

1 BEFORE THE NEW YORK STATE SENATE  
2 STANDING COMMITTEE ON CODES

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3 PUBLIC HEARING

4 IMPLEMENTATION OF DISCOVERY REFORM

5 (S1509 - PART LLL)

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7 Van Buren Hearing Room A  
8 Legislative Office Building, 2nd Floor  
9 Albany, New York

10 Date: October 28, 2019  
11 Time: 10:00 a.m.

12 PRESIDING:

13 Senator Jamaal T. Bailey  
14 Chair

15 PRESENT:

16 Senator Daphne Jordan  
17 Senator Thomas F. O'Mara  
18 Senator Susan J. Serino

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| 4  | Casandra Walker                    |      |           |
| 5  | Capital Region/North Country       |      |           |
| 6  | Regional Director,                 |      |           |
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Shane Hug 275 297  
Criminal Defense Attorney  
Capital District  
(formerly of the Rensselaer County  
DA's Office)

Andrew Correia 275 297  
Public Defender  
Wayne County

George Lamarche 275 297  
Attorney  
Albany County

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1 SENATOR BAILEY: Good morning, everyone.

2 I'm state Senator Jamaal Bailey. I'm the  
3 Chair of the Committee on Codes.

4 And today is Monday, October 28, 2019.

5 We are here in an Legis -- in LOB in Hearing  
6 Room A for our second hearing on the implementation  
7 of the discovery reform that was in Part LLL of this  
8 year's -- this year's enacted budget.

9 This is the second hearing.

10 Again, we had a hearing on, I believe,  
11 September 9th, at 250 Broadway.

12 But I want to make sure that we -- because  
13 the laws that we pass are statewide, and they're not  
14 just downstate, we wanted to make sure we had one in  
15 the Capital Region here in Albany.

16 So I -- I'm glad that I've been joined by  
17 many of my colleagues from what some consider to be  
18 upstate. And depending on what region you're in,  
19 I don't want to be -- I don't want to be incorrect,  
20 but, to my right I have Senators (sic) Daphne Jordan  
21 from this immediate region, Senator Tom O'Mara from  
22 a little further up, and Senator Sue Serino from a  
23 little further down.

24 And I -- and I would like to ask them, if  
25 you -- do you have any opening remark that you'd

1       like to make prior to the commencement of the  
2       hearing?

3                SENATOR JORDAN:  I do.

4                Thank you, Senator Bailey.

5                And thank you to my colleagues that are here  
6       today.

7                And most importantly, thank you to the panels  
8       that are here to testify because their input is very  
9       important.

10               As has been done since January of this year,  
11       irresponsible legislation has been passed time and  
12       time again.

13               The Legislature saw many bills passed  
14       hurriedly, resulting in new major policy for the  
15       state, only to come back again to be voted in an  
16       amended form.

17               There are 22 minority senators that  
18       consistently raised issues, had press conferences,  
19       and offered real solutions to these problematic  
20       bills, all to no avail.

21               So here we are, months after the vote for the  
22       bail-reform package that was stuffed into the  
23       budget, only two months away from when the reforms  
24       are to start, and only now having public hearings on  
25       the package.

1 This is really backwards and irresponsible.

2 22 senators voiced varied concerns being  
3 discussed in these hearings before the majorities of  
4 both the Senate and the Assembly and the Governor  
5 pushed these reforms through.

6 Today this hearing focuses on discovery  
7 reform. Major concerns have to be discussed.

8 I hear these concerns from our district  
9 attorneys, town justices, law enforcement officers,  
10 and the public at large, who want to know that they  
11 are protected from those that commit crimes.

12 Some of these concerns are:

13 Prematurely exposing the identity of  
14 witnesses could result in an increase in harassment,  
15 intimidation, and violence.

16 Discovery within 15 days of arraignment is a  
17 very narrow time frame, especially in cases where  
18 prosecutors are dealing with multiple police  
19 agencies.

20 The defendant will have access to the crime  
21 scene.

22 How are these visits going to be supervised?

23 Cost of all this?

24 DAs' offices and town justices -- town  
25 justice offices need more resources to come in

1 compliance with these reforms.

2 Who is paying for all of this?

3 It's my hope, at the very least, that the --  
4 that the discovery reforms are fine-tuned to answer  
5 these concerns.

6 My real hope is that the entire Legislature  
7 wake up and realize that crime victims should be  
8 protected, and coddling criminals is not in line  
9 with public safety.

10 And, therefore, I would hope that the entire  
11 package would be repealed.

12 But thank you, and I look forward to today's  
13 testimony.

14 SENATOR BAILEY: Thank you, Senator Jordan.

15 Senator O'Mara, Senator Serino?

16 SENATOR O'MARA: Yes.

17 Thank you, Senator Bailey, for having this  
18 hearing today.

19 I'd just like to provide a couple opening  
20 remarks for those that weren't in attendance or  
21 able to watch the first hearing on this issue in  
22 New York City.

23 I'm just going to paraphrase -- not  
24 paraphrase, but take portions of testimony from  
25 New York County District Attorney's of -- District



1 Attorney Cy Vance testifying.

2 I would note that, when I started my legal  
3 career in 1991, I started as an assistant DA in  
4 Manhattan.

5 And I could tell you that, knowing Cy Vance  
6 in that office, it is not an office that is of  
7 "let's lock them up as much as we can and throw away  
8 the key."

9 DA Vance testified that:

10 "Everyone wants the fairest criminal justice  
11 system possible for your constituents.

12 "For these reforms to be successful, district  
13 attorneys' offices need access to the resources  
14 necessary to implement these changes, resources that  
15 far exceed what they presently have.

16 "Providing the discoverable materials, such  
17 as, victims' names and witnesses; thousands of text  
18 messages; medical recordings, X-rays, and other  
19 imaging; insurance records; financial records;  
20 historical cell-site data; search warrants for  
21 computers, cell phones, photographs, surveillance  
22 videos from private businesses, police units, body  
23 cameras, transcript of various proceedings,  
24 recordings from police body cameras; and many other  
25 sources of evidence.

1           "Currently in Manhattan, in the New York  
2 County DA's Office, more than 97 percent of cases  
3 are resolved by guilty pleas.

4           "The change in this discovery rule being  
5 mandated," according to the District Attorney Vance,  
6 "constitutes a seismic shift in the demands placed  
7 upon prosecutors, one that would render it  
8 impossible to comply without an increase in  
9 resources.

10           "Full discovery will increase in  
11 approximately 32,000 additional cases annually just  
12 in New York County.

13           "New York County estimates that they will  
14 need an increase in personnel and technology  
15 resources, amounting to well over \$20 million each  
16 year."

17           DA Vance states that, "The most efficient  
18 and, indeed, perhaps the only practical way for our  
19 offices to meet these demands, is to create an  
20 e-discovery platform that will allow us to promptly  
21 deliver discoverable materials to the defense."

22           Further he goes on:

23           "We must also ensure witness safety and the  
24 cooperation of witnesses.

25           "This change is a change that, undoubtedly,

1 will dissuade witnesses who live in all  
2 neighborhoods from reporting crime or agreeing to  
3 testify as witnesses.

4 "Without adequate resources, we simply will  
5 not be able to comply with this."

6 And another of our more progressive counties  
7 in state, from the Brooklyn County District  
8 Attorney, Eric Gonzalez, at the September hearing:

9 "It remains clear to us, that despite our  
10 diligent good-faith efforts, we simply do not have  
11 the necessary resources to fully and effectively  
12 comply with the new law's mandates.

13 "We will be required to provide discovery in  
14 thousands more cases than we currently do.

15 "We need the resources to implement it.

16 "We know that we do not currently have the  
17 human resources or the technical capabilities to  
18 fully comply with the law.

19 "We will need additional funding for:

20 "Additional paralegals and attorneys who will  
21 be needed to handle the discovery in thousands more  
22 chases;

23 "Technology experts to download, process, and  
24 review thousands of hours of electronic recordings,  
25 including police body-worn camera footage;

1 "Investigators and analysts to review  
2 financial documents and other complex materials;

3 "Victim advocates and interpreters to work  
4 with victims and witnesses whose contact information  
5 must be turned over;

6 "And grand jury reporters to turn over the  
7 grand jury minutes much more quickly in  
8 substantially more cases.

9 "And with the additional staff, there comes  
10 for the need for more physical space in our office  
11 building, and more computers and other supplies, for  
12 the new employees.

13 "Any new legislation must provide meaningful  
14 protection for victims and witnesses, and not create  
15 a chilling effect on their willingness to testify in  
16 prosecutions.

17 "Again, we need a secure online portal  
18 through which the defense may contact witnesses in a  
19 manner that does not reveal their personal  
20 identifying information."

21 That's just from two of our largest district  
22 attorneys' offices in the state, with considerable  
23 resources and staffs at the present time.

24 Having worked in the Manhattan DA's Office,  
25 I know that full well.

1 Further, in my career, I went on to be an  
2 assistant district attorney in Chemung County, and  
3 the district attorney of Chemung County, a much  
4 smaller office, with much smaller resources that  
5 will be stretched beyond limits.

6 In most -- I would say every county in this  
7 state cannot possibly meet these demands within a  
8 15-day requirement period.

9 So I'm hopeful that some changes do come out  
10 of these hearings we're having.

11 And again I thank you, Senator Bailey, for  
12 having these hearings.

13 SENATOR BAILEY: Thanks, Senator O'Mara.

14 Senator Serino.

15 SENATOR SERINO: ((Microphone off.))

16 Yes.

17 Good morning, and thank you, Senator Bailey.

18 My name is Senator Sue Serino --

19 Is that on?

20 SENATOR BAILEY: Turn the microphone on.

21 SENATOR SERINO: Oh, sorry.

22 SENATOR O'MARA: Yeah, it's on.

23 SENATOR SERINO: (Microphone on.)

24 Okay. Sorry about that.

25 And once again, thank you, Senator Bailey.

1           My name is Senator Sue Serino, and  
2           I represent the 41st Senate District, which covers  
3           most of Dutchess County and part of Putnam County.

4           And I'm here today because many members of  
5           the law enforcement and legal community have  
6           expressed grave and sincere concerns to me regarding  
7           this new law.

8           While we wish more in-depth hearings like  
9           this were held before such a significant piece of  
10          legislation was passed, I'm glad we are here today  
11          so that these concerns are entered into the record.

12          It is my hope that the voices of those who  
13          have to deal with these cases each and every day are  
14          truly heard and their concerns are effectively  
15          addressed, because I'm sure we can all agree that,  
16          while reform is important, our top priority needs to  
17          be public safety.

18          I'd like to once again thank you,  
19          Senator Bailey. I know that you have worked very  
20          hard on these issues.

21          And I'd like to thank the witnesses, most of  
22          all, because I know what a feat this is to be here  
23          today with your very busy schedules.

24          Thank you.

25          SENATOR BAILEY: Thank you, Senator Serino.

1           And -- and, again, there -- there is no  
2           secret in this room that I disagree with my  
3           colleagues, but I respect them greatly. And  
4           I really appreciate them taking the time out of what  
5           is a really busy off-session month in their  
6           respective districts to come down here and ensure  
7           that -- that they are playing a role in -- in -- in  
8           shaping policy.

9           So to my colleagues, I -- I -- I thank you  
10          for coming here and -- and -- and expressing your  
11          opinions.

12          And, again, we -- we may agree to disagree in  
13          substance, but the dialogue is always appreciated  
14          and -- and expected.

15          So some -- some ground rules for the -- for  
16          the testimony.

17          And -- and -- and I would ask that, because  
18          we have -- I assume that we're going to have some --  
19          some question-and-answer period, that -- that if we  
20          can do our best to not read from the testimony, if  
21          we could, I guess, distill our testimony into a  
22          5-minute period, and allow the greater time to be --  
23          to have conversations about your testimony, a  
24          5-limit minute (sic) for each question -- not  
25          each -- each participant, not per panel.

1           So each individual that is testifying will  
2           have 5 minutes to testify, followed by a 10-minute  
3           Q&A period.

4           We can be -- sometimes we can be flexible  
5           with the time, but I'd ask that -- that we also  
6           be -- be mindful of the time.

7           Also, please keep our comments ger -- germane  
8           to discovery.

9           I see conversations and written testimony  
10          about bail.

11          This is a discussion on discovery.

12          I would like for us to dis -- to discuss  
13          discovery, because there is enough to speak about  
14          with just discovery reform.

15          With that being said, I want to thank again  
16          my colleagues for -- for coming.

17          I want to mention, the -- the -- the ranking  
18          member of the Codes Committee, Senator Andrew Lanza,  
19          who is not present, but I know his chief of staff,  
20          John, is. And I wanted to thank him for -- for --  
21          for sending him.

22          And with that being said, our first witness  
23          will be Ms. Kate Powers from the New York State  
24          Office of the Attorney General.

25          DA KATE POWERS: Good morning.



1           My name is Kate Powers, and I'm joined by  
2           Cassandra Walker, from -- also from the office of  
3           the Attorney General, Leticia James.

4           Thank you, Chairman Bailey, and members of  
5           the Senate Codes Committee, for the opportunity to  
6           speak before you today.

7           This Senate came into office in 2019 with a  
8           mandate to finally undertake long-stalled steps to  
9           mend our broken criminal justice system.

10          You more than fulfilled that charge, passing  
11          landmark reforms, from the elimination of cash bail  
12          in the majority of cases, to sweeping criminal  
13          discovery reform.

14          The Attorney General applauds that work,  
15          and thanks you for bringing us together for what  
16          we hope will be a productive discussion about  
17          implementation.

18          The Attorney General is aware that a number  
19          of district attorneys, as well as law enforcement  
20          and defense organizations, have come before you, and  
21          will continue to come before you today, to request  
22          significant funding increases.

23          Our office is providing testimony today to  
24          say that we strongly support these requests, and  
25          urge you to account for these needs in the coming

1 2020 budget.

2           Throughout her career, the Attorney General  
3 has fought for measures to build trust between  
4 law enforcement and the communities they serve.

5           She believes the vast majority of police  
6 officers and prosecutors are dedicated public  
7 servants who seek only to achieve the just result.

8           But when systemic flaws continue to lead to  
9 unjust outcomes, even in instances where everyone  
10 operated with the best of intentions, it means we  
11 must change the system.

12           Our criminal-discovery regime was one of the  
13 most glaring such flaws.

14           Until this past year, New York State had the  
15 distinction of being one -- only one of a handful of  
16 states with a "Blindfold Law," which allowed  
17 prosecutors to withhold key evidence until the very  
18 eve of a trial.

19           Even if many prosecutors' offices did not  
20 take full advantage of this legal "blindfold," it is  
21 unacceptable that this sort of evidence withholding  
22 was permissible under the laws of this state.

23           Moreover, it does not require malice or  
24 pushing discovery delays to the limit to bring about  
25 an unjust result.

1 Failure to provide sufficient information  
2 before accepting a guilty plea is often enough to  
3 create a miscarriage of justice.

4 For callous individuals caught up in the  
5 justice system, therefore, reforming criminal  
6 discovery could mean the difference between liberty  
7 and confinement, wrongful conviction, and the right  
8 result.

9 Just because discovery reform was the right  
10 thing to do, it does not mean its implementation  
11 will be easy.

12 Complying with the new rules will require  
13 more funding for staff, technology, and logistics.

14 We also have to support and work closely with  
15 law enforcement and accredited laboratories because  
16 they will be in possession of many of the required  
17 materials, and we'll need their help to meet the new  
18 deadlines.

19 Just as importantly, it is not just  
20 prosecutors and police that will need more funding  
21 under these reforms.

22 Public defense organizations will need to  
23 significantly expand their personnel and  
24 information-storage capacities in order to give  
25 their clients the represented -- the representation

1 they deserve under the new law.

2 We understand the negotiations over the  
3 changes were contentious, and these concerns still  
4 remain, but we share a common interest in ensuring  
5 that this law is implemented in a timely manner that  
6 is consistent with the objectives of the law.

7 Based on the experience of our office,  
8 prosecutors around this state are doing their utmost  
9 to meet its obligations however difficult the  
10 challenge is.

11 But the challenges of compliance are real for  
12 smaller offices with only a handful of attorneys for  
13 an entire county. Complying with this law really  
14 may require doubling their support staff.

15 For the largest offices with the biggest and  
16 most complex caseloads, compliance really may mean  
17 investment in the double-digit millions.

18 It is also likely that storage costs will  
19 compound in the coming years, as materials will need  
20 to be kept long after a trial is over.

21 Each office has thought carefully about its  
22 own needs and capacity, and we urge you to work with  
23 them to ensure that adequate funding is provided in  
24 this year's budget, and going for -- forward.

25 The office of the attorney general does not

1 have a criminal caseload comparable to those found  
2 in New York's larger counties, nor are our  
3 challenges with initial compliance under the status  
4 quo as daunting as those faced by less-populous  
5 understaffed counties. But even our office will  
6 need a significant infusion of resources in order to  
7 do justice to this new law.

8 We will likely need to hire approximately  
9 20 new staff members, and make an immediate outlay  
10 of 500,000 to meet our e-discovery needs, followed  
11 by 9.7 million in investments in the coming years.

12 While we have common concerns and common  
13 goals, the needs of each office are unique.

14 For instance, while the volume of our cases  
15 is not large, many of them are white-color  
16 prosecutions with large records and significant  
17 storage requirements.

18 Many of the cases undertaken by our  
19 organized-crime task force come from long-term  
20 investigations, involving wiretaps and video  
21 surveillance, which require massive amounts of data  
22 storage to keep and transmit.

23 Every office will have its own specific  
24 needs, and it is vitally important to ensure every  
25 office be given voice to these needs.

1           New York has an opportunity to demonstrate  
2           that these reforms, and progressive prosecution,  
3           more generally, deliver justice while preserving law  
4           and order.

5           Passing these laws was the first step in the  
6           process.

7           The next step is for us to all work  
8           together -- the Legislature, Executive, prosecutors,  
9           public defenders, and the rest of us who play a part  
10          in the criminal justice system -- to ensure that the  
11          resources -- we have the resources we need to  
12          properly implement these reforms.

13          Thank you again.

14          I'm happy to take questions and take the  
15          questions back.

16          I will not able to respond to questions this  
17          morning, but I could take them back, and we would  
18          promptly get back to you.

19          SENATOR BAILEY: Sure.

20          So the -- the -- well, first and foremost,  
21          thank you for your testimony.

22          The first question that I would have would  
23          be, I guess, is just stating something that --  
24          that's in your testimony.

25          So Attorney General James and the office is

1 in favor of the reform, but there are concerns of  
2 implementation.

3 So there are no concerns with the sentiment  
4 of the reform; that this was the right thing to do  
5 in the eyes of the attorney general.

6 Would that be something that I would be  
7 correct in stating?

8 DA KATE POWERS: That is correct.

9 SENATOR BAILEY: Okay.

10 But there are concerns about implementation?

11 DA KATE POWERS: That's correct.

12 SENATOR BAILEY: Okay. So -- and I -- and  
13 I -- and I thank you for that, because these  
14 hearings were born out of conversations that  
15 happened, that the criminal justice roundtables that  
16 I hold in my district office.

17 And Attorney General James came to one of my  
18 district attorney -- took -- came -- came there,  
19 along with District Attorney Darcel Clark and  
20 District Attorney Anthony Scarpino.

21 And there were conversations about concerns  
22 concerning implementation; that, reform was passed,  
23 but we have concerns -- concerns about  
24 implementation.

25 So those are the reasons that are born out

1       them.

2               So I just wanted to thank Attorney  
3       General James for coming to the roundtables and for  
4       voicing this prior to today's date.

5               So, I don't have anything further because  
6       that -- that's kind of all I have.

7               Do any of my colleagues have questions for  
8       Ms. Powers?

9               Seeing none -- oh, Senator O'Mara.

10              SENATOR O'MARA: Thank you for being here  
11       with us this morning.

12              You mentioned that you would need an initial  
13       immediate outlay of a half a million dollars to meet  
14       your e-discovery needs.

15              Can you describe what e-discovery you  
16       currently have in place at the AG's office, and what  
17       more you need to do to comply with this legislation?

18              DA KATE POWERS: I'd be happy to get back to  
19       you with an answer to that.

20              SENATOR O'MARA: Your testimony fails to  
21       discuss any aspects of disclosure of witnesses'  
22       names, identifications.

23              What is the Attorney General's position, and  
24       any concerns over witness intimidation that will  
25       result from the early release of this information?



1 DA KATE POWERS: Again, I'm happy to get back  
2 to you.

3 I'm not the substantive expert in our office.  
4 And we'd be happy to provide you with a  
5 prompt response to your questions.

6 SENATOR O'MARA: Okay.

7 Can you explain to us why Attorney  
8 General James did not send someone here today  
9 with substantive knowledge of the Attorney General's  
10 position on these issues?

11 DA KATE POWERS: I'm sorry, Senator. I was  
12 available to testify, and she did want to make sure.

13 This is a very important issue to her, and,  
14 you know, she did want to send somebody.

15 And, again, we will promptly respond to your  
16 questions.

17 SENATOR O'MARA: And she didn't have anybody  
18 with substantive knowledge of this issue to send  
19 today?

20 DA KATE POWERS: I'm sorry, Senator. I was  
21 available.

22 SENATOR O'MARA: Thank you.

23 SENATOR BAILEY: Senator Serino.

24 SENATOR SERINO: None at this time.

25 SENATOR BAILEY: Seeing nothing further,

1 I thank you for your Ms. -- for your testimony,  
2 Ms. Powers.

3 DA KATE POWERS: Thank you.

4 SENATOR BAILEY: The next panel will be the  
5 panel of district attorneys:

6 Mr. David Hoovler, the DA of Orange County,  
7 and also the president of the District Attorney  
8 Association of the State of New York;

9 Mr. David Soars, the Albany County District  
10 Attorney;

11 Ms. Mary Pat Donnelly, the Rensselaer County  
12 District Attorney;

13 Mr. Anthony Jordan, the Washington County  
14 District Attorney;

15 Ms. Kristyna Mills, Jefferson County District  
16 Attorney;

17 Weeden Wetmore, Chemung County --

18 Is that right, Mr. -- Senator O'Mara?

19 SENATOR O'MARA: Chemung, yes.

20 SENATOR BAILEY: -- Chemung County District  
21 Attorney;

22 And, Patrick Perfetti, Cortland County  
23 District Attorney.

24 I have no preference in the -- in the -- in  
25 the order that you are testifying, but just prior to

1 your testimony, if you would indicate who you are  
2 for the record before you commence testimony.

3 And -- and -- and I thank you all for taking  
4 time out of your incredibly busy schedules to come  
5 up here and testify.

6 DA DAVID HOOVLER: Good morning, Senators.

7 Good morning, Senator Bailey.

8 Thank you again for giving us the opportunity  
9 to be here.

10 My name is David Hoovler. I'm the district  
11 attorney of Orange County, and also the president of  
12 the District Attorneys Association.

13 I'll be very brief, since I've already  
14 appeared in front of the Committee earlier at the  
15 first hearing in New York City last month.

16 Today we are here, and you'll be hearing from  
17 some of my upstate colleagues, about how these laws  
18 will impact our offices.

19 Many district attorneys who are here today  
20 are from smaller counties, and from counties with  
21 fiscal and budget situations that may not be as  
22 strong as some of our downstate colleagues.

23 In upcoming months, I urge you to continue  
24 these conversations so we can all work together to  
25 help find solutions that will allow these new laws

1 to be successful for our entire state.

2 As I have previously stated, I believe these  
3 reforms are well-intentioned, well-meaning, and were  
4 needed.

5 After the last hearing, I conveyed a  
6 discovery summit, and invited the district attorneys  
7 from small and midsize counties north of New York  
8 City.

9 I wanted these prosecutors to be able to  
10 share ideas and exchange information and concerns  
11 with each other.

12 We had a frank and purposeful discussion  
13 about how these laws will impact our counties,  
14 particularly the upstate counties.

15 Every single office in attendance is  
16 concerned about the implementation of these laws by  
17 their police departments, as well as the New York  
18 State Police.

19 Most offices were concerned with workflow and  
20 compliance by laboratories.

21 We are also extremely concerned about how to  
22 prosecute Vehicle and Traffic Law infractions with  
23 the new discovery requirements related to these  
24 cases.

25 Under the new law, all discovery relating to

1 a Vehicle and Traffic Law case will have to be  
2 turned over within 15 days.

3 This includes 911 calls, police radio  
4 transmission, police reports, body-worn cameras, and  
5 other items that relate to a simpic -- simple  
6 traffic stop.

7 I cannot stress enough how the process of  
8 obtaining and preparing discovery for exchange is  
9 extremely labor-intensive.

10 Smaller offices with fewer ADAs and  
11 investigators will be at a significant disadvantage.

12 And in some offices, even these tasks are  
13 delegated to the local towns and villages who employ  
14 their own lawyers.

15 To begin to even try to comply with these  
16 laws will require a completely new process and  
17 management staff.

18 I learned that governments of many smaller  
19 counties do not have the resources to adequately  
20 fund the requests that are being made by local  
21 district attorneys.

22 I can assure you that all of our offices are  
23 doing our best to prepare and carry out these laws  
24 best we can.

25 After these discussions, I am not confident

1 our offices will be anywhere near being adequately  
2 funded.

3 As we've been doing all along, prosecutors  
4 will continue to engage in careful planning because  
5 we know we will ultimately be responsible for  
6 carrying out these laws.

7 However, many of our upstate offices feel  
8 like our state government is not listening.

9 I just recently read, New York City received  
10 \$391 million to implement -- to implement criminal  
11 justice reforms.

12 I can tell you, in my county, I will not get  
13 anything close to that, and every dime that I get in  
14 my county will be a fight.

15 We are concerned about the state labs that  
16 are already at capacity, and whether they will be  
17 able to expand and test more evidence more quickly  
18 and in more cases.

19 My colleagues are concerned about how they  
20 will review and redact body-worn camera footage.

21 They are concerned about how they will obtain  
22 documents in a timely manner from multiple police  
23 departments in different formats, and how they will  
24 provide this information to defense attorneys.

25 My fellow prosecutors are faced with the

1 important task of keeping victims and witnesses safe  
2 under the new laws that will disclose their names  
3 and addresses much -- much earlier in a case.

4 Many residents in these small counties have  
5 already voiced their concerns about victim safety.

6 There is a real need for funding for  
7 pre-trial services outside of New York City, such as  
8 in my county, Orange County, only 70 miles from New  
9 York City, that has virtually no pre-trial services  
10 available, such as pre-arraignment diversion.

11 Please listen carefully to my fellow  
12 prosecutors here today, and try to get a really good  
13 picture of how these laws will play out in the  
14 smaller counties.

15 The ultimate success of these laws depend on  
16 prosecutors being able to comply with them.

17 We are asking for help; we are asking for  
18 help for our local governments from you and the  
19 Governor.

20 I ask that you look carefully at what we are  
21 presenting.

22 Thank you.

23 SENATOR BAILEY: Thank you, David.

24 And also to my -- to my colleagues, the way  
25 that we're -- we've been running hearings, and

1 I think we're going to stick to the format, we are  
2 going to permit all of the panelists to testify  
3 prior to your question-asking.

4 So I just want -- I would just ask you to  
5 hold your questions for each individual as we come  
6 to a -- the question-answer period.

7 Thank you, David, for your testimony.

8 Whoever is next, please just say -- you know,  
9 please step on up, and just indicate who you are  
10 prior to your testimony.

11 Thank you again.

12 DA WEEDEN WETMORE: Good morning.

13 I'm Weeden Wetmore, the Chemung County  
14 District Attorney.

15 The role of a prosecutor is to seek justice,  
16 to do the right thing.

17 The new discovery laws, although obviously  
18 passed with the good intentions of leveling the  
19 playing field for the accused, will, because of  
20 their broad application to all charges filed, and  
21 because of the short time constraints, divert  
22 district attorneys and their assistants from seeking  
23 justice, to seeking discovery materials.

24 I have worked as a prosecutor in the district  
25 attorney's office for over 31 years; 20 years as a



1 full- or part-time assistant district attorney, and  
2 now almost 12 years as the elected district  
3 attorney.

4 I have seven full-time and three part-time  
5 assistant DAs on my legal staff.

6 We appear daily in Chemung County Court  
7 before two county court judges and in Elmira City  
8 Court before two city court judges.

9 The assistant district attorneys appear  
10 weekly in 14 village and town and justice courts  
11 throughout the county.

12 We prosecute, annually, over 2,000 criminal  
13 cases, of which 25 percent start out as felonies and  
14 75 percent is misdemeanors.

15 Generally, of the more than 500 persons  
16 initially charged with felonies, we obtain  
17 indictments or superior court Informations against  
18 approximately 300 of those defendants.

19 Of those defendants indicted, many plead  
20 guilty after receiving their requested discovery  
21 materials, following motion practice.

22 Others plead guilty after challenging the  
23 admissibility of evidence at pre-trial hearings.

24 The balance of some 35 to 50 cases move to  
25 our county trial calendars, after which more

1 defendants plead guilty, and we are left with  
2 approximately 10 to 15 cases that go to trial.

3 The new discovery rules will require in all  
4 cases where felonies are charged, whether indicted  
5 or not, even more discovery than was provided in  
6 trial cases in the past.

7 Those mandated discovery materials will  
8 oftentimes include items that will be neither  
9 relevant nor material to the defense of the case.

10 For example, assume the following facts:

11 An 18-year-old defendant, with little or no  
12 criminal history, is arrested by the police in the  
13 act of committing a burglary, and he confesses.

14 Under the present discovery rules, we would  
15 resolve that case quickly and fairly, expeditiously,  
16 after providing defense counsel with a copy of  
17 defendant's confession, and offering the defendant  
18 an opportunity to plead guilty to burglary, be  
19 adjudicated a youthful offender, and sentenced to  
20 probation.

21 Undoubtedly, that plea bargain would be  
22 accepted and the case closed out quickly.

23 By contrast, under the new discovery laws, we  
24 must automatically provide within 15 days, among  
25 other materials, items such as radio transmissions,

1 whether needed by the defense or not; 911 calls,  
2 whether needed or not; grand jury transcripts of  
3 witnesses, whether needed or not.

4           Should defense counsel initially ask for a  
5 two-week adjournment for his client to consider the  
6 aforementioned plea offer, our office would still  
7 have to begin gathering all of the automatic  
8 discovery materials, as the 15-day clock is ticking,  
9 within which time we must gather those materials,  
10 and then file a certificate of compliance with the  
11 new discovery provisions, or face the risk of not  
12 being ready for trial.

13           Common sense suggests that too much time will  
14 be spent complying with the new discovery laws,  
15 whereas, such time could be spent better seeking  
16 justice in other cases requiring more attention.

17           For example:

18           An assistant district attorney in my office  
19 may wish to conduct legal research in a  
20 drug-possession case to determine whether the  
21 defendant's constitutional rights were violated, or  
22 whether the defense of agency applies;

23           In an assault case, he may wish to research  
24 the issue of self-defense under the law of the  
25 justification;

1           He may wish to consider the defense of  
2           renunciation, where the police charge a defendant  
3           with an attempt crime rather than a completed one.

4           In certain crimes involving the influence of  
5           drugs or alcohol, an assistant district attorney may  
6           wish to consider extending mercy to a defendant due  
7           to those underlying circumstances.

8           We will still expect the prosecutor in my  
9           office to perform these functions, notwithstanding  
10          the new discovery laws, but his workload will  
11          increase exponentially due to his need to comply  
12          with the automatic discovery rules.

13          In the Elmira City Court, in the town and  
14          village courts, where approximately 1500 misdemeanor  
15          charges are addressed, we presently have an  
16          open-file policy of discovery; meaning, that we  
17          generally give defense counsel access to everything  
18          in our file if and when they ask for it.

19          The exchange takes place in only  
20          approximately 30 percent of all misdemeanor cases  
21          filed, as instead, many defendants choose to plead  
22          guilty to the charge filed, or a reduced charge  
23          after receiving an accusatory instrument and  
24          supporting depositions, rather than full-blown  
25          discovery materials.

1           However, the new automatic discovery laws  
2 would require my assistant district attorneys to  
3 produce the mandated discovery materials in  
4 all 1500 misdemeanor cases within 15 days of  
5 arraignment.

6           And that's generally speaking.

7           We agree that full discovery is sometimes  
8 needed to make an informed determination before a  
9 defendant enters a plea of guilty, but, oftentimes,  
10 the automatic discovery materials may not be  
11 necessary for the defense to proceed, and, thus,  
12 never even reviewed by counsel or the defendant in  
13 the first place.

14           We have no problem in providing discovery  
15 materials when requested by the defense. But many  
16 of these defendants can make informed determination  
17 without reviewing all such discovery materials,  
18 especially where adequate counsel represents them.

19           Having to comply with the new automatic  
20 discovery provisions will not resolve the cases more  
21 fairly for a defendant, but, instead, will be more  
22 time-consuming, and will utilize the resources of my  
23 office less efficiently, as well as the resources of  
24 the court system.

25           Complying with the new discovery laws as they

1 apply to criminal cases alone will substantially add  
2 to the caseloads of attorneys in my office.

3 However, the discovery reform laws also apply  
4 to all cases where a simplified Information is  
5 filed, such as a vehicle and traffic ticket.

6 Last year there were 17,711 traffic tickets  
7 issued in Chemung County.

8 Requiring my assistant district attorneys to  
9 gather discovery materials within 15 days of  
10 arraignment on all of these tickets, and then to  
11 issue a certificate of compliance on each ticket,  
12 will be extremely burdensome.

13 Such practice would call for the issuance of  
14 over 48 certificates of compliance daily, even if my  
15 staff worked for a full 365 days a year.

16 Although the prosecution of traffic cases in  
17 2018 in just our town and village courts generated  
18 over \$2 million in revenue, of which the State share  
19 was \$1,461,473.48, I cannot envision my staff, as  
20 presently constituted, as able to comply with the  
21 new discovery laws as they apply to vehicle and  
22 traffic violations.

23 Obviously, to fully comply with new CPL  
24 Article 245 will require more resources in my office  
25 in terms of both equipment and staff. Additionally,

1 more office space will be needed to accommodate  
2 additional personnel.

3 Although the public defender's office and the  
4 public advocate's office is in Chemung County, will  
5 receive grant money, not from the County, grant  
6 money, however, that totals over \$3 million between  
7 2018 and 2022, my office will receive no such aid  
8 from the State to help us defray the cost of  
9 implementing the discovery reform laws.

10 I realize the goal of this new legislation is  
11 to afford defendants with a full opportunity to  
12 evaluate the evidence against them in any given  
13 case.

14 However, I believe that purpose can still be  
15 accomplished in criminal cases if the law is amended  
16 to expand the 15-day time limitation for automatic  
17 discovery to 45 days.

18 The additional 30 days would not prejudice  
19 the defendant, and would still provide discovery  
20 well in advance of any proposed disposition or trial  
21 date.

22 Further, during that extra 30 days, the  
23 parties could negotiate the case, try to resolve the  
24 case, with an appropriate bargain that seeks justice  
25 for both.

1           As for automatic discovery where defendants  
2 appear on simplified Information, such as the  
3 vehicle and traffic violations, the law should be  
4 eliminated.

5           To comply with automatic discovery in such  
6 cases is not practicable in light of the time  
7 prosecutors must spend on discovery in criminal  
8 cases.

9           I have chosen to address practical problems  
10 I anticipate affecting my office's ability to comply  
11 with the criminal justice reform laws as they apply  
12 to pre-trial discovery.

13           However, I hasten to add that there are other  
14 troubling aspects of the law.

15           One is the obvious conflict that arises when  
16 one considers, presently, the present law,  
17 Section 190.20, subdivision 4(a) of the CPL, which  
18 states, "grand jury proceedings are secret."

19           One reason for secrecy is for the safety and  
20 security of witnesses.

21           I believe the release of grand jury  
22 transcripts well in advance of trial will have a  
23 chilling effect on certain witnesses coming forward  
24 to testify, as they will be concerned with  
25 intimidation.



1           No longer can we assure them that their  
2 identities and testimony will remain secret and not  
3 revealed unless absolutely necessary.

4           The chilling effect of this reform certainly  
5 does not assist prosecutors in seeking justice in  
6 all cases.

7           I hope I've given you some information to  
8 consider as you proceed with your responsibilities.

9           Thank you for affording me this opportunity  
10 to address you.

11           SENATOR BAILEY: Thank you, District  
12 Attorney Wetmore.

13           I would ask that we, even if -- even if you  
14 can't get to five minutes, could we get to six, max?

15           Could we distill something?

16           In law school, we IRAC'd everything. Right?

17           Yeah, let -- let -- let -- let's break it  
18 down a little bit.

19           Your -- your -- your -- your written  
20 testimony has been received. And I want make sure  
21 that we have significant time for the  
22 question-and-answer period. That -- that's --  
23 that's something that's more --

24           DA WEEDEN WETMORE: I apologize to  
25 Senator Bailey.

1 SENATOR BAILEY: No, no.

2 No, no need to apologize.

3 I just want to see if we can -- see if we can  
4 break it down.

5 The next district attorney to testify.

6 DA KRISTYNA S. MILLS: Good morning.

7 Is this on? Can you hear me?

8 SENATOR BAILEY: Yes.

9 DA KRISTYNA S. MILLS: Okay.

10 My name is Kristyna Mills. I'm the district  
11 attorney in Jefferson County.

12 And, again, thank you for allowing us the  
13 opportunity to speak with you this morning.

14 First, just a little bit about my county and  
15 the efforts that we've made to comply with the new  
16 discovery laws.

17 We are a relatively small county of  
18 approximately 114,000 people. We border Canada,  
19 across the St. Lawrence River. And we house Fort --  
20 we house Fort Drum, which is a large military base  
21 that employs approximately 18,000 people.

22 The Jefferson County District Attorney's  
23 Office employs 11 attorneys, including myself.

24 We all handle full case loads.

25 We prosecute everything, from felonies, down

1 to violations and traffic infractions, that occur  
2 within our county.

3 We work with many agencies.

4 We prosecute military personnel, for which we  
5 have concurrent jurisdiction with Fort Drum.

6 And we prosecute many border prosecutions  
7 that are investigated by Immigration and Customs  
8 Enforcement or border patrol.

9 Our assistant district attorneys have an  
10 average caseload of approximately 350 cases open at  
11 any given time.

12 We also handle all of our own appeals and  
13 post-judgment motions, which do not factor into the  
14 open cases that we currently handle.

15 We also have traffic infractions.

16 I said numbering in excess of 5,000.

17 That number is significantly greater than  
18 5,000.

19 We handle about 5,000 reductions alone a  
20 year. That does not include every single traffic  
21 offense.

22 In attempting to comply with the new  
23 discovery laws, Jefferson County, we've been ahead  
24 of the curve.

25 More than a year ago we began asking the

1 police agencies to send their entire file to us  
2 digitally.

3 We have 12 police agencies in our  
4 jurisdiction, and some have the technology to do  
5 that, some don't.

6 In April, after the passage of the reforms,  
7 we began the process of going paperless.

8 We upgraded our technology and began using  
9 digital evidence system for the transfer of  
10 discovery to defense counsel and the courts.

11 This has not been an easy transition.

12 Not all defense counsel has been receptive to  
13 this new way of transferring evidence. And we've  
14 had difficulties with the technologies and all  
15 parties to the system, from the police, to the  
16 courts, to the defendants.

17 It has been an extreme challenge finding the  
18 resources to upgrade our computer systems and give  
19 our legal staff the tools that they need to comply  
20 with the changes bearing down on us.

21 We have held nearly a dozen trainings and  
22 in-services to educate law enforcement on the new  
23 laws, and we have a half a dozen more scheduled.

24 In October, we began attempting to comply  
25 with the new discovery provisions, as if it was

1 January 2020, on all felony cases.

2 It has been extremely difficult to keep up  
3 with the duties of prosecution when a great deal of  
4 our time is spent trying to compile and turn over  
5 far more discovery than we have ever received, and  
6 far more cases than we ever needed to before.

7 We will attempt to start complying with the  
8 new legislation on misdemeanors and violations next  
9 week.

10 I harbor no illusions that we will be able to  
11 maintain our current prosecution standards, and  
12 I fear cases will start falling by the wayside at  
13 our current staffing level.

14 I anticipate being permitted to increase my  
15 staff by one ADA in the upcoming budget year.

16 While this will undoubtedly be of a help,  
17 I am concerned this is a mere drop in the bucket in  
18 order to be in full compliance with these laws.

19 While we have made great strides, I fear that  
20 we may have miles to go with very little time left.

21 We are experiencing extreme difficulty  
22 getting our police agencies to comply.

23 We are imputed to know everything they know  
24 under these laws, yet we are having trouble getting  
25 them to tell us what they know within that 15-day

1 time frame.

2 And, another difficulty that we are having in  
3 my jurisdiction is our federal police agency  
4 partners. They are not bound by the same laws, they  
5 are not bound by the same rules.

6 And we were informed just recently, we had to  
7 get a subpoena to get a border patrol file in a  
8 recent DWI prosecution.

9 The military has tried to be cooperative, but  
10 they have Forbes (ph.) for their forms.

11 I have little doubt that I actually know a  
12 fraction of what I'm imputed to know under this  
13 statute.

14 Additionally, we have currently no ability to  
15 provide law radio recordings in all cases.

16 Under the current system, the law radio  
17 recordings are mixed together, as all units on the  
18 road are calling into the 911 dispatcher -- dispatch  
19 center at once.

20 In order to separate those recordings and  
21 turn over what is germane only to each and every  
22 case, it requires someone to listen to all of these  
23 recordings and manually pick out those related to  
24 specific cases, and copy them to a single digital  
25 file.

1           Our already-beleaguered 911 center does not  
2 have the staff to accomplish this.

3           They have told me, in no uncertain terms,  
4 they will not be able to comply with these new laws as  
5 of January 1.

6           Another issue we're facing stems from the  
7 thousands of traffic infractions that we prosecute  
8 each year.

9           We do not carry files on all these traffic  
10 infractions. We do not even know that they exist.

11           And now we have to figure out a way to turn  
12 over body-cam videos and certificates of calibration  
13 into thousands of cases that we don't even know  
14 about.

15           Our digital discovery system will not work  
16 for those individuals because that requires an  
17 e-mail address. And we don't have e-mail addresses  
18 for those people that are charged with traffic  
19 infractions.

20           Attempting to get law enforcement to change  
21 their entire way of issuing tickets to get e-mail  
22 addresses is a daunting task, and it's a task for  
23 which I don't think we will have a solution by  
24 January 1st.

25           The safety of our highways and the revenue of

1       our state municipalities will feel this loss, I have  
2       no doubt.

3               Additionally, I fear that many of these laws  
4       have unintentionally legalized misdemeanor-level  
5       possessions of dangerous narcotics, such as heroin,  
6       methamphetamine, and cocaine.

7               Overburdened labs across the state typically  
8       do not test misdemeanor weight narcotics unless that  
9       testing is needed for trial.

10              Under this new law, in order us for -- for us  
11       to declare that we are ready for trial, arguably,  
12       that testing must be completed.

13              I fear that there is no possible avenue for  
14       which these labs can comply in these small cases,  
15       and I fear that that is going to be a detriment to  
16       the individuals that are arrested in these cases.

17              We will no longer be able to get them on  
18       probation, and get them into the treatment that they  
19       need, because they will have no incentive to do so.

20              So this law is hurting the very people that  
21       it was enacted to help.

22              In conclusion:

23              These are some, but not all, of the concerns  
24       that we are wrestling with, and we're ahead of -- in  
25       terms of implementation, than some of the smaller



1 counties in the state.

2 Some of the counties in this state did not  
3 even have prosecuting case-management systems, so  
4 they had to implement that, let alone a  
5 discovery-management system.

6 District attorneys' office and police  
7 agencies across the state are running a losing race  
8 against time to comply with these enormous changes  
9 by January 1st with no funding to do so.

10 With additional time and additional funding,  
11 I believe solutions could be found for these  
12 problems, and law enforcement would be equipped to  
13 fully comply with the statute as written.

14 Thank you for your time.

15 SENATOR BAILEY: Thank you, District  
16 Attorney Mills.

17 DA PATRICK PERFETTI: Good morning,  
18 Chairman Bailey and members of the Codes Committee.

19 I appear before you today out of concern  
20 about the level of service that the office of the  
21 district attorney may be able to provide to the  
22 residents of Cortland County, which is my highest  
23 priority as their district attorney.

24 Though Cortland County is a small county,  
25 with a population of 49,000, and I believe, among

1 today's panel, I represent the smallest county of  
2 those testifying today, it is a county that is  
3 located between Binghamton within Broome County to  
4 the south and Syracuse within Onondaga County to the  
5 north, with Interstate 81 transiting the north-south  
6 axis of the county.

7 This conduit of legitimate commerce does also  
8 engender illicit drug trade, among other illegal  
9 activities.

10 In recent months I have repeatedly shared  
11 with my county legislature, and now with you,  
12 information and details about the additional burdens  
13 that this state's recently passed criminal justice  
14 legislation presents to my office.

15 As an example:

16 The discovery statute requirements are not a  
17 simple matter of turning discovery materials over to  
18 defense counsel.

19 Technology can assist with this retrieval of  
20 discovery materials, and I have implemented those  
21 when I first took office 2 1/2 years ago; however,  
22 these materials must, in every case, be reviewed.

23 This review process is not something capable  
24 of automation, and still requires the gift of human  
25 intellect to address.

1           Currently, discovery is a practice that is  
2 generally engaged in in those cases that are upon a  
3 trial track.

4           In 2018 my office handled 1,614 felony cases.

5           Of that total, 156 either were indicted or  
6 advanced to county court on a superior court  
7 Information.

8           This is a scant 10 percent, 9.67 to be exact.

9           Of that, a total of 9 cases were tried, which  
10 is less than -- around 1/2 of 1 percent of the  
11 total.

12           After January 1, 2020, due to the legislation  
13 you've enacted, discovery returns will be required  
14 in 100 percent of all filed criminal cases, to  
15 include misdemeanors, as well as all vehicle and  
16 traffic cases, which represents to my office tens of  
17 thousands of additional cases requiring discovery.

18           This discovery must be reviewed in its  
19 entirety to ensure that sensitive information, such  
20 as undercover and confidential informant identities,  
21 victim demographic information, and material  
22 relative to law enforcement tactics and procedures,  
23 are addressed in protective orders, and not  
24 inadvertently or prematurely divulged.

25           This presents an increased workload for my

1 office staff of five assistant district attorneys  
2 and four administrative support staff that can only  
3 be described as astronomical, it's beyond  
4 exponential. And this cannot be met by my current  
5 staff.

6 It bears mentioning that Cortland -- that the  
7 Cortland County District Attorney's Office is one of  
8 10 of the 62 district attorneys' offices statewide  
9 that is without an investigator.

10 It will amount to, literally, thousands of  
11 hours of additional work per year, work that my  
12 present staff, already working beyond their 35 hours  
13 of compensated time, largely due to their  
14 professionalism, currently cannot be reasonably  
15 expected to handle.

16 For fiscal-year 2020, I made the following  
17 request above my 2019 budget, solely due to the  
18 changes in the criminal procedure law:

19 I've requested one assistant district  
20 attorney, and that district attorney would be  
21 assigned to discovery compliance.

22 To support that district attorney, I have  
23 also asked for two paralegals and an additional  
24 keyboard specialist.

25 The total cost, based upon my county's

1 current pay scale for salary, costs, and benefits,  
2 would be \$295,794.69.

3 In addition, I have asked for support for  
4 LexisNexis computer subscriptions, additional phone  
5 lines, additional publications, additional  
6 computers, and additional Microsoft licenses, for a  
7 total of \$8,247, which would be a total cost of  
8 \$335,441.69.

9 Less than half-a-million-dollar increase in  
10 my budget may not seem like much money in comparison  
11 to the state's budget in the billions, or to  
12 metropolitan counties.

13 However, Cortland County is cash-strapped,  
14 with a jail that is in need of upgrading for about  
15 the past decade.

16 And I have been told by the acting county  
17 administrator that the Cortland County Legislature  
18 is presently trying to close a 1.7-million-dollar  
19 budget gap.

20 The sheriff's office and the Cortland County  
21 Police Department are the two largest  
22 case-generating agencies in my jurisdiction, and  
23 they have case-tracking systems that are not  
24 currently capable of interfacing with the district  
25 attorney's office.

1           For those agencies not submitting  
2           electronically, my office, in some instances, is not  
3           receiving case files for up to six weeks after  
4           arrest.

5           Certainly, this is not fast enough to comply  
6           with the new discovery statute.

7           Cortland County is also at 94.6 percent of  
8           its taxing authority.

9           And I am informed by the chairman of the  
10          county legislature that all of my additional  
11          personnel and other funding requests for 2020,  
12          largely due to the criminal procedure law changes,  
13          have been denied in the administrator's budget in an  
14          effort to stay below the State-mandated tax cap.

15          These needed resources for my county, and my  
16          county's inability to provide them, are due to the  
17          fact that this piece of legislation, which was  
18          inserted in the Article 7 budget process, were  
19          passed by this Legislature without funding them.

20          This is irresponsible.

21          This is going to cause me to have to  
22          prioritize, out of necessity, the prosecution of  
23          vehicle and traffic infractions, which represent  
24          some 41,000 cases in my jurisdiction.

25          I will either have to divert these to law

1 enforcement agencies who are writing the traffic  
2 tickets, or, have them prosecuted by the municipal  
3 attorneys representing the municipalities wherein  
4 the offenses are alleged to have occurred, both of  
5 whom I'm fairly certain are less capable of handling  
6 the discovery requirements than my office, as they  
7 have received no resources for this effort either.

8 Such could leave Cortland County practically  
9 without traffic enforcement, except in criminal  
10 matters and incidences involving fatalities,  
11 personal injuries, or excessive property damage.

12 This is far less than ideal and represents a  
13 clear threat to public safety.

14 New York State has, for the past 10 years,  
15 enjoyed being the safest large state in the country,  
16 and the fifth safest state nationwide.

17 I reluctantly predict that such will no  
18 longer be the case in the near future, and such will  
19 be directly owing to the actions of this Legislature  
20 this year.

21 Thank you, and I'll be happy to field any  
22 questions that you may have.

23 SENATOR BAILEY: Thank you, District  
24 Attorney Perfetti.

25 DA MARY PAT DONNELLY: Good morning.

1 I'm Mary Pat Donnelly.

2 I welcome the opportunity to be heard here  
3 this morning.

4 I am the Rensselaer County District Attorney.

5 I just started my first year after being  
6 elected last November.

7 And let me start by saying that I do support  
8 criminal justice reform.

9 Before serving as district attorney, I had a  
10 perspective of sitting as a town judge in a suburban  
11 community while, simultaneously, servicing as a city  
12 court judge's law clerk right here in Albany, two  
13 very busy, very different courts, with a lot of the  
14 same faces on the other side of bench.

15 From my 21 years of experience in New York  
16 State's criminal justice system, I'm into agreement  
17 that we can do better to make sure that everyone  
18 receives equal treatment under the law regardless of  
19 race, religion, sexual orientation, or socioeconomic  
20 class.

21 I ran for this office to be part of the  
22 solution to that problem; however, the reforms as  
23 drafted are not practical.

24 In attempting to level the playing field, we  
25 are playing roulette with public safety.



1           There has to be a better way.

2           A defendant and his counsel should have fair  
3 exposure to the prosecutor's evidence before making  
4 decisions on a plea deal.

5           This is the practice in my office, and is  
6 simply a matter of ethics and human decency.

7           I never want us to forget that the accused is  
8 innocent until the DA meets the burden of proof.

9           And while I am for this reason a proponent of  
10 open discovery, it is a fact that formal discovery  
11 is not typically completed unless a case is headed  
12 to trial.

13           Certainly, turning over all the material in a  
14 DA's file within 15 days does not sound unreasonable  
15 if you don't work in a DA's office.

16           Put your file in the copier and send it out  
17 to the secretary for dissemination.

18           I assure you, it's not that simple.

19           It is extremely time-consuming, and with the  
20 new additional requirements and  
21 constructive-possession rules, it will become even  
22 more so.

23           First of all, the DA has to ensure that we  
24 have all the required paperwork from police agencies  
25 before we can turn it over.

1           My office serves 18 municipal courts with  
2 cases from 9 different police agencies.

3           In many misdemeanor cases, a defendant is  
4 arraigned in a town court outside the presence of a  
5 DA, and given a return date a week or two later.

6           The clock starts ticking at arraignment, but  
7 the paperwork has not even made it to our office  
8 yet.

9           In certain cases, such as drug arrests, an  
10 investigation may be ongoing. And turning over  
11 investigative material at the commencement of the  
12 prosecution will undoubtedly jeopardize these  
13 investigations, and the witnesses will be in danger.

14           That said, in order to comply with the  
15 directives of 245, police agencies are going to have  
16 to completely overhaul the way they do business.

17           Law enforcement needs time to properly train  
18 personnel, and to allow for policy decisions to  
19 accommodate these massive changes.

20           If the police don't fully understand their  
21 obligation, even with the help that I've been giving  
22 them, and if they don't have the tools to comply  
23 with this requirement, our office is going to be  
24 handcuffed in our ability to file a certificate of  
25 compliance and to answer ready.

1           Cases will be dismissed, and actual  
2           threatening criminals will escape penalty.

3           At the very least, I urge you to consider  
4           deferring the implementation of these reforms in  
5           order to give prosecutors and police departments  
6           sufficient time to come together on policies that  
7           will give us the best chance of complying with these  
8           directives.

9           The unintended result of 245, I promise you,  
10          is going to be dramatically enhanced need to triage  
11          criminal cases, which we do already.

12          We will simply have to abandon prosecution on  
13          those less-important cases.

14          How do I tell a victim that their case is  
15          just not important enough for me prosecute?

16          I'm sorry, but your loss, your injury, your  
17          humiliation, it just doesn't matter, because I don't  
18          have time or manpower to do the necessary paperwork  
19          to seek justice for you.

20          That's a frightening and a disheartening  
21          thought.

22          It's not what I signed up for, and I know  
23          that's not what any of the folks here with me today  
24          would like to see happen.

25          That's why the outcry, with respect to the

1 lack of funding, is really, really important for  
2 everybody to understand.

3           Reviewing files, and ensuring that everything  
4 discoverable is physically in our possession, and  
5 ready to be turned over, is, literally, going to be  
6 a second full-time job for every attorney in my  
7 office.

8           245 also mandates disclosure of the names and  
9 contact information of witnesses, as we've  
10 discussed.

11           We can no longer offer witnesses peace of  
12 mind by assuring them that their identity will be  
13 protected.

14           Even grand jury testimony, long understood to  
15 be secret, must be turned over within 15 days.

16           This will certainly result in a lack of  
17 cooperation by witnesses.

18           And taking this a step further, I think it's  
19 going to cause New Yorkers to think twice about  
20 reporting crimes in the first place.

21           While we may have the ability to seek a  
22 protective order, this, again, is more work for the  
23 ADAs who are already working very hard to try to  
24 seek justice in the cases that we are handling.

25           I hope that my testimony demonstrates to you

1 that the DAs of New York State are not simply  
2 engaging in fear-mongering.

3 I very much resent that characterization.

4 When we speak of opposition to this reform,  
5 it is not about resisting legislation which will  
6 make our jobs more difficult.

7 It is simply that we need the funding and the  
8 time to do this correctly, to protect everyone.

9 I don't want to be sitting here after there's  
10 been a tragedy and we've had an opportunity to  
11 rethink things.

12 I continue to believe that my fellow DAs  
13 entered this calling like I did, to protect the  
14 community.

15 We want to exercise our discretion and  
16 ethical considerations to seek justice.

17 I honestly believe that the legislation, as  
18 drafted, is going to inhibit my ability to do just  
19 that.

20 Thank you for listening.

21 SENATOR BAILEY: Thank you, DA Donnelly.

22 DA ANTHONY JORDAN: Thank you.

23 I'm Tony Jordan. I'm the district attorney  
24 for Washington County, and I greatly appreciate the  
25 opportunity to address you folks.

1           And I will say, to start, much of what  
2           I prepared and submitted to you has already been  
3           covered at length, not only today, but at your  
4           previous hearing.

5           So, a little bit of a different approach, but  
6           I first want you to understand Washington County a  
7           little bit.

8           It's 62,000 people.

9           It stretches approximately 90 miles, from  
10          north to south.

11          The Vermont border is our entire eastern  
12          border.

13          And, virtually, all of the county has little  
14          to no public transportation.

15          We cover 22 local courts; 9 police agencies,  
16          6 of whom are local police departments, the vast  
17          majority of which cover important shifts with  
18          part-time police officers.

19          In that framework, we had 2,000 crimes,  
20          roughly, year in and year out, over the past  
21          six years that I've been district attorney.

22          Last year we had over 10,000 vehicle and  
23          traffic tickets.

24          So these -- and that -- those numbers don't  
25          include violations which would be harassments,

1 disorderly conducts, and similar.

2 The impact of having this law reach all of  
3 those on a small office, and comply with the  
4 demands, much like my colleagues have expressed in  
5 greater detail, is going to be nearly impossible  
6 under our current physical structure and technologic  
7 structure in the county.

8 What does that mean?

9 Many of our police agencies don't have the  
10 technology to even -- or, have Live Scan, which is  
11 the means of fingerprinting.

12 They have to do the fingerprinting,  
13 essentially, manually, and then travel upwards of  
14 30 miles to the sheriff's department, just to  
15 complete that process, to give you a sense of the  
16 rural and the technological deficiencies in our  
17 county.

18 Since I became DA just about six years ago,  
19 we implemented an open pol -- open-file policy,  
20 which has had the effect of giving defendants  
21 everything that we have, as soon as we have it, in,  
22 virtually, all of our cases.

23 And the result of that has been a significant  
24 number of cases getting resolved very early on, and  
25 a significant number of cases being resolved within

1 a short period of time in -- in ways that result  
2 in -- in satisfactory outcomes for the defendant  
3 especially, because we pursue diversion in a  
4 significant way.

5 So our budget constraints, much like others,  
6 come down to this:

7 Our county, as I've showed in our submission,  
8 our five union contract raises alone exceed the  
9 available tax-cap number for Washington County.

10 That is before any effort at complying with  
11 this law.

12 That doesn't include the public -- department  
13 of public works or any other department within the  
14 county and their increasing needs.

15 So any ask had to be done, where we were  
16 looking for funding, in that light.

17 What I did first, was working with our  
18 information technology department, sheriff's  
19 department, the 911 call center, public safety, and  
20 alternative sentencing and probation, was, let's  
21 look at the cases that we have a firm handle on, and  
22 that is the 2,000 misdemeanors and felonies, and  
23 what will it cost to comply, and what will it take  
24 to just honor the spirit and the -- and the writings  
25 of this law?



1           Those needs alone were well over  
2 a million dollars.

3           And so, recognizing the budget constraints we  
4 were under already, we took the approach of, that's  
5 just not workable in Washington County.

6           What we ultimately came forward with, at a  
7 bare-minimum approach from those departments  
8 I referenced, was just over \$400,000.

9           Our county is still going through the budget  
10 process. It will be probably be December before we  
11 get a final answer.

12           But the early indications are, we are not  
13 going to see that money, or, certainly, nothing  
14 close to what our true needs are.

15           What I would like to focus on in my remaining  
16 time is, where do we have commonality, based on your  
17 concerns stated at the beginning?

18           And I think I would start with that.

19           I think, like you, we here care about all  
20 New Yorkers, not just those in our direct  
21 constituency.

22           In your instance, the Senate districts.

23           Ours are counties.

24           That includes defendants, that includes  
25 witnesses, that includes victims, and that truly

1 includes all New Yorkers.

2 The goal of the statute is to get defendants  
3 as much discovery as exists, as soon as possible.

4 The goal of criminal justice is to protect  
5 those same New Yorkers that we all care about.

6 With this in mind, I was struck, when I sort  
7 of spent the last six months trying to understand  
8 this law, with the stark difference between how the  
9 State rolled out Raise The Age and how we're  
10 addressing this statute.

11 With Raise The Age, implementation was moved  
12 out a year and a half, and then phased in over a  
13 two-year period.

14 With Raise The Age, the State implemented a  
15 statewide task force to analyze all areas of  
16 compliance. That included Governor's  
17 representatives, probation, courts, corrections,  
18 district attorneys, public defenders, county  
19 attorneys, department of social services, and many  
20 more.

21 This group, which I had the opportunity of  
22 being a part of, met regularly over that period of  
23 time, to develop plans, to ensure that  
24 implementation of that important legislation  
25 occurred properly.

1 I think, in large part, because of those  
2 efforts, Raise The Age has been heralded as  
3 a resounding success.

4 But perhaps more importantly, Raise The Age  
5 also included a very important funding stream for  
6 counties.

7 All the counties had to do, was submit a  
8 plan.

9 If that plan was improved -- was approved,  
10 all expenses that the county incurred in complying  
11 with Raise The Age would be funded by the State --  
12 or, refunded by the State, or covered by the State.

13 However, there was one really important  
14 caveat, and as a true cynic, I suspect maybe that  
15 that was not unintentional, and that is, a county  
16 that exceeds the tax cap will not receive that  
17 reimbursement funding for (sic) the State for Raise  
18 The Age.

19 So when you couple the challenge with the  
20 now-implemented and -enacted discovery, bail, and  
21 its link to speedy trial, counties across  
22 Upstate New York are going to be faced with two  
23 simple choices:

24 Do we fund our departments sufficiently to  
25 comply with this important piece of legislation, and

1 in doing so, exceed the tax cap and be denied  
2 funding from the State for Raise The Age?

3 Or, do we ignore the important edicts of the  
4 statute, deprive our departments from being able to  
5 comply, resulting in ultimate dismissal of cases,  
6 and be able to receive the reimbursement for the tax  
7 cap, so -- under the tax cap for Raise The Age?

8 So I think, in closing, because we've taken a  
9 lot of your time, I think the State needs to ask  
10 itself a very important question:

11 Is the goal of the statute to ensure  
12 compliance, to provide defendants with the  
13 information that you have deemed is critical, which  
14 we believe we want to give everything we have, we  
15 want to assist them in making intelligent, rational  
16 choices?

17 But if that's the true belief, then the State  
18 needs to do what it did with Raise The Age, and that  
19 is, fund the departments properly so that we can  
20 provide the -- this important discovery.

21 And by that, that's also going to include all  
22 departments: public defenders, assigned counsel,  
23 probation, alternatives to incarceration, local  
24 police agencies.

25 Most importantly, and let's not forget, the

1 state police lab that provides for probably north of  
2 50 of our counties important investigative resources  
3 and tools to allow the criminal justice system to  
4 work.

5 So with that, I think the key is, if you want  
6 compliance, we want to comply, we need funding in  
7 order to be able to do that.

8 Thank you.

9 SENATOR BAILEY: Thank you, DA Jordan.

10 DA Soares.

11 DA DAVID SOARES: Good morning, and thank  
12 you.

13 SENATOR BAILEY: Good morning.

14 DA DAVID SOARES: Well, we are not strangers  
15 to this conversation.

16 I think we've been having a lot of  
17 conversations over the course of the last year.

18 And I think that my colleagues have done a  
19 fantastic job of articulating some of our concerns.

20 So my remarks will be very short.

21 My hope is that we're doing more engaging and  
22 having conversations about some solutions, as  
23 opposed to continuing to re-litigate the problem.

24 So if I can, I'll just -- I'll read from my  
25 prepared remarks.

1           The past several months have presented my  
2 office with perhaps its most difficult challenge in  
3 the 20 years that I've been there.

4           I will discuss some of those challenges here  
5 today, but, again, I want to focus on discussing  
6 some solutions.

7           It goes without saying that the reforms  
8 passed on April 1st were significant.

9           We do not need to spend any time here  
10 debating or re-litigating what has been done.

11          We must put aside our differing opinions and  
12 concentrate on the matter at hand.

13          While some have called the legislation passed  
14 in the budget as "reform of the criminal justice  
15 system," I myself prefer to call it "the reimagining  
16 of the criminal justice system."

17          In Albany County, and many upstate  
18 communities, reimagining the criminal justice system  
19 has presented us with significant workflow and  
20 technological challenges.

21          In fact, every county in New York State is  
22 experiencing the same burden.

23          Albany County is home to 11 distinct police  
24 agencies: one county sheriff, the New York State  
25 Police, federal authorities, the enforcement arms of

1 every state agency, including tax, department of  
2 motor vehicle, and the IG.

3 The vast majority of cases presented to my  
4 office originate with our police, sheriff, and state  
5 police.

6 With rare exception, every single law  
7 enforcement agency owns and maintains its own  
8 technology.

9 Smaller agencies will, at times, share  
10 technology with larger agencies.

11 The technology includes computer-aided  
12 dispatch systems, records-management systems, radio  
13 and transmission and video systems, body camera and  
14 dash-camera systems. And in addition, every agency  
15 will have its own evidence tracking and storage  
16 systems.

17 A simple traffic stop will employ several  
18 technologies, each stored in various places within a  
19 police department.

20 If a driver calls 911 to report a drunk  
21 driver on the road, that agency must preserve the  
22 call, the time that call was received, the car that  
23 was dispatched, the car dispatched, the time of  
24 arrival, and the time the case was cleared.

25 If the department has a dash cam or a

1 body-cam policy, additional materials are generated  
2 and must be stored.

3 A simple DWI generates many documents,  
4 recording of both voice and visuals, as well as test  
5 results.

6 Currently, in most DWI incidents in  
7 Albany County, many of the materials just mentioned  
8 are turned over to the defense in order for lawyers  
9 to engage in meaningful discussions with their  
10 clients.

11 There are many materials that are turned over  
12 in what we term "open discovery."

13 Electronic transmissions and physical  
14 evidence is provided upon demand for discovery;  
15 thus, triggering the collecting event within each of  
16 the police departments.

17 Picture every police department as a  
18 supermarket, with evidence in all of its forms, for  
19 every case, sitting in different aisles.

20 When a demand is sent to the department, the  
21 demand is like a shopping list, and various people  
22 are tasked with going up and down every aisle,  
23 placing the items on that list in that cart.

24 Once that cart is complete, then the  
25 materials are sent to the check-out, and delivered



1 to the DAs' offices.

2 The discovery legislation recently passed  
3 will change this process in significant ways, in  
4 that there are more materials being sought and a  
5 compressed timeline for compliance.

6 In other words, there are more aisles and  
7 more shopping carts moving up and down every aisle.

8 The discovery process will present the  
9 greatest challenge and need for investment in my  
10 office.

11 What I have described thus far are the  
12 challenges in getting materials to my office.

13 Once the materials arrive in my office, we  
14 have the corresponding obligation to review the  
15 materials, redact where appropriate, and make  
16 available these materials for the defense.

17 Remember, in Albany County we practice open  
18 discovery, which is also termed "substantial  
19 discovery."

20 Complete discovery is done only in cases  
21 heading for trial, which is less than 5 percent of  
22 all of my cases.

23 Requiring complete discovery in 100 percent  
24 of the cases requires significant investment, a  
25 theme you're going to hear, and I think you have

1 heard, from all of us presenting here today.

2 There were hearings that were held last  
3 month, and I had the opportunity to review and view  
4 some of the exchanges that took place between my  
5 colleagues and all of you.

6 I viewed some of that exchange, and there was  
7 a discussion about what was possible.

8 And I believe that Darcel Clark from my --  
9 from our organization was discussing about was what  
10 possible.

11 In view of -- the view of most people who do  
12 not work in law enforcement is that everything is  
13 digitized.

14 I mean, anyone who watches CSI or the  
15 television shows would be right to believe that a  
16 robust technological infrastructure exists within  
17 all of our agencies.

18 I actually watched a show where the police  
19 had access to the database of a library in order to  
20 tie a case together.

21 That doesn't exist, and nothing could be  
22 farther from the truth.

23 But creating that reality is possible, if we  
24 think about it, to have access to all varieties of  
25 technology.

1           But what makes the possible more probable is  
2 investment.

3           Jeff Bezos envisioned a world where people  
4 could click a button and purchase products from  
5 their homes.

6           I'm sure that the vast majority of the people  
7 who were made aware of his vision doubted his  
8 ability into making that vision possible.

9           With strategically placed distribution  
10 networks, and significant investment in  
11 infrastructure and technology, he made that vision  
12 possible, and we shop today in ways that we could  
13 not have imagined 10 years ago.

14           In a world where we purchase music and food  
15 on our phones, everything is, in fact, possible.

16           But without that investment, it would not be  
17 probable.

18           The reimagined criminal justice system you've  
19 created is possible, but not with the 2 percent tax  
20 cap.

21           That's the reality.

22           Reform without investment is empty rhetoric.

23           You can either have real reform, or palm-card  
24 reforms which are as worthless as the paper that  
25 they're printed on.

1           Without State investment, you will have  
2           created a dysfunctional patchwork of systems  
3           throughout New York whose ability to comply would be  
4           dependent on the counties' fiscal health.

5           ZIP codes should not determine the quality of  
6           justice experienced in the court systems.

7           And with that, I will take your questions.

8           SENATOR BAILEY: Thank you, District  
9           Attorney Soares.

10          I would like to thank you all for your  
11          testimony.

12          Thank you for taking time out of what I know  
13          are to be incredibly busy schedule.

14          And I want to thank you for what the  
15          commonality that we do have.

16          I think as DA Jordan mentioned, and  
17          DA Donnelly mentioned as well, we -- we -- we all  
18          care about people beyond the scope of who we  
19          represent.

20          But I want to start with a couple of things,  
21          and I know, DA Soares, you said we didn't want to  
22          re-litigate it, but I heard a little bit of  
23          re-litigating.

24          So I just want to address some of the  
25          re-litigation points that I heard.

1 I heard words like "irresponsible" and -- and  
2 "cynic."

3 And if I were a cynic, what I would think  
4 of --

5 If we can silence phones, please.

6 Thank you.

7 If I were a cynic, I would look at this panel  
8 of district attorneys and note that only one had a  
9 conversation with me prior to me being the Chair of  
10 the Codes Committee.

11 If I were a cynic, I would say that only one  
12 of these district attorneys engaged in meaningful  
13 discussion with me about justice reform prior to me  
14 becoming the Chair of the Codes Committee.

15 But I don't want to consider myself a cynic,  
16 and I don't want to be labeled as irresponsible.

17 I think about, what's irresponsible?

18 Is it responsible to allow people not to have  
19 access to information that relates to their freedom,  
20 to their liberty?

21 I think about, what's irresponsible?

22 And so, like, I wanted to have a conversation  
23 about implementation, about what it will take.

24 Because I have a legitimate interest in  
25 making sure that this works.

1           What I do not have a legitimate interest in  
2           is having conversations about what happened in the  
3           past.

4           But since it was brought up, I will allow  
5           myself the opportunity to have conversations about  
6           it, because I want to help.

7           I'm a father and I'm a husband before I'm a  
8           state senator.

9           I want my daughters to be safe.

10          And you do a damn good job in keeping people  
11          safe, you and members of law enforcement.

12          Let's be very clear about where I stand.

13          This is not a criminal's bill of rights which  
14          has been bandied about.

15          This is something about equating justice for  
16          people who have been denied it for quite some time.

17          And I'm not in the business of lecturing, but  
18          I heard some things that troubled me.

19          And I want to have (indiscernible)  
20          conversations about this. And I thought that we  
21          were making -- we were making headway.

22          We talked about -- DA Soares, and we  
23          talked -- last year, we talked about root causes;  
24          two years ago, we talked about root causes, and real  
25          investment in communities.

1           And DA Hoovler, you mentioned \$391 million to  
2           the State of New -- from (sic) the city of New York.

3           None of that went to discovery.

4           It was \$126 million in previously-planned  
5           investments, and \$265 million to go towards closing  
6           Rikers, and reinvestment in root cause.

7           That's where that money came from.

8           So that's what that's about; that's where we  
9           should be spending money.

10          And I want to be very clear as well, I'm not  
11          saying you shouldn't receive increases. I'm not  
12          saying that at all.

13          In private meetings that we've had, in  
14          hearings that we've had, no one can say that I have  
15          said, Don't give district attorneys money.

16          I have not said that.

17          I will never say that.

18          Because you need to have funding in order to  
19          run your operations.

20          But I'll just ask this:

21          Prior to the enactment of these laws, what  
22          was the conversation around updating district  
23          attorneys' offices?

24          I would ask that conversation.

25          Aside from D.A. Mills, who mentioned that --

1 that there was a conversation about -- about that,  
2 what other efforts have been made to update district  
3 attorneys' offices in the face prior to the  
4 enactment of this legislation?

5 OFF-CAMERA SPEAKER: David, do you want to  
6 take that?

7 DA DAVID HOOVLER: Yes.

8 I think a lot, Senator.

9 But, you can only do so much, when you go to  
10 a county legislature, you go to a county executive,  
11 and they tell you you're bound by the tax cap.

12 In my county, I wish, I wish there was a  
13 million dollar -- a million dollars for, basically,  
14 pre-arraignment diversion.

15 I know we're here to talk about discovery,  
16 but they're all connected. The root cause,  
17 everything that you're saying here, it's all  
18 connected in one form or another.

19 I wish there was that money.

20 But, I've asked for it, I've been denied.

21 Everybody sitting on this panel, we all  
22 answer to a board of supervisors, a county  
23 executive, or a legislature, that property taxes --  
24 in every one of these counties here, the property  
25 taxes that are levied on the people that live there



1 set the budget.

2 No of the local -- none of the local elected  
3 officials want to go over the tax cap, or even want  
4 to say that they raise taxes.

5 Just like the four of you, the last thing you  
6 want to say is, I raise taxes.

7 So we're stuck.

8 We're stuck.

9 And not one of us here says -- I don't think  
10 the reforms are bad.

11 But, again, if I'm constantly told "no" every  
12 time I need something, it's hard to do anything.

13 And, again, I've been asking my county for  
14 infra -- for IT infrastructure for years.

15 But I have over 40 different police  
16 departments that all have a different chief, that  
17 all have a town council, that all have a town  
18 supervisor, that all have their own way of doing  
19 things, and it becomes difficult to try to  
20 interface.

21 And I think that that is what we have across  
22 the state.

23 And I know it's a hard issue to deal with  
24 when you look at it from the larger, because I know  
25 exactly where you want to go. And I think you're

1 right on a lot of things.

2 But, it's almost like, once you move north of  
3 the GW Bridge, you have to deal with multiple layers  
4 of government that are almost impossible to deal  
5 with.

6 I can't -- I have to beg, borrow, and steal  
7 with my legislature, and I talk to them every day.

8 And since this has come out, I have been  
9 talking to them, and, look, I'm going to get a  
10 little bit of what I asked for, what I need.

11 But, again, my county has a little bit of  
12 money there to help.

13 The others sitting here, they don't, and  
14 that's why we're here; we're here to ask for the --  
15 we're here to ask for the help.

16 And, again, the help, indigent legal  
17 services, legal aid, they're getting some help  
18 through grants.

19 Get us the help we need to make the system  
20 that you want work, and I guarantee you it will, but  
21 it costs money.

22 And, again, every time we ask for it, if all  
23 we're ever told is "no," then it does become -- it  
24 is a problem.

25 And it's not that we don't want to change or

1 do things. It's, just, when you want to change and  
2 you want to do things, it costs money, and it's very  
3 difficult.

4 SENATOR BAILEY: And you -- and you make --  
5 you make a fair point.

6 Being told "no" is frustrating, consistently.

7 And the when people wanted simple reforms,  
8 year after year, people being told "no," was  
9 consistently frustrating.

10 So -- so I share your frustration in being  
11 told "no" repeatedly.

12 DA ANTHONY JORDAN: On the positive side, on  
13 the investment in technology, one of the fortunate  
14 things we have is the New York Prosecutor Training  
15 Institute.

16 They do receive some funding from  
17 New York State. And they've re -- continually  
18 request increased support, because, through them,  
19 I wish I knew the number off the top of my head, but  
20 I think it's in the range of 50 to 52 of the 62 DA  
21 offices utilize a case-management system.

22 And they've also, over the past three or four  
23 years, because of substantial investment from  
24 district attorneys' offices, have developed a  
25 discovery, which is called "digital evidence

1 management system." And it's because of that.

2 You know, one thing I know -- I don't know  
3 you -- I know one goal we have in common is to make  
4 this work. Right?

5 I -- I've -- I've spent six months saying,  
6 this has to work.

7 What I can't do is make something move that  
8 is immoveable.

9 And so the digital evidence management system  
10 at least gives us a fighting chance.

11 But we have nine agencies, two of which are  
12 state agencies, that I don't control, that I have no  
13 impact on, no say to. And they lack the ability,  
14 they lack the resources, to get us the material as  
15 well.

16 So, it's a real problem.

17 I think a lack of adequate information is  
18 very -- it's a real problem. And if we don't bridge  
19 that gap somehow, then we're just going to sit here  
20 and have this battle for decades to come.

21 But resources are the key.

22 We can -- I love what DA Soares said.

23 It is -- this is possible, but without  
24 resources, it won't be probable in a 100 percent of  
25 the cases.

1           And I think none of us want that reality.

2           SENATOR BAILEY:   Sure.

3           Sir.

4           DA PATRICK PERFETTI:  Senator, I --

5           Mr. Chairman, I have a partial answer to that.

6           Prior to any of this legislation even being  
7           contemplated, I took office in 2017, with the  
8           intent, and seeing the value, of going paperless.

9           So, without bothering my county legislature,  
10          I had seized asset-forfeiture funds, that I utilized  
11          to outfit each of one of my five assistants with  
12          laptop computers.

13          We already were utilizing the case-management  
14          system.  And I have a team of professionals that are  
15          moving us over to utilizing the digital evidence  
16          management system.

17          That's the technological piece.

18          I've managed to make that work for my county  
19          without going to the legislature to ask for money.

20          The part I need is the part I told you about.

21          I have to have personnel that can review this  
22          discovery before it's being turned over, and that's  
23          the really expensive part.

24          I'm sure you're aware, in any organization,  
25          whether it's government or private industry, the

1 most expensive investment is people, and that's the  
2 part I've got problems with, and that's the part I'm  
3 asking for help with.

4 DA DAVID SOARES: The challenge that we're  
5 presented with is twofold: It's workflow, and it's  
6 also technology, because there are solution sets  
7 for -- for technology.

8 You had mentioned, what were we doing before  
9 April 1st?

10 The New York State Prosecutors Training  
11 Institute, throughout the last several years, have  
12 invested significantly in being able to provide, for  
13 all of us, a prosecutors' case-tracking system.

14 So the solution for upstate states -- for  
15 upstate counties has been, you know, NYPTI's  
16 investment in all of us with technology.

17 And I believe the vast majority of our  
18 offices currently use the New York State -- 56 of us  
19 use the case-tracking system, PCMS, which I think  
20 gets us to the technology issue.

21 We have to -- for example, I have people in  
22 my own family who don't have Apple phones. They  
23 have their Sang -- Samsung phones. There's the  
24 annoyance of having to keep these people on the same  
25 thread.

1           This is what we're facing with our law  
2 enforcement agencies.

3           So many of them, they operate with their own  
4 independent contracts, with different technologies.

5           And what we're trying to do is create  
6 uniformity, so that those materials are delivered;  
7 however, simply delivering the material is not  
8 enough.

9           If you take one incident that requires  
10 multiple cars arriving for one call, and, in  
11 addition to those cars, you also have body cams, you  
12 have to review the body-cam footage for every single  
13 officer, and you have to review the body-cam footage  
14 for every -- the camera footage from every dash cam,  
15 which takes a significant amount of time.

16           Now, if it's a case that -- that is  
17 prosuit -- proceeding to a hearing, or a case that  
18 is proceeding to trial, I mean, you take the time to  
19 do that.

20           However, with cases that are just average  
21 cases, that are routine cases, and now we're  
22 required to do this for 100 percent of those cases,  
23 it's going to require a significant human  
24 investment, which is what we're currently seeking  
25 from our legislature.

1           Now, let me just say this:

2           I know that the Governor's Office has talked  
3 about, you know, the monies that will be saved from  
4 bail and jail, and things of that nature.

5           I just want to demonstrate to you that, in  
6 Albany County, when I first took office, we had beds  
7 for 1100 people in the Albany County Correctional  
8 Facility.

9           We instituted diversion programs. We  
10 instituted restorative justice programs. We  
11 instituted greater use of community service.

12           We've dwindled that population within our  
13 Albany County Correctional Facility by two-thirds,  
14 but we don't experience those savings, and those  
15 savings are not reinvested back into the good fight,  
16 nor are they reinvested back into the community.

17           Much like we've closed a number of state  
18 prison -- correctional facilities, with little of  
19 those dollars that we've saved being reinvested in  
20 continuing to do the same.

21           What I think we're all trying to avoid, and  
22 I think you should also have an investment in  
23 avoiding, is creating a patchwork of different  
24 discovery process, the pre-trial processes, from  
25 county to county, that would be based on that



1 county's ability to invest in our office.

2 And let me just say this, in closing, and  
3 I'll take your questions:

4 If you have a dysfunctional DA's office, it  
5 gums up everything.

6 It gums up everything.

7 Let me just say, you know, those of us who  
8 are sitting here today, we can go back to our jobs.  
9 Right? And if we wanted to bankrupt our counties,  
10 we would just place every single person on  
11 probation. Just, that's our offer, 100 percent  
12 probation.

13 And before you know it, you'd go from  
14 1 percent of the population in Albany County under  
15 community supervision, to a much wider variety of  
16 people now subject to that same -- to that -- to  
17 that same experience; thus, bankrupting one of our  
18 partners.

19 So the downstream effect of inefficiency  
20 within our office impacts every other space.

21 And true reform -- right? -- is about making  
22 sure that the outcomes are just, not law-office  
23 failure.

24 To have cases dismissed on technicalities  
25 because of failure to comply, that just can't be the

1 way that we envision this system to be.

2 And the reality is, I have tremendous respect  
3 for you as legislators.

4 You've listened to your constituents.

5 You've passed the law that you've passed.

6 It is our responsibility now in the executive  
7 branch to comply with those laws and to make those  
8 laws happen.

9 But as I said before, reform without  
10 investment is just empty rhetoric.

11 And the -- the reliance on our local  
12 legislators to provide for those resources, when you  
13 consider that what we do is, in fact -- you know, in  
14 fact, affects our state, it is not -- it's just not  
15 right.

16 And that's what we're looking for.

17 I want to help you succeed in the legislation  
18 that you've passed.

19 How can you help us help you?

20 SENATOR BAILEY: So, to that point, I have  
21 two more questions, and then I know my colleagues  
22 have a number of questions as well.

23 To that point, DA Soares --

24 Anybody is -- can feel free to answer any of  
25 the questions that I'm asking.

1           -- you mentioned non-uniform -- I guess  
2 non-uniform procedures in district attorneys'  
3 offices.

4           I know -- I know that you instituted  
5 open-file in your district attorney's office, and  
6 other jurisdictions don't.

7           Aren't -- isn't there already a non-uniform  
8 manner in which -- in which offices --

9           DA DAVID SOARES: But I believe -- there is  
10 non-uniformity. And that experience in the criminal  
11 justice system will range from county to county.

12           But I think what you're -- what you've tried  
13 to do in your legislation is to eliminate that.  
14 Right? You've tried to eliminate that with the  
15 reforms that were passed.

16           And what I'm saying is, is if there is no  
17 investment from the State, in equal shares through  
18 the county -- right? -- where we're relying on  
19 legislators who will not invest in some communities,  
20 then what we're doing is just really recreating, in  
21 fact, maybe even enhancing, that disparity  
22 experience from county to county.

23           SENATOR BAILEY: So one final question, and  
24 then -- then -- then we'll go down to Senators  
25 Jordan, O'Mara, and Serino, and then I will have a

1 second round of questions. I just want to give my  
2 colleagues some time.

3 Is there a total cost?

4 I know we spoke about this at the last  
5 hearing.

6 And -- and -- you know, is there a total  
7 cost, statewide, as to what it would cost for  
8 implementation in each county?

9 DA DAVID HOOVLER: Outside, again, in talking  
10 with NYSAC (the New York State Association of  
11 Counties) and their -- and their counsel, we had  
12 originally talked, for the upstate counties, a  
13 number north of \$100 million in order to implement.

14 And, again, we have not considered every  
15 factor and every consideration in that. And a lot  
16 of that was still -- was still -- it still hasn't  
17 been fully developed at this point, because there's  
18 still -- they still haven't completely assessed all  
19 pre-trial services, they haven't completely assessed  
20 DAs' offices' needs, because all of those counties,  
21 right now, the vast majority upstate, are still  
22 involved in their budget process, and the budget  
23 hearings are going right now at those levels.

24 But it's north of \$100 million, sir.

25 Thank you, DA.

1           Senator Jordan.

2           SENATOR JORDAN:   Sure.

3           Well, I guess I go back to my statement from  
4 the beginning, and I understand your concerns with  
5 costs.

6           And it's sort of incredulous that we're  
7 having public hearings way after the fact instead of  
8 before passage of any of this.

9           But my question, because I understand you're  
10 concern with cost, is --

11           And this is open to anyone who wants to  
12 answer.

13           -- what can you do about witness  
14 intimidation, and their protection, at this point?

15           If things were to stay as it is, how -- how  
16 would you advise anybody, or how would you solve  
17 that problem?

18           DA MARY PAT DONNELLY:   I can speak just a  
19 little to that, basically.

20           What I asked for in my budget was additional  
21 investigators to deal directly with these witnesses  
22 when we do need them to come and testify, and  
23 additional staffing, so that we can -- we can have  
24 the network there for these witnesses.

25           And when -- when we don't have their

1 cooperation, we have people who are dedicated to --  
2 to provide them with a certain amount of reassurance  
3 that we will do everything we can to get them  
4 protected.

5 SENATOR JORDAN: So in going with what you  
6 said, how would you protect them?

7 DA MARY PAT DONNELLY: Well, our proposed  
8 budget has given me an additional half of an  
9 investigator, it has given me one administrative  
10 aide, and one district attorney.

11 So, I don't know that I can under the  
12 framework that I have.

13 My hope had been to have investigators  
14 dedicated to these witnesses for situations like  
15 those crime-scene visits, so that an investigator  
16 can be dedicated to assisting the victim under those  
17 circumstances.

18 And without funding, I can't do anything  
19 additional for them.

20 SENATOR JORDAN: Right.

21 And so, you know, you're looking at it in  
22 terms of when they're going back to the crime scene,  
23 and, you know, having an investigator with them.

24 But what about afterwards, when the person is  
25 coming home from work the next day, and now

1 everybody knows they're a witness or the victim.

2 And, you know, I'd be afraid to go home.

3 DA MARY PAT DONNELLY: I'm not sure money can  
4 protect them.

5 I don't know if anyone else has a different  
6 theory on that.

7 DA KRISTYNA S. MILLS: I know that we've had  
8 issues up in my county with witness statements  
9 getting put out on social media.

10 And that's had a real chilling effect on  
11 witnesses coming forward.

12 We've had witnesses that have been refusing  
13 to testify at trial, so we've had to dismiss cases  
14 because of that.

15 We don't have the infrastructure right now to  
16 really protect witnesses.

17 There is no sanctuary. There is no -- other  
18 than hotels, there is no place to put witnesses that  
19 have been threatened.

20 So I think that we would need significant  
21 funding to be able to do that, and we would  
22 definitely need to beef-up our victim services.

23 We don't have any dedicated funds in my  
24 office for victim services.

25 We have a victims' assistance center that,

1 basically, donates one of their advocates to my  
2 office, that can help us out with some victim  
3 services.

4 But, we don't have any funding for that.

5 And we would need significant funding to come  
6 up with some type of sanctuary plan for victims that  
7 have been threatened and for witnesses that have  
8 been threatened.

9 DA DAVID SOARES: There was a current budget  
10 for witness protection that is funded through the  
11 New York Prosecutors Training Institute, but it's  
12 very small. It's \$250,000, and that is supposed to  
13 be used for the entire state.

14 Let me just -- if I can just back up for a  
15 moment and talk to you about -- about witness  
16 protection and current the discovery practices.

17 So, with rare exception, the only cases that  
18 I would not turn over materials -- identifying  
19 materials to the defense, are cases that involve  
20 serious domestic violence, or cases that involve  
21 gang -- organized crime, gangs.

22 I wait until perhaps a month out, two months,  
23 before trial, because, two months, I can afford to  
24 remove a person from community and have that person  
25 stay at -- at -- at one of the various locations



1       that we use.

2               And through NYPTI, those dollars are --  
3       are -- are reimbursed to us.

4               The problem, however, is when, now we're  
5       required to turn over materials so early on in the  
6       process, we could not, in fact, provide that kind  
7       of -- of -- of witness protection for -- for that  
8       kind of period of time, four or five months, could  
9       even be possibly six months.

10              I'm not suggesting to you that we -- that  
11       couldn't be overcome, but it's -- again, it's  
12       going to require a significant investment in  
13       witness-protection funds.

14              And these cases, let me just also say that --  
15       how do I say this and be polite? -- you know, there  
16       are communities, certainly in my community here in  
17       Albany County, where the victims and their  
18       perpetrators live within a block of one another,  
19       they live within two blocks of one another. Their  
20       friends and associates are all known to one another.

21              And so, in those instances, the ability to  
22       provide witness protection, the witness -- the  
23       ability to provide some measure of protection for  
24       witnesses, in addition to victims, really sparks  
25       cooperation.

1           And so we may not have a witness-protection  
2           issue if we don't have cooperation to bring cases in  
3           the first place.

4           And that's the kind of information that I'm  
5           going to be tracking throughout the first and second  
6           quarters, just to be able to update all of you, for  
7           purposes of our having to revisit some of these  
8           issues.

9           SENATOR JORDAN:   Was witness protection  
10          included in any of the additional costs that any  
11          of -- that you spoke about?

12          DA PATRICK PERFETTI:   Senator Jordan, I --  
13          I come from the smallest county represented here.

14          Like DA Soares has mentioned, many times in  
15          my county, the perpetrators and the victims know  
16          each other.   And it is a rural county.

17          Other than the county seat, there really  
18          aren't, you know, hotel accommodations or safe  
19          houses.   And even if there were, law enforcement  
20          agencies, they're dealing with the same fiscal  
21          constraints that I'm dealing with.

22          I've got a sheriff's office right now that's  
23          down two shifts, due to retirements and the  
24          reticence of the county legislature to offer him  
25          funds to replace those officers he's losing by

1 retirements.

2 So, largely, I haven't ever budgeted for  
3 witness protection.

4 And in this climate, I could just add that to  
5 the list of things that are being denied, I think.

6 DA WEEDEN WETMORE: Witness intimidation in  
7 the city of Elmira is very a real problem.

8 Many cases are not prosecuted at all because  
9 the witnesses don't come forward on shootings.

10 If we do get, by chance, a case that we can  
11 present to the grand jury, right now, we will  
12 provide all the discovery, but we may be reluctant  
13 to give certain witnesses until the time of trial,  
14 but counsel will indeed get those witnesses.

15 The problem is a very real problem, and cases  
16 have gone unsolved because of that, or cases are  
17 dismissed.

18 I've not asked for any witness money of the  
19 legislature.

20 Presently, we have asset forfeitures on  
21 occasion.

22 If I've gone to trial, I've been able to  
23 assure certain witnesses that, following the trial,  
24 that we will provide transportation expenses if they  
25 might want to relocate to another state, to be with

1 family members.

2 It is that bad because, in Elmira, as they  
3 say, as some of the other district attorneys have  
4 pointed out, the witnesses live next door to the  
5 very people they're testifying.

6 They are very -- they are very frightened, it  
7 is very real; the intimidation factor is real.

8 It's real in drug cases.

9 It's real in domestic-violence cases.

10 It's real in assault.

11 It's real in gun cases.

12 And, in Elmira, we do have a major problem  
13 with respect to witness intimidation in that regard.

14 DA DAVID HOOVLER: If I may, Senator, just in  
15 one -- one instance, and we've mentioned a whole  
16 variety of cases, I am fortunate that I do have a  
17 child-advocacy center.

18 Within the child-advocacy --

19 SENATOR BAILEY: DA, one second, I'm sorry.

20 Please silence your phones.

21 We -- we need to give all the people  
22 testifying, to make sure that they have -- that we  
23 hear -- we hear them out.

24 Thank you.

25 DA DAVID HOOVLER: Thank you, Chairman.

1 I do have a child-advocacy center. Within  
2 that child-advocacy center, I have one family  
3 advocate.

4 I utilize that advocate to provide certain  
5 resources, but those resources aren't coming from  
6 the county. Those resources are largely State  
7 resources.

8 And that advocate, largely, assists the  
9 families of these child sex- and physical-abuse  
10 victims to access the Office of Victim Services.

11 So those are state moneys.

12 And we have, on certain occasions, been  
13 denied monies that assist with relocation.

14 That would be my greater concern,  
15 particularly with the early discoveries, having to  
16 turn over those kinds of Informations relative to  
17 children -- child victims, and without the resources  
18 to protect them.

19 It's already hard to get them to come  
20 forward.

21 Without the ability to protect them, like  
22 DA Wetmore said, we'll probably, you know, have  
23 cases we can't prosecute.

24 SENATOR JORDAN: Sounds like a step backwards  
25 in public safety and justice.

1 I'm finished with my questions.

2 Thank you.

3 SENATOR BAILEY: Thank you, Senator Jordan.

4 Senator O'Mara.

5 SENATOR O'MARA: Uh, yes, thank you,  
6 Chairman.

7 Thank you all for being here today.

8 I applaud each and every one of you for the  
9 work that you do. You do truly carry out justice in  
10 your communities.

11 And I'm proud to have sat in the position  
12 that you're in previous in my career.

13 I want to direct this first question to  
14 DA Hoovler and the DAs Association.

15 Can you describe for me what outreach,  
16 involvement, inclusion, in the discussions of this  
17 legislation were conducted before this legislation  
18 was passed?

19 DA DAVID HOOVLER: There -- there were  
20 conversations at times over previous -- previous  
21 years, and months, where people talked about  
22 criminal justice reform with individual DAs, with  
23 DAs that sat on the justice task force.

24 But, in the end, this particular package that  
25 came down, nothing.

1           SENATOR O'MARA: No outreach from the  
2 sponsors of this legislation once this specific  
3 legislation was drawn up?

4           DA DAVID HOOVLER: Not on this specific piece  
5 that came down, I think Parts L and K, on this  
6 specific.

7           But there were discussions prior to that.

8           SENATOR O'MARA: Now, I understand fully,  
9 coming from a background of county government as  
10 well, having served as a county attorney, and the  
11 constraints of the property-tax cap, which I fully  
12 and strongly support, because property taxes are a  
13 huge problem in our state.

14           We lead the nation in property taxes.

15           We lead the nation in overall taxes that  
16 stifles our economy and our ability to be  
17 successful, individually, in this state.

18           So I get it.

19           But this comes as another unfunded mandate.

20           Governor Cuomo pushed for the property-tax  
21 cap, saying that unfunded mandates would be  
22 addressed.

23           They have not been addressed.

24           And this governor continues to pile on  
25 unfunded mandates, such as this one, that's been

1 estimated by you, to be over \$100 million across  
2 just Upstate New York.

3 That's huge; that's a huge impact, and a  
4 burden on our taxpayers, on our economy as a state,  
5 and our ability to succeed as a state.

6 Now, some of you have suggested giving up  
7 control of prosecutions in local courts.

8 To what extent can you, if you -- if you --  
9 I don't recall.

10 -- what -- what crimes or violations or  
11 traffic can be conveyed to either municipal attorney  
12 or to law enforcement to prosecute themselves?

13 DA DAVID HOOVLER: Under the county law of  
14 our -- of our state, Section 700, the district  
15 attorney is charged with all prosecutions that occur  
16 in the geographic confines of where he or she is  
17 elected.

18 They have the ability, under case law that  
19 has been decided in the state, to delegate certain  
20 authority.

21 That delegation generally extends to, code  
22 violations go to municipalities, traffic violations  
23 and such can go to municipalities as well. And then  
24 the municipalities can determine on how they want to  
25 do that, sir.



1           SENATOR O'MARA:   Okay.

2           What would you foresee, if your offices gave  
3 up prosecution of what you can, and how those local  
4 courts would deal with, not just this issue of  
5 discovery, but how cases would be handled in  
6 general, in those local courts?

7           DA DAVID HOOVLER:   I think that's a question  
8 better answered by some of the smaller counties.

9           DA PATRICK PERFETTI:  I'll take a shot at  
10 fielding that, Senator.

11           There is case law, as President Hoovler had  
12 indicated, under People versus Van Sickle, that  
13 allows for delegation of authority.

14           I've done that, prior to this legislation  
15 being contemplated, in a certain series of -- or,  
16 types of cases for the municipal attorneys.

17           But in doing it in this regard, I'm not  
18 certain is really a workable solution.  It would  
19 really just be an effort to get these off my plate.

20           I know in some areas of the state, traffic  
21 enforcement is delegated to the law enforcement  
22 agencies.

23           And I think, under our current system, that  
24 can be done.

25           But when the Westchester DA testified before

1 you in New York City, he indicated, and I concur  
2 with his assessment, that the certification of  
3 discovery compliance, and that's a requirement of  
4 the bill, has to be done by an attorney.

5 That's why I'm seeking an additional attorney  
6 in my office to head up discovery compliance,  
7 because I don't think, in the way the statute is  
8 structured, it can be -- that can be done by a  
9 non-attorney.

10 So I'm not certain that delegating to law  
11 enforcement agencies, the prosecution of traffic  
12 tickets, is something in the future that will be  
13 possible, although that may have to await a judicial  
14 determination.

15 As far as delegating it to the municipal  
16 attorneys, as I stated in my comments, they haven't  
17 received any resourcing for this either, so that it  
18 may just be something that they choose not to do,  
19 understanding that municipal attorneys are hired in  
20 a variety of ways.

21 Some are done for a specific -- are hired for  
22 a specific contract issue -- or, they're contracted  
23 to address a specific issue.

24 Some are hired as W-wage -- W-2 wage-earning  
25 employees, and -- or, they're a regular employee of

1 the municipality.

2 And some -- some have restrictions. Like,  
3 they can only work 20 hours a week or per month.

4 It depends on what the municipality decides  
5 they want and need.

6 So I don't think that's going to be a  
7 solution that can be applied statewide, given the  
8 diversity that we have within the state.

9 SENATOR O'MARA: Well, it's going to be  
10 shifting that cost to another entity.

11 DA PATRICK PERFETTI: Right.

12 (Multiple parties cross-talking)

13 DA PATRICK PERFETTI: And I'm reluctant to do  
14 that too.

15 SENATOR O'MARA: It's going to shift the cost  
16 to law enforcement, having to send officers to court  
17 every time their case is on for trial.

18 Less resolution of cases, pre-trial, I would  
19 assume, to cause police officers to appear in court,  
20 local municipal attorneys without the necessary  
21 background and experience that have in your offices,  
22 would be my thoughts on that.

23 DA KRISTYNA S. MILLS: I think it's important  
24 to note as well, that we are all triaging; we are  
25 all trying to deal and comply with these laws from

1 the most serious cases, down.

2 So I think that what's going to suffer are  
3 going to be some of the lesser cases that are  
4 prosecuted in the local courts.

5 What that means, is there's going to be less  
6 funding, less fine structures, less traffic tickets.  
7 All of that revenue is not going to come into the  
8 municipalities anymore.

9 They are not going to be able to afford  
10 their -- their municipal attorneys and their local  
11 police agencies.

12 And that's something I think we're going --  
13 we're going to see.

14 DA WEEDEN WETMORE: If we were to turn over  
15 the prosecution of vehicle and traffic cases,  
16 just -- let's just talk about that, to the local  
17 municipal lawyers, it would be utter chaos in  
18 Chemung County.

19 These people are part-time attorneys. They  
20 would not be capable of reviewing the hundreds, to  
21 thousands, of cases, to send out certificates of  
22 compliance.

23 My suggestion earlier, is if you could remove  
24 the vehicle-and-traffic component from the  
25 discovery, that would be a tremendous asset for us,

1 a tremendous boon to us.

2 I'm not talking about removing misdemeanor  
3 cases, such as DWI or reckless driving, or even if  
4 you want to include DWAI, which is a violation.

5 But removing the traffic tickets, the  
6 speeding cases, those types of cases, we've got to  
7 comply with discovery in all of those. That's --  
8 that's not really cost-beneficial, especially when  
9 that is such a money-generating venture for --  
10 I suppose, you'd call it, "venture," but, a  
11 money-making thing that happens for the county, for  
12 the state, for the various agencies involved, that  
13 collect these funds.

14 But if we're going to turn this over, it's  
15 not going to be accomplished.

16 If my office is going to have to certify,  
17 I told you, it would 48 e-mails, letters, a day,  
18 with a certificate of compliance, saying, we've  
19 gathered all the discovery, we've gathered all the  
20 video, we've gathered all that, on these vehicle and  
21 traffic cases.

22 A simple stroke of the pen, eliminating  
23 VNTs, except for the ones that are egregious,  
24 would be a tremendous help to, I think, every  
25 district attorney's office in the state, not just

1 upstate.

2 SENATOR O'MARA: There seems to be a  
3 perception from those that are behind this -- this  
4 legislation and these mandates, that there's some  
5 desire by prosecutors to push these cases to trial,  
6 and to hold back on discovery to sandbag the  
7 defendants at trial.

8 Having been a prosecutor, and I'm sure you  
9 all agree, your number-one goal is, first of all,  
10 doing justice, but, second of all, doing triage, as  
11 you mentioned, and disposing of cases as quickly and  
12 expeditiously as you possibly can.

13 When you talk about numbers of less than  
14 5 percent of cases going to trial, you're going to  
15 be wasting all this time on 95 percent cases that --  
16 that aren't going to get that far.

17 And to have to do this in 15 days, it doesn't  
18 give time for a defendant to appropriately consult  
19 with his attorney, talk about what he knows about  
20 the case with his attorney, and consider a plea  
21 offer, or a request for reduction of something,  
22 which should be done. But it's not going to be done  
23 in 15 days.

24 I would think -- and I'm supportive of  
25 opening up the discovery further than what we have

1 in New York.

2 I don't like the last-minute disclosures of  
3 things before trial. Even as a prosecutor I did not  
4 like that.

5 But, it seems to me it would be more  
6 effective to work from a trial date, backwards, as a  
7 time frame for when this needs to be disclosed, as  
8 opposed to 15 days from the beginning.

9 What type of -- well, let me just ask you  
10 this: What is a typical timeline to trial for  
11 cases -- these cases that are going to end up in  
12 trial? What's a typical timeline in your counties?

13 DA DAVID SOARES: Currently, in Albany  
14 County, with the judges, with their standards and  
15 goals, cases are tried, from beginning to end, less  
16 than six months, with the exception of a -- of a  
17 more-complicated case.

18 It's a rarity that a case is on track for  
19 more than six months.

20 DA WEEDEN WETMORE: Yeah, I would agree with  
21 that.

22 Those that are incarcerated get priority  
23 preferences. We go to trial on those sooner, to  
24 remove those, or we try to address those cases  
25 sooner.

1 I agree, plea bargaining is a major component  
2 of a prosecutor's arsenal. We try to resolve these  
3 cases, we try to do it fairly.

4 Most cases do not go to trial.

5 I'm not suggesting that -- unlike you,  
6 Senator O'Mara, I'm not suggesting that we look at  
7 the trial date.

8 I agree that perhaps we should look at the  
9 arraignment date, and come up with a time to give  
10 some early discovery to defendants, because that's  
11 the -- that's the concern, I suppose, of the defense  
12 bar, is that, we don't get discovery early enough,  
13 and sometimes we lose potential witnesses.

14 More -- we're more than willing to work with  
15 the defendants.

16 When defense counsel comes to me and says,  
17 "We've got witnesses," we will sit down with them.

18 But as you say, in 95 percent of the cases,  
19 they're going to be resolved by pleas.

20 It's the cases that require a lot of work,  
21 that we're willing to work, we're willing to give  
22 you the open discovery early on.

23 But setting a time limit of 15 days is not  
24 necessarily the way to go.

25 If we go back from trial, as you suggest, the



1 other side is going say, Well, yeah, you're looking  
2 at the trial date. You're still not disclosing all  
3 that information that needed to be discovered  
4 earlier by the defense.

5 We're willing to work with them.

6 We have never hidden our witnesses, other  
7 than, some witnesses, especially on drug cases.

8 And, by the way, the defense ends up knowing  
9 who they are. They know by the indictment, by the  
10 dates, they end up knowing who those persons are.

11 So there is still witness intimidation even  
12 when we don't disclose.

13 The problem is that, that 15-day window is  
14 much too tight a window for us to gather all the  
15 discovery materials, even, even when we get the  
16 computer system in place, even when we get the  
17 data-management systems in place.

18 That 15 days, it's going to require an  
19 assistant DA, at some point, to look at the file, to  
20 certify that everything has been gathered.

21 DA DAVID SOARES: I just -- just as a point  
22 of correction, because I do know that we are all --  
23 we tend to all speak about "15 days."

24 It is not 15 days.

25 The police department will have 7 1/2 days to

1 gather all the material and to turn it over to us.  
2 And then we have 7 1/2 days to review all the  
3 material before we turn it over, so that we are  
4 falling within the 15-day time frame.

5 So it's not "15." It's 7 1/2.

6 DA PATRICK PERFETTI: In answer to your  
7 question, Senator, the last two felony trials that  
8 I directly conducted in my office, one was a  
9 homicide case.

10 It was -- the homicide occurred in April.  
11 Trial occurred in January. So it was about  
12 eight months.

13 And then, in a firearm assault case, it was  
14 10 months.

15 So we're less than a year, but, I'd say,  
16 anywhere between 8 and 10 months, and that's in a  
17 county that has two county judges.

18 So, you know -- and -- and both were detained  
19 in custody.

20 So like -- like, in Chemung County, we are  
21 putting those cases in priority, so that the  
22 detained defendant does get their constitutional  
23 right to trial in an orderly way.

24 SENATOR O'MARA: Thank you.

25 SENATOR BAILEY: Thank you, Senator O'Mara.

1           Senator Serino.

2           SENATOR SERINO: Thank you, Senator.

3           First I have a few comments, and then I have  
4 a question.

5           But, you know, it's up to all of us to  
6 provide public safety.

7           And I can't thank you enough for all of you  
8 being here today.

9           And I'm a firm believer that anybody that's  
10 got skin in the game needs to be involved in these  
11 conversations, especially when it comes to critical  
12 legislation like this.

13           And, DA Mills, your comments about the state  
14 labs, the drug labs, my DA in Dutchess County too  
15 had the same concerns, because they're understaffed.

16           15 days does not seem feasible.

17           So the very people that we are trying to  
18 help, we're really going to hurt, because they're  
19 not going to be able to have programs.

20           And I love your comment about how many people  
21 came to you afterwards, of getting some kind of --  
22 into a program, that they -- you know, you saved  
23 their life, basically.

24           And I'm afraid that this is going to be a  
25 huge problem here.

1           And, you know, we talked about the witness  
2 protection.

3           Domestic violence and gangs, that's a fact of  
4 life in each and every one of our communities. And  
5 I'm really worried about this.

6           We talk about the finances, the cost.

7           Well, we all hear about the doom and gloom of  
8 the upcoming budget, what's going to happen?

9           You know, I'm a firm believer in the  
10 2 percent tax cap, because I know how hard it is for  
11 people, especially in New York State, to pay their  
12 taxes.

13           But when that was enacted, like  
14 Senator O'Mara said, we were supposed to address the  
15 unfunded mandates.

16           And here we go again, we're back to the same  
17 situation.

18           My question is about the multiple police  
19 departments that are going to be involved, and all  
20 of you, pretty much, mentioned that.

21           How difficult is it going to be to coordinate  
22 with multiple departments in 15 days, or, basically,  
23 7 1/2 days, like you said, without a centralized  
24 system?

25           DA DAVID HOOVLER: Just addressing that from

1 Orange County, because I'm very unique, next to  
2 Westchester, we have the most municipalities:  
3 21 towns, 19 villages, 3 cities; over 40 different  
4 local police departments that we deal with on a  
5 regular basis.

6 They have 19 different operating systems.

7 Not one of them interface with the district  
8 attorney's office in a meaningful way.

9 It's extremely difficult.

10 We are looking at a -- we started the  
11 e-discovery platform through NYPTI.

12 We've been using that for, now -- now, over a  
13 year we've been working with that.

14 Just to take the process to look at a system  
15 that can handle all of the law enforcement agencies  
16 and the district attorney's office, with servers and  
17 what we call a "dig system," that, basically, can go  
18 in and extract information, we were looking at  
19 initial investment of about a million dollars, that  
20 would have to go out in RFP; public bid, lowest  
21 responsible bidder.

22 And then, probably, close to \$300,000 a year,  
23 just to maintain it for those 40 or so different  
24 agencies, and allow them to interface with us.

25 Because, the way it's all -- because, again,

1 you have to remember, in a lot of municipalities,  
2 you got a town supervisor, you got a police chief.

3 They all go out and get their own contracts,  
4 with their own providers, with their own bidders,  
5 and they decide what's best for them.

6 And whether or not that system can interface  
7 with anybody else is not their concern.

8 It's, just, does it work for them?

9 So that's a huge problem everywhere you go  
10 across the state.

11 But I'll leave that question for others.

12 DA PATRICK PERFETTI: I probably have the  
13 fewest law enforcement agencies in my county.

14 I have seven.

15 I -- state police, and the university police.

16 As small and as rural as we are, we enjoy  
17 having a college at the state university system in  
18 Cortland.

19 Both those agencies are using electronic  
20 filing with my office; however, those two agencies  
21 are two of the smallest case-generating agencies  
22 that I have.

23 I also have a village police department  
24 that's e-filing.

25 My two largest case-generators are the

1 sheriff's office and the city police department.

2 And as I often say when I'm in public  
3 hearings, particularly in my county, "the police  
4 don't work for me."

5 Like DA Hoovler says, they're their own  
6 governmental entities.

7 And in the case of the sheriff, he's an  
8 elected official in his own right, and they purchase  
9 what systems and resources best suit them.

10 If we get to a resolution with the -- with my  
11 city and sheriff's office, hopefully, it will be the  
12 same resolution because they use the same computer  
13 system.

14 So, I'm sure there's an answer.

15 If I understood IT, I wouldn't do what I do.

16 SENATOR SERINO: And, so, \$100 million might  
17 not even be enough money that we were talking about  
18 for all of the counties above New York City.

19 And I also just wanted to clarify too:

20 I think, DA Hoovler, you mentioned that no  
21 one -- none of the counties received funding for  
22 this, yet. But there was a county, or someone in  
23 the city, that provide -- that was -- received  
24 funding? Or --

25 DA DAVID HOOVLER: No, the City --

1           SENATOR SERINO:   No?

2           DA DAVID HOOVLER:  -- the City has  
3 comprehensive criminal justice reform.

4           SENATOR SERINO:   Oh, okay.

5           DA DAVID HOOVLER:  They got \$391 million.

6           But when you talk criminal justice reform,  
7 you have to look at it as a whole, it's not just one  
8 piece, because, again, you have to -- you have to  
9 address the cause, you have to address the person  
10 that's charged, you have to have services for them.

11           And then, ultimately, you have to do justice,  
12 whether it's going to be a trial or whether it's  
13 services.

14           It's a complete process.

15           And when you look at it as just a piece,  
16 it -- it -- we're dealing with people.

17           And -- and, again, I -- I just -- that's --  
18 that was my point with Senator Bailey on that.

19           SENATOR SERINO:   Okay.

20           DA DAVID SOARES:  With respect to the -- the  
21 finances, and I believe Senator O'Mara also  
22 discussed what cases -- whether we're going to come  
23 to a point where we're making decisions about what  
24 cases to prosecute, I believe the reason why we're  
25 not able to provide you specifically with those



1        answers now, is because the vast majority of us in  
2        Upstate New York, whose budget timetable is  
3        different than -- than -- than it is downstate, are  
4        all really sitting back, waiting to see what it is  
5        that our legislators are going to do.

6                And, therefore, it's almost like we're --  
7        we're aiming at a moving target.

8                I'm sure that, within the matter of  
9        three weeks, when we begin to see that budget  
10        crystallize, then the "Sophie's choice" will have  
11        to -- will come. And it's a very -- that's going to  
12        be a much different discussion than the discussion  
13        that we have now.

14                To get at some of the questions that you had  
15        asked about, the interface of technology between all  
16        of the agencies, what we're doing in Albany County  
17        is not looking to have these agencies speak with one  
18        another.

19                We're looking for them to speak with us.

20                And, in terms of infrastructure investment  
21        for me, it's really building a little Kinko's within  
22        my -- within my operation, where, once the  
23        message -- once the information is presented to us,  
24        then it's a matter of reviewing, and then  
25        duplicating and making it available for the defense.

1           So, that's really the -- the -- the only  
2 structure that I think that we can create in order  
3 to fall within compliance on the 1st.

4           The reality is, we are going to fail; I mean,  
5 we just are. But it's a matter of choosing where we  
6 fail, and how we fail.

7           I have every single member of my  
8 organization, right now, making the clear  
9 distinction between offenses that involve victims  
10 and those offenses that do not involve victims,  
11 because when -- if and when we have to make that  
12 "Sophie's choice," we are really going to be  
13 focusing on those cases that involve victims.

14           SENATOR SERINO: And domestic violence is  
15 something that's really near and dear to my heart,  
16 so I have a grave concern over that with this new  
17 law as well.

18           And my other question is, with access to the  
19 crime scenes, are you guys concerned about that with  
20 disclosure?

21           And I don't know if we really spoke about  
22 that at all.

23           DA PATRICK PERFETTI: Well, I think --  
24 I think we're all concerned with the disclosure.  
25 And there is process written into the statute, that

1 allows us to address this by a protective order.

2 SENATOR SERINO: Uh-huh?

3 DA PATRICK PERFETTI: But, like with any new  
4 piece of legislation -- and this is not to be  
5 critical of this one particular piece of  
6 legislation -- but with any new piece of  
7 legislation, there will be a time, as we go forward,  
8 that we're going to have to see how it plays out in  
9 the judiciary.

10 Some judges may grant these protective  
11 orders, other judges may not.

12 SENATOR SERINO: Right.

13 DA PATRICK PERFETTI: And until those cases  
14 advance their way through the court system, and,  
15 probably, ultimately, to be decided by the Court of  
16 Appeals, we won't know the ultimate answer as to how  
17 that will work.

18 DA DAVID SOARES: And just to add a fine  
19 point to what my colleague is saying, look, I know  
20 part of the goal here was to create greater  
21 efficiencies within the system, to make sure that,  
22 if people are incarcerated, that they're not there  
23 long, awaiting trial.

24 But what's really happened here, if you look  
25 at the totality of these reforms, is that you've

1 really created more litigation throughout the  
2 process.

3 For example, even in something as -- as  
4 simple as the bail issue, which is at the very front  
5 of the system, there are opportunities for appeals  
6 right at that -- in that moment, and hearings that  
7 are required.

8 With respect to protective orders, we have  
9 the ability to go to the Appellate Division and  
10 appeal those decisions that are made by judges,  
11 right then and there, which means we're litigating  
12 much more on issues that we've never had to litigate  
13 before; thus, requiring more bodies to be able do  
14 just that.

15 DA DAVID HOOVLER: I cannot imagine.

16 I went to a town hall, and I spoke.

17 And, individuals, if your house gets  
18 burglarized, and I explained what the law was.

19 And somebody said -- I'm just going to leave  
20 it like this:

21 Somebody said to me: So you're telling me,  
22 District Attorney Hoovler, that if my house is  
23 broken into, and somebody takes something, and a  
24 judge signs an order, the defendant and his attorney  
25 can come back to my house?

1           And I said: Yes. If a judge signs a lawful  
2 order, then, yes.

3           The individual looked at me at the town hall  
4 and said, "Not coming in."

5           SENATOR SERINO: And --

6           DA DAVID HOOVLER: And --

7           SENATOR SERINO: -- that's exactly what we're  
8 afraid is going to happen.

9           DA DAVID HOOVLER: And then the discussion  
10 was, How are we going to address that?

11           And as I said to the individual, I said that,  
12 That -- that, again, that's your house, that's your  
13 right. You have the right to do that.

14           But, again, that is going to happen,  
15 somewhere, someplace, that somebody's just going to  
16 say "no." And they're going to say, I don't care  
17 that a judge signed an order. You're not coming  
18 back to my house.

19           And, again, I think that individual that owns  
20 that house, they're going to have -- they're going  
21 to have standing to put up a fight to say they don't  
22 want somebody in.

23           But, again, I think that's going to be a rare  
24 instance, but, it's something that's going to  
25 happen.

1           DA WEEDEN WETMORE:  Yeah, I think it's going  
2           to be a rare instance.

3           I kind of have faith in my local defense bar,  
4           that they're going to be very sensitive to the needs  
5           and wishes of victims, and they're not going to go,  
6           in every case, say, we want to go visit the crime  
7           scene.

8           I'm sure that, where necessary, we will  
9           assist them in providing access to a crime scene.  
10          Maybe it has to do with impossibility of performance  
11          of the crime under some scenario.

12          However, there are visiting defense lawyers  
13          who come to town, and who may try to utilize  
14          whatever they can under the Criminal Procedure Law.

15          And -- so when I talk with victims under this  
16          law, we're going to have to say:  Generally  
17          speaking, we think it's not going to happen, but it  
18          may.  But we will try to protect you as much as we  
19          can, we'll try to get that protective order.

20          We have judges, I think, that are very  
21          sensitive to that in Chemung County.

22          So that is not as pressing a concern to me,  
23          although it is a concern.

24          I've talked to a police officer on the way  
25          here this morning.  He says, Hey, we've talked with

1 the victims. They are concerned about this.

2 The victims are really concerned. And  
3 I think it's going to take some education from us to  
4 assure them that that's going to be the exception  
5 rather than the practice.

6 DA ANTHONY JORDAN: And I would just add one  
7 quick point.

8 I think it comes right back to the same  
9 thing, though, which is resources.

10 The victims in that instance will reach out  
11 to us when they're served with that order to show  
12 cause, and say, Do I need an attorney?

13 And we'll have to remind them that we are not  
14 their attorney in that instance. And if they want  
15 to litigate that, they would have to hire their own  
16 attorney.

17 And I think to, you know, sort of bring it to  
18 a close, perhaps for me, is, Chairman Bailey, we're  
19 kind of in the same position here.

20 The Governor put this in his budget, and  
21 there was no money.

22 And you are faced with a tough choice, like  
23 those of all of your colleagues that are here and in  
24 the other House.

25 Do we vote for it with money -- or, without

1 money, or do we vote against it?

2 And I -- what I am encouraged to hear here at  
3 this table, with the broad spectrum of DAs, no one  
4 is saying repeal it. Right? No one is saying, this  
5 was a bad idea.

6 What people are saying is, we desperately  
7 want to comply, but we need resources.

8 And it's a state law. And it just -- it  
9 defies logic to me, that the State would not fund  
10 such an important initiative.

11 And I think that certainly would be my own  
12 goal and my own objective, because, without those  
13 resources, I think we're going to have a difficult  
14 time, you know, an impossible time, in complying  
15 fully.

16 But, thank you.

17 DA MARY PAT DONNELLY: I would just like to  
18 make one quick point. I know you want to get out of  
19 here.

20 But, there's a reason plea bargains occur in  
21 the first place. It's because we can't litigate  
22 every single case.

23 So now we're looking at a situation where we  
24 want to evaluate every case, from start to finish,  
25 properly. And that's a -- that's what we should do.



1           But we can't do it on the same shoestring  
2           that we've been operating on.

3           So there has to be a better way. We all need  
4           to figure it out quickly, perhaps.

5           But I want you to know that we all want do  
6           this. But as it stands, I don't -- I really don't  
7           think it can be done.

8           SENATOR BAILEY: Senator Serino, were you --  
9           were you finished with your -- with your line of  
10          questioning?

11          Because I have -- I have a couple of more  
12          questions before we allow our DAs to go back and do  
13          the great work they do in their county.

14          SENATOR SERINO: Sure.

15          No, no.

16          And I just think -- I'm so happy that we had  
17          this conversation today, and we all are on the same  
18          page, that, you know, reforms are good.

19          But, you guys all have to be included in this  
20          conversation.

21          So today your feedback is really important.

22          So anything that you think needs to be  
23          adjusted, I think, would be critical at this point,  
24          that we have Senator Bailey here today.

25          So thank you very much.

1           SENATOR BAILEY: Thank you.

2           So I would have a -- just -- just one  
3 comment, and then a couple of questions.

4           One, I'm glad we cleared up that is -- that  
5 it is more exception than the rule.

6           Because, when it was proffered, the  
7 conversation was more about, witnesses' homes will  
8 be in danger, as opposed to specifically delineating  
9 that, this is a limited circumstance, that a judge  
10 has to approve, when the original photos and a video  
11 of the crime scene are not insufficient.

12           We should lead with that, because you say you  
13 don't intend to fear-monger. But when you lead  
14 with, "people are going to have access to your  
15 home," anybody, pro/against reform, is going to be  
16 concerned, until you specifically delineate what the  
17 statute says.

18           We have to lead with that.

19           Like, I think we -- I -- and I -- and I --  
20 and I think -- I'm not -- I'm not telling you how to  
21 do your job. But when you're telling  
22 constituents -- right? -- and even when I tell my  
23 constituents, and I'm -- and I was a sponsor of the  
24 bill, I tell them the good, the bad, and what --  
25 with the good -- what you consider to be the good,

1 the bad, or the ugly.

2 That is my duty as a state senator.

3 And when we have to instruct people, we've  
4 got to instruct people what it's -- what it's about.

5 So that's the first thing.

6 DA Hoovler, when did you become the president  
7 of the District Attorneys Association?

8 DA DAVID HOOVLER: July.

9 SENATOR BAILEY: So -- so you were the  
10 president -- you weren't -- you -- you were not the  
11 president during the -- the negotiations of the  
12 budget.

13 DA Soares, were you the president during the  
14 budget; right?

15 DA DAVID SOARES: Yes, sir.

16 SENATOR BAILEY: Did we have discussions  
17 about this -- this particular legislation prior to  
18 the enactment?

19 DA DAVID SOARES: Absolutely.

20 SENATOR BAILEY: I just wanted to make --  
21 I just wanted to make that crystal-clear.

22 I just wanted -- I wanted to make it  
23 crystal-clear, about that.

24 And the final question I wanted to have is,  
25 witness safety.

1           You mentioned that -- that there's  
2 intimidation happening currently.

3           How does the enactment of this law, how would  
4 that -- what -- what creates a tipping point?

5           Because, I -- I -- I ask that in earnest.

6           I want to know, what -- what about this  
7 legislation would make -- would make it more  
8 dangerous for witnesses, when no other jurisdiction  
9 with this type of open-file discovery has had the  
10 same circumstance?

11           DA DAVID HOOVLER: Disclosure of grand jury  
12 minutes.

13           For -- since time began in the state of  
14 New York, we've always, essentially, all prosecutors  
15 have told, "Unless or until this case goes to trial,  
16 what you say to the grand jury will be secret," for  
17 a number of reasons: To protect -- to protect the  
18 witness; to protect the investigation; to,  
19 basically, protect undercover officers.

20           A myriad of reasons.

21           The fact that that is no longer going to be  
22 true, I think that is the most significant factor of  
23 all of it.

24           But I'll leave any fellow DAs to comment.

25           DA ANTHONY JORDAN: I think the other issue

1 is, within 15 days now of arraignment, we have --  
2 we'll have to provide the names of all witnesses and  
3 contact information.

4 And, oftentimes, that is -- what will be  
5 adequate contact information, we don't know.

6 So in the instances where we have concern  
7 with protect -- and we have an open policy --  
8 open-file policy, where we have concerns of -- a  
9 real concern of potential intimidation, we won't  
10 provide that information.

11 We'll provide defense counsel with a summary  
12 of what the witness observed, what they saw, but  
13 we're not going to be giving out their name,  
14 address, what have you.

15 And under this law, we have to, unless we're  
16 successful in getting a protective order.

17 And the way the law is written, that is  
18 within the sole discretion of the judge, but it  
19 requires specific and articulable instances or  
20 evidence of threats against that individual from  
21 that individual.

22 And I don't have the statute in front of me,  
23 so I'm probably misquoting it, but, that's a  
24 different standard than, we have this very real  
25 concern. We know the person's history. We know his

1 or her, co-conspirators', co-defendants', histories,  
2 and so we will be protective of that information.

3 We lose control, and it gets turned over to  
4 the discretion of a judge, that's going to have a  
5 very different standard than what we would be  
6 applying. And we have history with those standards,  
7 and, typically, they're very narrowly construed.  
8 And if you don't meet it, then the disclosure is a  
9 must.

10 DA DAVID SOARES: I would also just add --  
11 I would add just this one practical element here.

12 Look, when there are shootings that happen in  
13 my community here, it's not as if, when police  
14 respond, there are a number of people looking to  
15 cooperate.

16 One of the ways that we're -- we're able to  
17 provide assurances to people that their information  
18 is not going to be divulged, is the secrecy of the  
19 grand jury, and, also, the promise that, if and when  
20 the time comes where I have to disclose this  
21 information to the defense, I will do everything  
22 that I can to move you from this area and provide  
23 you with protection until after trial. And then we  
24 can do other long-range planning.

25 That's been eliminated.

1           That has been eliminated.

2           And, listen, that, what I'm saying right now,  
3 is not about, good legislation, bad legislation.

4           This is about reality, and the reality that  
5 we're dealing with.

6           Not one of you sitting here, not one of us,  
7 I mean, whoever, wherever you stand on these issues,  
8 wants to see our communities deteriorate because of  
9 violence.

10           We're seeing it happen in some communities  
11 more frequently than in others.

12           I think we're all here, trying to achieve the  
13 same goals: You want greater transparency in the  
14 criminal justice system.

15           You know, I'm the first to admit that, by  
16 God, it's about time. Right?

17           To me, our cases are better in the earliest  
18 phases of a prosecution than later on.

19           So delaying, you know, that opportunity for  
20 that defense attorney to have meaningful  
21 conversation with his or her client, that is not in  
22 our best interest.

23           But the reality is, there are several laws  
24 right now that are really impacting the way that we  
25 operate.

1           Now, I got to get together with Tony Jordan a  
2 little bit later and ask him: How did you get money  
3 for Raise The Age, because we didn't?

4           And I don't know that any other county has  
5 either.

6           But I want you to just take inventory of  
7 something that's happened in the last two years.

8           16-year-old children, 17-year-old children,  
9 in my county right now --

10          Facts, not fiction, I'm not -- I'm not  
11 telling stories.

12          -- 80 percent of my shooters right now in my  
13 county are 12, 13, 14, 15, 16, 17.

14          Okay?

15          These are cases that we would have, that we  
16 would -- that we would have people on bail, or  
17 holding them, pending the outcome of a case.

18          These cases are now going to family court.

19          Now, mind you, family court is an institution  
20 designed to bring people back together. Right?

21          Probation is an institution that is designed  
22 to provide community supervision over the least  
23 dangerous people that we have in our community.

24          And right now, my shooters are going to  
25 family court, where, on Monday, these kids are going



1 back to school, with ankle monitors -- right? --  
2 putting others in that particular place in fear.

3 That's just the reality.

4 Do they need to be held behind bars?

5 Absolutely not.

6 Do we need to remove them to some other place  
7 so that other people who -- their victims and other  
8 people can feel safer?

9 Absolutely.

10 But that's not happening right now.

11 The law, as it's written, if I live on the  
12 first floor and I'm with my wife, if she and I have  
13 an altercation, and the police are summoned,  
14 because, domestic violence falls under that  
15 particular heading where bail can still be  
16 considered and arrests can be made, I will be  
17 arrested and I will be removed from my home.

18 But if I get into a fight with a person who  
19 lives on the first floor, the second floor, or the  
20 third floor, well, when the police are summoned,  
21 that person is going to receive an appearance  
22 ticket, and that appearance ticket is -- can be, you  
23 know, filled out for 20 days out.

24 So where is the order of protection between  
25 the period of -- of, you know, the police being

1 summoned and the date of arraignment?

2 Right?

3 Now, I mention these things, not because I'm  
4 trying to demonize what's been done.

5 I mention these things because there are  
6 consequences to -- to the way that -- that these  
7 laws have been written.

8 And we need to get to the table, together, so  
9 that we're able to fix those things and to address  
10 some things.

11 I'm not suggesting to you that, you know, we  
12 reinstitute bail here, or do that, or change.

13 What I'm talking about, is that there are  
14 collateral consequences here that -- that for  
15 purposes of public safety, we need to come together,  
16 and to fix and to address.

17 SENATOR BAILEY: Thank you.

18 I just have one final -- well, one comment  
19 and then a final question.

20 You mentioned, DA Soares, that we had a  
21 conversation about this, about the people coming to  
22 testify.

23 And -- and -- and -- and I would say this, in  
24 public, in private: The reason why some people  
25 don't testify is because they don't trust the law

1 enforcement system, because they have had negative  
2 experiences with them.

3 DA DAVID SOARES: But, listen --

4 SENATOR BAILEY: And -- and -- and I know  
5 we've had commonality.

6 I wanted to make sure I address that, and say  
7 that, we spoke about that, and you agree with that.

8 But I just wanted to make sure I stated it  
9 for the record, because we talk about root causes a  
10 lot.

11 And both -- and -- and beneath the surface of  
12 all the legislation, we should have a conversation.  
13 You should all come talk to me at the beginning  
14 session.

15 Not about discovery.

16 If you want to talk about discovery, fine.

17 But if you want to talk about anything that's  
18 happening in your counties, my office, Room 609,  
19 LOB, is open to you, period, to anybody that wants  
20 to come by.

21 You got to make an appointment first, because  
22 it might get a little crazy, but, you have to -- you  
23 should come by.

24 The final question I would have is this:

25 You mentioned that -- that you -- that you

1 wanted an increase in funding.

2 Would you -- would you -- do you think that  
3 defense attorneys and defense-attorney organizations  
4 should also receive an increase in funding?

5 DA DAVID SOARES: My public defenders, my --  
6 in Albany County, if you look at our budget, the  
7 indigent defense system has more lawyers than I do,  
8 they have more resources than I do.

9 And the reality is, that, in Albany County,  
10 the indigent defense system, they handle anywhere  
11 between 55 to 60 percent of the cases.

12 We still have to address those cases that --  
13 that defendants are not indigent.

14 So we have private attorneys, as well as  
15 indigent defendants, in addition to investigations  
16 that we conduct ourselves.

17 So, when you talk about a system that is  
18 balanced, absolutely.

19 Every person, indigent or wealthy, should  
20 have counsel.

21 I do not begrudge my colleagues for receiving  
22 the funds that they do, but I believe, right now,  
23 with the additional burdens that have placed upon us  
24 in terms of the discovery reform, we need to balance  
25 that scale.

1           DA PATRICK PERFETTI: I'd be happy to address  
2           that, Mr. Chairman, and just so you're aware, I'm --  
3           I came from the defense bar, only 2 1/2 years ago.  
4           And in my county, there was a time that I served as  
5           the deputy public defender.

6           And I argued back then that they needed to be  
7           properly resourced.

8           Right now, the public defender's office in my  
9           county, in terms of staffing, is equal in number to  
10          my office.

11          And through indigent legal-defense grants and  
12          resources, the public defender in my county has got  
13          about a million and a half dollars to spend.

14          In order to comply with the statute, I need  
15          less than half a million dollars, and it's -- it's  
16          not forthcoming.

17          The public defender's got more money than he  
18          knows what to do with.

19          In fact, there's been discussions that he's  
20          looking for ways to try to find how to spend it.

21          One of the unique aspects of being in a rural  
22          county like mine, where the public defender doesn't  
23          have -- I mean, he has his staff, but, where he  
24          can't handle a case because there's a conflict of  
25          interest due to their being co-defendants, and such,

1 things -- matters then get assigned out to an  
2 assigned-counsel program.

3 There are several articles in the state  
4 "Bar Journal" about a lack of attorneys in rural  
5 areas.

6 And so, even though we have an  
7 assigned-counsel program, it is far from robust.  
8 It's got about -- about half a dozen attorneys that  
9 are available. And even some of them are not  
10 universally available.

11 There may be -- there may be certain town  
12 courts they don't want to go to because those  
13 sessions are at night.

14 There may be certain types of cases they  
15 don't want to handle, whether it be sex-offense  
16 cases, or cases where there's child victims.

17 And so, in that regard, they've got resources  
18 in terms of money, but they don't have personnel.

19 I need much less money and I can get the  
20 personnel. I mean, I've got -- I've got two law  
21 schools within 30 miles of my county. I can get  
22 the -- I can get the personnel.

23 I just need to figure out a way to fund it.

24 But I have always -- I've always said that,  
25 you know, the defense should be in a parity with the

1 prosecution in terms of resourcing.

2 SENATOR BAILEY: All right.

3 I greatly appreciate all of your time and  
4 your attention to this -- to this very important  
5 matter.

6 I thank you for the job that you do.

7 And I look forward to having serious  
8 conversation, not just about discovery.

9 But any other matters that -- that come  
10 before your counties, please feel free, again.

11 It's -- I don't want to say -- keep referring  
12 to DA Soares, but he walked into my office and we  
13 had a conversation.

14 The door is open for all of you.

15 Thank you.

16 (All witnesses say "Thank you.")

17 SENATOR O'MARA: Thank you.

18 SENATOR SERINO: Thank you.

19 SENATOR BAILEY: The next panel will be:

20 Attorney Terence Kindlon from Albany County;

21 Attorney Sandra McCarthy from

22 Rensselaer County;

23 And, Attorney -- Chief Attorney Kevin

24 Stadelmaier of the Legal Aid -- Stadelmaier, hope

25 I appreciate -- pronouncing that correctly --

1 Legal Aid Bureau of Buffalo.

2 LEE GREENSTEIN, ESQ.: Excuse me, Senator?

3 I was scheduled for one. My name is  
4 Lee Greenstein.

5 If it's okay, I'm going to join this panel.

6 SENATOR BAILEY: Sorry, and your name?

7 LEE GREENSTEIN, ESQ.: Lee Greenstein. I'm  
8 on the 1:00 (parties cross-talking) --

9 SENATOR BAILEY: Lee Greenstein will be  
10 joining this panel.

11 No objection?

12 TERENCE KINDLON, ESQ.: No objection.

13 SENATOR BAILEY: So ordered.

14 I may never be a judge, so I -- probably  
15 won't ever be there, so I --

16 TERENCE KINDLON, ESQ.: You did that very  
17 well, though.

18 SENATOR BAILEY: -- so, you know, I practice  
19 a little bit. Right?

20 So...

21 So you may commence in the order that you  
22 wish. Just state your name for the record prior to  
23 the commencement of your testimony.

24 And thank you for your patience in -- in --  
25 in coming to testify.



1           TERENCE KINDLON, ESQ.: I'll go first.

2           Terry Kindlon, Albany, New York.

3           Senator Bailey, I -- I'm going to quote you  
4 when I say that it's no secret that I disagree with  
5 your colleagues. I do so respectfully.

6           Senator Jordan, I was troubled by the fact  
7 that you described this legislation as,  
8 quote/unquote, coddling criminals.

9           I haven't heard that phrase used in a  
10 sentence since Nixon was in the White House.

11           And I'd like to emphasize something, that  
12 we're talking about a point in the criminal justice  
13 process which is one in which the -- the presumption  
14 of innocent attaches.

15           These people who are pre-dispositioned are  
16 not criminals. They're accused.

17           And all that we're asking for here is that  
18 they be treated fairly.

19           Now, just briefly, who am I?

20           At present --

21           I'm probably the oldest person in the room.

22           -- but, at present, after almost 50 years in  
23 this line of work, I started out as a law student,  
24 working in Albany County Public Defender's Office,  
25 in 1970.

1 I, if nothing else, bring a great deal of  
2 institutional memory to this conversation we're  
3 having.

4 Over the years, first as an assistant public  
5 defender, then for, in excess of 30 years, in  
6 (indiscernible) private practice, and then, at the  
7 end, as a public defender -- again, as the acting  
8 public defender in Albany County, I've had about  
9 175 jury trials to verdict, 36 of which were murder  
10 cases. A couple of those were in federal court.

11 I'm capital-qualified when we used to need  
12 that designation in New York State, before we got  
13 rid of that blasted death-penalty statute.

14 I'm designated as learned counsel in federal  
15 court.

16 And I was actually in the office the day that  
17 the Criminal Procedural Law which we're discussing  
18 here came into effect, which was September the 1st  
19 of 1971.

20 And, by the way, the CPL didn't really help  
21 the very dismal discovery availability that we had  
22 at the time.

23 The Criminal Procedure Law, specifically,  
24 Section 240, which deals with discovery, is,  
25 essentially, meaningless.

1           We don't get -- we have not gotten discovery  
2           in New York State unless the district attorney's  
3           office chooses to give it to us.

4           Frankly, the discovery material, at best, is  
5           trickled out.

6           The section, 240, or the article, 240, of the  
7           Criminal Procedure Law was toothless.

8           After it was slightly revised in 1978, it was  
9           still toothless.

10          When that, combined with the mandatory  
11          minimum sentences provided by the Rockefeller drug  
12          laws, a very dark period in New York State criminal  
13          prosecution set in, because what you had was, you  
14          had prosecutors who had this incredibly powerful  
15          weapon of mandatory minimum sentences, and you had  
16          criminal defense lawyers who were dealing with all  
17          of these unknowns, because so many of the cases  
18          arose, allegedly, through confidential informants  
19          and -- and street sales.

20          And what that did, what that toxic mixture of  
21          circumstances did, was it began the formation of a  
22          lot of really bad habits that, essentially, almost  
23          killed off trial practice in New York State  
24          altogether.

25          And I have to tell you, my -- my focus is

1 primarily on indigent defense.

2 I was in the beginning, as I said, an  
3 assistant public defender.

4 I finished up that way.

5 And, currently, my law partner and I, my law  
6 partner is my wife, we are involved in doing  
7 mentoring for the New York State Office of Indigent  
8 Legal Services.

9 Everybody knows that this situation gave rise  
10 to a massive prison population; that most of those  
11 people in prison are people of color, or they're  
12 indigent defendants; and that most of them were  
13 represented by assigned counsel, who, until very  
14 recently in upstate, were working with extremely  
15 limited resources, as so many of them were young  
16 lawyers with no training.

17 And, frankly, my experience was that, judges  
18 were generally indifferent to the lack of discovery.

19 We would make a discovery demand. The  
20 district attorney would give us what I always  
21 affectionately referred to as a "bread sandwich,"  
22 nothing there.

23 We would make a motion to compel.

24 The judge -- judges were generally  
25 indifferent.

1 I actually had, and this is a classic, a  
2 local county court judge look at me and smirk, and  
3 say, Well, your client knows what he did.

4 Now, that's not the definition of  
5 "discovery," "your client knows what he did," but  
6 that's what I was told more than once.

7 I have spoken with assistant district  
8 attorneys, who being, I hope, facetious, referred to  
9 the paper shredder in their office as the "Brady  
10 machine."

11 You know, power corrupts, we know this for a  
12 fact.

13 And the reality is this:

14 I had a -- and this is a good example of what  
15 I'm talking about.

16 I had a -- the last trial -- last serious  
17 trial that I did a couple of years ago, and it was a  
18 four-week trial, and I had to pull three  
19 all-nighters during the course of that trial, and  
20 I decided, at the age of 69, that's enough of that.

21 So I throttled back a little bit.

22 But in that trial, I received, after several  
23 requests, copies of the police reports.

24 Now, under the new sec -- under the new law,  
25 we get the police reports.

1 I had to beg and plead to get police reports  
2 in this case.

3 And I swear to God, what I found when I got  
4 the police reports was that, a lot of information  
5 was redacted, including, and I'm not making this up,  
6 the telephone number of the police department from  
7 which the report had come.

8 So, obviously, they had some -- some person  
9 just in there redacting everything of any  
10 significance.

11 I had a preliminary hearing in a very serious  
12 case. And my client had given a statement, a  
13 written statement. And the district attorney -- the  
14 assistant district attorney refused to turn it over  
15 to me because it wasn't required to be turned over  
16 under the Criminal Procedural Law, Article 240.

17 In a nearby county, I had no discovery.

18 I made a motion to compel.

19 The judge basically shined me on and said,  
20 Well, you know, the DA knows what his responsibility  
21 is.

22 And I filed another motion to compel, and  
23 I got the same thing.

24 As so frequently, typically, happened, we got  
25 to trial. And on the morning of trial, the DA came

1 in, and took a box full of papers and dropped them  
2 on my desk, like that (demonstrating), and says,  
3 There's your discovery material.

4 That is -- that makes it impossible for a  
5 criminal defense lawyer to do his or her job.

6 You know -- and the reality is this:

7 Thorough discovery is going to facilitate the  
8 disposition of cases.

9 You know, if -- if I'm talking to a client,  
10 and he says, What do they got? Why should I plead  
11 guilty? What do they have?

12 And I say, I don't know. They say they have  
13 this, they say they have that, they say they have  
14 the other thing.

15 And he says, Well, what -- and I've heard  
16 this 1,000 times in last almost 50 years: Do they  
17 have any statements?

18 I guess.

19 Well, can I see it?

20 No. I can't see it either.

21 You know, I have -- I -- I -- I'm friends  
22 with some of the assist -- some of the district  
23 attorneys who were up here, and I know them to be  
24 good men and women.

25 But, they've -- they've been happy with the

1 situation as it has existed for the last 50 years.

2 They've resisted change through their  
3 District Attorneys Association.

4 You know, and what I think has really forced  
5 change recently is this, an observation:

6 People on the panel purport to not have  
7 any -- you know, to say that, you know, well,  
8 this -- this law popped out of -- popped out of the  
9 woodwork suddenly, that's not true.

10 According to public records, the New York  
11 State -- the New York City Legal Aid Society was  
12 working on this in 2009.

13 Discovery for Justice was working on it in  
14 2012.

15 2014, New York State Bar Association Task  
16 Force Report.

17 2015, New York State Bar Association.

18 2017 through 2019, Repeal the Blindfold.

19 Senator, I know you've been putting a lot of  
20 time and effort into this effort over the last  
21 several years.

22 And, what happened was this:

23 This legislation finally became possible when  
24 there was a change in the makeup of the Legislature.

25 Let's not -- let's not be -- let's not be



1 naive about that.

2 And the statute is brilliantly conceived. It  
3 is developed with broad -- with input from a broad  
4 spectrum of people. It's carefully constructed to  
5 sort of preemptively negate all the usual excuses  
6 that we became so tired of listening to.

7 DAs are obligated to do justice.

8 This statute gives them the means to do that.

9 You know, and instead of acting like  
10 William Buckley, standing (indiscernible) history,  
11 yelling, "Stop," they should be explaining the law  
12 instead of just complaining about it.

13 They're dragging their feet. They're making  
14 baseless claims. They're scaring people.

15 Oh, if we divulge the grand jury minutes, all  
16 these witnesses are going to be killed.

17 That's nonsense.

18 40 states, 40 states, have disclosed this  
19 kind of information for decades.

20 My wife practiced in Phoenix, Arizona, for  
21 11 years before I met her.

22 I met her in 1988.

23 Phoenix, Arizona, was doing complete  
24 open-file discovery in the '70s.

25 So to say that this is, you know, terrible,

1       it's just -- it's just -- it's just not -- just not  
2       so.

3               Our -- our old statute is unfair, and it's  
4       unwise, and, worse, it has positioned the great  
5       Empire State at the absolute bottom of the -- of the  
6       states.

7               We can change it.

8               We have changed it.

9               All we have to do, I think, is put a sincere  
10      effort into observing its terms and its conditions.

11              There's no reason why New York State should  
12      be worse than Texas when it comes to discovery, and  
13      we are.

14              We are worse than Texas.

15              We are worse than Arizona.

16              We are worse than New Jersey.

17              We are worse than any number of places.

18              Places where open-file discovery is a  
19      reality, not some noble gesture by a district  
20      attorney who is being a good person by doing it, the  
21      law has to require it, and it does.

22              And I think the district attorneys are just  
23      going to have to adjust to that.

24              So, anyway, I think I covered everything.

25              Most of the -- most of these reforms that are

1 going to cost \$20 million, baloney, it is malarkey.

2 Most of these -- most of these reforms can be  
3 accomplished with a photocopying machine.

4 There's no magic in getting a report from,  
5 you know, three blocks away, and just making another  
6 copy, or, even electronically, forwarding it to the  
7 defense lawyer.

8 District attorneys are going to have to --  
9 and we defense lawyers know all about this --  
10 they're just going have to move a little bit faster.

11 They're going to have to change a lot of bad  
12 habits that have set in over the years.

13 And, granted, it won't be perfect.

14 You can't let perfection be the enemy of  
15 good, but it's doable.

16 And we all can do it if we all work together  
17 for the benefit of our clients and the criminal  
18 justice system of the state of New York.

19 And that's all I got to say.

20 Thank you very much.

21 SENATOR BAILEY: Thank you, Mr. Kindlon.

22 Again, I want to make sure I make the same  
23 reminder: Please, let's try to limit our testimony  
24 as much as we can.

25 Thank you for your testimony.

1           Who will be next to testify?

2           LEE GREENSTEIN, ESQ.: Senators, my name is  
3           Lee Greenstein.

4           I worked for the criminal defense division of  
5           the Legal Aid Society in Queens, New York, from 1986  
6           to 1990.

7           And I've been a criminal defense lawyer in  
8           the Capital District since 1991 when we moved here.

9           I have represented people, from murder  
10          defendants, to DWI, to burglaries, everything in  
11          between.

12          I represented clients in Queens during the  
13          crack epidemic in the late '80s, up until today.

14          So I'm here to tell you what I have seen, and  
15          how some of the things that you're considering, how  
16          I've experienced them.

17          When I -- I would like to first remind  
18          everybody who we're talking about, because it's my  
19          sense, and the sense of any other defense lawyer  
20          I know, that the previous discovery laws were  
21          written for an unknown frightening class of  
22          defendants.

23          When I meet clients for the first time, and  
24          I want them to trust me, I tell them that I work for  
25          them, and that they're flesh and blood, and they're

1 my responsibility.

2 And those flesh-and-blood people are not the  
3 sensational people you read in headlines, but,  
4 they're your neighbors, your family; they're people  
5 that we all know.

6 And my sense is that, for the first time,  
7 this legislation was written with real people in  
8 mind, not the rarest and most unusual frightening  
9 people that you might see in headlines.

10 The people that testified this morning, the  
11 district attorneys, many of whom I know and am  
12 friends with, who are all well-intentioned,  
13 well-meaning, hard-working people, they have a lot  
14 of power, and they don't want to give up that power,  
15 because they can control what they give and when  
16 they give it to the people who are accused of  
17 crimes.

18 And how are they trying to keep that power?

19 We heard terms this morning like: What's  
20 going to happen if this law goes through when it's  
21 supposed to go through?

22 They used terms like:

23 Chaos.

24 Roulette with public safety.

25 Witness intimidation.

1           We don't want to see communities deteriorate  
2 because of violence.

3           I have news for you, Senators: The sky will  
4 not fall, the world will not come to an end, there  
5 will not be mayhem in the streets, if you allow what  
6 has been legislated, which is reasonable discovery,  
7 to go forward.

8           I'd like to address Senator Jordan's concern  
9 about witness intimidation.

10           Witness intimidation is another way for  
11 saying, a defense lawyer and his investigator going  
12 to someone's home to ask what happened.

13           And that person cannot answer the door,  
14 cannot answer the phone, or, if they want, they can  
15 talk to them.

16           It's the same thing that happens now when  
17 police officers and the staffs of district  
18 attorneys' office investigators go speak to the same  
19 people.

20           Okay?

21           But the reality is, is that defense lawyers  
22 and defendants know who the victims are now, the  
23 alleged victims. They know who the witnesses are.

24           Okay?

25           This law, there's no law that you can write,

1 that is going to disallow people who are charged  
2 with crimes and their lawyers from trying to speak  
3 to people who are accusing them of crimes.

4 And I heard one of the prosecutors say this  
5 morning that it's an "unknown world." They don't  
6 know if judges will grant protective orders.

7 Senators, I guarantee, if a prosecutor goes  
8 to any judge in this state and gives a reason why  
9 it's a gang case, or it's a domestic-violence case,  
10 or there's something particularly dangerous about a  
11 case, I guarantee you they'll get a protective  
12 order.

13 There will not be a -- a -- you know, what  
14 are we afraid of?

15 Okay?

16 Nobody on this panel wants to wake up in the  
17 morning and read about harm that came to somebody  
18 because of legislation that was passed by this body.

19 Okay?

20 And the truth is, is that the only thing  
21 that's going to change is the speed at which  
22 prosecutors have to deliver the information to  
23 defense lawyers and those who are accused of crimes.

24 And when they can't, cases are not going to  
25 be dismissed. They'll explain to the Court.

1           And when they shouldn't, because it's  
2 dangerous, judges will allow them not to do it.

3           There will be no change, there will no death,  
4 there will be no anarchy or chaos, as the  
5 prosecutors would like you to believe.

6           As Mr. Kindlon just said, it's a reality  
7 they're going to have to adjust to.

8           In an effort to convince you that they can  
9 never, or can't do it now, I just want to clear up a  
10 few things.

11           We heard many, many times that: How can we  
12 get grand jury minutes to defendants in 15 days?

13           There are never grand jury minutes in  
14 Albany County within 15 days.

15           People don't get indicted within 15 days.

16           And a judge is not going to dismiss a case  
17 because a stenographer has not produced it, if, on  
18 those rare occasions, and they are rare occasions,  
19 that there are grand jury minutes.

20           And I worked in Queens. The vast, vast  
21 majority of the time, there is not an indictment  
22 within 15 days.

23           911 calls, they get erased within a certain  
24 time period, depending on the county, if they're not  
25 requested in a certain time period.



1           They are all preserved immediately.

2           All right?

3           The rest is paperwork.

4           These are not great burdens that are going to  
5 overwhelm these offices.

6           And it -- the simple reality is, it will be  
7 difficult, but people in the state have been waiting  
8 many, many years for rights that have been  
9 legislated.

10           And I guarantee you something else.

11           That the county legislators that they're  
12 going to before now, who won't give them the money?  
13 When the law is passed, they'll give them the money,  
14 and they'll get the resources that they need.

15           SENATOR BAILEY: Will that be all,  
16 Mr. Greenstein?

17           LEE GREENSTEIN, ESQ.: That will be all.

18           I skipped the script, as you asked.

19           So, I appreciate your time.

20           SENATOR BAILEY: Thank you very much.

21           Next person to testify?

22           KEVIN M. STADELMAIER, ESQ.: Thank you.

23           Good morning, Senators, and, Senator Bailey,  
24 and member of the Codes Committee.

25           Thank you for allowing us to come here today.

1           My name is Kevin Stadelmaier. I'm the chief  
2 attorney of the criminal defense unit for the  
3 Legal Aid Bureau of Buffalo.

4           With 31 attorneys and 14 support staff,  
5 representing approximately 12,000 clients per year  
6 in Buffalo City Court and New York State  
7 Supreme Court and Erie County Court, we pride  
8 ourselves in providing the highest quality of  
9 client-centered representation without regard to  
10 cost.

11           I'm also the legislative co-chair of the  
12 New York State Association of Criminal Defense  
13 Lawyers.

14           And although my colleague Karen Thompson  
15 testified in the September 9th hearing in  
16 New York City, my comments today are made with the  
17 full backing of NYSACDL.

18           We anticipate the reforms that we've talked  
19 about here today will bring a heretofore unseen  
20 level of fundamental fairness to a process that, for  
21 many years, was fundamentally unfair.

22           No longer will our clients be held on unfair  
23 bail, awaiting trial, only to be offered plea  
24 bargains without first being apprised of all of the  
25 evidence against them.

1 Under the outgoing discovery statute in  
2 New York, unlike most of the rest of the country,  
3 including such liberal outposts as Texas, as pointed  
4 out in Mr. -- by Mr. Kindlon, prosecutors and police  
5 are not required to provide police reports and other  
6 crucial evidence or discovery to people facing  
7 criminal allegations, or -- or their attorneys,  
8 until trial begins months or years after an arrest.

9 More than 95 percent of cases never make it  
10 to trial. They either end in pleas or dismissals.

11 That means nearly everybody who is charged  
12 with a crime might never see the evidence collected  
13 by the police and prosecutors.

14 This "Blindfold Law" contributed to mass  
15 incarceration, wrongful convictions, and court  
16 delays.

17 This injustice had hugely disproportionate  
18 impacts on Black and Latinx New Yorkers who are far  
19 more likely to be arrested and to be jailed on  
20 unaffordable bail.

21 The pre-trial system effectively operated as  
22 a tool of coercion to plead guilty regardless of  
23 guilt or innocence.

24 The criminally -- criminal discovery reform  
25 legislation including -- included in this year's

1 budget generally requires all evidence and  
2 information in a criminal case to be turned over as  
3 soon as it is practicable, and no later than 15 days  
4 after a criminal case begins, and, in some cases,  
5 extended to 45 days, and on an ongoing basis.

6 And to clear up a misconception that was  
7 proffered by the district attorneys up here earlier,  
8 vehicle and traffic violations, speeding tickets,  
9 are not under this statute. They do not require to  
10 turn over discovery in speeding-ticket cases within  
11 15 days.

12 The new speedy-trial statute addresses that,  
13 but not the discovery statute.

14 It also mandates that prosecutors make these  
15 disclosures prior to the expiration of any plea  
16 offer.

17 It further mandates that a prosecutor's plea  
18 offer may not be conditioned on the waiver of the  
19 discovery obligations, an important provision to  
20 prevent abuse of this system.

21 Early and complete disclosure promotes  
22 fairness in the criminal justice system. As such,  
23 the law does not limit discovery to the specified  
24 list of discoverable items.

25 The party can request, and the Court can

1 order, disclosure even if it is not specified within  
2 the law, as long as it's relevant to the case.

3 This landmark reform also allows for the  
4 defense to adequately investigate a case so that,  
5 even if items are not within the control or  
6 possession of the prosecutor, the defense can still  
7 move to preserve evidence or a crime scene, and the  
8 defense can subpoena any additional items that are  
9 not in the prosecutor's control.

10 In the first Senate hearing on discovery  
11 reform implementation, several prosecutors stated  
12 that the law would require them to turn over DNA lab  
13 results before they are completed, and then failure  
14 to do so would result in a case being dismissed.

15 Contrary to these fear-mongering talking  
16 points, the law does not require them to turn over  
17 what does not yet exist, as is common sense.

18 Furthermore, the large -- the range of  
19 sanctions listed in its statute offer judges a  
20 variety of options for ensuring compliance.

21 And it is, frankly, absurd to suggest that  
22 judges will dismiss charges for failing to turn over  
23 DNA lab results that have not yet been completed.

24 More to the point, prosecutors will have to  
25 turn over drug-lab results as soon as practicable,

1 which are often completely complete early in a case,  
2 but under the outgoing discovery statute, are  
3 withheld for many months.

4 To address some issues on victim and witness  
5 safety, I'd like to offer five points that we should  
6 all keep in mind.

7 In the vast majority of cases there are no  
8 risks to witnesses. Often there are no civilian  
9 witnesses at all.

10 The new law empowers judges to order that any  
11 and all evidence be withheld from people facing  
12 criminal allegations and their attorneys in the rare  
13 cases in which witness safety might be at risk.

14 Prosecutors from other states have endorsed  
15 reform, as have crime-survivor advocates here in  
16 New York.

17 Three: Judges already of the tools to  
18 protect crime victims and other witnesses, including  
19 orders of protection, which prohibit all contact  
20 between defendants and the other party.

21 Four: Prosecutors already have tools to  
22 protect crime victims and other witnesses, including  
23 felony charges, for violating orders of protection  
24 or intimidating witnesses.

25 Discovery reform is not an experiment.

1           The vast majority of other states have  
2           enacted legislation that both requires the timely  
3           disclosure of evidence, including witness  
4           information, and keeps survivors and witnesses safe.

5           You may hear that the truncated timelines in  
6           obtaining and provisioning discovery are one of the  
7           main sticking points to implementation.

8           And while we agree that the timelines will  
9           require fundamental changes in prosecutorial  
10          practices, the stakes are too high to allow DAs'  
11          offices to hide behind (indiscernible) logistical  
12          excuses any longer.

13          Prosecutors in other states with early  
14          discovery have long complied were their state's  
15          laws. And with the right administrative philosophy,  
16          this can be readily accomplished here.

17          And, further, the statute allows for  
18          extension requests where they are appropriate.

19          The statute also recognizes that people  
20          should make decisions about guilty pleas, not only  
21          voluntarily, but knowingly.

22          Having early access to the items that we've  
23          described, and to review them with our clients, and  
24          advise them of plea offers, is of critical  
25          importance.

1           (Indiscernible) our attorneys were forced to  
2 counsel defendants on life-altering plea offers,  
3 many with dire collateral consequences, without the  
4 benefit of knowing everything there was to know  
5 about a particular case, no longer will they have to  
6 do so.

7           These reforms fundamentally alter the  
8 landscape of the attorney-client relationship in  
9 criminal cases, as we can now have a fully informed  
10 discussion about available options, with the benefit  
11 of having all the factors available for review.

12           And as Mr. Kindlon said, it's likely to  
13 result in quicker outcomes, and better outcomes.

14           What should not be lost in all this, is the  
15 district attorney offices around the state, instead  
16 of fighting tooth and nail to gain ground against  
17 the reforms, should instead see themselves as  
18 partner in implementation of these reforms.

19           Although there will always be a fund -- an  
20 adversarial relationship between prosecutors and  
21 defense counsel, an overriding principle of  
22 fundamental fairness should always permeate, and  
23 prosecutors must always seek to do justice rather  
24 than leverage power-secured convictions.

25           While some prosecutors' offices take an



1 obstructionist and alarmist position relevant to  
2 these reforms, the district attorney of Erie County,  
3 John Flynn, has taken a different tact.

4 DA Flynn and his key deputies have been  
5 working collaboratively with our office on the  
6 implementation of these reforms.

7 Instead of seeking ways to subvert the  
8 reforms or undercut -- undercut the required  
9 provisions, they have been diligent in meeting with  
10 stakeholders, and reforming their administrative  
11 processes to assist us with the logistics of these  
12 complicated reforms.

13 It is their credit, and, in our view, are a  
14 model for the rest of the state prosecutors to  
15 follow.

16 While we expect that they will, as always,  
17 zealously prosecute those they believe guilty of  
18 crimes, they absolutely recognize that these reforms  
19 are important, and require substantial efforts to  
20 effectuate them as intended.

21 And for that, we offer our thanks do  
22 DA Flynn.

23 In conclusion:

24 The Legal Aid Bureau of Buffalo recognizes  
25 that change is always difficult.

1           We further recognize that there are certain  
2           factions who will never agree that the reforms, as  
3           highlighted, are a positive development.

4           While we strenuously disagree, we understand  
5           that position.

6           However, after years of watching our clients  
7           languish under an unfair criminal justice system, a  
8           system where prosecutorial efficiency and pragmatism  
9           was prized over transparency and fairness, it is  
10          clear that we can never go back.

11          These reforms were hard-fought over a period  
12          of years and thoroughly considered in advance.

13          These reforms demonstrate New York State's  
14          commitment to bringing our criminal justice system  
15          into the twenty-first century.

16          The reforms recognize that no longer can  
17          indefinite pre-trial incarceration and trial by  
18          ambush be the normative state.

19          These reforms were achieved through  
20          deliberative (sic) -- were deliberative, and  
21          designed to impart fundamental fairness.

22          And we urge you to continue to support and  
23          uphold the important gains that were achieved.

24          Thank you.

25          SENATOR BAILEY: Thank you.

1 SANDRA McCARTHY, ESQ.: (Microphone off.)

2 My name is Sandra McCarthy -- I have a  
3 little cold, I'm sorry.

4 My name is Sandra McCarthy. I'm the conflict  
5 defender in Rensselaer County, which means that,  
6 when someone is poor, and they are accused of a  
7 crime, they are assigned a public defender office.

8 But there are times when the public defender  
9 cannot take the case because of a conflict of  
10 interest: They represent one of the parties in  
11 family court. There's a co-defendant. They  
12 represent a witness or the crime victim.

13 And that is where my office comes in.

14 So we represent the same types of cases that  
15 the public defender's office would take. Felonies,  
16 misdemeanors; the same exact types of cases.

17 Before I had this job, I did practice on the  
18 CJ panel in federal court.

19 I've done all kinds of different indigent  
20 defense, including children's law.

21 And, now, I've been doing this for -- I think  
22 for about 14 years.

23 So, I know that I should say to that, I'm  
24 very honor to be here, and somewhat humble to be  
25 here too, before all of you.

1           In Rensselaer County last year, I just pulled  
2 a little bit of data:

3           We had 147 cases that closed after a plea of  
4 guilty after an indictment.

5           And 75, about half of those, that number were  
6 pled as a result of what we call an "SCI," and there  
7 were 5 trials.

8           This is by the public defense, not the  
9 private defense.

10          This would just be public-defense numbers  
11 from my office and Mr. Turry's (ph.) office, the  
12 public defender.

13          The way that the discovery statute works now,  
14 the defendant is not entitled to even ask for  
15 discovery until the case has been indicted.

16          They can't even ask.

17          The DA has six months to decide if they're  
18 going to indict.

19          So during that six months we don't even have  
20 the right to ask for discovery.

21          We can't even ask.

22          I know that there was some talk about  
23 voluntary discovery, and things like that, by the  
24 DAs that were up here.

25          That is not uniform, even within a county.

1           One assistant DA may be really willing to  
2 give you information, and another one says  
3 "absolutely not."

4           So it's not -- not only not uniform from  
5 county to county, but not even really uniform within  
6 a county.

7           You have some DAs you get along with better  
8 than others. Some that are more -- I was going to  
9 say, fair-minded, than others.

10          In any event, that six months goes by. And  
11 during that six months, there's often plea-bargain  
12 offers being thrown out all the time. Right?

13          The DAs, as they said, have all the power.  
14 Right?

15          You have this crazy high maximum, 15 years,  
16 25 years. Right?

17          And you have everything down to what we want,  
18 which is a dismissal. Right?

19          And all the space in between.

20          And all this six months is going by, and the  
21 DA is throwing out plea-bargain offers.

22          How about two plus two? Two to six?

23          Whatever.

24          And we're getting these plea-bargain offers.

25          The defendant often risks higher penalties

1 after indictment, because the way the sentencing  
2 structure works, particularly when they're indicted  
3 on a violent felony offense.

4 So you have a young kid facing a violent  
5 felony as a house burglary, or something like that.

6 The DA's throwing out plea-bargain offers,  
7 two to six, (indiscernible) whatever they're  
8 offering.

9 If we wait until that defendant gets  
10 indicted, that young person, our plea-bargaining  
11 offers are going to be restricted.

12 For example, we would not be able to plea  
13 that defendant to a non-violent felony -- right? --  
14 that two-to-six offer I threw out.

15 That's what we call a "non-violent felony  
16 offer" -- right? -- minimum of two, maximum of six.

17 Once that young person is indicted, that  
18 offer, by law, cannot be given. Right?

19 So, we go to the defendant and say, He offers  
20 two to six.

21 And they say, What's the proof?

22 And we say, We don't know.

23 And they say, Really?

24 And we say way say, Really. We don't know.

25 We not only don't know, we can't even ask for it.

1 We have to wait until after you're indicted on that  
2 violent-felony event, where now you're going to have  
3 to plead guilty to a violent felony -- right? -- and  
4 any plea-bargain offer.

5 Am I making -- am I doing this good --

6 OFF-CAMERA SPEAKER: You're doing great.

7 SANDRA McCARTHY, ESQ.: -- explaining it this  
8 way?

9 [Laughter.]

10 OFF-CAMERA SPEAKER: You nailed it perfectly.

11 OFF-CAMERA SPEAKER: That was good.

12 SANDRA McCARTHY, ESQ.: And so it's like a --  
13 it's like a crapshoot.

14 And like I do do public law, and I've also  
15 done public law. But, as the private attorneys here  
16 pointed out, like, this isn't about public law.

17 The bail-reform statute is about public law.  
18 Right?

19 You or I would be able to bail ourselves out  
20 if we were accused of something -- right? -- and be  
21 able to fight the case from the outside.

22 But this statute is not about public law.

23 If you or I were accused of something, and we  
24 made bail and we were on the outside, we still  
25 wouldn't have access to any information about what

1 was going on with our case.

2 Right?

3 This is about everybody.

4 This is about rich people, poor people;  
5 anybody who's accused of a crime in New York State.

6 So, to me, my dream world would be where the  
7 public defense, the public defendants, the poor  
8 people, were afforded same types of protections as  
9 the rich people -- right? -- where maybe they  
10 wouldn't make the arrest in the first place, unless  
11 they actually had evidence.

12 The statutes of limitations are very long.

13 I think two years on misdemeanor, six years  
14 on felonies -- right? -- or homicide forever.

15 So if the -- if the law enforcement delays  
16 the arrest until they actually have evidence --  
17 right? -- then that would solve a lot of these  
18 problems.

19 Then the DA would have their file because law  
20 enforcement would delay.

21 There's no doubt that this is going to be a  
22 huge change for law enforcement and how law  
23 enforcement does things, instead of just going out  
24 and arresting people, without knowing if the drugs  
25 are really drugs; without really having any



1 witnesses; without, whatever.

2 One more thing I did want to point out about,  
3 what we call "Brady."

4 "Brady" is -- is evidence that could be  
5 favorable to the defense. Right?

6 And it is true that we now have a statute, as  
7 well as constitutional law, saying that, the  
8 government/the DA has to hand over to the defendant  
9 exculpatory information. Right?

10 But we have mountains of case law, saying  
11 that it is not the DA that decides what is  
12 exculpatory. It is the defendant.

13 Because they routinely don't give us what we  
14 call "Brady," because they say, it's not Brady, it's  
15 up to us to analyze our defendant's case, and decide  
16 if that is exculpatory or not. Not up to the DA to  
17 figure it out.

18 So by having the whole file turned over  
19 early, we can decide.

20 That would resolve a lot of those Brady  
21 issues that we have now, whether it's Brady or  
22 whether it's not Brady.

23 It doesn't matter if it's Brady. We get it  
24 all. Right?

25 And I know that my colleagues did a great job

1 with the witness-protection situation.

2 But I'm also hoping, in hearing about  
3 Senator Jordan's concerns, that maybe law  
4 enforcement might not make that arrest with the  
5 domestic-violence case for something really serious,  
6 where someone's life is in jeopardy, until they have  
7 already protected that witness.

8 Right?

9 It's not more resources; it's just when you  
10 put them into place.

11 Maybe that person needs to work with a better  
12 women's shelter to be safely removed before the  
13 arrest is made.

14 Right?

15 So a little bit more investigation, law  
16 enforcement goes in on the front end before arrests  
17 are made, instead of afterwards, then trying to  
18 scramble to get a file together.

19 But, in any event -- there was one more here.

20 Oh.

21 One of my colleagues from the district  
22 attorney's office there brought up the idea of  
23 sandbagging.

24 That, with defendants, defense attorneys say  
25 that, DAs push cases to trial, and then sandbag us

1 with evidence -- boxes of evidence.

2 That's not really my experience.

3 It's actually kind of the opposite, that  
4 DAs, not -- not -- I'm not saying (indiscernible),  
5 but everyone's overwhelmed with work. Right?

6 So what they -- they don't push cases to  
7 trial, not in my experience.

8 Instead, they try to force these pleas early  
9 on, to get rid of the case before they've even  
10 looked at it.

11 I mean, that's one thing that really struck  
12 me this morning in hearing them.

13 They're, like, we haven't even seen the  
14 information yet.

15 And I'm thinking:

16 Then how are you making a plea-bargain offer?

17 And how are you saying three to six, two to  
18 four, five plus five?

19 Like, how are you doing that when you haven't  
20 even seen the file?

21 How is that truth-seeking?

22 How is that justice?

23 One of my -- the colleagues here came in and  
24 said, We're going to spend more time now on  
25 discovery compliance than seeking justice.

1           And I was, like, what?

2           That is seeking justice.

3           You should see your file before you throw out  
4 a number just to get rid of the case. And then tell  
5 us that, if we ask for discovery, our plea-bargain  
6 offer is going to go higher. Or, if we get  
7 indicted, our plea-bargain offer is going to go  
8 higher.

9           That's -- I don't see them pushing things to  
10 trial and sandbagging us. That's not what I see.

11           I see them pushing pleas before even they  
12 know what's in the file.

13           So, anyway, I apologize for going over.

14           SENATOR BAILEY: So thank you,  
15 Ms. McCarthy.

16           And I wanted to thank everybody for your  
17 patience.

18           I know the -- you know, the time schedules we  
19 gave, it's a little skewed, but we want to make sure  
20 we have a full and fair discussion.

21           And I hope you would avail to my -- to myself  
22 and my colleagues for -- for some questioning.

23           The first question that -- that I would have,  
24 would be, you mentioned -- you mentioned a lot of  
25 things. Right?

1           But I want to mention, also, I want to --  
2           I want to -- I want to thank DA John Flynn, who --  
3           who came to the New York City hearing on the  
4           9th of September.

5           I would have thought he would have come to  
6           Albany, but, you know, DA Flynn made -- made it down  
7           there.

8           So I wanted to thank him as well before  
9           I started my -- before my comments.

10          You mentioned a lot of the onus being on the  
11          district attorney because they -- they -- they have  
12          the power. Right?

13          But this law is going to take effect  
14          January 1st.

15          What can defense attorneys do to -- to  
16          effectuate a smoother transition, in your opinion?

17          Any of you may answer.

18          KEVIN M. STADELMAIER, ESQ.: I can tell you  
19          generally what we've done in my office.

20          When the reforms came out, we immediately  
21          convened some focus groups inside our office,  
22          consisting not only of our support staff, but also  
23          some of the attorneys on staff, to go through the  
24          law and figure out, not only, you know, what it gave  
25          us on the legal side, but, also, what the

1 administrative challenges were going to be.

2 And out of those focus groups, and then out  
3 of meetings with the district attorneys, which we've  
4 been having pretty consistently since about June,  
5 we've talked about centralized discovery apparatus.

6 So, in our office, we're tasking specific  
7 support-staff people to deal with the discovery  
8 inflow that's going to be coming.

9 We expect, you know, a vast amount more than  
10 we had received in the past, pursuant to the new  
11 regs.

12 And we've spoken with the district attorney's  
13 office about doing a similar thing, centralizing  
14 discovery in their offices.

15 So it goes from the police agencies they have  
16 to deal with, to one centralized location. And  
17 then, packaged up, sent to us, with inventories of  
18 what's there and what's not, for us to obtain in one  
19 centralized location. Log it into our systems, and  
20 then distribute it out to our attorneys, tracking  
21 everything that comes in, from start to finish.

22 I think if we didn't do it that way, it just  
23 came in scattershot, it would be near impossible to  
24 make sure that we were maintaining everything we  
25 need to maintain.

1           So, those types of things have been  
2 happening.

3           And I'm serious when I say, I mean, District  
4 Attorney Flynn has been very proactive with this.  
5 He's been meeting with us regularly.

6           I've been meeting with his deputies on a  
7 weekly basis.

8           They are fully engaged in this process.

9           And if they weren't, I can't imagine what  
10 we'd all be facing come January 1st.

11           I'm sure it will be worst than even what I'm  
12 imagining right now. So...

13           LEE GREENSTEIN, ESQ.: Senator, your question  
14 is a good one, but I think the reality is, there  
15 won't be some cliff on January 1st. There will  
16 just be a -- a -- a nuanced power shift.

17           Okay, now, they have all the power, so that  
18 the counties that have, you know, quote/unquote,  
19 voluntary disclosure, it's not uniform. It depends  
20 upon the prosecutor.

21           And when you ask for something, some are very  
22 forthcoming. Some sort of hang it out there, that  
23 maybe the offer won't be as good if they have to  
24 give it to you.

25           Well, now the conversation will just be a

1 little different, because we as defense lawyers know  
2 that, if we run to a judge on January 2nd,  
3 nobody's going dismiss a case.

4 But they'll just have a little more burden, a  
5 little more urgency, to get us the things that we  
6 need.

7 But I appreciate your question in terms of  
8 trying to address the concerns of some people, that  
9 the world is going to see a seismic shift.

10 It's not.

11 It's just going to change the conversation  
12 because there will be a different obligation on the  
13 prosecutors.

14 And just one example of what a "voluntary  
15 disclosure" is now, it was the county that was not  
16 represented here, so I won't name them.

17 But, in order to get voluntary disclosure in  
18 this county, a defendant has to give up rights.

19 In order to get police reports and witness  
20 statements, a defendant has to sign a contract which  
21 says, I won't file a discovery motion, and, I'll  
22 tell you who my witnesses are before the trial  
23 starts.

24 And that is one of the few weapons or tools  
25 that a defendant has in a country where you're



1 presumed innocent, which is to keep that stuff to  
2 yourself.

3 And so the reality about voluntary  
4 disclosure, it's not so voluntary, it's not so open.

5 It's up to the people who have it, which is  
6 the prosecutors, and that's just going to change  
7 after the 1st.

8 TERENCE KINDLON, ESQ.: I would respectfully  
9 submit that I think the prosecutors have been  
10 exaggerating the magnitude of the problem.

11 Lee's point is well taken: There's going to  
12 be a bump in the road, but it's not a cliff.

13 It's going to be something we can move  
14 through.

15 SENATOR BAILEY: Thank you.

16 The next question I would have would be:

17 I know that you mentioned comments about the  
18 prosecution requiring an increase in funding.

19 And -- and your belief that that may not be  
20 as high, or higher, or necessary at all.

21 Will defense groups -- I'm not talking about  
22 individual public defenders, individual private  
23 defenders.

24 Will legal aides and inde -- indigent legal  
25 services, will you need an increase in funding as

1 well?

2 And, if so, how much?

3 TERENCE KINDLON, ESQ.: A lot of funding has  
4 come from this Hurrell-Harring settlement that you  
5 probably know about. And that has -- that money  
6 has gone to public defense offices throughout  
7 Upstate New York, as far as I -- as far as I know.

8 So there's already a lot of new money there.

9 And beyond that, I -- I don't -- I don't know  
10 what else their financial requirements might be.

11 SANDRA McCARTHY, ESQ.: I don't -- I don't  
12 want to speak for all the public defenders, that's  
13 for sure, and I could be wrong about this.

14 But -- but Mr. Kindlon brings up this 5-year  
15 rollout of the Hurrell-Harring settlement for the  
16 non -- counties that were not involved in that  
17 litigation. Right?

18 My hope would be that, if the 5-year rollout  
19 happens at the same time as these new reforms go  
20 into place -- right? -- that offices like mine, we  
21 will be using those resources for those rollouts.  
22 Right? They'll be coming at the same time.

23 So my hope would be, I mean, I don't want  
24 to -- maybe (indiscernible) answer -- my hope would  
25 be I wouldn't need additional funding.

1 I might.

2 But, because I'm having the -- you know, I'm  
3 having this come in, and unlike the DAs who have  
4 been doing it one way all this time, and now have to  
5 suddenly change it, getting funding simultaneously  
6 with criminal justice reform, that would just,  
7 coincidentally, be the way that it rolled out.

8 So, I don't know if you agree with that.

9 KEVIN M. STADELMAIER, ESQ.: I do.

10 We're still assessing our needs, but, at this  
11 point, we're hoping to use the money that's coming  
12 from ILS in order to satisfy what we need to do in  
13 our office.

14 SENATOR BAILEY: So I have a couple more  
15 questions, but I want to allow my colleagues the  
16 opportunity to ask you questions as well.

17 Senator Jordan.

18 SENATOR JORDAN: (Microphone off.)

19 Sure.

20 I listened to you -- oh.

21 (Microphone on.)

22 Thank you all for being here, first of all.

23 And I did listen to each of you carefully.

24 Mr. Kindlon, you started -- you said, at one  
25 point, that this was all carefully constructed.

1           If it was carefully constructed, we all  
2 wouldn't be here trying to fix it.

3           And that's the importance of having public  
4 hearings before we pass major policy such has been  
5 done.

6           But I am a little bit disturbed with -- with  
7 what you said, because you're basically telling us  
8 not to listen to the panel before us, the district  
9 attorneys that spoke.

10          You know, you're telling us that what they're  
11 saying isn't so, that they shouldn't have the  
12 concerns they have, cost isn't a problem, and --

13          Did you ever work in a district attorney's  
14 office?

15          TERENCE KINDLON, ESQ.: Actually, I did,  
16 yeah, when I was in law school.

17          And --my -- my -- my wife was a prosecutor in  
18 Maricopa County in Phoenix for a number of years.

19          So we spent a lot of time talking to each  
20 other about being prosecutors.

21          Now, budgets are not my problem, so I really  
22 can't address the district attorneys' budgetary  
23 problems.

24          However, my point is not -- I'm not -- I'm  
25 not saying they're lying.

1 I'm saying that they're overreacting.

2 I'm saying they're exaggerating.

3 I'm saying that they're reluctant to give up  
4 this -- power that they've had is -- is close to  
5 absolute power.

6 You know, we are -- we, as criminal defense  
7 lawyers, and I spent my -- I spent my whole life  
8 under the CPL as a criminal defense lawyer, we are  
9 dictated to.

10 And Sandy McCarthy made, you know, a good  
11 point, a number of good points.

12 And the fact is, that you're given an offer  
13 by an assistant district attorney who doesn't even  
14 understand the case, but knows full well, that if  
15 your client doesn't take that offer, and she goes to  
16 trial, and she is convicted of a violent felony,  
17 there's going to be a mandatory minimum prison  
18 sentence, which might not be -- which might not be  
19 just under the circumstances.

20 So, again, Senator, I -- I mean no  
21 disrespect, but the fact is, that I do sincerely  
22 believe that the district attorneys who testified  
23 here this morning are overreacting to a change that  
24 they have to make, and people don't like to change.

25 I used to joke to a county court judge that,

1 if he had his way, there would still be gas lights  
2 in the courthouse.

3 People resist change. It's unpleasant, it's  
4 hard, it requires you to work late. And, you know,  
5 it's usually for a very good reason.

6 So, again, I want to be clear: I'm not --  
7 I'm not insulting the district -- the district  
8 attorneys who were here. Those that I know are  
9 really good people.

10 But, you know, they don't want to change.

11 They've had things their own way since they  
12 became lawyers.

13 And now it's different, and it's going to be  
14 a very healthy difference.

15 It's going to benefit, not just our clients,  
16 but society at large.

17 You know, and when I hear people talk to  
18 DAs, you know, you would think that the DAs  
19 are -- you know, have descend from heaven and are  
20 magical or imbued with some kind of supernatural  
21 grace.

22 The fact of the matter is that, you know, we  
23 have a system of justice here, which is supposed to  
24 be in balance.

25 And criminal defense lawyers have to fight

1 like hell to keep it that way. It's not easy.

2 And we have spent the last 40 years  
3 underfunded.

4 Only recently have funds finally started to  
5 become available for criminal defense lawyers.

6 So, that's all I got to say.

7 SENATOR JORDAN: Well, in the same veins, the  
8 district attorneys were telling us the problems with  
9 the roll out of this.

10 TERENCE KINDLON, ESQ.: Right.

11 SENATOR JORDAN: And so we have to listen to  
12 them.

13 TERENCE KINDLON, ESQ.: Oh, of course.

14 SENATOR JORDAN: Just as we are listening to  
15 you.

16 TERENCE KINDLON, ESQ.: Which -- which I am  
17 profoundly grateful for, believe me.

18 It is so important.

19 This criminal justice system -- this criminal  
20 justice system, it lies at the heart of my marriage.

21 I mean, it's -- all I ever talk about is  
22 criminal law to my wife.

23 I mean, she's -- you know, she's  
24 actually giving a seminar to lawyers down in  
25 Westchester County today.

1           It's what we do, and it has to work right.

2           And I was thinking, if I can just take  
3           30 more seconds, I went to a prison up in Canada a  
4           couple of years ago, Donnacona. It's right halfway  
5           between -- well, it's up -- it's up there.

6           But, anyway, I walked in, and it was visiting  
7           day, and all the prisoners were there, talking to  
8           their wives and girlfriends and moms and dads, and  
9           everybody was White.

10          And I said, Wow, look at that.

11          That looks about as unlike an American prison  
12          as you could possibly ever hope to see.

13          And the fact of the matter is, that it is our  
14          clients of color who have really taken it on the  
15          chin here, because they -- you know, they have to  
16          depend upon public defense.

17          And as good as many of the public defense  
18          lawyers are, if you don't have discovery and you  
19          don't have time, you're just stuck.

20          And the outcome of the case is going to be  
21          dependent upon your ability to think at the speed of  
22          light, and to ask the right question, sort of,  
23          almost intuitively, rather than to study the record.

24          So, that's what I'm talking about, ma'am, and  
25          I thank you for your question.



1 SENATOR JORDAN: And, Mr. Green...

2 LEE GREENSTEIN, ESQ.: Greenstein.

3 SENATOR JORDAN: ...Greenstein, yes, when you  
4 were talking about witness intimidation, you said,  
5 "I guarantee you'll get a protective order when one  
6 is needed."

7 Those are your thoughts.

8 That's not how the bill is written.

9 You know?

10 It's all very subjective, and that is  
11 dangerous.

12 LEE GREENSTEIN, ESQ.: Sure.

13 SENATOR JORDAN: And so you cannot guarantee  
14 that.

15 Nobody can guarantee it.

16 And that's also why we're here, because it's  
17 not a perfect bill.

18 LEE GREENSTEIN, ESQ.: To the extent that  
19 you're holding these hearings to get the viewpoints  
20 from public defenders and district attorneys, I'm a  
21 private lawyer, and I've been doing this for over  
22 30 years.

23 So, "guarantee" was a strong word.

24 My view is that, judges go to incredible  
25 lengths, largely, appropriately so, but not always,

1 to give district attorneys what they want when  
2 there's an allegation against a victim.

3 And the best example I can give you are  
4 orders of protection, which are given out because  
5 prosecutors ask for them -- okay? -- and there are  
6 two kinds of orders of protection.

7 So say it's a domestic-violence situation.  
8 And there are two people who have had a problem, a  
9 big enough problem, where there's an order of  
10 protection, where someone has to leave the home.

11 And there's another kind of order of  
12 protection, where you can be around somebody, but  
13 you just have to refrain from illegal contact.

14 And there are occasions, Senator, where no  
15 matter what I say to a judge, no matter what  
16 evidence I present to a judge, that the allegation  
17 is wrong, that it is a lie, that is baseless, that  
18 difficulties will happen to my client in terms of,  
19 where he lives, financial problems, work, they  
20 always get the order of protection.

21 Why?

22 Because of the umbrella of fear in  
23 domestic-violence cases, which is so often true, but  
24 not always.

25 So my experience is, is that when prosecutors

1 say, "Hey, there's a danger here," they get what  
2 they want.

3 And that's not going to change under the new  
4 law.

5 SANDRA McCARTHY, ESQ.: Can I just say  
6 something and add to that?

7 So I did hear your concern.

8 I know a lot of people are worried about  
9 witness protection, obviously, crime victims, and  
10 things like that.

11 I've been doing this for a while, for over  
12 20 years. And I will tell you that, like,  
13 particularly in a domestic-violence case, where your  
14 concerns are, which I understand, the defendant  
15 always knows the identity of the victim.

16 It's not that the discovery reform is going  
17 to change that. It's their intimate partner.

18 Right?

19 How -- I just feel like that's a bit of a red  
20 herring, and that's getting kind of confused with  
21 discovery reform. Right?

22 The defendant will -- in a domestic violence,  
23 always knows the identity of the alleged victim,  
24 because that's they're intimate partner.

25 It's not like, suddenly, now we're going to

1 tell them where they wouldn't have known that  
2 before.

3 Obviously, they knew that.

4 In drug cases, which is, a lot of times,  
5 where they have con -- use confidential informants,  
6 I'll just tell you, in 20 years, my clients always  
7 know who it is, because the date, time, and location  
8 of the sale is written on the complaint.

9 They know who they were with at that time.

10 Right?

11 So I just -- not that it's not valid, and not  
12 that we don't need orders of protection for  
13 domestic-violence victims, or we don't need orders  
14 protection for the confidential informant in the  
15 drug case.

16 I'm just saying that this statute is -- does  
17 nothing. That's exactly the same as it's always  
18 been.

19 Those identities of those people were all --  
20 are always known to the defendant.

21 And the Court has always taken measures to  
22 try to protect them to the best of their ability.

23 SENATOR JORDAN: All right, those aren't the  
24 only crimes, though.

25 SANDRA McCARTHY, ESQ.: That's true.

1           And --

2           SENATOR JORDAN:   And so that's not -- you  
3 know, the -- those aren't the only crimes that I'm  
4 worried about.

5           SANDRA McCARTHY, ESQ.:   Okay.

6           I understand.

7           I mean, generally speaking, the defendant  
8 knows who -- who was -- you know, who they're  
9 talking about, and who was involved in the  
10 situation, as a general rule.

11           If there's something new that's going to be  
12 disclosed to the defendant, the DA can ask for the  
13 protective orders.  They can do what they -- you  
14 know, what they need to do to protect the -- those  
15 people.

16           I'm just -- I'm just saying that those are  
17 the mostly the victims that I deal with, and the  
18 people that -- the defendant is aware of, the two  
19 cases we brought up earlier.

20           And the defendant is aware of the identities  
21 of those people already.

22           SENATOR JORDAN:   Let's talk about maybe the  
23 grandmother that lives down the street, and was  
24 looking out the window and saw a rape.

25           Do you think she'd want to come forward as a

1 witness?

2 SANDRA McCARTHY, ESQ.: Well, I -- I'll --  
3 that's -- that is an issue, and I think that that  
4 was brought up earlier, is that, why people don't  
5 come forward to say that they witnessed a crime  
6 really doesn't have to do with the discovery  
7 statute.

8 Right?

9 That's -- this is a problem that's been  
10 persistent.

11 Is it because they feel like criminal justice  
12 won't -- that -- that -- that law enforcement won't  
13 protect them? Is it because they're concerned?

14 I don't really know.

15 I -- Mr. Kindlon looks like he wants to say  
16 something.

17 TERENCE KINDLON, ESQ.: I'd like to interject  
18 something here.

19 If we are concerned with gramma down the  
20 street being the victim of a crime, because of her  
21 being a witness, this statute provides for what's  
22 called "attorney discovery," so that the information  
23 can be given to the criminal defense lawyer, but not  
24 to the accused.

25 And that is a -- that is a very significant

1 safety valve that's built into the statute.

2 Senator?

3 SENATOR JORDAN: Thank you.

4 I'm finished.

5 Unless you --

6 LEE GREENSTEIN, ESQ.: Just one more view  
7 from my years of experience.

8 That circumstance, that a witness comes  
9 forward, and the defendant knows about it, and that  
10 witness being threatened or harassed or harmed by a  
11 defendant, that's a fantasy.

12 Does it happen?

13 Over the course of human behavior, yes.

14 Has it ever happened in one of my cases since  
15 1986? Never.

16 To me, the prosecutors who were here earlier,  
17 when they used terms like "chaos" and "tragedies,"  
18 that's fear-mongering.

19 That is nine -- that is -- that is 1 percent,  
20 or less than 1 percent, of reality, and the police  
21 and the courts and the prosecutors can take care of  
22 those situations.

23 I have seen many tragedies from my side of  
24 the fence, and they have to do with people who are  
25 incarcerated for long periods of time, who are

1 overcharged, who are innocent, or who don't have  
2 money.

3 So I just want to remind the senators that,  
4 despite the use of the word "tragedy" by the  
5 prosecutors, there are tragedies all throughout the  
6 criminal justice system.

7 And I think this law will prevent more  
8 tragedies than create them.

9 SENATOR BAILEY: Thank you, Senator.

10 Nothing else, Senator Jordan?

11 Senator O'Mara.

12 SENATOR O'MARA: Yeah, sure, just a couple.

13 Thank you all for being here, and, again,  
14 thank you for the work that you do.

15 I know it's as equally as important to our  
16 criminal justice system as that of the prosecutors  
17 that testified before you.

18 So, thank you for that work.

19 Two things I really want to focus on, that  
20 are most concerning to me in this whole legislation.

21 First of all, it's the 15 days.

22 Seems a little unreasonable to me, as far as  
23 length of time.

24 So let's just talk about that one first.

25 I mean, 15 days seems awfully fast to me,



1 having been in the situation before, knowing the  
2 volumes of things that you have, and what you don't  
3 get timely from law enforcement at times.

4 Things do need to change to make that work  
5 better, and I believe they will.

6 And I'm all in favor of greater discovery in  
7 timely -- so you have it for timely use as well.

8 But, you know, there's a long period of time  
9 between -- between arrests and the initial  
10 arraignment, and either the indictment, or -- or, if  
11 it ultimately goes to trial, there's a long period  
12 of time there.

13 And no -- and I understand that you want to  
14 get the information so you can properly inform your  
15 client: The odds of success. The odds of  
16 conviction. The odds of acquittal. And maybe even,  
17 I'm sure, point out inconsistencies or weaknesses in  
18 the case to the prosecutor when they're determining  
19 what to do with it.

20 But 15 days just seems too fast to me.

21 Can you just comment on that?

22 TERENCE KINDLON, ESQ.: Well, here's --  
23 here's my concern, and this just happened to a  
24 client of mine.

25 He was arrested and charged with a Class B

1 felony, possession of drugs with intent to sell.

2 My client is a junky. He had some crack in  
3 his possession. He was not going to sell it. He  
4 was going to use it.

5 And here's the problem:

6 The possession was a little tiny misdemeanor;  
7 a little, insignificant, tiny misdemeanor of the  
8 sort which, under prevailing practice, would result  
9 in, you know, get out of here, go get some rehab, or  
10 something.

11 But as it was, he was stranded in jail with a  
12 Class B felony for a whole month before anybody  
13 looked carefully at this and decided that he was  
14 overcharged.

15 And I think, under the circumstances, if  
16 total disclosure had been made at the start, then he  
17 would not have borne that burden for so lengthy a  
18 period of time.

19 And that's just an example of probably  
20 (parties cross-talking) --

21 SENATOR O'MARA: But I believe our bail  
22 reforms certainly covered that, and that individual  
23 will not be put in jail on bail, as of the first of  
24 the year, with the changes.

25 Not that I support the whole-scale changes

1 that we made to bail, but a lot of it I did, and do.

2 So, you know, that won't be a factor going  
3 forward with another reform that was done.

4 TERENCE KINDLON, ESQ.: Well, Senator,  
5 I happen to agree with you.

6 I think that 15 days is -- is lightning-fast  
7 right now.

8 I'm sure that the prosecutors and the State  
9 and the police will probably adjust somewhat.

10 And as I understand it, as I understand the  
11 statute --

12 SENATOR O'MARA: Well, it's going to take a  
13 change to the law now --

14 TERENCE KINDLON, ESQ.: Right.

15 SENATOR O'MARA: -- or a so-called "chapter  
16 amendment."

17 So -- and then the second aspect --

18 LEE GREENSTEIN, ESQ.: Senator, can I just  
19 address that real quick?

20 SENATOR O'MARA: Oh, yeah, sure.

21 LEE GREENSTEIN, ESQ.: I'm sorry.

22 I think you said you were a prosecutor  
23 earlier in your career.

24 SENATOR O'MARA: Yes.

25 LEE GREENSTEIN, ESQ.: The -- there's been a

1 requirement, since I started about 1986, and I'm  
2 guessing when you were a prosecutor, for prosecutors  
3 to hand over statements of defendants within  
4 15 days. And that happens routinely.

5 And when it doesn't happen, and it's a week  
6 later, a month later, or sometimes six months later,  
7 a judge wags their finger at the prosecutor and  
8 says, "Don't do it again."

9 Okay, on the rare occasion, there's some  
10 sanction or remedy or suppression which happens.

11 My sense is, the same thing will happen with  
12 the new law, that the realities of the limitations  
13 that the prosecutors have will -- will -- will just  
14 flesh themselves out.

15 Is it fast? Yeah.

16 But when you're sitting in jail, Judge, it's  
17 not that -- judge -- I'm sorry.

18 [Laughter.]

19 LEE GREENSTEIN, ESQ.: -- that's not that --  
20 it's not that fast.

21 And in the vast majority of the cases, this  
22 is basic stuff.

23 It's some documents, there's a 911 call, you  
24 hand it over.

25 And if you can't, the case won't get

1 dismissed.

2 KEVIN M. STADELMAIER, ESQ.: And, Senator,  
3 just to piggyback on that, there are provisions in  
4 the law that allow the district attorneys to ask  
5 judges for extensions of time when they don't have  
6 materials in their possession.

7 But, really, this all keys on, is -- is the  
8 30/30 time.

9 I mean, the real change in this statute, is  
10 that they can't declare ready until they've turn  
11 over everything in their possession, and then ask  
12 for extensions on the stuff that they have (sic).

13 So, you know, as Mr. Greenstein says, what is  
14 a judge going to say when they don't turn it over  
15 within 15 days, and we object?

16 They're going to say, Can you go and get it a  
17 little bit quicker? Can you go and ask whoever, you  
18 know, you have to ask in order to get that discovery  
19 faster?

20 No matter what we ask for, whatever sanctions  
21 we ask for, really, the only thing that's going to  
22 matter at the close of the day is the 30/30 time;  
23 and that's 90 days for misdemeanors, 6 months for  
24 felonies.

25 I think judges are going to, at least for

1 first little while of this statute taking effect,  
2 they're going to be awfully lenient with  
3 prosecutors' offices and police agencies in the  
4 implementation of this.

5 TERENCE KINDLON, ESQ.: We (indiscernible)  
6 developed over the last half century.

7 It's not the sort of thing that's just going  
8 to go away overnight.

9 SENATOR O'MARA: Oh, I know. It will be a  
10 forced change, for sure.

11 The other aspect of it is, is the cost.

12 And I've heard you say you disagree with the  
13 costs of what the prosecutors have talked about.

14 And, I get it: You don't think it will be as  
15 much. They think it's going to be more.

16 Who should bear that cost?

17 This is an unfunded mandate from the State  
18 that, right now, will have to be borne by the  
19 counties if the district attorney's office can't get  
20 the funding from the county.

21 Who should pay -- who should be paying for  
22 this?

23 The State, since we're mandating it, or the  
24 county taxpayers, where -- that's where the county  
25 DA gets their money from?

1           SANDRA McCARTHY, ESQ.: Well, this is above  
2 my pay grade, but I'd say the State.

3           I don't want to see anymore mandates on my  
4 county. That's resources.

5           You know, I deal with this all the time,  
6 being a county employee, since I'm an appointed  
7 county employee.

8           So -- and to -- to -- and I did appreciate  
9 the DA's argument too, about the RTA statute, and  
10 about, if the counties go over the 2 percent tax cap  
11 on this, then they won't be able to get reimbursed  
12 for that.

13           It is sort of a catch-22 and a bit of a  
14 circular problem.

15           SENATOR O'MARA: Uh-huh.

16           SANDRA McCARTHY, ESQ.: I do also agree,  
17 though, that they're overemphasizing the amount,  
18 because a lot of it is a shift of when you do it.

19           It's not that you -- it's not that you're --  
20 you just did it later.

21           So a lot of times it's a shift of resources  
22 to making sure we get this done up front.

23           And a lot --

24           SENATOR O'MARA: Yeah, but don't you think,  
25 with 90 percent of cases getting plea-bargained,

1 that this is going to create much more volume of  
2 work --

3 SANDRA McCARTHY, ESQ.: That's what --

4 SENATOR O'MARA: -- in that aspect?

5 SANDRA McCARTHY, ESQ.: -- well, that just  
6 shows how little discovery we get now, I guess.

7 I guess that just goes to the argument.

8 Right?

9 They never saw it.

10 We never saw it.

11 That's exactly the argument that we're  
12 making.

13 But I think it's going to have more of a  
14 shift, honestly, with local law enforcement.

15 I actually think that -- because if law  
16 enforcement has their file in a row -- their ducks  
17 in a row, and their file put together properly  
18 before effectuating the arrest, they'll be able to  
19 get all that to the district attorney's office.

20 I think that's probably more where the bigger  
21 fundamental change is going to be, is in law  
22 enforcement.

23 As we heard the DAs, all these agencies, the  
24 sheriff's department, (indiscernible), and getting  
25 this information to them.



1           Once the DA's office has it, and it's in a  
2 nice package for them, I don't think it will be hard  
3 for them to turn it over to us.

4           But, I'm not an expert on the funding of the  
5 DA's office.

6           I don't any think of us are, so...

7           LEE GREENSTEIN, ESQ.: Senator, I'll just  
8 tell you who shouldn't be pay for it, and that's  
9 those who are accused of crimes shouldn't pay with  
10 their rights.

11          SANDRA McCARTHY, ESQ.: Right.

12          SENATOR O'MARA: Okay. Thank you all.

13          TERENCE KINDLON, ESQ.: Thank you so much.

14          SENATOR BAILEY: Senator Serino.

15          SENATOR SERINO: Thank you.

16          And I'd like to thank you all for being here  
17 today.

18          You know, not to beat a dead horse, but  
19 I really wish that these hearings would have taken  
20 place before this legislation passed, have all of  
21 you guys at a table together.

22          I'm a firm believer of that, because there  
23 are going to be unintended consequences.

24          We talked about domestic violence, and you  
25 had mentioned how law enforcement would place

1 victims in a safe house.

2 I could tell you, in my district, we don't  
3 have the funds for that.

4 We have Grace Smith House, which is a  
5 wonderful institution, but they don't have places.  
6 They don't have the resources.

7 I really worry about that.

8 Earlier today, too, we talked about the drug  
9 labs.

10 15 days is not possible.

11 I know, in every county, I can imagine we all  
12 have a heroin and opioid epidemic.

13 I've gone to many, many wakes, and it's just  
14 so, so sad.

15 So now we're making a situation where, a lot  
16 of these cases, because the drugs have to be tested,  
17 if I understand this correctly, within the 15 days,  
18 so then people will know that, okay, there's not  
19 going to be a case, with the speedy trial, it's not  
20 going to happen, so they're not going to be put into  
21 a place where they might get help, like a diversion,  
22 or the drug court, or what have you.

23 That's not going to happen.

24 So now we're making it worse, and I believe  
25 that they're going to be the victims of this bill.

1           And as everyone said, too, the lack of  
2 dollars are a true reality.

3           You know, we hear the doom and gloom about  
4 our budget next year.

5           I can't even imagine.

6           I don't know where the money is going to come  
7 from, and it's going to take dollars, because it's  
8 going take the resources, whether it's in bodies or  
9 computer equipment, what have you.

10          So those are just my comments that I had to  
11 make.

12          And I don't know if you have anything that  
13 you'd like to add?

14          SANDRA McCARTHY, ESQ.: I agree with you that  
15 the -- you know, the lack of domestic-violence  
16 funding for these advocacy groups or shelters, that  
17 is a reality. But that has nothing to do with the  
18 discovery statute.

19          You know what I mean?

20          It's really not in any way related.

21          Because, like I said, discovery is just about  
22 letting the person know the name of that person,  
23 which they already know.

24          So it's just -- I just don't want to confuse  
25 that very real and prevalent issue with this

1 statute.

2 Really, one has nothing to do with the other.

3 SENATOR SERINO: Can I ask you another  
4 question, then?

5 So with the discovery bill, is there a  
6 danger, like -- and I forgot what the situation was  
7 earlier, that they mentioned, there's a time frame  
8 in between of the person -- and you know who  
9 your you know, not everybody that's a victim goes  
10 after their abuser. Right?

11 That's a fact of life too, in a  
12 domestic-violence case.

13 SANDRA McCARTHY, ESQ.: Not (parties  
14 cross-talking) --

15 SENATOR SERINO: Right, right.

16 SANDRA McCARTHY, ESQ.: -- that the defendant  
17 goes after their victim --

18 SENATOR SERINO: Yes.

19 SANDRA McCARTHY, ESQ.: -- is that what you  
20 mean?

21 SENATOR SERINO: Yeah -- no, no, no.

22 That the victim actually goes to court.

23 SANDRA McCARTHY, ESQ.: Oh, prosecutes?

24 SENATOR SERINO: Yes, absolutely, because  
25 they're afraid.

1           So is there a time frame in between, because  
2 of this 15 days, that, now, they are -- they're  
3 going know that their abuser, you know, the vic --  
4 the abuser is going to know that their victim is  
5 coming after them.

6           You know what I mean?

7           Like (parties cross-talking) --

8           SANDRA McCARTHY, ESQ.: They got arrested.

9           SENATOR SERINO: Right.

10          SANDRA McCARTHY, ESQ.: They've been  
11 arrested.

12          And the -- you know, due to the statements  
13 attached, they already -- they already know that.

14          If there's only two people in the room,  
15 obviously, they know that that victim has come  
16 forward.

17          And I hope that that person has gotten the  
18 services that they need to extricate themselves from  
19 the situation.

20          As was pointed out, we have orders of  
21 protection, and things like that.

22          But lack of services for domestic-violence  
23 victims really doesn't have anything to do with the  
24 discovery statute. Right?

25          They already know the name of that person.

1 That's the person they're in an intimate  
2 relationship with.

3 And I know that this is new, and not true  
4 everywhere, but, in Rensselaer County, we do have  
5 the new opioid court.

6 So any defendant, at -- when they're --  
7 right -- when they get -- right -- before they're  
8 even arraigned, they're questioned with this little  
9 questionnaire about, do they want help for their  
10 drug problem?

11 So we can get those people out.

12 Whether the case is strong or weak is not  
13 relevant to the opioid court.

14 The opioid court, which is different than a  
15 drug court -- but, anyway, the opioid court does  
16 allow the defendant -- and I'd like to be more  
17 involved in that, but, whatever -- to get access to  
18 drug treatment before even discovery, before  
19 anything.

20 Just (indiscernible) -- we're going to try to  
21 connect that person, to the best we can, with  
22 whatever treatment we have available through our --  
23 we have these (indiscernible) that work in the  
24 courts, and whatnot.

25 So we have -- but that doesn't have to do

1 with discovery.

2 It's just that I don't want to mix up the  
3 social-justice issues, which we do work on, with the  
4 discovery statute.

5 SENATOR SERINO: And -- but even with the --  
6 like, you can ask somebody if they need help that's  
7 on drugs. Right?

8 If it's not mandated, most likely they're not  
9 going to get the help.

10 That's what I'm saying.

11 Because now they're saying that they're not  
12 going to -- they're not going -- if the 15 days is  
13 not going to allow them the time to comply with the  
14 discovery, and they cannot meet their speedy-trial  
15 burdens, so then that person knows that nothing is  
16 going to happen, so, literally, they can walk away.

17 That's my point with that -- right? --  
18 because they're not getting mandated to get help.

19 SANDRA McCARTHY, ESQ.: Well, the opioid  
20 court is voluntary.

21 I don't want to get into a big discussion  
22 about (parties cross-talking) --

23 SENATOR SERINO: No, voluntary.

24 No, I don't either.

25 SANDRA McCARTHY, ESQ.: -- especially

1 (parties cross-talking) --

2 SENATOR SERINO: I'm just trying to make a  
3 point here, that --

4 SANDRA McCARTHY, ESQ.: -- it's just a  
5 mandate -- when you're mandating somebody to drug  
6 treatment, you're -- they're going to use  
7 (indiscernible).

8 But, like, when you put people in jail, most  
9 of these overdoses are people coming out of jail or  
10 rehab because it was mandated.

11 When the person's ready, is when they're most  
12 likely to get -- I mean, I don't want to get into a  
13 huge debate about this, because, again, it has  
14 nothing to do with discovery.

15 But -- but voluntary services, usually, are  
16 more effective.

17 So this -- we have the opioid court, to allow  
18 people to go into services voluntarily. And we have  
19 the service that we're doing, now, three -- four  
20 courts in the county.

21 KEVIN M. STADELMAIER, ESQ.: Senator?

22 SENATOR SERINO: Yes.

23 KEVIN M. STADELMAIER, ESQ.: When someone's  
24 arrested on the spot, marijuana, drugs, there's a  
25 field test, which is a -- has a certain amount of



1 validity, but not the kind of validity you could use  
2 at a trial.

3 So when there's that test that exists, they  
4 have to turn that over under the statute.

5 But before trial, they send it to a lab, and  
6 that takes a much longer period of time.

7 Cases are not going to be dismissed because  
8 they don't have the lab within 15 days, nor -- or,  
9 there will not be a flourish of defendants, who  
10 should otherwise get drug treatment, who are going  
11 to go free because of the statute.

12 They'll hand over the field test, and at some  
13 point before trial, they'll hand over the lab.

14 Nothing is going to change.

15 I can also assure you that drug courts, which  
16 have been in existence for maybe 15 years, have --  
17 have really changed the nature our practice.

18 They have given a vast amount of sympathy and  
19 treatment for many of our clients who would  
20 otherwise go to jail.

21 So there's a real positive effect in the last  
22 15 years of drug courts and opiate courts.

23 But this discovery statute will not -- will  
24 not change anything, because all they have to do is  
25 give over the field test at the beginning, and the

1 lab test will come when it comes.

2 SENATOR SERINO: Okay.

3 I'm not an attorney.

4 LEE GREENSTEIN, ESQ.: That's why I'm glad  
5 you asked the question.

6 [Laughter.]

7 SENATOR SERINO: No, but it is -- it's a  
8 concern, because we don't know what's going to  
9 happen. This is all new, so, we'll have to see.

10 And the drug courts a wonderful thing.

11 I know Putnam County has an amazing  
12 drug-court system, and it's helped many, many  
13 people, but we do lack resources to help, you know,  
14 people that need the help.

15 That's a real problem throughout every one of  
16 our counties.

17 And I think everybody's on the same page: We  
18 need reform.

19 That's why we're here today.

20 I didn't hear anybody on the prior panel say  
21 that they wanted to repeal.

22 It was all about reform.

23 So, thank you.

24 SENATOR BAILEY: Well, I'd like to thank --  
25 I would like to thank you for testifying.

1 I would like to thank you for the work that  
2 you're doing, as -- as my -- as my colleagues also  
3 mentioned.

4 And, again, thank you for your patience, and,  
5 thank you for testifying.

6 TERENCE KINDLON, ESQ.: Thank you.

7 KEVIN M. STADELMAIER, ESQ.: Thank you so  
8 much.

9 SENATOR BAILEY: The next panel will be:

10 Martin Mayfield, New York State organizer for  
11 Just Leadership USA;

12 Justin Harrison, policy counsel for the  
13 New York Civil Liberties Union;

14 Darryl Herring, community leader for  
15 VOCAL-NY;

16 Erin George, civil rights campaign director,  
17 Citizen Action of New York;

18 And, Chuck Keller, member of the  
19 assigned-counsel program, Onondaga County.

20 So I would ask that -- that the same rules  
21 apply to the -- as the prior panel.

22 You can go in any order that you choose to  
23 go, but just state your name prior to the  
24 commencement of your testimony.

25 And, again, I -- I -- I will ask, once again,

1 as I have said to the -- I've been saying before the  
2 panels, let's try to stick to the 5 minutes as much  
3 as we possibly can.

4 I know we're passionate about this testimony,  
5 but we want to make sure everybody -- senator --  
6 some of the senators and I get a chance to -- to --  
7 to answer -- to -- to question you.

8 With that being said, please commence.

9 JUSTIN HARRISON, ESQ.: Good afternoon,  
10 Senators.

11 My name is Justin Harrison. I'm a policy  
12 attorney with the ACLU of New York.

13 We've heard a lot about -- and I have a few  
14 pages of written testimony, I've submitted that.

15 And at the first part of that testimony, we  
16 go into considerable detail about the 6th and  
17 14th Amendment implications, and all of the  
18 constitutional underpinnings of the discovery reform  
19 law.

20 However, because my panel seems to have  
21 expanded considerably from what's on the list, and  
22 because we're also quite pressed for time, I'm going  
23 to move sort of directly into a discussion of  
24 something that I haven't heard anything about yet  
25 today, but we've heard a lot of sort of collateral

1 mention of, and that is the idea of electronic  
2 discovery and evidence portals.

3 Uhm -- uh, let's see.

4 And, please forgive me for skipping around.

5 So, yes, in light of many of the comments  
6 that we heard earlier today, particularly comments  
7 by some of the district attorneys, especially  
8 Mr. Soares, the NYCLU would like to offer just a  
9 word of caution about the growing use of evidence  
10 portals.

11 Evidence portals, for those who might not be  
12 aware, are online and, in many cases, cloud-based  
13 databases, in which evidence is stored by the  
14 prosecutor's office, stored by police departments,  
15 and by which it is shared with defense attorneys.

16 The NYCLU supports electronic discovery, and  
17 we are not flatly opposed to portal-based evidence  
18 production; however, those systems raise troubling  
19 questions of privacy, as well as the control of  
20 evidence.

21 And I noted, Senator Bailey, that you have  
22 some paper in front of you.

23 If you're following along, if anybody is  
24 following along, with my testimony, this is page 5.

25 So, first: Who enters evidence into the

1 portal database?

2 If it's just police and prosecutors, then it  
3 is inevitable that some evidence, particularly  
4 exculpatory evidence, won't make it into the  
5 electronic database, and defense attorneys will  
6 simply never know it exists.

7 Such a system risks negligent exclusion of  
8 evidence, or, worse, invites Brady violations.

9 In any portal system, the prosecutor, as part  
10 of the new discovery law's compliance-certification  
11 process, must certify that the evidence  
12 electronically available; that is, the evidence in  
13 the portal, is identical to the evidence in the file  
14 and that nothing has been excluded.

15 Appropriate remedies, including sanctions,  
16 must be available for the Court to impose if  
17 something is missing.

18 Second: A portal system must allow  
19 defendants who represent themselves, as well as  
20 indigent defendants who lack Internet access --  
21 excuse me -- to inspect evidence without having to  
22 go through the portal.

23 Everyone must have the right to opt out of  
24 electronic evidence production and sharing systems.

25 The portal system cannot be the only way

1 defendants or their counsel are allowed to access  
2 evidence. It must be purely optional.

3 Third: Evidence placed into the portal must  
4 remain in the public domain.

5 Many of the companies who offer commercial  
6 portal services assert intellectual property rights  
7 as to uploaded evidence.

8 For example: Axon, which is the same company  
9 that makes police body cameras and tasers, makes an  
10 evidence-sharing platform for use by police  
11 departments in uploading, storing, and sharing  
12 police body-camera footage.

13 The website that Axon has created is cleverly  
14 named "evidence.com."

15 Police can share a link to the footage with  
16 the prosecutor's office, and the prosecutor can  
17 share that link with the defense.

18 The problem, however, is that Axon's terms of  
19 use grant Axon free and permanent license to do  
20 almost whatever it wants with the footage, that  
21 includes body cam and police dash-cam footage,  
22 uploaded to the website.

23 That footage often includes people's faces,  
24 license plate numbers, the insides of their homes,  
25 their children's identities, and everything else, if

1 it has been uploaded in -- without having been  
2 redacted first, and other details that people who  
3 were captured in this footage might not want shared  
4 by Axon, or, eventually, subsequently, monetized in  
5 ways that they don't understand and haven't  
6 consented to.

7 To avoid this, portal evidence must be held  
8 by the prosecutor's office.

9 The prosecutor cannot simply provide web  
10 links to defense attorneys and tell them to visit  
11 evidence.com to see dash-cam or police body-camera  
12 footage.

13 Moreover, if the evidence is held by a  
14 private company, that company cannot be allowed to  
15 monetize that data any way it wants.

16 Access to evidence cannot be subject to  
17 license agreements or intellectual-property  
18 protections.

19 Lastly: No matter who operates the portal,  
20 there cannot be -- and I am told by attorneys who  
21 have practiced in a lot of courts throughout the  
22 country -- there cannot be tracking or  
23 data-collection activity of any kind embedded in the  
24 portal software; that is to say, the prosecution  
25 cannot use the software or electronic discovery



1 suite to find out what evidence the defense has  
2 viewed, what evidence the defense has prioritized,  
3 or whether the defense has viewed some parts of the  
4 evidence and not others.

5 The defense must be able to download all the  
6 prosecution's evidence at once and examine it  
7 offline at their leisure.

8 In conclusion:

9 Thank you, Senator Bailey; thank you, the  
10 rest of the members on the Committee.

11 And I'm happy to take any questions you might  
12 have.

13 SENATOR BAILEY: Thank you.

14 CHUCK KELLER, ESQ.: I guess I can go next.

15 Senators, appreciate the time.

16 My name is --

17 SENATOR BAILEY: Please -- please speak into  
18 the microphone, so -- because you're -- we're -- you  
19 know, this is for -- on the record.

20 So, thank you.

21 CHUCK KELLER, ESQ.: Thank you, Senators.

22 My name is Chuck Keller. I'm a  
23 representative from the assigned-counsel program in  
24 Onondaga County.

25 I'm not just a member of the assigned-counsel

1 panel. I'm also a private attorney, so I take  
2 retained cases as well.

3 So I have -- my perspective on this is, both,  
4 as a defender who deals were indigent defense, and  
5 as also a person who represents people who are able  
6 to afford their defense.

7 And, I won't belabor the panel with some of  
8 the remarks we've already had, but one of the things  
9 that I think has been lost in the long conversations  
10 is that, these reforms are, basically, changing the  
11 standard of discovery practice for the prosecution,  
12 from lowest common denominator, to highest common  
13 denominator.

14 And what do I mean by that?

15 So in my county, Onondaga County, our  
16 district attorney claims to have an open-file  
17 policy; however, that open-file policy is subject to  
18 interpretation by each individual ADA.

19 And what do I mean by that?

20 Some ADAs will, literally, hand you every  
21 single thing they have in their file on the first  
22 day they get it.

23 Other ADAs will refuse to give you anything  
24 until after an indictment comes. And under the old  
25 process, you had to file motions and argue it with a

1 judge.

2 I think we can do better than lowest common  
3 denominator.

4 I think these new reforms are important and  
5 meaningful.

6 The other issue is that, what I hear is, all  
7 this concern about this "15 days."

8 But we've already heard that the 15 days is  
9 extendable by the prosecution, even without an  
10 application, up to 45 days in most circumstances.

11 But more importantly, is the mechanism that  
12 would result in a dismissal, is it's being tied to  
13 speedy trial.

14 And for a felony that's six months.

15 So, whereas, you know, a failure to comply  
16 with voluminous discovery does not result in  
17 immediately -- immediate dismissal of a case, it  
18 just means that the prosecution can't say, "We're  
19 ready for a trial."

20 I've been practicing for 20 years.

21 I can tell you that I've seen, literally,  
22 memorandums from my prosecutor's office that says,  
23 Our policy is to announce ready for trial at  
24 arraignment.

25 Every single case, 100 percent of the time.

1           That is a practical and legal impossibility.

2           But what that announcement is, is it's a  
3 mechanism to stop that clock.

4           And the new reforms are important because now  
5 we're going to get prosecutors announcing "ready"  
6 when they really are ready for trial.

7           What that does is, it forces prosecutors to  
8 go to their files, review their files, take a look  
9 at those files.

10           I can't tell you how many cases I've handled  
11 that a prosecutor, who finally takes a good look at  
12 their file, right before the eve of trial, finally  
13 turns over the information, realizes they don't have  
14 the same case they thought, we're able to work it  
15 out.

16           I think that these reforms will actually  
17 create savings in terms of economies of scale and  
18 timing, because prosecutors will be forced to look  
19 at their cases and make decisions about which cases  
20 are worth prosecuting, which cases are not, and  
21 which ones should be negotiated.

22           The prior rules under the discovery statute  
23 were, and we've heard this before, essentially,  
24 toothless.

25           The failure to comply resulted in no

1 sanctions whatsoever.

2 And the most troubling problem with that was,  
3 where the prosecution would withhold what we call  
4 "Brady material." And even the rules for Brady  
5 material have, essentially, been toothless.

6 I can tell you that I've had -- I've  
7 presented to judges, "I have found Brady material"  
8 over and over again, and the judge's response is,  
9 Well, you know about it, so there's no sanction,  
10 there's no penalty.

11 All that does is encourage hiding the ball.

12 And our criminal justice system can't be  
13 about hiding the ball.

14 I think these reforms were needed. I think  
15 they are a long time in coming.

16 And, Senator Bailey, I specifically wanted to  
17 address something that you had raised, which is, we  
18 had talked about the cooperation of witnesses in the  
19 criminal justice system.

20 I'm a defense attorney, and I have trouble  
21 getting people to cooperate, and it's not because of  
22 discovery rules.

23 It's because I think that there's a general  
24 mistrust of the criminal justice system.

25 And I think if the system appears -- again,

1 perception can be reality -- and I think if the  
2 perception is that the system is fair, that when we  
3 make an allegation against you, we tell you what the  
4 allegations are, we tell you what the evidence  
5 against you is, then I think people will start  
6 understanding that the criminal justice system can  
7 be fair.

8 And I think that will address these concerns.

9 Lastly, I'll just say that, I think what  
10 we've seen is, from the prosecutors who testified,  
11 was a -- a very reasonable and sound complaints  
12 about problems in prosecuting cases in the criminal  
13 justice system, but these are not attached to the  
14 discovery reforms.

15 Getting witnesses to testify is a systemic  
16 problem. It's not tied to discovery.

17 Communicating with law enforcement, getting  
18 them to do their jobs in a timely manner, that's  
19 not -- that -- that's -- again, that's a systemic  
20 problem. It didn't just happen now. It's not going  
21 to just start in January.

22 That's been a problem.

23 Crime-scene access: I'm a defense attorney.  
24 I can make an application now to go to a crime  
25 scene, with a judge. And the judge applies,

1 literally, the same standard that's now codified.

2 To sum it up:

3 What we have now is, we're, literally, taking  
4 something which has been piecemeal, and, again,  
5 lowest common denominator across the state, and  
6 changed to it standardized responses, with a  
7 timetable that's meaningful, and now we have highest  
8 common-denominator discovery.

9 And I can't see how that's bad for anybody,  
10 whether you're a prosecutor or a defense attorney.

11 SENATOR BAILEY: Thank you for your  
12 testimony.

13 DARRYL HERRING: Yes, my name is  
14 Darryl Herring. I'm a VOCAL leader.

15 I'd like to address two issues that I heard  
16 also, and ya'll have my testimony.

17 One, there's a group of people that are  
18 incarcerated in our system who are 50 years and  
19 older. And a lot of those gentlemen in New York  
20 City, actually, whether it was misdemeanor or  
21 felonies, did not have the discovery material that  
22 was needed in their cases, and a lot of them ended  
23 going upstate.

24 It was used like a noose over them.

25 When I look at their history, discovery has

1       been an issue in New York, actually, it's been with  
2       the Assembly first, for 20 years.

3               Assemblyman Lentol, I believe, was the one  
4       that started it.

5               And this organization, as well as the public  
6       defender's office, The Bronx defenders, that have  
7       been pushing for this bill, and have, literally,  
8       went to most of the Assembly, as well as senators,  
9       with a package that we presented to everybody's  
10      office.

11              For the last three years, I personally have  
12      been a part of that -- a part of that issue.

13              And then I was given a testimony of things  
14      that had happened previously to me.

15              And, so, I know that we presented the  
16      discovery package to people, and we also had people  
17      that was testifying about what happened to them.

18              Now, in my testimony, one thing that I said  
19      that was important, is that all the people that are  
20      wrongfully prosecuted, once they come out of jail,  
21      they have a chance for a lawsuit.

22              Why would the City want to have to pay out  
23      money in lawsuits, when, if a person is done  
24      properly -- when the discovery material and things  
25      are done properly from the beginning, it doesn't



1 have to be done.

2 That's going to save the city and the state a  
3 whole lot of money.

4 Why -- and -- and -- and it's only right.

5 I just can say this, I can't say too much  
6 about it, in my case, I would have preferred to have  
7 the discovery material, instead of a lawsuit,  
8 because, at -- at -- at 60 years old, or 58 years  
9 old, coming out of jail, losing everything, and  
10 having to start all over, it's not an easy thing.

11 I look at young Kalief Browder, the young man  
12 that died over a book bag.

13 And not only what happened to him, but you  
14 got to look at what happened to his family too. His  
15 mother had two heart attacks behind that issue. The  
16 second one killed her.

17 So, looking at it from a legalistic point of  
18 view is one thing, but looking at it from a  
19 humanitarian point, it's another.

20 And most of the people that do end up in --  
21 well, I'll say Rikers Island because I'm from the  
22 city, are people of color.

23 And it's not fair, that whether it's a  
24 misdemeanor or a felony, that they have to suffer  
25 the indignity of not being able to properly present

1 a case.

2 And, yes, I'll end with this:

3 A lot of -- I did not begin to respect  
4 lawyers until I got involved in this process, and  
5 I saw legal-aid lawyers fighting in this battle with  
6 me.

7 That's when I began to respect lawyers.

8 But before that, I felt like I was by myself,  
9 because I -- and during my process, I got rid of  
10 two, and was going get rid of the last one, but, it  
11 didn't happen.

12 But, it's sad, that when people are in jail,  
13 the only person they're supposed to put their trust  
14 in is their lawyer. But he doesn't have any  
15 information to give to them.

16 So how can you trust somebody, and you don't  
17 know what's going on?

18 You're looking at four walls all day.

19 You're looking at another inmate that's  
20 locked in with you.

21 You want to get to the truth of your case  
22 too. You don't want to spend 17, 18 months, or  
23 2 years, in jail, and don't -- and -- and not really  
24 receive the information that you need or your  
25 discovery material.

1           Or the sad thing about it is, people that  
2 goes upstate, 15, 20 years of their life is gone,  
3 behind that process.

4           I'm glad that the bill has been passed.

5           Now what we need to do is come together,  
6 whether it's the prosecutor or public defender, and  
7 find the best solution to implement it, because it's  
8 here now.

9           It's like a baby, a baby goes through stages.

10          So now it's being born.

11          So now we have to find a way to make it  
12 profitable for everybody.

13          SENATOR BAILEY: Thank you for your  
14 testimony.

15          MARVIN MAYFIELD: Good afternoon.

16          My name is Marvin Mayfield. I'm a state  
17 organizer with Just Leadership USA.

18          Thank you, Senators, for allowing me to be  
19 here today to testify.

20          I consider it, you know, a privilege to be  
21 here, to be able to speak about my personal history,  
22 my personal experience.

23          And I believe the significance of me being  
24 here, is so that I can bring light to the person  
25 who -- people who are directly impacted, formerly

1       incarcerated, and people who have been negatively  
2       harmed, or negatively affected and harmed, by  
3       these -- the laws that governed discovery.

4               At 22 years old I was arrested on suspicion  
5       of burglary, burglary in the third degree, of which  
6       I was charged.

7               At that time, I was taken off the street,  
8       beaten. I was taken to central booking in Brooklyn,  
9       New York.

10              At that point in time, I suffered some  
11       serious indignities at that point in time, going  
12       back and forth from cage to cage.

13              Finally getting to court and seeing a judge,  
14       where he imposed a \$10,000 bail on me, which  
15       I couldn't make.

16              Subsequently, I was sent to Rikers Island,  
17       where I was again assaulted. My leg was broken.  
18       I endured, I mean, numerous beatings and numerous  
19       assaults throughout the 11 months that I spent  
20       there, unable to make bail, and going back and forth  
21       to court no less than 22 times.

22              22 times in that amount of time, I remember  
23       distinctly, because it was one time for each year  
24       that I was alive.

25              Each time I went to court, I saw -- sometimes

1 I didn't see anyone. Most times it was adjourned.

2 But at no time, at any point, did anyone  
3 offer me any evidence that was held against me.

4 There was no discovery at that point in time.

5 Being young and naive, I didn't know the word  
6 or the term "discovery."

7 All I knew is, is that I didn't do what they  
8 claimed I had done, and, there was no evidence to  
9 prove otherwise.

10 After 11 months of suffering the  
11 indignities, assaults, by both staff and other  
12 fellow incarcerated, I -- I was offered a plea deal.

13 And the judge told me, Mr. Mayfield, if you  
14 plead guilty, you can go home today. We're going to  
15 give you time served if you plead guilty.

16 As someone just invoked the name of  
17 Kalief Browder, I didn't have the fortitude to say  
18 that, you know, I'm innocent.

19 I just wanted the suffering to end.

20 So, the greatest indignity, and the greatest  
21 injury, that I -- that I -- that was inflicted upon  
22 me during that time, was the fact that I had to  
23 plead guilty to something that I didn't do, just to  
24 end the suffering.

25 And I believe that discovery is one of the

1 most important aspects to justice in our courts now.

2 And I would like to ask the prosecutors that  
3 oppose these new discovery laws:

4 Aside from complaining, what have you done to  
5 prepare for implementation?

6 What have you done to comply with what is now  
7 the law?

8 All I have been hearing from district  
9 attorneys is that they need more money and more  
10 staff.

11 Well, it didn't take more money and more  
12 staff to railroad defendants into taking plea  
13 bargains.

14 For decades, New York State prosecutors have  
15 held all the cards and were not compelled to release  
16 any discovery evidence until the case was ready for  
17 trial.

18 Many lives were devastated as a result of  
19 these practices.

20 The new law presents an opportunity for DAs  
21 to turn a new page on justice, a new page on  
22 fairness.

23 It was through the activism of people who  
24 were formerly incarcerated, or directly impacted,  
25 that we have this legislation, which illustrates

1       that the lives of the people -- of those people are  
2       on the line.

3               Even with the new legislation regarding bail  
4       reform, there will still be people who are being  
5       detained pre-trial in lieu of cash bail.

6               Every moment that a person spends in jail is  
7       a moment where their life is at risk.

8               I don't think anyone here denies that jails  
9       are violently deadly places.

10              Open, early, automatic discovery will save  
11      lives.

12              These are not numbers or statistics or dollar  
13      signs.

14              These are people, mostly poor, mostly people  
15      of color.

16              It was us, the directly impacted, who fought  
17      for this reform -- for these reforms, and we are not  
18      about to surrender our hard-won victory to apathy  
19      and business-as-usual attitudes.

20              Discovery reform is not an anomaly.

21              There are clear examples of -- from other  
22      states that implementation is -- is as difficult or  
23      -- is not as difficult or expensive as New York  
24      State district attorneys claim.

25              Obviously, there needs to be changes in the

1 way prosecutors do business.

2 But even the State, through all -- even if  
3 the State threw all the money they wanted at these  
4 jurisdictions, there is still, and more importantly,  
5 an attitude, that the people who suffer at the hands  
6 of unfair policies do not deserve the right to  
7 fairness, that the people -- that Black and Brown  
8 people are inherently predisposed to criminality.

9 There's an attitude that, if you're arrested,  
10 you must be guilty.

11 We have to protect the presumption of  
12 innocence at all costs.

13 If the attitudes and the sensibilities of  
14 district attorneys and judges and law enforcement  
15 are stuck in a Jim Crow Era, then it is the  
16 responsibility of the government to step in and  
17 ensure that the law is adhered to, that the reforms  
18 are implemented.

19 I am not here to indict an entire industry,  
20 but I am here to expose the underhanded plans to  
21 thwart implementation.

22 For instance, there were some DAs that  
23 who -- who threatened to impose an order of  
24 protection on every case in order to circumvent the  
25 15-day rule.



1           That's just one example of the methods being  
2 contemplated by the DAs that don't want to give up  
3 the control they have enjoyed for ages.

4           I, too, am concerned about public safety, but  
5 the issue of witness intimidation puzzles me.

6           If -- if a -- if a district attorney  
7 prosecutes a case, it's because they believe that  
8 person is guilty.

9           Am I right?

10          Okay, that part makes sense.

11          But if they believe that the defendant -- if  
12 they believe the defendant to be guilty, then  
13 doesn't that defendant already know who the victim  
14 is, and even without the benefit of discovery?

15          Well, of course we care about the safety of  
16 victims and witnesses, but what about the innocent  
17 and -- men and women who have been coerced into  
18 taking plea bargains?

19          Open discovery protects the innocent from  
20 malicious prosecution.

21          As an advocate, and a person abused by the  
22 policies of denying discovery, I and my colleagues  
23 understand that open, early, and automatic discovery  
24 is just simply about fairness, which is the  
25 foundation of justice.

1 Thank you.

2 SENATOR BAILEY: Thank you for your  
3 testimony.

4 ERIN GEORGE: Hi.

5 Thank you very much for the opportunity to be  
6 here today.

7 Thank you to Senator Bailey for convening  
8 these hearings.

9 My name is Erin George. I'm the civil rights  
10 campaigns director at Citizen Action of New York.

11 We are a statewide grassroots organization,  
12 and we're deeply engaged in the campaign and the  
13 coalition that fought to pass this law.

14 Issues of mass incarceration are also  
15 personally really important to me as someone whose  
16 younger brother has spent most of his life in and  
17 out of the system.

18 I think as folks have named, it's really  
19 important to name, that the new discovery law brings  
20 New York in line with dozens of states across the  
21 country who have successfully passed, and also  
22 implemented, laws to overhaul their discovery  
23 practices.

24 And these states include traditionally red  
25 states, like Texas, where that law was passed with

1 the support of prosecutors, because advancing  
2 fairness, transparency, and efficiency is not, nor  
3 should it be, a partisan issue.

4 The new discovery law advances safety and  
5 justice, and I think it's really important that we  
6 name that.

7 Without early and open discovery, and given  
8 that more than 95 percent of cases end in a plea  
9 bargain, that means that the vast majority of people  
10 who are accused of crimes are never seeing the  
11 evidence against them before they're making  
12 decisions about whether or not to accept a plea,  
13 decisions that will impact their life forever  
14 thereafter.

15 Currently, prosecutors overcharge regularly,  
16 and leverage Draconian sentencing laws in ways that  
17 make it extremely risky to go to trial.

18 So the options at hand, the options that  
19 someone who's been accused of a crime is facing, is  
20 to accept a plea deal on a lesser charge, along with  
21 whatever sentence the prosecutor is offering and has  
22 applied, or to face trial on the top charge that  
23 that prosecutor filed, with no information about  
24 their case, and trust that a system that's rigged  
25 against them and rooted in racism and stigma is

1 going to serve them justice.

2 And that doesn't seem like much of a choice  
3 to me.

4 Our new discovery law will correct this  
5 imbalance, and it's also going to roll back the  
6 rampant injustice of a system that we have to say is  
7 designed to decimate communities of color and  
8 low-income communities.

9 This new law, people are saying that it was  
10 rushed.

11 This new law was carefully crafted over the  
12 course of years.

13 Discovery legislation has been introduced and  
14 negotiated for decades.

15 And this specific law was carefully  
16 negotiated over the course of years with input from  
17 stakeholders across the board.

18 And despite the false rhetoric being pushed  
19 by law enforcement, the new discovery law was  
20 written with deliberate attention to protecting  
21 witnesses.

22 It includes the same measures that have been  
23 used in over 40 states that have passed discovery  
24 reform.

25 And, in fact, New York's new law goes even

1 further to ensure witness safety, an issue that, in  
2 reality, only comes up in a very limited percentage  
3 of cases to begin with.

4 Under the new discovery law, judicial  
5 discretion remains in place for the sharing of  
6 witness contact information. Judges can choose to  
7 only share witness contact information with the  
8 defense attorney. And all discovery materials are  
9 subject to withholding by Court-ordered protective  
10 orders.

11 And as people have attested to today, motions  
12 for protective orders made by prosecutors are  
13 granted by judges the vast majority of the time in  
14 the system.

15 Prosecutors have opposed discovery reform for  
16 decades, and this is because, the goal is for them  
17 to maintain the upper hand in plea negotiations by  
18 withholding evidence.

19 And this prosecutorial advantage in the  
20 courtroom has resulted in court delays, which costs  
21 the state money; wrongful convictions; and mass  
22 incarceration.

23 And, this is really driven by the perverse  
24 incentive of law enforcement metrics -- right? --  
25 where -- wherein, like the success, promotions,

1 professional advancement, of prosecutors and law  
2 enforcement is directly tied to securing convictions  
3 at all costs, and is not tied to achieving outcomes  
4 that address root causes and prevent future harm.

5 So despite the fact -- and, you know, it's  
6 upsetting to see that, despite the fact that a  
7 majority of New Yorkers, as recent polling shows, a  
8 majority of state-electeds, support the pre-trial  
9 bills, including the new discovery law, prosecutors  
10 continue to engage in a coordinated and intentional  
11 strategy to subvert these laws, before they've even  
12 gone into effect, by spreading fear and  
13 misinformation.

14 I feel that this is extremely concerning,  
15 given that prosecutors are, literally, responsible  
16 for upholding the law, not circumventing it.

17 Recently, their opposition efforts have  
18 become more explicit, with prosecutors publicly  
19 stating their intentions to manipulate the new  
20 discovery law, to the greatest extent possible, in  
21 order to maintain the status quo.

22 In statewide trainings, public documents,  
23 public forums, prosecutors are sharing strategies  
24 for how to circumvent these new laws and prolong  
25 discovery turnover.

1           DAs' offices are directly explaining to  
2           other prosecutors how they can delay and withhold  
3           the sharing of discovery material, by delaying the  
4           setting up of arraignment on the indictment,  
5           unnecessarily identifying people as confidential  
6           informants instead of witnesses, and increasing  
7           claims of exceptionally voluminous discovery, which  
8           all of this flies directly in the face of the spirit  
9           of the new law.

10           Prosecutors should not be training on how to  
11           stop the clock.

12           They should be training on how to achieve the  
13           intent of the law.

14           Prosecutors continue to claim that  
15           implementing this law will cost enormous amounts of  
16           money.

17           I'm not an attorney, but I do know that  
18           this -- from many conversations, from being engaged  
19           in hundreds and hundreds of conversations, with  
20           prosecutors, law enforcement, defense attorneys,  
21           legislators, other policy advocates, that this is an  
22           exaggeration.

23           I also believe that fundamentally reduces  
24           values for justice, fairness, and human life to  
25           dollar amounts.

1 I've heard complaints about the increased  
2 work that's going to be required to pursue  
3 infractions, violations, and misdemeanors under the  
4 new law.

5 I think a good way to address this concern,  
6 and also reduce caseloads, would be for prosecutors  
7 to decline to prosecute or to dismiss these  
8 low-level cases.

9 As regards to 15-day time -- the 15-day  
10 timeline that keeps being raised, the law calls for  
11 turn over of materials that are in the prosecutor's  
12 possession at 15 days.

13 And additional -- like, additional material  
14 thereafter, can be turned -- that arrives  
15 thereafter -- right? -- lab testing, et cetera,  
16 turned over after the 15 days.

17 And, again, there are extensions that can be  
18 filed for, especially voluminous discovery.

19 The starting point for implementing this  
20 discovery law should be for DAs to rethink how  
21 they run their offices in order to comply.

22 Yes, implementation is going to require  
23 adjustments. Right?

24 They're going to need to rethink how they  
25 prosecute, bring fewer meritless cases, and



1 re-prioritize existing resources.

2 Law enforcement should be treating arrests  
3 and prosecutions as limited resources, and thinking  
4 about discovery implementation as an opportunity to  
5 reallocate funds, and shift many cases out of the  
6 system completely because they never belonged there  
7 in the first place.

8 These things are all easily done, and they're  
9 also necessary to meet the discovery obligations  
10 when the law goes into effect in a couple of months.

11 The new discovery law is also going to lead  
12 to quicker, fairer, and more accurate case  
13 resolutions, which means fewer taxpayer dollars  
14 spent on maintaining mass incarceration.

15 These are resources that can and should be  
16 invested in the things that truly create community  
17 safety and stability, like public education,  
18 affordable and stable housing, health care,  
19 community-based services, et cetera.

20 I'll sort of -- one of the, like, last things  
21 I want to add is:

22 I'm also concerned with the continued  
23 rhetoric that I've heard on -- at these hearings,  
24 and that I've heard from law enforcement, that  
25 implementation of the new pre-trial laws, and

1 implementation of the discovery law, will  
2 necessarily result in decreased funding for  
3 programming and treatment.

4 This is incredibly disturbing.

5 It's not a zero-sum game, and we need to stop  
6 treating it that way.

7 Government can and should, both, implement  
8 the new pre-trial laws, and increase funding of  
9 services.

10 And the costs that we should care the most  
11 about, are the costs centered by those of us who  
12 fought and won these bills, won these laws, and it's  
13 the human cost of an unjust system of mass  
14 incarceration that destroys lives.

15 New York's discovery law was passed with the  
16 express intent of achieving necessary overhaul of  
17 the system.

18 And I think that we talk a lot about laws in  
19 Albany as being driven by a New York City agenda.

20 That's not the case here. Right?

21 Unlike downstate, in recent years, upstate  
22 counties have seen an explosion in pre-trial  
23 incarceration, overwhelmingly targeted at people of  
24 color.

25 And we really have stop the statewide

1 geographic distinction of how justice is served.

2 Upstate counties, as folks have named, face  
3 unique challenges in ending mass incarceration, as  
4 there's, generally, fewer defense and advocacy  
5 resources, more limited court infrastructure.

6 And that's exactly why strong implementation  
7 and compliance with this new law is so critical.

8 This is an opportunity for us to rethink  
9 public safety, which we all care about, and to  
10 utilize the implementation process as an opportunity  
11 to advance solutions that create safety for  
12 everyone; and "everyone" includes, particularly, the  
13 low-income communities and communities of color  
14 whose safety is threatened by the current system of  
15 mass incarceration, criminalization, and punishment.

16 Prosecutors and law enforcement can't be  
17 allowed to undermine the implementation process and  
18 continue to impede true safety for all New Yorkers.

19 Thank you.

20 SENATOR BAILEY: Thank you.

21 I want to thank you all for your testimony,  
22 and I appreciate your -- your consistent efforts  
23 in -- in -- in this matter, much like I appreciate  
24 the prosecute -- prosecutors and defense attorneys.

25 I don't have any questions just yet, because

1 I don't believe in speaking just to speak.

2 I -- I think many of you, your testimony has  
3 spoken, and we -- and we've covered these  
4 conversations in -- in -- in -- in the prior panels.

5 I appreciate your testimony.

6 And I would ask if Senator Jordan has any  
7 questions?

8 SENATOR JORDAN: I just have just a short  
9 one.

10 Erin?

11 ERIN GEORGE: Yeah.

12 SENATOR JORDAN: Large part of what you spoke  
13 about was DAs trying to subvert the new laws  
14 coming down.

15 Where -- where do you get that information  
16 from?

17 Because the panel that was here are all  
18 trying to be in compliance, but they're telling you  
19 there are problems that they're running across with  
20 complying.

21 They're doing the best that they can with  
22 what they have.

23 So how many district attorneys do you know  
24 that are trying to subvert the laws?

25 Where do you get that information from?

1           And, how do you figure that?

2           ERIN GEORGE: Yeah, I'd be happy to share.

3           There was a state -- a PDF that was  
4           circulated, a statewide, from DAASNY -- or, I don't  
5           know if it was DAASNY specifically -- from the  
6           training institute, that includes really specific  
7           recommendations -- and I'm happy to share that --  
8           specific recommendations on things that prosecutors  
9           can do to stop the clock, some of which -- all of  
10          the things that I named in my testimony came  
11          directly out of that PDF.

12          There are also reportings of trainings that  
13          have been held, where -- and I'm happy to share that  
14          as well -- trainings that have been held where  
15          prosecutors are training other prosecutors on how to  
16          use loop -- what they're identifying as "loopholes"  
17          in the law to slow the clock, to --

18          SENATOR JORDAN: Right, because in -- they  
19          are having problems with that 15-day time frame.

20          So, they're trying to comply, and they're  
21          looking at how they're going to comply, and come  
22          forth with all of this.

23          So --

24          ERIN GEORGE: I think neither of us -- with  
25          all due respect, neither of us are district

1 attorneys, and I would encourage you to listen to --  
2 I'm happy to send -- I would encourage you to listen  
3 and read the materials that are out there.

4 I'm happy to also send press, and press  
5 clips, where, almost every single day, we are  
6 seeing -- we are seeing multiple articles, dozens of  
7 articles, where -- where specific cases are taken  
8 and misrepresented as to how those cases will be  
9 handled under the new laws; under the new bail and  
10 new discovery law.

11 And that is fear-mongering tactics to  
12 undermine these laws, from my perspective.

13 SENATOR JORDAN: In your opinion, correct.

14 Okay. Thank you.

15 SENATOR BAILEY: So, with that being said,  
16 I wanted to thank you, especially, you know,  
17 speak -- speaking about your former -- your --  
18 your -- your past experiences.

19 You know, one of the things -- I was going to  
20 save this for the end, but -- but it may bear worth  
21 repeating, but I wanted to mention it now.

22 One of the reasons why discovery was just  
23 really important, in my opinion, was just because  
24 it's about knowing what you've been accused of.

25 And -- and that -- and that's, essentially,

1 what it's distilled down to.

2 And -- you know, and if you're -- you're  
3 forced to take a plea, and -- and you're asking  
4 somebody to condition their life upon something, and  
5 place your hands in -- and place your life in the  
6 hands of people that you don't know, and if you're a  
7 poor indigent person, you really haven't met them  
8 prior to the assignment of counsel, and they come  
9 before you and they say, Hey, you know, I don't have  
10 everything, but guess what?

11 You can go home right now if you take this,  
12 or, you'll only do four years if you take this.

13 And -- and, again, I -- I am not judge, jury,  
14 or, you know, anything else, but what I am is  
15 somebody who have -- who -- who's seen this play out  
16 in my community in real life.

17 And -- and -- and I'm appreciative of you --  
18 of you telling your stories.

19 I just thank you for your -- for your  
20 testimony --

21 OFF-CAMERA SPEAKER: Thank you, sir.

22 OFF-CAMERA SPEAKER: Thank you.

23 SENATOR BAILEY: The next panel:

24 Reverend Emma J. Lottin-Woods (sic) of  
25 WESPAC Foundation;

1           Mr. Khalil Cumberbatch, chief strategist for  
2 New Yorkers United for Justice;

3           And Mr. Dewey -- Dewey -- and Dewey Bozella,  
4 exoneree advisory counsel for the Innocence Project.

5           At your leisure, you may commence, and please  
6 state who you are prior to your testimony.

7           REV. EMMA J. LOFTIN-WOODS: Good afternoon.

8           I am Reverend Emma Jean Loftin.

9           Thank you.

10          I thank the panel.

11          I thank you, Senator, for holding this  
12 hearing.

13          As you have my testimony:

14          I am a 54-year resident of New York,  
15 Westchester County.

16          I'm representing WESPAC here today.

17          AUDIENCE MEMBER: Can't hardly hear.

18          REV. EMMA J. LOFTIN-WOODS: Sorry,  
19 I apologize.

20          I said again that:

21          I am Reverend Emma Jean Loftin-Woods.

22          I'm a 54-year resident of New York,  
23 Westchester County.

24          I am representing WESPAC here today, a  
25 community organization in Westchester County



1 fighting for critical social change.

2 I want to begin by thanking the Legislature  
3 for passing discovery-law reform in April of this  
4 year.

5 I'm one of the thousands of New Yorkers  
6 across the state who have been impacted by our  
7 regressive, unjust discovery laws, and who fought  
8 for change.

9 I want to express my deep gratitude to the  
10 Legislature for hearing the suffering of  
11 New Yorkers, and responding by passing the new law.

12 Together, we stood up and said no to a  
13 "Blindfold Law" that allowed prosecutors to withhold  
14 evidence or hide the fact that none existed.

15 We insisted that New Yorkers deserve to know  
16 the facts of their cases, that we all deserve open,  
17 early, automatic discovery turnover.

18 While much of this hearing has focused on the  
19 specifics of implementation, it is critical to  
20 remember the human impact and the importance of  
21 discovery reform, to ensure that New Yorkers are not  
22 coerced into pleas, and have all the evidence they  
23 need to prepare for their own defense.

24 I know these issues very personally.

25 I spent four days in the Westchester County

1 jail. No bail, because it was a weekend.

2 I had three charge -- three felony charges  
3 alleged against me, Friday night, you don't get  
4 bail.

5 The court proceedings lasted for 96 days.

6 My legal term -- team repeatedly asked for  
7 trial. They were prepared for it.

8 There was no discovery. I didn't know what  
9 was going on.

10 I knew what was alleged against me, but a  
11 trial never took place.

12 In the end, the charges alleged against me  
13 were subsequently reduced to a misdemeanor, and the  
14 file has been sealed.

15 My legal fees amounted to over \$7,500.

16 The mental and emotional scars will never go  
17 away. They are constant reminders of where this  
18 system was.

19 Now, the Legislature has passed discovery-law  
20 reform.

21 No one else will suffer like I did, like my  
22 family did.

23 Prosecutors will be required to turn over all  
24 of the evidence 15 days after arraignment and prior  
25 to any plea deal.

1           As New Yorkers, who suffered and fought for  
2 change, we insist on the effective implementation of  
3 these bills.

4           Discovery reform has been implemented in many  
5 jurisdictions, so this work is not unique to  
6 New York.

7           Both Texas, of all places, North Carolina,  
8 have implemented open-file discovery systems. And  
9 prosecutors in Texas have written in support of  
10 New York legislation.

11           Finally, I want to address relate -- issues  
12 related to funding.

13           Some of the requests for additional funding  
14 from DA offices have just been outlandish.

15           For example, Westchester County's DA has  
16 claimed that he needs 42 additional staff positions  
17 to implement discovery reform.

18           Underlying the testimony of the DAs is the  
19 belief that they should continue to do business as  
20 usual, prosecuting the same number of cases, and  
21 doing so with the same illegitimate leverage.

22           However, the goal of the discovery  
23 legislation is to change prosecutorial practice.

24           Prosecutors must rethink how they prosecute.

25           We pay them.

1           They must bring fewer needless cases, and  
2 re-prioritize, and reallocate their resources.

3           They must be more thoughtful about charging,  
4 to apply scrutiny on their front end, so that they  
5 are not pursuing wrongful or needless cases.

6           This is an opportunity to exercise true  
7 prosecutorial discretion.

8           Our communities, those who have been  
9 devastated by mass incarceration and decades of  
10 disinvestment are in dire need of funding for  
11 education.

12           When our children are educated, they are more  
13 less likely to commit crimes.

14           Health care, which is a dire need in my part  
15 of town, and all services that all families of lower  
16 income, even what used to be middle income, that  
17 doesn't exist, we all need services for our  
18 families.

19           This is where the resources should be  
20 directed, not in the pocket of the prosecutors.

21           Our communities are counting on you all.

22           We cannot wait.

23           Thank you so much.

24           SENATOR BAILEY: You for your testimony.

25           KHALIL CUMBERBATCH: Thank you, Chairman, and

1 Committee members, for the opportunity to speak  
2 before you today.

3 My name is Khalil Cumberbatch, and I am here  
4 today on of behalf my organization, New Yorkers  
5 United for Justice, a broad, diverse coalition that  
6 I'm heading up, along with another  
7 formerly-incarcerated New Yorker, Topeka K. Sam,  
8 with one mission: Ensuring a fairer and more just  
9 criminal justice system for all New Yorkers.

10 As a new organization, we work with our  
11 colleagues to help raise statewide awareness of the  
12 need for pre-trial reforms.

13 After dozens of conversations, we decided to  
14 launch had a video campaign that focused on  
15 discovery reform, because we believed, as did many  
16 others, that discovery, despite its misleading and  
17 ambiguous legal terminology, referred to one of the  
18 core values of our justice system, a value that is  
19 shared across political spectrums and ideologies.

20 The simple notion that, if you are accused of  
21 a crime, you have to right to see the evidence and  
22 face your accusers in court.

23 However, and as the Committee and the  
24 witnesses who have testified earlier knows all too  
25 well, the theory is very different than practice.

1           Thanks to the members of this Committee and  
2           other members of both chambers, New York State  
3           joined 35 states, including Texas, as was mentioned  
4           by previous witnesses, New Jersey, and Florida, who  
5           have open-discovery practices that require  
6           prosecutors to turn over police reports and other  
7           evidence in a timely manner in the criminal-case  
8           process.

9           Prosecutors in these states support lifting  
10          so-called "Blindfold" laws to ensure that laws  
11          fair -- that laws are fairer and more efficient.

12          Assistant District Attorney Linda Garza from  
13          Webb County, Texas, said:

14          "Prior to discovery reform, Texas prosecutors  
15          were saddled with the gatekeeping responsibility of  
16          deciding what evidence should be turned over to the  
17          accused.

18          "But under the Michael Morton Act, we've been  
19          relieved of this ethical dilemma without any  
20          increased security concern for witnesses or victims.

21          "Every day, open discovery helps to restore  
22          Texans' faith in our criminal justice system, and we  
23          know it's something New Yorkers can accomplish  
24          here."

25          Texas, a particularly conservative state,

1 reformed their discovery laws in 2013 to no  
2 ill-effect.

3 That year, Texas, a historically,  
4 quote/unquote, law-and-order state, with  
5 254 counties, 192 more counties than New York State,  
6 passed and implemented the Michael Morton Act, named  
7 after a wrongfully-convicted, falsely-imprisoned  
8 exoneree.

9 Michael was convicted in 1987, and sentenced  
10 to life in prison, for the murder of his wife.

11 He was exonerated in 2011 after DNA testing  
12 connected another man, who subsequently killed again  
13 to the brutal crime.

14 In their investigation, Michael's lawyers  
15 discovered that the prosecutor in the original case  
16 had withheld critical evidence that could have  
17 pointed to the real killer, and spared Morton the  
18 quarter century he spent behind bars, and would have  
19 spared another woman's life and another family's  
20 senseless tragedy.

21 It is worth noting that, since 2013, the sky  
22 hasn't fallen in Texas, as it relates to public  
23 safety, witnesses' names and addresses, along with  
24 other sensitive information, being leaked or turned  
25 over to defense counsels.

1           In fact, crime rates in Texas, as well as  
2 other states who had implemented similar laws, have  
3 seen crime rates decline.

4           Similarly, in New York, there have been  
5 equally appalling cases of injustice, where the  
6 withholding or delay of turning over critical  
7 evidence led to false confessions, and, therefore,  
8 wrongful convictions of individuals, costing  
9 taxpayers millions of dollars spent in prosecution,  
10 housing, and in some cases, financial-compensation  
11 payouts to those wrongfully-convicted persons.

12           The "Exonerated Five," formerly known as the  
13 "Central Park Five," being one of the most prominent  
14 cases and examples.

15           Another example is the case of Dewey Bozella,  
16 who is set to testify after I, and don't want to  
17 steal any of his thunder, but I will say something  
18 that he said to us:

19           "In 1977, 92-year-old Emma Crapser was  
20 murdered in her Poughkeepsie, New York, apartment.  
21 And police claimed Ms. Crapser walked in on a  
22 burglary I was committing, and that I killed her.

23           "Once convicted, I learned that key  
24 information was not disclosed to my defense,  
25 including pages of police reports containing



1 statements from neighbors that contradicted the  
2 testimony of the prosecution's key witness.

3 "Discovery rules requiring early disclosure  
4 would have enabled my defense to find these  
5 witnesses and call them at trial, and would have  
6 had" -- "and wouldn't have lost more than a quarter  
7 century of my life.

8 "It is time for New York to get it right.

9 "No one should ever have to go through what  
10 I went through.

11 "And I am an example of how poor discovery  
12 can spell a dead end for justice, and why lawmakers  
13 in Albany must pass discovery reform in this  
14 session."

15 Obviously, that was stated before the reforms  
16 were actually passed.

17 In closing, and as the Committee knows, and  
18 as witnesses have highlighted already today, there  
19 are many benefits to discovery reforms passed  
20 earlier this year, one of which being a much-needed  
21 upgrade to -- of the digital capability of law  
22 enforcement, and prosecution's ability to make  
23 evidence accessible much earlier in the process to  
24 defense, and also making the communication between  
25 police departments and district attorneys' offices,

1 as was mentioned earlier by DAs themselves, more  
2 streamlined; thus, eliminating the reliance on,  
3 quote/unquote, tape rooms, triplicates, typewriters,  
4 and paper chain-of-command sheets.

5 Bringing this aspect of the justice system  
6 into the twenty-first century is also a necessary  
7 and long-overdue overhaul.

8 More importantly, the new discovery law will  
9 make our communities safer.

10 No longer will public safety be at risk by  
11 the inappropriate withholding of evidence that has  
12 led to false confessions, pressured plea deals,  
13 wrongful convictions, and, ultimately, the failure  
14 to hold those who commit crimes accountable for  
15 their actions.

16 New York is safer, fairer, and more just  
17 because of this law.

18 Thank you again, Chair, and Committee  
19 members.

20 If there are any questions the Committee has,  
21 I will attempt to answer them.

22 SENATOR BAILEY: Thank you for your  
23 testimony.

24 DEWEY BOZELLA: First of all, I'd like to  
25 apologize.

1 I had to go outside and, you know, for the  
2 car, pay that ticket.

3 First and foremost, I apologize, Senators,  
4 and thank you for having me.

5 I would like to first start out by saying,  
6 I was wrongfully convicted.

7 I did 26 1/2 years for a crime did I not  
8 commit.

9 And I'll start off by saying that, in 1977,  
10 I was arrested for a murder. And I was only  
11 supposed to have been hold for three days. But they  
12 kept me for 28 days, to where the judge said, You  
13 got to let this man go.

14 And, they let me go on what they called  
15 (indiscernible) in Kentucky.

16 They didn't have no evidence on me or nothing  
17 like that.

18 So after that, 5 1/2 years went by, and I got  
19 re-arrested for the same charge, but they made a  
20 deal with two guys from the state penitentiary to  
21 testify against me.

22 But they also needed a collaborating witness.

23 So, without one single shred of evidence,  
24 nothing pointed to me, and everything, I went to  
25 trial, and I got sentenced, 20 years to life.

1           For the next -- from 1983, all the way to  
2           1990, I was fighting my case. And while I was  
3           fighting my case, my case was overturned, and it was  
4           overturned because I didn't have a jury of my peers.

5           So I went to trial, and this time I went to  
6           trial, it was so bad, that they offered me three  
7           different times.

8           They offered me manslaughter, which I didn't  
9           take.

10          Then they offered me time served.

11          And then the last one they offered me was  
12          (indiscernible) offer plea. All I had to do as was  
13          sign a piece of paper and I could have walked right  
14          out the courtroom right on the spot.

15          I didn't take the deal.

16          Then, right behind that, the jury came out  
17          and I got convicted again, 20 years to life, with  
18          not one single shred of evidence.

19          From 1990, all the way to 2005, for the next  
20          15 years, I kept fighting for my freedom.

21          And then I heard about the Innocent (sic)  
22          Project.

23          So I heard about the Innocent (sic) Project.  
24          I kept writing them and writing and writing them,  
25          till one day they finally accepted my case.

1           When they finally accepted my case, which was  
2           in 2005, they went to the Poughkeepsie Police  
3           Department, and the Poughkeepsie Police Department  
4           destroyed all the evidence.

5           They destroyed the hair samples.

6           They even destroyed the evidence that said  
7           that someone's fingerprints was found on the side of  
8           the house. And he was arrested for the same type of  
9           murder I was arrested for.

10          So, from 2005, when after they found out that  
11          all the evidence was destroyed, the Innocent (sic)  
12          Project went and got Wilmer Cutler Hale law firm, a  
13          high-powered law firm, to get involved in my case.

14          So they were started working on my case for  
15          the next three years.

16          And then they told me: Listen, Mr. Bozella,  
17          we can't do nothing for you. All the evidence is  
18          destroyed. We can't find a witness or witnesses, or  
19          they're dead.

20          And something came over to me, to where  
21          I said, Just go -- go -- go by the arresting police  
22          officer (sic) house. I think he might have a change  
23          of heart. Just -- just go by and see him. Just,  
24          please talk to him.

25          So, I think about eight months went by. This

1 was in 2008.

2 They finally went by.

3 But in the meantime, before they went over  
4 his house, I went to four parole boards. And each  
5 time I went to the parole board, they gave me two  
6 more years added to my sentence.

7 So I was like saying, how the heck am I going  
8 to get out of here?

9 So when this -- when I told them about  
10 Lieutenant (indiscernible), the police officer, they  
11 finally went over to his house. And when they went  
12 over his house, he, at first was (indiscernible).

13 But then he opened up, and they asked him a  
14 question: Do you have any recollection about  
15 Mr. Dewey Bozella (sic) case?

16 And he said, Yes, I do.

17 What can you tell us about Mr. Bozella (sic)  
18 case?

19 He said, I want you to know, I kept  
20 Mr. Bozella's case, his personal files, at my house  
21 for the last 19 years.

22 Are you supposed to keep his personal files  
23 at your house?

24 He said, No, I'm not. But I always felt that  
25 this man was innocent when the other guy's

1 fingerprints was found. So I took the files and  
2 I kept them here at my house, because I always knew  
3 that someone would come talk to me about it.

4 "So here are his files."

5 Inside of them files were Brady and Rosario  
6 material that said that someone else committed the  
7 murder.

8 Not only that, my lawyers, they went to the  
9 prosecuting district attorney's office, and when  
10 they went to his office, they didn't want him to go  
11 into the files. But they found way to where they  
12 had him to give him the files, and there was four  
13 boxes, but one of the boxes was missing.

14 Inside one of the boxes they found the tape.

15 And inside the tape it said that someone else  
16 committed the murder.

17 And the worst thing about it,  
18 with the prosecuting district attorney,  
19 William O'Neill (ph.), who prosecuted me in 1983 and  
20 1990, was in the room, with two police officers,  
21 that someone else said that they committed the  
22 murder.

23 And -- so that was the beginning of my case  
24 being overturned.

25 Not only that, they also found evidence that

1 someone else, that was also arrested for the same  
2 type of murder, his fingerprints were found on the  
3 side of the same woman, and it showed the same  
4 identical type of killing.

5 They didn't go after him, they came after me.

6 So with all this newly-discovered evidence,  
7 I went before the judge. And, in 2009, the judge  
8 said: This is overwhelming evidence. I believe, if  
9 this man would have had this in any one of the two  
10 trials, it would have been a different outcome.

11 So the case was dismissed, and it was  
12 dismissed on the day, like today, the 28th.

13 OFF-CAMERA SPEAKER: Wow.

14 DEWEY BOZELLA: And this make 10 years that  
15 I've been out.

16 OFF-CAMERA SPEAKER: Wow.

17 OFF-CAMERA SPEAKER: Wow.

18 ERIN GEORGE: And, so, when you talk about  
19 discovery, and a miracle, after 32 years of fighting  
20 for my freedom -- excuse me for being emotional --  
21 after 32 years of fighting for my freedom, because  
22 the prosecuting district attorney didn't want to  
23 turn over the evidence, you need it.

24 You need it.

25 They need to be fair.



1           Just be fair.

2           Don't be unjust (sic) just to make a  
3 conviction.

4           Thank you.

5           SENATOR BAILEY: I -- I'm rendered speechless  
6 very infrequently, but I am speechless as to what  
7 I heard.

8           Thank you for your courage, and thank you for  
9 your testimony.

10          And thank you for the courage.

11          Some people say the courage of your  
12 convictions, but there's a pun there.

13          But you had so much courage, like, I --  
14 I cannot -- like, facing that kind of adversity, and  
15 being asked to -- you can go home. But if you know  
16 what you didn't do, that -- that -- that -- that  
17 sort of strength happens.

18          And, we talk about the fiscal cost.

19          What's the human cost that we face?

20          Like, I -- I -- I -- I -- I have vivid  
21 memories of things that have happened to me far, far  
22 less serious than that, and they are an indelible --  
23 indelibly, you know, etched in my mind.

24          I -- Mr. Bozella, I -- I -- I simply cannot  
25 imagine that.

1 I thank you -- I thank you for -- for your  
2 strength again.

3 I thank you for your testimony today.

4 And -- and I -- and I would hope that this is  
5 instructive to anybody that's listening, and as to  
6 what the goal of this whole justice reform is.

7 It's not about just letting people free, but  
8 there was somebody else who did that. And if  
9 somebody else took someone else's life, that person  
10 should be prosecuted as opposed to you.

11 If we're really in the business of finding  
12 truth, the more evidence that we have, ultimately,  
13 it -- it has to come back.

14 And -- and -- and you -- you -- you both  
15 testified incredibly wonderfully.

16 Khalil, I've known you for quite some time,  
17 so thank you for your testimony.

18 Reverend, thank you for your testimony.

19 But Mr. Bozella, I just -- I don't have any  
20 questions.

21 I just -- I just want to say, thank you.

22 I truly want to say, thank you, for -- for  
23 just being willing to -- to -- to come before us  
24 today.

25 DEWEY BOZELLA: You're welcome, sir.

1           SENATOR BAILEY:   Senator Jordan?

2           SENATOR JORDAN:   I don't have any questions,  
3   but thank you for your testimony.

4           DEWEY BOZELLA:   Thank you.

5           SENATOR JORDAN:   You're so welcome.

6           SENATOR BAILEY:   Thank you all for -- for --  
7   for coming.

8           SENATOR BAILEY:   The next and final panel  
9   will be:

10           Attorney Art Frost, a private criminal  
11   defense attorney, and partner at Frost & Kavanaugh  
12   Law Firm;

13           Attorney Shane Hug, a criminal defense  
14   attorney from the Capital District, formerly of the  
15   Rensselaer County District Attorney's Office;

16           And, Andrew Correia, a public defender in  
17   Wayne County.

18           I thank you all for your patience in -- in --  
19   in waiting to testify today.

20           And I appreciate your -- and  
21   Mr. George Lamarche.

22           I apologize.

23           Mr. George Lamarche as well.

24           So, thank you, gentlemen, for -- for -- for  
25   sticking it out until the -- the final panel.

1           And you may commence, and please indicate  
2 your name for the record prior to your testimony.

3           ARTHUR FROST, ESQ.: Good afternoon, Senator.

4           My name is Arthur Frost.

5           For the last 18 years I've had the privilege  
6 of being a public defender in Rensselaer County.

7           Apart from that, I am engaged in private  
8 practice, and I do criminal defense and civil  
9 litigation.

10           I'm not going to repeat a lot of stats for  
11 you. You've heard enough of them, you know them  
12 already.

13           Instead, I'd like to contrast two cases that  
14 I'm currently working on.

15           One is a young man who's accused of assault.

16           He's been criminally prosecuted, and the case  
17 has been pending for eight months.

18           I have no discovery.

19           Zero.

20           I went to a pre-trial hearing, and my client  
21 looked at my file, and looked at the prosecutor's  
22 file, and said, Why's her file three times the size  
23 of yours?

24           I said, Good question.

25           I didn't have an answer for him.

1           Now, I also represent a woman who was beaten  
2 badly by some city workers.

3           It's a civil case.

4           I've spent the last seven months preparing  
5 discovery responses.

6           I've given a full bill of particulars, a list  
7 of every injury she's ever suffered, any injuries  
8 that I claim are permanent, any preexisting  
9 conditions that were aggravated by these workers'  
10 actions.

11           I've given every medical record she's had for  
12 the last five years.

13           I've given authorizations so they can get  
14 those medical records themselves.

15           I've submitted her for a deposition.

16           I've submitted her for a medical examination,  
17 not by one, not by two, but by three doctors.

18           Even -- because it's against city workers,  
19 even before that, she sat for a 50-H hearing, where  
20 they examined her, and then they examined her again.

21           If we had discovery in civil cases like we  
22 have in criminal cases, Progressive, Geico, and  
23 Liberty Mutual would storm the doors, screaming high  
24 dudgeon, How dare you take our money without  
25 discovery.

1           If we're going to protect money like that,  
2 shouldn't we protect liberty?

3           New York's discovery rules in criminal cases  
4 are appalling. They're shameful.

5           And now, fortunately, they're different.

6           I can't tell you how many times I've sat with  
7 young attorneys.

8           Part of what I do in the public defender's  
9 office is train some of the younger attorneys in our  
10 office.

11           I can't tell you how many times I've sat with  
12 them and said, "I know what your case looks like on  
13 paper, but here's what's really happening."

14           The reason I know that is because I've  
15 practiced law for 23 years.

16           How is a young prosecutor -- or, pardon me, a  
17 young defense attorney supposed to know the things  
18 that I've gained through all that experience?

19           When the papers exist, and they're in the  
20 prosecutor's or the police's files, they should be  
21 turned over.

22           There's no reason.

23           What's the big secret?

24           Where are these papers?

25           Why can't we have them?

1           Sometimes prosecutors don't disclose material  
2 out of malevolence.

3           Most times, they don't do it innocently.

4           Occasionally, they don't do it because of  
5 ignorance.

6           But every time they don't do it, it's wrong.

7           Give us what we need. Let us do our jobs,  
8 let us defend.

9           Most of what I've heard has been under the  
10 assumption that the accused is guilty.

11           You've just seen a dramatic example of what  
12 happens when they're not.

13           How dare we do this.

14           You fixed it.

15           Keep it this way.

16           Thank you.

17           SENATOR BAILEY: Thank you.

18           And I'm going to break from what I was doing  
19 before, and I just want add a comment to what  
20 your -- what your testimony was.

21           I was a practicing civil attorney, and  
22 I practiced in civil courts downstate, usually  
23 Bronx County and Kings County.

24           And I would -- I often saw pleadings  
25 stricken, you know, for an inability to provide

1 discovery at a preliminary conference or a  
2 compliance conference.

3 But, generally speaking, that discovery was  
4 plentiful in a civil case.

5 Your response to your interrogatories and  
6 other statements.

7 And, as you mentioned, when a monetary matter  
8 is on the line, the civil statutes allow for broad  
9 and sweeping discovery.

10 Yet, when life and liberty are on the line,  
11 and -- and, sometimes, in all of conversations and  
12 arguments we've had on this, we forget to make these  
13 points.

14 And I'm glad you made that point for the  
15 record, because, I know money is important, but the  
16 human cost is the most important.

17 And I just -- I would like to thank you for  
18 that.

19 And I've been -- I'm sorry for breaking with  
20 the discussion of letting the people on the panel  
21 testify prior to my interjection.

22 But I just wanted to thank you for your  
23 testimony.

24 ARTHUR FROST, ESQ.: You're welcome, Senator.

25 GEORGE LAMARCHE, ESQ.: I'll go next, in that



1 same vein.

2 My name is George Lamarche. I am a  
3 private-practicing criminal defense lawyer.

4 I'm also a civil litigator, and limit my  
5 civil practice to representing plaintiffs in serious  
6 personal-injury claims.

7 I would like to thank the many people who  
8 have dedicated countless hours and tireless energy  
9 to bringing much-needed change to our criminal  
10 justice system.

11 My perspective, like Mr. Frost's  
12 perspective, is a little different than some of the  
13 other individuals who have testified before you, in  
14 that, I am not only in private practice, but also a  
15 civil litigator.

16 As you now well know, when a claim is brought  
17 against a defendant in a personal-injury claim, that  
18 defendant is entitled to full and complete  
19 disclosure of all matters material and necessary to  
20 the defense of that action.

21 As a -- as plaintiff's lawyers (sic), I can't  
22 say to a defense lawyer, My client was injured. Pay  
23 my client money, unless there is full and complete  
24 discovery.

25 I can't say, Your client knows full well what

1 your client did, so pay my client, unless, and  
2 until, there is full and complete discovery.

3 In a civil case, understandably, the defense  
4 wants to examine my client's background, explore all  
5 of her medical history, obtain statements or take  
6 depositions of parties and relevant non-parties, as  
7 well as obtain disclosure regarding the use of  
8 experts.

9 On the other hand, historically in New York,  
10 the defendant in a criminal matter, essentially,  
11 receives none of that information until the day of  
12 trial, if we're lucky.

13 I have struggled with the fact that claims  
14 for money seemed more important than matters where a  
15 defendant faces prison.

16 That our state was more content with someone  
17 going to jail than it was with someone having to pay  
18 a money judgment.

19 For years, I've had to explain to my clients  
20 the fundamentally unfair system of justice in  
21 New York, that authorizes more mandated discovery in  
22 a simple tort case than for a person who is facing  
23 life-altering consequences and loss of liberty.

24 We have heard the calls from prosecutors that  
25 the capabilities to comply with the sweeping and

1 long-awaited discovery reform will be difficult;

2 That the limited resources and technological  
3 incapacities will require millions of dollars in  
4 additional resources to make compliance possible.

5 We've also heard complaints that this statute  
6 will require more judicial intervention,  
7 applications for protective orders, and more  
8 hearings.

9 However, in my experience in civil cases,  
10 judicial intervention is rarely required, because  
11 plaintiffs and defense counsel often work together  
12 to resolve issues, rather than filing motions and  
13 seeking judicial involvement.

14 Importantly, if I decide to prosecute a civil  
15 case on behalf of an injury victim, I know what the  
16 rules are.

17 When I go to a conference in a civil case,  
18 and the Court sets a scheduling order, I don't say  
19 that I don't have the time to get the discovery done  
20 because my firm lacks technology or staff.

21 If I decide to prosecute a civil case, I do  
22 it with the knowledge that certain obligations need  
23 to be met.

24 If I can't, or I don't want to, comply with  
25 those obligations, I don't pursue the case.

1           If I have a concerns that a case may lack  
2 merit, or that I may not have all of necessary  
3 information to prove my case, I decline to prosecute  
4 the case.

5           The rules as they exist force me to make  
6 important choices before proceeding with an action.

7           This same concept will apply to prosecutors.

8           For too many years, prosecutors have utilized  
9 the discovery rules to hold back information and  
10 game the system, to push plea bargains or threats of  
11 higher sentences without an ability for a defendant  
12 to view all of the evidence and make a truly  
13 informed decision.

14           The new discovery rules finally swing the  
15 pendulum back in the right direction and make our  
16 justice system much more transparent.

17           These new rules return a sense of trust to  
18 our system of justice that are long overdue.

19           In my experience, prosecutors have not  
20 appreciated that I have an obligation to offer  
21 guidance to my clients about the evidence against  
22 him or her and the likelihood of success.

23           That in order to honor my client's  
24 6th Amendment right to effective assistance of  
25 counsel, I have an ethical and professional

1 obligation to obtain evidence so I can properly  
2 provide guidance and counsel.

3 I have received plea offers from prosecutors  
4 at arraignments with time limits to accept or  
5 reject.

6 I've heard prosecutors say, "Your client  
7 knows what he or she did," despite the well-known  
8 burden of proof.

9 I have walked into conferences with judges,  
10 probation officers, and prosecutors, and felt like  
11 I was walking into a party I didn't receive an  
12 invitation to attend, where the decisions about my  
13 client's future were already made long before any  
14 discovery is ever provided.

15 The expectations placed on defense lawyers by  
16 clients, and the ethical canons we agree to in  
17 becoming involved in cases, are now being honored by  
18 this new discovery statute.

19 While any amount of change can bring some  
20 feeling of fear, with change will come a new normal,  
21 as the system will adjust and adapt.

22 It should not a time of complaining about  
23 what we can't do or how hard it's going to be to do  
24 it, or how much money it's going to take to make it  
25 happen.

1           This is a new opportunity; a time to reassess  
2           how things are being done, to prioritize resources,  
3           and to cooperate and collaborate to do what needs to  
4           be done to move our system of justice forward.

5           I hope the energy being spent challenging,  
6           questioning, and criticizing the work that has been  
7           done to finally bring us up to speed with the rest  
8           of the country can be refocused on what needs to be  
9           done to make this work, because we all have a goal  
10          to administer justice.

11          And these new discovery rules will finally  
12          help us to achieve that.

13          Thank you.

14          SENATOR BAILEY: Thank you for your  
15          testimony.

16          SHANE HUG, ESQ.: Good afternoon.

17          My name is Shane Hug. I'm an attorney who's  
18          got an office in Troy.

19          I think I have a somewhat unique perspective  
20          to offer on this conversation, given my -- my  
21          history.

22          I've been an attorney for about 11 years, and  
23          I've practiced exclusively criminal law, but  
24          I practice it on both sides.

25          7 1/2 years of that time I spent as a

1 prosecutor, prosecuting crimes, from petty  
2 larcenies, up to homicides, and everything between.

3 I've seen the worst that society has to offer  
4 to each other: Terrible murders. Terrible  
5 assaults. Terrible sex offenses.

6 And for the last 3 1/2 years I've been on the  
7 other side, defending people who have been accused  
8 of these types of offenses.

9 I do so in a private capacity for clients who  
10 can afford representation.

11 And I do so, as I am a member of the  
12 18B panel in several counties in the area, being  
13 assigned indigent clients who cannot afford an  
14 attorney, but have a conflict with either the public  
15 defender's office or the conflict defender's office.

16 I also presently prosecute a number of cases  
17 every year, when courts decide to assign me as a  
18 special prosecutor when a district attorney's office  
19 has a conflict of interest.

20 So I come to this statute, looking at it from  
21 a different perspective, I believe.

22 And all I had heard about it, was that it is  
23 terrible.

24 That prosecutors say, it's untenable.

25 That this can't be implemented.

1           That if we do implement this new statute,  
2           which is the law right now, and it is the  
3           requirement to obey that law, that it will lead to  
4           civilians being hurt.

5           So when I agreed to speak at this panel,  
6           frankly, I hadn't even read the statute yet.

7           So I spent time yesterday immersing myself in  
8           it. And what I realized is that, these concerns are  
9           unfounded.

10          Article 245 is not the boogeyman that people  
11          want to make it out to be.

12          Our system of justice is one where people are  
13          presumed to be innocent.

14          Presumed to be innocent.

15          That should be more than lip service.

16          We've heard stories today about countless  
17          people whose lives have been irreparably harmed by a  
18          system that does not seek justice.

19          As a prosecutor, when I was in a DA's office,  
20          and on the cases I handled as a special prosecutor,  
21          including one I was in court on today, that is what  
22          drove me: Justice.

23          Justice isn't just the result, it is the  
24          process. And that process needs to be fair.

25          Senator, I don't know about you, but I would



1 not purchase a vehicle without taking it for a test  
2 drive.

3 I would not buy a house without doing a  
4 walk-through.

5 I would not send my child to college without  
6 going to visit that institution.

7 But for some reason, we think it's is okay  
8 and acceptable for people to make decisions in their  
9 lives, that may send them to prison for a lengthy  
10 period of time, separating them from their loved  
11 ones, without getting to peek under the hood.

12 That is not right.

13 OFF-CAMERA SPEAKER: No, it's not.

14 SHANE HUG, ESQ.: I tend to disagree with  
15 some of my colleagues on the defense bar that they  
16 are not legitimate concerns.

17 I think there are some concerns from a  
18 prosecutorial perspective about the implementation  
19 of these laws.

20 There are concerns about an ability to do so,  
21 especially in smaller counties, where district  
22 attorneys' offices are extremely small and they may  
23 not have the resources.

24 But not having the resources should not be  
25 the reason that this is not implemented.

1           These things are not mutually exclusive.

2           If these things are as important as they are,  
3 and I suggest to you they are, then we should be  
4 funding these offices so they can comply with the  
5 law.

6           That is not hard.

7           Are there legitimate concerns in some cases  
8 about safety of witnesses? Yes.

9           Despite what some attorneys have come up here  
10 and said, yes, there are.

11           As a prosecutor, I have had witnesses who  
12 have been intimidated, who have been beaten as a  
13 result of their cooperation with law enforcement and  
14 myself.

15           But those are the exception to the rule.

16           And this statute has provisions in it, where  
17 prosecutors can seek protective orders.

18           The law has envisioned these issues coming  
19 up.

20           I think, rather than putting up our  
21 roadblocks, like I did before even reading the  
22 statute, everybody should actually read the law as  
23 it's written, and see what it does as it levels the  
24 playing field.

25           Even if a prosecutor today follows the law,

1 my client does not get to see the evidence against  
2 him until after opening statements in a trial.

3 Think about that.

4 A defendant is asked whether or not to accept  
5 a plea, sometimes before indictment, at which point  
6 he's not even entitled to discovery, the little bit  
7 of discovery that the statute presently envisions.

8 But, he doesn't get to see Rosario material,  
9 the statements people have previously made, until  
10 after opening statements have been made.

11 That's not fair.

12 OFF-CAMERA SPEAKER: No, it's not.

13 SHANE HUG, ESQ.: That's not right.

14 It does not put their attorneys in a position  
15 to adequately represent them, especially when their  
16 liberty is on the line.

17 I applaud the Senate, the Assembly, and the  
18 Governor for enacting this legislation and signing  
19 it in to law.

20 And I would be happy to answer any questions  
21 that you have, Senator.

22 SENATOR BAILEY: Thank you very much for your  
23 testimony.

24 ANDREW CORREIA, ESQ.: Thank you, Senator.

25 My name is Andy Correia. I'm the public

1 defender in Wayne County, New York, in  
2 Western New York. It's just east of Rochester,  
3 Monroe County.

4 We have about 94,000 people there. There's  
5 no cities. It's all towns and villages. The  
6 economy is agricultural.

7 We handle about 2,000 cases a year in my  
8 office, just criminal.

9 I am not going to read from my statement.

10 I am going to focus on the thing that I think  
11 maybe is unique about me in my attempt, probably  
12 futile, to try to wrap up the testimony that you've  
13 heard today.

14 I have been a lawyer in New York since 2001.

15 I was born in New York. I was raised in  
16 New York. I went to college in the state university  
17 system. I went to law school in New York City.

18 But the first three years of my practice were  
19 in New Hampshire.

20 I joined the New Hampshire Public Defender  
21 Office, a highly-regarded public-defense office.

22 In New Hampshire, they call themselves the  
23 "Live Free or Die state."

24 New Hampshire has broad, open, and early  
25 discovery.

1           That's what I grew up on as a lawyer.  
2           Police reports. Depositions of experts.  
3           If a witness had given two conflicting  
4 statements, you could make a motion for a deposition  
5 of that witness.

6           Why?

7           Why?

8           Because, in New Hampshire, they allowed no  
9 surprise at trial. None.

10          They knew it was unfair. It was the culture.

11          The judges knew it.

12          The "county attorneys," as they call DAs in  
13 New Hampshire, they knew it.

14          Now, in that law, there were consequences for  
15 defendants if witness tampering had occurred.

16          There were stand-alone statutes that could be  
17 prosecuted.

18          My experience in New Hampshire, is that that  
19 was no more frequent in New Hampshire than it ever  
20 happens here in New York.

21          And as we all know, from this statute, there  
22 are multiple ways that information and witnesses can  
23 be protected.

24          Now, it's efficient, it's fair, it resolves  
25 the cases that should be resolved, and provides a

1 fair battleground for the cases that have to be  
2 fought.

3 When I came to New York in 2001, I was  
4 shocked.

5 I had to learn an entirely new set of skills  
6 to talk to a client about what they should do  
7 without the information necessary to make that  
8 decision.

9 It took me a while to get my mind around  
10 that.

11 Thankfully, New York has moved on.

12 Now, in my small county, I've sat down and  
13 I've talked to the district attorney, I've talked to  
14 my IT department, I've talked to my county board;  
15 they are all know this is coming.

16 In fact, I have a meeting tonight back in  
17 Wayne County I'm going to be late for, with the  
18 Magistrates' Association, all the town and village  
19 judges, to talk about how this is going to be rolled  
20 out in our county.

21 We are digging in in my county, not delaying,  
22 because this is too important.

23 And I got to tell you, that what I've heard a  
24 couple of times today, that this was somehow sprung  
25 on people, my question is: Where have they been?

1           Because I've been here.

2           In 2005, I testified in front of the  
3           K Commission, and specifically spoke about my  
4           experiences, the difference between New Hampshire  
5           discovery and New York discovery, and the  
6           wrongfulness of it, and the shame of it.

7           There have been bar-task forces. There have  
8           been years upon years of lobbying on this issue.

9           The proposal that has passed, has been  
10          scrutinized, and has been gone over by all these  
11          other states that do it.

12          That's just disingenuous.

13          Now, I just want to make a couple other  
14          comments here about some things that I heard today.

15          The idea that the district attorneys may need  
16          some financial support to roll this out.

17          I am not here to object to that.

18          I don't know if "\$100 million" is the right  
19          number. I have no way of knowing that.

20          But I will say, there's something that gets  
21          overlooked, when you compare public-defender budgets  
22          side by side with district attorney budgets, is that  
23          the district attorney budgets are already  
24          necessarily supported by multiple other law  
25          enforcement budgets.

1           Those investigators, that fleet of  
2           investigators, that even in my small county, they  
3           have access to, are the state police, are the  
4           sheriffs, are the local police departments. They  
5           have their own budgets, and they are available to  
6           help the district attorney.

7           It's almost like a shadow budget that doesn't  
8           really get considered.

9           We're comparing apples and oranges.

10          Now, if they need some assistance to roll  
11          this out, okay. I wouldn't say no, it's that  
12          important.

13          And I will also say, that I walked around in  
14          this building with this folder, in the '90s, when  
15          I was in law school, and the death penalty came back  
16          to life, and we were arguing against it.

17          And it somehow passed, and the money was  
18          somehow found, to fund that initiative to the tunes  
19          of hundreds of millions of dollars.

20          It is not a question in my mind of political  
21          will -- I'm sorry, it's not a question of the dollar  
22          amount. It's the question of the political will to  
23          get this done.

24          The very last thing I will say:

25          All of the other stated objections to this



1 statute can be dealt with in its implementation; all  
2 of them, without exception.

3 Those objections have, at their heart,  
4 really, a reluctance to give up a systemic,  
5 legislative, competitive advantage in this system  
6 that should have never existed in the first place,  
7 and it has no place in the system of justice.

8 So rather than delaying and undermining and  
9 obfuscating, I'm suggesting, that we get to work on  
10 the new age of justice in the state of New York.

11 Thank you.

12 SENATOR BAILEY: I want to thank you,  
13 gentlemen, for your testimony.

14 I have a couple of comments, and -- and --  
15 and, actually, I do have a question for -- for the  
16 panel, and it was something that I had wanted to ask  
17 the prior panel, but I kind got lost in my notes up  
18 here.

19 As an attorney, you know, you -- you -- you  
20 hear certain things from certain people about  
21 attorneys.

22 There are lots of jokes made about attorneys,  
23 and sometimes there's a general distrust in  
24 attorneys.

25 And I've heard conversations that -- that

1 have happened with people who have been convicted,  
2 whether rightfully or wrongfully.

3 And they've said:

4 The attorney didn't tell me anything.

5 The attorney, they didn't let me know  
6 anything.

7 They didn't -- they weren't -- they weren't a  
8 good attorney because they didn't tell me anything  
9 that they were facing -- that I was facing.

10 And, through any journey through law school,  
11 and the Legislature, I've been able to instruct more  
12 people that, I don't know the specific case that  
13 you're in.

14 And -- and -- and I'm adverse to speaking on  
15 these hypotheticals that we all faced in  
16 (indiscernible) -- in law school.

17 I don't like hypos because real life is,  
18 everything is predicated upon context.

19 But I would be willing to say that, often,  
20 when these individuals have faced this lack of trust  
21 in attorneys, it's probably predicated upon this  
22 discovery statute.

23 As attorneys defending individuals, have you  
24 seen that there is a general distrust for attorneys,  
25 based upon the un -- the lack of availability of the

1 discovery information in the statute?

2 ARTHUR FROST, ESQ.: Unquestionably.

3 Unquestionably, Senator.

4 Part of the problem is the public defense  
5 system to be begin with, because those individuals  
6 didn't choose us to represent them.

7 So, we're already starting from a  
8 disadvantage.

9 And then when I walk in --

10 Andy, Shane, George, you can probably say the  
11 same.

12 -- when I walk in and I have an empty file,  
13 and I say, Here's your offer, or you're going to the  
14 grand jury tomorrow, why should they trust me?

15 How many times -- I've heard, and I'm sure  
16 you guys have heard: You're working for them.  
17 You're just trying to put me in prison.

18 That's the last thing I want. That's not my  
19 job.

20 My job is to do everything I can, within the  
21 bounds of the law, to ethically defend this person.

22 It's the prosecutor who has a job to see to  
23 it that justice is done.

24 I don't have that obligation.

25 My obligation is to prevent a conviction at

1 all costs if I can, or to mitigate the damages if  
2 I can't.

3 But if I don't have the tools to do the job,  
4 how can I possibly do it, and how I can ask them to  
5 trust me?

6 Would you trust a contractor who came to your  
7 house and asked to borrow a saw?

8 [Laughter.]

9 SENATOR BAILEY: The answer -- I'll answer  
10 that: No.

11 And I think that you -- you mentioned the  
12 analogies about the -- the "under the hood."

13 And -- and everything that we do is based  
14 upon some sort of review process. Right?

15 If my wife and I go to eat, like, we Yelp the  
16 restaurant. Right?

17 Like, we look at -- we look at, with schools.  
18 Right?

19 Like, what -- and so I don't know how anybody  
20 is permitted, or should be expected, to make a  
21 decision that involves the rest of their lives.

22 And for -- forgetting about the times spent  
23 in incarceration, even though you can't forget that,  
24 what follows you, post conviction, is a series of  
25 other trials and tribulations.

1           The inability to be able to get employment.

2           The inability to be able to live somewhere.

3           The inability to be able to apply for  
4 financial aid.

5           These are all things that -- that can be born  
6 out of the failure, or lack of will, for an  
7 individual to simply hand over information to  
8 somebody that is accused of something.

9           I have children. And before I -- before  
10 I decide to punish them for anything that they've  
11 done, I like to ask them: Did you do this?

12           It would be wrong of me, as a father, to  
13 punish my children unilaterally, and saying, The  
14 milk spilled. Because the milk spilled, one of you  
15 did it. You're in trouble.

16           They might not have been in the room.

17           They might not even have been in the house.

18           But I can just go and say, You're in trouble  
19 because the milk spilled.

20           And that's the kind of -- sometimes, and  
21 I want to be clear, sometimes, because, again -- and  
22 I want to make sure, that, by and large, I believe  
23 that prosecutors do an honorable job.

24           I will always believe that prosecutors do an  
25 honorable job, and, by the large, I think they do

1 the right thing.

2 But, in those instances where -- you saw with  
3 Mr. Bozella, where they don't, what happens?

4 The time spent is far worse than the money  
5 that -- that we'll -- that we'll spend.

6 Gentlemen, I want to thank you for your time  
7 and attention to this matter, for your compelling  
8 testimony, and for your dedication to people, not  
9 just defense or prosecution.

10 Thank you, gentlemen.

11 OFF-CAMERA SPEAKER: Thank you, Senator.

12 OFF-CAMERA SPEAKER: Thank you, Senator.

13 SENATOR BAILEY: So, as we come to conclusion  
14 of this hearing, I would like to thank my colleagues  
15 for attending: Senators Daphne Jordan, Tom O'Mara,  
16 and Sue Serino;

17 My staff: Jason Laidley, Noel Mendez,  
18 Jackie Jenkins-Cox, Rachel Arnaud,  
19 Kim Bernstein (ph.);

20 Central staff: Donavan Borington,  
21 Dorothy Powell, and Angelica Martinez;

22 Conference services, and media services, and  
23 photography;

24 And most importantly, all of you individuals  
25 who came to testify, on the defense side, on the

1 prosecution side, the -- the -- the formerly  
2 incarcerated, community members; thank you all  
3 for -- for -- for doing this, and I appreciate your  
4 time.

5 Thank you.

6 (Multiple audience members say  
7 "Thank you.")

8 (Whereupon, the public hearing concluded,  
9 and adjourned.)

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