

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

Transcript of Proceedings  
Thursday, May 19, 2016

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B E F O R E:

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

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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 the Borgata Hotel & Casino,  
6 Atlantic City, New Jersey, on Thursday, May 19, 2016,  
7 commencing at 3:03 in the afternoon.

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

6 Before we begin I'd like to just  
7 introduce some of our subcommittee members and then  
8 we'll proceed. Next to me is Judge Feinberg. She's  
9 the assignment judge, formerly retired assignment  
10 judge, Judge Lawson also who is an assignment judge  
11 in Monmouth County who's also retired could not be  
12 with us today. Then we had Jessica Oppenheimer and  
13 Judge Nunez. I'm not sure if they'll be joining us  
14 today. They are also members of the subcommittee  
15 formally from the Attorney General's office, and  
16 Judge Nunez is formally from the Newark Municipal  
17 Court.

18 And we have Arnold Fishman at the end  
19 who is a defense attorney. We have Jon-Henry Barr  
20 who is past president of the prosecutor's association  
21 and a prosecutor down in Clark, New Jersey. Mike  
22 Testa, who is a defense attorney from South Jersey,  
23 and we have Bob Pinizzotto who is a defense attorney  
24 from South Jersey. We have Judge Bonnie Goldman,  
25 who's a former -- a retired former assignment judge,

1 and myself as chair of the subcommittee on judicial  
2 independence in the municipal courts.

3 I want to just take a few minutes just  
4 to discuss how we got here. By way of background,  
5 the formation of the subcommittee on judicial  
6 independence in the municipal courts back in 2013,  
7 the state bar created a task force to study judicial  
8 independence in the municipal courts. And that was  
9 comprised of 14 members. Four public hearings were  
10 conducted throughout the State of New Jersey. And  
11 ultimately the task force made recommendations to the  
12 State Bar Association.

13 They prepared a report that detailed  
14 recommendations for protection of future independence  
15 in the municipal courts. Many of those  
16 recommendations became recommendations that the Bar  
17 Association then adopted going forward. In the  
18 report of the task force on judicial independence in  
19 May of 2015, the task force recommends that municipal  
20 courts are charged with the responsibility to judge  
21 traffic offenses, disorderly persons offenses, petty  
22 disorderly persons offenses, violations of municipal  
23 court ordinances and housing ordinances.

24 They also handle instances of alleged  
25 domestic violence and such issues are disposed of and

1 often have significant impact upon a municipality's  
2 budget and financial considerations. The task force  
3 also acknowledged in its report that a comprehensive  
4 study of the interrelationship that exists between a  
5 municipal court's financial performance and the  
6 length of a municipal court judge's service requires  
7 extensive time and resources and should be conducted.

8           The task force recommended that the  
9 State Bar Association create a separate subcommittee  
10 charged with similar -- singular focus to address  
11 judicial independence in the municipal courts. The  
12 task force further recognized that the municipal  
13 courts are the courts which most citizens come in  
14 contact with. Its integrity, both actual and  
15 perceived, is critical to the public's acceptance of  
16 its determination which must be made without regard  
17 to whether findings of guilt and imposition of fines  
18 are served to assure continuation of a judge's  
19 position.

20           In the fall of 2015, the State Bar  
21 Association, through its officers, trustees and  
22 through the municipal court practice section, created  
23 this subcommittee with myself as chair to addressing  
24 the judicial independence of the municipal courts.  
25 The subcommittee on judicial independence in the

1 courts determined it was necessary to gather and  
2 compile antidotal information in further considering  
3 these very significant issues of financial impact on  
4 the courts in addressing the issues.

5           The New Jersey Bar Association, through  
6 its officers, trustees and municipal court practice  
7 section approved conducting four public hearings.  
8 Thus far we have conducted a public hearing April  
9 4th, 2016 at the Law Center, last month we conducted  
10 a public hearing in Rowan University in Glassboro,  
11 New Jersey, we're now conducting today's hearing and  
12 our final hearing will be on June 6th at the Seton  
13 Hall Law School in Newark to address the issue of  
14 municipal court independence.

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

25           The hearings will also address the

1 impact of judicial independence and the lack of  
2 uniformity throughout the state upon the judicial  
3 salaries and the lack of tenures in the courts. The  
4 goal of the public hearings is to obtain antidotal  
5 information from members of the bar, the judiciary  
6 and members of the public in an effort to enhance the  
7 operation of the municipal courts and thereby insure  
8 independence in the municipal courts in the state.

9 It is our ultimate goal that through the  
10 process of conducting these four public hearings  
11 throughout the state and recommendations being made  
12 by the subcommittee on judicial independence in the  
13 municipal courts to the bar association's officers  
14 and trustees and through its municipal court practice  
15 section, it is our hope and our goal that it will  
16 lead to the enhancement of continued future  
17 independence in the municipal court's judiciary of  
18 future cases and to ultimately benefit the public.

19 So at this point I'm going to turn the  
20 proceedings over to Judge Feinberg who will render  
21 some introductory remarks, and then we'll proceed to  
22 take testimony of individuals. Following the  
23 testimony of each individual there will be questions  
24 from the subcommittee members.

25 JUDGE FEINBERG: Thank you. First of

1 all, welcome this afternoon and we'd like to thank  
2 all of you for coming and participating. In order to  
3 proceed in an orderly manner the following rules  
4 shall apply. The names of the speakers will be  
5 called in the following order; first, individuals who  
6 have contacted the State Bar Association in writing  
7 or by telephone prior to the hearing. Second,  
8 speakers will be called based on the time of their  
9 arrival.

10 For those of you who have not registered  
11 and you're debating whether to speak, I want to  
12 encourage all of you who are here who are municipal  
13 prosecutors, defense attorneys, prosecutors, judges,  
14 members of the public, attorneys who practice in the  
15 municipal court; you have a wealth of experience and  
16 background and you're familiar with the process and  
17 we welcome your comments and encourage those of you  
18 who are here to bring to our attention any concerns  
19 you have and to talk to us about the independence of  
20 the municipal courts.

21 When your name is called please come to  
22 the front table, speak into the microphone, state  
23 your name, your occupation, the town where you  
24 practice. Each speaker will be given seven minutes  
25 to make a presentation. We'll take the names on the

1 list and we'll welcome individuals to speak to us who  
2 are not on the list. And if we have enough time  
3 thereafter, we'll be more than happy to welcome back  
4 any of the speakers who would like to expand on what  
5 they've already told us.

6 From time to time members of the  
7 committee may wish to ask a question in order to  
8 clarify something that a speaker said and perhaps ask  
9 a follow-up question. And we've done that in the  
10 past and it's been very productive. We've had great  
11 dialogues. Questions from the committee are designed  
12 to gather information in order to improve the quality  
13 of the committee's recommendations. If you don't  
14 understand a question, please let us know and I will  
15 ask the person here who asked the question to  
16 clarify.

17 We ask that members of the audience not  
18 comment when a speaker is presenting testimony.  
19 Anyone present today or if you know someone who  
20 practices in the municipal court or a member of the  
21 public who would like to tell us about their  
22 experience and to talk to us about potential  
23 recommendations, we welcome comments in writing sent  
24 to the New Jersey State Bar Association.

25 The proceedings today are recorded and

1 I'm going to ask the court reporter, if we go too  
2 fast or the people who are speaking go too fast,  
3 please let us know and we'll change the pace. It is  
4 my pleasure at this time to call the first person to  
5 the podium, Jeff Gold.

6 MR. GOLD: Okay. I don't have much to  
7 say. I've been asked to stay. I'm happy to answer  
8 any questions later by anybody. I tell my clients  
9 who ask me about this subject in municipal court and  
10 how fairly they're going to be treated, I say, Just  
11 think of it this way, you're going into a system  
12 where the judge's paycheck, the prosecutor's  
13 paycheck, the public defender's paycheck and the  
14 chief of police's paycheck is all signed by the same  
15 person. That in and of itself is a system that's  
16 very hard to keep independent.

17 You know, antidotically, certainly I'm  
18 sure other people have come and told you other  
19 stories. I'm just not going to do that. What  
20 defense attorneys fear the most and what I see all  
21 the time are judges that lean to the prosecution side  
22 just way too much. The reported cases on it  
23 recently, you know, have spoke exactly to that, where  
24 judges think they're on the prosecutor's team. I  
25 don't know that that is that far away from what

1 happens in the superior court. After all, in the  
2 superior court we often have prosecutors that are on  
3 a team that represent a judge, and a judge and the  
4 prosecutor are sort of seen as a team as well.

5 But in municipal court more than  
6 anywhere else I face a judiciary that sort of leans  
7 to the prosecutor's side that is concerned about what  
8 chiefs of police think that are beholden to  
9 reappointments, and it leads to problems. And I  
10 don't think it's nefarious, I just think it's human  
11 nature.

12 I will tell only one story. I was in  
13 the municipal courts some years ago where the  
14 prosecutor and I wanted to get away from a chief that  
15 was very influential on what happened in that court.  
16 He was sort of involved in every case. He would come  
17 into the pros -- he wouldn't just have a liaison in  
18 there, he would come in as well as a liaison. And we  
19 had a sense about him. We had a legal issue which we  
20 thought the judge could help us resolve and then that  
21 would resolve the case, so we asked for a conference.

22 And as soon as we had that conference a  
23 knock on the door came and there was the chief of  
24 police who wanted to be in there for the judicial  
25 conference as well. And the judge really was

1 hard-pressed to tell that chief to get out of that  
2 conference. And, in fact, the chief stayed there for  
3 the conference. That's the kind of pressure  
4 municipal court judges are under. Because when they  
5 alienate the chief of police, they may not be in the  
6 position to have that judgeship very long. So that's  
7 really all I have to say and if there's any questions  
8 for me, I do go all over the state, I'm happy to  
9 answer.

10 THE COURT REPORTER: Excuse me, could I  
11 just have your name, sir.

12 MR. GOLD: Jeff Gold.

13 MS. UNGAR: Yeah, Jeff, and can you just  
14 let us know where you practice, how long you've been  
15 practicing. And I have one or two questions to ask  
16 you.

17 MR. GOLD: I began as a prosecutor in  
18 Burlington County and then went into private  
19 practice. I have an offices in Moorestown, which is  
20 in Burlington County, and then in Cherry Hill. So  
21 I've been in practice for about 35 years now and  
22 within the last ten years I have been going all  
23 around the state because of my work with the ALPHA  
24 TEST and whatever else, probably because the internet  
25 sort of allows people to know who you are and I'm all

1 over the state by this point.

2 MS. UNGAR: Jeff, we've heard at a prior  
3 hearing that there was a police liaison in South  
4 Jersey, at least, that's involved in some of the  
5 proceedings. Has that been your experience with  
6 police liaisons?

7 MR. GOLD: I mean, there's police  
8 liaisons everywhere now. You know, the seminal  
9 factual example of a police liaison getting in  
10 trouble, I think, was in Linden in a case where Judge  
11 DiLeo became a case where he allowed the police  
12 liaison to prosecute the case and then the case and  
13 then the judge (inaudible, coughing) the case in  
14 addition to that. I haven't seen that personally.  
15 We know that happened in Linden because it's a  
16 reported case where that judge, DiLeo, is no longer  
17 sitting there anymore.

18 But liaisons -- I've had situations  
19 where I will have a liaison sitting at a table during  
20 trial and a ruling will be made by a judge sort of --  
21 the liaison sometimes sits there, like when we were  
22 young prosecutors and you had the county defective  
23 sit there and shepherd you through the case. And  
24 liaisons act that way sometimes with the municipal  
25 prosecutor watching over his shoulder and sort of

1 helping him along. And in this case the judge made a  
2 ruling which the liaison did not like and the liaison  
3 stood up to object to the ruling. And I had to say,  
4 He can't -- I mean, the judge was actually listening.  
5 I said, Judge, he can't object. And then the officer  
6 made a lot of noise, sort of like you advise your  
7 clients not to do when there's a ruling.

8           You advise your defendant to sit down  
9 and shut up and not react to what the judge rules on.  
10 But this officer made a whole lot of noise when the  
11 judge ruled my way and excluded a video. And low and  
12 behold, sometime later that ruling softened by the  
13 judge quite a bit. Now, I don't know what happened  
14 between now and then and I'm not going to say because  
15 I don't know. But all I know is a ruling which was a  
16 very hard decision was excluded a short time later,  
17 and I don't mean later, you know, that -- that  
18 minute. It was sometime when the judge was not in my  
19 presence, put it that way.

20           The ruling softened to be a lot  
21 different, it was definitely excluded. So whether  
22 the police got to the judge or didn't get to the  
23 judge or whatever else, I don't know. But you just  
24 fear those kind of things. Your client is sitting  
25 watching an officer, you know, all the -- now

1 everybody knows the officer shouldn't be up on the  
2 bench, you know. We all shouldn't have Christmas  
3 parties, you know those things -- but all the things  
4 that I specifically said that the AOC doesn't write  
5 about going on and doesn't think I'm coming to  
6 Christmas -- it's a little more difficult for judges.  
7 So what -- we all know who practices. It's just  
8 human nature. It's very difficult when your  
9 judgeship is sort of beholden to, you know, forces  
10 that probably they shouldn't. And it's a difficult  
11 road for judges. And when judges do the right things  
12 sometimes they lose their judgeships. You know, I  
13 can't -- you know, I -- it's just hard. So I don't  
14 -- I don't know about more than that.

15 MS. UNGAR: The other question I have is  
16 have you had instances in your practice where a court  
17 was reluctant or did not grant a motion merely  
18 because there was pressure being put on them by the  
19 police?

20 MR. GOLD: Well, I don't know more than  
21 those two antidotes that I said. But it occurs. And  
22 there's been -- pressure sometimes is on the  
23 prosecutors and not on the judge. It's hard to say  
24 where it happens. I'm not there all the time. I  
25 leave, you know. They're there for the month in

1 between that I'm there. I don't know. But there is  
2 a tendency, I would say, that it's not surprising to  
3 anybody that practices in municipal court. I'm also  
4 on the Supreme Court Municipal Practice Committee.  
5 I've been on the Supreme Court Committee on  
6 Electronic Discovery.

7           It's very difficult at that level for  
8 judges to understand what happens in the municipal  
9 court only because they're the best in the state. So  
10 when you have some practice committees, we have  
11 everybody that is really on top of their game and  
12 very ethical and, you know, it's very -- it's  
13 difficult to understand that. And in the interland  
14 (sic) you can be talking to a brick wall about  
15 something and it's not because of justice, it's  
16 because there's something else, you know, at work.  
17 So, I mean, I think those two antidotes -- yeah.

18           MR. TESTA: I just have one question.

19           JUDGE FEINBERG: Could everybody  
20 identify themselves before they speak. Thank you.

21           MR. TESTA: Thank you. My name is  
22 Michael Testa. Jeff, you and I happen to sit on the  
23 same supreme court practice committee and also  
24 practice in some of the same courts throughout South  
25 Jersey, although my offices doesn't go as far north

1 as yours does. But we've all been in courts where  
2 there is a municipal -- where there is a police  
3 liaison and there's a row of people on the side of  
4 the court that are waiting to negotiate their case  
5 with that police liaison.

6 MR. GOLD: Mm-hmm.

7 MR. TESTA: I've always had a pretty  
8 hard problem with that because to me it really is the  
9 unauthorized practice of law. Because that defendant  
10 never even gets to see the prosecutor at all. It  
11 really is now the police prosecuting the case. And  
12 there's a litany of court cases back when New Jersey  
13 had police courts which were ultimately botched.  
14 What are your thoughts on that?

15 MR. GOLD: Well, I mean, similarly how  
16 many municipal prosecutors rely on police clerks to  
17 send discovery, which is also not proper? Discovery  
18 is supposed to come from the prosecutor. And then  
19 there is this problem where it's, Well, you know,  
20 it's the police court. And then you want to get the  
21 police clerk into court to say why she doesn't send  
22 it but it's the prosecutor that's required to do  
23 discovery pursuant to Title 2B. And, of course, by  
24 the same title, it's the prosecutor who's supposed to  
25 prosecute not the officer.

1                   You know, I mean, there's certain  
2 practicalities involved. You know, I've been in  
3 courts, you know, more in the old days where you go  
4 in the back room and instead of a liaison there'd be  
5 ten troopers. That wasn't any better either, because  
6 of the ten troopers, one of them was going to have a  
7 position contrary to yours and try to talk your  
8 trooper out of it. But so that wasn't good either.

9                   The liaison is just -- in general, isn't  
10 bad, in my opinion, but the idea that they are  
11 negotiating with pro se defendants -- and, in fact,  
12 all the judges simply, you know, say, If you'd like  
13 to talk to the prosecutor, come on and do it. Forget  
14 about the liaison. The whole idea that they're just  
15 invited in this informal matter to talk to the  
16 prosecutor who is their enemy, theoretically, who is  
17 their adversary at the very least, is sort of  
18 daunting.

19                   But it's the nature of the court where  
20 you have a hundred people listed and you're trying to  
21 get through the list and all that. You know, it --  
22 it's different maybe when you have a DWI. And I  
23 think that most of the prosecutors respect that. If  
24 a client, pro se, is on that line to talk to a  
25 prosector and it's a DWI, then more times than not

1 you're saying to them, "Get a lawyer," because they  
2 understand it's different than speeding.

3 JUDGE ZINNA: Jeff, you have a  
4 tremendous amount of experience. Have you given any  
5 thought to the fix?

6 MR. GOLD: Well, you know, no, I haven't  
7 because I think that when you get to the League of  
8 Municipalities point of view on this and towns have  
9 built Taj Mahals all over the state that they have to  
10 fund, the League of Municipalities will be a big  
11 block. But, yeah, I mean, obviously if I was to  
12 think about it -- and you were talking about judicial  
13 independence. You need the judiciary to not be so  
14 closely identified via paycheck with the same people  
15 that pay the prosecutor.

16 Now, I mean, you can say that the  
17 state's -- you know, public defenders are paid by the  
18 state, judges -- superior court judges are paid by  
19 the state. So, I mean, you can extend that to become  
20 crazy. But I do think the way that it sits right  
21 now, that the AOC has to tell judges not to go to the  
22 corporate Christmas party, you know, in essence,  
23 because everybody's going to the Christmas party. Of  
24 course the judges and the chief of police are going  
25 to go because they're on the same team. And it's the

1 AOC that has to tell them, No, you can't do that.  
2 It's not natural in the municipal court system to  
3 think you're different.

4 We've come a long way. Judge Goldman  
5 and I were just talking about a judge we both know  
6 who had a little bit of a problem recently. He  
7 hadn't sat in 30 years and he came back and sat after  
8 30 years and it was like Rip Van Winkle. You know,  
9 if you didn't know what happened in the last 30  
10 years, you're sort of, you know, ruling -- and we've  
11 come a long way in 30 years. So the AOC has tried to  
12 tighten things up. There's no doubt about that. I  
13 think that's true. But the only way for us to really  
14 have it is some model closer to the superior court  
15 where there's tenure and the pay is different. And,  
16 you know, whether we'll ever get that or not I think  
17 is based on political reality, that's why I haven't  
18 thought much about it.

19 JUDGE FEINBERG: Okay. I'm going to  
20 limit it to one more question because we're past the  
21 seven minutes and we can always have you back if  
22 there's time.

23 MR. PINIZZOTTO: Thanks, Judge. Bob  
24 Pinizzotto. Jeff, you said a number of times what we  
25 all know, referring to practitioners knowing, what

1 actually occurs in the municipal courts. I'm curious  
2 about the disconnect between what we all know as the  
3 reality and what the AOC and others perceive. Do you  
4 have an opinion as to why this disconnect occurs?

5 MR. GOLD: I don't know what the -- I  
6 can't speak for the AOC or what they perceive. There  
7 are certain political realities to things that right  
8 now this is the way the system is. And it would have  
9 to be a constitutional change probably for something  
10 to happen. And short of that it would be a  
11 revolution which would involve fighting, basically,  
12 the League of Municipalities. So I don't know what  
13 they think, I just know the political realities are  
14 such that the AOC probably is working within the  
15 politics that exist right now and doing the best it  
16 can to try to reign in municipal court judges.

17 But in 523 towns, you know, I don't know  
18 how many judges we have -- some of the vicinages,  
19 like I have -- Judge Emigati (phonetic) teaches with  
20 me and, you know, I always laugh, he's got, like 53  
21 judges, you know, under him as a PJ. I mean, that's  
22 like herding cats to the extreme. So how does the  
23 AOC get everybody on board to do all those things,  
24 when in the end, municipal court judges have to pay,  
25 sort of, respect to the AOC but they're really

1 worried about their job and that is much closer to  
2 home. So I don't know what they think, but I do  
3 think it's the same political realities that I see  
4 that's daunting.

5 JUDGE FEINBERG: Thank you.

6 MR. GOLD: Thank you.

7 JUDGE FEINBERG: Jeff Abate.

8 MR. ABATE: "James" Abate.

9 JUDGE FEINBERG: James Abate.

10 MR. ABATE: My name is James Abate. My  
11 office is in Somerville, New Jersey. I've practiced  
12 in Union County, Somerville and Hunterdon Counties.  
13 Now, you're going to hear from a lot of people  
14 through this process who are going to tell you about  
15 the revenue connection between everyone being paid  
16 the same and who is hiring them.

17 But I want to talk about something a  
18 little bit different. I want to talk about how would  
19 a judge, who is going to tip the scales, actually do  
20 it. They're not going to get up and they're not  
21 going to say, Everyone I am now going to give special  
22 preference to the prosecution. They're not going to  
23 do that. That would be dumb. I also want to talk to  
24 you about where on earth would they get the idea that  
25 this was something that was acceptable. Is there

1 someone or some organization within the state that is  
2 influencing them to do that. The first way that the  
3 scales are tipped, and I'm not going to specifically  
4 point this out to the municipal court judges, is  
5 something called the 60-day rule or the so-called  
6 60-day rule. It should be the 60-day rule that only  
7 applies to the defense bar.

8 I can go through a case and if I am not  
9 moving things along as a defense attorney, the second  
10 60 days comes up I'm going to hear about it and there  
11 are going to be steps taken to prejudice me and my  
12 client. I can't say that my client is trying to  
13 raise the money for a defense expert, he doesn't have  
14 it right now, he needs a little time. But if the  
15 state police say, We don't have the video, eight  
16 months may go by before that judge acts on it. If  
17 the police don't have the lab reports four, five, six  
18 months may go on.

19 If this was an even balanced system and  
20 if the judiciary wanted to influence the state police  
21 and other police forces to do their jobs in a  
22 time-sensitive manner, these cases would be dismissed  
23 under the 60-day rule. There are uneven discovery  
24 burdens and that's one of the biggest problems that  
25 are seen.

1                   Now, I also want to talk to you about  
2 who influences these judges that are -- or the  
3 system, let's just call it, to say that these  
4 prosecutions should get the scales tipped in their  
5 favor. Well, I'm not going to -- I'm not going to  
6 come right out and name them. But the first thing I  
7 would do if I was that organization is I would issue  
8 some sort of written declaration that said that DWI  
9 is scourge and we must rid the roads of these people  
10 and that we must work with the legislature to do so.  
11 That might, if I were a judge, give me a hint that  
12 I'm supposed to do something like that.

13                   The next thing I'd do is even though  
14 there's an overwhelming opinion in 49 other states  
15 that DWI defendants should get jury trials, I might  
16 say, We're not going to give them jury trials, we're  
17 going to leave it in the hands of the prosecutors.  
18 Next I would come up with a really tight system of  
19 protocols for breath testing in New Jersey. And if  
20 by some -- and I would tell the state, you have to do  
21 these certain things. And when the state didn't do  
22 these certain things, I wouldn't hold them  
23 accountable.

24                   I would let them just go about and  
25 continue -- and maybe they'll say, We're going to

1 stop using this particular device. I would say,  
2 Okay, go right ahead. These are the kinds of things  
3 that I would say. I'm not going to name the group of  
4 people I'm talking about. But these are the kinds of  
5 things I would do if I wanted to send a message to  
6 the judiciary that they could take -- that they  
7 should be favoring the state's case.

8           The goal of the system, if I were  
9 looking to -- if I were to go back in time and go to  
10 Ferguson, Missouri, and I wanted to what happened  
11 there, and I'm talking about the -- the misuse of  
12 municipal courts to -- to consume their own people as  
13 a tax source and as a revenue source. This is what I  
14 would say, I would say to those people, Take every  
15 single case to trial. Take as many cases to trial.  
16 Because when you take cases to trial you are then  
17 influencing how much it costs the police to bring  
18 these cases.

19           One -- one of the things that we're  
20 finding now is that there are too -- there are so  
21 many cases that if the cases were all brought to  
22 trial the system would collapse. And the legislature  
23 knows this. They've been trying to for -- and I'll  
24 also say that if the police knew these resources were  
25 going to be required, they wouldn't arrest as many

1 people. I would posture that a -- that over a  
2 majority of the arrests that are brought are arrests  
3 that should not be brought, that officers should be  
4 exercising their discretion. And when they know  
5 they're never going to have to go to court, there's  
6 never going to be a trial, they don't have to  
7 exercise the discretion. And then the revenue issue  
8 comes into play, they are then just raising revenue.

9           And some of the things the legislature  
10 has done in the past few years have indicated that  
11 they know this and that they want police to -- and  
12 that they want people to give up their rights. I was  
13 talking to another member of the bar who is a judge  
14 and I said, Well, why should -- why -- there's a --  
15 it was a discussion about people who were not good  
16 lawyers out there, not good defense lawyers. I won't  
17 use the same term that was used, but people who just  
18 come to court and they say, What's my case about?  
19 What are we going to do?

20           Well, why shouldn't they. If you come  
21 to court on a marijuana charge, what's the first  
22 question; Is he conditional discharge eligible? Why  
23 fight something like that when you've already been  
24 given a free out. If it's a disorderly persons  
25 offense, is he conditional dismissal eligible. Last

1 year there was a move to have interlock so that DWI  
2 defendants would give up their rights. The  
3 legislature is trying to get people to give up their  
4 rights to just pay a fine, give up their property and  
5 move on. Thank you very much.

6 JUDGE ZINNA: Frank Zinna. Jim, all of  
7 what you say, some I agree with, some I don't. But  
8 it seems as though a lot of what you're saying is  
9 pointing at the legislature, at the system. But  
10 what's the fix for judges so that no matter what the  
11 system brings to them, they're going to be fair,  
12 equitable and they're not going to feel pressure from  
13 the appointing authorities? That's really what our  
14 task is here, to try to come up with a fix. And we  
15 can't fix the legislature.

16 MR. ABATE: Yeah, we can't fix the  
17 legislature, we can't fix some of the courts in the  
18 state but what we can do is we can -- we're the face  
19 of justice to these people out there, the municipal  
20 court judges, the attorneys, the prosecutors. And  
21 while the system may prevail in this way, when they  
22 see everyone is being paid by the same source, the  
23 inference to anyone who comes to municipal court is  
24 that the fix is in. That is the way they look at it.  
25 They say, how is this judge that's appointed by the

1 town ever going to rule in my favor.

2 And the answer, I think, is to have  
3 centralized courts. During the State V. Dental Spec  
4 debate I kept hearing stories about there was a  
5 system already set up where the cases would be tried  
6 in the presiding county, the presiding judges would  
7 handle the cases and the municipal prosecutor would  
8 continue to stay with the case. And that strikes me  
9 as for the -- at least for the more serious cases  
10 that are going to trial the way that would eliminate  
11 some of the hometown issues.

12 MR. PINIZZOTTO: Bob Pinizzotto. James,  
13 would you ever consider filing an ACJC complaint  
14 against a municipal court judge? And if not, why  
15 not?

16 MR. ABATE: No.

17 MR. PINIZZOTTO: Why not?

18 MR. ABATE: Because it would have to be  
19 something extremely beyond all scope of reality or  
20 beyond -- I can't even think of a situation where I  
21 would do that because I would have to think that I  
22 could never ever handle another case in that town  
23 because when I file that complaint, really I wouldn't  
24 be. Every time I came to court in that town I would  
25 have to say, I'd like to have the case transferred to

1 another town for a conflict issue. And I'd have to  
2 tell all my clients who came to me from that town  
3 that, We're going to have to move the case to another  
4 town. That may be good to some people, but telling  
5 them that you are adverse to the judge is really not  
6 great marketing.

7 MR. PINIZZOTTO: Would you be fearful of  
8 retaliation? Is that why you would ask to have your  
9 cases moved?

10 MR. ABATE: I would be recognizing that  
11 there is a conflict present, an actual conflict. I  
12 would not feel comfortable bringing that, bringing  
13 more cases before that judge or before that town.  
14 That doesn't mean that we don't have disagreements  
15 from time to time. There are certain towns where  
16 I've had some very adverse -- not adverse, very  
17 heated cases and -- but if the relationships are  
18 good, things blow over for the most part.

19 MS. UNGAR: Jim, have you had any  
20 instances in your work as a municipal court attorney  
21 in courts being reluctant to rule in your favor on a  
22 motion or finding your client not guilty because of  
23 pressure from the police?

24 MR. ABATE: That's really not the scope  
25 of where I want to take my discussions today. My --

1 my discussions are centered on what is the way that  
2 it's done that really kind of slides beneath the  
3 radar.

4 MS. UNGAR: Thank you.

5 JUDGE FEINBERG: Thank you very much.  
6 Michael Hoffman.

7 MR. HOFFMAN: My name is Michael  
8 Hoffman. I'm an attorney and I live in Vineland, New  
9 Jersey. I want to thank you guys for taking your  
10 time and helping to solve a problem that I think  
11 needs to be addressed. I -- my mom was a speech and  
12 -- speech and drama teacher and she taught me  
13 something very important very early on, even before I  
14 ever wanted to be a lawyer. She said, When you're  
15 talking to a bunch of people, tell them what you're  
16 going to tell them, tell them before you tell them  
17 that you told them. So I'm going to start at the end  
18 and tell you what my three points are that I'm going  
19 to touch on with a very good story.

20 The first is that by my direct  
21 experience I've seen that municipal court judges are  
22 influenced in their decisions by elected officials  
23 and the media. And second, that municipal court  
24 public defenders lack clear oversight and clear human  
25 resources representation. Third, that those who

1 oppose anything within the system that affects a  
2 municipality monetarily can be subject to swift and  
3 substantial retribution. At least two of the members  
4 of this panel know my individual story, so I'm going  
5 to hit bullet points to tell this story. And as Jack  
6 Nicholson said in *As Good As It Gets*, it was all over  
7 a dog.

8           In 2009, I was public defender in the  
9 City of Vineland. In January 2009, Animal Control  
10 sought and got a warrant to go into a defendant by  
11 the name of J.J. -- and I'll refer to him as "J.J."  
12 -- J.J.'s house to seize a dog that they had found  
13 was potentially dangerous. Now, this is rare because  
14 animal control doesn't need a warrant. It's one of  
15 those weird things where Animal Control can just go  
16 anywhere they feel like. But because they've had  
17 dealings with J.J. before, decided to seek out a  
18 warrant and they got it.

19           And when they served that warrant they  
20 got more than they were expecting. They didn't find  
21 the one dog, they found five. They found a sawed-off  
22 shotgun underneath the bed of a parole felon. They  
23 found a marijuana grow operation in the basement and  
24 they found children. This was no longer a municipal  
25 court case, by everybody's definition. This belonged

1 in superior court for the drug case, it belonged in  
2 -- it belonged with DYFS for the kid issues, and it  
3 belonged for parole -- for the parole violator. But  
4 J.J. wasn't the parole violator, it was his brother.

5 Now, flash forward from January to  
6 September. I'm still public defender and three  
7 things happened in September that are worth note  
8 here. First is I tried to speak to -- as public  
9 defender I tried to speak to my boss who I learned  
10 the hard way is not my judge, was effectively the  
11 city solicitor who also served from time to time as  
12 the prosecutor of the city. The reason I needed to  
13 speak with him is that I was going to -- I was  
14 requesting paternity leave starting in November for  
15 my wife who was having a high risk pregnancy. And I  
16 was asking for 12 weeks to spend with the newborn.

17 And because the city is a large enough  
18 entity, I was asking for that opportunity to  
19 experience the birth of my daughter and to experience  
20 the first few weeks of life. The second thing that  
21 happened was the mayor of the City of Vineland spoke  
22 to the local paper and there was a front page article  
23 that was published about the case of State versus  
24 J.J. and specifically the fact that the kenneling of  
25 these five dogs had cost the City of Vineland

1 \$18,000 between January and September of that year.

2 Third and most importantly to this  
3 board, immediately after the article came out and  
4 potentially and probably due to communications  
5 between the mayor and the judge, the judge -- the  
6 municipal court judge decided something had to be  
7 done. So that judge did something. That something  
8 he decided to do was he took back jurisdiction of a  
9 superior court for the purposes of forfeiture of the  
10 dogs. The reason forfeiture is an important issue  
11 that I -- that meant something to me is I -- for a  
12 silly reason, I represent the ASPCA in collection  
13 matters ultimately, and I knew what kind of shelter  
14 it was. This is a shelter that if there are dogs  
15 that are unclaimed after a very short period of time  
16 they're euthanized.

17 So the court scheduled this matter, the  
18 matter of State versus J.J., in the middle of  
19 October. I'm going out November 1st, for the leave,  
20 as I told them, and I was the PD assigned. And the  
21 way I learned that I was the PD assigned was that I  
22 was given notices that had the animal control numbers  
23 on it and that was it. I didn't receive any  
24 discovery any -- anything whatsoever.

25 I arrive in mid October and I say to the

1 judge and the prosecutor, I don't think that this can  
2 proceed right now. They said, It's happening, it's  
3 happening today. The dogs are being seized today. I  
4 had some trepidation at that point because I knew  
5 that only one of the dogs was considered potentially  
6 dangerous in the case and there were five dogs  
7 involved. So there were potentially four dogs that  
8 were completely innocent that were going to be  
9 euthanized. So I knew that this was -- that this was  
10 an unfair and unjust result for these animals.

11 So despite being -- despite having a  
12 full PD caseload and the normal, as John Menzel put  
13 it, dump truck load of 30 cases on that day at a one  
14 o'clock session, during that one o'clock session to  
15 four o'clock I wrote an interrogatory stay of  
16 execution for those dogs to go up to the state -- or  
17 to go up to the county even before -- even before the  
18 motion had been heard. Because I knew that if they  
19 were seized they would be euthanized that night and  
20 I'd have nothing to stop it. After reading my  
21 application the judge postponed the matter for one  
22 week.

23 MR. FISHMAN: The municipal court judge?

24 MR. HOFFMAN: The municipal court judge.

25 Because he read the application that I sent up to the

1 State before he actually heard the motion and did  
2 that. I'll briefly go through the rest. That  
3 Thursday, two days later, the city solicitor  
4 contacted me and told me that my contract was not  
5 renewed in August so, therefore, I was no longer the  
6 public defender and that my wife and my health  
7 insurance was cancelled retroactive to August. Now,  
8 with a high risk pregnancy and the fact that we'd  
9 been dealing with a high-risk pregnancy and she was  
10 going c-section, that was a very daunting financial  
11 burden that we were expecting.

12 I'll leave -- because of the time I'll  
13 leave the rest of the story there because the  
14 conclusion and the resolution don't really matter.  
15 Ultimately it's the systemic problems that we're here  
16 to deal with. I could give you the end of the story  
17 about what happened with the dogs, with J.J., with  
18 the mayor and with the City of Vineland, but I'll  
19 leave that to your imagination. What's most  
20 important to me is that on the 6th I got to hold my  
21 daughter with -- proudly and with my integrity  
22 intact. And today, six years later, I'm looking  
23 forward to going home and hugging her when I get home  
24 from here.

25 JUDGE FEINBERG: Thank you.

1                   MR. HOFFMAN: And I'll take any  
2 questions you guys might have.

3                   JUDGE FEINBERG: Any questions? Okay.  
4 Thank you very much.

5                   MR. HOFFMAN: Thank you.

6                   JUDGE FEINBERG: John Menzel.

7                   MR. MENZEL: I want to thank you all for  
8 having these hearings. They're an important thing to  
9 do. My name is John Menzel, my office is in Point  
10 Pleasant. I've been practicing primarily in the  
11 municipal courts since about 1988, having been  
12 admitted to the bar in 1984. I have, by my  
13 estimation, appeared in more than 300 different  
14 municipal courts around the state. My practice is  
15 statewide and I like to think of myself as the father  
16 of some key cases, such as State versus Farrell, a  
17 very interesting speedy trial case recorded by the  
18 appellate division.

19                   I don't need to tell you that story  
20 because you can read it yourself. It is an example,  
21 by the way, of how municipal courts do coddle the  
22 state in violation of the defendant's Constitutional  
23 Rights. I've dealt with State versus Cummings  
24 dealing with the burden of proof, the change in  
25 burden of proof on refusal cases, State versus Chund

1 (phonetic) which I did with Jeff, State versus  
2 Holland which was one of the subsequent cases after  
3 Chund. State versus Fry and State versus Tailor,  
4 both dealing with sentencing on refusal cases, and  
5 finally, State versus Dental Spec, which I'm still  
6 crying over after last week.

7 Now, that all being -- and I've given  
8 184 seminars mostly in the State of New Jersey, but  
9 also around the country. Now, that all being said  
10 with -- it's against that experience I really want to  
11 address four things, and some of it you've probably  
12 heard time and again already. As I tell my -- the  
13 first is the inherent corruption of the system in its  
14 structure. The second is a bias that tends to favor  
15 the prosecution that is pervasive in the system. The  
16 third is the improper involvement of the judiciary in  
17 executive functions such as discovery and that sort  
18 of thing. And finally, conferences, judicial  
19 conferences in the municipal court.

20 Taking the first issue, what I tell my  
21 clients on intake when they come to me is that,  
22 You're dealing in a system that is inherently corrupt  
23 and it is the worst kind of corruption that there is  
24 because it's out there for everybody to see it. And  
25 as Jeff said earlier, it's the situation where you

1 have the same people who are paying the cops and the  
2 prosecutors, they're also paying the judges. Now,  
3 the judges are not protected, the prosecutors are not  
4 protected in terms of tenure or misconduct, it's  
5 purely political. And the quickest way for a judge  
6 or prosecutor to not get reappointed is to get people  
7 complaining about them.

8           Sometimes the biggest whiners and the  
9 complainers are the police officers. And while they  
10 don't have the power of reappointment, they are  
11 organized and have a great deal of influence and that  
12 influence is frequently brought to bear. That kind  
13 of influence together with the financial pressures of  
14 many municipalities leads to very unjust things. And  
15 I can give you two quick antidotes which are out  
16 there in the public domain.

17           One is very early in my career, 1990.  
18 The judge in Metuchen was a fellow named James Smith.  
19 And there was an article in the -- one of the local  
20 papers there about how the new mayor was looking at  
21 the judge as a director of marketing and if the  
22 director of marketing wasn't generating enough  
23 revenue, he had to be replaced. And I actually  
24 testified at the hearings in front of that mayor and  
25 counsel. And they really couldn't -- they couldn't

1 care less. And more recently, probably about 2004,  
2 we had a situation involving communication involving  
3 the appointment of a judge in Eatontown where a judge  
4 named Richard Thompson was appointed because of his  
5 ability to generate revenue. And that was also  
6 reported to the press.

7           These pressures have been in place  
8 throughout my entire career. And they are structural  
9 and systemic and there is no remedy for them, unless  
10 the structure is changed. Maybe tenure is one  
11 answer. Maybe review of judicial appointments by  
12 some separate entity such as an assignment judge,  
13 maybe -- maybe some kind of input through a committee  
14 of the state bar passing on the credentials of  
15 individuals to be judges because one of the other  
16 problems, very often municipal courts judges have no  
17 experience in municipal court practice in the  
18 criminal law and are really -- I used to joke about  
19 one judge who's speciality was writing supermarket  
20 leases and it had very little application to what he  
21 had to do in municipal court.

22           And consequently they grow and they make  
23 mistakes and maybe that's a question of experience,  
24 but actually it's a product -- a byproduct of  
25 political cronies. Now, financial pressures are one

1 thing, but the other problem is the inherent bias  
2 that comes with the job of being a municipal court  
3 judge. And I told this story in the bench bar panel  
4 that we had immediately before these hearings,  
5 involving a seminar I had given where I just  
6 described in the very terms that I have to this  
7 committee about the inherent corruption of the  
8 system.

9           And in the audience was a municipal  
10 court judge and he was very offended by my remarks.  
11 And I knew him. I knew him to actually be a pretty  
12 fair guy, a well -- a good municipal court judge.  
13 And it got back to me through the grapevine how  
14 personally offended he was and so I called him up the  
15 next day and talked to him. And he told me he took  
16 personal offense. And I said, No, I'm just talking  
17 about the system and the structure, it's not directed  
18 at you. And as the conversation went on he talked  
19 about how of course he sees cops all the time and  
20 what reason would they have to lie and I would tend  
21 to give their testimony greater weight than I would  
22 to somebody I've never met before. All the same  
23 things that in superior court jurors are instructed  
24 to not do.

25           And so another structural consequence of

1 this system is you have municipal court judges, again  
2 it's human nature, who see the same people time and  
3 time again and tend to develop biases favoring their  
4 testimony and findings of credibility.

5 Now, another thing that happens in this  
6 process, I have an impression that the prosecution is  
7 generally favored on procedural matters over defense  
8 attorneys. And I understand that, too. Prosecutors  
9 are usually dealing with tens or even hundreds of  
10 cases on a calendar, whereas a defense attorney, like  
11 myself, has the luxury of having maybe having one,  
12 two, three, better time to individually prepare a  
13 case. And prosecutors have resorted municipal court  
14 liaisons, discovery clerks. And, you know, there's  
15 nothing wrong with that. We all have paralegals and  
16 secretaries in our offices, and so I think  
17 prosecutors are entitled to that deference as well.

18 But where the problem comes into play is  
19 when the court gets in on the act, where judges and  
20 court administrators are calling the prosecutor's  
21 discovery clerk, the police officers to see what  
22 their -- what the status of discovery is, all without  
23 any knowledge of the defense attorney. And that  
24 betrays a bias favoring the state.

25 And that brings me to my final point,

1 and that is the use of judicial conferences. This a  
2 very recent war story. It happened just -- a  
3 prosecutor in Monmouth County had just been elevated  
4 to the bench and she was so newly appointed I didn't  
5 even realize she was the judge until I saw her stand  
6 up and there she was. And we'd worked the case out  
7 on the merits, a DWI case, involving a 20 minute  
8 issue. And there was -- a 20 minute issue apparent  
9 on video.

10 And when we talked to her she no longer  
11 was a judge but a prosecutor. And she asked to look  
12 at the reports and immediately said, Oh, well, that's  
13 an obvious sign of intoxication. We call that  
14 Bowmine's captology (phonetic) because it wasn't that  
15 bad. And as far as the 20 minute goes, even though  
16 it was on video, Oh, the officer must have been  
17 watching before that. She brought her prosecutorial  
18 bias to that of the judgeship. And I was left now  
19 with the quandary of asking her to recuse herself or  
20 letting it ride, which I couldn't do, or somehow  
21 resolving the case otherwise.

22 I know I'm over time but somebody asked  
23 the question before about filing ACJC complaints. I  
24 have done that. It was a case up in Warren County  
25 involving a judge who on the arraignment through --

1 the client, the person I had consulted with over the  
2 weekend in jail, because he looked at the record, saw  
3 he was a second offender, saw he had a fatality on  
4 his driving abstract, saw that he failed to pay  
5 surcharges in his younger days and remanded him to  
6 the Warren County Jail on \$10,000 bail. And when the  
7 car he was borrowing had inadequate credentials he  
8 increased the bail to \$12,000.

9 And I filed an ACJC complaint in that  
10 case after consulting with another municipal court  
11 judge who was a friend of mine. That judge, through  
12 his credit, recused himself. He later retired. But  
13 it was a tactical decision on my part whether to make  
14 that kind of a motion. One thing I hate to say that  
15 influenced me was the fact it was Warren County and I  
16 don't get there that much so I didn't perceive any  
17 practical repercussions. The other question is do I  
18 try to do it secretly or do I make a big production  
19 out of it. And it was so egregious to me I figured,  
20 let me make a big production out of it. And to my  
21 client's benefit it worked. But it's a shame it had  
22 to get that far in the first place.

23 But again, this is just an example of  
24 how for some municipal court judges, the balance is  
25 weighed against defendants and pressure is put to

1 bear for convictions. Judges don't get in trouble  
2 for convicting people. They only get in trouble if  
3 they find somebody not guilty and then that person  
4 goes out and makes a headline. I can't tell you how  
5 many times I've had a judge say to me, Hey, I'm not  
6 going to hang my ass out on the line. I let him go  
7 and he hurts somebody else, the papers are going to  
8 be coming after me. That's not fair. It's reality  
9 but it's not fair.

10           And maybe one of things is to make it  
11 very clear that the judicial branch should not be  
12 involved in the executive function of monitoring  
13 discovery. They should not be involved in the job of  
14 prejudging cases in conference. Conferences are  
15 permitted by our rules for the purposes of case  
16 management and that's what they should be restricted  
17 to. I welcome any questions by the panel.

18           JUDGE FEINBERG: Let me ask you a  
19 question. I'd like you to react to a possible remedy  
20 or solution that would be difficult to adopt but  
21 perhaps not impossible. It's a possible path. We  
22 know that if the power of appointments of municipal  
23 court judges was taken away that would be very, very  
24 difficult, I think, to adopt. But what about the  
25 municipality appointing the judge, admitted to the

1 bar, that if there should be some requirement in  
2 terms of how many years in, but even putting that  
3 aside, and that the issue of retention beyond the  
4 three years was a decision by the assignment judge  
5 and perhaps a committee in the county of  
6 well-respected practitioners who would look at his or  
7 her record and make an assessment as to confidence,  
8 diligence, professionalism. Assuming that that could  
9 be adopted, what's your reaction to that?

10 MR. MENZEL: I think those are positive  
11 steps. In fact, the requirement that one be a lawyer  
12 and admitted for five years I believe is already  
13 required by statute. But in the final analysis,  
14 under the current system it's a political appointment  
15 by the executive branch. And that executive branch  
16 can obtain input from a county bar committee say, or  
17 the assignment judge. But right now it's up to that  
18 mayor or council.

19 I don't know how the AOC could influence  
20 it, but again, that might be even a constitutional  
21 issue because it'd be a conflict. I know under -- we  
22 have a very strong judiciary under our state  
23 constitution, probably the strongest judiciary in the  
24 country. And to the extent that they classify or  
25 consider reappointment to be a procedural function,

1 perhaps in that way AOC might get involved. You  
2 know, unfortunately I've had my conversations with  
3 Glen Grant over the years and I appreciate his zeal  
4 defending the judiciary and I know he has the  
5 experience as a municipal court judge in the City of  
6 Newark.

7 But frankly, Newark is not typical of  
8 the rest of the state and sometimes I believe the ACO  
9 has its head in the clouds and really doesn't see  
10 what's happening day-to-day, which is why these  
11 hearings are good. Because you hear about people in  
12 the interlands. Who was it that was talking about  
13 the interland? And that's probably more consistent  
14 with my experience around the state.

15 JUDGE FEINBERG: You're suggesting that  
16 the problems are more obvious in the smaller towns?

17 MR. MENZEL: No, suburban towns.

18 JUDGE FEINBERG: Suburban towns.

19 MR. MENZEL: I would say, suburban.

20 JUDGE FEINBERG: Okay.

21 MR. MENZEL: You know, urban courts are  
22 more difficult to deal with, generally. Camden is  
23 very difficult to deal with. Newark is very  
24 difficult to deal with. In fact, I had a case where  
25 we had to send a lawyer to Newark Municipal Court

1 this morning because in spite of the fact that we  
2 sent him a letter of representation, entered a not  
3 guilty plea and had no discovery, they refused to  
4 waive the appearance in spite of the fact that I had  
5 to be here. So a big sin is that in almost every  
6 other place besides an urban court like Newark or  
7 Camden, no problem, adjourn it. Case management is  
8 not generally a problem except in the urban courts.  
9 And, again, that doesn't go to judicial independence,  
10 that goes more to administration.

11 JUDGE FEINBERG: Anybody else?

12 MS. UNGAR: Yeah, I have a question.  
13 John, so the subcommittee has to consider as part of  
14 our goal in these hearings the appointment process of  
15 the judges. We've had other testimony about the  
16 appointment process, whether it should be taken away  
17 from the town or not.

18 MR. MENZEL: That's going to require  
19 legislation.

20 MS. UNGAR: I recognize that. I  
21 wondered if you had any recommendations for the  
22 subcommittee as to the appointment process and  
23 reappointment process.

24 MR. MENZEL: I think it's fair to  
25 recommend input from other sources like assignment

1 judges, like bar committees. I think that's fair,  
2 understanding that those recommendations are going to  
3 be purely discretionary with the appointing  
4 authority. In terms of administration of court  
5 itself, I think this -- I think this committee can  
6 ask the AOC to issue memoranda discouraging direct  
7 involvement of the court with the executive functions  
8 of providing discovery, of using case management  
9 conferences in chambers judiciously, no pun intended,  
10 and reminding judges that they are not to get into a  
11 prosecutorial role, merely to assess whether the  
12 parties' positions are reasonable.

13                 That judge really annoyed me. She was  
14 new. I wasn't so much worried about offending her  
15 because I'm going to have to appear in front of her  
16 in many courts. I actually saw it as an opportunity  
17 to try to set her straight early in her judicial  
18 career to say, You know, you're acting like a  
19 prosecutor and I don't feel comfortable with you  
20 judging my client. You've already expressed a bias  
21 favoring the state, you're thinking of every possible  
22 argument to convict her instead of looking for every  
23 reason to give her a doubt. And I have a problem  
24 with that. And I'll put it all on the record. I'm  
25 going to tell you, I'd be very reluctant to do that

1 but I'd do it because -- oh, what would my kid say,  
2 you don't want to poop where you eat.

3 JUDGE FEINBERG: One more question.

4 MR. PINIZZOTTO: Thank you, Judge. Bob  
5 Pinizzotto. John, now, you've said it three times.  
6 First you said, the practical repercussions. You  
7 said you'd be reluctant to address some of these  
8 issues that you found with judges. If the committee  
9 comes to a conclusion that the legislative solution  
10 will not occur and that we're going to have to look  
11 to administrative solutions, do you have any  
12 recommendations?

13 MR. MENZEL: You know, one question is,  
14 what power does the AOC have to establish  
15 reappointment criteria? Judges, municipal court  
16 judges are really caught between a rock and a hard  
17 place because they have to satisfy the appointing  
18 authority and then they have to deal with oversight  
19 from the AOC. And in most cases where there's a  
20 conflict they're probably going to go with the  
21 municipality because they're the ones that sign the  
22 paycheck. I don't know how much influence the AOC  
23 has on the appointment process and maybe an  
24 examination of the rules might help us find a  
25 solution there.

1                   MR. PINIZZOTTO: Do you think an  
2 anonymous ACJC complaint process would be of benefit?

3                   MR. MENZEL: Yeah, because it would  
4 remove that threat of retribution. Like I said, it  
5 was a factor in a case I had in Warren County. And I  
6 just said the heck with it, I'll let her do it.

7                   JUDGE FEINBERG: Thank you very much.  
8 Craig Aronow.

9                   MR. ARONOW: So good afternoon,  
10 everybody. I'm Craig Aronow. I'm the president of  
11 the Middlesex County Bar Association. I am not a  
12 municipal court practitioner, but our municipal court  
13 practice committee did prepare a position, a paper on  
14 this issues and they asked me to come down here to  
15 read it to you and present the issues. We had a very  
16 interesting discussion about this issue in our board,  
17 so I'm happy to raise any of the issues or address  
18 any of the questions that were also raised in our  
19 board discussion about this.

20                   And I also just want to make it clear  
21 that we understand that this may not, at the end of  
22 the day, be a perfect and highly practical solution,  
23 but the discussion has to be started somewhere on  
24 ideas how to fix this. And even if a couple little  
25 pieces of this are helpful work, then we're happy to

1 contribute to the discussion. And, actually, Judge  
2 Feinberg, some of the comments that you made about  
3 proposed solutions were contained in the discussion  
4 that our practice committee came up with. So this is  
5 also going to be in writing and submitted to the  
6 relevant folks that need to hear it.

7           The MCBA recognizes the paramount  
8 importance of an independent judiciary to the people  
9 of the State of New Jersey. Our municipal courts  
10 represent the most common face of our judiciary in  
11 light of the volume of matters venued there as well  
12 as the nature of the matters handled there largely  
13 including routine traffic violations. Any actual or  
14 perceived deprivation of rights in the independence  
15 of these courts is of grave concern to the Middlesex  
16 County Bar Association.

17           Recently there's been a general concern  
18 across the state that our municipal courts lack the  
19 appearance of independence. There is a concern that  
20 the public has come to view the role of our municipal  
21 courts not as a proud arm of the judicial branch, but  
22 instead as an important source of revenue for our  
23 cash-strapped municipal and state governments. Due  
24 to the volume of cases and quantity of financial  
25 assessments imposed in the municipal courts, in

1 comparison to those in our superior court combined  
2 with the judge's ability -- I'm sorry -- combined  
3 with many reports that judicial appointments in  
4 municipal court focus largely on a judge's ability to  
5 raise revenue through the imposition of financial  
6 assessments against litigants, the MCBA concludes  
7 that there is a genuine concern for the independence  
8 of our municipal courts.

9           When our municipal court judges render  
10 decisions based upon a municipality's financial  
11 interest or expectations as opposed to the rights of  
12 the citizens that come before the court, reforms must  
13 be implemented. That municipal judges should fear  
14 for their appointments should they not collect  
15 sufficient fines is irreconcilable with an  
16 independent judiciary. We feel it is necessary to  
17 change the status quo and strive to guarantee that  
18 our constitution is upheld.

19           To that end the MCBA concludes that the  
20 appointment and tenure of municipal court judges must  
21 be reformed through an appointment and retention  
22 process that is beholden to the values and  
23 considerations we have come to expect from the  
24 remainder of our judiciary. Accordingly, we propose  
25 that the initial term of municipal court judges

1 should be extended to four years with the appointment  
2 by the respected municipal council with the advice  
3 and consent of the assignment judge of the county or  
4 a superior court judge designated by the assignment  
5 judge.

6 We propose that the renewal for  
7 successive terms of an equal length shall thereafter  
8 be at the discretion of the assignment judge or a  
9 superior court judge designated by the assignment  
10 judge who shall only act upon a reappointment after  
11 receiving advice from a municipal judge appointment  
12 committee comprised of local municipal court  
13 practitioners, members of the public and members of  
14 the bar association whose role it shall be to  
15 evaluate the performance of the municipal court judge  
16 during their prior term with regard to areas bearing  
17 upon that judge's professional performance.

18 We propose that there be MJACs created  
19 in each of the 21 counties that will be responsible  
20 for assisting in the municipal court judge selection  
21 process in their respective counties unless the  
22 appointment is made through the governor's office.  
23 The MCBA believes that the foregoing proposal will be  
24 a strong step forward in eliminating the concerns  
25 expressed in the state regarding the lack of

1 independent judiciary in our municipal courts.  
2 Further, we urge the legislature to conduct a  
3 meaningful study of the disproportionate impact that  
4 routine financial assessments in our municipal courts  
5 have had, including related motor vehicle commission  
6 penalties and the impact on the middle and lower  
7 income citizens that come before the court.

8           We had a discussion. New Jersey is a  
9 very political state. It is hard to pry power, the  
10 power of appointment away from people in the  
11 different branches. But in order for people to go to  
12 court and to not be subjected to what some of our  
13 speakers have talked about earlier, something has to  
14 be changed and the fight has to be waged against the  
15 politicians and against the people that control these  
16 decisions. And at the end of the day, it always --  
17 it seems that these issues and the reform starts with  
18 organizations like the county bars and the state bar.

19           So if there's any questions I'm happy to  
20 answer them. Otherwise, I want to thank you all for  
21 the work you're doing on this. It's important work.  
22 And like anything else, the inertia of government, it  
23 takes baby steps to move the deal a little bit. So  
24 hopefully something good will happen. Thank you for  
25 your time.

1 JUDGE FEINBERG: Thank you.

2 JUDGE ZINNA: Great. Thank you. That  
3 was very informative.

4 MR. ARONOW: Thank you.

5 JUDGE GOLDMAN: Thank you.

6 JUDGE FEINBERG: Questions?

7 MR. TESTA: For the record, Michael  
8 Testa, Jr. Craig, I'd like to thank the bar  
9 association for creating such a good document there.  
10 Was there -- in your discussions with your bar  
11 association was there any discussion regarding  
12 whether an MJAC would create any discord with, like,  
13 the local police departments and the municipality  
14 after a judge is now perceived as maybe not being pro  
15 police? Because I can tell you from my experience,  
16 there are some municipal court judges who are seen as  
17 very pro state and pro police. Was that part of the  
18 discussion at all?

19 MR. ARONOW: It was. And the committee  
20 consisted of people that are in the municipal courts  
21 all the time. And I think the concern that the --  
22 the concern in the way it's addressed is we know that  
23 in any reform there's a period of adjustment. And  
24 during that period of adjustment there's going to be  
25 bad feelings. And at some point, once it becomes the

1 normal process, the way things are done, that stuff  
2 kind of slides away a little bit. Some people have  
3 longer memories than others. But at some point, if  
4 the process is adopted and people accept it for what  
5 it's going to be, then you -- you know, you start to  
6 lose the sting of whatever the instance is going to  
7 be. But, of course, up front we acknowledge the fact  
8 that there's definitely going to be some people that  
9 will be rubbed the wrong way and not happy.

10 MR. TESTA: And the reason I ask that,  
11 it sort of goes to what Mr. Abate was talking about  
12 when he spoke, is that currently -- again, you know,  
13 he talked about the 60-day rule. One of the things  
14 that I champion is the fact that there really  
15 obviously are no repercussions in the state when a  
16 state trooper, for instance, doesn't show up for  
17 court and there is a subpoena there. And, you know,  
18 nobody is sanctioned. But if my client weren't  
19 there, there'd be a warrant for his arrest.

20 I could see that the backlash, at least  
21 from what you said. I loved the content of your  
22 resolution from your bar association. But the fact  
23 of the matter is I could see there being backlash of  
24 now officers simply not going to court.

25 MR. ARONOW: I understand. And again,

1 you know, these are the details that would have to be  
2 hashed out in the process as it's put forward. But,  
3 you know, having served on JPAC, you know, for the  
4 superior court level, I understand the value that  
5 that process provides in evaluating judges and  
6 providing somewhat of a buffer for judges to be  
7 evaluated on grounds other than revenue generation  
8 and to understand that you may get the stamp of  
9 approval of a body that's going to say, Hey, you know  
10 what, you're doing a good job. It's not just about  
11 money. And maybe that can carry some weight to help  
12 protect those judges.

13 JUDGE FEINBERG: We have one more  
14 speaker. We only have about eight minutes left.

15 MR. BARR: I just have one quick "yes"  
16 or "no" question.

17 JUDGE FEINBERG: Very quickly.

18 MR. BARR: Jon-Henry Barr. Craig, were  
19 municipal prosecutors included in that group that  
20 discussed this and came up with the statement?

21 MR. ARONOW: Yes.

22 MR. BARR: All right. Thank you.

23 JUDGE FEINBERG: Thank you. Judge  
24 Belasco.

25 MR. BELASCO: Thank you. My name is

1 Lewis Belasco. I am a municipal court judge, I have  
2 been for 30 years. I also serve as a municipal court  
3 presiding judge. Judge Roy McGee, as many of you  
4 know, had wished to be here today but he couldn't  
5 make it. In anticipation of him coming here, though,  
6 he wrote to the committee on extrajudicial activities  
7 because as a judge, this is beyond my judicial  
8 activities, to speak before a committee. The code of  
9 conduct limits judges appearing before legislative or  
10 executive bodies. This is not an executive or  
11 legislative body. So they turned it over to the  
12 chief justice. And he was given a direction letter  
13 giving him or his designee permission to be here with  
14 some restrictions, though.

15 I may provide a historical perspective  
16 of the municipal court system, but I may not advocate  
17 for or against proposals regarding municipal court  
18 judge tenure, judicial salaries or addressing fiscal  
19 restraints. So, essentially, anything that would be  
20 legislative in nature I'm not permitted to address.

21 With that background let me address, if  
22 you will, some of the historical perspective. I read  
23 the transcript of your first hearing and I looked at  
24 the New Jersey Constitution because municipal courts  
25 are not a constitutional court. The New Jersey

1 Constitution allowed -- allows the legislature to  
2 create courts of limited jurisdiction. And that's --  
3 we are created by the legislature. We are a  
4 statutory court. The New Jersey Constitution in  
5 Article VI also grants to the chief justice at the  
6 administrative -- to be the administrative head of  
7 all courts of New Jersey.

8           And some of the chief justice's duties  
9 are carried out under the court rules. Under court  
10 rule 1:33-4, Judge Feinberg, as you know, a former  
11 assignment judge, the assignment judge is considered  
12 to be the chief financial officer within every  
13 vicinage and shall have plenary responsibility for  
14 the administration of all courts therein, including  
15 municipal courts. I venture a guess that most times  
16 judges become assignment judges, they quickly learn  
17 that there's a lot of problems and issues to deal  
18 with in municipal court, a lot more than they thought  
19 about because of the vast number.

20           As a statutory court right now, the  
21 statute that addresses and creates our courts is  
22 Title 2B. 2B-1 requires every municipality to have a  
23 municipal court. It creates the appointment. Three  
24 years is the appointment process. As I was sitting  
25 in the audience I was mentally going through and I

1 think I've been through 15 appointments in my various  
2 towns. I sit in Cape May County, in North Wildwood,  
3 Wildwood Crest and Cape May City. And I can tell you  
4 that for about half my career every three years I had  
5 a tremendous case of agita every December worrying  
6 about my reappointment knowing that there was nothing  
7 I can do about it. After my appointment my  
8 affiliation with the municipal governing body  
9 essentially ends.

10 I cannot involve -- municipal judges  
11 cannot be involved in politics. We cannot, as you've  
12 heard, attend social events with municipal elected  
13 officials. We are not -- if we have a private  
14 practice, not permitted to represent them and render  
15 legal services. So we're essentially out there  
16 hoping that we get reappointed every three years.  
17 That historical perspective, I'd also like to talk  
18 about involves the 1985 task force on municipal  
19 court. At that time, in 1985, the judiciary and the  
20 bar came together to really examine modernizing the  
21 municipal court system. And as a result of that we  
22 now have the ATS/ACS system. No municipality pays  
23 for software. No municipality pays for hardware.  
24 That is all provided by the state. We now have  
25 municipal prosecutors in every municipal court

1 throughout the state, part of that 1985 task force.

2           And we have an oversight where the  
3 municipal division of the superior court under the  
4 guise of the assignment judge conducts annual  
5 visitations of all the court records, audits of --  
6 random audits of all their monies and their tickets.  
7 Municipal judges conduct in-session visitations  
8 unannounced observing and filling -- and filing  
9 reports with the -- confidential reports with the  
10 assignment judge on municipal courts. That created a  
11 certification system for court administrators and  
12 that has been expanded under the court rules so that  
13 now, whether you realize it or not, assignment judges  
14 are directly involved in the hiring of deputy court  
15 administrators and court administrators.

16           Court rule 134 -- 141-4 gives the  
17 assignment judge authority to suspend the  
18 certification process for municipal court  
19 administrators. So you already have judicial  
20 oversight of some of the hiring process of the  
21 municipalities for court administrators and deputy  
22 court administrators. We see lately an expansion,  
23 not quite regionalization, but an expansion of the  
24 duties of the municipal court judges. Some certain  
25 municipal court judges are assigned by the assignment

1 judge to handle blood drawl -- telephonic blood drawl  
2 warrants, and that applies across the entire county  
3 or vicinage if you have more than one county.

4 We have cross assignment orders where if  
5 there are conflict matters, perhaps a member of the  
6 governing body has a ticket or has an issue and that  
7 is sent out to another judge to hear. So essentially  
8 you have a judge sitting for one municipality not  
9 subject to the appointment power of that governing  
10 body. And very soon with criminal justice reform,  
11 most counties are going to have a centralized  
12 judicial processing court. And most likely it'll be  
13 municipal judges making decisions on release  
14 conditions for defendants from every municipality in  
15 the county or the vicinage.

16 So the framework, and you can see, I've  
17 seen over the years more -- more of a sort of  
18 regional structure to the duties of municipal court  
19 judges coming about. I was at one of your earlier  
20 sessions here and your bar president was given an  
21 award and he noted, which, we, as judges here all the  
22 time, that we are the face of the judiciary. We have  
23 an annual conference once a year and members of the  
24 supreme court come and speak to our conference. And  
25 I can -- I'm probably not even going out on a limb by

1 saying that every single year we hear the same thing,  
2 that we are the face of the judiciary. That the six  
3 million filings in municipal court from parking  
4 tickets to DWI, they -- people will form their  
5 opinion of the New Jersey judicial system based on  
6 their interaction in a municipal court.

7 The core values of the judiciary that we  
8 share along with all of the superior court divisions  
9 are quality, service, fairness, integrity and  
10 independence. So independence and what you're doing  
11 here today by -- and throughout the state by  
12 examining the issue of independence in municipal  
13 courts is a very important thing. It touches on the  
14 core values that we espouse and try to convey to the  
15 public in our municipal court system. Subject to my  
16 initial restrictions, I'll -- any questions.

17 MR. PINIZZOTTO: Judge Belasco, I don't  
18 know if you know this, but every time you made an  
19 appearance in a municipal court that I was involved  
20 in I knew you were in the audience, and so did  
21 everybody else, when you came to observe your annual  
22 observations.

23 JUDGE BELASCO: I can't hide.

24 MR. PINIZZOTTO: No. My point is --

25 JUDGE BELASCO: Somebody told me once,

1     Wear flannel.  Wear a hat.

2                   MR. PINIZZOTTO:  My point is that.  Do  
3     you think there would be any benefit for the AOC to  
4     have an independent individual, a secret shopper, if  
5     you will, appear in municipal courts and just observe  
6     and not judge, but give commentary on what they  
7     observe?

8                   JUDGE BELASCO:  Well, along those lines,  
9     Bob, when issues have come up with municipal --  
10    certain municipal courts and brought to my attention,  
11    knowing that if I show up, viola, things are  
12    different, I will gather tapes from the court session  
13    and listen to the tapes.

14                  MR. PINIZZOTTO:  Okay.

15                  JUDGE BELASCO:  It doesn't give you the  
16    full flavor of sitting there, but you can gain a lot  
17    when -- knowing that somebody's not being watched and  
18    listening to the tapes.

19                  MR. PINIZZOTTO:  Judge Goldman just  
20    said, "sneaky."  Thank you, Judge.

21                  MR. FISHMAN:  Does the municipal court  
22    judge know that you pulled his tapes?

23                  JUDGE BELASCO:  Not always.  The  
24    municipal court administrator will know.  Whether  
25    they tell him or not, I don't know.  But they will

1 not always know that I pulled the tapes.

2 MS. UNGAR: We have a process in the  
3 superior court that we get routine evaluations of the  
4 superior court judges. I wondered about your  
5 thoughts of having a similar process for attorneys  
6 appearing at proceedings before the courts throughout  
7 the state and municipal courts through the AOC.  
8 They've done that routinely. You have to fill out a  
9 questionnaire in the superior court and that  
10 determines the judge's tenure. And I wondered if you  
11 had any thoughts about that process from the  
12 municipal court.

13 JUDGE BELASCO: I wouldn't be opposed to  
14 that. That would be something that the bar would  
15 negotiate, I guess, with the administrative office of  
16 the courts. But I -- the session that I do, the  
17 report I fill out is a confidential document and only  
18 goes to the judge and to our assignment judge.

19 JUDGE FEINBERG: Thank you. Any other  
20 questions? Let me remind everyone that if there are  
21 additional comments that you would like to make in  
22 writing, please do so. We encourage you to do that,  
23 even if you've testified and you want to supplement.  
24 And please take it back to other municipal court  
25 practitioners who may not have had the time to

1 attend. There is one more public hearing. If you're  
2 not able to attend that, please put in writing any  
3 concerns or recommendations that they may have and  
4 again, thank you for attending this afternoon.

5 MS. UNGAR: Just one more closing  
6 remark, our next hearing is June 6th in Newark in the  
7 law school. If anybody wants to sign up, please do  
8 so.

9 (Whereupon the proceedings were  
10 adjourned at 4:25 p.m.)

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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