21 the picture as far as reappointment's concerned. So
22 the judge can really focus on doing the right job and
23 not have those things in the back of his or her head.
24 The merit panel, the judge needs to understand, I've
25 got to be up on the law. I've got to have perfect

1 judicial demeanor, I've got to do things the right
2 way or I'm not going to be recommended for retention.
3 And then ultimately the assignment judge or -- the
4 assignment judge and maybe a committee of PJs is
5 going to review that recommendation and make a
6 determination, yes, the judge should be retained.

7 The fact that it's not for life doesn't
8 allow the judge to become arrogant, become
9 overconfident because it's going to happen again in a
10 few years, seven years, eight years, whatever it
11 might be. So it's not lifetime, but it's a
12 significant period of time so the judge can dedicate
13 his or her time to dealing with the real issues that
14 is justice in each case and not have to worry about
15 the revenues, not have to worry about the police
16 department, just doing what is right. So that might
17 be a way to proceed. But then we run into the issue
18 of judges who are concerned about their salary or
19 benefits, whatever it might be. In one town where I
20 was sitting there was a change in politics. The
21 mayor remained but the council changed. And the
22 council decided that it was going to cut the salary
23 of both judges in the town. The salary of no other
24 employee in the town was being cut, just the judges'.
25 And the reason was because they made a determination

1 that you really aren't working that hard so we're
2 going to cut your salary. It wasn't because of the
3 amount of work you're doing, it was political.

4 So do judges need to deal with that? Of
5 course they shouldn't have to deal with that. They
6 should be dealing with the cases before them, not to
7 worry about that kind of garbage. So one of the
8 things I think should happen is to be junctured with
9 this new appointment process is put the judges in
10 with the statute. There's a statute that governs
11 municipalities and deals with tenured clerks, tenured
12 tax collectors and tenured tax assessors. And the
13 statute says that once these people have been
14 appointed, you really can't reduce their salary
15 during their tenure. You can't furlough them. You
16 can't reduce their hours. And if you give a pay
17 raise to your other employees, you have to give them
18 the same pay raise that you give to those people.

19 It might be as simple as saying, we're
20 now getting into that statute, this may work for
21 municipal court judges and you would then give them
22 that protection so that the use of the financial tool
23 to show political displeasure with an action of a
24 judge would no longer be available to the
25 municipality.

1 So those are some thoughts as to perhaps
2 how we could move slowly to having a more
3 professional venue from the standpoint of not being
4 influenced or having in the back of your mind those
5 thoughts that you really shouldn't have to deal with
6 in determining what is the right course of action to
7 take on a case. Thank you.

8 JUDGE LAWSON: Thank you. Does anyone
9 have any questions?

10 Thank you, Mr. Cantanese.

11 Mr. Ramsey, do you want to come forward.

12 MR. RAMSEY: Thank you, Judge.

13 All right, guys, I have a PowerPoint and
14 it's behind you. I'd just ask you to follow along
15 with the lesson plan. We've given out copies to
16 everybody else except for Mike Testa. Okay. First
17 of all, good afternoon, everybody. My comments --
18 and I hope you will indulge me, we have in our
19 audience Assemblyman Reed Gusciora, who is was a
20 municipal prosecutor in two different municipalities,
21 is also a long -- 20 years maybe, so however many
22 terms that is, Assemblyman. At the end of the day,
23 nothing is going to happen without the action of the
24 assembly and the senate. And I'm hopeful that he
25 will be a spokesman for the ideas that come out of

1 here and that we get some traction in the assembly.
2 That's a given that that's what is going to have to
3 happen. I don't think I'm going to say anything that
4 has not been said previously or will be said in the
5 future meetings. But I do want to contextualize
6 (sic) everything, so I've really kind of taken a
7 historic viewpoint of what's going on here. I'd like
8 you to all to be able to appreciate what's going on
9 and to appreciate the comments you're hearing from
10 the different witnesses in a deeper context. All
11 right. With that being said, let's take it from the
12 top.

13 This is the introduction and my
14 definition of the crisis facing the municipal courts
15 is based upon perception specifically, and you heard
16 this from Mr. Gerrow, the lack of confidence in the
17 independence and integrity of the judiciary among
18 both members of the public and the bar. This crisis
19 is the result of vastly increased judicial
20 responsibilities that have to be implemented within
21 -- with, for want of a better term, an obsolete
22 administrative structure that is imbued in local
23 politics. And if you know the case law, that's the
24 one thing that our supreme court, not only in the
25 case law but also in the rules of court, is

1 absolutely crazy about, which is, at any level of
2 politics, associated with the functions of the
3 judiciary.

4 Let's take it from the top. The concept
5 of home rule, which you've heard talked about today,
6 the idea of local control having been at the heart of
7 municipal courts since colonial times, believe it or
8 not. We've had three constitutions in New Jersey and
9 I just wanted to talk about how these things were
10 handled in the 1776 and 1844 Constitutions. This
11 comes out of the case law under our revolutionary
12 Constitution of 1776, the justices of the peace,
13 along with the judges of the other courts were
14 elected by the legislature for a term of years.
15 Their position in the community was roughly
16 comparable to that of the English justices of the
17 peace of the same period who were generally the
18 leading citizens of the county with a tradition of
19 public service.

20 One of the ways in which our second
21 Constitution, that of 1844, reflected the democratic
22 revolt of the Jacksonian era was providing for the
23 popular election of justices of the peace by
24 townships and in the cities by wards. Such
25 elections, here and elsewhere through the country,

1 generally reflected popular demand of the period for
2 direct election of judges who would be close to the
3 people and no thought was given to imposing any
4 standards or qualifications for that particular
5 office. So the New Jersey Constitution of 1844 put
6 the justice of the peace in local politics with
7 undesirable results that inevitably flow from mixing
8 judicial work and politics. The election of a
9 justice of the peace as a prank by his neighbors was
10 not unknown, and the office shrank in dignity and
11 usefulness.

12 Now, by the 1940's, again our country
13 had changed very quickly, especially following the
14 Civil War. In the cities the police judges had taken
15 over the bulk of criminal jurisdiction of the
16 justices of the peace under the mass of statutes
17 varying in application from municipality to
18 municipality. Thus there was created a
19 jurisdictional chaos. The low estate of police
20 courts, the justly maligned justices of the peace, as
21 well as the confusing, inefficient and frequently
22 condemned system by which the compensation of the
23 judges depended in part on the penalties they
24 assessed against defendants they found guilty of some
25 offenses, a practice that had been responsible for

1 bringing many local courts into disrepute, were
2 conditions noted with disapproval by Chief Justice
3 Vanderbilt as well as the public at large.

4 Now, this is all coming from the case
5 law. I'm not making this stuff up. I'm giving you
6 the pinpoint citations for all of this stuff.

7 So the Constitution of 1947, when it
8 came to the municipal courts, did the following.
9 There's been an amendment in 1978, and I just want to
10 share the distinction. The original language of the
11 1947 Constitution in Article VI said, The judicial
12 power shall be vested in a supreme court, superior
13 court, county courts and inferior courts of limited
14 jurisdiction. Now, this is a term of art for the
15 superior -- or jurisdictions of superior -- of both
16 the superior court and the county court. The
17 inferior courts and their jurisdiction may, from time
18 to time, be established, altered or abolished.

19 The amendment from 1978, and I've
20 underlined the words that have been taken out -- the
21 county courts, of course, were abolished at that
22 point. And the word "inferior court" was taken out
23 and the substitution's "courts of limited
24 jurisdiction." But apart from that, there's really
25 no change in the Constitution of 1947, and we live

1 under the courts established authority of Article VI,
2 paragraph 1 of 1978. The goal of the 1947 framers
3 was take such action as may be deemed necessary to
4 establish a modern and efficient inferior court
5 system to be presided over by qualified persons and
6 to provide that all judges of the inferior courts
7 receive reasonable fixed compensation which shall
8 have no relation to the fees received.

9 So again, the taxing of some of the
10 problems that existed in the previous Constitution.
11 Following the adoption, the legislature enacted the
12 statute NJSA 2A:8-1 through four that abolished the
13 justices of the police and also the existing police
14 force, magistrate, recorder's courts and any other
15 name that they had for them. It's very funny. If
16 any of you ever have the chance to go up to Frank
17 Sinatra's hometown, Hoboken, and you go to the
18 municipal court, when you walk in the door it
19 actually says, engraved in concrete "police court."
20 It's just something that -- from the pre 1947 era.
21 It's still there.

22 Now, it's critical to remember that this
23 statutory scheme was enacted almost 70 years ago.
24 And I just want you to pick a random day from that
25 era. How about February 11th, 1950. That's as good

1 a day as any other; right? So let's think about how
2 things have changed since February 11th, 1950. The
3 population of New Jersey -- and we're 8.4 million.
4 The demographics, who's living here. The level of
5 education of all the people here. The economics of
6 our state, technology, internet -- by the way, I
7 think this internet stuff is here to say, so -- our
8 culture, law enforcement priorities, the size of law
9 enforcement, the politics of our state. We are in an
10 utterly, totally and completely different place today
11 than we were back on February the 11th, 1950.
12 There's just no comparison.

13 The statutory scheme that was enacted
14 initially following the Constitution, this 2A:8-1,
15 provided initially for a weak, local system of
16 municipal courts. Local political control by way of
17 funding, facilities, hiring the court staff and the
18 appointed magistrates. They weren't judges, they
19 were just magistrates. Jurisdiction was limited to
20 drunk driving, traffic and parking offenses,
21 ordinances. Very minor criminal conduct appeals were
22 heard in the county court. Again, De Novo, as Arnold
23 indicated. And no requirement for municipal
24 prosecutors or public defenders. In fact, the first
25 mention in any law at all dealing with municipal

1 prosecutors didn't occur until 1980 in commentary by
2 the New Jersey Supreme Court's plea bargaining
3 guidelines. There was no such thing statutorily as a
4 municipal prosecutor. To the extent they existed at
5 all in New Jersey, they were a creature of local
6 ordinances. But there was no such thing statutorily
7 as municipal prosecutors.

8 Public defenders, probably spurred by
9 the -- through the case law, Madden versus Delran
10 Township I think is probably mostly responsible for
11 the municipal public defenders. These positions,
12 though, just did not exist under New Jersey law. It
13 wasn't enacted until the 2A in that era. 2A:8-1
14 through eight was repealed effective February the
15 15th, 1994 and replaced by our current title 2B:12-1
16 et. seq. Now, it's very important when you're kind
17 of going through and thinking about our structure
18 reports. But what first you have to understand is
19 that the amendment, the new statute following the
20 repeal, is not all that different from what existed
21 before. It maintained all the same structural
22 elements that were present back in 1947 under the
23 state constitution, newly enacted at that time.
24 Think about it, it -- I've given you the statutes to
25 look at it. First of all, every municipality in the

1 state must still have some either access to a
2 municipal court of its own or a shared municipal
3 court. So there has to be a court available for
4 every single municipality, all 563, four, five
5 however many we have.

6 The local governments are responsible
7 for providing the court facilities, equipment and
8 supplies. In other words, all the funding has to
9 come from the municipality, so to a certain extent
10 the court is a prisoner to the resources that, A)
11 that are available, and B) that will be imparted or
12 bestowed upon them by the local politicians. The
13 judges are still appointed for a term of three years,
14 no tenure, and you heard Judge Cantanese talk about
15 the vicinages. The judges also can serve, you know,
16 part-time or full-time. And if they're full-time
17 judges they can't have any type of employment. Most
18 are part-time judges.

19 The local politicians still select the
20 judges. The governor will get involved with senate
21 approval in those situations where there are joint
22 municipal courts. Local governments are going to be
23 responsible for determining the salary of the judges.
24 That's done on a local -- on an annual basis, as
25 opposed to on a three-year term. And local

1 governments or the counties determine the salary for
2 the court personnel. So nothing really has changed
3 in terms of the initial structure of the court.
4 There were some enhancements, though, and I do want
5 to kind of give some credit to it, to the law that
6 was enacted in 1994. Municipal court judges now have
7 to be New Jersey residents and admitted to the bar
8 for at least five years. That was not a requirement
9 earlier on. In fact, prior to 1947 you didn't have
10 to be a judge to be a -- lawyer to be a judge.

11 Arnold, do you remember somebody
12 grandfathered in, guys who were sitting who were not
13 attorneys --

14 MR. FISHMAN: All --

15 MR. RAMSEY: -- not attorney judges?

16 MR. FISHMAN: All too well.

17 MR. RAMSEY: All right. And they died
18 out eventually, but now there is a requirement that
19 they be a member of the New Jersey Bar for at least
20 five years. There's a chief judge when you have a
21 court where there's more than one judge. One has to
22 be designated as the chief judge for administrative
23 purposes. There is now a system supported to the
24 assignment judge of each vicinage that there be a
25 presiding judge in municipal courts for training

1 purposes, supervision and discipline under certain
2 circumstances. And I think it's an extremely
3 important thing and could be very helpful to the
4 legislature, is tenured certification for court
5 administrators in recognition of at the end of the
6 day, although the judges are replaced very easily, we
7 need somebody there who's knowledgeable, professional
8 and is going to be there for a long time to take care
9 of all the bookkeeping and money aspects of the
10 court. And the legislature recognizes that with
11 tenure and certification for court administrators.

12 So within this 1947 administrative
13 structure, municipal courts have been assigned a wide
14 variety of new tasks and responsibility as well as
15 the tools to carry out these functions. So
16 responsibilities -- the administrative adjudicate
17 responsibilities of the court are increasing all the
18 time, all the time, all the time with more and more
19 responsibility thrown upon them or more duties. And
20 it's not an exaggeration to say that if you're a
21 municipal court judge you're on duty seven days a
22 week, 24 hours a day. That's just the way things are
23 going to be.

24 Just to give you some examples, though,
25 with this expansion, the Part VII Rules of Court,

1 they were established by the Supreme Court's decision
2 in State versus Gonzalez. And I want to give a
3 special nod of thanks to Judge Robert Switzer of the
4 Egg Harbor Township and Hamilton Township Municipal
5 Court. He really single-handedly is the author of
6 the Part VII Rules and our state owes him an enormous
7 debt of gratitude for the efforts he put in back in
8 1989. But there was no -- there was a standalone
9 part that the -- referenced the Part III rules and it
10 was all a matter of confusion which was the issue in
11 the Gonzalez case.

12 The ATS/ACS computer system modernized
13 the bookkeeping components of municipal court. There
14 is now a requirement that there be municipal
15 prosecutors. They still serve for a one-year term,
16 but at least they have to be there in every court.
17 There is now, as I mentioned before, following that
18 case a requirement that there be municipal public
19 defenders. They also serve for one-year terms. The
20 court changed its policy and allowed for plea
21 bargaining under certain rules and guidelines. I
22 think, again, that goes back to around 1989. So
23 these are changes just -- and there's many, many,
24 many others I have not added onto the list. But if
25 you stop to think about the way courts are

1 responsible for domestic violence and the
2 complexities of drunk driving cases these days, and
3 animal cruelty cases, you know, things that really
4 are important cases societally and to the community,
5 those are within the responsibility of the municipal
6 court.

7 So as I've indicated, some of the other
8 adjudicated duties now in municipal court that did
9 not exist previously; motions to suppress evidence,
10 which requires an in-depth knowledge of Fourth
11 Amendment Jurisprudence, domestic violence TROs,
12 which implicates an enormous level of discretion as
13 well as equity -- equity issues, search warrants and
14 the setting of initial bail in most criminal matters.
15 And again, this is -- there are many, many more.
16 These are just to illustrate how the responsibilities
17 of municipal court judges around the state have been
18 increasing exponentially. The skill-set necessary to
19 carry out these duties requires an in-depth knowledge
20 of the following.

21 Now, if you're going to do your job as a
22 judge, there's a long learning curve on this stuff;
23 okay? Judge Goldman, would you -- oh, Judge Zinna.
24 All right? That's better. I don't want to pick on
25 you too much. You know where I live. You would

1 agree with me to be a good -- I mean, a really top
2 flight municipal court judge, you need to know the
3 rules of evidence cold; right?

4 JUDGE GOLDMAN: Absolutely.

5 MR. RAMSEY: You've got to know
6 everything there is to know about Part VII and Part
7 III. Part I wouldn't hurt either, do you agree, of
8 the Rules?

9 JUDGE GOLDMAN: Sure.

10 MR. RAMSEY: Do you think it's important
11 to know the New Jersey Code of Judicial Conduct?

12 JUDGE GOLDMAN: Of course.

13 MR. RAMSEY: And the New Jersey ethics
14 rules, the RPCs? You have to know the New Jersey
15 Code of Criminal Justice, especially sentencing;
16 suppose these cases are going to plead out. All the
17 parameters and the law in the New Jersey Motor
18 Vehicle code, again, sentencing is very, very
19 important, especially drunk driving. Fourth
20 Amendment, Fifth Amendment jurisprudence and all the
21 local ordinances. It takes a long time to learn this
22 stuff and you've got to be serious about it. And
23 tough to do if you've got a -- if you're a part-time
24 judge and have other things to do professionally
25 besides be a judge.

1 But the point I'm trying to make is that
2 for judges to do their job and do it well, they've
3 got to have a really good solid foundation. I've
4 always thought that there's at least a six-year
5 learning curve associated with these things. The
6 1947 structure of the municipal court has created an
7 enormous problem for the ability of the court -- the
8 municipal court judiciary to carry out its
9 responsibilities while maintaining the confidences of
10 the public and bar. This is the main problem that
11 really needs to be addressed by the legislature.

12 I mentioned before and I'd reiterate,
13 the one thing that is absolutely an asset to the
14 Supreme Court, and this is in the court rules and
15 it's mentioned in the case law, is no involvement
16 with politics. But yet we have a structure in the
17 municipal courts which is completely involved with
18 politics. So the control of the activities, the
19 funding, the appointment, the salaries, the supplies,
20 the facilities, all of this being done by local
21 politicians allows for the follows: 1) Undue
22 influence in judicial decision-making. I mention the
23 In re Fenster case, which is probably the most
24 extreme case where a judge really seated control of
25 his court to the mayor of the town. The mayor made

1 statements during the course of the trial, things of
2 that nature. That's just one of the many cases
3 involving violations of the New Jersey Code of
4 Judicial Conduct. It's just the most egregious one
5 that I could think of. It has the capacity to raise
6 questions among the defense and the public at
7 difficult, unpopular or controversial judicial
8 decisions that require fearlessness will not be made
9 because of fear of retaliatory loss of employment of
10 benefits.

11 I know personally people here on this
12 panel, for example, who have been subject to
13 retaliation for being fearless and for making --
14 calling them as you saw them; okay? And the police
15 and the politicians sometimes don't take kindly to
16 that and attempt to retaliate, sometimes by
17 abolishing the court, as a matter of fact. But here
18 is the main case I want you to all be aware of and
19 the one thing that our court -- supreme court wants
20 the judges of our state to be a unit of is
21 fearlessness. You will make the call the way you see
22 it based upon the law and the evidence and nothing
23 else, no politics, no fear of retaliation.

24 Now, if you're in the superior court or
25 a tenured judge, you can do that type of stuff. In

1 the municipal court you don't have that luxury. The
2 way things are set up now deters judges from ruling
3 against local police for fear of political
4 retaliation. I don't know of any judge in the state
5 who wants to keep his job who's going to try a case
6 and then in the face of blatant false testimony by
7 the police officer say, when he's going through his
8 fact-finding, And I reject the testimony of Officer
9 "Thing." I think he was impeached. I don't believe
10 what he had to say or anything else that would call
11 into question the bona fidety (sic) of the police
12 officer. It's just not going to happen.

13 And from the defense perspective, it
14 makes things very, very difficult. Once you know
15 that you can kind of approach the case and try it in
16 a different manner. But judges just aren't going to
17 do that, even though on occasion the police certainly
18 deserve it.

19 It places pressure on judges to increase
20 revenue and collections for the benefit of the
21 municipality. I've given you a law division case on
22 here, State versus Jolicoeur, where the municipal
23 court judge is in this particular case was just
24 obsessed with the idea of collecting every single
25 penny of a -- some kind of a public application fee

1 and the law division really very -- was very critical
2 of the activities of this court, saying, Look, you're
3 not the revenue agents, okay, you're here to do
4 individual justice to the individual cases. You
5 can't let local politicians dictate to you the
6 pressures of the municipality from a financial
7 standpoint, but our structure of the court allows
8 that kind of thing to happen.

9 Something else that's particularly, I
10 think, demeaning to both the defendants and to the
11 court is aggressive attempts by judges to publically
12 arrange for payments from defendants, asking
13 defendants in public, What is your income? When can
14 you make your next payment? When can you make your
15 first payment? It wastes tremendous time, it's
16 embarrassing to everybody in the process. I think
17 it's demeaning to courts. I don't think the judges
18 really should be involved in this at all. There's
19 got to be a better way to do it. And it gives the
20 appearance to the public that the municipal court is
21 not about anything other than a money grab,
22 especially when you're in a huge court where
23 everybody's lined up like in a Turkish bazar talking
24 to the prosecutor and getting 90 seconds in front of
25 the judge to enter a plea of guilty and then start

1 discussing with the judge how much money's going to
2 be paid and when.

3 It completely defeats any idea that
4 there's some degree of posterity and dignity to the
5 process. It just gives the impression this is
6 nothing more than a naked money grab, very harmful to
7 the image of the system of justice in New Jersey
8 especially in situations where this is the only
9 exposure that the average people are going to have to
10 the judiciary in their lifetime.

11 Local funding, it's going to allow for
12 widely desperate resources and management of
13 municipal courts. This results in a complete lack of
14 uniformity, extremely poor service to the public at
15 various places around the state. Some courts you
16 can't get anybody on the phone 24 hours a day, seven
17 days a week. Private courtrooms, inconvenience, you
18 heard Mr. Gerrow speak about that and the night court
19 situation. Poor perception of the judiciary
20 generally speaking by the public.

21 Also, the part-time status allows for
22 widely disparate talent. You have people who are
23 really committed, some people that aren't so
24 committed. There's a long learning curve here and
25 people who are not as committed to their job, it

1 takes them a longer time to learn no matter how, you
2 know, dedicated they are to it. So there are wide
3 ranges of talent, ability, commitment, training and
4 dedication among the municipal court judges.

5 And by the way, Mr. Gerrow said this,
6 and I agree with him, many of the same arguments are
7 applicable to the prosecutors who serve one-year
8 terms and are usually part-time, and by the way,
9 without any support staff at all. There's good
10 comment on this in State versus Prickett. Judge
11 Cantanese and I were talking on the way down today
12 just thinking about a prosecutor who's serving a
13 one-year term with no backup, part-time, and he's got
14 a rather complex drunk driving case, something with a
15 seat in the community. It's really a pleasure being
16 a third offender, for example, who's -- these are
17 dangerous people. They've got to be prosecuted very
18 aggressively. It takes a lot of resources these days
19 to put together complex drunk driving cases. There's
20 blood involved, there's urine involved or if it's an
21 an OPPO test case where you've got documents,
22 discovery and, you know, police officers you've got
23 to prep and things of that nature.

24 You've really got to know what you're
25 doing. It takes a lot of time to get these cases

1 ready to roll and prosecutors aren't getting any
2 special incentive to do this other than their own
3 sense of professionalism. It's a system that can
4 lead to catastrophe. There's one case -- Jimmy
5 Moore. Yeah, I think you'll remember this. Do you
6 remember the case, Emery (phonetic) Siegal has the
7 case involving a homicide, it was the superior court
8 judge's son? Do you remember that.

9 MR. CANTANESE: Yeah, I do.

10 MR. RAMSEY: Do you remember that? And
11 this was a situation where the prosecutor just
12 thought he was going to be able to wing it and he
13 wound up getting reprimanded by the supreme court for
14 his lack of preparation. But, you know, you have
15 some cases that take an enormous amount of
16 preparation and it's just not there when you go to
17 the part-time prosecutors who have no resources to
18 help them.

19 These are the recommendations I'd like
20 you all to think about, and this is directed
21 especially to Assemblyman Gusciora, here. The
22 legislature should abolish local control of the
23 municipal court system and establish the municipal
24 court system, as they did in California, which is an
25 adjunct to the superior court.

1 The -- and I agree with Judge Cantanese,
2 the tenure of municipal court judges is essential.
3 Or just make them superior court judges, have
4 superior court judges go and do that. Revenues that
5 are generated by the court should go back to the
6 local municipalities based upon where the case came
7 from in the first place. There should be uniformed
8 funding and resources provided by the state so that
9 really everybody is going to be treated the same no
10 matter where you go. And to echo Mr. Gerrow, again,
11 professional full-time prosecutors under the
12 immediate supervision of the county prosecutor should
13 represent the State of New Jersey.

14 Oh, and by the way, this business with
15 the police liaison sitting there next to the
16 prosecutor, Mr. Gerrow -- where'd he go?

17 MR. CANTANESE: He stepped out.

18 MR. RAMSEY: He went to get a
19 restraining order against me. You stop to think
20 about it, all right, this is such a blatant violation
21 of the Rules of Professional Conduct. The RPC 3.8,
22 requires independent judgment by these prosecutors.
23 You can't have a -- you know, like a string being
24 pulled by the police. They're the ones that have to
25 deal with individual justice in individual cases.

1 That's not the function of the cops. So it's very
2 disturbing. I can't imagine why the county
3 prosecutor puts up with it, or the attorney general,
4 for that matter.

5 So those are my recommendations, again,
6 I hope of kind of getting through to Mr. Gusciora.
7 And I hope he'll be the champion of these changes.

8 MR. FISHMAN: You talked about a long
9 line to see the prosecutor. In actuality, there's
10 two lines. One of them leads to the prosecutor.
11 They're for represented people. There's another line
12 for the pro ses and at the head of that line is a
13 police officer who is dispensing justice and by the
14 way practicing law without a license.

15 MR. RAMSEY: I can't imagine what county
16 prosecutor permits this. It's so blatantly against
17 the RPC's. The attorney general really ought to do
18 something about this, but --

19 MR. FISHMAN: I always remind liaison
20 officers at the head of that line that practicing law
21 without a license in the State of New Jersey is now a
22 third degree crime. They -- they don't think it's
23 funny, but --

24 MR. RAMSEY: Well, that --

25 JUDGE LAWSON: That should be brought to

1 the attention of the assignment judge.

2 MR. ZINNA: First of all, where is that
3 happening? I mean, that never happened in Morris or
4 Sussex, that's for sure.

5 MR. RAMSEY: You don't have to go to
6 Camden County to find it.

7 MR. ZINNA: That has to be an isolated
8 incident.

9 (Crosstalk.)

10 JUDGE LAWSON: Stop. Stop. Stop.
11 We've got a court reporter and she can't hear if
12 you're all talking over each other.

13 MR. FISHMAN: I wish it were an isolated
14 situation. It is not.

15 MR. RAMSEY: They would never do that in
16 Monmouth County, Judge. I guarantee you that, not
17 even in Roosevelt.

18 MS. UNGAR: Mr. Ramsey, can you let us
19 know what counties where you've experienced the
20 liaison?

21 MR. RAMSEY: Camden, right off the bat
22 comes to mind. I mean, I have to tell you the one
23 particular town in Camden County where I know they
24 did this, Don't even bother, we're trying the case.
25 Forget about the cops, I don't care about the cops.

1 The judge will give you a fair trial. We'll just try
2 the case. I'm not going to get involved with you.
3 It's ridiculous. I'm not going to waste my time,
4 because the prosecutor has no say over anything.
5 Even if the case were lacking evidence, he had no
6 case.

7 MR. TESTA: The other counties in which
8 it occurs is in Cumberland County, Atlantic County,
9 Cape May County. And you stole my other comments
10 about the unauthorized practice of law. I
11 consistently remind police liaisons that they may be
12 engaging in the practice of unauthorized practice of
13 law --

14 MR. RAMSEY: Michael, it's worse than
15 that, it's an RPC violation. The prosecutor
16 ethically has to do individual justice of individual
17 cases. He has to exercise independent judgment.
18 Sometimes these cops are wrong.

19 MR. FISHMAN: The force --

20 MR. TESTA: The cops are wrong. And
21 they have to be told they're wrong.

22 JUDGE LAWSON: Mr. Testa, you mentioned
23 a number of vicinages that has this going on. Has
24 anyone brought this to the attention of the
25 assignment judges in those respective vicinages, or

1 the PJ?

2 MR. TESTA: I know for a fact that in
3 more than one of those counties that I've mentioned
4 the assignment judge sometimes appears in those
5 courts just to watch the goings on in those courts.

6 MR. RAMSEY: Judge, maybe this is viewed
7 as an executive branch issue as opposed to something
8 that's outside of the range of the judiciary. That
9 may be the issue.

10 JUDGE LAWSON: That is not outside of
11 the range of the judiciary. That is -- I can tell
12 from my 21 years of being an assignment judge that is
13 not outside the realm. Once that -- that court falls
14 within the jurisdiction of the assignment judge and
15 everything that goes on in that court is part of the
16 assignment judge. And that assignment judge should
17 know that that's going on to deal with it.

18 MR. RAMSEY: Well, my own sense is, the
19 rule -- if you think about Rule 1:18, the judges of
20 this state are obligated to report violations of the
21 New Jersey Code of Judicial Conduct or the RPCs.
22 They have no discretion. They have to do it. But I
23 can't imagine, again, because it's local politics
24 that a judge could see this and he knows that it's
25 wrong, and he knows that it violates RPC 3.8 is going

1 to report his own prosecutor because of the local
2 politics.

3 JUDGE ZINNA: The way you found out
4 about it was a presiding judge. We have to make
5 in-court visits.

6 MR. RAMSEY: Yeah.

7 JUDGE ZINNA: When I say an in-court
8 visit up to my courts, one of the things that would
9 drive me absolutely crazy is what Bob says, these
10 lines waiting to talk to the prosecutor, whether
11 there's two lines or one line, it looked like a
12 supermarket and --

13 MR. RAMSEY: Judge, let's talk about
14 Mount Olive. It's a place in the middle of nowhere
15 but it's packed to the rafters with people. Where do
16 they all come from?

17 JUDGE ZINNA: Yeah. And so, you know,
18 we started to train on it. I brought it to the
19 attention of the presiding -- of the assignment
20 judge. We had a training session. We tried to
21 discourage it. I think we did in many of the
22 municipalities. So there's no doubt that's going on.
23 I do agree, though, that although you may not have a
24 police officer sitting in the courtroom, I do know
25 they have an awful lot of control over the prosecutor

1 because almost every court has a liaison officer
2 which gives the prosecutor carte blanche to plea
3 bargain a variety of cases without contacting anyone.
4 And that's the same effect only they're not sitting
5 in the courtroom. Maybe in South Jersey there's just
6 more of the liaisons right there.

7 But the one thing -- back to the
8 suggestions of what we should be doing, the one thing
9 I haven't heard and, Bob, I know you do a lot of
10 training, one of my problems that I've always had
11 with regard to municipal court judges taking the
12 benches is many of them never saw the inside of a
13 municipal court. They never handled a criminal case,
14 they never handled a municipal court case, they never
15 prosecuted in municipal court. That's not the
16 end-all and be-all to become a good municipal court,
17 but I always thought that one of the things if we got
18 the centralization and became more integrated with
19 the superior court would be judges don't take the
20 bench after presiding judges spend x-number of hours
21 which we have to do with them and maybe they sit one
22 or two times. It's just not enough to be a good
23 municipal court judge.

24 And I think that also creates a
25 perception of lack of confidence because, first of

1 all, you get attorneys who actually know what's going
2 on and they see a municipal court judge that doesn't
3 really no what's going on and that creates a lack of
4 confidence. And certainly people can generally see a
5 judge with confidence, understanding, knows what he's
6 doing as opposed to one that doesn't. So I'm
7 wondering if that fits into this whole picture of --

8 MR. RAMSEY: Judge, can I comment on
9 this for a second? For many, many years before they
10 fired me for stealing Christmas trees I used to go to
11 the baby judge schools. And I taught there for years
12 and years and years. Okay? And it just -- I have
13 the greatest respect for the people that are doing
14 it. But it's really worthless training. Human
15 beings can only learn a small amount of stuff in a
16 short period of time. And they're getting this flood
17 of information. A lot of it is new.

18 So, Judge Cantanese and I sat down and
19 developed our own baby judge school, so to speak, and
20 we put it all on video subject by subject by subject.
21 So now the judges, if they want to learn, they can
22 sit there and watch it 24 hours a day over and over
23 and over again and, you know, get it reinforced and
24 have the materials there. And it's a critical --
25 it's a critical function that the judges have since

1 there's such a long learning curve, a steep learning
2 curve here that they really have some fundamentals
3 before they start off. Is that kind of --

4 JUDGE ZINNA: Yeah, it does. And,
5 again, I'm -- what I -- I want to take it to the next
6 level where I think that as part of the process they
7 should be vetted before they get their initial
8 appointment.

9 MR. RAMSEY: Yeah.

10 JUDGE ZINNA: So if we're going to do
11 something, like a merit system, which Paul pointed
12 out, there probably should be some concept and some
13 panel put together before you even get your initial
14 appointment.

15 MR. RAMSEY: I think that -- I know that
16 some of them go through a really conservative
17 so-called doughnut hole in the municipalities and how
18 it's such a total waste of resources to have double
19 municipal courts with double personnel and things of
20 that nature. But imagine, like, in a county like
21 Monmouth County, for example, where you had maybe
22 three regional municipal courts running day and night
23 staffed by full-time professional personnel with
24 tenured judges who've been vetted and trained before
25 they take the bench, and they don't have any --

1 there's no possibility of any local politics getting
2 into the system. They judge cases based on law and
3 evidence and nothing else.

4 They have hours that are going to be
5 convenient for the public and they're dedicated to
6 service, which is exactly the mission of the
7 judiciary. It just seems to me that that's the way
8 to handle these things down the line. And, again, it
9 -- it's kind of consistent with what Assemblyman
10 Gusciora's trying to do with doughnut hole
11 municipalities and the duplication of services
12 associated with it.

13 JUDGE LAWSON: Thank you. If we could
14 focus, we have Mr. Herman. You wanted to speak?

15 MR. HERMAN: Yes, sir.

16 JUDGE LAWSON: And then we have
17 Assemblyman Gusciora and then we can then have a
18 question-and-answer. And Mr. Hernandez, as well.
19 Okay. So, Mr. Arnold (sic), do you want to reserve
20 your question or do you want to ask him now?

21 MR. FISHMAN: I'd like to ask it now.

22 JUDGE LAWSON: Go ahead, please.

23 MR. FISHMAN: When you combine mandatory
24 sentences, minimum mandatory felonies, you have a
25 tendency to overcharge which police can't resist. It

1 really changes the discretion from the judge to the
2 prosecutor. It depends on what you want to plead.
3 You want to go in to the prosecutor and make a deal
4 and then depending on what you plead to, the judge
5 locally imposes the penalty that the legislature has
6 created. When you have that situation coupled with
7 the fact that before State versus Clark, I used to
8 prosecute and defend. I used -- as a prosecutor I
9 used to tell the cops what to do. Today the cops
10 tell the prosecutor what to do.

11 And it delivers the entire minor
12 judiciary into the hands of the executive branch of
13 government where it can be really corrupted. So one
14 of those things has to end -- or all of those things
15 have to end. And I'd like to hear whether you agree
16 with that.

17 MR. RAMSEY: Well, this is all the more
18 reason why the cops can't be involved in this. So
19 let's take a situation where the police have charged
20 somebody with five different offenses, most of which
21 have mandatory -- minimum mandatory sanctions
22 associated with it. All right? The prosecutor will
23 assume individual justice in individual cases. So he
24 will make an assessment of the guy's driving record,
25 what happened in the case, if there's any victims,

1 restitution to be paid, and all of the myriad of
2 things that go into this case. And then he'll make a
3 plea offer which is intended to, again, do individual
4 justice in that case. Okay? And it may involve
5 dismissal of other type of charges associated with
6 it.

7 The cops can't play a role in this.
8 It's the prosecutor's responsibility. The judge
9 can't just rubber stamp this stuff either because at
10 the end of the day it's the judge who has to make a
11 determination that the plead sentence agreement is in
12 the best interest of justice. This requires time,
13 information and consideration by a judge who's
14 knowledgeable about these things. That's how the
15 system is supposed to work. It can't work when
16 there's 150 people lined up waiting to hear their
17 cases. The judge wants to get out of there by three
18 o'clock in the morning. That's not justice. That's
19 a money grab, a blatant money grab. That's how the
20 local politicians were coming at this because that's
21 their concern. Thank you, your Honor.

22 JUDGE LAWSON: Thank you very much, Mr.
23 Ramsey. At this time we're going to call Mr. Herman.

24 MR. HERMAN: Thank you, Judge. My name
25 is Robert Herman. I'm an attorney. I've been

1 practicing since 1998. My practice is down in
2 Atlantic County mainly. My office is out of Linwood.
3 I live in -- currently in Mays Landing. By way of
4 background for those who don't know me, and the
5 Judges I don't believe -- I may have met Judge
6 Lawson. And I'll try and keep it relatively short
7 considering the noted remarks of three prior
8 speakers.

9 By way of background, I was initially a
10 judicial law clerk in the law division of criminal
11 part back in 1998. As a shout-out to Mr. Fishman,
12 I've been published. I wrote an article dealing
13 specifically with draconian arbitrary nature of
14 mandatory minimum sentencing, and as a second
15 shout-out to Mr. Fishman I was born in 1968. But
16 that aside, I've also taught as adjunct faculty at
17 Richard Stockton State College, now University. I
18 taught in the area of criminal law and constitutional
19 theory, practice. I've guest lectured for attorneys
20 and also for other colleges including Rowan, here,
21 and Temple and a number of distinguished groups
22 dealing with the issue of criminal law,
23 constitutional law and also politics and its effects
24 on the court.

25 As a lawyer I noted that I've been

1 practicing for 18 years now, actually more than 18.
2 And I've appeared in courts throughout the state. I
3 appeared in municipal courts, superior both criminal,
4 civil, chancery, general equity, family,
5 administrative in the office of administrative law, I
6 tried cases there and also appeared in superior court
7 in the appellate division and also before the state
8 superior court where I am too, and a lot.

9 But of note, ladies and gentlemen, I've
10 actually tried several hundred cases and many of
11 those in municipal court. I know what a trial is
12 about. I know what it's like to try a case. And I
13 also know what it's like to deal with the municipal
14 courts, deal with the prosecutor, the process of
15 litigation, the prosecutor and also the judge. And
16 then the judges were dealing with the issue of
17 trials.

18 Now, there was some discussion before
19 noted, I believe, it was Judge Cantanese, was talking
20 about the Constitution of 1947. I was doing some
21 writing and one of the things I had looked at was on
22 the Rutgers Law website was dealing with some
23 commentary dealing with the Constitution of 1947 and
24 the issue of how do we structure our court system.
25 We have a unified court system. What about some of

1 the lower issues? For example, we've been dealing
2 with driving while intoxicated, other driving
3 offenses. Unfortunately, I don't recollect her name,
4 but there was a speaker who was a female attorney
5 from -- representing the League of Women Voters. It
6 was particularly eloquent. And she went in and had a
7 very lengthy discussion and it was not dissimilar to
8 what we're dealing with today with the panel. But it
9 was a discussion relating to the nature of -- or the
10 requirement that we have this independence with our
11 courts, specifically dealing with these lower level
12 type offenses, ones which are not, for example, a
13 homicide, they are driving while intoxicated or
14 driving offenses.

15 And one of the problems that was noted
16 among her testimony and a number of others was that
17 concept of independence, the problems they have
18 faced. So as I noted, Judge Cantanese had spoken
19 about this. This is a problem and the reason I bring
20 this up is this is a problem that has existed for a
21 long time or at least concerns about it. And we're
22 talking literally about 70 years or so. It is
23 nothing new. And I should note as well that when you
24 deal with the issue of independence you have to think
25 -- one must think of it in two separate ways, one

1 dealing with the issue of the independence of the
2 court itself as a fully independent branch of
3 government separated from the executive and
4 legislative branches.

5 So there's that concept of independence.
6 And then there's also the question of independence of
7 the court itself, and that is the judge who is --
8 because we deal with bench trials. Now, my focus is
9 mainly on what I've seen and what I'm here about
10 today are about some of the issues and concerns
11 relating to the independence of the judges and their
12 impacts with the courts. Some of those issues, for
13 example, one that was mentioned earlier, Judge
14 Cantanese, I think again had testified regarding it
15 and Mr. Ramsey during his presentation, I think,
16 touched on it as well, if not stating even more is
17 dealing with the -- the issue of the courts being
18 utilized by the municipalities for the purpose of
19 fund-raising or generation.

20 And that is a significant problem which
21 I'll just go into moderately previously because,
22 again, noting the late hour. But in doing research,
23 again, on some other occasion for some other issue, I
24 remember reviewing a local township down there in
25 Atlantic County, reviewing their budget, looking at

1 their annual budget, year-to-year, which I guess is
2 what an annual budget would be. And it was the
3 question of how much was the expected revenue of the
4 municipal courts. And what was found to be
5 inherently interesting dealing with that issue
6 because, again, we're required to publish a budget,
7 now available on the internet, and I don't want to
8 say that this is systemic, I have not done a survey
9 of New Jersey's 500 plus or whatever, the
10 municipalities. However, I know that this is not a
11 singular problem.

12 In this one particular jurisdiction it
13 had, for example, it had the amount of money that the
14 courts -- it cost to run the courts. And this one,
15 let's say it was \$500,000 a year, rounding numbers,
16 using lawyer math. And the actual revenue from the
17 previous year had been 800 and some thousand dollars.
18 So then what happens is then you have a projection.
19 And the projection -- there's a current projection
20 listed that the municipal court -- this one
21 particular municipality utilized for the purposes of
22 their municipal budget was the -- approximately the
23 amount of revenue they had received from the year
24 before.

25 So when they were doing their budget

1 they took into account what they expected the court
2 to do or to produce in that particular upcoming year.
3 And while one could understand the nature of this
4 dealing with the issue of money coming in, budgeting,
5 what it does is it creates additional problems, some
6 of which we see and which we testify to. Problems
7 that relate to external factors which affect or have
8 the ability to affect the courts and the judiciary.

9 Now, before going in, just a hair more
10 detail, I want to make it absolutely clear that there
11 truly is no such thing as an absolutely or truly
12 neutral or independent individual. The fact is that
13 we all, as individuals, come into whatever the
14 situation may be with our own background, with our
15 upbringing, whether religious, secular or
16 non-secular, whether it's events we're taking into
17 account, how we take it into account, events that
18 occurred, education, there are a number of external
19 factors which affect our ability to perceive things.
20 Society itself changes. And that has -- in and of
21 itself -- affects people and their -- the way that
22 they see things.

23 So the belief that a judge as a human
24 being is absolutely one hundred percent neutral and
25 doesn't come or doesn't have any kind of bias

1 whatsoever is fallacious. It's just not accurate.
2 That doesn't mean that their biases are -- any
3 notions that they may have should affect their -- his
4 or her or their decisions. But rather it's the idea
5 that what we should be gaining or moving towards is
6 not absolute neutrality, but rather as close as we
7 can get as human beings. Now, part of that deals
8 with the concept in what I've seen as a lawyer in
9 municipal courts. And we'll put aside all the other
10 courts that I've been in and tried cases.

11 In municipal court there are, as has
12 been testified to, many external influences on the
13 judge. Whether they affect him or her consciously,
14 whether there is a subconscious effect, it really is
15 virtually impossible to tell. Even with a full
16 confessional, even with fully annunciated testimony
17 such as Judge Cantanese has provided. The fact is it
18 that it still is through a prism, it's still through
19 a filter of what one sees is the basic makeup of
20 one's personality. So then what I'm saying is that
21 while we're able to identify some, we can't identify
22 all. There are, based on the way that the system is
23 currently set up. It's agreed. And I as a
24 solo-practitioner I should note that I have not been
25 on the prosecutor's side, I have never been a judge,

1 I am coming specifically, though I have them in my
2 family, I -- it's -- I'm coming from the side of the
3 defense attorney.

4 Here is what I see. This is my
5 perception, and also from certain discussions. It's
6 that these pressures and influences, they're as noted
7 because they're concerned about their jobs. They're
8 concerned that no matter what kind of job they do
9 that they're going to be kicked out, potentially even
10 ostracized. They live in some of -- the judges live
11 in these communities. They depend on them. There's
12 a -- you may have seen it where there's an ad and
13 it's an ad for a judge who is running for election in
14 a neighboring state, let's say, Pennsylvania. And it
15 says, Vote for judge so-and-so. And then you might
16 see sometimes the negative ads which is, Don't vote
17 for Judge Smith, he let out a rapist last year on
18 appeal.

19 And it's one of those times and I can't
20 say there are tons, but it's definitely one of those
21 times when you say, Hey, we live in New Jersey, not
22 them, you know. We don't elect our judges except we
23 get sort of close actually when we look at the system
24 a little bit better. And what we do is by having the
25 judges concerned about their jobs, by noting that

1 some -- and it's been well publicized and testified
2 to is that municipalities concerned about money
3 coming in that they're coffers don't run dry if they
4 put burdens on judges who have these other concerns,
5 concerns about maintaining their judgeship.
6 Likewise, you deal with judges -- and I'm sure each
7 of you has at least at one point had that late night
8 phone call or somebody's come to your house with a
9 warrant to sign, whether it be a search warrant or an
10 arrest warrant, whatever it may be.

11 We give only the municipal court level
12 as it exists today only with bench trials. And for
13 that judge, and again, this deals with more of a
14 subconscious influence, they have to find -- if that
15 police officer is not testifying credibly, they're
16 required to find that they're not telling the truth.
17 They'll tell me the truth that they are incredible.
18 The judge also knows that to find a police officer
19 incredible may mean the end of his or her career, not
20 the judge's, but the police officer. They realize
21 that to find this person not testifying accurately
22 and honestly it may impact that particular
23 individual. The individual with whom the judge has,
24 essentially, established a relationship, especially
25 since they've been in that jurisdiction for a number

1 of years. This is something which impacts or may
2 impact the judge's decision-making at trials, at
3 suppression motions, at hearings, court hearings.
4 It's -- it can be understated and I think just to
5 underscore again what Judge Cantanese has said, is
6 that some officers will find a not guilty verdict as
7 a personal affront. And I've seen that. And the
8 cases don't bear out a conviction.

9 And where there are case, and I have
10 tried those, we take them up on appeal, a case of
11 something -- cases which are important to a
12 municipality, where there is a particular person in
13 the municipality who is not like the powers that be,
14 and next thing that you know, that person is looking
15 at a litany of charges whether they're administrative
16 or criminal, traffic as well.

17 Now, there's -- without, again, going
18 into this credible detail and trying to keep it
19 relatively succinct, in the end, there are these
20 pressures on judges. And the question is, is how
21 does it or how can we suggest that we at least
22 alleviate some of that burden. How is it or how can
23 it be -- or what kind of construct as it presently
24 exists can we shift, can we twist, can we turn or do
25 we have to recreate from an entirely new block of

1 clay. There are some suggestions that I'd like to
2 make and I'd be more than willing as well to answer
3 questions about personal examples of the experiences
4 that I've had in municipal court. But specifically,
5 the first thing that I'd have to suggest and perhaps
6 the easiest, though maybe not the most politically
7 safe is to take out the financial incentive.

8 And what I mean by that, at least the
9 suggestion that I would make or maybe this panel
10 would consider, is the suggestion that any monies
11 that the municipal court receives in excess of its
12 operating budget for that year be turned over to a
13 state authority, to a regional authority, whatever it
14 may be. I am absolutely certain that while that is
15 not a panacea, it is a good start. The municipal
16 courts where people have -- people in general, that
17 is, have their greatest exposure to governments,
18 particularly the judiciary, is something that should
19 not be utilized as an additional tax and authority,
20 something which should not be -- they should not
21 perceive that this is just a money grab, as noted
22 earlier.

23 Secondly, the concept of these local
24 people, the local courts, and I say this with the
25 greatest respect for the three judges in front of me,

1 to municipal court judges, it's something where we
2 have to understand that while the courts are
3 localized, there will always be these pressures.
4 They're inherent in the system. They're inherent as
5 it's set up. They will -- while they -- if one
6 removes the financial incentive in the sense of the
7 actual court itself receiving fees, it doesn't get
8 away from that local mentality, the ability of the
9 local politics to affect the judiciary. There must
10 be a wall. There must be a separation. And that
11 separation must be distinct and it must be a high
12 wall. The third thing, and I note that there is a
13 case that -- Tim Aquendis (phonetic), I believe is
14 the name of the case that has been argued at the
15 state supreme court and pending a decision dealing
16 with the issue of jury trials based on --

17 MR. LAWSON: State versus Dental Spec.

18 MR. HERMAN: -- Dental Spec, my
19 apologies. Maybe it's time that we reconsider as
20 well this concept of jury trials, like many other
21 states have done with, for example, DWIs, some of
22 them with two "C" violations. Because what happens
23 is that again -- and maybe there's a mix of different
24 ways of going about creating at least, or buffering
25 for independence, but where you have a bench trial,

1 again, with the local courts, you end up with the
2 kind of problems with which we've discussed and the
3 impropriety and the excessive influence. If perhaps,
4 and without proselytizing, we put the decision of
5 fact in the hands of others, perhaps a smaller jury
6 pool, whatever it may be, I think in Michigan, as I
7 recall, it was six people, then under those
8 circumstances again you may look at a judiciary that
9 is not again -- or a result which is not a panacea
10 but one which is palatable and more towards what we
11 want to see with judicial independence. Thank you.

12 JUDGE LAWSON: Thank you.

13 MS. UNGAR: Thank you. Can you provide
14 us with any scenarios that you encountered in the
15 courts around the south where fiscal constraints or
16 naturally and fiscal considerations impacted a
17 judge's decision in a court? Do you have any
18 specifics that you can provide to us?

19 MR. HERMAN: The question you're asking
20 is do I have any specific relating to courts where
21 I've in my travels and dealings in the southern part
22 of New Jersey --

23 MS. UNGAR: Correct, that's my question.

24 MR. HERMAN: -- where the courts have
25 been impacted and the answer is, yes. It's one of

1 those things where I can only tell you in generality
2 as again, specifics, and not point to a particular
3 municipality or even a region but rather -- the
4 answer is, yes. There have been discussions, there
5 have been talks, there have been concerns raised.
6 There's been noting of, for example, when officers --
7 or I'm aware of circumstances where their officers
8 are not -- they don't have any as many officers
9 patrolling the streets that the income for certain
10 towns may be down, and that's a related concern, or
11 been a concern.

12 JUDGE LAWSON: Judge Zinna.

13 JUDGE ZINNA: One of the things that we
14 all are talking about is that municipal courts have
15 become revenue generators. And you suggested that we
16 take away that financial incentive, which is an
17 interesting suggestion. My concern is, if anything
18 is going to be done with regard to the municipal
19 courts it's going to have to get done through the
20 legislature. And I get the strong sense that many of
21 our legislators are just as happy about the revenue
22 generated from municipal courts as the localities are
23 because in effect, it generates monies for different
24 programs, some very, very good programs.

25 But it's a -- it's another form of

1 income for the state and, of course, it'll be very
2 interesting to hear from the assemblyman as to what
3 his thoughts may be on that topic, but I get concerns
4 with that because if anything is going to happen by
5 way of recommendation from this panel it's going to
6 have to be orchestrated through the legislature. And
7 I'm concerned as to where -- you know, where the
8 sensitivity will be with the legislature when you
9 start saying, Well, we want to take away financial
10 incentives. Do you have any feeling about that.

11 MR. HERMAN: My feeling is it's probably
12 a better topic for the next speaker, which is the
13 assemblyman. I'd just note, Judge, if I may is that
14 all of these concepts, all of the things we're
15 talking about which impact judicial independence or
16 neutrality, or even perceived judicial independence
17 and neutrality, these are things that are going to
18 require one of two things; legislative action or
19 constitutional amendment, realistically. So that may
20 be something which -- also and I haven't done --
21 explicitly done research on this, but there may be
22 under constitutional grounds, not constitution in the
23 sense of having to amend the New Jersey Constitution
24 of 1947, but rather dealing with the concept of that
25 it is improper for courts to be a profit making

1 enterprise. And that may have a constitutional -- a
2 component to it, which could be challenged up through
3 the courts, or at least raised as an issue.

4 JUDGE ZINNA: Thank you.

5 MR. HERMAN: Thank you, gentlemen,
6 ladies.

7 JUDGE GOLDMAN: Just a very quick
8 comment. And that is that interesting to talk about
9 the revenue and the concerns the towns have. I
10 actually had a state police court which because state
11 police fines for traffic offenses actually go to the
12 State and they're -- let's say a marijuana charge
13 where there's a lot of time consumed by the court,
14 very -- all the mandatory penalties go to the State
15 and court costs are not even assessed for a
16 conditional discharge, for example. There are
17 actually courts that don't make money. But that's
18 also a concern of the governing body, the fact that
19 there are courts that aren't paying their way or, you
20 know, covering the actual costs of operating the
21 court. And that probably has resulted in some of the
22 shared of court situations and whatnot. But I just
23 thought it was interesting to note that that is also
24 the case. But we need to take a break for this young
25 lady.

1 (Whereupon there was a brief break in
2 the proceedings.)

3 JUDGE LAWSON: Thank you very much. We
4 now have the honorable Assemblyman Gusciora who will
5 give us his comments.

6 MR. GUSCIORA: Thank you, Judge.

7 JUDGE LAWSON: It's a pleasure to have
8 you.

9 MR. GUSCIORA: And it's always a
10 pleasure to see my two judges, Judge Goldman and
11 Judge Cantanese, who are the walking continuing
12 education for me. I learn more from those two than
13 three years of law school and ten years in practice.
14 I also represent the 15th legislative district, the
15 capital district and I'm a municipal court prosecutor
16 in Princeton, Lawrenceville and Hopewell Borough, so
17 I have some municipal court experience. But in my
18 legislative capacity I have introduced bills that
19 were signed into law. One is the conditional
20 dismissal program that's -- seems to be gaining
21 acceptance. I also introduced a bill that eliminated
22 or removed jurisdiction from municipal court for
23 traffic summonses that resulted in death or serious
24 bodily injury. That was a problem that resulted in
25 the double jeopardy issue in Ewing Township. Also

1 the elimination of fees and surcharges for hardships,
2 which actually takes away state revenue, bad debt
3 that just needs to be eliminated.

4 And I also introduced the bill that is
5 now law that requires a third brake light that is now
6 in working order. So anyway, I have seven real quick
7 suggestions that my -- my latest bill is municipal
8 court drug court. I think that the drug court
9 superior court has been very successful and there are
10 times where we see petty offenders that we know are
11 going to graduate to bigger and better crimes and I
12 think at the municipal court level on a select and
13 realizing the limitations of municipal court, there
14 are some times that we know offenders that we can
15 work with. And municipal judges may on a voluntary
16 basis or otherwise have the ability to take these
17 offenders and make them come to court once a month
18 and find out what they're doing job-wise or
19 school-wise, but give the municipal courts
20 flexibility to do a mini drug court.

21 And I think there's some offenders that
22 could use some guidance so they won't have to go to
23 the superior court level drug offenses. Secondly,
24 there's a problem with witnesses both when it comes
25 to domestic violence or shoplifting. Sometimes we

1 have defense counsels that run -- that insist that a
2 loss prevention officer come eight times to court or
3 a domestic violence victim come because they have one
4 more question for them and after a while they just
5 give up. And I think that there should be some kind
6 of rule that you have two times that a witness --
7 here is somebody who has -- maybe a victim but also
8 as an independent witness may really not have any
9 skin in the game and after a while just not come back
10 to court. I think there should be some rule that you
11 have two bites of the apple and after that the next
12 appearance would be -- is for trial.

13 So there has to be some recognition that
14 when there's an independent witness, they are
15 volunteering their time, they're taking time off of
16 work so they shouldn't have to be required to come to
17 eight appearance each time. I mean, we have -- not a
18 lot of the defense counsel or public defenders abuse
19 it, but some do. Also on domestic violence, if we're
20 going to be serious about domestic violence, enforce
21 them because of the part-time relationships of
22 prosecutors and even judges, sometimes things fall
23 through the crack. I might not be there and I may
24 have a substitute prosecutor and then the matter gets
25 resolved. However, the original prosecutor of the

1 police know something about this case. There should
2 be some kind of red flag that we can put on a file,
3 Do not resolve the matter until you talk to the lead
4 prosecutor. And that would really help. I was in a
5 couple of domestic violence cases, unfortunately I
6 wasn't able to be there, there was a visiting judge
7 and things fell through the crack and we dismissed a
8 case that really should not have been dismissed. But
9 especially since we should be serious about domestic
10 violence, there should be an ability to put a red
11 flag on a file just say, Do not resolve it unless you
12 consult with the lead prosecutor or whoever.

13 Regarding automated systems, because of -- the
14 prosecutors do not have generally files, they're
15 part-time, there really needs to be an automated
16 system for prosecutors that will have automated
17 subpoenas, be able to track discovery problems and it
18 -- it would really do a long way to help the
19 prosecutors do their job.

20 It's actually a bill that I introduced.
21 It's A2613. But the State really should expend some
22 money to allow prosecutors to further their cases.
23 And I think automating a statewide system would help.
24 Mandatory appearances. I think that that needs to be
25 eliminated. Our latest thing where cellphone

1 violations, we make them come to court and also
2 credential violations for insurance, they should be
3 able to mail them in or -- and then there's plenty of
4 people at the beginning of my court sessions I say,
5 All right, who has a cellphone violation and they
6 just want to pay it? Come over here and we'll
7 process them all through. We should do more things
8 to automate and make it consumer friendly so that
9 people can get in and out of here or do the court
10 business online. But to mandatory make them come and
11 take off a day, we'll see a lot of steam at the
12 beginning of a court session and it really erodes the
13 public confidence in the court system.

14 There's a prisoner re-entry issue. As
15 many of you know, there might be a prisoner who has
16 been sent to jail for ten years or five years and
17 while their sentence takes care of their state
18 charges and they paid their debt to society,
19 invariably you'll have eight jurisdictions that
20 they'll have to take care of. And it's so
21 overwhelming when they come out; they don't have a
22 job, they don't have family support and they have to
23 go to Toms River, then they have to go to
24 Lawrenceville, then they have to go to Sussex County,
25 they have to go to Newark. They have no money to

1 deal with this. And I'll often say, How are you
2 doing in the other cases? And they say, The one
3 judge won't let me go, he wants me to pay every
4 nickle, I can't get my license restored. So I think
5 for -- especially for prisoners there should be a
6 periodic consolidation court that I think could be
7 run from the county bar association where they can
8 have -- and I think we can get volunteer prosecutors.
9 I certainly would volunteer.

10 You could have volunteer public
11 defenders and we could even have volunteer
12 magistrates from the bar association. Consolidate
13 all of these and have the ability to say to the town,
14 This is all you're going to get. You're not going to
15 get much more. And do it in a fair way that works
16 with the prisoner that you can talk to, or the
17 ex-offender. You can know what their job ability is,
18 whether they'll be able to in the future be able to
19 pay all of these outstanding matters. But there's
20 got to be a way that we can help them because they
21 just get frustrated and they end up right back in the
22 system. So there has to be a way to consolidate
23 these.

24 I know you know there are systems.
25 There are prisoners out there that they come back and

1 they have indicate jurisdictions or more and
2 surcharges. There's got to be a way to consolidate
3 all of them. Finally, on drug offenders,
4 particularly opiates are becoming epidemic. And
5 there should be a no contact order or a condition of
6 bail should be allowed to make them go into drug
7 treatment or get a drug assessment as a condition of
8 bail on an opiate related drug offense. I argue on
9 all drug offenses. But there should be a no contact
10 neighborhood -- no contact for a place, you know,
11 where they hang out at 7-Eleven or they -- it's a
12 known area for drug activity.

13 MS. QUELCH: They already have those.

14 MR. GUSCIORA: A lot of municipal courts
15 aren't doing it.

16 JUDGE GOLDMAN: They aren't doing it.

17 MR. GUSCIORA: So we have to get that
18 message out, particularly because opiates are getting
19 more and more of an epidemic in this -- and but
20 judges should have a lot more discretion in bail for
21 conditions of bail. So I think those are my seven
22 suggestions and that's it.

23 JUDGE LAWSON: Thank you.

24 MR. GUSCIORA: And as always, I'm paid
25 to say that I agree with Robert Ramsey and that I'll

1 be in the California Bill for him. Thank you.

2 MS. UNGAR: Assemblyman Gusciora,
3 there's been some -- a number of speakers that have
4 come before the subcommittee that have recommended
5 that we consider the regionalization of some of the
6 courts. And if we do that for the purpose of
7 limiting fiscal -- fiscal exposure on the towns. And
8 if we do that, obviously it will have to go back to
9 the legislature to consider how that should be done.
10 And I wondered if you had any recommendations for the
11 subcommittee on that topic.

12 MR. GUSCIORA: Yeah. One of my pet
13 peeves are the doughnut hole communities. And you'll
14 have -- we consolidated ourselves in Princeton but
15 you'll have the same judge, the same prosecutor, the
16 same police and the same public defender in many
17 instances. And there's no reason for it. And so
18 there should be some kind of consolidation when there
19 is an overlapping police department, certainly, so
20 that there's only one-stop shopping for these
21 communities.

22 JUDGE LAWSON: What about Ocean County,
23 where you've got Long Beach Island and you've got --

24 MR. GUSCIORA: Oh, I have a bill to
25 consolidate the entire Long Beach Island because you

1 have people driving through two towns to get to their
2 own town hall --

3 JUDGE LAWSON: Right.

4 MR. GUSCIORA: -- and they have -- they
5 just have a house there so they pay property taxes
6 but they have multiple jurisdictions of police and
7 municipal government. So I'm all for consolidation.
8 And it will go a long way to eliminate a lot of costs
9 overrides and duplications.

10 MS. UNGAR: One more question. Do you
11 have any recommendations for the subcommittee in
12 terms of keeping the finances, the penalties, the
13 fines that are coming in through all the
14 municipalities, a different way of the fines being
15 disseminated that are coming into the municipalities
16 so that we don't have -- so that we don't have issues
17 of conflicts with courts collecting fines and
18 disposing of matters that way in the way they do it
19 now and so that we don't have issues with judicial
20 independence?

21 MR. GUSCIORA: Well, I think that can be
22 done through computers to know which monies go to
23 which towns so that can eliminate the guesswork,
24 but --

25 MS. UNGAR: I meant in terms of the

1 current system where all the funds go back to the
2 municipalities. Do you have any suggestions for the
3 subcommittee on an alternative to the current system?

4 MR. GUSCIORA: Municipalities are always
5 looking for more ways to make funds. I know there's
6 pressure to not charge people a state statute but
7 charge people with ordinance violations so that no
8 money is shared with the state, it goes to the town.
9 So towns are hard-pressed these days, especially with
10 property taxes, and so I'm all for the towns.

11 MS. UNGAR: Thank you.

12 JUDGE LAWSON: We've got to be very
13 careful. I understand, Miss Ungar, we only have --

14 MS. UNGAR: Yes.

15 JUDGE LAWSON: -- this room until eight
16 o'clock?

17 MS. UNGAR: Yes.

18 JUDGE LAWSON: Okay.

19 MS. UNGAR: I just sent a note to the
20 judge because we were notified that eight o'clock we
21 have to finish, so I just --

22 JUDGE GOLDMAN: I just wanted to comment
23 that, you know, all monies -- all monies don't go to
24 the --

25 MR. GUSCIORA: Yup.

1 JUDGE GOLDMAN: -- state police
2 tickets --

3 MR. GUSCIORA: Yup.

4 JUDGE GOLDMAN: -- if their motor
5 vehicle goes to the state and there are a myriad of
6 funds and some go to the -- the local traffic ticket
7 and half goes to the county. So and there are all
8 kinds of exceptions, just for the record. But could
9 I just want to ask you, Mr. Gusciora, since there's
10 been a lot of preference to the pressure on
11 prosecutors by police. What is your experience in
12 that regard? I mean, do you -- I know in of the
13 things that you mentioned about prosecutors and them
14 having computers and staffing and all that, those are
15 really executive function things and don't really
16 relate specifically to the courts because we have to
17 rely on people like you to provide legislation to
18 provide the money for the prosecutors to have these
19 things. But what about the -- the comments about the
20 pressure from police?

21 MR. GUSCIORA: Yeah, I'm lucky to have
22 three jurisdictions and you know Princeton that we're
23 -- I'm lucky to be in three jurisdictions where
24 police tend to entrust the prosecutor to make the
25 right decision. But I do know that the pressure is

1 out there to -- for police. And a lot of times the
2 police try to have ownership on every ticket and
3 summons. And after a while you get to work with the
4 police, but there still are a couple of police -- an
5 officer that'll write on a summons "No deals." In
6 fact, there was an issue in Princeton and you
7 probably even know the defendant, your Honor. An
8 officer wrote, "No deals." And I ended up making a
9 deal and I said -- and the judge pointed out, he said
10 What about this? And I said, Your Honor, this kid
11 has enough problems and he has enough on his plate.
12 I'm just resolving this credential violation that --

13 JUDGE LAWSON: It's crazy.

14 MR. GUSCIORA: -- is a little
15 ridiculous. So I'm -- but I've been there a long
16 enough time so that when the officer's going to find
17 out and he'll yell at me and I'll just tell him, Move
18 on. But I know that that pressure is out there. And
19 I don't know how to exactly eliminate that either.

20 JUDGE GOLDMAN: Thank you.

21 MR. PINIZZOTTO: Reed, if I may, this is
22 not personal. As you know, prosecutors are under a
23 lot of political pressure from the local elected
24 officials and the police departments. You also know
25 that municipal prosecutors are the only prosecutors

1 in the state that are permitted to be involved in
2 politics --

3 MR. GUSCIORA: Yes.

4 MR. PINIZZOTTO: -- you by way of
5 example.

6 MR. GUSCIORA: Guilty.

7 MR. PINIZZOTTO: Do you believe that the
8 supplemental codes of ethics of both the attorney
9 general's office and the county prosecutor's offices
10 should be applicable to municipal prosecutors, and if
11 not, why not?

12 MR. GUSCIORA: I have a bill to create
13 full-time legislators, so that'll resolve that
14 problem. But I think as long as there's going to be
15 municipal courts, part-time prosecutors it's -- it's
16 very hard to get anyone else that's not involved in
17 politics somehow. The judges are involved in
18 politics, as you know.

19 JUDGE LAWSON: Wait. Not municipal
20 court judges.

21 MR. GUSCIORA: No, no, no --

22 JUDGE LAWSON: Oh.

23 MR. GUSCIORA: -- I mean, the politics
24 of appointment.

25 JUDGE LAWSON: Oh, okay.

1 MR. GUSCIORA: You guys are all
2 qualified especially and I -- I have the utmost
3 respect, especially for Judge Goldman and Judge
4 Catanese. But it is unfortunate at the end of the
5 day, it is a municipal appointment and it's politics
6 on their end. And it's politics on the end of
7 counsel who's going to end up calling me. I've been
8 talked to by business administrators and, you know,
9 the message -- the underlying message is, We're
10 looking for more revenue. Or you're told at the end
11 of the year, This is how much you brought in and it's
12 a little less than last year, so --

13 JUDGE LAWSON: I'm guilty, Miss Ungar, I
14 have to ask one question. What about the scenario
15 that Mr. Catanese brought up with having a panel, a
16 panel made up of -- the same way we do with the
17 administrators, have a panel where you vet the judges
18 and have the assignment judge involved in it before
19 the appointment. Take it away --

20 MR. GUSCIORA: Absolutely.

21 JUDGE LAWSON: -- the whole rule --
22 getting away from the whole rule. Would the
23 legislature be willing to go that next step?

24 MR. GUSCIORA: Absolutely. I would
25 support something like that because I think we've all

1 been there where we've heard in another jurisdiction,
2 so-and-so has been appointed as a judge. And you
3 just, like, raise your eyebrows. So it -- it does
4 happen and there should be some qualification because
5 at the end of the day there are people's lives and
6 this really is -- we're -- are the front of the
7 public because so much of the public comes into court
8 on a daily basis that we're the -- we're really the
9 people on the front lines.

10 JUDGE LAWSON: Okay.

11 MR. TESTA: I just have one question
12 with regards to an elected official serving as a
13 prosecutor, my understanding -- my reading of the
14 Constitution of 1947 prohibits anyone from serving in
15 two branches of the government simultaneously.

16 MR. GUSCIORA: When I'm told to vacate
17 my job I'll -- the legislature will be the first
18 thing I eliminate, so -- but there -- there's
19 probably what; about eight?

20 MR. BARR: Yeah, seven or eight in both
21 parties.

22 MR. TESTA: I understand it's in both
23 parties.

24 MR. GUSCIORA: God bless you. Get rid
25 of me.

1 MR. TESTA: I can do something else.
2 I'm also teaching at the College of New Jersey so,
3 I'll just take another class.

4 MS. UNGAR: Thank you, Assemblyman.

5 MR. GUSCIORA: Thank you.

6 JUDGE LAWSON: At this time I'd like to
7 call Mr. Hernandez. Mr. Hernandez. First name,
8 Steven; correct?

9 MR. HERNANDEZ: Thank you, Judge Lawson.
10 My name is Steven Hernandez --

11 JUDGE LAWSON: Tell us where you
12 practice and --

13 MR. HERNANDEZ: I'm Steven Hernandez,
14 Steven with a "V," offices in Toms River. My
15 practice is 99 percent municipal court, primarily
16 specializing in drunk driving cases. I spoke last
17 time briefly and I mentioned I'm all in favor of the
18 assignment judge being involved in the decision. I
19 think that takes the politics out of it. But, you
20 know, and I want to make a few comments. First of
21 all, I'm -- what some of the speakers said today.
22 Training, judges and the lack of training is a big
23 concern of mine. Most of the municipal court judges
24 that I've dealt with, especially those who are now
25 getting appointed, are generally family law judges.

1 And no offense to family law practitioners. But many
2 of them have never set foot in a criminal municipal
3 court setting. Because if they were they'd be making
4 money doing criminal law, and they wouldn't be giving
5 that up to go set foot in the municipal court and be
6 a judge.

7 The rules of evidence are very -- the
8 rules of evidence are -- although they apply in
9 family court and family trials, you know, most of
10 those rules of evidence that you go and you read them
11 apply to the criminal setting. They were, in a sense
12 designed to protect criminal defendants at trial. We
13 have the Constitution of the United States and the
14 Bill of Rights, four of the ten first amendments are
15 designed to protect criminal defendants. Our judges,
16 these municipal court judges, they come in and they
17 don't know the rules of evidence the way the
18 attorneys appearing before them do. They don't know
19 case law the way the attorneys who are appearing
20 before them do. They don't know arrest, search and
21 seizure the way the attorneys do who are appearing
22 before them.

23 And they make -- especially the newer
24 judges, they make really rookie new mistakes and it
25 could be devastating to attorneys appearing before

1 the courts and to the defendants. So -- and one of
2 the other problems is you could have a municipal
3 court judge -- not judge, sorry, prosecutor who on
4 December 31, the prosecutor in town -- in the town
5 but then on January 1st is now the judge. Now, we
6 know that in the superior court setting municipal --
7 superior -- I'm sorry, county prosecutors, when they
8 get appointed to the bench in the county they
9 practice in, they never hear criminal cases for at
10 least about a year or so. They get stuck in family.
11 All right?

12 There's -- I see this -- this trend
13 where the prosecutor is suddenly the judge. Now,
14 they've had these -- these relationships with these
15 police officers for years and now they're the judge.
16 And a lot of the time they don't stop prosecuting.
17 So I think one of the problems -- one of the
18 solutions also that has to be implemented is there's
19 got to be some break that if you're going to become
20 the judge in a town, there's got to be some break
21 between when you were the prosecutor. And I'm not
22 just talking about for conflict purposes. Clearly
23 those judges can't hear the conflict cases.

24 Also, you know, a couple years ago I got
25 this -- the last time I was in superior court I got

1 this solicitation from the AOC to rate the judges.
2 You know, You appeared Judge So-and-so --

3 JUDGE LAWSON: The questionnaires.

4 MR. HERNANDEZ: -- the questionnaires,
5 exactly. Please rate the judge. I think we need
6 some kind of system where we can rate -- where
7 attorneys who appear in municipal court can rate
8 those judges. And I think that -- and the AOC should
9 pay attention to those, a questionnaire. Especially
10 -- not only just for the new judges, but also or the
11 existing judges. That might help weed out those
12 judges who seem to be biased or unfair because, hey,
13 you know what? There's going to a solicitation that
14 goes out about me and I don't want to get unfavorable
15 reviews either.

16 I recently became a municipal court
17 certified attorney and one of the things that I had
18 -- someone said -- asked me to be one of their
19 references. And there's a little questionnaire that
20 you get when you're a reference. And there's about
21 five questions on there that you're asked. They ask
22 about the attorney's qualifications, their knowledge,
23 their knowledge of the world, et cetera. There
24 should be some kind of form that when someone wants
25 to be a municipal court judge that -- that they have

1 certain qualifications like a form. And it gets sent
2 out to -- and the courts select who it gets sent out
3 to, not that they would select their own people, that
4 can -- that can anonymously give the AOC an idea for
5 whether this person is qualified to be a judge,
6 whether they have the character and demeanor and
7 ethics, et cetera, to be a judge. Things that should
8 all be considered I think by a panel in helping make
9 our courts more independent. And then -- I -- I'm
10 drawing a blank, so I think so that's it.

11 JUDGE LAWSON: Any questions? Does
12 anyone have any questions? Thank you very much.
13 Does anyone want to make any statement? We've got
14 ten minutes.

15 MR. TESTA: That's a wrap, Judge.

16 JUDGE LAWSON: Does anyone from the
17 public wish to make a comment? Well, I thank
18 everyone for your participation here this evening.
19 It was very helpful to the community. This was a
20 very good group of speakers this evening with a lot
21 of experience and you gave us a lot to work with. So
22 I thank you very much. And those of you we can see
23 on May -- what's it, the 19th and then June 6th.

24 MS. UNGAR: The next date will be May
25 19th at the annual meeting in Atlantic City at the

1 Borgata Hotel. Anyone who is interested in
2 attending, it's open to attend. And it will start at
3 three o'clock and will go on till about 4:30. If
4 anybody who knows anybody who wants to testify, let
5 us know. And then June 6th we'll be holding a public
6 hearing in the Seton Hall Law School in Newark. It
7 will start at four o'clock and go till six o'clock
8 and we encourage everybody to come. The transcript
9 of the proceedings today will be online through the
10 State Bar Association and available to those who want
11 to read it in a few weeks. Thank you.

12 (Whereupon the proceedings were adjourned.)

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C E R T I F I C A T E

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I, CARYN KELLNER, a Certified Court Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness was duly sworn by me to testify to the truth, the whole truth, and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

CARYN KELLNER, CCR NO. 30XI100213000