

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

Transcript of Proceedings
Monday, April 4, 2016

B E F O R E:

HON. LINDA FEINBERG, (ret.)

HON. BONNIE GOLDMAN, (ret.)

HON. FRANK ZINNA, (ret.)

BARBARA UNGAR, ESQ.

JON-HENRY BARR, ESQ.

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T R A N S C R I P T of the
stenographic notes of the proceedings in the
above-entitled matter as taken by and before
DONNA M. TRASENTE, a Certified Court Reporter
and Notary Public of the State of New Jersey,
held at the office of NEW JERSEY LAW CENTER, One
Constitution Square, New Brunswick, New Jersey,
08901, on Monday, April 4, 2016, commencing at
approximately 3:00 in the afternoon, pursuant to
notice.

1

2 MRS. UNGAR: First of all, I would
3 like to thank everyone for being here on this
4 very important day. I want to start out by
5 introducing myself. I'm Barbara Ungar. I'm the
6 chair of municipal court action of the state
7 bar. And I'm also chair of the municipal courts
8 judicial independence subcommittee. Studying
9 judicial independence in the municipal courts.

10 I want to take a few minutes to
11 introduce everybody on the subcommittee. We
12 have Judge Linda Feinberg, who is to my left. A
13 retired assignment judge. Judge Bonnie Goldman,
14 who is to my left, also retired presiding judge.
15 Judge Nunes isn't here yet, but he is on his
16 way. Also retired presiding judge with the
17 public defender's office now. And Judge Frank
18 Zinna, also retired presiding judge from Essex.
19 We also have Arnold Fishman, who is on the
20 subcommittee. Jon-Henry Barr is on the
21 subcommittee, but he is not able to be with us
22 today, as well as Mike Testa. And we have
23 Jessica Oppenheim, who is also on the
24 subcommittee. And myself. And Bob Pinizzotto,
25 also a defense attorney. And Arnold Fishman.

1 And we welcome everybody.

2 I just want to take a few minutes
3 really to talk about judicial independence in
4 the municipal courts and how we got to this
5 point.

6 By way of background, the
7 formation of a subcommittee on judicial
8 independence in the municipal courts started
9 when it really began back in 2013 when the New
10 Jersey State Bar Association created a task
11 force on studying judicial independence. The
12 task force and judicial independence was
13 comprised of about 14 members. The task force
14 and judicial independence held four public
15 hearings that were conducted around the state,
16 with the final one being in Atlantic City by the
17 task force to consider threats of judicial
18 independence in the State of New Jersey at that
19 time, which were very significant.

20 Following those hearings and the
21 testimony taken of those hearings, the task
22 force on judicial independence prepared a report
23 that detailed recommendations for protection of
24 future and continued judicial independence in
25 the courts. Many of the recommendations

1 contained in that report by the Task Force on
2 Judicial Independence were adopted by the New
3 Jersey State Bar Association.

4 In the report of the task force on
5 judicial independence, which was issued, by the
6 way, in May of 2015, the task force recognized
7 that municipal courts are charged with the
8 responsibility to judge traffic offenses,
9 disorderly persons offenses, petty disorderly
10 persons offenses and violations of municipal
11 ordinances. They also handle instances alleged
12 domestic violence and certain housing matters.
13 All these matters may lead to the imposition of
14 fines, along with associated penalties. The
15 manner in which such issues are disposed of can
16 often, and does have, a significant impact on a
17 municipality's budget and financial strength.
18 The task force also acknowledged that a
19 comprehensive study of the interrelationship
20 that may exist between a municipal court's
21 financial performance, and the length of
22 municipal court judges' service, requires
23 extensive resources and time to study this
24 matter and should be conducted.

25 In its report the task force also

1 requested that the New Jersey State Bar
2 Association appoint a separate subcommittee
3 charged with the singular focus to address
4 judicial independence in the municipal courts.
5 In its report the task force further recognized
6 that the municipal court is the court which most
7 citizens come into contact with. In its
8 integrity, both actual and perceived it is
9 critical to the public's acceptance of its
10 determinations which must be made without regard
11 to whether findings of guilt and the positions
12 of fines could serve to assure a continuation of
13 a judge's position. And that comes from the
14 task report back in May of 2015.

15 In the fall of 2015, the New
16 Jersey State Bar Association was officers,
17 through its officers, trustees and through the
18 municipal court practice section of the state
19 bar, created a subcommittee addressing judicial
20 independence in the municipal courts. The
21 subcommittee on judicial independence in the
22 municipal courts thereafter determined that it
23 was necessary and important to gather and
24 compile anecdotal information in further
25 examining these issues.

1 Thereafter, the state bar, through
2 its officers and trustees and through the
3 municipal court practice section had approved
4 the scheduling of these bar public hearings
5 throughout the state. The dates of these public
6 hearings scheduled are today, and May 2nd, in
7 Rowan University in Glassboro, New Jersey. May
8 19th at the Borgata Hotel in Atlantic City, New
9 Jersey at the annual meeting of the New Jersey
10 State Bar Association. And June 6th, 2016 at
11 the Seton Hall Law School in Newark to address
12 judicial independence in the municipal courts.

13 During the public hearings, the
14 state bar subcommittee on judicial independence
15 in the municipal courts will consider the impact
16 that fiscal constraints may have on the
17 municipal courts, as well as the
18 interrelationship that may exist in the lack of
19 uniformity throughout the state in the
20 appointment process and reappointment process of
21 our municipal court judges. And the hearings
22 will also address the impact of judicial
23 independence, and the lack of uniformity in the
24 state as to judicial salaries, and the lack of
25 tenure of the judges in the municipal courts.

1 The goal of the public hearings is
2 to obtain anecdotal information from the members
3 of the bars, the judiciary, the members of the
4 public in an effort to enhance the operations of
5 the municipal courts and to ensure the municipal
6 courts have judicial independence. The
7 subcommittee addressing judicial independence in
8 the municipal courts seeks comments from all new
9 and experienced members of the bar, the
10 judiciary and members of the public as to
11 impartiality, independence and uniformity in the
12 municipal courts. And that's why we are here
13 today.

14 It is our ultimate goal that
15 through the process of conducting these hearings
16 throughout the State of New Jersey, and
17 recommendations being made by the subcommittee
18 on judicial independence in the municipal court
19 to the New Jersey State Bar Association, to its
20 officers and trustees, through the municipal
21 court practice section, that we hope it will
22 lead to the enhancements of continued future
23 independence in the municipal court, in the
24 municipal court judiciary and to ultimately
25 benefit the public as a whole.

1 So, without further ado, I will
2 turn the hearings over to Judge Feinberg, who
3 will give us some further statement.

4 JUDGE FEINBERG: First of all, we
5 would like to thank everyone who is here this
6 afternoon dedicating your time to be here and to
7 provide information and feedback about your
8 experiences, observations, and information that
9 may assist us in making recommendations. As you
10 know, the judiciary, the municipal court is the
11 face of the judiciary. And most people who have
12 any contact with the courts, will face the
13 municipal court. And for most people that will
14 be their only experience with the judiciary.

15 In order to proceed in an orderly
16 manner, we have adopted the following rules,
17 which are: When you approach the table, we ask
18 that you identify who you are. If you're a
19 practicing attorney, where you practice. If
20 you're a member of the community, where you
21 live, in terms of your county. And if you're a
22 member of the public, a member of any
23 organization, and you would like to share that
24 information with us, that's fine.

25 Today, first, those individuals

1 who have signed up through the bar association,
2 or who have contacted the bar association, by
3 email or by telephone, will be taken first.
4 Second, the individuals who did not contact the
5 bar, but are here to offer information, that
6 will be helpful to us, we welcome your comments.
7 And those individuals would be called next.

8 If there is anyone here, however,
9 who has a time commitment that they have to meet
10 the panel would be certainly willing to
11 accommodate that request. Each speaker will
12 have approximately seven minutes to make a
13 presentation, depending upon how many
14 individuals are here to address the panel.
15 There is some flexibility with that. We ask
16 that people in the audience who are here,
17 refrain from talking during the presentation so
18 that we can concentrate completely on the
19 comments that are being made.

20 From time to time members of the
21 panel may wish to ask a question to provide
22 additional information to us that would be
23 helpful. If you don't understand the question,
24 let me know, and I will clarify that for you.
25 The questions that we ask are designed to help

1 us with information that you have provided, and
2 this is really an information-gathering session
3 so that we as members of the committee, when we
4 have heard all the comments, and we meet
5 together in committee, to put a final report
6 together, that we have the most reliable and
7 most comprehensive record so that we can do that
8 effectively.

9 Anyone present today, who would
10 like to submit something in writing, if your
11 seven or ten minutes is not enough, we certainly
12 welcome the opportunity for you to submit
13 something in writing. If you're talking to
14 members of the community, members of the public,
15 lawyers, or other professionals, if for some
16 reason have not had the opportunity to take time
17 from work and to be here in person, as an
18 information-gathering panel, we encourage you to
19 also invite them to submit any comments.

20 The proceedings today are
21 recorded. And a transcript will be prepared.

22 And now it's my pleasure to call
23 to the podium Marc Garfinkle. He's not here.
24 The next person is Laura. She is not here.
25 Okay. Mike Speck.

1 MR. MICHAEL SPECK: My name is
2 Michael Speck. I have an office in Freehold,
3 New Jersey. I have been practicing since about
4 1988. Would you like the address of the office,
5 71 West Main Street Freehold, 07728.

6 I just -- a little bit about
7 myself. I started in law school in Michigan,
8 many, many years ago. Fortunate to work in the
9 Barry County Prosecutor's office in Michigan. I
10 actually started trying jury trials when I was a
11 law student, because misdemeanors in Michigan,
12 you had juries. We actually tried DWIs in front
13 of juries in Michigan. They were six person
14 juries. Met a Jersey lady in law school, got
15 talked into moving back to New Jersey. Her
16 father was a municipal court judge. That some
17 of you -- I know Judge Goldman probably knows my
18 ex-father-in-law. Leslie Tinkler. And I met at
19 an interview with a gentleman by the name of
20 Francis X. Moore. Many of us as Judge Lawson
21 would say, many of us have known Mr. Moore. And
22 I started practicing with Mr. Moore. I argued
23 probably more appellate appeals in the '90s than
24 most lawyers. Some would say we made some bad
25 law. I argued State Vs. Downey. I argued State

1 Vs. Ham, the jury trial case. I argued State
2 Vs. Kerry, which was the original
3 post-conviction relief case. I argued a couple
4 bad cases. State Vs. Samorel. A couple other
5 cases.

6 I primarily practiced in the
7 municipal courts until the early 2000s. I
8 prosecuted in East Brunswick, which I believe we
9 prosecuted the most DWIs in the state during my
10 tenure. So I have had a little bit experience
11 on both sides. I went into a firm, decided I
12 better learn some civil work, and I had been in
13 and out of municipal courts for years.

14 And the reason why I am here is
15 not just bash judges. I have been in front of
16 many, many good judges. I've been in front of
17 Judge Goldman many, many years ago. I don't
18 think I was never in front of you, Judge
19 Feinberg, but I happen to know that I tried a
20 DWI case where a state trooper was arrested in
21 your town, probably lucky for you, because I
22 think you were pending appointment and got moved
23 to Washington Township, so you didn't have to
24 deal with that case. But I did litigate.
25 Sometime I will tell you the story. Because the

1 prosecutor was also very infamous in Mercer
2 County because he eventually was indicted, the
3 municipal prosecutor.

4 So, I tried literally hundreds and
5 hundreds and hundreds of municipal court
6 matters. I am old enough to remember when we
7 couldn't, quote, plea bargain. So we tried
8 cases and anybody who knows Francis X. Moore's
9 office knows that we weren't afraid to try a
10 case. Mr. Menzel eventually came to work for me
11 at Francis Moore's office. He had more freckles
12 that I had at that time, so it was a good thing.
13 I remember the days when I literally faced
14 castigation because I would file a motion
15 demanding a jury trial. I literally got made
16 fun of in the municipal court because I would
17 file a demand for a jury trial. A very famous
18 judge in Clifton, New Jersey once threatened me
19 to call the assignment judge because I was
20 demanding a jury trial for my potential third
21 offender, who had a prosthesis from the knee
22 down, a first-grade education, and a problem
23 with the breathalyzer and the after breathalyzer
24 certificate that was handed to me on the day of
25 trial. I know a little bit about the old 900

1 breathalyzer, and I didn't recognize the
2 mistake. I literally got castigated and
3 threatened by a municipal court judge that he
4 was gonna hand a transcript of my request for an
5 adjournment because how dare we go by the 60-day
6 goal. And I offered to personally deliver it to
7 the chief justice, because I was gonna be
8 arguing State Vs. Ham in two weeks. Luckily, I
9 was smart enough to tell him that my client was
10 a third offender so he recused himself. He took
11 it seriously.

12 I have also had very, very good
13 judges make very, very difficult decisions in
14 municipal court at 4:30 in the morning when we
15 used to try these cases at 4:30 in the morning.
16 So, I just wanted to give a little bit of my
17 breadth of experience.

18 I have a huge concern about the
19 independence of municipal court judges. And I
20 have been thinking about this before I testify.
21 And I gotta tell you, I really think things
22 changed a lot when State Vs. Storm came out,
23 when we no longer had municipal court
24 prosecutors that also defended in other towns in
25 the same county. To me that was a check on the

1 system. Municipal prosecutor who prosecuted in
2 one town, and then would act like a complete
3 idiot in that town, could not then go to another
4 town and expect courtesy. Expect to be treated
5 professionally. So, although I understand the
6 under opinions of State Vs. Storm, I think it
7 led us down this path that we are now on today.
8 And, also, unfortunately or fortunately, I have
9 been very involved in local politics.

10 There is municipal prosecutor, who
11 those of us in the Monmouth County and Judge
12 Lawson knows very well. His name is James
13 Butler. I don't think he would have a problem
14 with me telling his story. But when we started
15 State Vs. Downey we were actually castigated.
16 It wasn't Judge Lawson, we were castigated by
17 the assignment judge, because how dare we
18 convene a hearing to see if the breathalyzer
19 works. And they filed an interlocutory appeal
20 two weeks at a time. Do you think the defense
21 attorney would ever enter an interlocutory
22 appeal out of the municipal court granted two
23 weeks at a time? No way. We appeared in the
24 assignment judge's chambers, and a lot of
25 lawyers showed up that day. And I remember the

1 assignment judge looking at Mr. Butler, who was
2 the municipal prosecutor, and saying
3 essentially, how dare you agree to this. And I
4 remember Mr. Butler, it stuck with me my entire
5 career, taking out the ethics rules, and saying
6 my job is to see that justice is done, not to
7 seek convictions. Believe it or not, the
8 assignment judge's courtroom, a bunch of lawyers
9 clapped, because we were fed up with it. And
10 there was serious, and there is still is serious
11 issues with the breathalyzer. And I won't waste
12 your time with those.

13 Ever since State Vs. Storm, we
14 have been going down a path where municipal
15 court judges, I believe, are more interested in
16 being reappointed than they are, necessarily,
17 having the independence that they need to give
18 the public the right to a fair trial. It
19 concerns me greatly. They call municipal court
20 a lot of things. But I guarantee, and you have
21 some municipal court judges here, I guarantee to
22 it, it is the place that most people see the
23 judicial system for what it is in this state, at
24 least. And I dare say that some people are left
25 with a bad taste. Sometimes they probably

1 deserve it. Because people don't always
2 understand the system. And sometimes we take it
3 for granted. But we have to work a little bit
4 on this. We have to try harder with our
5 municipal court judges.

6 There has been a lot of work on
7 education. I mean, literally we used to get
8 accused of not playing fair. I would write
9 letters to the municipal courts' home office
10 because I would get accused of not filing a
11 motion, even though i sent it to the clerk, they
12 just didn't bother to look at it. We got
13 accused because we would try DWIs, and oh, my
14 goodness, we would actually win. They couldn't
15 deal with that, the state police and the police
16 departments that we were dealing with. I'm
17 gonna give Frank Moore a lot of credit. When we
18 made arguments, these were thought out
19 arguments. We didn't just willy-nilly demand a
20 jury trial. We knew, because we were there
21 every day, what effect a third offender has.
22 What that, in those days, jail, and/or community
23 services. Now jail, 180 days. It's important
24 stuff that municipal court judges do now.

25 I say I was involved with politics

1 because I have been involved with the committee
2 people, who flat out have had municipal court
3 judges tell them how much money they would
4 raise. Flat out. I was interviewed once for a
5 municipal court judge. I was very proud of the
6 two gentlemen that interviewed me, they didn't
7 ask me if I would raise revenue. I probably
8 would have said, no. They didn't ask. I was
9 very proud of them. It is a serious problem.
10 And we all know about what is going on in
11 Monmouth County. It's serious. This is not
12 something that we should take lightly in our
13 state. I understand revenue. I am concerned
14 that if you don't -- if you find a defendant not
15 guilty in municipal court, there is a concern
16 you're not reappointed because the police don't
17 like you anymore.

18 Now, I think the older ones of us
19 will remember what used to happen when a judge
20 wanted to find somebody not guilty. Does
21 everybody remember when judges reserved
22 decision. I see some smiles so we all know what
23 I'm talking about. And that was a judge who
24 wanted, usually, not always, wanted to find
25 somebody not guilty, but didn't necessarily want

1 to do it in front of the police officer. It was
2 good for my client. I'm not sure if it was good
3 for the system, but it was good for my client.

4 And I have also thought a lot
5 about what we are gonna do. I guess that's your
6 committee's job. And I'm gonna think on it some
7 more, because it's not an easy issue. But I
8 tried a case in front of the judge about two
9 days before, that judge is no longer a judge, at
10 least for now. And I will tell you I got
11 frustrated enough when I was asking for a stay
12 on a first offense with no breathalyzer readings
13 with a gentleman who had a torn meniscus in his
14 knee, an officer who had never had standardized
15 field sobriety training from the state police.
16 An expert who testified he didn't even conduct
17 the field sobriety training tests right. And
18 this judge, I ordered the transcript for him.
19 So he had it in front of him when he made his
20 decision. He had time to read it. I wrote a
21 brief. I took the time. Didn't even read my
22 cross-examination. I admit it, I got
23 frustrated. I just want to tell you I got
24 frustrated enough, I actually said during
25 cross-examination, or during my request for a

1 stay, which by the way was denied, because of
2 State Vs. Robinson. I said, you know, Judge, it
3 would have been nice had you actually read the
4 cross-examination. I think my client would
5 have, at least, deserved that. And that tells
6 me, I am at a point where I'm so frustrated with
7 the system that I would have the frustration of
8 looking a judge in the eye and say that. I
9 literally started my law division brief with,
10 Please, Judge, I implore you to look at the
11 cross-examination in this case. You're guilty
12 until proven innocent. There is a point where
13 the burden shifts to the state. I'm not
14 supposed to have to prove my client's innocence,
15 and I'm concerned in municipal court, we now
16 have to prove our client's innocent, and that's
17 just not the way it's supposed to be.

18 JUDGE FEINBERG: Any questions?

19 Yes, Mr. Fishman.

20 MR. FISHMAN: We appreciate the
21 deep thought that you have put into this thing.
22 Have you given any thought to any suggestions?

23 MR. MICHAEL SPECK: That's the
24 thing I have probably been wrestling with the
25 most.

1 MR. FISHMAN: We all can agree
2 that it's not a perfect system. And I think
3 what we are trying to do here is make it better.
4 And I would really, considering the experience
5 that you have, I would really like to hear what
6 you think about that.

7 MR. MICHAEL SPECK: Well, I
8 think, luckily, Mr. Menzel's case is going to
9 deal with the third offenders, which, to me, is
10 probably the most serious offense that we face
11 in municipal. Probably more serious than fourth
12 and third degrees. I really truly hope the
13 supreme court is gonna give us a jury trial. I
14 personally would give any serious offense, and
15 there is quite a few of them, a jury trial. But
16 I think we have to figure out a way, probably to
17 come up with some type of tenure. It's fraught
18 with problems. And I understand that. And
19 you're dealing with local politics and you're
20 dealing with a lot of that stuff. We have to
21 give a way to somehow separate the judge's need
22 to be reappointed every three years. And we are
23 at a point now where we have judges that that's
24 all they essentially do. They don't practice
25 law anymore. They become judges. And if they

1 don't get reappointed, that affects their
2 livelihood. And that's a serious concern to me.

3 When I started, the judge may have
4 one town, may have two towns. We have judges
5 with 12 towns. That is a lot of income that
6 they're deriving from municipal courts. And I
7 think if you had some way of doing that, or
8 maybe you're gonna have -- you guys are not
9 gonna wanna do this, but you have to figure out
10 a way to separate the need to be re-appointed
11 and the pressure that the local police
12 departments put on our court personnel to not be
13 independent. I don't mean outwardly through
14 threats or anything like that. We have multiple
15 police officers who get involved in elections,
16 which is their right. I have been -- I have
17 dealt with police officers who didn't like the
18 municipal court judge in a particular town and
19 worked to get rid of him or her. So we have to
20 figure out a way to do that. And that's what I
21 would ask you guys. I don't know of any
22 anything else that we can do, short of some type
23 of system to protect the judges. Because I
24 really think to some, you know, we have all
25 faced it.

1 There are good judges and there
2 bad judges. Hopefully there are more good
3 judges than bad judges. But in municipal court
4 it's even harder to be a judge. That's what
5 nobody understands. There are good prosecutors
6 and there are bad prosecutors. I know John is
7 one of the good ones. It's a hard thing to do
8 to prosecute. It really is, to see that justice
9 is done. When you have 50,000 cases on your
10 calendar, you get two minutes to spend on, and
11 the defense attorney walks in and that defense
12 attorney wants something from you. That's
13 another thing we have to consider. It's just
14 got to be a way to more, what I characterize,
15 not that nobody is professional, it's
16 professional, it's just that we need to protect
17 the judges from the pressure that can be put on
18 them from politicians and the police. And,
19 quite frankly, the public.

20 I will just answer in one note.
21 There was a certain judge, I believe it was over
22 by you, Judge Feinberg, who made the decision
23 because MADD Mothers used to show up in his
24 courtroom on a regular basis. I happened to
25 have a case during that time. And he refused to

1 try a drunk driving case with MADD Mothers in
2 the audience. And I remember what he said. He
3 said, They're here to put pressure on me to not
4 be impartial. The mere fact that I think that's
5 why they're here, I'm not sure I can be
6 impartial. They have every right to be here.
7 And I can't stop them from being here. I'm not
8 telling them they can't. But I don't think I
9 can give somebody a fair trial if they're here.
10 Boy, did that judge get a lot of grief. I give
11 that judge a lot of credit. Because that's a
12 hard thing to do. I hope I answered your
13 questions.

14 JUDGE FEINBERG: Another question?

15 MRS. UNGAR: Mike, do you think in
16 your experience of handling cases both on the
17 prosecution side, and the state side, have you
18 seen any systemic-wide problems around the state
19 in terms of concern with impartiality or
20 concerns with appointment and reappointment of
21 judges that you would want us to consider?

22 MR. MICHAEL SPECK: I, actually,
23 at one point, and you know how many municipal
24 courts I have appeared in, I think there are,
25 what, 340 at one point. 343?

1 MR. FISHMAN: 537.

2 MR. MICHAEL SPECK: I think I
3 have been in over 350 of them. Let's face it,
4 Francis X. Moore, in our day, we probably tried
5 a quarter of the DWIs in the state. I have been
6 in front of some judges that should not be
7 judges. And it concerns me to no end that there
8 is no easy way to remove those judges. I would
9 ask that there would be a system that we -- I
10 think that's why they tried the presiding
11 system, is to not monitor judges, because I hate
12 that word. We are all adults. We are all
13 lawyers. But to, when you have a problem, just
14 don't assume that it's not a problem with the
15 judge. We all get frustrated. We all get
16 angry. And I can't imagine being a municipal
17 court judge. I can't imagine being a special
18 civil judge, because you have to deal with
19 people who aren't lawyers a lot.

20 But I think that in my mind,
21 Barbara, it is a situation where we have to -- I
22 know there has been a move to try and
23 professionalize it. But I'm not so sure we
24 should have judges anymore that practice
25 privately. Because I think it puts too much

1 pressure on judges to make that living. Now
2 that they have to deal with motions. Judge
3 Goldman and I were talking about the fact that,
4 you know, they get motions in the middle of the
5 night. They don't get any sleep. I think,
6 that, in my opinion, to professionalize the
7 judicial core state-wide, I don't know whether
8 they're gonna combine, because that's sort of
9 happening through attrition right now. But
10 maybe judges have to have four or five towns.
11 Maybe they do. Maybe that's the way.

12 The only other issue I would have
13 Barbara, is, there's such a difference. I mean
14 look at what happened in Monmouth County. Guess
15 who it is affecting guys, the fact that the
16 judge is no longer sitting. It's not affecting
17 the judges, it's affecting the defendants. You
18 know why? Because we are not allowed to amend
19 the disorderly persons offense to an ordinance
20 violation anymore. Now, that's a plea bargain.
21 We all know it. But it's also part of judicial
22 economy. It's all part of moving system. It's
23 all part of looking at every individual
24 defendant and saying, in this particular case, I
25 want to take this 19-year-old kid who had a bad

1 night one night, and give him a DEP, which by
2 the way, guys, we had this seminar where it
3 could affect his or her college livelihood.

4 JUDGE FEINBERG: I'm gonna have to
5 ask you to sort of wrap up.

6 MR. MICHAEL SPECK: That's fine.

7 JUDGE FEINBERG: I don't want
8 to -- if there's anybody who wants to ask -- all
9 right. Let's start from Bonnie and go down.

10 JUDGE GOLDMAN: I just had a quick
11 question going back to the fact that you said
12 there was a judge who hadn't read, wasn't
13 prepared and hadn't read some cross-examination,
14 some testimony, what have you. So, to me,
15 that's a lack of professionalism. And, of
16 course, that can vary from person to person,
17 judge to judge. I guess where I was headed is,
18 do you think that the fact that there are some
19 judges who are practicing attorneys, who may
20 just have one court, and who may focus more on
21 their practice, or the demands of their
22 practice, do you think that that is a problem
23 such that full-time municipal court judges would
24 be a better option?

25 MR. MICHAEL SPECK: I think that,

1 and I hate to say it, because I understand the
2 system, but, if they're not willing to give the
3 time that they need to give to be a judge, I
4 think that's the only choice we're gonna be left
5 with. Seriously, I have done this a long time,
6 I only take referrals. I don't advertise. I
7 ordered that transcript at great expense to my
8 client. We had two days of trial. Can you
9 imagine how much that cost. And he didn't even
10 look at my cross.

11 MR. PINIZZOTTO: Mike, do you
12 believe there is a disconnect between the
13 reality of what you have seen in municipal court
14 and the perception by the powers that be?

15 MR. MICHAEL SPECK: Absolutely.

16 MR. PINIZZOTTO: Do you have an
17 opinion as to why that might be?

18 MR. MICHAEL SPECK: Probably
19 because there is a misperception of the people
20 that are defendants in the municipal court that
21 it's not serious. And, it is. And it's
22 becoming more and more serious. You get a drug
23 conviction, guys, you see 3510, aren't eligible
24 for a conditional discharge. We're all worried
25 about the ramifications, guess what, you may not

1 qualify for federal aid anymore. I mean, these
2 are serious offenses in today's day and age.
3 You want to become a police officer. You plead
4 guilty to a motor vehicle violation, a reckless
5 driving, you forget, you don't know. You just
6 go in there and you plead guilty. You forget to
7 put it on your application to become a police
8 officer, you're not a police officer anymore. I
9 think there is a perception that municipal court
10 is not serious. And, it is.

11 MR. PINIZZOTTO: Why do you think
12 the ACJC complaints aren't used when you see
13 transgression? The Advisory Committee on
14 Judicial Conduct?

15 MR. MICHAEL SPECK: The real
16 reason?

17 MR. PINIZZOTTO: Yes.

18 MR. MICHAEL SPECK: Because they
19 are afraid of retribution. There are lawyers
20 that would love to testify, that do a lot more
21 municipal court than me.

22 JUDGE ZINNA: Frank Zinna. One of
23 the things that you commented on strictly and
24 you're well-versed, and that's why I'm asking
25 this question. You said what are we going to do

1 about it. And, really, that's our function.
2 You also have some experience in politics. So
3 you know the process would not be an easy one.
4 If you could put yourself, put your legislative
5 hat on, so to speak, what would you suggest? We
6 know tenure might be the answer. Although, I
7 think it could also be counterproductive. In
8 that if we say, okay, after two appointments now
9 your third appointment, you're tenured. We know
10 that many municipalities would say, well, I'm
11 not gonna reappoint him, because we don't want
12 to have a tenured judge here. Correct? Do you
13 have any ideas that might be helpful to us when
14 we craft what to do about the situation/problem?

15 MR. MICHAEL SPECK: I wish there
16 was a magic bullet. And I don't know that there
17 are. I would be very interested to follow this.
18 I was gonna ask a question, how you get the
19 transcript from Barbara, but I will find out
20 later. I just think that, you know, to some
21 extent it's education in the municipalities,
22 too. And the power being in the municipalities,
23 because they don't understand what happens.
24 When they look at it as a profit center, they
25 don't have a true understanding and maybe it's

1 gonna take some education.

2 JUDGE ZINNA: There is certainly
3 some merit to that. The problem is that, there
4 is also turnover in counsel and commissioners.
5 So sometimes you educate one group and the next
6 group comes in and it changes everything. Do
7 you think that, and you alluded to it, maybe the
8 municipal judges should have five or six courts.
9 Do you think it might be helpful to have a more
10 centralized municipal court in areas, so that it
11 has more of a feel of a superior court
12 situation.

13 THE WITNESS: Yes and no. Yes,
14 and I think that's a way to solve, to some
15 extent, the problems, because it combines
16 professionalism. Allows somebody to make a
17 living to do it. The part I like about
18 municipal courts is they are the people's
19 courts. You get more into the local community
20 with the municipal court judge in that
21 community. You should understand the problems
22 in that community. And not every community has
23 the same problem. There are huge differences in
24 problems between Newark and, you know, Brielle,
25 for the sake of argument, the shore towns. So I

1 think that's part of the issue. But, you know,
2 maybe -- I think it's happening.

3 JUDGE ZINNA: Well, in Essex
4 County where I practice, and I practice in
5 Belleville, right next to Newark, one of the
6 other problems talking about the seriousness of
7 what happens is a county, like, Essex,
8 prosecutor is, the county prosecutor is sending
9 an awful lot of serious drug cases back, and
10 cases they really can't handle. And I do
11 appreciate the fact that it's a good idea that
12 you have a bit of a feel for the locality. So,
13 I wonder if maybe, not necessarily county-wide,
14 but maybe, you know,, five, six, seven, eight,
15 municipality-wide municipal courts that are not
16 necessarily controlled by one governing body
17 might make some sense.

18 THE WITNESS: I agree. And just
19 one comment in favor of municipal prosecutors.
20 The easiest DWI trial I ever tried was against
21 the county prosecutor. It was sent down because
22 MADD Mothers got involved and it became a combat
23 van came and this prosecutor didn't have a clue
24 how to try a drunk driving case. And not only
25 did I beat the drunk driving, I beat the

1 careless driving with a rear-end hit, guys. So,
2 I also think, don't underestimate municipal
3 prosecutors, who have the experience they need
4 to actually prosecute these cases.

5 JUDGE ZINNA: That again can be
6 controlled by who is appointed.

7 JUDGE FEINBERG: Let me indicate
8 this. I don't know how many are going to
9 testify. We do have one more. But I would
10 certainly give other folks in the audience who
11 would like the opportunity to talk. If you're
12 willing to stay around then we can always recall
13 you because I, actually, do have a question.
14 But I rather wait.

15 MR. MICHAEL SPECK: I appreciate
16 it. Thank you very much.

17 JUDGE FEINBERG: Thank you very
18 much.

19 MR. MICHAEL SPECK: Thank you for
20 your time.

21 JUDGE FEINBERG: All right. It's
22 my pleasure to call Mr. Garfinkle.

23 MR. MARC GARFINKLE: I'm Marc
24 Garfinkle. I'm the late Marc Garfinkle. I'm
25 sorry for my late arrival.

1 JUDGE FEINBERG: Okay. Your name
2 for the record.

3 MR. MARC GARFINKLE: Marc
4 Garfinkle. I'm an attorney in Morristown.
5 Judge Zinna, I played basketball with you 100
6 years ago.

7 JUDGE ZINNA: Maybe more than 100.

8 MR. MARC GARFINKLE: I want to
9 thank the subcommittee for letting me speak on a
10 very limited issue, the one just broached by
11 counsel. And that is the idea of tenure for
12 municipal court judges. I also have an
13 apparatus in my mouth for the first time, and
14 I'm gonna be lisping and whistling unexpectedly
15 throughout my next few minutes.

16 I also want to take this
17 opportunity to let you know that your efforts
18 are not entirely thankless, because, I know what
19 kind of effort and time you spend, and I know
20 the pay scale you're on. And so, I really want
21 you to know that I am certainly joined by
22 members of the bar in thanking you for your
23 efforts in all of our behalf.

24 I'm a Morristown solo. My
25 practice is entirely judicial ethics, legal

1 ethics, which is bar admission. Legal ethnics
2 and discipline and judicial misconduct. That's
3 all I do. I'm a public defender in Livingston,
4 and I have been for the last ten years. I teach
5 Persuasion and Advocacy at Seton Hall University
6 Law School, and I do a bunch of other things
7 through the school as well. I was admitted in
8 California in '78. Came back into my hometown
9 of -- well, my home state in '82, and I have
10 been practicing here as a solo ever since. I
11 really never worked for anybody as an attorney.
12 And I lecture around the country to younger
13 attorneys about the legal system, and how to be
14 a lawyer. I actually wrote a book called Solo
15 Contendere how to go right from law school into
16 the practice of law without getting a job. And
17 I wrote that back in 2008, which is, I guess, no
18 surprise.

19 JUDGE FEINBERG: Probably sells
20 well today.

21 MR. MARC GARFINKLE: Actually,
22 it's dated. I don't talk about social media.
23 So it's already dated. Before embracing my
24 ethics specialty, I was a civil and criminal
25 trial lawyer. I estimate that I have handled

1 over 2000 municipal court cases in New Jersey.
2 By an equally and accurate count I think I have
3 been in 20 of our 21 counties in municipal
4 court. That doesn't count my representation in
5 Livingston.

6 I am here because I heard that at
7 some point this subcommittee may be considering
8 the idea of establishing a tenure system for
9 municipal court judges. And I really think it's
10 not a good idea. I think that there are other
11 ways to approach this. And I base this, not so
12 much on the integrity of judges who are of
13 legislators, but really on the fact that we have
14 a system in place already. We have rules of
15 ethics. We have a state code of ethics, and we
16 have rules of judicial misconduct. A judge can
17 say no. Maybe the answer is better vetting the
18 character of our judges. But the reason that I
19 am taking this position, and I am opposed
20 generally to line dancing, and other blanket
21 treatments, it is because, much like we have a
22 federal system, we have a variety, a wide
23 variety of municipal courts with a wide variety
24 of approaches, and each municipality takes a
25 different view of the role that its court plays

1 there. And we have some municipalities whose
2 view runs afoul of certain principles, and
3 perhaps there are ways, other than trying to
4 isolate the judges with a pension, or a tenure,
5 that would meet that goal. And unfortunately, I
6 am as ill-prepared as my precedent attorney here
7 to make suggestions. And my only suggestion is
8 a negative one, which, again, is, don't go that
9 way. At the heart of the issue, as I see it, is
10 that we really have a traverse system, and the
11 courts really are that varied. I think we all
12 agree we need strict compliance with the law.
13 And that we need to have a certain uniformity,
14 and consistency and equal treatment and all that
15 across the board. But on the other hand we need
16 to maintain the autonomy that each municipality
17 has. And I offer a case in point.

18 In Livingston recently had a dozen
19 or so high school kids that busted one of these
20 home parties, and all of those matters were
21 resolved with a plea to a municipal ordinance.
22 Now I have been in Livingston as public defender
23 for ten years, and I know that they were not
24 trying to screw the state out of any fees, and
25 they weren't really looking to fill the coffers

1 of Livingston with the ordinance penalties. But
2 there was an officer there from East Orange who
3 said to me, I can't believe it, nobody is gonna
4 have to eat a 2C. All of those defendants, they
5 got plenty of evidence and nobody is gonna have
6 to eat a 2C. I didn't know much about the bust.
7 I didn't hear much. And I told him, I can tell
8 you a few things, Officer. I said, I'll bet
9 that none of those kids there had a weapon. And
10 I bet none had a juvenile record. And I will
11 bet that every one of them wants to go to
12 college. And I will bet that if they get a
13 record for a 2C, that's going to affect that
14 ambition of theirs. And I can also bet you that
15 if there is another situation in another town, a
16 bust like this would probably yield a dozen
17 fruitful warrants. And you got to take that
18 into consideration. And then I maybe went a
19 little too far. And said, my guess, is,
20 Officer, that if the Livingston police were in
21 that house and suspected that the kids were
22 smoking weed out in the back, that they would
23 have taken their time walking through the house.

24 And I think that we have to
25 recognize this. We have shore towns. We have

1 rural towns. We have homogenous and
2 heterogeneous places. We have places where you
3 can't plead a no insurance down to a failure to
4 exhibit. And then there's places where you can
5 do it as long as it happened on the same day.
6 And then there's places where you can do it as
7 long as it happened within a few days. There's
8 places where you can't plead a 2C shoplifting
9 down to an ordinance. Maybe you can plead it
10 down to an ordinance to a 2C where they don't
11 have to do community service.

12 There are places where the judge
13 doesn't even let you be heard at sentencing
14 unless you jump up before he or she states the
15 fine. And it's all okay. And if you practice
16 in this field, you get to know where it is. And
17 you get to know which courts you better be there
18 on time or you go last. And you better get to
19 know which courts have the police officer
20 sitting there, and where they won't. And where
21 they have a say and where they don't. And you
22 get to know the courts where people with counsel
23 do better, and people with local counsel do even
24 better. And it's still all okay. And it's not
25 fair and not -- it is not equal. But we are not

1 supposed to be equal. We are supposed to have
2 equal rights. And I think that is your burden.
3 And I don't envy you for it. And I'm glad I'm
4 on this end of the table and not on yours,
5 because I don't have solutions. But I can say,
6 don't look to pensions to solve that problem.
7 Really look to the problem to solve that
8 problem. And the problem is integrity. And I
9 don't know where you go with that. But the
10 problem is integrity. A judge knows what he or
11 she is supposed to do, and a judge can say, no.
12 And I think that's where the problem is.

13 So, even if a judge is now given
14 pensions, or given a tenure, that same judge
15 maybe is now going to be beholding to other
16 people for other things at other times. And
17 maybe that tenure is gonna give that judge a
18 sense of entitlement or power or invulnerability
19 that he or she would not have had without it.
20 And so it's a two-edge sword. And because it's
21 a two-edge sword, I would say that think twice
22 before we eliminate it. I don't know where to
23 tell you to go, but if you're going down that
24 lane, I would say, and I thank you for the
25 opportunity for letting me say, that you should

1 reconsider. Thank you again for the opportunity
2 to be heard.

3 JUDGE ZINNA: Marc, I tend to
4 agree in one respect. Tenure may not be the
5 answer. It could be a double-edge sword, as I
6 said before. But some of the issues that you
7 raise, you talk about the lack of uniformity
8 from municipal court to municipal court, many,
9 many practitioners abhor that. You know, you
10 talk about, and I think Michael did, too, well,
11 you know, why is it you got some kid who is
12 ready to go to college, he shoplifts, why
13 shouldn't he get an ordinance violation. Well,
14 where does that stop, you know. Do we say the
15 fellow who is not gonna go to college, but
16 doesn't have an arrest record, he shouldn't get
17 the ordinance violation. I don't want to get
18 into that because you can get all over the lot
19 with who should be entitled to a downgrade from
20 a DP to an ordinance violation. But I do think,
21 when you talk about integrity of municipal court
22 judges and municipal court judges being able to
23 say, no, where in the law do they have the right
24 to be able to take downgrades to municipal
25 ordinances. But that's an issue for another

1 day. But I do agree with you about the tenure.
2 But I don't agree with you about the lack of
3 uniformity. And that is why, again, I say what
4 would the answer be to get us to the point where
5 judges are not under the pressure of the
6 locality. Is it some type of a municipal court
7 that comprises five, six, seven, eight judges
8 and eight communities, and everybody filters
9 into one, and you get some uniformity at least
10 in that group.

11 MR. MARC GARFINKLE: Well, your
12 Honor, and I suspect that the subcommittee,
13 seems to take the position that there is
14 something inherently wrong with inconsistency.
15 And I understand from both sides of the fence,
16 but I feel that the consistencies we want are of
17 a grander nature. I look at the gun control
18 laws, and we were looking to have one gun
19 control law that applies to everybody. And you
20 look at the urban areas, and you look at the
21 coasts and you say, Wow, there most of the
22 people who have guns are bad guys and the good
23 guys don't. And so we really need to have
24 strict gun laws. And then you go out in certain
25 rural areas where the good guys have guns, and

1 most of the bad guys don't. And people say,
2 What do we need gun laws for. And they're both
3 right. So I say, let's not try to demagnetize
4 everything. Let's try to get to the root of it.

5 We can all work with -- I can work
6 with the prosecutor who wants a different
7 standard than somebody else. And if I'm not
8 sure what's required of me in that court I will
9 go to a lawyer and say, Hey, do you practice
10 here? Look what I got. I got a second time
11 340, and I have an open container. Do you think
12 the judge is gonna let my guy walk, or do you
13 think she's gonna take his license? And that
14 prosecutor is gonna say, Well, you know, I'm not
15 here very often, but this guy, over here, is.
16 Why don't we bring him over, and you get your
17 answer. It's not the easiest practice. It's
18 not a very predictable practice. But so much of
19 life isn't predictable or easy, and it's still
20 fair. I feel it's this way. I think that there
21 is something to be said with diversity, for the
22 diversity. A lot to be said for the diversity,
23 as long as they don't go over the bounds. And
24 if each is within bounds, if each is within
25 reason, it's, like, having umpires with

1 different strike zones. It's okay, as long as
2 you know them, as long as you know where they're
3 gonna call that low pitch, you're okay with it.
4 And I feel that way. Learn what you need to
5 know in that forum. Understand how they roll,
6 as they say, and you will be okay. And if it's
7 different from what you're used to, well, grow
8 up. Now, that's not to you, Judge. I am just
9 saying to the bar as a whole.

10 JUDGE ZINNA: I know what you're
11 saying, but it seems to be that you're
12 forgetting one real --

13 JUDGE FEINBERG: Let's -- finish
14 that comment. Because there are other people
15 who want to speak. And if you would make your
16 response, you know, short as you can.

17 JUDGE ZINNA: I think there is one
18 group that you're forgetting. And that is the
19 defendant. So a defendant can walk into a
20 municipal court in Belleville and maybe expect
21 to get an ordinance violation. Yet if he goes
22 to North Caldwell, he's not gonna be able to.
23 How is that fair to a defendant of, let's say,
24 equal status, ready to go off to college.

25 So, again, that's really not what

1 we are here to debate. I understand that you
2 say, Listen, we don't need tenure. We don't
3 need uniformity. I don't think whatever we
4 decide to do with regard to judicial
5 independence, that's going to affect what
6 happens. Because most of what you're talking
7 about is not municipal judges, it's municipal
8 prosecutors. They are the one who make the
9 deals, and unless it's something way out of
10 bounds, most times the municipal court judges go
11 along with it. So, I think it really begs the
12 question on what we need to decide here.

13 MR. MARC GARFINKLE: Then I
14 apologize for taking your time.

15 JUDGE ZINNA: No, no. I think
16 your thoughts are really well reasoned. And I
17 think they are important comments. But I don't
18 necessarily know that the imbalance from
19 municipal court to municipal court is really the
20 issue here. Because I think that's more of a
21 prosecutor issue than a judges issue.

22 MR. MARC GARFINKLE: Judge, if I
23 may. Just a few more seconds. When your Honor
24 addressed an earlier issue of Essex County, and
25 really normally the indictables. I practiced

1 criminal law in Essex County. I'm in Morris
2 County now. And I see every day people who
3 would have been indicted in Morris and looking
4 at seven years and instead they are getting PTI
5 in Essex. And I don't -- again, is it fair?
6 Well, maybe not. But you tell your client oops,
7 you made a mistake you did that in Morris, you
8 should have gone over to Livingston.

9 JUDGE FEINBERG: Before I
10 recognize somebody else. Let me indicate that
11 we are not here all to agree. Sometimes we
12 learn more by hearing something that we may not
13 agree with. But it gives us additional thought.
14 So, we welcome all of the comments. So there is
15 no need to apologize.

16 Yes, Mr. Fishman.

17 MR. FISHMAN: If integrity is the
18 key, which it is, what would you think about the
19 bar playing an active role in vetting municipal
20 court judges in much the same way that we do in
21 vetting superior court judges. Superior court
22 judges used to have to appear before both the
23 local JPAC and the state JPAC committees. The
24 local JPAC has been cut out of the process by
25 our present governor. But they still exist.

1 What would you think about some process that
2 would require a prospective municipal court
3 judge to be vetted by the local JPAC committee.

4 MR. MARC GARFINKLE: Well, I think
5 that's a good idea. It may need to be
6 buttressed by some objective standards,
7 objective criteria, and by whoever has, or
8 something like that would therefore be
9 disqualified. I think the committee is fine,
10 but I think they're gonna need some sort of
11 criteria. I don't know. I know that the
12 committee on character who vets attorney, the
13 people who pass the bar, and are trying to
14 become members of the bar, they subject people
15 to the most intense scrutiny that they will ever
16 face. So I don't know that we need to do that
17 with our municipal court judges.

18 On the other hand, I don't know
19 that we don't need to. But there is a vehicle.
20 This committee on character is a pretty awesome
21 group. And they, too, do plaintiffs' work.

22 MR. PINIZZOTTO: Do you have an
23 opinion as to, should there be a difference
24 between tenure for municipal court judges versus
25 superior?

1 MR. MARC GARFINKLE: Yes. A very
2 strong opinion. I really get it, as they say.

3 MR. PINIZZOTTO: Why?

4 MR. MARC GARFINKLE: With the
5 superior court judge, 40 years old gets to the
6 bench, now gets the second appointment is gonna
7 get tenured. Gonna be 54 at the end of that
8 tenure. I think that if the concern was just
9 judicial independence, then I would make the
10 same argument. But I think that there are other
11 lifeline concerns with tenure. What a person is
12 sacrificing when they agree to seven-year terms,
13 that differentiated. So I was fully in support
14 of tenure for superior court judges. And I am
15 pretty strongly opposed to the same for
16 municipal court judges. I haven't given enough
17 thought to those courts where the municipal
18 court judge is a full-time judge. I really
19 haven't. I have tried to think that one
20 through. And I can't get my ring around it.

21 MR. PINIZZOTTO: Thank you.

22 MRS. UNGAR: One quick question.
23 I know you testified and felt that a lack of
24 uniformity in some respects is helpful. Do you
25 feel that there is any room to have some form of

1 uniformity throughout the state with municipal
2 courts to assist in allowing more integrity and
3 judicial independence from county to county?

4 MR. MARC GARFINKLE: There is
5 plenty of room. We are just agreeing to have a
6 national bar. So, if we can do that with the
7 bar exam, I think that we can certainly find
8 lots of common ground, lots of common standards.
9 Lots of uniformity. What I am afraid of is that
10 we are going to squeeze out the edgy things. We
11 are gonna squeeze out the different ones. We
12 are gonna squeeze out system of differences that
13 really, I think, make for the fabric of this
14 country.

15 MRS. UNGAR: Thank you.

16 JUDGE FEINBERG: Anything further
17 from anyone? Mr. Garfinkle, thank you very
18 much.

19 MR. MARC GARFINKLE: Thank you,
20 Judge. Thank you, folks. I really do appreciate
21 letting me take the time.

22 JUDGE FEINBERG: It is my pleasure
23 to call Steven Hernandez to the podium.

24 MR. STEVEN HERNANDEZ: Hello, my
25 name is Steven Hernandez. I'm a solo in Toms

1 River. My practice is almost all DWI.
2 Exclusively DWI, with a few cases here and
3 there. I have had the honor of appearing before
4 Judge Goldman several times, many years ago when
5 I worked for John Novack I was actually sent as
6 the public defender in Upper Freehold Township
7 where Judge Goldman sat.

8 JUDGE GOLDMAN: You got to eat a
9 lot of chocolate, then, didn't you?

10 MR. STEVEN HERNANDEZ: Yeah. But
11 my practice is mainly in the municipal court
12 practice section. An attorney can make a pretty
13 good living in municipal court. But ask someone
14 who practices almost exclusively in municipal
15 court I see day-to-day problems. And I think
16 some of the problems has to do with the lack of
17 uniformity. I can be in Toms River where I
18 feel, or Ocean County where I feel safe
19 territory, but then go up to Hudson where I feel
20 like a fish out of water. An attorney who
21 practices solely in the municipal court, like
22 myself, can't really make a living being in one
23 county. You got to be able to travel. And that
24 is why I want to make this comment. I have to
25 disagree with the previous speaker because we

1 need uniformity. So, I know what the rules are,
2 whether I'm in Salem County or whether I'm in
3 Hudson County I don't have to feel, again, like,
4 the fish out of water.

5 One specific incident was, I was
6 hired on DWI in Secaucus. And I send in my
7 letter of representation. Now 99 percent of the
8 time we send in a letter of rep, you get an
9 adjournment. Not in this court. You had to go
10 for an arraignment. Even though you advised
11 your client of their rights and the penalties,
12 you still had to show up for arraignment. And
13 then, you got a two- or three-week adjournment
14 You show up in two or three weeks. Now, on a
15 DWI chances of you having discovery on a state
16 police case in three weeks is next to none. But
17 you show, up tell the judge, I don't have
18 discovery, come back in three weeks. Judge, I
19 can't be, I have another court date. Too bad.
20 Come back another three weeks. Still don't have
21 discovery. In this case, I had in Secaucus I
22 appeared approximately ten times before the case
23 got sent out for trial. Ten times. And I hired
24 an expert in this case. And I went into the
25 judge's chamber with the prosecutor to discuss

1 the upcoming trial. And I mentioned my expert.
2 And the judge held up my expert's report and
3 said, I can't wait to get him on the bench.

4 So, this trial, by the way, lasted
5 another three court appearances. Thirteen times
6 to take care of this case. Now, in the court
7 where I am more comfortable, Ocean County, or
8 Atlantic County or Monmouth County, you know it
9 might take five court appearances before you go
10 to trial. And they are going to give you those
11 reasonable adjournments. That's part of the
12 problem. I think one of the major problems that
13 we face is that the municipal court judges are
14 expected to be revenue generators for the towns.

15 Recently, in, I believe there was
16 an article in, I think it was NJDotCom, recently
17 Leonia Township the major was recently
18 interviewed and said that the towns actually
19 depends on the revenue from the municipal court.
20 Now a very wise attorney once told me that if
21 the defendants are innocent until proven guilty,
22 why shouldn't the municipal court budgets
23 technically be set at zero. Now, obviously that
24 can't be. That's not reality. The towns do
25 depend so much on these revenues. But again,

1 these towns seem to be -- these judges seem to
2 be so -- are expected to be these revenue
3 generators to the extent that they won't do
4 things to upset the apple cart.

5 Prime example is. I have
6 represented some indigent clients before as a
7 private attorney. Indigent clients whose
8 parents, siblings, whoever, came up with the
9 money to hire me. And after a while, we
10 determined how you know, you got a decent case.
11 We need an expert. Well they can't afford and
12 expert. So I applied, had to fill out a 5A Form
13 to get some ancillary services. Now, there is a
14 case called State Vs. Kennedy, which is a
15 superior court case. It's a superior court
16 criminal case where a private attorney was able
17 to get ancillary funds to hire an expert. The
18 judge shot me down. He said in 25 years as a
19 judge, he had never seen anything like it. Not
20 even a public defender had ever asked for an
21 expert. So, he shot me down. Made me feel, you
22 know, kind of small in this matter. That I was
23 stupid to file such a motion. I filed an
24 interlocutory appeal, and the law division said,
25 of course you get this expert. Your guy can't

1 afford it. I went back and the judge was so mad
2 at me, and the court administrator was so mad at
3 me she handed me the voucher, and the way she
4 handed me the voucher was, you know, you could
5 tell they were not happy because I was about to
6 cost the town money. And that's a no-no. And
7 the judge would have to sign off on it. The
8 court administrator was gonna have to sign off
9 on it. Only five, \$600, but they were mad. And
10 again, I was telling, just a public defender,
11 never asked, in 25 years had never asked for an
12 expert. There is a whole section in the court
13 rules. Not in the court rules. The 2B:24,
14 whatever, talks about the obligation of public
15 defender and expert fees, et cetera. It's
16 statutorily set that the towns have to allocate
17 this money. But you know what, the judges don't
18 want to assign it, and they don't want to give
19 it. I spoke to a public defender in Ocean
20 County. And I said, Hey, you've got a great
21 case. He was telling me about this case. But
22 you need an expert. He's the public defender in
23 one of the towns. I'm not gonna do that, he
24 said. Why not? I want to get reappointed. I'm
25 not going to cost the town money. And his dad

1 was the mayor of that town. It happened he had
2 to recuse himself. And he didn't want to ask
3 for a public defender.

4 So clearly, I don't know if it's
5 clearly, that's a prime example of the towns not
6 wanting to issue or give funds, and the judge
7 having to be the keeper of the checkbook, in a
8 sense. Now, again Leonia. We had this example
9 in Leonia.

10 In Eatontown in 2013, I believe it
11 was, I don't know if any of you read the Asbury
12 Park Press. There was this article about how
13 some emails between the township committee
14 between each other got leaked. And in these
15 emails, the township committee members were
16 complaining that revenues from the town were
17 down. And they said, We got to find a judge who
18 will raise revenue. We need to get rid of
19 George Cieri. And we need a judge, like,
20 Richard Thompson. Look what he has done in
21 Tinton Falls.

22 Now, any of you who may know this
23 judge I mentioned, he is pretty good at raising
24 revenue in his town. And sure enough, guess who
25 didn't get reappointed, George Cieri. And guess

1 who got appointed as their judge, Richard
2 Thompson. Now that is a prime example. And if
3 you think that happens just in Eatontown, and
4 Leonia, then I think you would be mistaken. I
5 think that in every town where the judges are
6 part time, and again, excluding, those city
7 towns where the judges sit five days a week and
8 it's their full-time job, being consistent and
9 raising revenue, and getting reappointed is
10 utmost on their minds.

11 Now, I heard Mr. Fishman ask
12 Mr. Speck a question. And I'm paraphrasing
13 Mr. Fishman. I think you asked what was the
14 solution.

15 MR. FISHMAN: Suggestion of what
16 we are looking for. Assuming we conclude that
17 the system is less than perfect, what do we do
18 about it.

19 MR. STEVEN HERNANDEZ: I don't
20 think that -- honestly, I think the solution is
21 a statutory fix. Because our courts are set up,
22 via, you know, statutorily. I believe they
23 might even be constitutional. And therefore
24 they need a fix, a solid fix. I think, the
25 ultimate solution, if not tenure, is removal of

1 the relationship of the municipal court judge
2 from the local towns. That the towns do not
3 appoint. The local mayors do not appoint the
4 judges. It removes that relationship
5 completely.

6 MR. FISHMAN: Who would fill that?

7 MR. STEVEN HERNANDEZ: I don't
8 know. I thought maybe -- I think I was sharing
9 this idea with some people. Maybe the
10 assignment judge for the county. Maybe the AJ.
11 Maybe you put in your job, your application for
12 judge, and the AJ is the one who interviews you.
13 Here is a good example, Mr. Fishman. There is
14 an attorney who I'm hoping will come and speak.
15 He applied for a job in Newton. I believe
16 that's the county seat of Sussex. And he said
17 sitting in that interview, besides the mayor and
18 its committee members, was the chief of police.
19 And so, I think in order for there to be a
20 good -- for them to be a fix here, again, it's
21 got to come from the legislature, and it's got
22 to be something that removes the appointment of
23 judges from the local municipality.
24 Freeholders. I don't know, you know.

25 JUDGE FEINBERG: So you think that

1 the assignment judge would be the appropriate
2 person to have that responsibility? I think
3 that's a very interesting concept. It's really
4 quite innovative. And I think that really, you
5 know, sounds like a really good idea. Who else
6 do you think if the assignment judge would not
7 be that person.

8 MR. STEVEN HERNANDEZ: The reason
9 why I think the assignment judge is a good
10 choice is because once the assignment judge, you
11 know, of course he starts off as a law division
12 judge, of course. He is clearly a tenured
13 judge. He's not swayed by the politics.

14 JUDGE FEINBERG: He or she.

15 MR. STEVEN HERNANDEZ: He or she.
16 Thank you. The assignment judge is not swayed
17 by the politics, at least, anymore. The
18 Freeholders, I'm not sure that's still a good
19 fit, because it's still political. I like the
20 idea, at least, of the assignment judge having
21 some say in the decision with maybe, I don't
22 even want to say advice and consent. But maybe
23 the townships can play some role in the
24 position. I don't know. I don't know who else.
25 You know, the governor is too busy to be

1 thinking about 566 municipal courts. And
2 clearly the legislature doesn't have time to sit
3 there and vet and go through this, you know,
4 four ways, or whatever. But, you know, that's
5 another thing. But maybe locally there should
6 be, you know, four ways or other interview
7 processes. Anybody can be a municipal court
8 judge who has been, what, five years. Just
9 about anybody who has been an attorney.

10 JUDGE FEINBERG: The assignment
11 judge would have to be tenured obviously.

12 MR. STEVEN HERNANDEZ: Clearly.

13 JUDGE FEINBERG: There are some
14 assignment judges who have been appointed and
15 they have not been. Do you think it should be
16 the assignment judge, or do you think the
17 assignment judge should have a committee of
18 attorneys who practice perhaps in their county,
19 maybe the president of the county bar. Do you
20 have any concept of that?

21 MR. STEVEN HERNANDEZ: I hadn't
22 thought that far, to be honest with you. The
23 idea, though, of the assignment judge because
24 they are the ones who know those towns. They
25 are the ones who are gonna know the applicants.

1 Know their reputation. No their standing in the
2 community, as well. They are the ones who, I
3 think, at least should be overseeing this
4 decision. And, honestly, they should have some
5 kind of veto power over the selection.

6 JUDGE FEINBERG: I mean, having
7 been an assignment judge for 16 years,
8 particularly in the beginning I didn't know all
9 the players in municipal courts. So I think it
10 would be helpful to have some attorneys be part
11 of that. But it's an interesting concept.
12 There are all different ways to work that
13 concept. So I appreciate you bringing that to
14 the attention.

15 Any other comments?

16 MR. PINIZZOTTO: Not a question,
17 just a comment. Judge McGeady testified before
18 the judicial task force with his concerns about
19 municipal court and judicial independence. And
20 his suggestion was that the local officials
21 would appoint initially, but the assignment
22 judge would decide the retention. And that way
23 the municipalities actually had a little bit of
24 control. But thereafter, as assignment judges
25 do, they go out on assignments based on,

1 hopefully, the right peg in the right hole.

2 How would you feel about the
3 assignment judges deciding on retention and
4 taking it out of the hands of the municipality.

5 MR. STEVEN HERNANDEZ: I think
6 that's -- I am glad you mentioned that,
7 Mr. Pinizzotto. I think ultimately if the
8 assignment judge is gonna have a role in the
9 appointment they have to have -- they must have
10 a role in the retention of the judge. They
11 absolutely have to, because a municipality could
12 then -- if it wasn't in the assignment judge's
13 hands, then it would be easy to reappoint
14 somebody else for some period of time. Someone
15 who the township can manage. I think the total
16 point is the role of the judges has to be, I
17 think, 100 percent taken away from townships, or
18 give the townships a very limited role in who
19 becomes that town's judge.

20 MRS. UNGAR: I wondered what your
21 thoughts were about a uniform system statewide
22 to oversee the appointment of municipal court
23 judges and reappointment?

24 MR. STEVEN HERNANDEZ: I think
25 for -- I'm in favor -- I just say this. I'm in

1 favor of county municipal courts with full-time
2 judges, full-time prosecutors, and a public
3 defender office that is actually run by the
4 state public defender office for overseeing the
5 municipal court public defender. So, Barbara, I
6 have no -- I'm sorry, Mrs. Ungar.

7 MRS. UNGAR: That's fine.

8 MR. STEVEN HERNANDEZ: Well, I'm
9 calling everybody Mr. or Mrs.

10 MRS. UNGAR: We know each other
11 well.

12 MR. STEVEN HERNANDEZ: Yes. I
13 think ultimately it should be a -- if I
14 understand your question, right, it should be a
15 county, a permanent thing. And therefore,
16 again, the governor is too busy. So, the
17 assignment judge, again, would be, I think the
18 right choice to be making these decisions to
19 fill these slots. I think that's ultimately the
20 way to fix it, is eventually to have, again,
21 full-time courts, but that's a subject for
22 another time.

23 JUDGE FEINBERG: Any other
24 questions?

25 MR. STEVEN HERNANDEZ: Thank you.

1 JUDGE FEINBERG: Your comments are
2 excellent. And thank you so much for appearing.

3 MR. STEVEN HERNANDEZ: Thank you
4 for allowing me to speak.

5 JUDGE FEINBERG: Is there anyone
6 else from the audience who would like to, who
7 might have come, not thinking about testifying,
8 if we have sparked some interest here, we
9 would -- particularly those individuals who are
10 experienced in the municipal court. Any of you
11 who practice in the municipal court, even if you
12 don't have anything prepared, we would really
13 welcome if you would like to make a
14 presentation.

15 I will invite you back if you
16 would like to.

17 MR. MICHAEL SPECK: Sure.
18 Michael Speck. Hi, Judge.

19 JUDGE FEINBERG: I have a
20 question. Just in terms of since you have
21 practiced in the municipal court for so many
22 years, and you traveled the state in over maybe
23 350 courts, that's quite impressive. Do you
24 have any sense of the municipal court judges,
25 who you consider to be hard-working, good

1 municipal court judges, who have not been
2 reappointed? Do you have any sense of that? I
3 know that's very difficult, but...

4 MR. MICHAEL SPECK: Absolutely.
5 There are absolutely judges who have not been
6 appointed because they probably made decisions
7 that certain people didn't like.

8 JUDGE FEINBERG: Do you have any
9 idea of the number or the frequency of that?

10 THE WITNESS: I would say one is
11 too many, if it's a good judge. But probably,
12 not as frequently as you would expect. That's
13 the good news. I sort of like Steven's idea. I
14 thought that was interesting but I don't think
15 I'd want to be the assignment judge. Because
16 that's a lot of work. I tend to agree with you.
17 I think a committee would help. But, again, you
18 know, I don't want anybody to think that
19 municipal court judges are bad, because, listen,
20 I know some of the toughest judges I appeared in
21 front of some of the toughest decisions. I mean
22 because they had the courage of their
23 convictions, and they weren't afraid of the
24 local police department, you know. And, I mean,
25 tough people that, you know, put us through a

1 wringer. I don't always agree with the judge in
2 the way they dealt with it. So I don't want
3 people to think I'm just against municipal court
4 judges. I think there has been a natural
5 progression over my career, when there is much
6 less of an independence between the police, the
7 politicians and the judge. Not corruption,
8 because that's too strong of a word, but there
9 are good judges. There just are.

10 JUDGE FEINBERG: I just wanted to
11 follow-up. With regard to who would be on that
12 committee, if, in fact, there was a change in
13 the appointment process. And let's assume the
14 assignment judge would be part of that, who else
15 would you recommend who would be part of that?
16 What would it look like. What would the
17 committee look like?

18 MR. MICHAEL SPECK: I think
19 Mr. Fishman had an idea. The bar has to be
20 involved. I mean I am from Monmouth County. We
21 have a pretty active bar association. I think
22 that there has got to be a defense attorney or
23 two on there, that people that go into the
24 trenches and that county, there probably should
25 be a municipal prosecutor on there that go into

1 the trenches. I mean, it's really a situation
2 where I think an assignment judge should get
3 brought in. Let's face it, the more information
4 you get, the better decisions you make.

5 JUDGE FEINBERG: The county bar
6 association should recommend to the assignment
7 judge a municipal prosecutor and a municipal
8 public defender.

9 MR. MICHAEL SPECK: Subject to
10 the judge's interpretation. I think the judge
11 should have some independence on that. Let's
12 face it, sometimes the bar association is a
13 closed situation, too. Not all the lawyers are
14 in the bar association that are good lawyers.
15 But, yes, absolutely a way to do it. I give
16 Steve a lot of credit, because I hadn't thought
17 that far through it. I also tend to agree with
18 maybe you should have a town that, because, you
19 know, you got to understand the town's
20 structure. It is sort of a plumb for the town
21 to appoint prosecutors and attorneys, and this
22 stuff. And to reflect their town. I agree with
23 something that I think Mr. Goldstein said that,
24 you know, every town is somewhat different. I
25 think you should celebrate that to some extent.

1 JUDGE FEINBERG: You mean
2 Mr. Garfinkle.

3 MR. MICHAEL SPECK: Mr.
4 Garfinkle. That's why when Judge Zinna said,
5 you know, maybe four or five courts. I wouldn't
6 go as far as Steve. I don't want broad brushes
7 because I think the towns have individual
8 problems, especially in Monmouth County.
9 There's a huge difference.

10 JUDGE FEINBERG: Let me ask you
11 this. Do you think, I know there was a
12 suggestion about taking over the prosecutor and
13 the public defender. Do you think rather than
14 taking that approach, making changes with regard
15 to how judges are appointed and give the town
16 the ability to pick their prosecutor and their
17 public defender?

18 MR. MICHAEL SPECK: In my
19 experience on the whole with prosecutors, and I
20 come from the day when my first court in New
21 Jersey was Judge Smith. I don't know if you
22 remember.

23 JUDGE GOLDMAN: Allentown? Well,
24 he was all over.

25 MR. MICHAEL SPECK: He was all

1 over. But he was in Holmdel.

2 JUDGE GOLDMAN: He was my
3 predecessor in Allentown. He had been there for
4 29 years.

5 MR. MICHAEL SPECK: I walked into
6 the back room where he sort of had court, and
7 there were a bunch of lawyers. And he said,
8 You, I got too many sitting in jail and it's
9 your job to get them out today. And they were
10 both charged with DWI. I was welcomed to the
11 municipal court.

12 But to answer your question, I
13 agree. I think the prosecutors and public
14 defenders, I respectfully disagree with it. I
15 think it should be local lawyers, because I
16 think local lawyers are tuned into the problems.
17 Because one town has a different issue than the
18 other towns. They just do. Because I was once
19 asked in an interview, you know, Would you help
20 us with the bad landlords. I said, Well, I
21 think that's more of a police prosecutor job,
22 but I certainly, if the cases were brought to
23 me, I certainly would rule on them. I wouldn't
24 be afraid to do that. So, my opinion is, keep
25 that local.

1 JUDGE FEINBERG: So your process
2 would be selection by the assignment judge and
3 members of the committee to be appointed, and
4 public defenders and prosecutors would be
5 appointed by the township?

6 MR. MICHAEL SPECK: I mean, other
7 than hearing Steve's suggestion off the top of
8 my head, it's certainly something that would
9 help. I think Judge Goldman had a question.

10 JUDGE GOLDMAN: I just wanted to
11 follow up on something that you said. I think,
12 in a few different ways, and Judge Feinberg
13 followed up on it to some extent. But you said
14 that you thought there was a lot of pressure
15 placed on judges by police departments and
16 police officers who would work to get rid of
17 judges.

18 Now, I'm assuming that this is
19 information that has come to you, based on
20 scuttlebutt, what have you, you have heard that
21 maybe a decision was made and police were
22 unhappy and worked to get the judge unappointed.
23 I guess I wanted to ask about the source of your
24 information, how often you heard it. And if you
25 also heard of police departments, or even state

1 police who might go elsewhere with their charges
2 and arrests, and what have you, as a result of
3 decision the judge made.

4 MR. MICHAEL SPECK: I will be
5 very blunt. There would be a certain town in
6 Middlesex County where the troopers -- back in
7 those days I was representing a lot of troopers,
8 who absolutely would go on down the Parkway,
9 because they didn't want to stop the person in a
10 certain town. So, yes, that happens. There is
11 no doubt about it.

12 And now I again, my experience of
13 law enforcement state troopers are probably some
14 of the best trained law enforcement we have in
15 the state. I have dealt with -- I have
16 represented a lot of police officers. I don't
17 have anything against police. But I do have a
18 thing against politics having a place in
19 appointing judges in such a closed environment.
20 I mean statewide it's a little different than
21 that one little municipality where, you know,
22 people -- the town I, sort of, grew up in, or
23 lived in, we used to call it rankle town because
24 it was so crazy, the politics. And I just don't
25 think the police officers should have a say in

1 the judge. I really don't. It's not a good
2 idea to have police have a say in the judge.

3 JUDGE GOLDMAN: But your
4 experience is, you have heard that they have.
5 Is that what you're telling us?

6 MR. MICHAEL SPECK: I know for a
7 fact they have.

8 MR. PINIZZOTTO: You mentioned
9 prosecutors, and J.H. Barr is about to take my
10 head off, but you and I have traveled similar
11 paths, just in North Jersey versus South. Do
12 you believe that municipal prosecutors should be
13 subject to the Supplemental Code of Ethics?

14 MR. MICHAEL SPECK: Oh, yeah.

15 MR. PINIZZOTTO: That other
16 prosecutors are? Do you see that as a problem
17 within our municipal courts?

18 MR. MICHAEL SPECK: I gotta tell
19 you, I don't have -- municipal prosecutors,
20 really, truly, I think, do a good job. Now,
21 they also have tough jobs. And I have dealt
22 with some municipal prosecutors that I don't
23 always agree with, but some of the people here
24 know Michael Richmond, who writes one of the
25 books. Michael Richmond was a prosecutor in

1 Middlesex County. Some people didn't like him.
2 I respected him because he wasn't afraid to try
3 a case. And if I beat him, he shook my hand. I
4 mean, and didn't get mad at me, didn't, you
5 know, treat me any differently.

6 If there is anything that I would
7 be concerned about with a municipal prosecutor,
8 same thing I'd be concerned with a local police
9 officer, sometimes tempers get a little bit
10 frayed in trials. And I don't want my next
11 client to be treated wrongly because -- and I'm
12 not saying it about John, but because by somehow
13 I messed up the prosecutor's name, because I
14 tried a case. That's the only concern I have.
15 But when Mr. Butler, and I know Judge Lawson
16 knows this. When Mr. Butler stood up in front
17 of a courtroom full of people in a very, very
18 big case, and went to the supreme court, not
19 once but twice, we brought experts in from all
20 over the world on that case. And said that my
21 job is to see that justice is done, not to seek
22 convictions. That's the main rule of the
23 prosecutor. Sometimes they forget. But that's,
24 guess what, that's our job, to point it out as
25 defense attorneys.

1 JUDGE FEINBERG: Thank you.

2 Anyone else? Thank you, very much.

3 MR. MICHAEL SPECK: Thank you
4 very much.

5 JUDGE FEINBERG: It is 4:30, so it
6 is time to close the hearing. I do want to
7 thank everyone for coming and testifying. I
8 will tell you that if the public hearings, the
9 next three, are as thoughtful and productive as
10 the testimony that you have given here today, we
11 will have quite a bit of information to
12 hopefully make some very good recommendations.
13 So, thank you very, very much.

14 MRS. UNGAR: I just wanted to take
15 an opportunity, first of all, to recognize our
16 bar president who is present with us today in
17 the hearing and his encouragement to create this
18 subcommittee. We will be holding the next
19 public hearing May 2nd at Rowan University in
20 Glassboro. We will have the same subcommittee
21 there. I would encourage all of you who have
22 colleagues down in Glassboro, New Jersey to have
23 them come and appear with us. If they want to
24 testify, they can let Kate Coscarelli know, and
25 she is present in the back. I wanted to thank

1 her and Sharon Balsamo for their work in
2 assisting us in this process.

3 We will also be having hearings
4 down in Atlantic City. We have a municipal
5 court practice session track of CLE scheduled
6 that day at the annual meeting, and at the
7 conclusion of the bench bar conference May 19th,
8 we will be holding the continuation of these
9 public hearings in Atlantic City at the Borgata.
10 And our final public hearing will be held on
11 June 2nd in Seton Hall University Law School in
12 Newark, where there is parking nearby.

13 So, I would encourage all of you
14 to let others know, we are interested in hearing
15 from not only practitioners but judges, retired
16 judges, presiding judges, municipal court
17 judges, folks that are involved in the AOC and
18 the courts, as well as members of the public.

19 So, I would encourage anybody who
20 knows anyone who is interested in testifying to
21 take this rare opportunity to testify before the
22 subcommittee so we can gather as much
23 information as we can to put together ultimately
24 a report that will go through the municipal
25 court practice section to ultimately the state

1 bar to consider.

2 And I thank you all for joining us
3 today, and we will be holding other hearings.

4 MR. STEVEN HERNANDEZ: Would
5 there be a chance to get a copy of the
6 transcripts from the hearing?

7 MRS. UNGAR: I will find out.

8 MR. STEVEN HERNANDEZ: Will it be
9 posted online, maybe?

10 MRS. UNGAR: I will find out from
11 the bar and I will post it on the section on
12 community networking.

13 MR. STEVEN HERNANDEZ: Thank you.

14 (Whereupon, the proceedings were
15 concluded at 4:35 p.m.)

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C E R T I F I C A T E

I, DONNA M. TRASENTE, a Certified Court Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the stenographic notes as taken by and before me, on the date and place hereinbefore set forth.

DONNA M. TRASENTE, C.C.R.
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