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BEFORE THE NEW YORK STATE SENATE FINANCE
AND ASSEMBLY WAYS AND MEANS COMMITTEES

JOINT LEGISLATIVE HEARING
In the Matter of the
2011-2012 EXECUTIVE BUDGET ON
PUBLIC PROTECTION

Hearing Room B
Legislative Office Bldg.
Albany, New York

February 9, 2011
9:30 a.m.

PRESIDING:

Senator John A. DeFrancisco
Chair, Senate Finance Committee

Assemblyman Herman D. Farrell, Jr.
Chair, Assembly Ways & Means Committee

PRESENT:

Assemblyman James P. Hayes
Assembly Ways & Means Committee (RM)

Assemblywoman Helene E. Weinstein
Chair, Assembly Committee on Judiciary

Senator John J. Bonacic
Chair, Senate Committee on Judiciary

Assemblyman Joseph R. Lentol
Chair, Assembly Committee on Codes

Senator Michael F. Nozzolio
Chair, Senate Committee on Crime Victims,
Crime and Correction

Assemblyman Jeffrion L. Aubry
Chair, Assembly Committee on Corrections

1 2011-2012 Executive Budget
2 Public Protection
2-09-11

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5 Senator Stephen M. Saland
Chair, Senate Committee on Codes

6 Assemblywoman RoAnn M. Destito
7 Chair, Assembly Committee on Governmental
Operations

8 Senator Elizabeth O'C. Little

9 Assemblyman Marcus Molinaro

10 Senator Ruth Hassell-Thompson

11 Assemblyman Rory I. Lancman

12 Senator Michael N. Gianaris

13 Assemblywoman Aravella Simotas

14 Senator Gustavo Rivera

15 Assemblyman Philip Boyle

16 Assemblyman William Colton

17 Senator Velmanette Montgomery

18 Assemblyman Clifford W. Crouch

19 Assemblyman J. Gary Pretlow

20 Senator Catharine M. Young

21 Assemblyman Mike Spano

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1 CHAIRMAN DeFRANCISCO: All right,
2 it's 9:30. And to follow up on our
3 new-found efficiencies, and to get these
4 hearings done on time, we're going to start
5 on time.

6 I just wanted to mention that this
7 meeting is pursuant to the State
8 Constitution and the Legislative Law, where
9 we're authorized to hold hearings on the
10 Executive Budget proposal. Today's hearing
11 will be limited to a discussion of the
12 Governor's proposed budget for the Office of
13 Court Administration, Division of Homeland
14 and Emergency Services, Division of Criminal
15 Justice Services, Department of Corrections,
16 Division of Parole, Division of State
17 Police, and the Office for Technology.

18 Following each presentation there will
19 be some time allowed for questions from the
20 chairs of the fiscal committees and other
21 legislators.

22 We have a new system; we've actually
23 got a time clock. It isn't as sexy as the
24 lights that we have at the Court of Appeals,

1 but it has the same purpose. And we're
2 going to try to keep everyone on time so
3 those later on in the proceedings won't have
4 to last here substantially longer than they
5 are scheduled. We also are limiting the
6 time of the legislators, and hopefully --
7 it's worked out great. Everybody has
8 participated and made this work.

9 Lastly, I want to thank those who have
10 done the mechanical things and electronic
11 things to make this a reality, because it's
12 really been very, very helpful.

13 Assemblyman Farrell.

14 CHAIRMAN FARRELL: We have been
15 joined by Assemblywoman Helene Weinstein,
16 Assemblyman Jeff Aubry, Joe Lentol, Rory
17 Lancman, Aravella Simotas, and RoAnn
18 Destito.

19 CHAIRMAN DeFRANCISCO: And joining me
20 is the chair of the Judiciary Committee,
21 John Bonacic, and the ranking member on
22 Crime and Corrections, Gustavo Rivera. And
23 also Senator Hassell-Thompson.

24 SENATOR HASSELL-THOMPSON: Thank you.

1 Good morning.

2 CHAIRMAN DeFRANCISCO: You're on,
3 Judge Pfau. Good morning.

4 JUDGE PFAU: Good morning. Thank you
5 for the --

6 CHAIRMAN FARRELL: You don't seem to
7 be on.

8 JUDGE PFAU: Is that better?

9 CHAIRMAN FARRELL: That's it.

10 JUDGE PFAU: Okay. I have so many
11 lights now to look at.

12 Good morning, and thank you for the
13 opportunity for me to present to you the
14 Judiciary's fiscal needs for the fiscal year
15 2011-2012.

16 I would just like to begin by
17 introducing who is here with me at the
18 table. And to my left is the Honorable Fern
19 Fisher, who is the deputy chief
20 administrative judge for the courts in
21 New York City and also our director of our
22 access to justice programs. At the other
23 end of the table is Judge Michael Cocco, who's
24 the deputy chief administrative judge

1 for the courts outside of New York City.
2 And next to me is Maureen McAlary, who's our
3 director of the budget.

4 And before I begin with the fiscal
5 needs, I really want to just begin by
6 expressing my great gratitude to the
7 Legislature for enacting the judicial
8 compensation law that was recently enacted,
9 with the salary commission. It really does
10 produce a long-standing solution to the
11 crisis that has crippled us for so long with
12 judicial salaries.

13 We are very grateful, and we know what
14 it means for the institution and the future
15 of New York, that it means that we can
16 maintain the high-quality bench in New York
17 that is just so critical to the economic
18 well-being and to the families who live in
19 New York. So again, I want to begin by
20 expressing my great gratitude to you for
21 that legislation.

22 I want to also discuss what the budget
23 looks like this year, which is different
24 from last year. What we have presented this

1 year, for purposes of clarity and to conform
2 our format to that used by the other
3 branches, are two separate documents. One
4 contains the operating budget, which are
5 really the operating needs for the courts
6 for the coming fiscal year. And the second
7 contains the general state charges; that is
8 the pension and health-related costs --
9 costs that certainly are outside of our
10 control -- again for the judiciary for the
11 coming fiscal year.

12 This is the first step in what we hope
13 to continue working with you to continue to
14 make sure that our budget is as transparent,
15 as simple, and as straightforward as
16 possible so everybody understands very
17 clearly how the taxpayers', hardworking
18 taxpayers' dollars are being put to use in
19 the New York State Judiciary.

20 This year particularly we are very,
21 very aware of the need to make sure that our
22 budget is as fiscally prudent as possible,
23 but at the same time a budget that allows us
24 to carry out our constitutional obligations

1 to provide justice to everyone who comes to
2 our courts. And these days there are more
3 and more people coming to our courts, not
4 only as the result of the recent fiscal
5 crisis, but in the years preceding.

6 The operating budget that we've
7 presented to you this year, which has a
8 decrease from last year's operating budget,
9 supports a caseload that has increased over
10 the last decade by 15 percent. Within that,
11 we now have 4.5 million cases each year in
12 the New York State courts. Foreclosures
13 alone over the last few years have risen by
14 150 percent. Since the new legislation was
15 put into effect, we have conducted nearly
16 200,000 foreclosure conferences, and we
17 continue to do so.

18 Foreclosures also take a great deal of
19 our energy, with the scrutiny that is needed
20 to be done now by judges after we learned
21 about the robo-signing that was being done by
22 the banks. We now require attorneys to
23 submit affirmations to demonstrate that
24 they've spoken to their client and assured

1 them that the information contained in the
2 documentation presented to the court is
3 accurate. We felt this was vital to ensure
4 the integrity of the court process. But
5 again, it is another layer that the judges
6 have to do dealing with these very, very
7 complicated cases.

8 Not only foreclosures are on the rise,
9 family matters, not surprisingly, are on the
10 rise as well. Family offense orders of
11 protection in recent years have nearly
12 tripled, with a total of over 66,000 being
13 filed last year. Last year also orders of
14 protection statewide reached nearly 400,000.
15 Certainly our work is only increasing.

16 The economic hardship that the state is
17 feeling we are feeling at every single
18 court. Whether it's housing, consumer debt,
19 low-level crime, family violence,
20 adjustments to child support, forecloses or
21 business dissolutions or disputes, every
22 court is feeling the pain.

23 Adding to this increased volume is
24 increased complexity. We know now that at

1 least 2 million people a year come to all of
2 these courts without the availability of
3 legal representation. It not only
4 represents the quality of justice, but it
5 affects the efficiency of how we conduct the
6 court business. It has been demonstrated
7 that when people do not have counsel, it
8 results in more court appearances and
9 longer, more extended appearances to try to
10 do justice.

11 Now more than ever before, especially
12 during these hard economic times, we need to
13 keep the courthouses open. We need to be as
14 efficient as we possibly can, of course, and
15 we have to provide meaningful justice to the
16 citizens of New York. The challenge for us
17 is not to follow the model of other states,
18 other states that have made decisions to
19 close courthouses certain days a week,
20 certain weeks a month, to disband simple
21 jury trials, to close courthouses down
22 altogether, making citizens go to a
23 courthouse hundreds of miles away. Now more
24 than ever we have to keep sufficient

1 resources in the courts to make sure that
2 our citizens have access to the justice that
3 they have a constitutional right to.

4 Over the last decade, while the cases
5 have increased over 15 percent -- and the
6 conferences have increased dramatically.
7 Last year, Family Court alone held 2 million
8 conferences -- the nonjudicial staff, again,
9 over the last decade, has increased by only
10 3 percent. And that doesn't necessarily
11 even translate into new resources for the
12 courts. Much of that was taken up by our
13 takeover of local security to make sure that
14 we have the highest-quality security for
15 litigants and the people who come to court.

16 And I apologize, I have a cold.

17 The only real additions that have been
18 made to our court resources, to the
19 nonjudicial resources, are in the area of
20 court attorney referees that we are having
21 to use in Family Court just to meet the
22 demand for orders of protection, and
23 interpreters -- again, to meet the demands
24 of our increasingly diverse litigants.

1 Problem-solving courts, as we have expanded
2 those to meet the needs of the community,
3 have also gained additional resources.

4 In his written commentary on the
5 Judiciary budget, the Governor called on
6 everyone in state government to recalibrate,
7 redesign and rebuild, and he asked us to
8 reduce spending while continuing to serve
9 those who need justice. Over the last few
10 years, that is exactly what we've been
11 doing. When Judge Lippmann became the chief
12 judge, we took a look at the administrative
13 structure overseeing the courts, and we
14 downsized it. We began our reengineering
15 then. We reduced the number of
16 administrative judges, we reduced the number
17 of deputy chief administrative judges, to
18 make sure that all available resources have
19 gone to the courts.

20 Two years ago, when we put in a
21 zero-growth budget, we participated in a
22 targeted buyout program that Governor
23 Paterson had recommended. And at that point
24 150 employees left the system, employees who

1 were not replaced.

2 Last year we participated in an early
3 retirement program during which about
4 10 percent of our workforce, or
5 1500 employees, chose to leave the court
6 system. That achieved savings in two
7 ways -- positions that were left vacant as a
8 result of that, and people who were rehired
9 were rehired at a lower salary.

10 But we didn't just do rehiring. Again,
11 we continued our reengineering process,
12 requiring of each administrative judge to
13 submit a plan for making the best use of the
14 nonjudicial resources in the courts, how to
15 combine functions, positions that could be
16 left open, prioritizing to make sure that
17 only essential positions were filled.

18 We have done that now and kept
19 positions vacant. Whatever positions were
20 left vacant from early retirement within the
21 Office of Court Administration have been
22 left vacant, so that we have downsized by
23 over 50 positions.

24 Overall, over the last two years, our

1 administrative structure has been reduced by
2 over 10 percent, and systemwide the number
3 of nonjudicial employees that are currently
4 on the payroll has been reduced by over
5 1,000.

6 We are continuing this effort, looking
7 at how we can use better technology more
8 efficiently. We've engaged the National
9 Center of State Courts to help us in that
10 effort. We are doing things that the
11 Legislature has approved and we so much are
12 grateful for -- electronic filing of court
13 documents, which is certainly the wave of
14 the future and the way we have to continue.
15 And we are doing that now on a mandatory
16 basis in two counties we've begun, and it
17 works very, very well.

18 Within the Office of Court
19 Administration, your online attorney
20 registration can now be done entirely
21 electronically, without ever having to mail
22 in checks, without ever having to complete
23 forms. Again, all of these translate into
24 fewer people needed to actually do this

1 function.

2 We are conducting a management review
3 to make sure that our management structure
4 is as modern and up-to-date as possible.
5 And as the Executive branch begins its
6 collective bargaining process and achieves
7 savings, we will certainly be looking for
8 savings during our collective bargaining
9 process.

10 I strongly believe that this is a
11 budget that is fiscally sound and addresses
12 the real needs of New Yorkers who come us to
13 seeking justice. And it is for that reason
14 that included in this budget is a \$25
15 million appropriation for provision of civil
16 legal services to the indigent. Again, this
17 is a matter of justice. The Chief Judge
18 held hearings around the state where we
19 heard directly from citizens who appeared in
20 court without representation and how
21 difficult it was for them. We heard from
22 the business community, from the education
23 community, from the medical community how
24 much better the litigation process was when

1 both sides were represented. And we heard
2 from judges who talked about how much more
3 efficient the litigation process was when
4 there are lawyers for both sides.

5 So we believe that is a very important
6 part of our budget that, again, fits within
7 the operating budget that we have
8 recommended to you that actually is a
9 reduction over last year.

10 It is part of our mission to make sure
11 that we fulfill our obligations under the
12 Constitution, but to do so in a way that's
13 meaningful and the people get what they have
14 constitutionally have a right to get, which
15 is access to real justice. We have become
16 truly society's emergency room, and we are
17 an emergency room that is stretched to the
18 limit. But due to the hard work and
19 determination of our judges and our support
20 staff, we will continue to fulfill our
21 constitutional mission in the year to come.

22 Thank you for having me, and I'd be
23 happy to answer any questions.

24 CHAIRMAN DeFRANCISCO: Thank you.

1 Senator Bonacic.

2 SENATOR BONACIC: Judge Pfau, thank
3 you very much for coming this morning.

4 JUDGE PFAU: Thank you for having me.

5 SENATOR BONACIC: I know all the
6 agencies have been under quite a bit of
7 stress because of our fiscal problems.

8 JUDGE PFAU: Yes.

9 SENATOR BONACIC: Let me just start
10 off with a couple of observations. I don't
11 think the Judiciary had a good month this
12 past month. I thought the Governor made
13 some negative insinuations toward the
14 Judiciary with respect to its budget.

15 There was an article in the *New York*
16 *Post* recently that talked about a luxury
17 hotel, high expense. I'm going to ask you
18 to address that and enlighten us.

19 But for the moment, let me start with
20 asking -- a part of the Governor's policy
21 and the direction he'd like to see the state
22 go is consolidation of school districts and
23 municipalities. Is it your collective
24 wisdom that it doesn't work for the

1 Judiciary with respect to consolidation of
2 buildings?

3 You made a point of saying that
4 caseloads are up, and we understand that
5 with the recession it's a heavier burden for
6 the judges. It doesn't work anywhere
7 throughout the state that consolidation of
8 facilities in terms of efficiency and cost
9 cutting would work? Has anyone ever
10 undertaken a study of that?

11 JUDGE PFAU: There certainly has been
12 a study of what would happen if you did a
13 constitutional consolidation of all the
14 trial courts, for example. And if you
15 had -- if in one court you consolidated
16 Family Court, Supreme Court, and the trial
17 courts in one court, could that achieve
18 savings? I think it certainly could. But
19 it would take, you know, a real
20 constitutional restructuring of the court
21 system to have that be achieved.

22 If what you're talking about is just
23 combining courts into a single facility so
24 you don't have so many facilities to run, I

1 think that's a question of, you know, having
2 the citizens have access to their court in
3 their community. And we know that when
4 people have to leave their community to go
5 to a different community to get justice,
6 there is a strong reaction against that.

7 But certainly at a certain level, and I
8 would say with the town and village courts,
9 consolidation can be a very, very good idea.
10 You can have a neighboring town and village,
11 each with one court, and the idea of sharing
12 one court with a neighboring town or a
13 neighboring village is something that does
14 make a great deal of sense.

15 SENATOR BONACIC: Thank you.

16 Just to clear up this article in the
17 *Post* that got a lot of people upset when
18 they read about it --

19 JUDGE PFAU: It wasn't our favorite
20 article either.

21 SENATOR BONACIC: I'd like to give
22 you an opportunity -- you've indicated that
23 you cut your budget by 15 percent, caseload
24 is up. Can you share with us that

1 expenditure of -- and whether you thought
2 that was a prudent expenditure of money?

3 JUDGE PFAU: Yeah, thank you. I
4 appreciate the opportunity to do that.

5 I mean, starting with this year's
6 budget, I would say that, number one, the
7 idea of this use of Centennial Hall is
8 something that started quite a few years ago
9 in a different fiscal time, in a different
10 era, when the city was concerned about
11 having this abandoned building in the middle
12 of the city. So there was a certain sense
13 that it could make sense back in that time.

14 It was submitted in our budget in
15 2006-2007. Obviously, the funding was
16 approved by the Legislature. And the total
17 funds have essentially been expended, so
18 that there is no new money requested in the
19 budget for Centennial Hall for next year.

20 SENATOR BONACIC: Okay. Thank you,
21 Your Honor.

22 And my last question, you know, with
23 the legislative budget we itemize in very
24 specific detail every aspect of every

1 elected official's office. And we're
2 wondering if -- we would like to see the
3 Judiciary do that with respect to every
4 judge and office with personnel and
5 expenditures, to the same standard with
6 respect to the legislative budget. Because
7 we need transparency and accountability.

8 Is that something that you would be
9 willing to undertake and do, to the same
10 degree of itemization as our legislative
11 budget?

12 JUDGE PFAU: I think a couple of
13 things.

14 I think I couldn't agree with you more
15 that our budget, like your budget, like
16 every budget, has to be transparent, has to
17 be readable. Any citizen should be able to
18 pick it up and understand where their
19 taxpayer dollars have gone. So we would
20 absolutely be willing to work with you, to
21 work with the Division of the Budget towards
22 a budget that works and is as transparent
23 and as itemized as possible.

24 There is a certain flexibility I will

1 say that I think it's important for us to
2 maintain. For example, when we need to make
3 sure -- and one of the reasons many years
4 ago we went from a county-based funding
5 system to a state-based funding system with
6 the state courts was to make sure there was
7 an equalization of the funds that were
8 available to courts. So there are some
9 times in some years -- for example, in
10 Queens, when it turned out that it was
11 really the epicenter of foreclosures, we
12 need the flexibility to make sure that a
13 specific court has the resources it needs
14 when something unexpected occurs.

15 So within the ability to be flexible,
16 we would be absolutely delighted to work
17 with you to make sure that our budget, you
18 know, addresses all of the concerns that you
19 have.

20 SENATOR BONACIC: Thank you,
21 Your Honor.

22 JUDGE PFAU: Thank you.

23 CHAIRMAN FARRELL: Thank you.

24 Jim Hayes.

1 ASSEMBLYMAN HAYES: Thank you,
2 Mr. Chairman. We've been joined on the dais
3 this morning by Assemblyman Mark Molinaro on
4 our side.

5 CHAIRMAN FARRELL: And we've been
6 joined by Assemblyman Bill Colton.

7 First to question, Helene Weinstein.

8 ASSEMBLYWOMAN WEINSTEIN: Thank you,
9 Judge, for your comments here. And also, I
10 think, thank you from the residents from our
11 state that despite the economic times, that
12 New York courts have been open every day.
13 As we've seen other states close their doors
14 on certain days, that you've been able to --
15 the court system has been able to absorb the
16 cuts and still continue to function.

17 I wonder if you could just expand a
18 little bit some of your remarks regarding
19 legal services and the need for civil legal
20 services, particularly -- well, in two
21 areas. Firstly, in terms of the mortgage
22 foreclosure conferences, the result of not
23 having the litigant represented by counsel,
24 and the flip side, the advantage of the

1 counsel being there.

2 JUDGE PFAU: Yeah, thank you. I'd be
3 delighted to, because it really is, you
4 know, such a kind of a snapshot of what
5 happens without representation.

6 You know, the number of foreclosures is
7 continuing to rise. There are probably
8 80,000 pending throughout the state at this
9 time. And for every foreclosure, there of
10 course is the conference. And the
11 conferences bring good news and bad news.
12 The good news is that of those proceedings
13 that stay in the conference part -- that is,
14 that they don't go straight to a
15 foreclosure -- when they stay in there,
16 about half of them actually do get resolved
17 and get settled. And that's very, very good
18 news.

19 What we do know is that when homeowners
20 come without representation and don't get
21 representation, instead of having something
22 resolved within three conferences, it could
23 probably take 13 conferences. They don't
24 know what paperwork to bring, there is a

1 lack of a balance of what happens as far as
2 the bank or the servicer, who is obviously
3 represented. There's kind of a lack of
4 pressure on the bank, unless the judge puts
5 it on, to make sure that they respond when
6 they have to give papers back and forth.

7 It is very much a moving target, the
8 foreclosure settlement process, because it's
9 hard to find who the right bank is, who the
10 right servicer is. The documentation that's
11 needed can change as they go through
12 different iterations of possible outcomes.

13 And for the homeowner to keep up with
14 that without representation means
15 essentially that the court staff has to make
16 sure that the playing field is level and has
17 to make sure that they follow up and has to
18 make sure that things are done the right
19 way. So each conference becomes much, much
20 longer and I would say the number of
21 conferences more than triples when there is
22 no lawyer involved.

23 So it's obviously a detriment to the
24 homeowner, but it's also a detriment just to

1 the best use of the court resources.

2 And thank you.

3 ASSEMBLYWOMAN WEINSTEIN: And you
4 referenced the Chief Judge's Civil Legal
5 Services Task Force. And I attended one of
6 the hearings, where I was struck by the
7 strong support of the business community and
8 the hospital community in terms of -- for
9 civil legal services. And could you
10 describe perhaps some of the rationale
11 behind their support and the difference that
12 being represented, having a litigant
13 represented in court makes in terms of the
14 result and the timeliness of the resolution?

15 JUDGE PFAU: And it's interesting,
16 again, if you just go back to foreclosures,
17 when the conferencing began, the New York
18 State Banking Association was very much in
19 favor of it because they certainly have
20 always said they want to resolve cases, they
21 don't want to have people not in their
22 homes. And banks are paying for counsel to
23 represent them, and it's the same thing.

24 What they are telling us is for them

1 the process is more efficient, more
2 accurate, has more integrity when there are
3 lawyers on both sides. They have a partner
4 who they can talk to who understands the
5 language. They don't necessarily want to
6 appear for 13 conferences, and they don't
7 necessarily want a conference to take two
8 hours. They would like it to be efficient.

9 So across the board, whether we were
10 upstate, downstate, whether in the Western
11 Tier or the Albany area, everyone we talked
12 to -- who one might think would not
13 necessarily be in favor of civil legal
14 services for civil litigants -- came out
15 very, very strongly in favor of the -- and
16 we always had a little bit of a joke that
17 the doctors really wanted lawyers on the
18 other side. And the answer is they do.
19 Again, because it just helps the case
20 process move better and has better and more
21 durable and quicker outcomes.

22 So thank you.

23 ASSEMBLYWOMAN WEINSTEIN: And I think
24 one of the things that also was mentioned,

1 that sometimes by having counsel represent
2 the individuals they can resolve the issues
3 without ever having to come to court. And I
4 would assume that would then incur savings
5 in the court system.

6 JUDGE PFAU: Yes, and that was a
7 surprise to us. We didn't expect as much
8 testimony about the number of opportunities
9 that were missed to resolve issues without
10 even coming to court.

11 So as much as we're happy to have
12 everyone come to court, if they can resolve
13 their differences without us, that's a very
14 good thing too. So again, I think we all --
15 we heard all positive outcomes.

16 ASSEMBLYWOMAN WEINSTEIN: Thank you.
17 Thank you, Judge.

18 CHAIRMAN DeFRANCISCO: Senator
19 Nozzolio, to be followed by Senator
20 Hassell-Thompson after the Assembly asks
21 their question.

22 SENATOR NOZZOLIO: Thank you, Senator
23 DeFrancisco.

24 Judge, I want to follow up on Senator

1 Bonacic's question about the --

2 CHAIRMAN DeFRANCISCO: Excuse me,
3 Senator. I forgot twice now that we have
4 Senators Little and Gianaris who have joined
5 us.

6 SENATOR NOZZOLIO: Thank you,
7 Senator.

8 I'd like to follow up on Senator
9 Bonacic's question regarding an open
10 judicial budget. And I believe your answer
11 missed the point. The point that Senator
12 Bonacic was asking you about were not the
13 budgeting process, not the allocation of
14 those resources during a budgetary review,
15 but rather the itemization of the specific
16 expenditures made by each individual judge
17 and each individual court across this state.

18 Each individual legislator sitting at
19 this dais, as well as all the other
20 legislators, as well as the Executive, have
21 the requirement of itemizing their
22 expenditures. Why don't judges do the same?

23 JUDGE PFAU: Most of -- the vast
24 minority of the expenditures that we have

1 are expenditures associated with an
2 individual judge. A judge has, at the
3 maximum, two employees, the chamber staff
4 that are statutorily authorized for the
5 judge. The nonjudicial employees that make
6 up -- you know, the other thousands that
7 make up the court system are not necessarily
8 affiliated with any individual judge or
9 necessarily even any specific court.

10 Upstate, for example, they would be
11 affiliated with the judicial district, so
12 that we can assign them as needed to a city
13 court or maybe we have a need in the county
14 courts so we would assign them to a county
15 court. So that it is not driven by the
16 judge and the judge's hiring, it is more
17 centrally driven to make sure that they can
18 be assigned as we need them.

19 But I'm happy to continue to have that
20 conversation -- you and I talked about this
21 last year -- happy to have the conversation
22 to make sure that it is as specific, as
23 transparent, as open as we possibly can. It
24 is just a different system where it's not

1 necessarily -- as your system is driven by
2 the members, your budgeting, ours is driven
3 by our court structure and our
4 administrative structure, as opposed to
5 individual judges.

6 SENATOR NOZZOLIO: Well, Judge, let's
7 start with the judges' cost of operating
8 their offices, including their staff. And
9 then the next step would logically be the
10 list, the roster of those researchers and
11 other court personnel connected with the
12 administration of the court.

13 Now, that's what we're asking for. We
14 believe the Judiciary should follow the
15 example of itemizing their expenditures.
16 Whether they be assigned to an individual
17 judge or an individual court is not
18 determinative factor. What is the
19 determinative factor is that each
20 expenditure be open and itemized for public
21 review.

22 And we hope that in order to restore
23 confidence in the Judiciary, as well as
24 we're trying to restore confidence in all

1 areas of government, that the Judiciary does
2 not drag its feet, does not try to hide
3 behind a cloak of secrecy, and itemizes
4 those expenditures appropriately.

5 JUDGE PFAU: And we're happy to do
6 that. I don't think that we -- certainly I
7 have never gone into this wanting to hide
8 behind a cloak of secrecy.

9 You know, is this the budget that tells
10 the story the way it should be told?
11 Probably not. Do we have to do better? Of
12 course. And what exactly the right answer
13 is for us to make sure our budget is one
14 that everyone has confidence in and
15 understands what their dollars are for, I
16 think that's a process that we absolutely
17 will work on with you, with the Division of
18 the Budget. It has to be something that
19 everybody can use and understand. But we
20 will do that, absolutely.

21 SENATOR NOZZOLIO: Thank you, Judge.

22 JUDGE PFAU: Thank you so much.

23 SENATOR NOZZOLIO: Thank you,

24 Mr. Chairman.

1 CHAIRMAN FARRELL: Joe Lentol.

2 ASSEMBLYMAN LENTOL: Thank you,

3 Mr. Chairman.

4 Good morning, Judge Pfau --

5 JUDGE PFAU: Good morning.

6 ASSEMBLYMAN LENTOL: -- and members

7 of the panel.

8 First of all, I was very pleased to see
9 your testimony about civil legal services in
10 response to the questions by Assemblywoman
11 Weinstein. And I think you know my feeling
12 about civil legal services. And I'm glad
13 now we have almost unanimity among all sides
14 of political spectrum here in Albany and
15 elsewhere about the unusual need that people
16 have this in economic downturn for the
17 provision of civil legal services.

18 But I wanted to ask you just one
19 question specifically, because it was a
20 story I heard today which is very
21 disturbing, and I wondered if the Office of
22 Court Administration has thought about it or
23 could do anything about it or if it happens
24 in New York.

1 It's bad enough if an individual is
2 foreclosed on in this economic downturn and
3 can't get legal services, or just the fact
4 of being foreclosed on their property. But
5 I saw that in spite of a federal law against
6 it, that there are members of the armed
7 forces serving in Afghanistan and Iraq who
8 are being foreclosed on and without --
9 probably without legal representation. And
10 I wondered if the Office of Court
11 Administration is monitoring that situation.
12 Because it's bad enough to be foreclosed on;
13 it's certainly worse if you're serving your
14 country in the military.

15 JUDGE PFAU: And think, it could be
16 worse because it could be because of a
17 robosigned document that might not even be
18 accurate. So, I mean, really there are some
19 very, very difficult things going on here.

20 I think of course it underscores
21 exactly what you say about the need for
22 civil legal services, and particularly in
23 this area where your very home is subject to
24 be taken away.

1 I will say that we have, you know,
2 provided our judges and the staff that is
3 working in this area with a great deal of
4 training, including in this area with regard
5 to those who are serving the country and,
6 you know, the special scrutiny that needs to
7 go on. And we have been working with bar
8 associations, and they've been wonderful
9 about providing pro bono legal
10 representation particularly to members of
11 the armed services.

12 But it's certainly in the area that we
13 will continue to monitor and make sure our
14 judges are aware of. Because remember,
15 while the conference part can go on, at the
16 end of the day New York is a judicial
17 foreclosure state, and the foreclosure can't
18 happen without the judge signing the order
19 of foreclosure.

20 So really at that point it is incumbent
21 upon the judge, who -- and I know our judges
22 are aware of this -- has to really carefully
23 scrutinize what is before that judge and
24 make sure that everything is appropriate and

1 as it should be, and be very careful before
2 those foreclosure orders are signed.

3 Thank you.

4 ASSEMBLYMAN LENTOL: Thank you.

5 CHAIRMAN DeFRANCISCO: Senator
6 Hassell-Thompson.

7 SENATOR HASSELL-THOMPSON: Well, for
8 once my questions have all been answered.

9 But I would just like to just take this
10 opportunity to say to Judge Pfau and to all
11 the judiciary present that we've done some
12 extraordinary things and I think that what
13 this budget really reflects is a
14 streamlining and readjustment of many
15 structures of the courts. And I'm not sure
16 that everybody appreciates the amount of the
17 work that has been done in the last two
18 years in terms of that restructuring.

19 JUDGE PFAU: Right. I appreciate
20 that very much, thank you.

21 SENATOR HASSELL-THOMPSON: And that I
22 am very supportive of what we've begun to
23 do, and I would not like to see us have this
24 budget just destroy years of work. And this

1 has been growing. I mean, it didn't -- it
2 culminated these last few years, but this
3 has been a plan of Judge Kaye's for many,
4 many years. And we've been very successful,
5 I think, in reaching certain goals in terms
6 of caseloads, not only for judges but for
7 attorneys. And I think that it would be
8 very destructive for us to --

9 JUDGE PFAU: And I have to say thank
10 you --

11 SENATOR HASSELL-THOMPSON: -- to look
12 at this budget and not say that the kind of
13 representation that all people deserve and
14 need in this state should not be
15 appropriately represented by the way in
16 which we present the budget numbers.

17 JUDGE PFAU: Thank you. And I would
18 just add to that that certainly this idea of
19 reducing administration and making sure that
20 all the available resources lie in the
21 courts and not in administration is
22 something we have been working on for
23 several years. And I think we have reached
24 a certain point in which it is beginning to

1 bear fruit in the courts.

2 And at the same time, we have given to
3 you an operating budget that is a decrease
4 from last year, but within that envelope is
5 funding for civil legal services and
6 continued funding for indigent defense case
7 caps. So we do think this is a very prudent
8 budget.

9 Thank you. I appreciate your support.

10 CHAIRMAN FARRELL: Assemblyman Jeff
11 Aubry.

12 ASSEMBLYMAN AUBRY: Good morning,
13 Judge.

14 JUDGE PFAU: Good morning.

15 ASSEMBLYMAN AUBRY: It's a pleasure.

16 As you know, we reformed the
17 Rockefeller Drug Laws not so long ago. I
18 wonder if you could talk to the impact that
19 it's had with the Judiciary, in that it
20 restored some discretion back to judges.
21 How does the Judiciary see that working, and
22 are there things that we need to tweak to
23 improve the process?

24 JUDGE PFAU: I think it is working

1 very well. I mean, I have not heard of any
2 issue or any instance in which giving the
3 judge back the discretion to make decisions
4 that judges are, you know, are paid and
5 that's what they do, has resulted in any
6 kind of inequity or anything that's
7 inappropriate. I think the appropriate
8 decisions are being made.

9 I think, again, it goes to a resource
10 issue. Once those decisions are made and
11 they are judicial determinations, very
12 appropriately, then we have to make sure
13 that once treatment has been approved as a
14 course of action that the resources are
15 there to monitor, to make sure the treatment
16 is done, and to fulfill our obligation under
17 the Rockefeller Drug Law. We are certainly
18 doing it, but again, it could be a resource
19 issue in the future.

20 ASSEMBLYMAN AUBRY: Thank you.

21 JUDGE PFAU: Thank you.

22 ASSEMBLYMAN HAYES: Mr. Chairman,
23 just for the record, we've been joined on
24 the Assembly side by Assemblyman Phil Boyle

1 on the dais and, in the audience,
2 Assemblyman Chris Friend.

3 CHAIRMAN DeFRANCISCO: Anyone else on
4 this side? All right, I just have a couple
5 of questions.

6 Oh, Senator Saland is watching over us
7 from the doorway.

8 Judge, just a couple of things. Every
9 other group that's come before us we've
10 tried to ask questions like "What can you do
11 to streamline services?" and "What costs can
12 be cut?" There must be some statutes that
13 require you to do some nonsensical things
14 that are no longer necessary. You may not
15 be prepared to answer this now, but it
16 certainly would be helpful if we need some
17 legislative change, things may have outdated
18 that may have made perfect sense in the
19 past.

20 JUDGE PFAU: It's a great point. We
21 absolutely welcome the opportunity. Much of
22 what is now statutorily required is good,
23 but I am sure there's a lot that no longer
24 serves the function it was intended for. We

1 would love to take a look at that.

2 CHAIRMAN DeFRANCISCO: All right.
3 And during the term of Judge Kaye, there
4 were many, many things that were instituted
5 that are great if you can afford it. But
6 unfortunately every other agency, including
7 healthcare agencies, hospitals, everybody is
8 cutting back substantially.

9 I just want to give one example. It's
10 wonderful, in my mind, to have childcare in
11 the courthouse. But for the first 150 years
12 of our history we didn't have childcare.
13 And things like this that were instituted
14 that were great things to have -- but it
15 seems to me that when you're in a time of
16 crisis, maybe those wonderful things that we
17 can't afford during at least the crisis
18 period should be looked at. Are we still
19 providing childcare in courts?

20 JUDGE PFAU: We are, apparently for
21 litigants, yes, for litigants who come to
22 courts.

23 But again, I think that's what this
24 budget process is for, for all of us to take

1 a careful look to see what kind of services
2 you think the litigants deserve. I mean, we
3 started this -- and you're right, but we
4 started this for a practical reason, that
5 when the litigants bring their kids, as they
6 often do, into the courtroom, it can be
7 very, very disruptive.

8 CHAIRMAN DeFRANCISCO: That's in
9 Family Court only?

10 JUDGE PFAU: Yes.

11 CHAIRMAN DeFRANCISCO: Well, they
12 could be disruptive in any court. I guess
13 my point is that hasn't changed, there have
14 been disruptive kids even when we were kids.

15 And my point is that in addition to
16 looking at laws that may require you to do
17 things that really don't make any sense
18 anymore, it seems to me -- I would really
19 like to have a list of items of additional
20 things that we've been spending money on
21 that traditionally were not provided in the
22 courts. At least during the period of
23 crisis I think the courts, like everyone
24 else, should be participating in some of the

1 luxuries being eliminated.

2 JUDGE PFAU: I absolutely agree. And
3 we will provide you with that list.

4 CHAIRMAN DeFRANCISCO: Now, the Pace
5 University -- the judges' school at Pace
6 University. Is it at Pace?

7 JUDGE PFAU: Judicial Institute, yes.

8 CHAIRMAN DeFRANCISCO: Judicial
9 Institute. It's very -- it's impossible,
10 under this budget, to figure out exactly
11 what the cost of Pace is, because all the
12 personnel are lumped together.

13 And so when you talk about itemized
14 budgets, it's not only itemized budgets of a
15 court, a judge and who participates in that
16 courtroom, but it's also the Pace -- can
17 you, the financial person or somebody tell
18 me what the total cost of the Judicial
19 Institute is in this budget?

20 JUDGE PFAU: I can tell you the
21 operating cost, just operating the building
22 cost, the MPS cost is about \$300,000 a year.

23 CHAIRMAN DeFRANCISCO: To operate the
24 building.

1 JUDGE PFAU: To operate the building.
2 But you're asking about the people.

3 CHAIRMAN DeFRANCISCO: Well,
4 personnel is the real cost to running an
5 institute, I would think. And my question
6 is, how many -- is there lawyers, judges,
7 teachers?

8 JUDGE PFAU: I'm being told it's
9 about \$3 million a year.

10 CHAIRMAN DeFRANCISCO: Okay. Now, I
11 notice that in order to -- for someone to
12 attend the Pace University justice -- I'm
13 sorry, the judicial what?

14 JUDGE PFAU: Institute.

15 CHAIRMAN DeFRANCISCO: Institute. I
16 guess that's for judges to learn --

17 JUDGE PFAU: To continue the
18 education of judges, absolutely.

19 CHAIRMAN DeFRANCISCO: You have to
20 travel to this.

21 JUDGE PFAU: Very little now. Mostly
22 what is happening, while we do have the
23 facility and we do on occasion bring judges
24 together -- for example, every January, for

1 newly elected judges, we think it's
2 important that they physically come to the
3 building. But most of the training that we
4 do now, while the staff of the Judicial
5 Institute puts it together, we do it by
6 video.

7 CHAIRMAN DeFRANCISCO: All right.
8 Now, there's private groups that -- and in
9 fact, an industry has been created for CLE
10 courses for lawyers. I mean, you can get
11 courses online, courses anywhere. But it's
12 a private industry that does that.

13 Is there such an industry or such
14 resources available by private organizations
15 to train judges and give them CLE or upgrade
16 training?

17 JUDGE PFAU: There is an institute
18 out in Reno, Nevada -- where you have to
19 travel to, so they'd have to pay travel --
20 that does provide, nationally, judicial
21 training.

22 Every state court system that I know of
23 has a center of one kind or another that
24 provides ongoing education for judges.

1 Because technology changes so fast, medicine
2 changes so fast, judges really have to keep
3 pace with what's going on.

4 So certainly it's something that we can
5 look at and will look at. But this core
6 idea that we continue to provide education
7 for judges I think is something we really
8 are committed to.

9 CHAIRMAN DeFRANCISCO: Okay. And
10 since our imposed time is getting down, I'm
11 going to ask just a couple of quick ones.

12 You had mentioned all the additional
13 increases in proceedings. And we've talked
14 about this privately. It seems to me that
15 the number of actual trials is going down.

16 JUDGE PFAU: It is.

17 CHAIRMAN DeFRANCISCO: And to me, and
18 having practiced in the courts for many
19 years, the fastest way to settle cases isn't
20 to have 16 conferences where everybody says
21 no, but to get a case scheduled for trial.
22 Either it gets tried or it gets settled, and
23 usually they settle at the last minute.

24 Can you give me some kind of magnitude

1 as to the number of trials, how it's gone
2 down in recent years?

3 JUDGE PFAU: After you and I had that
4 conversation, I took a statewide look at it.
5 And I would say what's happened is statewide
6 trials on the civil supreme side are down to
7 some degree, maybe 8 percent.

8 At the same time, and I don't know that
9 one is necessarily a corollary to the other,
10 the number of motions filed in Supreme Court
11 in the civil term has expanded dramatically.
12 And the number of conferences has expanded
13 dramatically.

14 So it is certainly possible we're
15 getting much, much more motion practice. It
16 is possible that there are more appearances
17 to try to resolve the issues involved in the
18 motion. But certainly it's something that
19 we are looking at. I've already asked Judge
20 Coccooma to take a look at this outside of
21 New York City to make sure that we're
22 addressing it.

23 CHAIRMAN DeFRANCISCO: I have two
24 seconds left. Thank you.

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(Laughter.)

JUDGE PFAU: Thank you.

CHAIRMAN FARRELL: Rory Lancman, to close.

ASSEMBLYMAN LANCMAN: Good morning, Judge Pfau. It's good to see you.

JUDGE PFAU: Thank you. Good to see you.

ASSEMBLYMAN LANCMAN: Well, let me start with it's been said that the Judiciary and OCA have had a bad month, and I guess anyone is entitled to their opinion.

But I have a different view. I think you've had an outstanding month. I think that you and Judge Lippmann have stood up for the independence of the Judiciary as a separate, independent arm of government and, more importantly, have stood up for the rights of litigants, many of whom come to you in this time of economic crisis desperate and in a position of being taken advantage of by whether it's a bank or a creditor or some other situation, where, but for the reforms and restructuring that the

1 court has done, but for the commitment to
2 the rights of civil litigants and giving
3 them an opportunity to have their day in
4 court, would be really tragic circumstances
5 for those individual litigants.

6 And I hope that throughout this
7 process, this budget process, you stand firm
8 in your commitment to an independent
9 Judiciary and a traditional system that
10 respects and looks out for, affirmatively,
11 the rights of litigants, particularly those
12 who don't have the resources to hire
13 counsel. Those of us who practice, the two
14 most frightening words that we encounter in
15 the course of our practice is "pro se."

16 JUDGE PFAU: And as a judge who sits,
17 they are pretty frightening words, because
18 you just don't know how you're going to
19 manage this case with someone who just
20 doesn't have any idea what's involved. It's
21 very difficult.

22 ASSEMBLYMAN LANCMAN: And it's very
23 important, I think, that people who are not
24 lawyers or people who are not practicing

1 understand that although the primary purpose
2 of giving resources and counsel to civil
3 litigants is to protect their rights, it
4 also, as you mentioned in your testimony,
5 makes the court system much more efficient.

6 JUDGE PFAU: Yes.

7 ASSEMBLYMAN LANCMAN: And I
8 personally appreciate the work that you've
9 done with me on legislation that I've passed
10 that just tried to make the court system
11 more efficient, whether it's on the
12 foreclosure issue or on fair representation
13 in jury pools.

14 And I just urge you to stand firm and
15 to understand, as we all must, that
16 sometimes the things that we impose, the
17 requirements that we impose on legislators
18 are not really suitable or appropriate for
19 judges. To put it simply, you all signed up
20 for a different gig than we did. And not
21 everything that we require legislators to do
22 or expect of legislators to tolerate is
23 really necessarily appropriate for judges.

24 With that, two quick questions. The

1 operating budget, as I understand it,
2 there's a part of your budget that you
3 really cannot control and there's a part
4 that you can control.

5 JUDGE PFAU: Exactly.

6 ASSEMBLYMAN LANCMAN: And I
7 understand that the part that you can
8 control, you have reduced?

9 JUDGE PFAU: That's right.

10 ASSEMBLYMAN LANCMAN: Just do you
11 have a percentage reduction that you've
12 reduced, or is that something that you can
13 get to me?

14 JUDGE PFAU: It is a 0.02 reduction,
15 0.02 percent.

16 ASSEMBLYMAN LANCMAN: Okay. But it's
17 a reduction.

18 JUDGE PFAU: Yes, it is a reduction.

19 ASSEMBLYMAN LANCMAN: Well, it's
20 something.

21 JUDGE PFAU: It's enough to call a
22 reduction.

23 ASSEMBLYMAN LANCMAN: There you go.

24 JUDGE PFAU: And I would just go back

1 to two things, if you don't mind. One is
2 within that envelope, with its slight
3 reduction, is a provision for civil legal
4 services, continued funding for the indigent
5 defense case caps, in addition to, you know,
6 the personnel that are included in there.

7 So we have tried to be as prudent as
8 possible because we take very seriously
9 what's going on in New York and what this
10 Governor has urged us to do, which is to
11 spend less money, to be as fiscally careful
12 as possible while we continue to provide
13 justice. We have a fundamental
14 constitutional obligation to provide justice
15 to the people of New York, and we cannot
16 abrogate that. Within that picture, we are
17 willing to do everything we can to be
18 absolutely the best partners we can as we go
19 forward.

20 So thank you.

21 ASSEMBLYMAN LANCMAN: And as you've
22 said, as the economy deteriorates and
23 revenues to the government shrink and
24 require us all to make cuts, the consequence

1 of that is an increase rather than a
2 decrease in the people who are using the
3 court system. So we should be mindful of
4 that.

5 My last question is -- I know it was in
6 your testimony; I don't know if you covered
7 it in your presentation to us -- is the
8 increase, as a consequence of the increased
9 docket and burden on the courts, in
10 nonjudicial personnel serving a
11 quasi-judicial function. And that's
12 something I think we should all be concerned
13 about, and I'm sure you are --

14 JUDGE PFAU: Yes. Yes.

15 ASSEMBLYMAN LANCMAN: -- that's why
16 it was in your written testimony, that we
17 have in our state a constitutional process
18 for how we select, whether it's appointing
19 or electing, judges to hear and decide
20 cases.

21 Could you just briefly talk about how
22 that function is being undermined by a lack
23 of judges and therefore the delegation of
24 responsibilities for judging to people who

1 aren't judges?

2 JUDGE PFAU: Well, you see it
3 primarily, I would say, in Family Court,
4 where as you saw, the numbers of requests
5 for orders of protection have risen so
6 dramatically.

7 And again, that's a good thing. When
8 citizens need protect protection, we want to
9 be there to protect them. But we have the
10 same complement of Family Court judges that
11 we have had so for so many years. We do
12 what we don't necessarily want to do, which
13 is take judges from other courts and put
14 them in Family Court -- but those other
15 courts have burgeoning dockets.

16 So what we do with the orders of
17 protection that come in, the requests for a
18 temporary order of protection, the first one
19 that comes in generally goes to a court
20 attorney referee to make a determination.
21 The protocol that we have established is
22 that if the court attorney referee would
23 want to deny the order, that has to go to a
24 judge for judicial determination. But the

1 granting of the temporary order can be done
2 by a court attorney referee.

3 And if we didn't turn to that, the
4 person who wanted the order of protection
5 would be standing in line so long to see the
6 judge that by the time they got to the judge
7 it would almost be moot. So it is borne of
8 necessity.

9 Again, we agree that judges should be
10 doing judge work and making judicial
11 decisions. But it is really what we have to
12 work with right now.

13 ASSEMBLYMAN LANCMAN: Thank you very
14 much.

15 Thank you, Mr. Chairman.

16 JUDGE PFAU: Thank you.

17 CHAIRMAN FARRELL: Assemblyman
18 Hayes.

19 CHAIRMAN DeFRANCISCO: And we're
20 joined by Senator Montgomery, who's over to
21 the side.

22 CHAIRMAN FARRELL: Oh, and we have
23 Assemblyman Mike Spano sitting in the
24 audience.

1 ASSEMBLYMAN HAYES: Thank you,
2 Mr. Chairman.

3 Judge, with all due respect, I have to
4 follow up on my colleague's questioning to
5 you about the cut.

6 JUDGE PFAU: You know, when you're a
7 judge and somebody says "with all due
8 respect," you know you're in so much
9 trouble.

10 (Laughter.)

11 ASSEMBLYMAN HAYES: You know what's
12 coming.

13 (Laughter.)

14 ASSEMBLYMAN HAYES: I have to get you
15 to focus on the issue that Governor has put
16 before the Legislature in the overall budget
17 process. The Governor has looked at it, and
18 education has taken 2 percent cuts;
19 healthcare, 2 percent cuts. He has turned
20 around and looked at the state operations
21 budget and has taken 10 percent in terms of
22 cuts.

23 He asked the Judiciary to do the same.
24 You have shared with us some of the reasons

1 why, you know, parts of that you were not
2 able to do. But then, in response to
3 Assemblyman Lancman's question, he asked you
4 to break that down between the places where
5 you absolutely had no flexibility to cut and
6 the places you did, and you responded to us
7 that you have cut 0.2 percent in the area
8 that you do have flexibility to cut. Did I
9 hear that correctly?

10 JUDGE PFAU: I would frame it a
11 little differently. That we made a
12 determination, the Chief Judge felt very
13 strongly this year that we wanted to put
14 within our operating budget funding for
15 civil legal services of \$25 million; funding
16 for additional indigent defense case caps,
17 that's about \$11 million. So we have
18 reduced our actual operating money by that
19 amount to accommodate that and still come in
20 with an operating budget that is slightly
21 reduced.

22 ASSEMBLYMAN HAYES: And "slightly
23 reduced" is the 0.2 percent that you were
24 talking about.

1 JUDGE PFAU: Yes, right.

2 ASSEMBLYMAN HAYES: So in addition to
3 putting those categories in the operating
4 budget, the total budget is still 0.2
5 percent less. But it doesn't come anywhere
6 near what the Governor has asked everybody
7 else in the state, every other operation of
8 state government, it doesn't even come
9 close.

10 And I'm wondering if you see that as a
11 problem just in terms of the
12 collaboration -- we're separate branches of
13 government. Certainly we all go through the
14 same budget process. But in terms of the
15 blatant disregard for the Governor's call,
16 we may see something come out of the
17 Legislature that will look different than
18 what you're proposing, and we may certainly
19 see it with the Executive, who has last ups
20 in the process, reflect something completely
21 different.

22 But I think the spirit of what the
23 Governor is trying to do is to say to people
24 there is no more money.

1 JUDGE PFAU: I --

2 ASSEMBLYMAN HAYES: "There's no more
3 money, so you can either propose the cuts,
4 or I will." I've heard him say that very
5 clearly.

6 And I'm just wondering what your
7 reaction to it is when you propose, in an
8 area of your budget that you can control,
9 simply a 0.2 percent reduction.

10 JUDGE PFAU: And we have these
11 conversations with the Governor's office.
12 And when the Governor has said to us that he
13 would like us to cut 10 percent, we are
14 talking about cutting thousands of
15 employees. And there is no way I can cut
16 thousands of employees without shutting down
17 courts.

18 The volume of what's being asked to cut
19 us by 10 percent would effectively -- I
20 mean, I know this isn't how it would happen,
21 but you would be shutting down the citywide
22 courts in New York City. That's the volume
23 we're talking about -- the family, the civil
24 and the criminal court. You would be --

1 it's the volume if I shut down the Sixth,
2 Seventh and Eighth Judicial Districts. It's
3 people. That's what we have.

4 The things that Senator DeFrancisco
5 raised, as far as other things, absolutely,
6 we will be good partners and look at every
7 possible thing we can. But there is a
8 fundamental constitutional obligation we
9 feel we have to keep the courts open. So
10 for us to say that we will agree to enter
11 the budget process by providing for layoffs
12 of 2000, 2500 employees and shutting the
13 courts' doors, that for us is just not a
14 place we can with good conscience begin, nor
15 would our constitutional obligation as -- it
16 does not mean that we're not willing to be
17 good partners and have very serious
18 conversations through a budget process that
19 is just beginning.

20 ASSEMBLYMAN HAYES: Well, I
21 appreciate that. And I think you know we
22 have a constitutional guarantee of a sound
23 basic education for our young people in this
24 state, and we have school districts that are

1 camaraderie here that we're going to
2 experience? We're not only coming down
3 together, it's getting very cozy with the
4 lights dimming.

5 Can we start by if each of you would
6 just identify yourself and your position,
7 and then we'll start with John Gibb. Go
8 ahead.

9 CHAIRWOMAN EVANS: Andrea Evans, CEO
10 and --

11 CHAIRMAN DeFRANCISCO: Can you speak
12 into the mike so the stenographer can hear.

13 CHAIRWOMAN EVANS: Andrea Evans, CEO
14 and chairwoman of the Division of Parole.

15 SUPERINTENDENT D'AMICO: Joseph
16 D'Amico, superintendent of State Police.

17 ACTING COMMISSIONER BYRNE: Sean
18 Byrne, acting commissioner, Division of
19 Criminal Justice Services.

20 ACTING COMMISSIONER GIBB: John Gibb,
21 acting commissioner, Division of Homeland
22 Security and Emergency Services.

23 COMMISSIONER FISCHER: Brian Fischer,
24 Department of Correctional Services.

1 DR. MAYBERRY-STEWART: Melodie
2 Mayberry-Stewart, State CIO, director,
3 Office of Technology.

4 CHAIRMAN DeFRANCISCO: Terrific. If
5 we could start with Mr. Gibb.

6 ACTING COMMISSIONER GIBB: Chairman
7 DeFrancisco, Chairman Farrell, thank you
8 very much for the opportunity to talk to you
9 today about the 2011-2012 Executive Budget.
10 It's the first presentation from our merged
11 new Division of Homeland Security and
12 Emergency Services, consisting of our Office
13 of Counterterrorism, Office of Emergency
14 Management, Office of Cyber Security, Office
15 of Fire Prevention and Control, and the
16 Office of Interoperable and Emergency
17 Communications.

18 I believe that our new division
19 represents --

20 CHAIRMAN DeFRANCISCO: Can you move
21 the mike just a little closer, please?

22 ACTING COMMISSIONER GIBB: Is this
23 better?

24 CHAIRMAN DeFRANCISCO: Is the light

1 on?

2 ACTING COMMISSIONER GIBB: The light
3 is on.

4 CHAIRMAN DeFRANCISCO: Okay, thank
5 you.

6 ACTING COMMISSIONER GIBB: I believe
7 that our new merged division represents what
8 Governor Cuomo envisioned, a transformation
9 of our agencies to be leaner and more
10 efficient. During our merger process, we
11 took special care to make sure that our
12 overall mission of counterterrorism,
13 disaster preparedness and response, cyber
14 security, support for the state's fire
15 service, and enhancement of the
16 interoperable communications capability,
17 those missions were furthered.

18 The experience of our merged Division
19 of Homeland Security and Emergency Services
20 again is a solid example of the Governor's
21 vision of redesigning state agencies to lead
22 not only to successful cost savings but to
23 maintain and enhance services for the
24 citizens that we serve.

1 Governor Cuomo just over a week ago
2 delivered a message to all New Yorkers that
3 the state is at a crossroads and that
4 collectively we will work to do our fair
5 share to take a path on the road to
6 recovery. Obviously the Governor's
7 Executive Budget proposes a State General
8 Fund operations decrease of 10 percent. He
9 has stated his desire is that state agencies
10 will lead by example, and I and our division
11 are fully committed to doing our part to
12 make sure that we're maximizing as
13 completely as possible through improving
14 nonpersonal services to maximize those
15 savings.

16 A quick update on our merger. It
17 became effective July 1st when last year's
18 budget became effective. We've successfully
19 transitioned all the employees from various
20 departments to the new organization. We
21 have also combined several functions that
22 serve the whole division, including legal
23 administration, public information, and
24 information technology.

1 We also achieved additional benefits by
2 the agencies and the offices working closely
3 together. Most recently we've seen that in
4 the numerous activations of our State
5 Emergency Operations Center. Our State
6 Office of Emergency Management has been
7 working with state agencies to coordinate
8 the response to the winter storms that we've
9 been suffering this year, and we've found
10 that we've been able to enhance our EOC
11 operations through staff from our Office of
12 Counterterrorism, Office of Fire Prevention
13 and Control, Office of Interoperable and
14 Emergency Communications, and our Office of
15 Cyber Security.

16 We anticipated a cost savings of
17 \$1.5 million through the merger, and I'm
18 happy to report that we have achieved that.

19 In terms of federal funding, in 2010
20 the State of New York was awarded
21 approximately \$294 million by the U.S.
22 Department of Homeland Security. That
23 included \$113 million in the State Homeland
24 Security Grant Program. This was an

1 increase over 2009 levels. With the federal
2 budget a little unsure right now for this
3 fiscal year, we are not clear, it's not
4 clear to us what our federal grants will be
5 for this fiscal year.

6 We are, however, cognizant that this
7 year is the tenth anniversary of the 9/11
8 attacks and there have been some three dozen
9 terrorist plots aimed at the U.S., 11 aimed
10 at New York, in the ensuing decade. And we
11 remain fully committed to our
12 counterterrorism mission of working with
13 agencies and local governments to do what we
14 can to prevent the next attack.

15 Our office of Interoperable and
16 Emergency Communications is finalizing
17 grants of \$20 million authorized in this
18 year's state budget. Those will go to
19 counties to enhance interoperable
20 communications. The Executive Budget for
21 2011-2012 includes \$45 million to further
22 those grants.

23 In addition, this year's budget
24 contains \$9.3 million and next year's budget

1 an additional \$9.3 million to support public
2 safety answering points, those dedicated men
3 and women who answer our 911 calls.

4 I would point out, though, that the
5 2010-2011 deficiency bill that was advanced
6 as part of the Governor's proposed budget
7 does include technical corrections that are
8 necessary for us to be able to process that
9 911 money for this year.

10 We continue to work on our State
11 Preparedness Training Center in Oriskany,
12 New York. The Executive Budget this year
13 includes \$37 million in reappropriations to
14 continue the reconstruction that's underway
15 there. We expect our classrooms and the
16 terminal building to be completed later this
17 year, and work will continue on a complete
18 cityscape training area, an advanced weapons
19 training area, and an emergency vehicle
20 operations training area.

21 Even while the construction has been
22 ongoing, over the last year we've hosted
23 136 courses and provided training to more
24 than 3300 of our state's first responders.

1 So in closing, I would just say that
2 the overarching goals and missions of our
3 collective offices have been enhanced by the
4 merger. We continue to work with our broad
5 group of stakeholders to ensure that our
6 programs are hitting the mark and that our
7 budget is in line in terms of what we need
8 to do to support our state's first
9 responders.

10 Again, we're confident that our
11 division serves as a good example of how
12 government agencies can be redesigned and
13 continue to prove to be a successful
14 endeavor and provide services.

15 That concludes my comments, and I'm
16 happy to answer questions now or answer them
17 later.

18 CHAIRMAN DeFRANCISCO: Thank you.
19 We'll save the questions until everyone has
20 a chance to make an initial presentation.

21 The next speaker is Sean Byrne,
22 New York Division of Criminal Justice
23 Services.

24 ACTING COMMISSIONER BYRNE: Good

1 morning, Chairman DeFrancisco, Chairman
2 Farrell, and distinguished members of the
3 joint committee. I'm Sean Byrne, the acting
4 commissioner of the Division of Criminal
5 Justice Services. Thank you for inviting me
6 to appear before you today to explain how
7 DCJS will redesign, recalibrate and rebuild
8 to promote public safety in New York State.

9 Governor Cuomo's directive to me is
10 unequivocal: the status quo is not
11 acceptable, and it is not an option. The
12 state cannot and will not continue spending
13 at twice the rate of inflation. The day of
14 reckoning is today. Tomorrow has arrived.
15 The Governor's Executive Budget faces the
16 fiscal realities head-on and rejects the
17 budget games of the past. The budget
18 requires us all to make some difficult
19 choices, but our shared sacrifice in the
20 short term will bring shared prosperity in
21 the long term.

22 The Governor's budget begins a
23 transformation to a more efficient and
24 effective government focused on core

1 missions and obligations. The role of the
2 Executive branch agencies, including DCJS,
3 is to implement and manage a 10 percent
4 reduction. My role as acting commissioner
5 is to work in partnership with the dedicated
6 employees of DCJS and with our stakeholders
7 and constituents to reorganize the agency by
8 finding efficiencies to make it stronger
9 than before.

10 This budget proposal provides DCJS with
11 the flexibility to help us deal with a tough
12 fiscal reality. Governor Cuomo's budget
13 empowers us to better utilize our resources
14 through strategic agency mergers and allows
15 DCJS to accomplish its mission despite
16 reductions in state operations and local
17 assistance spending. Governor Cuomo's
18 budget was crafted to balance the public
19 protection and the financial interests of
20 taxpayers, without compromising either.

21 From a budgetary standpoint, I'd like
22 to focus on three areas: agency mergers,
23 state operations, and local assistance.

24 The 2011-2012 Executive Budget includes

1 a recommendation to merge the Office of
2 Victim Services, the Office for the
3 Prevention of Domestic Violence, the State
4 Commission of Correction, and the Division
5 of Criminal Justice Services. All three of
6 these agencies are currently hosted by DCJS,
7 and we perform financial, human resources,
8 and administrative responsibilities on their
9 behalf.

10 The missions of these agencies will be
11 preserved, and in fact enhanced, as
12 specialized offices within DCJS. The merger
13 offers opportunity for shared operations,
14 program synergies, and the optimization of
15 funding resources.

16 We've got experience at this. In the
17 current fiscal year we successfully merged
18 the former Division of Probation and
19 Correctional Alternatives into DCJS, and
20 we've already experienced the benefits of
21 that consolidation. Given the fiscal
22 emergency, I'm happy to report that we were
23 able to consolidate, from a number of
24 contract areas, and maintain our ATI

1 spending at the same level it would have
2 been at had they only experienced a cut
3 proportionate to all other local assistance
4 programs. At the same time, we protected
5 Prisoners' Legal Services, the Legal Action
6 Center, the Correction Association of
7 New York, and Civil Indigent Legal Services.

8 The additional mergers proposed in the
9 Governor's budget will allow for the
10 cost-effective delivery of the important
11 services provided by these agencies. I
12 would like to stress right up front that the
13 Commission of Correction, although it would
14 be an office within DCJS under the
15 Governor's budget proposal, will retain both
16 its constitutional mission and its
17 independence, which is so critical for it to
18 effectively operate.

19 Like all agencies, DCJS will be
20 required to absorb additional reductions in
21 state operations funding in fiscal year
22 2011-2012. As we have for the past two
23 years, the agency will manage through these
24 difficult financial times by focusing on

1 core mission activities and ensuring that
2 every dollar spent provides a return in
3 enhanced public safety.

4 Although there have been reductions,
5 the 2011-2012 Executive Budget provides the
6 division with the flexibility to develop a
7 comprehensive plan for the distribution of
8 criminal justice, probation aid and
9 alternatives to incarceration grants.
10 Distribution of these funds will be pursuant
11 to a plan developed by the commissioner of
12 DCJS after competitive bidding and taking
13 into consideration performance measures.

14 All 2011-2012 local assistance
15 contracts will be performance-based work
16 plans. Performance measures are already a
17 standard element in most of our contracts.
18 Now performance measures will be a standard
19 in all of our contracts.

20 Each contract will include expected
21 outcomes that demonstrate how the grants
22 will improve public safety. In addition to
23 providing a measure of the impact that
24 grants have on improving crime problems in

1 each jurisdiction, these outcomes will help
2 us understand what strategies are working in
3 our efforts to reduce crime.

4 Although we are in an economic crisis,
5 I believe DCJS and its partner criminal
6 justice agencies have proven their ability
7 to perform in a manner that is responsive to
8 the needs of our citizens and the fiscal
9 realities within which we operate. We have
10 done that by concentrating on our core
11 mission. We have not undermined the public
12 safety. I am proud to say the people's work
13 is getting done at DCJS.

14 The Governor's budget proposal is
15 designed to continue the historic progress
16 we have made over the past two decades,
17 recognizing that when we invest in
18 initiatives that drive down crime, there is
19 a ripple-effect return on that investment.
20 Fewer crimes mean fewer crime victims, which
21 means fewer hospital bills, less strain on
22 the insurance industry, fewer people on
23 parole and probation, and fewer people in
24 our jails and prisons. It means businesses

1 The next speaker is Brian Fischer,
2 New York State Department of Correctional
3 Services.

4 COMMISSIONER FISCHER: Good morning
5 and thank you, Chairman DeFrancisco,
6 Chairman Farrell, and members of the Senate
7 Finance and Assembly Ways and Means
8 Committees, for this opportunity to speak to
9 you about Governor Cuomo's vision for public
10 protection services in the coming year.

11 Governor Cuomo's Executive Budget is
12 about redesigning the delivery of state
13 services, recalibrating state spending to
14 sustainable levels, and rebuilding
15 New York's economy. As part of the overall
16 effort to redesign government, Governor
17 Cuomo's 2011-2012 Executive Budget advances
18 two major initiatives that will enhance
19 public safety, improve the preparation of
20 offenders for successful reintegration into
21 society, transform the prison communities,
22 and achieve significant savings for New York
23 taxpayers. In essence, we're talking about
24 the closure of correctional facilities and

1 the merging of the Department of
2 Correctional Services and the Division of
3 Parole.

4 The Executive Budget proposal
5 recognizes excessive capacity in the prison
6 system of at least 3,500 beds. In an
7 Executive Order issued today, the Governor
8 has created a Prison Closure Advisory Task
9 Force comprised of experts and legislators
10 to recommend the closure of specific
11 facilities. The task force will recommend
12 the closure of specific minimum and medium
13 security facilities after it has engaged the
14 community and received input from a variety
15 of stakeholders.

16 Governor Cuomo also recognizes the
17 potential impact closure will have on
18 communities that have come to rely on
19 prisons as a major employer and economic
20 driver. That is why he is the first
21 governor in modern times to couple closure
22 with state financial assistance to the host
23 prison communities by proposing up to \$10
24 million per location for economic

1 development to those very communities.

2 As Chart 1 will show, we have dropped
3 21 percent in inmate population since 1999.
4 This is the reason for the ability of us to
5 consider the closing of prisons.

6 As Chart 2 will show, since late 2008,
7 even after DOCS has closed five correctional
8 facilities and six annexes and removed from
9 the locator, the system, almost 2500 beds,
10 we still have a number of vacant beds in
11 housing units throughout the system.

12 To assist the task force, this agency
13 will provide a detailed overview of the
14 system indicating what our core
15 responsibilities and legal mandates require,
16 as indicated in Chart 3. At the same time,
17 the task force will consider factors related
18 to the cost of operations, capital
19 investment needs, impact on the workforce,
20 and other critical elements.

21 The Executive Budget merges the
22 Department of Correctional Services, DOCS,
23 and the Division of Parole into a new entity
24 to be called the Department of Corrections

1 and Community Supervision. As Chart 4 will
2 indicate, the plan recognizes the need for a
3 seamless coordination of programs and
4 services for offenders before, during, and
5 after prison in order to increase the
6 chances of everyone's successful
7 reintegration, thereby enhancing public
8 safety.

9 In line with the Governor's commitment
10 to provide better services in a more
11 cost-effective effort, this new agency to be
12 created will continue to undertake several
13 other important initiatives in the coming
14 year such as opening a new special needs
15 unit for female offenders at Bedford Hills,
16 and the completion of a second residential
17 mental health unit at Five Points to provide
18 more programming and treatment for inmates
19 with serious mental illness and lengthy
20 disciplinary problems.

21 Also, the completion of a centralized
22 automated pharmacy to be located on the
23 grounds of Mid-State but operated by the
24 Marcy Correctional Facility, which will

1 deliver, at a cost savings, medication to
2 all the state prisoners and hopefully within
3 a year or two be able to provide the same
4 services for county jails.

5 We will also look to increase
6 effectiveness in the administrative area by
7 looking at a centralized banking system and
8 the centralized operation of our prison
9 system commissaries.

10 Lastly, we will be looking to expand
11 what we've learned through the use of
12 technology to increase our ability to
13 provide educational classroom work to all
14 offenders.

15 As we move forward towards redesigning
16 and cost-effective rehabilitation, the
17 Governor has rightly demanded that every
18 agency in the state government fundamentally
19 rethink its operation, redesign the delivery
20 of services to fulfill core responsibilities
21 while achieving better results, and
22 recalibrate spending to sustainable levels.
23 His Executive Budget requires strong
24 leadership and decisive action to enhance

1 public protection. We look forward to
2 continued partnership with and support from
3 the Legislature to meet these challenges in
4 the fiscal year.

5 Thank you.

6 CHAIRMAN DeFRANCISCO: Thank you.
7 Andrea Evans, chairwoman and CEO of the
8 New York State Division of Parole.

9 CHAIRWOMAN EVANS: Good morning.
10 Senator DeFrancisco, Assemblyman Farrell,
11 honorable members of the fiscal committees,
12 I take great pleasure to appear before you
13 here today to describe how this Executive
14 Budget will strengthen and promote the
15 effectiveness of parole while reducing costs
16 and improving services.

17 Governor Cuomo has made it quite clear
18 that New York State is an economic crisis.
19 But if we follow through on the Governor's
20 vision for reform, we can turn this crisis
21 into an opportunity to recalibrate our
22 government, rejuvenate our economy, and
23 rebuild our state.

24 The Governor's budget is a thoughtful

1 approach built on partnerships with others
2 and on leveraging of resources so that we
3 make meaningful and enduring changes that
4 will transform and the way in which we do
5 business in the state.

6 The Division of Parole has two primary
7 objectives here, to enhance public safety
8 and to successfully transition former
9 offenders back to their community after
10 release from prison. The Board of Parole
11 achieves those objectives by determining
12 which offenders meet the criteria for parole
13 and then carefully monitoring those who are
14 released to serve the remainder of their
15 sentence in the community.

16 Our Governor has proposed merging the
17 Division of Parole with the Department of
18 Correctional Services into a new Department
19 of Corrections and Community Supervision in
20 a manner which not only preserves the
21 mission of the board but strengthens the
22 mission of both agencies by recognizing
23 their common goals of rehabilitation. A key
24 provision of the proposal is to ensure that

1 the merged agency continues to have a strong
2 role in supervision which requires
3 monitoring and mentoring.

4 Public safety continues to be an
5 overarching goal, and Parole is constantly
6 searching for the best, most cost-effective
7 way to ensure public safety while promoting
8 the individual's reintegration back into his
9 or her neighborhood. The Governor's
10 proposal enhances that goal by stopping the
11 revolving door of criminality through a
12 strategic reentry program aimed at providing
13 better results for all. When fewer
14 ex-offenders return to state prison or
15 community supervision and more of them
16 improve their own lives, public safety is
17 enhanced and costs to state taxpayers are
18 reduced.

19 The Governor believes and I do
20 wholeheartedly agree that reentry begins not
21 at the back door, or when an individual is
22 released on parole, but at the front door,
23 when the individual enters our prison
24 system. Merging the Division of Parole and

1 the Department of Correctional Services into
2 the Department of Corrections and Community
3 Supervision recognizes the important role
4 each existing agency plays at a critical
5 juncture in the process of transforming
6 lives while fostering an important continuum
7 of services through one agency to ensure
8 that former offenders have the necessary
9 support, guidance, and supervision to
10 increase their chances of success once they
11 are released from prison.

12 We can also obtain cost savings with
13 this merger. We will find ways to share
14 services, reduce redundancies, and
15 consolidate as a means for cutting costs.

16 The proposal also firmly safeguards the
17 independence of the Board of Parole while
18 recognizing the reality that there have been
19 dramatic drops in the numbers of individuals
20 appearing before the board, largely due to
21 the rise of determinate sentencing. The
22 proposal realigns the size of the board with
23 this drop and seeks to eliminate the six
24 currently vacant positions on the board,

1 leaving us with 13 members.

2 I am confident that the 13 members can
3 effectively address and reduce caseload,
4 especially with the increased use of
5 available technology, such as utilizing
6 video to conduct interviews off-site,
7 thereby alleviating the need to travel to
8 the prisons by the board.

9 Both of these initiatives, the merger
10 and the downsizing of the board, reflect the
11 Governor's goal of redesigning the delivery
12 of state services to achieve better results
13 and greater efficiencies while allowing the
14 recalibration of state spending to
15 sustainable levels. The Division of Parole
16 will continue to implement the tools and
17 policies that will effectively address the
18 twin goals of public safety and successful
19 reentry.

20 For example, Parole has developed an
21 assessment tool to determine the risks and
22 needs of releasees under field supervision.
23 The objective is to base supervision levels
24 on specific risk factors and needs of each

1 parolee. The use of a risk assessment tool
2 allows high-risk releasees to be supervised
3 more closely. By the end of 2010, all
4 facility staff were trained in the use of
5 the assessment tool, and plans for its
6 roll-out in 2011 are now being developed.

7 This is but one method contributing to
8 our ability to promote public safety by
9 ensuring that parolees do not reoffend. For
10 the past decade, the percentage of releasees
11 returned to state prison for committing a
12 new crime has declined by a whopping 40
13 percent, which means far fewer New Yorkers
14 are being victimized by an individual on
15 parole. Additionally, the percentage of
16 releasees returned to DOCS for a technical
17 violation is declining steadily and has
18 decreased by 17 percent since 2007. Again,
19 fewer releasees are being sent back to
20 prison for a technical violation, and fewer
21 are committing new crimes.

22 We have also taken important steps to
23 achieve the objective of providing a robust
24 reentry program, in part through a

1 relatively new approach called "graduated
2 responses." The New York State Commission
3 on Sentencing Reform recommended in 2009
4 that the Division of Parole adopt a system
5 of graduated responses for parole violators
6 in which the severity of the sanction
7 increases with the severity and frequency of
8 the violation.

9 There are times -- many times,
10 actually -- when a sanction other than a
11 return to prison will achieve the desired
12 result. In 2010, the division successfully
13 employed graduated responses by diverting
14 close to 40 percent of all potential
15 technical warrants to an alternative
16 sanction.

17 We will also work to ensure that our
18 reentry services unit continues to partner
19 closely with localities throughout the state
20 to facilitate access to support services
21 which encourage positive behavior and
22 rehabilitation and discourage a return to
23 criminality. The unit has developed
24 referral sources for substance abuse

1 prevention services, anger management,
2 domestic violence counseling, mental health
3 counseling, medical services, mentoring,
4 employment and many other services that are
5 needed by releasees -- including housing.
6 In the past year, the number of releasees to
7 homeless shelters in New York City has
8 decreased dramatically, from 31 percent to
9 16 percent.

10 I believe that the partnership that the
11 merged agency represents will permit us to
12 do even better, benefiting offenders and our
13 society alike.

14 All of the accomplishments that I have
15 discussed with you, by the way, have been
16 achieved in the context of the state's
17 challenging fiscal environment, and we will
18 continue to meet the challenge by preserving
19 our mission and providing better services
20 under a new structure while achieving even
21 greater efficiencies.

22 Thank you.

23 CHAIRMAN DeFRANCISCO: Thank you.

24 You've taken the Governor's charge to heart.

1 You certainly have reduced paper; your
2 entire statement is on one page.

3 (Laughter.)

4 CHAIRMAN DeFRANCISCO: So that's
5 paperwork reduction at its best.

6 The next speaker is Joseph D'Amico,
7 superintendent of State Police.

8 SUPERINTENDENT D'AMICO: Good
9 morning. Thank you, Chairman DeFrancisco,
10 Chairman Farrell, distinguished members of
11 the joint committee, for the opportunity to
12 discuss the Governor's budget proposal for
13 the Division of State Police. The New York
14 State Division of State Police is one of the
15 10 largest law enforcement agencies in the
16 nation and the only full-service police
17 department in New York with statewide
18 jurisdiction.

19 The Governor's budget requires all of
20 us, as agencies, to make some difficult
21 choices, but it also challenges us to become
22 leaner and stronger. The Governor's message
23 to us is that maintaining the status quo is
24 simply not an option. We can no longer

1 spend beyond our means and defer the
2 unwanted consequences for another day. We
3 must spend less and spend smarter.

4 All state agencies will lead by
5 example, by taking 10 percent cuts in their
6 budgets. The State Police will do its part
7 too, while continuing to execute the
8 agency's core mission. In doing so, I hope
9 to be able to work together with the men and
10 women of the State Police to find savings
11 while ensuring that the level of service is
12 not compromised.

13 The core mission of the New York State
14 Police is public safety; specifically, the
15 reduction of crime, ensuring highway safety,
16 and assisting law enforcement throughout the
17 state through uniformed patrols, criminal
18 investigations, and specialized services
19 such as aviation, SORT teams, which are our
20 SWAT, hostage negotiation, bomb disposal
21 technicians and other similar units.

22 One of the most important roles the
23 State Police plays is to be the primary
24 police agency for many communities

1 throughout New York State that don't have
2 their own agencies. This will always be a
3 priority for the State Police. The
4 Governor's budget requires us to explore
5 ways to create a leaner and more efficient
6 agency. We are exploring all areas where we
7 can achieve savings and efficiencies without
8 a reduction in the primary services that we
9 provide. We are prioritizing the areas
10 where we currently provide police services
11 to determine where we may realize additional
12 savings. We are also exploring all possible
13 areas outside of personnel services where
14 reductions may also be achieved.

15 As superintendent, it's my job to
16 implement and manage this. We in the State
17 Police are team players, and Governor Cuomo
18 expects us to do our part in helping him
19 rightsize and redesign state government.
20 That we will do -- without compromising our
21 core responsibilities or our commitment to
22 officer safety. During my tenure, my top
23 priority will always be safety of the
24 employees of the State Police.

1 Thank you for your support of the
2 New York State Police, and thank you for an
3 opportunity to address you today.

4 CHAIRMAN DeFRANCISCO: And thank you
5 for summarizing your written testimony.

6 The next speaker is Dr. Melodie
7 Mayberry-Stewart, of the New York State
8 Office for Technology.

9 DR. MAYBERRY-STEWART: Good morning,
10 Chairman DeFrancisco, Chairman Farrell, and
11 distinguished members of the joint Senate
12 Finance and Assembly Ways and Means
13 Committee. I appreciate the opportunity to
14 appear before you today and to share with
15 you highlights of the work CIO-OFT is doing
16 to leverage technology, thereby facilitating
17 improvements in the delivery of government
18 services and driving down the costs of those
19 government services without sacrificing
20 quality.

21 The Governor's Executive Budget does
22 not rely on budgetary gimmicks or one-shot
23 deals to eliminate the deficit. Instead, it
24 envisions the beginning of a transformation

1 of our agencies into a leaner and more
2 efficient state government. We must use the
3 state budget as both a budgeting blueprint
4 and, equally importantly, as a management
5 tool. State agencies will lead by example,
6 by taking the 10 percent reductions in their
7 operating budgets.

8 As the state's chief information
9 officer and director of the Office for
10 Technology, it is my job to implement and
11 manage this reduction in funding while
12 continuing to focus on and make progress in
13 CIO-OFT's core mission areas. In doing so,
14 I hope to be able to work in partnership
15 with you, with our IT workforce, and with
16 the SAGE Commission to effectuate meaningful
17 and sustainable changes in how CIO/OFT
18 supports the state agencies in meeting their
19 IT needs and leveraging technology to
20 increase their efficiency and effectiveness
21 in serving their constituencies.

22 We must scrutinize not only what we are
23 spending on, and how much we are spending,
24 but also the return on investment we are

1 getting for the people of New York as a
2 result of this spending.

3 CIO/OFT's core mission is to deliver
4 reliable and secure IT shared services,
5 including data center operations, networks
6 and telecommunications infrastructure, and
7 mission-critical applications to support
8 state agencies, who are our internal
9 customers.

10 CIO/OFT operates four mainframe data
11 centers, all located in the Capital
12 District, which house more than 50
13 mission-critical and enterprise-wide
14 applications for approximately 44 state
15 agencies. We operate and maintain extensive
16 voice and data networks serving more than
17 90,000 users throughout the state.

18 To assess CIO/OFT's overall service
19 delivery effectiveness to state agencies,
20 starting in 2007 CIO/OFT takes an annual
21 customer satisfaction survey that focuses on
22 15 major service areas, including data
23 center operations, application support, help
24 desk support, networks, technical training,

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and other key services.

As of the 2010 survey, efforts to redesign and restructure processes to streamline our operations are paying off. As shown in Figure 1, our overall customer satisfaction level rose from 3.4 in 2007 to 3.81 in 2010, representing a 12 percent improvement, in which 4 percent is considered an excellent rating.

In 2010, New York State achieved its highest ranking in the prestigious National Digital States Survey. The national survey, conducted by the independent Center for Digital Government every two years, is a comprehensive study to examine best practices, policies and progress made by all state governments in their use of digital technologies to better serve their citizens and streamline government operations.

This was New York State's highest ranking in the survey's 10-year history. Our unprecedented rise from a middle-of-the-pack national mediocre rating of No. 18 in 2007 to No. 5 in 2010 was the

1 result of many state agencies, public and
2 private partners collaboratively working to
3 put New York State on the map as a
4 technology leader in the public sector.

5 As articulated by Governor Cuomo in his
6 Executive Budget address, in the upcoming
7 year we must focus our efforts on actively
8 returning more and long overdue value to
9 taxpayers through greater efficiencies and
10 economies through restructured service
11 deliveries. This requires CIO/OFT to
12 continuously redesign, restructure and
13 rightsize its IT assets and resources to
14 realize future sustained savings and reap
15 higher service quality at a lower cost.

16 In my testimony today I will briefly
17 describe three strategic goals designed to
18 achieve the desired outcomes outlined by
19 Governor Cuomo's Executive Budget, which are
20 to standardize and consolidate technology,
21 make greater use of modern technology, and
22 create a talented IT workforce.

23 In terms of standardizing and
24 consolidating technology, I just want to

1 relay one strategy, migrating agencies to a
2 single email platform to achieve \$30 million
3 in savings.

4 Today the state's IT model is mostly
5 decentralized. The New York State
6 Enterprise IT Strategic Plan calls for a
7 transformation into a more efficient and
8 effective IT model. Most IT infrastructure
9 services -- which include networking, data
10 and servers -- should be performed as
11 enterprise shared services to drive down
12 costs. In addition, many common
13 administrative applications -- such as
14 email, financial and human resource
15 management systems -- should exist as
16 enterprise solutions.

17 In 2010, CIO/OFT deployed a plan to
18 migrate all executive agencies to a single
19 email platform referred to as NYSeMail. The
20 plan migrates 44 agencies representing
21 approximately 158,000 users over three
22 phases. To date, we are currently in Phase
23 Two of the migration and have over 75,000
24 users and plan to migrate the remainder in

1 2011.

2 The estimated savings is approximately
3 \$5.3 million annually, or more than
4 \$30 million over five years when fully
5 implemented. Savings are achieved by
6 eliminating redundant efforts and expenses
7 for licensing, data storage and maintenance
8 by individual agencies using individual
9 contracts.

10 Goal two, to make greater use of modern
11 technology. We want to transform the IT
12 service delivery business model to reduce IT
13 ownership costs.

14 Our second strategic goal requires
15 refinement of the current IT shared services
16 business model to drive a more effective and
17 cost-efficient IT environment that optimizes
18 the state's enterprise buying power,
19 achieves greater economies of scale, and
20 capitalizes on more innovative,
21 cost-efficient technology solutions.

22 Agency IT assets -- which include data,
23 hardware, software, services, networks and
24 even facilities -- can be shared among

1 agencies and other public or private
2 entities to reduce the overall costs of IT
3 acquisition, deployment, and ongoing support
4 and maintenance.

5 Another strategy is we want to upgrade
6 the critical IT infrastructure through
7 consolidation of our mainframe data centers.
8 The state must develop options to meet the
9 state's expanding data center needs, and the
10 Executive Budget includes a \$99.1 million
11 reappropriation for this purpose.

12 And our last goal is to create a
13 talented state IT workforce. The third and
14 final goal is to build this workforce. One
15 strategy is to use the IT in-sourcing bill
16 to reduce IT consulting costs. Chapter 500
17 of the Laws of 2009, known as the IT
18 In-Sourcing Bill, represents the first
19 significant step to address long-standing
20 challenges to hire and promote highly
21 skilled quality IT professionals. These IT
22 consultants are in much demand and are
23 proficient in new and emerging, more
24 cost-efficient technologies deployed by the

1 state.

2 Under the legislation, the Division of
3 the Budget is charged with monitoring and
4 reporting on implementation of the
5 in-sourcing initiative. And they recently
6 submitted the second progress report at the
7 end of December. Given the importance of
8 this law to help CIO/OFT meet future
9 workforce skills demands, we are working
10 very closely with DOB to successfully
11 implement this critical tool.

12 To date, CIO/OFT has insourced
13 20 employees, with a DOB-approved plan to
14 insource another 52 in the fiscal year
15 2011-2012, to realize full annual savings of
16 almost \$3 million.

17 And lastly, we want to increase MWBE
18 and small companies' participation in the IT
19 supplier pool. Governor Cuomo's State of
20 the State address includes a commitment to
21 increase the MWBE participation rates for
22 state contracts by setting an aggressive
23 20 percent goal statewide.

24 Figure 3 shows CIO/OFT's progression of

1 MWBE participation rates from 2007 to 2010,
2 to achieve our 20 percent goal by
3 establishing annual incremental targets. We
4 worked very closely with the state
5 agencies -- who make up a majority of the IT
6 procurements -- and the state's IT vendors
7 to achieve this result.

8 In support of Governor Cuomo's overall
9 MWBE goal, CIO/OFT plans to raise its 2010
10 bar to ensure these businesses have greater
11 opportunities to participate in our agency's
12 procurements.

13 While New York State faces some of the
14 worst economic difficulties in the state's
15 history, it presents an excellent
16 opportunity to implement sound and
17 out-of-the-box transformative strategies to
18 increase operational and programmatic
19 performance outcomes while reducing the cost
20 of achieving those outcomes.

21 Re-imagining and redesigning state
22 government starts with the state's fiscal
23 year 2011-2012 budget -- but it cannot and
24 will not end there. I and other senior

1 officials in my agency will continue to
2 reach out to all of the relevant
3 stakeholders to receive their input not only
4 on the budget, but also on changes that the
5 Office for Technology can and should make to
6 drive efficiencies and share IT services
7 across the state enterprise.

8 Thank you for this opportunity to
9 address the committees and highlight the
10 many IT efforts, challenges and risks we
11 must tackle to deliver high-quality services
12 to drive down our total cost of IT services.
13 And I welcome your questions and comments to
14 enable CIO/OFT to better meet the needs of
15 the new New York.

16 CHAIRMAN DeFRANCISCO: Thank you.

17 Before I go on, the stenographer, are
18 you okay?

19 THE REPORTER: (Nodding.)

20 (Laughter.)

21 CHAIRMAN DeFRANCISCO: Before we fall
22 over, I just want to make sure.

23 All right, the first questioner is
24 Senator Nozzolio.

1 SENATOR NOZZOLIO: Thank you. Thank
2 you, Mr. Chairman.

3 Ladies and gentlemen, we welcome your
4 participation today. That each and every
5 one of you is critically important to
6 ensuring public safety, the safety of the
7 citizens of this will state. You and your
8 predecessors have established, in part, the
9 largest decline of violent crime that any
10 state has ever experienced in the history of
11 America. To that, we should be proud.

12 But we should also be -- our mindset
13 should be that we shouldn't retreat from
14 that position, and that any policies
15 implemented through their discussions today
16 must be consistent with that objective.

17 My first question is to Commissioner
18 Byrne. In those consolidations suggested,
19 Commissioner, between Parole, the Commission
20 on Corrections, et cetera, what is the
21 dollar savings to be realized?

22 ACTING COMMISSIONER BYRNE: The
23 consolidation of the four criminal justice
24 agencies -- the Office for the Prevention of

1 Domestic Violence, the Office of Victim
2 Services, the State Commission of
3 Corrections, and the Division of Criminal
4 Justice Services -- will generate a savings
5 of about \$460,000.

6 But I can tell you, Senator, that
7 that's not the end of the story. The
8 agencies have experienced attrition,
9 reductions in budgets in prior years, and we
10 have duplication of services within those
11 agencies. For example, they all have grants
12 programs, or three of the four have grants
13 programs -- grants monitors, auditors, IT
14 staffs, things of that nature.

15 The need to maintain those supportive
16 and administrative functions within the
17 separate agencies is cutting into agency's
18 ability to deliver core services. And so
19 while this merger does save money -- that's
20 indisputable -- the enhancement of the
21 program that will result in the merger is
22 probably as important, if not more
23 important, than the fiscal savings.

24 SENATOR NOZZOLIO: Thank you.

1 How will you ensure that placement of
2 Parole within Corrections? How will you
3 ensure or how does this proposal ensure that
4 placement of Parole within Corrections
5 doesn't tempt future commissioners of
6 Correction to utilize Parole to solve
7 overcrowding systems?

8 ACTING COMMISSIONER BYRNE: Sir,
9 perhaps that would be better for
10 Commissioner Fischer to answer than I.

11 SENATOR NOZZOLIO: So you can tell
12 us, Commissioner, then, how the fox will
13 guard the henhouse.

14 COMMISSIONER FISCHER: I think the
15 question is certainly a valid one. There's
16 always a fear that when one agency combines
17 with another that there will be a change in
18 philosophy. But I think in this particular
19 case that's not going to happen for a couple
20 of reasons.

21 One, we're already interrelated and
22 working together more than most people will
23 recognize. Willard is a good example,
24 Edgecombe is a good example, our whole

1 reentry program is a good example.

2 I think it's far more important to
3 recognize that the two agencies -- not which
4 commissioner is going to be in charge of
5 what, but the two agencies and the staff can
6 in fact come together, which they already
7 have in many cases, and basically make one
8 agency work.

9 We're talking about the same
10 offender -- whether when he comes to us,
11 when he leaves, when he comes back, we're
12 talking about the same person. So it's in
13 both interests, if you would, both agencies'
14 interests to do the right thing by the
15 offender. And the right thing, obviously,
16 is to get him prepared -- and her -- get
17 them on the street, help them stay on the
18 street and not return.

19 So I'm not convinced at all that that's
20 an issue that has to be a concern by a lot
21 of people.

22 SENATOR NOZZOLIO: We'll certainly
23 monitor that in the future.

24 Commissioner, let me continue and ask

1 some questions about the elimination of
2 prison beds suggested by your testimony.
3 That in your analysis of capacity, did this
4 analysis take into account the fact that
5 maximum security cells in places like
6 Auburn, Clinton, Attica, those correctional
7 maximum-security facilities are over a
8 hundred percent of capacity?

9 COMMISSIONER FISCHER: That seems to
10 be a big argument and argued about how we
11 define capacity, how we define overcapacity
12 and undercapacity.

13 And I will call your attention, if I
14 may, to a report not developed by me but
15 developed by the union on January 3rd that
16 shows the -- took our figures and did an
17 analysis. And if you look at their
18 analysis -- and the whole issue has to be
19 whether the general confinement beds versus
20 all the other beds. But regardless of how
21 you want to define it, their report alone
22 clearly indicates that for all facilities --
23 max, medium, minimum -- there were
24 59,000-plus general confinement beds and

1 51,500 general confinement offenders in
2 those beds. We are not overcrowded.

3 I know the argument that we should not
4 have a second offender in a cell built for
5 two. We would agree. But we've been doing
6 it 15, 20 years without a problem. SCOC,
7 the State Commission on Correction, reviews
8 it. It is not what we'd like, but it does
9 work, it is safe. The historical data
10 supports that. The reality is, given the
11 fiscal limitations, what we're doing makes
12 sense, it is safe. And until we can
13 consider increasing maximum-security
14 prisons, like building them, this is the
15 right way to go.

16 SENATOR NOZZOLIO: Let's look to the
17 issue of saving money, Commissioner. Have
18 you in your analysis -- and has this task
19 force that's being presented today, the
20 Governor's establishment of a task force, is
21 the mission to close prisons or is it to
22 save money? In other words, are there
23 simply decisions made by this task force
24 that will close facilities, or will there be

1 other opportunities to implement bona fide
2 suggestions on changing correctional policy
3 that costs money?

4 For instance -- let me give you an
5 example. You have the authority now, you
6 don't need the legislative authority to do
7 this, but there are at least 20 facilities
8 that are neighbors to each other in the
9 correctional system. Yet each has, through
10 history, developed a separate
11 superintendent, a separate administrative
12 staff. Tell us why there have not been
13 consolidations of superintendents within the
14 same neighborhood to save dollars.

15 COMMISSIONER FISCHER: Because I
16 don't believe that that's the appropriate
17 way to run a prison. The superintendent and
18 his executive team, one of their primary
19 goals and responsibilities is to walk and
20 talk -- to look at the facility, what's
21 going on at the lowest level and the highest
22 level, both with the offender and the staff.

23 When you start dividing your attention
24 between two or three facilities, you're

1 basically showing a disservice to the people
2 and the offenders in the facility. When you
3 meet with an ILC group, a group of inmates
4 representing the population, you need to
5 focus on what their problems are at that
6 facility. You can't be worried about what
7 the problems are at the other facilities.

8 I know it sounds easy to consolidate
9 administrations. But when a staff person or
10 an offender has an issue, he or she wants to
11 be able to write to the right person and get
12 a response, just as they write to you and me
13 and everybody else.

14 When you start expanding the scope of
15 responsibility and authority too far, I
16 believe that you really begin to create an
17 unsafe situation, because the issues aren't
18 going to come forward the way they would be
19 when you walk and talk through a facility.

20 SENATOR NOZZOLIO: I think that's a
21 debatable question of management and
22 management style, Commissioner, with all due
23 respect. That the new paradigm, the
24 restart, restructure that we've heard from

1 each of speakers today doesn't seem to be
2 touching DOCS. That we're going to be doing
3 the same thing the same way, we're simply
4 just going to cut cell space. And that, to
5 me, is as dangerous a situation as whether a
6 superintendent can answer a letter.

7 I think that having -- walking that
8 beat in an overcrowded situation or a
9 situation where the wrong type of inmate is
10 placed could be much more dangerous than
11 having an executive, with all the costs
12 associated with an executive -- the separate
13 home, the car, all those kinds of things.
14 In terms of cost cutting, we really need to
15 see a whole restructuring situation. You're
16 not simply a way to keep the corrections
17 department running the same way ongoing.

18 I guess in terms of then if you're not
19 going to recommend superintendency
20 consolidations, then what administrative
21 costs within the Department of Corrections
22 are being recommended, Commissioner?

23 COMMISSIONER FISCHER: Well, we can
24 combine the two agencies and we are going to

1 take a \$5 million reduction in central
2 office. We anticipate a \$6 million savings
3 between combining the two agencies
4 administratively this year, perhaps \$8
5 million next year. We are going to look at
6 all aspects.

7 The centralizing the commissary,
8 centralizing our banking system, will allow
9 us to consider whether we can reduce
10 administrative costs, including staff. Most
11 of this will occur as we move forward.

12 But I would like to go back to your
13 very first comment. I think it's a valid
14 one in terms of are we just looking to close
15 facilities or whatnot. I think the answer
16 in the task force is to look at it. We're
17 talking about what do we do with the excess
18 beds. Facility closing doesn't have to be
19 the only answer. I think the task force,
20 the Governor is looking for the task force,
21 as you indicated, to come up with
22 recommendations that maybe we have not
23 considered. That's why he wants it,
24 basically, open-ended to legislative,

1 experts, other people to come together and
2 consider.

3 The problem is we can't afford to
4 expand the prison system, we all know that.
5 We can't afford to build more jails. So
6 what can we do internally? But we do have
7 the obvious problem; there are 3500 beds
8 that we simply don't need. We are currently
9 maintaining them. The question now becomes
10 is there a better way of managing our system
11 and in fact reducing the 3500 beds and the
12 costs associated with those beds.

13 SENATOR NOZZOLIO: One last question,
14 Commissioner. The issue of administrative
15 costs. Will you, before the task force
16 begins deliberations, specify exactly what
17 administrative costs you are recommending,
18 as you said, a certain percentage across the
19 board, elimination of employees?

20 Dr. Mayberry-Stewart just talked about
21 information technology. According to the
22 numbers I have, there are 86 people now
23 within the central staff at DOCS working on
24 management information services. Now, after

1 Dr. Mayberry-Stewart's presentation, I'm
2 wondering -- all these consolidations, her
3 ability to streamline, to do the kinds of
4 things that she's trying to do within a
5 modified cost structure, yet there are 86
6 people within central staff doing management
7 information?

8 It seems like you have a
9 responsibility, as you are setting forth the
10 closure of facilities, what type of
11 administrative efficiencies are you
12 squeezing out of the system in central
13 office?

14 COMMISSIONER FISCHER: I have
15 accepted the fact that I will find a \$5
16 million reduction in central office.
17 Central office is about 2 percent of the
18 entire agency. That's about 700 people out
19 of 30,000. But I'll take a \$5 million hit.
20 I can't tell you what items, because I have
21 to decide that once we consolidate and once
22 we look at what we have, what we need.
23 That's why technology will help.

24 But I will argue this. I know it seems

1 like a lot of people, but Correctional
2 Services' IT shops, if you would, are the
3 backbone of all the information that
4 everybody wants to know about the
5 offenders -- their status, their
6 information, their reentry needs. We
7 provide the basic data to Parole, to DCJS,
8 to everybody else. So there is a spine, if
9 you would, in terms of Corrections, and
10 that's the IT mainframe.

11 So in answer to your question, I have
12 my target of \$5 million. How I finalize in
13 terms of actual persons, I'm going to have
14 to work on that over the next several
15 months.

16 SENATOR NOZZOLIO: Thank you very
17 much, Commissioner.

18 Thank you, Mr. Chairman.

19 CHAIRMAN DeFRANCISCO: Thank you.

20 And I just wanted to mention that we've
21 been a little more liberal in the time for
22 the representatives, since there are
23 multiple speakers.

24 Joe Lentol.

1 ASSEMBLYMAN LENTOL: Are you warning
2 me about something?

3 (Laughter.)

4 CHAIRMAN DeFRANCISCO: No, no, it
5 wasn't a warning, it's just -- it's saying
6 you don't have to worry about that 7-minute
7 clock running now. Until you get through
8 the second 7-minute clock.

9 (Laughter.)

10 ASSEMBLYMAN LENTOL: Thank you,
11 Mr. Chairman.

12 First of all, I want to say that I was
13 very impressed with the testimony presented
14 by all of you. It was really interesting to
15 listen to. And in this difficult time I
16 know it's difficult for you to come up with
17 budget cuts in an area like public safety.
18 I'll try to reform what I was going to say
19 and recalibrate my testimony.

20 (Laughter.)

21 ASSEMBLYMAN LENTOL: Let me start
22 with you, Commissioner Byrne.

23 First of all, let's get off-budget for
24 just one second. You recently produced a

1 documentary, along with your staff, John
2 Caher here, about -- and I think it ought to
3 be brought out, because it's so very
4 important -- regarding something of interest
5 to parents about sexual predators. That
6 hasn't been done before, and I think it's
7 actually very important for you to discuss.
8 Would you discuss that for just a moment,
9 please?

10 ACTING COMMISSIONER BYRNE: Yes, sir.
11 The documentary that you're talking about is
12 a video entitled "The Sexual Predator: The
13 Familiar Stranger." We did it on the
14 strength of legislation that I believe you
15 yourself sponsored.

16 And we put the video together, it's
17 about a half-hour presentation. It cost the
18 State of New York nothing to produce other
19 than the staff time of some tremendous
20 professionals at the Division of Criminal
21 Justice Services. You mentioned John Caher;
22 he's certainly foremost among them.

23 But that video basically instructs
24 adults about how sexual predators

1 strategically work to position themselves so
2 that they can attack young people and hurt
3 young people. There are candid and blunt
4 interviews with sexual predators on the DVD.
5 There's conversations with psychiatrists
6 about how to deal with the phenomenon. It's
7 just very, very educational.

8 And as directed, we are going to be
9 sharing this video with every library in
10 New York State.

11 ASSEMBLYMAN LENTOL: And I hope every
12 educational institution as well.

13 ACTING COMMISSIONER BYRNE: Yes.

14 ASSEMBLYMAN LENTOL: Thank you for
15 that. I think the members of the panel as
16 well as the media would be interested in
17 that. It has not yet received a great deal
18 of public clamor yet.

19 The Executive Budget, Commissioner
20 Byrne, does it provide continued support for
21 drug law reform?

22 ACTING COMMISSIONER BYRNE: Absolut
23 ely, sir. Let me just recap for you a
24 little bit about what's happened in the

1 arena of drug law reform since it was
2 passed.

3 In the time since it's passed, fully
4 1,000 fewer persons have been sentenced to
5 the Department of Correctional Services than
6 would have reasonably been predicted to be
7 sentenced to the Department of Correctional
8 Services. That's during the first 12
9 months, 1,000 fewer. Seven hundred of them
10 went into judicial diversion; 300 of them
11 received jail or probation but not a prison
12 sentence.

13 Drug offenders have dropped since 2008,
14 the population under DOCS custody, by
15 27 percent. And remarkably -- this is worth
16 remembering -- since the peak in 1996, the
17 drug offender population in the Department
18 of Correctional Services has dropped 63
19 percent. The number of drug commitments to
20 prison has dropped from 5,190 in 2008 to
21 3,757 in 2010, a decline of 28 percent.

22 To further expand on your question,
23 yes, the 2011-2012 budget does contain
24 funding to carry on the important work

1 that's being done with respect to the
2 redirection of drug offenders in the
3 criminal justice system.

4 ASSEMBLYMAN LENTOL: Thank you.

5 I do want to ask Commissioner Fischer
6 as well as Commissioner Evans about the
7 merger. But before I do that, Senator
8 Nozzolio asked you, Commissioner Byrne,
9 about DCJS's role in the merger, and I
10 wonder if there is collaboration and what
11 DCJS's role will be in terms of the merger
12 of Corrections and Parole.

13 ACTING COMMISSIONER BYRNE: The
14 Department of Correctional Services takes
15 its title very, very seriously, services to
16 everybody in the criminal justice system, as
17 much as we can. Obviously the working load
18 falls on the shoulders of Commissioner
19 Fischer and Chairwoman Evans. The Division
20 of Criminal Justice Services will do
21 everything we can to facilitate that merger.
22 But quite frankly, I'd be insincere if I
23 said we were anything more than a bit player
24 in it. While we'll do everything we can,

1 the tremendous burden falls on my two
2 colleagues.

3 ASSEMBLYMAN LENTOL: Thank you very
4 much.

5 Commissioner Evans, may I just ask you
6 how many people are returned to prison as a
7 result of technical violations in one year?

8 CHAIRWOMAN EVANS: That number would
9 be -- if I could sort of give you a
10 percentage, I would say about 22 percent.

11 ASSEMBLYMAN LENTOL: In round
12 numbers, in real numbers, is it 10,000,
13 5,000, 15,000?

14 CHAIRWOMAN EVANS: Less than 10.

15 ASSEMBLYMAN LENTOL: Less than 10.
16 And has that number gone up or does it go
17 down?

18 CHAIRWOMAN EVANS: That number has
19 since 2007 declined significantly, yes. And
20 we would attribute that to our alternatives
21 to incarceration, our reentry services, and
22 the relationships that we have in the
23 communities.

24 ASSEMBLYMAN LENTOL: And who makes

1 the determination now as to whether or not a
2 technical parole violator goes back to
3 prison or doesn't go back to prison?

4 CHAIRWOMAN EVANS: The decision is
5 made with staff. And it goes as high as the
6 area supervisor, who runs a bureau. And in
7 case conferences and discussions, the
8 decision is made whether or not all
9 alternatives have been sought in a
10 particular case, whether graduated responses
11 have been entertained. And then a decision
12 is made whether or not to issue a technical
13 warrant.

14 ASSEMBLYMAN LENTOL: And I assume the
15 people who make those decisions are seasoned
16 veterans in the Division of Parole who
17 understand who are the serious violators and
18 who are the persons who are not?

19 CHAIRWOMAN EVANS: Yeah, we utilize
20 all of our resources and all of our
21 intelligentsia, if you will, to make
22 informed decisions. And we constantly are
23 training our staff on how to do it.

24 ASSEMBLYMAN LENTOL: So I guess what

1 concerns me and what would concern the
2 public is do you see -- and I can ask both
3 Commissioner Fischer and you -- a difference
4 that could be made in public safety by
5 different folks maybe deciding the question
6 of who goes back to prison and who doesn't,
7 assuming that you know now those people who
8 are most likely to reoffend and who are
9 violent, and maybe a new agency might not?

10 CHAIRWOMAN EVANS: Those kinds of
11 things have still yet to be worked out. You
12 know, costs for implementing the merger.
13 But we will have ongoing discussions about
14 that decision.

15 Of course, the agency will now be
16 merged with Corrections, and it will be
17 known as Community Services. But I think by
18 and large there's nobody better than the men
19 and women in the offices of the Division of
20 Parole who can make that judgment.

21 ASSEMBLYMAN LENTOL: Thank you.

22 Commissioner Fischer?

23 COMMISSIONER FISCHER: Let me add
24 something, and also to give credit to Sean

1 Byrne a little more than he chose to take it
2 on his own.

3 DCJS is a sister agency to Parole and
4 Corrections. We are collaborating on many,
5 many issues. In fact, they're the funding
6 agency that we work with, along with Parole,
7 for all our reentry task forces, for all our
8 reentry programs, for some of the programs
9 that are provided through the Behring funds
10 and ARRA funds. So we have a working
11 relationship with DCJS. It's not them and
12 us versus; it's us, all three of us.

13 As regarding the return of parole
14 violators, I want to give credit to Parole.
15 Between last year, 2010, and 2007, there was
16 a 19 percent drop in technical parole
17 violators. So we are doing very well.

18 And I want to use the argument of the
19 Edgecombe Correctional -- we call it
20 in-house the Edgecombe Parole Diversion
21 Program. Again, this is why the marriage
22 just seems to simply just make sense. By
23 working together with Parole and OASAS,
24 we've turned a prison into a parole

1 diversion program. Rather than send them
2 back upstate, individuals with technical
3 violation issues, especially drugs, are
4 transferred into Edgecombe, by the parole
5 officer, who takes them to Edgecombe. My
6 staff, DOCS staff, takes them in. During
7 the time that he's with us, Parole,
8 Corrections and OASAS people work with him,
9 and the same parole officer who brought him
10 in comes and gets him, takes him back out.

11 So we have that relationship. I think
12 there may be an overestimation of how
13 different we are when in fact we are really
14 very close to doing the same thing all the
15 time.

16 ASSEMBLYMAN LENTOL: I'll tell you
17 what worries me, though. And I know I'm
18 beyond my time, but I think what worries me
19 and what worries the public and the members
20 of the panel, maybe -- and we're all
21 interested in the same thing, public safety.
22 But in this fiscal crisis that we're in, we
23 do want to make savings. As you said, in
24 bed space, we need to make savings there.

1 We have to make savings in prisons. And we
2 may be able to consolidate and save a lot of
3 money.

4 And in the interests of saving money,
5 the decision made by a correction officer
6 may be -- there may be a little conflict of
7 interest there. Because he understands that
8 when they're making this decision, he's
9 helping the new division save money when he
10 makes a decision about returning a parole
11 violator.

12 And that's what concerns me, because I
13 don't expect that from the Division of
14 Parole, because they know these guys.
15 They've worked with them over the years.
16 And somebody from Corrections may not.

17 COMMISSIONER FISCHER: Well, I don't
18 see us replacing Parole staff with
19 Correction staff or replacing Correction
20 staff with Parole staff. It's the job
21 function that will determine who's best
22 suited to do the job. Clearly, Corrections
23 people are not authorized to do community
24 service. By law, only parole officers have

1 the authority to be in the community. So
2 there is automatically that division.

3 The issue becomes who's best suited to
4 handle the reentry issue while they're in
5 prison. And I think both Andrea and I both
6 agree there's got to be a marriage between
7 our correction counselors and our parole
8 officers, again, to come up with the best
9 reentry program that is available.

10 I also would like to remind everybody
11 that the Parole Board will remain
12 independent. The ALJs are the -- if you'd
13 call the legal authority to review all
14 violations. Nothing changes. The same
15 policies and procedures that are in place
16 today basically will be in place with the
17 new entity, because we know it works.

18 And I think I would have to say that --
19 I speak for myself, obviously, but I think I
20 would speak for anybody who follows me.
21 Corrections commissioners are not in the
22 business of adding people to the prison
23 system. I don't think the Governor would
24 let me. Certainly this panel would not let

1 me do it. And I think we have a good vision
2 of what we can do better if we're put
3 together.

4 CHAIRWOMAN EVANS: Assemblyman, there
5 are also some tools that we share in common,
6 the tools of reentry that have -- now we
7 know that evidence has proved, evidence-
8 based practices have proved that we can use
9 those tools to make better assessments about
10 how we will move a prisoner from entry point
11 to release point and continue that
12 throughout their time on parole supervision.

13 And we are in the process of training
14 our staff, and we hope tools like our
15 transition accountability plan -- we have
16 fully trained our Parole staff and we are in
17 the process of training Corrections staff,
18 sharing in that training, and moving to
19 several facilities where staff will now be
20 piloting the projects.

21 ASSEMBLYMAN LENTOL: Thank you. I
22 think my time is twice up.

23 CHAIRMAN DeFRANCISCO: Thank you.
24 Senator Bonacic.

1 SENATOR BONACIC: First of all, let
2 me thank you all for the job you do under
3 these difficult economic times. And your
4 job is getting more difficult because of the
5 economic squeeze that's being imposed upon
6 you.

7 I just have a couple of quick
8 questions. I'd like to start with
9 Commissioner Byrne.

10 In the past, the Operation IMPACT has
11 been wonderful tool for our cities. I have
12 a couple, Port Jervis and Middletown. You
13 know Kingston, not far from your home
14 county. Your office was very helpful with
15 the spike in violent crime in cities two
16 years ago. You helped the City of
17 Middletown Police Department and its
18 community.

19 In this budget, with respect to
20 community IMPACT tools, is there going to be
21 any elimination or diminution in that
22 category, if you know?

23 ACTING COMMISSIONER BYRNE: Well,
24 Senator, Governor Cuomo's budget proposes a

1 large lump-sum appropriation that
2 includes -- that will be used for many, many
3 purposes. That appropriation is subject to
4 distribution by a plan that will be arrived
5 at by the commissioner of DCJS. I'm going
6 to be obligated to take into account things
7 like performance measures and outcomes.

8 As noted by Governor Cuomo in his
9 budget presentation, there will be a heavy
10 emphasis on these two points, performance
11 measures and outcomes. The Division of
12 Criminal Justice Services has some very
13 significant experience in that, and you're
14 familiar with it because you've watched the
15 IMPACT program over these years. You know
16 that most of our contracts, like IMPACT, are
17 performance-based. In the future, every
18 contract is going to be performance-based.

19 We believe that this approach will
20 result in better outcomes, performance
21 outcomes by the people in the community, and
22 be less burdensome, from the administrative
23 perspective, on the communities.

24 We think that we can help local

1 governments work with reduced resources and
2 in so doing still achieve the same or better
3 outcomes. As Senator Nozzolio said a moment
4 ago, Governor Cuomo is prepared to allow no
5 retreat on violent crime or, for that sake,
6 on recidivism either. He wants to make sure
7 that the rate of recidivism goes down, that
8 the time to crime goes down, and that
9 violent crime continues its historic trend
10 with further downward directions.

11 SENATOR BONACIC: Thank you.

12 Commissioner Fischer, I want to
13 piggyback a little bit on the cell and the
14 two prisoners that Senator Nozzolio got into
15 before.

16 How many cells in the system are
17 double-bunked, if you know? Approximately.
18 I think you referred to about 59,000.

19 COMMISSIONER FISCHER: I do want to
20 give you the exact -- about 870 double cells
21 which were not built for two people. See,
22 we have cells that were built deliberately
23 to house two people, and there are the cells
24 that the Senator references, those in the

1 older facilities like Auburn and Attica.
2 There's about, I want to say, 817, 816. I
3 don't have the exact figure.

4 SENATOR BONACIC: That's okay. But
5 you indicated that for the past 15 years it
6 appears to be working well. And it's not a
7 safety hazard to the prisoners, I would
8 assume, when you made that statement.

9 COMMISSIONER FISCHER: Yes.

10 SENATOR BONACIC: Okay. But when it
11 comes to the county jails that have to be
12 constructed, and the design, you do not
13 allow double-bedding in those cells when it
14 comes to the amount of cells that have to be
15 built in county jails? It seems to be a
16 double standard. And I'd like you to
17 comment on it, because I've heard from
18 county officials this particular point.

19 COMMISSIONER FISCHER: I cannot
20 really respond because the standard by which
21 a county facility is built or houses people
22 is held by the State Commission on
23 Correction, not the New York State
24 Department of Correction. I have no

1 jurisdiction over a county jail, how they
2 handle their offenders and how they build
3 their facilities. That's under SCOC.

4 SENATOR BONACIC: Okay. It just
5 seems to be a contradiction in policy when
6 it comes to how we operate our prisons, with
7 double-bunking in the state prisons and yet
8 not allowed when it comes to design and the
9 building of county jails.

10 Hence, the cost's going up, whether
11 it's a concern for prisoner safety, whether,
12 you know -- if it's coming out of the county
13 taxpayers' pocket, then we can have a
14 different policy than if it's coming out of
15 the state taxpayers' pocket, even though
16 they're the same.

17 COMMISSIONER FISCHER: If you don't
18 mind an opinion from me --

19 SENATOR BONACIC: Yes, I would like
20 your opinion. That's why I went into this
21 area.

22 COMMISSIONER FISCHER: A county jail
23 is forced to deal with people who are
24 literally taken off the street. Many, many

1 times you don't know who are -- you don't
2 know their medical condition, you don't know
3 their mental health condition. So if I'm a
4 county sheriff running a jail, I really
5 don't want to put two people I don't know
6 very well in a single cell, one cell.

7 I have the option, before I put a
8 person in a double cell, we have a policy.
9 Both persons are looked at very carefully in
10 terms of their history -- their criminal
11 history, their violent history, their mental
12 health history, are they predators or
13 nonpredators, are they victims. So we say,
14 and very -- I can do these things: If you
15 are a victim, you will not be placed in a
16 double cell. If you're a predator, you will
17 be in a single cell.

18 Running a jail doesn't -- I don't have
19 those options. I don't know who you are.
20 And in many, many cases, because of the bail
21 system, the person can be in the jail
22 24 hours, 48 hours. I would recommend, if I
23 had my druthers, to keep it single cell in a
24 county jail because I don't know who they

1 are. As opposed to a prison system, where I
2 can control it, I have more information
3 regarding those prisoners. That's all.

4 SENATOR BONACIC: Thank you.

5 CHAIRMAN FARRELL: Assemblyman Jeff
6 Aubry.

7 ASSEMBLYMAN HAYES: Mr. Chairman,
8 excuse me. Just for the record, we're
9 joined on this side by Assemblyman Cliff
10 Crouch.

11 CHAIRMAN FARRELL: And we're joined
12 also by Assemblyman Gary Pretlow.

13 Jeff Aubry.

14 ASSEMBLYMAN AUBRY: A lot of issues
15 have been raised and we probably could talk
16 all day, but I know we don't have that time.
17 But really following up a little bit on
18 where you were, the State Commission of
19 Corrections is now being placed under the
20 new agency, is that true?

21 ACTING COMMISSIONER BYRNE: (Nodd
22 ing.)

23 ASSEMBLYMAN AUBRY: Okay. And you
24 are modifying that state commission based on

1 the removal of two of its full-time
2 employees. Would you explain how that works
3 and the two areas that are now going to be
4 overseen by one commission?

5 ACTING COMMISSIONER BYRNE:

6 Certainly, sir.

7 The Governor's budget proposes the
8 merger of the State Commission of
9 Corrections into the Division of Criminal
10 Justice Services. That also includes the
11 Medical Review Board, which is what I
12 believe you're alluding to. The
13 administrative functions of the agency will
14 be merged with DCJS. However, the
15 commission and the Medical Review Board
16 itself will absolutely retain its
17 independence and constitutional mission. As
18 you know, SCOC is already hosted by DCJS,
19 and we don't currently interfere with SCOC's
20 performance of its mission as it is.

21 I also want to hasten to add,
22 Assemblyman Aubry, that the Governor's SAGE
23 Task Force is taking a very serious look at
24 the SCOC structure, including the Medical

1 Review Board. And I believe they're going
2 to have a lot to contribute to this
3 conversation and to the very thing that
4 you're asking about.

5 ASSEMBLYMAN AUBRY: We this year had
6 a significant number of suicides in the
7 prison system. And I'm concerned about, as
8 the commission is now composed, it seems to
9 take a very long time to get reports back.
10 And it is their requirement to discuss and
11 tell us and advise us on what went on, what
12 were the results of studies there, what kind
13 of changes might need to be made.

14 And I'm concerned that once again --
15 well, here's a commission that has
16 historically been underfunded by governors
17 almost as long as I've been in the
18 Legislature. And now will it have the
19 capacity to give us information that we need
20 in a timely fashion? It hasn't up until
21 this period of time.

22 ACTING COMMISSIONER BYRNE: Let me
23 try and answer that in two parts.

24 The first part is that the commission

1 is of course very concerned about and
2 investigating those deaths that you made
3 reference to. And they do absolutely the
4 best job that they can within what they have
5 available to accomplish this.

6 And in fact, one of the proactive
7 things that they have been championing, in
8 an effort to drive down the rate of
9 suicides, is telepsychiatry. It's something
10 that's already being used in a handful of
11 locations by the Department of Correctional
12 Services and by local jails, and it holds
13 some promise to get mental health treatment
14 services to those who need it in a better
15 and more efficient way. So that's the first
16 part of the answer.

17 With respect to the bit about them
18 being historically underfunded, I do want to
19 repeat something that I said before. And
20 that is that the four agencies that are
21 proposed to be merged into one, we have
22 similar staff doing similar functions. We
23 have four counsels offices, for example.
24 And those functions are important, but there

1 can be a synergy, an efficiency that would
2 be realized by the merger that would allow
3 each of the separate agencies to do a
4 better, more effective job at its core
5 mission. In this case, the State Commission
6 of Corrections could focus all of its
7 resources on its monitoring
8 responsibilities, including suicides within
9 jails and prisons.

10 ASSEMBLYMAN AUBRY: I'll follow that
11 up with there are a number of things that
12 have been suggested that can be accomplished
13 by the merger. When will we in full detail
14 understand what those issues are? Will we
15 see them midyear? Will we have to wait
16 until next year's budget to understand how
17 this merger will work in very concrete terms
18 and what the economics of these potential
19 joining of agencies together will bring to
20 us? Or is what you're presenting to us now
21 the fait accompli of what we'll see in terms
22 of the development of this agency?

23 ACTING COMMISSIONER BYRNE: No, sir,
24 I think that you can look at our immediate

1 past experience as a model for what you
2 should expect. The 2010-2011 fiscal budget
3 included a merger of the Division of
4 Probation and Correctional Alternatives into
5 the Division of Criminal Justice Services.
6 That merger was accomplished within three
7 months. Already we've seen really important
8 positive consequences as a result of that
9 merger.

10 You may -- I know you know that the
11 budget that passed didn't fully fund
12 alternatives to incarceration. It created
13 challenges for Civil Indigent Legal
14 Services, for Prisoners' Legal Services, for
15 the Legal Action Center. You heard me speak
16 about it in my remarks a while ago.

17 Because of the merger, we were in the
18 position to cobble together funds that
19 allowed us to support all of those functions
20 at the same level they would have been had
21 they been cut only to an amount equal to
22 everybody else.

23 So that experience is something that I
24 think you can draw upon, Assemblyman, to

1 know that the merger of the four agencies is
2 going to drive significant positive return
3 for the State of New York.

4 ASSEMBLYMAN AUBRY: And we can
5 anticipate a reinvestment of savings into
6 those kind of programs? Is that a
7 commitment that the administration is
8 making, that we will have a reinvestment of
9 savings back into the system?

10 ACTING COMMISSIONER BYRNE: Assembl
11 yman Aubry, the concept of a reinvestment of
12 savings back into the system has very
13 sweeping implications. I can tell you that
14 the Division of Criminal Justice's budget is
15 built on ensuring the continuation and
16 enhancement of the core mission purposes of
17 the four agencies. On the reinvestment
18 point, I'm going to defer.

19 ASSEMBLYMAN AUBRY: Okay, thank you.

20 The Parole/DOCS merger, some of my
21 colleagues were concerned that Parole would
22 be used to reduce the size of the prison
23 population. And I'm of the opposite ilk.
24 I'm concerned that that merger, that

1 Parole -- again, an agency which we've
2 fought to keep in the budget at a stature
3 that is commensurate with its importance to
4 criminal justice -- might lose in this
5 capacity.

6 Is there any diminution of parole
7 officers in the budget that is being
8 proposed?

9 CHAIRWOMAN EVANS: Not at this
10 juncture.

11 ASSEMBLYMAN AUBRY: And is there any
12 diminution of correction officers that is
13 proposed in this merger?

14 COMMISSIONER FISCHER: Only that
15 which we related to the closures of
16 facilities and attrition rates, that if the
17 facilities shrink or the agency shrinks,
18 clearly the staff needs are different.

19 But I believe that Parole and
20 Corrections are always based on numbers,
21 ratios. So if the population continues to
22 go down in Corrections but goes up in
23 Parole, the agency has to be recognizing
24 that factor and adjust for it. If there are

1 less people on parole, then obviously the
2 agency will adjust for that as well.

3 ASSEMBLYMAN AUBRY: You have an
4 historic relationship -- Parole, DOCS, and
5 OASAS have been collaborating on a number of
6 issues. Is that continuing in this fiscal
7 plan? Is it anticipated that we will have
8 that kind of collaboration related to drug
9 abuse services for parolees and inmates?

10 COMMISSIONER FISCHER: We've got
11 commitment from OASAS to continue the
12 funding for the program at Edgecombe and at
13 Bayview. The three of us are going to be
14 talking about can we do similar work by
15 reassessing our work out of the Orleans
16 reentry program. OASAS has some funding for
17 it. It's available, we just have to come up
18 with a better plan to access it.

19 OASAS also, though, does fund the Phase
20 2 of the CASAT program in the western part
21 and the northern part of the state, so that
22 that will continue as well. People who
23 graduate from CASAT and go on parole will
24 continue to be involved in outpatient drug

1 treatment through the funding of OASAS.

2 ASSEMBLYMAN AUBRY: I understand that
3 the executive order to establish the
4 commission is being released today. Is that
5 what you presented to us, that closure?

6 COMMISSIONER FISCHER: Yes, the
7 executive order was issued sometime this
8 morning.

9 ASSEMBLYMAN AUBRY: Sometime this
10 morning. So we haven't yet seen that,
11 because we've been here.

12 COMMISSIONER FISCHER: Sorry about
13 that.

14 ASSEMBLYMAN AUBRY: Well, I'm sure
15 there's a plan in everything.

16 (Laughter.)

17 ASSEMBLYMAN AUBRY: Can you tell me
18 when that commission starts?

19 COMMISSIONER FISCHER: It will start
20 within 10 days of the enactment of the state
21 operations appropriation bill.

22 ASSEMBLYMAN AUBRY: So when we've
23 passed the budget, we will begin a process
24 of then looking at the facilities. So we

1 will pass a budget that will monetarily
2 advance the closure of facilities, and then
3 we will look at what facilities will be
4 closed. And how will that impact the budget
5 that you propose?

6 COMMISSIONER FISCHER: Well, the
7 budget proposal assumes that one way or
8 another we will be able to save money by
9 redefining what's going to stay, what's
10 going to go. The 3500 beds. There's a
11 target of \$72 million in savings through the
12 use of the task force to determine how best
13 to basically re-alter or reconfigure the
14 Department of Corrections.

15 Obviously, if there are some changes
16 that may occur, then the Division of Budget
17 will have to respond to that as well.

18 ASSEMBLYMAN AUBRY: So that could
19 give us sort of a wandering number that
20 we'll be working with, right? Because if it
21 takes us a month -- I presume it's a month
22 that we have to make these momentous
23 decisions?

24 COMMISSIONER FISCHER: That's

1 correct.

2 ASSEMBLYMAN AUBRY: Okay. So in a
3 month we have to figure out what combination
4 of facilities are going to be closed to
5 achieve a 3500-bed reduction. And if we
6 don't do that, as I understand it, that
7 power to make that decision is given
8 automatically to the commissioner of the new
9 agency.

10 COMMISSIONER FISCHER: Correct.

11 ASSEMBLYMAN AUBRY: And how long will
12 that commissioner have to make his decision
13 or her decision or their decision?

14 COMMISSIONER FISCHER: Rather
15 quickly.

16 ASSEMBLYMAN AUBRY: Rather quickly.
17 And are we going to be presented, presuming
18 the we -- that is, the legislators who will
19 be on that commission -- are we going to be
20 presented with a potential plan for these
21 closures?

22 COMMISSIONER FISCHER: No. The goal
23 that the Governor has set forth is to
24 present the entire system as it is: What we

1 have, why we have it, where it is.
2 Understanding that there is an opportunity,
3 if you would, to save some money based on
4 the 3500 beds that we could consolidate or
5 close.

6 So it is not for me for to simply say
7 here's my best set of recommendations. I
8 think the Governor, and rightly so, is
9 saying come together, let me lay out what
10 the system is, let me educate the task force
11 on why do we have what we have, why do we
12 have special needs programs, where is our
13 mental health programs.

14 Only after we all see what the prison
15 system is, I think, can we make an honest
16 assessment as to what you want to curtail,
17 change, modify. So that would be the
18 emphasis of the task force.

19 ASSEMBLYMAN AUBRY: And I certainly
20 appreciate the graciousness of the Governor
21 to give us this responsibility.

22 (Laughter.)

23 ASSEMBLYMAN AUBRY: But my problem is
24 I've got to believe that there's knowledge

1 already in this administration of what you
2 want to do. And while I'm more than happy
3 to go through the process of having you
4 present to us all of that systematic
5 description of the system, in the long run,
6 if we can't come to a decision, you're going
7 to have to make a decision very quickly.
8 And I can't believe that there's no plan
9 there to meet that 3500-bed number.

10 And I'm not opposed to -- even for
11 me -- having that plan on the table from the
12 professionals, as opposed to what one might
13 assume is a show and tell for us to stand
14 around and listen to some very good
15 information when we're about the business of
16 making some very hard decisions. And I'm
17 only speaking for myself.

18 COMMISSIONER FISCHER: You raise a
19 good point, and I understand why you're
20 doing that.

21 But to be fair to the communities that
22 may be impacted, if you're asking me as the
23 commissioner to decide or make
24 recommendations, my first priority, if you

1 would, would be what can I afford -- as
2 opposed to what is the impact on the
3 community, on the workforce.

4 I think the Governor is looking for the
5 task force to take into consideration the
6 impact on the community, the impact on the
7 workforce, in addition to all of the other
8 things that affect the facilities and the
9 agency. So I think this is a different kind
10 of opportunity than we had in the last two
11 or three years.

12 ASSEMBLYMAN AUBRY: And again, I
13 thank the Governor for such graciousness in
14 putting us in that position.

15 And that will move me to this
16 \$100 million capital money, if I'm made to
17 understand, that is now going to be
18 available for any community where a facility
19 is closed. Is that as I understand it?

20 COMMISSIONER FISCHER: Up to
21 \$10 million per community, through the
22 efforts of the State Economic Development
23 Corporation, yes.

24 ASSEMBLYMAN AUBRY: And so for those

1 communities that may be identified as losing
2 a facility, how are they to be involved in
3 the decision of how that money is to be
4 spent? This may be a conversation that
5 should be had with Economic Development, but
6 I presume it starts here and then works its
7 way down to the economic development
8 agencies. Who have not necessarily in the
9 past shown much interest in this effort,
10 because we've talked about -- we've had
11 legislation asking them to get involved in
12 creative plans to assist communities who may
13 have lost facilities. And we've already
14 closed some facilities, and I don't know
15 that we've accomplished any creative plans.

16 CHAIRMAN FARRELL: Jeff, you've done
17 your second, too.

18 COMMISSIONER FISCHER: I've taken the
19 step, if you would, to recommend --

20 ASSEMBLYMAN AUBRY: I've gone through
21 my time, and so I guess this is a
22 conversation to be continued.

23 COMMISSIONER FISCHER: Well, I would
24 like to get on the record, though, that I

1 have the recommendation, and I believe it
2 will certainly be well received, to include
3 the Economic Development Corporation at the
4 table so that, as you indicated, the
5 communities will know up front what is
6 available, what is possible before we make
7 any final decisions.

8 ASSEMBLYMAN AUBRY: And just one last
9 thing. I believe the merger absolutely
10 gives us an opportunity to better protect
11 public safety and to provide services to
12 communities and make us safer and have a
13 better system. So don't interpret my
14 questions as being negative on that.

15 CHAIRMAN DeFRANCISCO: Senator
16 Hassell-Thompson.

17 SENATOR HASSELL-THOMPSON: Thank you,
18 Mr. Chairman.

19 I guess I wanted to follow exactly
20 where he finished, because I was just
21 writing and developing my questions around
22 whether or not the task force is going to be
23 tied to the \$10 million awards. And who
24 makes the recommendations? How is there an

1 RFP? What is going to be the process?

2 COMMISSIONER FISCHER: That's an
3 excellent question. I think that's what
4 Assemblyman Aubry was leading to, how do we
5 include the Economic Development Corporation
6 policies and procedures into the
7 understanding of what is available to the
8 communities. And I think that will be dealt
9 with between now and the time the task force
10 is established.

11 SENATOR HASSELL-THOMPSON: Do you
12 think that short window that is written into
13 the executive order is going to be ample
14 time for you to be able to, number one,
15 make -- for the task force to make those
16 recommendations about the prison closures
17 and, number two, be able to facilitate a
18 plan that makes sense for the communities in
19 a timely fashion so that there is an
20 operating plan by which these \$10 million
21 could in fact be distributed?

22 COMMISSIONER FISCHER: I think it
23 can, because it's not going to be all done
24 in 30 days. The 30-day window is to decide

1 which is the best approach to operate. Then
2 there will be a phase-in plan for whatever
3 we do in terms of the Corrections
4 Department. So we're not talking about the
5 next day, we're talking maybe another 60,
6 90, 120 days, whatever it takes.

7 And during that time -- and not every
8 facility -- if in fact we do close a number
9 of facilities, they're all not going to
10 close at the same time. So there will be a
11 phase-in at which time both Corrections and
12 Economic Development will be working with
13 the communities.

14 So I believe the decision-making has to
15 be made rather quickly because of the fiscal
16 restraints we all have. But the
17 implementation can be delayed in the best
18 interests of both the community and the
19 department.

20 SENATOR HASSELL-THOMPSON: If the
21 facility closes and there becomes an
22 immediate impact on the unemployment of that
23 community, how does that planning time that
24 you speak to be beneficial to those

1 communities?

2 COMMISSIONER FISCHER: Well, I don't
3 know that would happen. But that would be
4 an issue that was raised -- would be raised
5 by the task force. And the economic
6 development people would have to, as well as
7 the community itself, have to decide what is
8 the best alternative, what is the time
9 frame, what is the next step that we all
10 need to do.

11 I will say that when -- and I know it's
12 an impact on the communities. But we've
13 been very successful by the manner in which
14 we have closed facilities in terms of the
15 workforce of Corrections -- of
16 Corrections -- in terms of being able to
17 find other positions for them within the
18 department. So the emphasis will be what
19 works best for the workforce, can we
20 accommodate them in other facilities, and
21 then what works best for the community in
22 terms of reinvestments.

23 SENATOR HASSELL-THOMPSON: One more
24 question for you. And of course you know

1 it's going to be the question on SHU.

2 How does this budget impact the plans
3 going forward for the SHU?

4 COMMISSIONER FISCHER: You know the
5 answer is on July 1 we will meet the
6 deadline as statutorily required to open up
7 the second residential mental health unit.
8 We will complete the SHU exclusion bill
9 requirements by July 1.

10 SENATOR HASSELL-THOMPSON: Okay, I
11 didn't know that. That's why I had to ask
12 the question.

13 COMMISSIONER FISCHER: No problem.

14 SENATOR HASSELL-THOMPSON: Okay,
15 thank you.

16 Commissioner Byrne, you're not off the
17 hook. I've got stuff for you.

18 (Laughter.)

19 ACTING COMMISSIONER BYRNE: Good for
20 you, Senator.

21 SENATOR HASSELL-THOMPSON: You know,
22 as somebody who has had varying
23 responsibilities for Crime, Crime Victims
24 and Corrections for about six years, and

1 chaired the committee for two, and looked at
2 this budget with a fine eye and looked at
3 structures of this budget for a very long
4 time, it somewhat concerns me that the
5 establishment of this commission will remove
6 the independence as a public watchdog over
7 the conditions at prisons and jails.

8 And I heard you say, I think, in your
9 presentation that it will not in fact have a
10 constitutional interruption. I'm not clear
11 that that's correct. Because one of the
12 things that the commission's
13 responsibilities is to -- is to have a
14 staff. And if I understand the reading of
15 the budget, the staff now is hired and
16 placed by you, the commissioner, as opposed
17 to its previous commitments.

18 So how, then, can it carry out its
19 responsibilities if in fact they have to
20 come to you as the subordinate and ask for
21 resources, staff, and capacity in order to
22 carry out their responsibilities?

23 ACTING COMMISSIONER BYRNE: Well, let
24 me start by saying that the Governor will

1 still appoint the chairman of the
2 commission.

3 SENATOR HASSELL-THOMPSON: Oh, and
4 that bothers me too, because -- we're going
5 to get to that, because that takes power
6 away from the Senate. So I was going to
7 speak to that.

8 ACTING COMMISSIONER BYRNE: Okay.

9 Well, as I mentioned earlier in my
10 presentation, we put great value on the work
11 of the Commission of Correction. We have
12 other independent entities that exercise
13 significant powers within the Division of
14 Criminal Justice Services, or associated
15 with it.

16 For example, our Juvenile Justice
17 Advisory Group is empowered with the
18 obligation to come up with a plan for
19 juvenile justice in New York State, and it's
20 done, that is requirement is set by federal
21 statute.

22 SENATOR HASSELL-THOMPSON: But they
23 don't have a watchdog responsibility over
24 your agency. Or over the corrections. They

1 don't have a watchdog responsibility.

2 ACTING COMMISSIONER BYRNE: The
3 Commission of Correction will continue to
4 perform that watchdog function over the
5 jails going forward -- and, to the extent
6 that it currently does so today, over the
7 Department of Correctional Services as well.
8 That function won't be interfered with,
9 Senator.

10 SENATOR HASSELL-THOMPSON: But you
11 hire the staff.

12 ACTING COMMISSIONER BYRNE: The
13 legislation would give to the commissioner
14 of DCJS the authority to hire the staff
15 going forward, yes. Yes, Senator.

16 SENATOR HASSELL-THOMPSON: Right,
17 exactly. So whose loyalty, then --

18 ACTING COMMISSIONER BYRNE: I want to
19 return --

20 SENATOR HASSELL-THOMPSON: Whose
21 loyalty, then, is the staff to? Is it to
22 the commission or is it to DCJS?

23 ACTING COMMISSIONER BYRNE: It's to
24 the mission of protecting the people that

1 are in the jails and prisons of the State of
2 New York and making sure that they are there
3 under humane and appropriate standards.

4 I do want to hasten to remind you that
5 the SAGE group that Governor Cuomo has put
6 together to look at the issue of reforming
7 and redesigning agencies within the State of
8 New York has on its list of items to take a
9 serious look at the configuration of the
10 Commission of Corrections within this
11 proposal. So that's something that I think
12 there will be more dialogue on and you'll be
13 hearing more about going forward, Senator.

14 SENATOR HASSELL-THOMPSON: I would
15 hope that you would keep me informed. I
16 would appreciate that a great deal.

17 ACTING COMMISSIONER BYRNE:
18 Absolutely. Absolutely.

19 SENATOR HASSELL-THOMPSON: Partly
20 because I think that, you know, we're
21 talking about budgetary considerations, but
22 I think that in this recommended budget for
23 the commission the function is \$2.9 million
24 and that's being totally transferred to

1 DCJS.

2 So I'm also not clear where all this
3 savings is, because the monies that -- I
4 didn't see any cuts to that, and that entire
5 amount is going to go over into the agency.
6 Where are the savings?

7 ACTING COMMISSIONER BYRNE: Senator,
8 I understand that the Division of the Budget
9 factored in a savings of \$460,000 as a
10 consequence of the merger of the four
11 agencies together.

12 However, that's only the beginning of
13 the story. While there are clearly budget
14 efficiencies that will be realized, the four
15 agencies are going to be better situated to
16 pursue their core function, to focus on the
17 work of inspecting and visiting the jails
18 and correctional facilities in the State of
19 New York; in the case of the Commission of
20 Correction, to do thorough investigations of
21 suicides within those facilities, as was
22 brought up by Assemblyman Aubry.

23 Those functions are going to now be
24 enhanced as a consequence of this merger.

1 They're not going to need to worry about
2 fleet services, financial services,
3 counsel's office, human resources, things of
4 those nature that currently drain time away
5 from the staff of the Commission of
6 Corrections from focusing on their core
7 mission.

8 SENATOR HASSELL-THOMPSON: I believe
9 in consolidations, Commissioner. My
10 conference has recommended many of them.
11 But I continue to believe that when we do
12 consolidations that we have a responsibility
13 to ensure that the agencies have synergy and
14 that there is not competition or conflict of
15 responsibility or law. And I am not clear
16 that that conflict does not occur in the way
17 in which this bill is structured.

18 So I will be very interested to see the
19 findings of SAGE in a very timely fashion,
20 to ensure that the concerns that I have will
21 in fact go away.

22 I know that this is a budgetary
23 hearing, but I also know as legislators we
24 have broad-based responsibilities for policy

1 as well. And so that when we make budgetary
2 considerations, they should not create bad
3 policy. Therefore, you know, I have
4 expressed to you some of my concerns about
5 the constitutionality. This commission was
6 formed in the 1900s, as you know, as a
7 watchdog over the health and conditions of
8 prisons. And during the Attica riots the
9 need for an independent commission became
10 even more critical as an explosive violence
11 shocked the public's sensibilities.

12 Recently there was a prisoner strike in
13 the Georgia prison system, which is a
14 reminder to us that we need to have an
15 independent assessment of prison conditions
16 to ensure that prisoners are treated
17 humanely and fairly. And that might not be
18 the concern of everyone on this panel, but
19 it certainly is a major concern of mine.

20 And gutting the staff and the
21 regulatory powers and the Senate
22 confirmation authority from the Commission
23 on Corrections makes the historic purpose of
24 the commission meaningless. In effect, the

1 merger will change the role of public
2 watchdog to institutional lapdog and will
3 have nothing but the state's number-one law
4 enforcement agency evaluating themselves.
5 Therefore, this proposal troubles me
6 greatly.

7 Thank you, Commissioner.

8 CHAIRMAN FARRELL: RoAnn Destito.

9 ASSEMBLYWOMAN DESTITO: Thank you.
10 Thank you, all of you, for being here. And
11 it's been a very informational dialogue.

12 John Gibb, Commissioner Gibb, the 911
13 surcharge distribution, we've had some
14 office conversation with regard to this.
15 It's about \$230 million, would you agree
16 with that, that is brought in by the
17 cellular surcharge?

18 ACTING COMMISSIONER GIBB: Correct.

19 ASSEMBLYWOMAN DESTITO: The state
20 fiscal year 2010-2011 budget included
21 \$20 million to support grants for the
22 development and consolidation of
23 interoperable public safety communication
24 networks. Have those been allocated? Or

1 when will they be allocated in that grant
2 process?

3 ACTING COMMISSIONER GIBB: The
4 request for applications has been finalized.
5 We have one additional meeting with the
6 State Comptroller's office to go through any
7 concerns they might have with our grant
8 evaluation tools. So it will be on the
9 street in the next couple of weeks.

10 ASSEMBLYWOMAN DESTITO: Okay. As you
11 know, the 911 surcharge, the 911 Directors
12 Association is very concerned about how that
13 money is distributed. And not only do we
14 need an interoperable statewide system --
15 because we did abandon one in the past --
16 but we need 911 operations to be up and
17 running in the counties. And how much money
18 do you allocate for -- I think it's on a
19 formula basis -- to the counties?

20 ACTING COMMISSIONER GIBB: This year,
21 and proposed for next year, it's \$9.3
22 million.

23 ASSEMBLYWOMAN DESTITO: Right. A
24 small amount of operational dollars. And we

1 have heard from 911 coordinators and the
2 counties themselves that they are looking
3 for a larger share of operational money,
4 especially in the light of the fact that
5 they're doing exactly what the Executive has
6 asked everyone to do, and that is to
7 consolidate.

8 How is that formula done? Is it based
9 on population? Is it based on people's
10 efforts to consolidate and save money? Is
11 there any admission that if you do something
12 to bring the cost down of your 911
13 coordination, are you rewarded or do you
14 just send money to counties?

15 ACTING COMMISSIONER GIBB: The
16 history of the funds that have supported the
17 public safety answering points was built
18 upon those 911 centers meeting a standard.
19 So in the early days when the money was
20 distributed to those county PSAPs, not every
21 county participated. And even now we have
22 the City of New York and I think 55 of the
23 counties that are part of the distribution
24 is population-based.

1 The interoperable communications
2 grants, the new program, is going to provide
3 that challenge to counties on a competitive
4 basis to look at ways that they can achieve
5 savings by collapsing 911 centers, by
6 investing in communications projects, small
7 and large, that will provide better regional
8 interoperability within mobile radio
9 systems, and also provide support for state
10 agencies to make sure everyone is equally
11 integrated.

12 ASSEMBLYWOMAN DESTITO: Okay. In my
13 experience in listening to -- and we talked
14 about this at our previous hearing, there
15 are some counties in the state that actually
16 have upwards of 50 PSAPs in one county, and
17 then there are some who are collapsing down
18 to one or two, depending on size. Most are
19 collapsing down to one.

20 I would hope that we would provide
21 operating dollars to the counties that are
22 looking for savings. You know, as we've all
23 been talking about, we're recalibrating,
24 we're right-sizing, we're consolidating.

1 And as we talk today, we're talking about
2 consolidating agencies, with the technology
3 that Melodie Mayberry-Stewart has talked
4 about and that we all know exists today in
5 this area. I would hope that any further
6 money that goes out to the counties and that
7 we put out in an RFP really speaks to the
8 fact that we want to show some savings.

9 ACTING COMMISSIONER GIBB: What I can
10 assure you is that, number one, you know, we
11 recognize this are critical state dollars.
12 And early in my career I ran a county
13 communications center, so I understand the
14 importance of those operations and also the
15 challenges that the 911 center operators are
16 facing.

17 We've done extensive outreach in
18 anticipation of putting this request for
19 applications on the street, so we've really
20 tried to talk to the communications
21 community, including 911 coordinators, to
22 make sure we're factoring their concerns
23 into this grant. And I can assure you that
24 moving forward from the \$20 million this

1 year to the \$45 million next year, we'll be
2 doing an equally careful examination of how
3 that investment works out, how we have to
4 make changes, how we can best meet the needs
5 of those 911 centers and the county
6 communications projects in general.

7 ASSEMBLYWOMAN DESTITO: Thank you.
8 And one more question for you, Mr. Gibb.

9 The department's allocation of federal
10 Homeland Security Grant Program funding, are
11 there any new initiatives as part of this
12 year's grant allocation, or are we staying
13 with the same initiatives?

14 ACTING COMMISSIONER GIBB: The
15 federal emphasis has stayed the same. And
16 again, as you know, we have a number of
17 grant programs that come to us from the
18 Department of Homeland Security.

19 We announced awards in November for the
20 2010 grants. We received those applications
21 back from the City of New York and from the
22 counties I think on December 30th.

23 Currently our staff and the Office of
24 Counterterrorism's grant staff are reviewing

1 those applications to make sure they're
2 consistent with our state investment
3 justifications and the purposes of the
4 federal grants. And we'll be working with
5 each of the recipients really to hone in, to
6 discuss with them to make sure we know how
7 we're buying down the risk through the
8 investment of these funds.

9 ASSEMBLYWOMAN DESTITO: Thank you.

10 Melodie Mayberry-Stewart, could I ask,
11 please? I want to talk about the Chapter
12 500 of the Laws of 2009, the insourcing of
13 up to 500 full-time-equivalent positions.
14 Could you just review the progress, that
15 report that DOB has given us regarding how
16 many positions have been insourced and the
17 savings?

18 DR. MAYBERRY-STEWART: Thank you,
19 Assemblywoman Destito. Regarding the law,
20 we want to thank you also, as well, for
21 championing that law.

22 The insourcing was done to accomplish
23 two things. One was to drive down the usage
24 of consultants, as well as drive down the

1 costs.

2 ASSEMBLYWOMAN DESTITO: Right.

3 DR. MAYBERRY-STEWART: As you
4 mentioned, DOB is charged with monitoring
5 and implementing that plan. The way it was
6 implemented was that each agency was
7 required to develop their plan. DOB then
8 would approve that plan. Each position that
9 you insource needed to be cost-justified.
10 Meaning that as a result of bringing that
11 individual in, you were actually reducing
12 your cost.

13 For our agency, I can report that, as I
14 mentioned before in my comments, we put in a
15 plan to bring in about 72. And I think that
16 was the largest number.

17 ASSEMBLYWOMAN DESTITO: Your agency
18 yourself?

19 DR. MAYBERRY-STEWART: Our agency
20 ourself, yes.

21 ASSEMBLYWOMAN DESTITO: Okay. Could
22 you also comment on what other agencies have
23 done insourcing and savings?

24 DR. MAYBERRY-STEWART: Overall, the

1 report that was issued by DOB, the last
2 report -- and another one is coming out
3 shortly -- about 212 of those positions have
4 been approved. How many have actually been
5 insourced, I can't answer that number. But
6 if you think of the 212 of the 500, we're a
7 little less than 50 percent there of those
8 positions that have been identified and have
9 been requested.

10 In terms of the actual insourcing, I do
11 not know what that number is. And I assume
12 that in the next report that is due to come
13 out shortly by DOB, those numbers will be
14 there.

15 ASSEMBLYWOMAN DESTITO: Okay. Thank
16 you very much. Thank you.

17 CHAIRMAN FARRELL: Thank you.
18 Senator Little.

19 SENATOR LITTLE: Thank you. And
20 thank you to all of you for your
21 presentations. I particularly enjoyed
22 hearing about the success of the
23 consolidation of the two agencies,
24 Commissioner Byrne and my own Commissioner

1 Gibb from Washington County. So thank you.

2 I have questions for Commissioner
3 Fischer, as I'm sure he guessed. But being
4 a Senator representing the district that has
5 recently seen the closure of two facilities,
6 a 200-bed annex, two farms and numerous
7 dormitories, I can attest to the enormous
8 impact on those communities.

9 And I appreciate the fact that we're
10 talking about some economic development
11 money. And I have two communities that
12 would like to see if they can get it now,
13 even though they were closed last year and
14 the year before, because we have no reuse
15 for any of these facilities.

16 And as we go forward with this task
17 force, I tend to agree with Assemblyman
18 Aubry that as difficult as the decisions are
19 that are going to be made -- and I know you
20 have to start figuring and making and
21 planning -- that we need to know in the
22 interests of transparency what facilities
23 are being considered, because of the
24 enormous impact.

1 And I would hope that this wouldn't be
2 something that comes a number of days after
3 the budget. Obviously, it could be 40 days
4 after the budget, this would be the results
5 of the task force, and it's already a done
6 deal and over with and the communities have
7 no recourse. So I would ask that we have
8 some transparency ahead of time.

9 One of the things I'd like to focus
10 on -- and I'll preface my remarks by saying
11 that I voted for the special needs for the
12 mentally ill inmates not to be in the SHUs.
13 But do you have an estimate -- I've visited
14 them, too, the one unit that's at Great
15 Meadows, in Washington County -- of the cost
16 in comparison to the inmate costs? I think
17 it's a multiple of what it costs to care for
18 an inmate.

19 COMMISSIONER FISCHER: Clearly the
20 expense on a per-capita basis for a mentally
21 ill offender, especially in what you refer
22 to as the Great Meadow one -- that's the
23 behavioral health modification program,
24 BHU -- clearly the average cost of an

1 offender is about \$55,000, depending on --
2 an average. When you combine the cost to
3 Corrections, the staff that we use, and then
4 you add in the cost of the Office of Mental
5 Health, we're probably in the neighborhood
6 of over \$100,000.

7 SENATOR LITTLE: Per inmate.

8 COMMISSIONER FISCHER: Per inmate.

9 SENATOR LITTLE: And I see that you
10 have \$320 million in the budget for capital,
11 but you're also building a new 60-bed mental
12 health behavioral program. Is the majority
13 of that money going for that unit?

14 COMMISSIONER FISCHER: The capital
15 that's being built -- I don't know the cost
16 of the capital. But yes, very similar to
17 the 100-bed facility at Marcy, which is,
18 again, a residential mental health unit.
19 Very expensive. This one will be a 60-bed.
20 It's been designed, we hope, to be a little
21 bit more cost-efficient.

22 But the real cost, to be fair to both
23 agencies, is that we're talking about almost
24 a one-to-one ratio of staff to offender.

1 Again, we have to emphasize -- I have to
2 emphasize that we're talking about offenders
3 who have already demonstrated an inability
4 to basically behave within the normal
5 parameters of a prison. And partly because
6 of their mental illness.

7 So you've got very often,
8 unfortunately, a violent offender or a
9 self-mutilating offender or a offender who
10 has compulsions of exposure; they simply
11 cannot be left in a general confinement
12 facility or even, as Senator
13 Hassell-Thompson knows, we don't even want
14 to leave them in the normal special housing
15 unit. So in effect, we have bought into the
16 need for a special mental health clinic
17 program, if you would.

18 I know this is said a lot of times:
19 13 percent of the offenders in our system
20 have serious mental illnesses. They're on
21 the caseload of the mental health program.
22 The ones that you are referring to are
23 those -- granted, it's from that 13 percent,
24 but those are the ones who have demonstrated

1 an inability to function in the general
2 population.

3 So when it comes down to why it's so
4 expensive, I think you have to understand
5 the one-on-one supervision and the security
6 level that we have to provide -- these are
7 maximum-security offenders, maximum-security
8 settings. And frankly, in addition to all
9 that is the cost of medications, which are
10 very expensive.

11 SENATOR LITTLE: And do these inmates
12 stay in this program for the length of their
13 incarceration, or do you actually have some
14 who leave the program and go back to the
15 regular population?

16 COMMISSIONER FISCHER: The goal is to
17 take an offender and stabilize him. And one
18 of the things that OMH and we do, which does
19 work -- and we've experienced that at
20 Sing Sing in the CORP program -- one of the
21 problems that many offenders have is that
22 they don't recognize their illness. Once
23 you begin to recognize your mental illness
24 and you begin to understand what are the

1 triggers, you can progress.

2 And our goal obviously is to take the
3 offender from the special housing unit where
4 he's committed a serious violation, place
5 him in this mental health unit, provide the
6 right kind of treatment, and then return him
7 hopefully to the general population -- or
8 more likely, more likely, to be returned to
9 a less secure, structured mental health
10 program in one of the other facilities, be
11 it an ICP, you know, intermediate program.
12 We have several what I would call
13 less-restrictive and more mainstream mental
14 health programs in each facility.

15 So the goal is you remove them from the
16 crisis situation, stabilize them, and then
17 return them to a more open setting.

18 SENATOR LITTLE: But it's fair to say
19 that it's taking up a huge amount of money
20 of the correctional system. And in our
21 conversations, you and I have talked that
22 some of the rules and regulations that were
23 derived out of the legislation are over the
24 top. And I'm curious if you think that

1 there is some mandate relief -- which is the
2 key word this year -- to try to change and
3 to eliminate some of the mandates required
4 there and somehow get the costs of caring
5 for those mentally ill inmates more in line
6 with what you can do. I know it's very
7 costly; it also takes up a tremendous amount
8 of space.

9 COMMISSIONER FISCHER: I agree. I
10 think probably the most effective way to do
11 that is to allow us to implement the
12 requirements of the statute and give us some
13 time to reevaluate whether or not all the
14 mandates are absolutely necessary.

15 There is some concern whether or not
16 every single offender entering every single
17 special housing unit needs to be evaluated
18 by the Office of Mental Health. We do our
19 own. There's an issue there. The Office of
20 Mental Health has raised that. It's a
21 question of resources. But I think --

22 SENATOR LITTLE: Well, I'm on this
23 mandate relief committee, so perhaps I could
24 sit down with you and we could take some of

1 these mandates back to the commission, which
2 has to have a report by the beginning of
3 March.

4 I have other questions, but I will
5 limit those to a conversation. And perhaps
6 we can sit down and meet on this.

7 COMMISSIONER FISCHER: Absolutely.

8 SENATOR LITTLE: Thank you.

9 CHAIRMAN FARRELL: Helene Weinstein.

10 ASSEMBLYWOMAN WEINSTEIN: Thank you.

11 Commissioner Byrne, a question. I know
12 you've been answering some questions about
13 the proposed consolidation. I wonder -- you
14 mentioned the figure of \$460,000. I wonder
15 how much of that is attributed to the two
16 victim service, victim advocacy agencies,
17 Office of Prevention of Domestic Violence
18 and Victim Services, or if you don't have
19 that breakdown.

20 ACTING COMMISSIONER BYRNE: I don't
21 know that right off the top of my head.

22 ASSEMBLYWOMAN WEINSTEIN: All right.
23 If that could be furnished to the committee,
24 that would be helpful.

1 And in terms of the proposed merger, do
2 you anticipate any issues arising from the
3 apparent conflict of these two victim
4 agencies being housed in an agency that's
5 described as criminal justice and whose
6 primary responsibilities are criminal
7 justice services?

8 ACTING COMMISSIONER BYRNE: No, I
9 don't see a conflict there, Assemblywoman
10 Weinstein. DCJS is the agency of aid to
11 prosecution and aid to defense. We're the
12 agency that funds victim services and rape
13 crisis counselors. We fund reentry and we
14 fund Operation IMPACT. We fund the needs of
15 the criminal justice system.

16 And a balanced system requires exactly
17 that, balance. We put -- in the four years
18 that have passed, we've put tremendous
19 emphasis on domestic violence. It's become
20 a very important focus of the agency.

21 I'm just going to give you a few
22 examples. We're actively working on the
23 National Instant Check criteria to make sure
24 that people who purchase firearms, that

1 their domestic violence background is known
2 and understood at the time that they
3 purchase that.

4 We're completing a DIR database that
5 will make the domestic incident reports from
6 every domestic incident in New York State
7 available to a police officer en route to a
8 subsequent call.

9 We have published annually the Domestic
10 Homicide Report, which I hasten to add --
11 and I know you know -- 44 percent of all of
12 the women killed in New York State in 2009
13 were killed as a consequence of domestic
14 violence, in their own home.

15 We've put a huge priority on domestic
16 violence visiting programs, called our Home
17 Visit Program. We know that domestic
18 violence is a serial crime, and the first is
19 not usually the worst. And there are a few
20 crimes where we know who the criminal is,
21 who the victim is going to be, where the
22 crime is going to happen. We just don't
23 know when.

24 But we frequently have many, many, many

1 warnings because of these DIR reports. We
2 put a tremendous emphasis on focusing on
3 that, because that's an opportunity area to
4 drive down aggravated assaults. And
5 aggravated assaults all too often are just a
6 scenario where the victim was lucky and it
7 wasn't domestic homicide.

8 So crime victims, domestic violence are
9 DCJS's mission. We understand it internally
10 at DCJS, and personally, that crime victims
11 and domestic violence are a high priority
12 for us.

13 ASSEMBLYWOMAN WEINSTEIN: I know at
14 last year's hearing I believe Assemblywoman
15 RoAnn Destito had mentioned that perhaps the
16 notion of calling it the Division of
17 Criminal Justice Services is misplaced and
18 it should be more termed the Agency for
19 Public Safety.

20 I think there is concern,
21 particularly -- and I appreciate what you
22 mentioned about domestic violence. Some of
23 that was long overdue, and the
24 computerization of that was long overdue.

1 The Domestic Violence Office is more
2 than just a criminal justice and focuses
3 more than just on the criminal justice
4 issues. There are other policy issues,
5 legislative policy issues that over the
6 years that I have worked with them on that
7 are unrelated to the criminal justice --
8 what we view as the criminal justice system,
9 but more policy-related, whether it is
10 training programs for people across a
11 variety of disciplines, and also the ability
12 of the office, through the task force, to be
13 at a par with the commissioners of different
14 agencies.

15 So I would like to not use the time
16 here but to have further discussion to talk
17 about how you really -- how all the core
18 functions that you've referred to before,
19 the idea that the core functions will be
20 enhanced, I'm curious how that would happen
21 under DCJS.

22 ACTING COMMISSIONER BYRNE: I would
23 very much welcome that opportunity.

24 And I do want to respond to the first

1 thing you mentioned, which is the name of
2 the agency. Assemblywoman Weinstein, if we
3 merge and the agency is better described by
4 a new title or a new description, then that
5 would be an appropriate consequence of a
6 merger.

7 We think that the name of the agency
8 should describe what the agency does. Right
9 now DCJS provides services to the entire
10 criminal justice system: IT services,
11 grants programs, everything. If we get
12 merged with OPDV and the Office of Victim
13 Services and a new name would be more
14 appropriate, then so be it.

15 ASSEMBLYWOMAN WEINSTEIN: Thank you.

16 CHAIRMAN DeFRANCISCO: The next
17 questioner is Senator Saland.

18 SENATOR SALAND: Thank you, Senator
19 DeFrancisco. Thank you.

20 My first question will be of
21 Commissioner Byrne. Commissioner Byrne, in
22 your testimony you talked about all the 2012
23 contracts being performance-based.
24 Operation IMPACT, is that not in effect a

1 performance-based contract currently, where
2 district attorneys, law enforcement set up
3 certain goals and it's their duty to meet
4 those goals?

5 ACTING COMMISSIONER BYRNE: When
6 we --

7 SENATOR SALAND: I don't have a lot
8 of time, so please give me a yes or no.

9 ACTING COMMISSIONER BYRNE: In the
10 future, Senator Saland, our projects are
11 going to be driven by what the data tells us
12 about need. For example, recently we did a
13 bunch of grants to attack burglary around
14 the state. We didn't just give the money
15 out to a specific burglary jurisdiction, we
16 looked at who had 15 percent --

17 SENATOR SALAND: Let me stop you. I
18 don't have a lot of time. Are you telling
19 me, then, that you're going to change the
20 current contractual situation or the
21 contractual parameters for Operation IMPACT?

22 ACTING COMMISSIONER BYRNE: Operation
23 IMPACT and all of our criminal justice
24 services would be performance-based

1 contracts going forward.

2 SENATOR SALAND: So you're telling
3 me, then, they're not currently
4 performance-based?

5 ACTING COMMISSIONER BYRNE: They are
6 not strictly performance-based. They are
7 not strictly performance -- in some
8 instances, it's revenue-sharing. We're
9 going to change that.

10 SENATOR SALAND: The Governor
11 proposes to in effect block-grant Aid to
12 Localities, taking the number to \$106
13 million, I believe, adding several million
14 and taking out \$14 million, a net loss of
15 \$10 million or \$11 million, blocking it and
16 giving you basically the authority as to
17 what programs shall be funded, the extent to
18 which they shall be funded -- if they're
19 going to be funded at all, because you have
20 total discretion; is that correct?

21 ACTING COMMISSIONER BYRNE: Senator,
22 the Governor's program does include a local
23 assistance block that has an 8 percent
24 reduction in it, or \$9.7 million. The

1 distribution of the funds --

2 SENATOR SALAND: Again, I'm going to
3 interrupt you. And I don't mean to be rude;
4 I apologize. Given the limitations of time.

5 You have discretion over how those
6 funds will be appropriated; is that correct?

7 ACTING COMMISSIONER BYRNE: That's
8 correct, Senator, it's pursuant to a plan by
9 the commissioner.

10 But I would say to you, sir, that today
11 is first day of the dialogue between us
12 about what that should look like. And I'm
13 sure you're going to be talking to the
14 Division of the Budget throughout this whole
15 process.

16 SENATOR SALAND: I'm a little
17 concerned that it might not be a dialogue,
18 that it might be a monologue. That's my
19 main concern.

20 ACTING COMMISSIONER BYRNE: Senator,
21 your input is very, very important.

22 SENATOR SALAND: I look at some of
23 the programs that are currently being
24 funded, not only Operation IMPACT but

1 witness protection, district attorney
2 salaries, defense funds, prosecution funds,
3 and the probation programs. Now, have not
4 virtually all counties, certainly the
5 counties outside of the City of New York,
6 adopted their budgets already? They're all
7 on calendar years.

8 ACTING COMMISSIONER BYRNE: All
9 counties have adopted their budget for the
10 2011 fiscal year.

11 SENATOR SALAND: If in fact those
12 items that were previously lined out under
13 probation were items that they have built
14 into their budgets, their budgets may now
15 find themselves being shortchanged,
16 depending upon which decisions are made as
17 to which of these programs that are
18 currently listed under probation services
19 (a) survive and in what form do they
20 survive, and how is it that that money will
21 be apportioned or appropriated.

22 ACTING COMMISSIONER BYRNE: Every
23 county's budget was subject to being reduced
24 just by virtue of the 8 percent reduction in

1 local assistance. And then within that
2 reduced amount, the competitive process
3 could drive a decrease or it could drive an
4 increase to a given jurisdiction going
5 forward.

6 SENATOR SALAND: Well, can we at
7 least agree that the rules change that has
8 occurred was not given on notice to
9 counties, and there may well be counties
10 that are going to find themselves in a
11 position where they have budgeted for
12 certain probation services based upon these
13 items having been previously lined out;
14 they're no longer lined out, but in this
15 local block grant over which you are the
16 arbiter?

17 ACTING COMMISSIONER BYRNE: There's a
18 chance that those probation budgets could go
19 down for those counties, Senator.

20 SENATOR SALAND: There's something in
21 here -- and I don't know who the appropriate
22 person is to ask the question of -- also
23 relating to counties. There was a \$5
24 million appropriation from the Board of

1 Prisoner Payments for delayed billings from
2 counties. Who would be the person who might
3 be most familiar with that?

4 Apparently it's been reduced to \$1
5 million in this year's budget. I think
6 that's perhaps money that was going to
7 state-readies. And the question I had is,
8 what happens if \$1 million is not adequate
9 for those counties?

10 COMMISSIONER FISCHER: If you're
11 referring to the procedure by which we do
12 not bring people in who are state-readies,
13 there is a funding source to pay the local
14 county jail. The rule basically is we bring
15 them in within 10 days. If we don't, then
16 the reimbursement goes back to the day they
17 were in, when they started.

18 The funding is reduced because we have,
19 in fact, been able to, in the last year,
20 year and a half, to clearly remove people
21 who are state-ready within a matter of a few
22 days. That works well because the county
23 jails and my office of classification and
24 movement are in constant contact, and we've

1 arranged for ready access, if you would, for
2 them to bring them in, or for, in the case
3 of New York City, they'd bring them in.

4 I'll give you a good example of what
5 has worked out because of the county/state
6 agreements. Women were, from the North
7 Country particularly --

8 SENATOR SALAND: If I may --

9 COMMISSIONER FISCHER: Oh, I'm sorry.

10 SENATOR SALAND: If I may, so you're
11 saying that the \$1 million appropriation is
12 adequate to take care of whatever
13 obligations may be for state-readies who in
14 fact are not moved within the required
15 period of time?

16 COMMISSIONER FISCHER: I believe so,
17 yes, sir.

18 SENATOR SALAND: And the only other
19 question I would ask would be let's assume
20 for the moment that it isn't. Where does
21 that money come from?

22 COMMISSIONER FISCHER: It will come
23 out of the Department of Corrections'
24 operating budget.

1 SENATOR SALAND: Thank you.

2 A question, if I might, Commissioner
3 Fischer. How many facilities are designated
4 for reentry?

5 COMMISSIONER FISCHER: In one sense,
6 they all are. We have transitional services
7 programs at every facility. We've
8 designated certain particular facilities for
9 what we created as a reentry unit. Hudson
10 as being one of them, Bayview, Orleans. But
11 we have that kind of program internally at
12 every facility.

13 SENATOR SALAND: And you mentioned
14 Hudson, Orleans and who else?

15 COMMISSIONER FISCHER: Hudson and
16 Bayview. And Queensboro.

17 SENATOR SALAND: And would these
18 facilities handle both medium and max?

19 COMMISSIONER FISCHER: Yes.
20 Actually, they all handle -- yes, they do.

21 SENATOR SALAND: I just have a couple
22 more questions of you, Commissioner.

23 Commissioner Fischer, excuse me. Your
24 printed presentation showed the graph with

1 the peak of 171,000-plus inmates, the prison
2 population around '99-2000, and currently
3 56-plus thousand. Would you be able to tell
4 me what staffing levels were in '99-2000
5 versus staffing levels currently?

6 And would you be able to tell me -- and
7 I don't know if you -- I wouldn't expect
8 that you would know this off the top of your
9 head. Would you be able to tell me with
10 regard to both central office -- where you
11 said you're taking a \$5 million hit, and you
12 mentioned, I think, some 80 IT personnel
13 that you have and whatever else you have
14 there -- what the central office staff may
15 have consisted of at that point some 10 or
16 so years ago versus now? Could you tell me
17 how many COs versus now?

18 And could you tell me -- and perhaps
19 this one you would know more readily -- each
20 correction facility has several deputy
21 superintendents, and they each have
22 different responsibilities. Are there three
23 or is it four? I honestly don't recall.

24 COMMISSIONER FISCHER: I can give you

1 all that information after the meeting in
2 terms of the progression of staffing from,
3 say, 2000 to 2010. But I will have to put
4 some notes on it, and here's why.

5 You could have a facility that actually
6 has expanded. For example, Marcy did not
7 have a 100-bed mental health unit. It does
8 today. So the staffing at Marcy actually
9 will go up, as opposed to another facility
10 where the staffing might have gone down.

11 As far as the central office, I can
12 provide that as well over the last several
13 years, as well as what we project for next
14 year.

15 SENATOR SALAND: And how many deputy
16 superintendents are customarily or generally
17 at a correction facility, and what is their
18 responsibility?

19 COMMISSIONER FISCHER: Generally
20 speaking, for a maximum-security prison and
21 a large medium-security prison over 900,000,
22 you have a superintendent and you have three
23 deputy superintendents, one for security,
24 one for programs and one for administration.

1 At some of our facilities where you have a
2 regional medical unit, you have a fourth
3 deputy who is in charge of the medical unit,
4 which is a separate unit that basically
5 provides all the medical services for not
6 only that facility but others. So you could
7 have four.

8 At the smaller facilities, you may only
9 have, at a camp or a minimum-security, a
10 superintendent and maybe an assistant
11 superintendent, maybe just a captain,
12 depending on the nature and the size of the
13 facility.

14 But generally speaking, it is three
15 deps and a superintendent.

16 SENATOR SALAND: And has that been
17 the flowchart, so to speak, since 2000,
18 since 1990?

19 COMMISSIONER FISCHER: Since forever,
20 yes.

21 SENATOR SALAND: It's been forever.
22 Just -- this will be more of a comment than
23 a question. And I think it was in response
24 to something Senator Bonacic had asked you

1 about the double-bunking issue, and you
2 distinguished between the state facilities
3 and county jails, saying that the sheriff
4 has someone off the street and doesn't know
5 who they are.

6 My understanding is at a county jail
7 you certainly have people who may be parole
8 violators, you may have people that have
9 been there briefly awaiting the ability to
10 make bail, but virtually everybody else is
11 in there on a misdemeanor sentence. And the
12 sheriff certainly knows their criminal
13 background and certainly knows the extent to
14 which they are a threat, the extent to which
15 they may have engaged in sex offenses, and I
16 would think would be certainly capable of
17 making decisions -- and I know you said this
18 is SCOC turf, so I'm not asking you to
19 comment -- would be capable of making
20 decisions similarly to the types of
21 decisions that you make when you choose to
22 double-bunk. So I'm not sure if it's as
23 black and white as you say.

24 And with regard to -- if I may ask one

1 more question of Commissioner Byrne, and it
2 comes back to Operation IMPACT. Inasmuch as
3 whatever Operation IMPACT is going to do is
4 going to be prospective, how can you measure
5 outcomes? They're making application to do
6 something in the name of public safety, and
7 hopefully they will be successful. But
8 nonetheless, you're not going to know until
9 you see the end of the process.

10 ACTING COMMISSIONER BYRNE: Well, the
11 Operation IMPACT grant program is actually,
12 Senator Saland, a model for us to look at
13 when it comes to the distribution of that
14 funds. What it calls for is it calls for
15 all the law enforcement professionals in a
16 given jurisdiction to get together and come
17 up with a consolidated plan to address their
18 principal violent crime problem in their
19 jurisdiction.

20 So that would be more than just the
21 district attorney and the chief of police of
22 the largest jurisdiction, it would include
23 the sheriff, the regional parole officer
24 from the Division of Parole, the probation

1 office, the district attorney's office, all
2 of those groups.

3 So, one, they get together and they
4 identify their primary violent crime
5 problem. And then, two, they come up with a
6 consolidated budget and strategy, a
7 consolidated strategy to address that
8 problem. So then they have to apply through
9 the grants process, which is the competitive
10 part of it all.

11 The part of it that you asked me
12 whether it was strictly a performance-based
13 contract, I gave you a direct answer that it
14 wasn't strictly a performance-based
15 contract. Because in order for it to be a
16 performance-based contract, there would
17 have to be deliverables, achievements that
18 they were going to accomplish that were
19 specifically there. And in the past, those
20 deliverables have not always been in the
21 grant applications. The agency has moved
22 over the last two years to push this agenda
23 to build them into those grant processes.

24 SENATOR SALAND: Thank you.

1 If I may, one last for Commissioner
2 Fischer. And I can't see a clock, so I
3 don't know if my time's up or not.

4 (Laughter.)

5 CHAIRMAN DeFRANCISCO: There's not
6 only one, there's four --

7 (Laughter.)

8 SENATOR SALAND: Okay. Well, may I
9 just, with the indulgence of my colleagues
10 and both chairs, having had a copy of the
11 executive order, and it concludes -- it sets
12 up the time frame, in paragraph number two,
13 to begin work within 10 days.

14 And the third paragraph, which is the
15 concluding paragraph, says "Provided that
16 such recommendations are made in accord with
17 the terms of this executive order, the
18 commissioner of Correctional Services shall
19 take into account such recommendations in
20 determining which correctional facilities he
21 shall direct to close."

22 And I would just pose two questions,
23 and you can respond if you'd like; I'll
24 consider them to be rhetorical. Number one,

1 why are we waiting? Why don't we start
2 immediately? Number two, my reading of
3 this -- and correct me if I'm wrong -- makes
4 you the final arbiter regardless of whatever
5 the task force may recommend, and imposes
6 upon you the responsibility merely to take
7 into account those recommendations.

8 COMMISSIONER FISCHER: Correct.

9 SENATOR SALAND: Thank you.

10 CHAIRMAN FARRELL: Assemblyman
11 Lancman.

12 ASSEMBLYMAN LANCMAN: Good afternoon
13 to all of you. I have just a quick
14 question.

15 CHAIRMAN DeFRANCISCO: Excuse me one
16 second. I didn't recognize Senator Cathy
17 Young, who's just joined us.

18 Thank you.

19 ASSEMBLYMAN LANCMAN: I have a quick
20 question for Commissioner Fischer, and then
21 another one for Commissioner Gibb.

22 In one of the other hats that I wear in
23 the Assembly is I chair a subcommittee on
24 workplace safety. And one of the issues

1 that has raised, and I have not looked into
2 it enough to really be able to form my own
3 opinion, is the safety issue in connection
4 with the double-bunking.

5 So if I understand correctly, there are
6 870 double-bunked cells, which were not --
7 and these are cells which were not built to
8 accommodate double-bunking. They were not
9 specifically built for that purpose; is that
10 correct?

11 COMMISSIONER FISCHER: 807.

12 ASSEMBLYMAN LANCMAN: 807, okay.

13 Now, with the consolidation or
14 reductions in order to rightsize the
15 prisons, in terms of the extra capacity that
16 you have spoken of, does that extra capacity
17 assume additional double-bunking?

18 COMMISSIONER FISCHER: No, it does
19 not.

20 ASSEMBLYMAN LANCMAN: So let me just
21 ask you about the double-bunking that is
22 going on. I know you testified that in your
23 opinion it's not a safety hazard.

24 Now, I assume that the reason some

1 cells are built with the expectation that
2 they will be double-bunked cells is for a
3 reason. So if it's not for a safety reason,
4 could you just explain to me why are some
5 cells built, from the beginning, and
6 designed to accommodate double-bunking and
7 others are not?

8 COMMISSIONER FISCHER: I think you've
9 got it -- well, understand, there's double
10 cells on the old facilities that were not
11 built for doubles. There are double cells
12 that are built for two people. And then
13 there's double-bunking, which is the medium
14 facilities.

15 You have to go back probably 20 years
16 to the '80s, when we literally could not
17 build fast enough to accommodate all the
18 offenders. And we are talking about maximum
19 security. So a decision was made, clearly
20 reviewed by SCOC and many others, that a
21 double bunk on a temporary basis -- which
22 really was the intent, and still is -- that
23 a person entering from one facility to
24 another could be placed in a double cell,

1 even though it wasn't built for two, on a
2 temporary basis, and then moved out. Which
3 does occur; it's not a permanent
4 arrangement. The flow of in and out of the
5 facility, especially in a max facility, is
6 always constant. So an offender would not
7 necessarily do his time in a double cell.

8 They were designed basically for -- and
9 they were also designed in placements to be
10 close to the correction officers in most
11 cases, so that we were aware of it.

12 Historically, the number of problems
13 that has created has not been a serious
14 issue. Again, partly because we were
15 conscious of it, partly because we replaced
16 them, and partly because it's temporary.

17 ASSEMBLYMAN LANCMAN: And you said
18 there was a distinction between double cell
19 and double-bunking?

20 COMMISSIONER FISCHER: Yes. You've
21 got to remember, the cells, like in
22 maximum-security prisons -- and the bulk of
23 our system is in medium and minimum -- you
24 have a double bunk.

1 ASSEMBLYMAN LANCMAN: Meaning those
2 are like -- the term, I would think, would
3 be like an open ward or a common area.

4 COMMISSIONER FISCHER: Correct,
5 right.

6 ASSEMBLYMAN LANCMAN: And within that
7 common area there are many inmates, and some
8 are in bunks, double bunks.

9 COMMISSIONER FISCHER: In the
10 prototype buildings we have basically 10
11 extra beds in each of the dormitories, so
12 that you have a 60-man dorm. But they're on
13 the back wall, the officers can see them.
14 And again, it's a big open area. It is not
15 a cell. It's not as private, obviously, as
16 a cell.

17 ASSEMBLYMAN LANCMAN: So the 807
18 figure, that refers to the double-bunks in
19 the common areas?

20 COMMISSIONER FISCHER: No.

21 ASSEMBLYMAN LANCMAN: Or it refers to
22 the double cells.

23 COMMISSIONER FISCHER: There you go.

24 ASSEMBLYMAN LANCMAN: Or two people

1 in a cell that was not designed to be --

2 COMMISSIONER FISCHER: Correct.

3 ASSEMBLYMAN LANCMAN: And those
4 assignments are temporary, they're
5 transient, you would not have two people in
6 a cell together for a long period of time?
7 Am I understanding that correctly?

8 COMMISSIONER FISCHER: Correct.

9 Correct. Now, someone could ask for it, and
10 we look at that very carefully, why they
11 might ask for that. But it basically is
12 designed and it is used as a temporary
13 basis.

14 ASSEMBLYMAN LANCMAN: Now, in your
15 opinion there's no safety hazard there. I'm
16 just curious -- and this is not an
17 accusation in any way, I'm genuinely
18 curious -- has there been any kind of study
19 or analysis, or it's just based on your
20 experience?

21 COMMISSIONER FISCHER: First, we take
22 any assault, any action very seriously. We
23 monitor all unusual incident reports. And
24 we identify when it happened, where it

1 happened, what shift, what tour, you name
2 it. And statistically we can show you that
3 the number of what we would call disruptive
4 behavior, assaults, is not any higher in a
5 double cell -- in fact, it may even be lower
6 in a double cell because of the temporary
7 nature -- than in some other facility
8 housing units.

9 ASSEMBLYMAN LANCMAN: And the bottom
10 line, though, is these efficiencies that
11 we're looking to achieve in terms of
12 consolidation or reductions are not going to
13 be achieved by increasing the number of
14 double cells that are out there.

15 COMMISSIONER FISCHER: The state has
16 made a commitment, the Governor and previous
17 Governors, we made a commitment we will not
18 put additional people in a cell built for
19 one person. That's why we built -- all new
20 construction is built with the understanding
21 of two people in a two-man cell.

22 ASSEMBLYMAN LANCMAN: And will any of
23 these efficiencies or reductions be achieved
24 by additional double-bunking in the common

1 area?

2 COMMISSIONER FISCHER: No, we will
3 not be double-bunking more people at all.

4 ASSEMBLYMAN LANCMAN: Okay. Thank
5 you very much.

6 And just Commissioner Gibb, very
7 briefly. Two years ago when I served on the
8 Government Operations Committee, with RoAnn
9 Destito as chair, we passed the Nonprofit
10 Homeland Security Preparedness Act, which
11 relates to the homeland security needs of
12 certain nonprofit institutions that are
13 targets of terrorism. And your office
14 produced a report and did a survey and
15 really did a terrific, terrific job. And
16 we've been working with Thomas McCarren and
17 some others on that. So I just want to let
18 you know that.

19 But also there is some more work to be
20 done in that area. And I think that if it's
21 viewed from the perspective of the
22 possibility of saving the office or the
23 division resources by empowering and
24 educating the nonprofit community to better

1 protect themselves, and therefore in the
2 long run to rely less on resources and
3 attention from government agencies, that
4 would not only be good policy but also save
5 the state some money in terms of where you
6 have to spend your resources.

7 So if you could go back to your folks
8 and see where we are in terms of moving that
9 along and implementing the recommendations
10 from the study that your office did, I would
11 really appreciate it. And if you have
12 anything to add on that and the value of
13 getting the nonprofit community assistance,
14 you know, I'd appreciate hearing it.

15 ACTING COMMISSIONER GIBB: Assemblym
16 an, we do want to be a strong partner with
17 the not-for-profits that qualify for federal
18 funding, and the not-for-profit community
19 that might be at risk in general.

20 As you know, we have advocated with DHS
21 for increased funding for not-for-profit
22 grants. We've also requested that they
23 develop a better self-assessment tool to
24 support the not-for-profits that receive

1 these grants to be able to better categorize
2 the extent of their risk and some of the
3 threats they face. And we're trying to
4 maintain a liaison with the impacted
5 communities.

6 We appreciate your supportive comments.
7 And we'd also like to thank you for the plug
8 you gave for New York Alert after the
9 tornado in New York City last fall.
10 Appreciate it.

11 ASSEMBLYMAN LANCMAN: Well, that's a
12 terrific program. And I try to do as much
13 as I can to let people know about it.

14 For anyone on the panel who doesn't
15 know what Commissioner Gibb is referring to,
16 we had a tornado in Queens, of all places.
17 And I actually knew about it 15 minutes
18 before it happened because I'm signed up for
19 New York Alert. So everyone should try to
20 get the message out as much as possible on
21 that excellent program.

22 Thank you very much.

23 CHAIRMAN DeFRANCISCO: Thank you.

24 Senator Rivera.

1 SENATOR RIVERA: Thank you,
2 Mr. Chairman. And thank you to the
3 commissioners who are with us today.

4 I have a couple of quick questions,
5 since the bulk of them have been answered in
6 the back-and-forth with other legislators.
7 But Commissioner Byrne first.

8 Regarding the way that all these
9 programs are now going to be joined under
10 DCJS, there is -- Senator Saland asked about
11 different programs and the way that you were
12 very clear that these were going to be
13 allocated based on performance-based, these
14 will be performance-based. So the reality
15 in this competitive process, there is a risk
16 that certain programs might cease to exist;
17 is that correct?

18 ACTING COMMISSIONER BYRNE: There's
19 always the possibility that certain programs
20 will cease to exist.

21 And I do want to say that there won't
22 be a one-size-fits-all approach to every
23 contract that we've funded in the past.
24 We're going to have a different structure

1 and flexibility in the whole process as we
2 go forward. But today really is the
3 beginning of the dialogue with the
4 Legislature about what that will all look
5 like.

6 SENATOR RIVERA: Thank you.

7 And I have a couple of quick questions
8 for Commissioner Fischer. Now, Corrections
9 and Parole were actually merged back in the
10 '70s, if I'm not mistaken.

11 COMMISSIONER FISCHER: Yes, I think
12 it was in '71 or '70 to '77.

13 SENATOR RIVERA: Okay. They were
14 broken apart later, and now they're being --

15 COMMISSIONER FISCHER: Yeah, but I
16 will argue that if you look at it carefully,
17 it never really was merged. They were kind
18 of placed side by side. There was no
19 attempt on a philosophical or operational
20 basis to really make it one agency. And it
21 did not work.

22 And the times were different. The
23 times are completely different from the way
24 it was then to the way it is today. So I

1 think this is why this is the right time and
2 the right idea to do it.

3 SENATOR RIVERA: And finally, for
4 Chairwoman Evans, do you not think that
5 there's an inherent conflict of interest
6 when you maintain prison populations between
7 the Department of Corrections and the
8 Division of Parole?

9 CHAIRWOMAN EVANS: No, I don't
10 believe that there's a conflict of any
11 interest. Because I believe that our roles
12 will be clearly defined, as they are now,
13 because in the facilities we have the
14 facility parole officer and the correction
15 counselor.

16 I'm certainly more familiar with what
17 that facility parole officer does. And that
18 facility parole officer's responsibility is
19 to prepare an inmate for the board, to meet
20 the board, and has responsibility to do
21 reports and to sit with the board and to set
22 up video conferences. Totally separate and
23 apart from what currently Corrections does
24 in the facilities with inmates who are soon

1 to be released.

2 SENATOR RIVERA: And the fact that
3 the Division of Parole is now going to be
4 much smaller, how do you think that's going
5 to impact the work of the members of the
6 board right now, the fact that it's being
7 kind of locked now, that we're going to have
8 six less, I believe -- right?

9 CHAIRWOMAN EVANS: Yeah, we've
10 actually been functioning that way for about
11 the last three or four months. It has not
12 been a burden to the board.

13 And one of the things that we look
14 forward to being able to do is to use those
15 video conferencing capacities where we now
16 do it at 26 facilities, to be able to expand
17 that to 11 additional facilities. And we do
18 it in four locations around the state, and
19 we'll able to expand that to at least an
20 additional two.

21 SENATOR RIVERA: Thank you.

22 Thank you, Mr. Chairman.

23 CHAIRMAN DeFRANCISCO: Senator
24 Montgomery.

1 SENATOR MONTGOMERY: Thank you,
2 Mr. Chair.

3 Good afternoon. You've been here a
4 long time, and I thank you for your
5 patience.

6 I wanted to ask a question regarding
7 the new position with the Division of Parole
8 and the Parole Board and the functions and
9 how those change. I'm looking at the
10 Article 7 language. And even though you say
11 that there will be no diminishing of the
12 position in terms of the mission of the
13 Parole Board and of the Division of Parole,
14 it says here that the power to set
15 conditions of release will be transferred
16 from the Board of Parole to the new
17 department.

18 The power to revoke release will be
19 transferred from the Board of Parole to the
20 new department. The power of the Parole
21 Board chair to promulgate regulations for
22 the operation of the Division of Parole,
23 including those regulations associated with
24 the placement of sex offenders, will

1 disappear. All rule-making power will
2 reside with the commissioner of DCJS. The
3 power to issue certificates of release from
4 disabilities and certificates of good
5 conduct would shift from the Board of Parole
6 to DCJS. The power of the Parole Board
7 chair to appoint and remove officers and
8 employees of the Division of Parole will
9 disappear.

10 So it seems to me that we are now
11 creating a merger between the department,
12 the Parole Board, and their functions as it
13 relates to release of people back into the
14 community, and those -- all of the powers
15 are being transferred to the commissioner of
16 Corrections.

17 The commissioner of Corrections, it
18 seems to me, has a very different
19 motivation. And the people who are
20 incarcerated have no leverage. Parolees
21 have no leverage. However, within the
22 Department of Corrections the employees have
23 a very strong and effective union that
24 lobbies for them.

1 So my question, then, is is it not a
2 huge conflict of interest and imbalance of
3 interest by this merger with Corrections and
4 the Parole Board? And given the language in
5 the Article 7 legislation, are we not now
6 essentially putting the people who are
7 incarcerated, we're putting them and their
8 interests in hopefully successful reentry in
9 a very untenable position? And if that is
10 the case, what should we be thinking about
11 to make sure that that does not happen?

12 CHAIRWOMAN EVANS: I think that if I
13 could answer you succinctly, the Governor's
14 thinking with regards to consolidating
15 Parole and the Department of Corrections is
16 so that we can push reentry. And I kind of
17 spoke to that earlier on when I talked about
18 in my statement that we want to begin
19 reentry, it's very important in the reentry
20 process that you begin when someone enters
21 into the process.

22 The relationship that the Division of
23 Parole and the Department of Corrections has
24 is a long-standing relationship. It's been

1 a partnership. And we've been sitting with
2 DCJS, we've been sitting with experts from
3 the National Institute of Corrections. And
4 on a state level, we've been trying to move
5 the reentry process, and we've gotten very
6 far in that.

7 And I'm very satisfied in knowing that
8 the Department of Corrections has the
9 interest of making sure that the inmates who
10 will be deemed appropriate for release by
11 the Board of Corrections, I'm satisfied that
12 the Department of Corrections has the same
13 interest that we have, and that is public
14 safety.

15 With regards to compromising the board,
16 the board and the legislation in Article 7
17 as it's been proposed will remain
18 independent with regards to any questions
19 about inmates and their rights. Due process
20 will remain. And the law protects the due
21 process of inmates. So in the revocation
22 process, the number of days in order to have
23 a final hearing or in order to establish
24 probable cause will remain the same.

1 So I trust and believe that this is
2 going to enhance public safety. I've been
3 working very closely with Commissioner
4 Fischer over the last couple of years. And
5 I think we are on a good footing.

6 SENATOR MONTGOMERY: And I want to
7 make this very clear. I trust you and
8 Commissioner Fischer and Commissioner Byrne.
9 We have a wonderful team. But moving
10 forward, considering in the future the
11 possibility that we won't have you guys in
12 place, who have a different commitment and
13 are philosophically very much in tune to
14 what many of us would like to see happening
15 in our criminal justice system.

16 But what we're doing now will go beyond
17 us, my assumption. And therefore, I pose
18 this very serious concern that there is
19 inherent in this process a huge conflict of
20 interest between those persons who look to
21 parole to give them some opportunity and the
22 prison system, which is there for a
23 different purpose.

24 So I want to raise that. And I hope

1 you understand, I really -- I really do
2 appreciate what this team represents. But
3 I'm not talking about this team, I'm talking
4 about a policy that goes beyond the team
5 that we have.

6 I want to raise another, because parole
7 is really very, very closely related, as far
8 as I can tell, to reentry, and so that's why
9 I dwell on that issue. And I know that,
10 Ms. Evans, you talked about that you're
11 looking to stop the revolving door as it
12 relates to the reentry program. I don't see
13 in the information that I have -- and in
14 your testimony you did refer to reentry, and
15 I appreciate that. But I don't see where
16 the budget speaks to reentry.

17 In fact, the block grant that is
18 proposed for Commissioner Byrne, I'm not
19 sure what that represents as it relates to
20 reentry, because nothing is lined out. And
21 I don't trust block grants because they very
22 often don't reflect the needs of communities
23 like mine in terms of the final distribution
24 of resources. And I didn't see anywhere

1 where you talk about you're going to make
2 sure that in order for reentry to work that
3 you are going to focus on that as, you know,
4 in terms of the programs in your plan for
5 distribution of the local assistance.

6 And let me just say I would like to
7 hear -- I know you talked about
8 performance-based, but I want to hear about
9 nontraditional approaches. Because very
10 often the mainstream-type programming, and
11 they may have wonderful performance, but
12 there are also other nontraditional programs
13 that would have even better outcomes
14 depending on how we resource them. And I
15 also want to hear about diversity, because
16 that's very, very important as it relates to
17 dealing with reentry.

18 And I don't see any of that, and I just
19 wanted to hear from you what you're thinking
20 along those lines. Because everything is
21 now block-granted, so we don't know what
22 you're going to do. And I appreciate you
23 having flexibility, but I would like to hear
24 more about specifics in your planning.

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ACTING COMMISSIONER BYRNE: I

appreciate the opportunity to comment on it, Senator. Thank you for asking me about it.

My colleagues Commissioner Fischer and Chairwoman Evans mentioned the fact that reentry begins before the person is released from the Department of Correctional Services. We have been building a system that's even more aggressive than that. We recognize that reentry begins at the time of sentencing. So at the Division of Criminal Justice Services we've been building a New York Offender Assistance Data System, called NOADS, for the last two years, two-plus years. And basically what that does is it provides for the automated transfer of pre-sentence reports from the probation agencies and courts to the Department of Correctional Services, so that they're available at the Department of Correctional Services upon intake.

It provides for the linkage to the transition accountability plan; that is, the plan for the offenders transitioning out of

1 the Department of Correctional Services and
2 back into the community that's done by the
3 Department of Correctional Services.

4 It links to risk/needs assessment tools
5 that are done by probation and by the
6 Division of Parole. The tool that we've
7 settled on in the State of New York is the
8 Compass tool.

9 We have a couple of years of
10 collaborative working between the three
11 agencies to advance that agenda, and that's
12 just one piece of it.

13 There also is -- and I regret I don't
14 remember specifically who asked the
15 question, but there also is something called
16 the State Reentry Task Force, which brings
17 together not only the Department of
18 Corrections and the Division of Parole and
19 DCJS, but it also brings together the Office
20 of Alcoholism and Substance Abuse Services,
21 the Office of Mental Health, the Department
22 of Education, the Department of Labor, the
23 Office of Temporary and Disability
24 Assistance, all of the state-level actors

1 that might touch on the reintegration of the
2 returning offender to the community.

3 And then in the communities there are
4 local versions of that. They're called the
5 county reentry task forces. Obviously,
6 there are not county reentry task forces in
7 New York City. Like in New York City, it
8 might be the -- you're probably familiar
9 with District Attorney Hynes' ComALERT
10 program in New York City.

11 So then there's a community-based
12 transitional support organization that
13 provides wraparound resources to the lead
14 agency, the Division of Parole. Those
15 wraparound resources could be things like
16 finding jobs, finding housing for people
17 that are in shelters, making sure that
18 there's mental health resources.

19 Now, finally, you asked about how do
20 the performance-based standards link to
21 that. In just this past year we started the
22 push towards making all of those local
23 reentry contracts performance-based. So if
24 you're going to get funded, you have to find

1 that parolee a residence. You have to make
2 sure that if he needs mental health services
3 that he is referred to a mental health
4 counselor that's appropriate. There has to
5 be job services that are found so that they
6 can get employment so that we're no longer
7 faced with a situation where I believe the
8 number is less than 6 percent of parolees
9 are employed full-time above minimum wage --
10 that number again is less than 6 percent --
11 and 64 percent are completely unemployed.

12 So the people now that are receiving
13 those monies going forward, Senator, are
14 going to be held to performance to make sure
15 that they provide those services. And if
16 the Division of Parole has that background
17 and resource available to it, there's a
18 higher probability that these people won't
19 recidivate; that if they do recidivate, the
20 time to crime will be delayed. And that's
21 what we're after. Ultimately, that's what
22 we're after.

23 So you're right, it's not specifically
24 lined out here, Senator, but it's a very

1 important agenda for Governor Cuomo, a
2 critical agenda.

3 SENATOR MONTGOMERY: I appreciate
4 that. And I certainly agree with you there
5 are so many barriers to people being able to
6 return successfully. And I think it
7 requires all of us really making sure that
8 our policies reflect how difficult it is.
9 People do need to work, and people need
10 housing. Those are two things. And right
11 now, too many of the people who return,
12 certainly to my district and to the city,
13 find themselves living in shelters and
14 horrible deplorable conditions.

15 And so we haven't really been terribly
16 successful with reentry so far, and we just
17 need more resources, not fewer. And we
18 certainly don't need to have reentry compete
19 with incarceration. That becomes an
20 untenable, an impossible position.

21 CHAIRMAN DeFRANCISCO: Commissioner,
22 there was no question. And I'm sorry, the
23 time is up. Actually, you've gone into my
24 time, so I gave you some of my time.

1 And I think I'm the last one, and I'm
2 going to be very, very quick because we're a
3 little bit behind schedule.

4 SENATOR MONTGOMERY: I think I have
5 more people who return from prison than you
6 do, so I deserve some time. Thank you,
7 Senator.

8 CHAIRMAN DeFRANCISCO: You're very
9 welcome. And some very quick questions in
10 follow-up to Senator Nozzolio's questions,
11 Senator Saland's question.

12 Commissioner Fischer, the executive
13 order says you make the final decision after
14 whatever this commission does. It's your
15 decision; correct?

16 COMMISSIONER FISCHER: I would like
17 to think that the purpose of the task force
18 is for us to kind of come to terms with what
19 we can do.

20 CHAIRMAN DeFRANCISCO: I understand
21 that. I understand that. But they're going
22 to make recommendations, that's what the
23 order says. Ultimately, it's going to be
24 your decision, based upon some of these

1 recommendations, I presume.

2 However, the Legislature should have
3 some role in what happens in the course of
4 the budget process. So you've got to
5 picture it from our standpoint, that after
6 the budget is done you are going to make a
7 decision and it's going to affect many
8 districts in the State of New York.

9 So the question is, would you give us
10 now your recommendations as far as how these
11 savings can be realized and what you
12 recommend presently, even before this group
13 gets together, so that we can possibly line
14 out some items or possibly do something
15 constructive in the legislative process so
16 that we just are not bound by a decision
17 that we have no control over?

18 COMMISSIONER FISCHER: I understand
19 your position, but I guess you have to
20 understand mine. The Governor has
21 established a task force, and that is the
22 group that I will present whatever it is
23 that the task force really needs to know or
24 wants to know at that time. I cannot do it

1 earlier.

2 CHAIRMAN DeFRANCISCO: How about what
3 the Legislature wants to know at this time?

4 COMMISSIONER FISCHER: I will follow
5 the executive order for right now.

6 CHAIRMAN DeFRANCISCO: In other
7 words, our only remedy is to line out of the
8 budget the areas concerning the prison
9 closures and that sort of thing and not
10 provide the savings in the budget process.
11 Is that what we should do, just -- or
12 provide in the budget that -- limiting the
13 executive order?

14 COMMISSIONER FISCHER: I can't tell
15 you what to do, obviously. But we do know
16 from historical perspective what happened
17 when certain names got out even before they
18 were real names. It's unfortunate, too many
19 people overreact to rumors and other things.
20 So I am bound to what I am bound to.

21 CHAIRMAN DeFRANCISCO: But is it fair
22 to say that you do have some thoughts on
23 this topic?

24 COMMISSIONER FISCHER: Of course.

1 CHAIRMAN DeFRANCISCO: Would you be
2 willing to, without a recommendation,
3 express to us what the thoughts might be?

4 COMMISSIONER FISCHER: No. The same
5 thoughts that I had two years ago and last
6 year is what I will present to the task
7 force. What needs must be met, what
8 mandates must be met, what facilities do
9 this, what facilities do that. That's the
10 goal of meeting with the task force, to
11 explain it and make certain recommendations
12 with the task force.

13 CHAIRMAN DeFRANCISCO: And there were
14 certain recommendations that you made in
15 prior years concerning this issue of
16 downsizing prisons?

17 COMMISSIONER FISCHER: Yeah, we made
18 recommendations in the last two budgets,
19 correct.

20 CHAIRMAN DeFRANCISCO: Okay. And
21 those were your recommendations? Or you
22 agreed with those recommendations.

23 COMMISSIONER FISCHER: Yes. Yes, I
24 did.

1 CHAIRMAN DeFRANCISCO: Okay, one last
2 point. The issue that we've been talking
3 about and really concentrated on is bed
4 closures. I've asked this of other
5 individuals who came forward, and I want to
6 ask it of you. I assume that there are
7 other areas that you've thought about as far
8 as cost cutting in your department, in the
9 Correction Department. Have those been
10 shared with anyone at this point, other ways
11 to save money other than bed reductions?

12 COMMISSIONER FISCHER: Over the last
13 several years we have, in fact, changed
14 procedures. We have made recommendations to
15 save money. We have saved money beyond
16 simply closing facilities. Consolidation is
17 probably the best approach we've used. It
18 saves money with the least amount of
19 disruption to the community, to the
20 staffing, to the facility. So yeah, those
21 are recommendations we've made and those are
22 the ones we've actually implemented.

23 CHAIRMAN DeFRANCISCO: Are there any
24 recommendations that you've made that have

1 not been implemented up to this point in
2 time, other than bed reductions?

3 COMMISSIONER FISCHER: Not that I can
4 think of right now.

5 CHAIRMAN DeFRANCISCO: Well, if you
6 think of any, could you let us know?

7 COMMISSIONER FISCHER: Yes, sir.

8 CHAIRMAN DeFRANCISCO: All right, I
9 have nothing further. And that concludes
10 this hearing. We're only a half-hour late,
11 which is remarkable.

12 But before anybody leaves, I just want
13 to say all of us sat here and listened to
14 every word, but the stenographer had
15 actually to really listen to every word and
16 put every one down. So I think we should
17 take a five-minute and congratulate Cathy
18 Kirkland for her unbelievable performance.

19 (Applause.)

20 CHAIRMAN DeFRANCISCO: Thank you,
21 thank all of you, and we'll take just five
22 minutes.

23 And the next speaker is Donn Rowe,
24 president of New York State Correctional

1 Officers. If he could start heading down so
2 we can get right back at it.

3 (Brief recess taken.)

4 CHAIRMAN DeFRANCISCO: Okay, time's
5 up.

6 The next speaker is Donn Rowe,
7 president of the New York State Correctional
8 Officers. You're on.

9 NYSCOPBA PRESIDENT ROWE: Good
10 afternoon, Chairman DeFrancisco, Chairman
11 Farrell, and members of the Legislature. My
12 name is Donn Rowe, and I am the president of
13 the New York State Correctional Officers and
14 Police Benevolent Association.

15 Similar to last year, I will refrain
16 from reading my entire statement, which is
17 in front of you, so that I may focus on
18 NYSCOPBA's chief areas of concern with
19 respect to the Department of Correctional
20 Services' proposed budget.

21 Once again, NYSCOPBA is faced with the
22 prospect of prison closures. Once again, we
23 are forced to deal with the commissioner's
24 spin tactics in terms of the number of empty

1 beds within the prison system.

2 Recognizing that each year at this
3 time, the commissioner of DOCS would
4 exaggerate and provide half-truths to this
5 body about the number of empty beds within
6 the state's prison system, NYSCOPBA sought
7 the enactment of legislation last year which
8 would shed true light on the status of the
9 state's prison system. We worked diligently
10 with many of you and many of your staff
11 members and crafted a bill supported by
12 Republicans and Democrats alike which passed
13 both houses.

14 Unfortunately, the commissioner
15 aggressively fought for a veto, explaining
16 in less than genuine terms that the costs
17 associated with the bill made it
18 prohibitive. Nothing could have further
19 from the truth. The bill would not have
20 cost the state a dime, yet failure to enact
21 it could cost my members their safety.

22 We thank you for your efforts last
23 year. We will ask you to pass the bill
24 again this year. And we are confident that

1 Governor Cuomo would support this critical
2 piece of legislation.

3 Thirty-five hundred empty beds, that's
4 the number being discussed and projected in
5 this year's budget. Right now, today, there
6 are more than 6500 inmates living on a top
7 bunk in a cell or cubicle that was
8 originally designed for one person and one
9 person only.

10 Double-bunking was a practice that
11 began decades ago out of necessity, at a
12 time when the inmate population was
13 exploding. It was a risk that New York
14 State had to take based on the circumstances
15 at the time. Inmates were housed in
16 gymnasiums, in hallways, in virtually every
17 nook and corner of empty space with a
18 prison. It was supposed to be a temporary
19 fix to a problem of having more inmates than
20 available bed space.

21 Once the inmate population began to
22 reduce and level off, rather than rightsize
23 the prison system and bring facilities back
24 into line with their original intended

1 capacity, past commissioners continued to
2 keep two inmates in cubicles and cells that
3 were designated for a single individual.

4 Commissioner Fischer has chosen to
5 continue this dangerous practice. As a
6 result, minimum-security prisons are gone,
7 and along with them their vital transitional
8 programs. Dorms are consolidated, inmates
9 are transferred to new facilities, and
10 officers are required to watch more inmates
11 with less manpower.

12 One thing that hasn't changed is the
13 number of violent felons behind bars. Every
14 member of this body by now should be fully
15 familiar with the fact that New York's
16 maximum prisons are operating at almost 122
17 percent capacity, and our overall capacity
18 is at 100 percent. NYSCOPBA has been trying
19 to shed light on this fact for years, but
20 the commissioner keeps trying to consolidate
21 and close prisons.

22 Has the commissioner explained where he
23 intends to put these inmates from facilities
24 that close? Has he given any thought to the

1 effect of commingling inmates with different
2 security classifications? There is no doubt
3 that as more and more inmates are crammed
4 into facilities with the state's most
5 dangerous and violent predators, that the
6 safety and security within the prison system
7 itself will erode. Lives will be
8 threatened -- not only the lives of my
9 officers, but the lives of those
10 incarcerated.

11 Most members of the public don't know
12 that inmates within our medium prisons are
13 not confined in cells. They live in dorms,
14 large rooms where they can roam freely among
15 other inmates. And half, half of all of our
16 medium prisons are structures which were
17 never designed to be prisons in the first
18 place. They are retrofits of buildings that
19 serve some other purpose.

20 As a result, my members face the daily
21 challenge of having to supervise violent
22 felons who, because of the physical
23 structure of the prison building itself, are
24 often out of their line of sight. Yet

1 rather than right the wrong that occurred
2 years ago with double-bunking, when
3 double-bunking first began, the commissioner
4 wants to place more inmates in these
5 dangerous facilities by falsely claiming
6 that prisons are empty.

7 A few decades ago, a single correction
8 officer working in a medium facility might
9 be charged with supervision of 40 inmates in
10 a dorm. Today the same officer is charged
11 with the supervision of 60 inmates in a
12 single dorm. To make matters worse, many of
13 these inmates are housed in facilities today
14 which make it extremely difficult to account
15 for them at all times. Now Commissioner
16 Fischer wants the New York State public to
17 believe that our prisons are empty and
18 consolidation is necessary. Nothing can be
19 further from the truth.

20 Finally, NYSCOPBA would be remiss if we
21 didn't touch upon the potential repeal of
22 the one-year notification law within this
23 year's budget. The law was enacted at the
24 specific request of NYSCOPBA to simply

1 ensure that NYSCOPBA's correctional officer
2 members had minimal notice of a prison
3 closure, giving their families and the
4 communities in which they reside adequate
5 time to prepare. Officers are often forced
6 to relocate themselves and their families,
7 leaving tremendous voids in the communities
8 where they live. The one-year notification
9 law was designed to ensure that an officer
10 had some time to prepare for a life-altering
11 occurrence.

12 Repeal of the law will take away what
13 little protection my officers and their
14 respective communities and families
15 currently have. We ask you to stand with
16 NYSCOPBA and recognize the tremendous burden
17 placed on the officers and their families
18 when they are forced to uproot themselves.
19 Providing minimal notice to those whose
20 lives will be impacted by a closure is a
21 small gesture, but an invaluable one.

22 In closing, I will ask you to recall
23 the time years ago when New York's prison
24 system was considered elite, the best of the

1 best. There was a time when the state
2 clearly distinguished itself from other
3 states that simply chose to warehouse
4 incarcerated individuals, as opposed to
5 rehabilitate them. We cannot let New York
6 become just another warehousing state.

7 Governor Cuomo himself, in his State of
8 the State address, spoke of the need for
9 New York to once again become the leader,
10 the innovator, an example for all other
11 states in this great nation. Commissioner
12 Fischer's plan to warehouse inmates clearly
13 does not distinguish this great state, it
14 simply conforms.

15 I thank you, and I would be happy to
16 answer any of your questions now or in the
17 future.

18 CHAIRMAN DeFRANCISCO: Thank you for
19 summarizing your testimony rather than
20 reading a long statement word for word, and
21 recognizing that we are all capable of
22 reading.

23 Senator Nozzolio.

24 SENATOR NOZZOLIO: Thank you,

1 Mr. Chairman.

2 Thank you, Donn Rowe. As president of
3 NYSCOPBA, we have a tremendous amount of
4 respect for your organization and the brave
5 men and women who, in my opinion, walk the
6 toughest law enforcement beat in America.

7 That safety is our premier concern. It
8 always has been mine, as chairman of the
9 Crime Victims, Crime and Corrections
10 Committee. Prisons weren't about jobs, they
11 were about keeping people safe, keeping
12 people safe in their neighborhoods and
13 keeping the brave men and women who work at
14 these facilities safe. So I certainly
15 respect your testimony relative to the
16 safety issues around the current population
17 and deployment of that population.

18 But I want you to divert a little bit
19 from your testimony and tell us, in your
20 opinion, what should the Corrections
21 Department focus on relative to saving
22 taxpayers' dollars? Every agency has to do
23 more with less. Where should the department
24 focus its cost-cutting measures?

1 NYS COPBA PRESIDENT ROWE: Well, I
2 believe within the system as it stands right
3 now there certainly is administrative levels
4 that need to be addressed, with duplicative
5 services. Where we are in 2011, certainly
6 we don't need large numbers of
7 administrations at each of these facilities
8 which are next door to each other, and a
9 very large agency building too which
10 oversees the entire system.

11 We have raised these issues -- again,
12 we have raised these issues with the
13 department that where is the shared pain.
14 Our officers are doing more with less.
15 We're consolidating dormitories. And I
16 think if they looked at this system as a
17 whole and took the opportunity -- and I
18 believe a financial crisis was called an
19 opportunity by everyone in '08 -- that we
20 should take this opportunity to rightsize
21 the system.

22 And certainly there can be cuts made,
23 and we've seen our cuts. We've lost over
24 1,000 officers since '09. We've lost over

1 2,000 officers since '99. But you have to
2 remember that the prison population in '99
3 was 130 percent capacity living in
4 gymnasiums, on draft buses, to where we are
5 today.

6 SENATOR NOZZOLIO: We'll save for
7 another day the discussion of rightsizing
8 the correctional system. I think we have
9 not enough maximum-security cell space for
10 the most violent.

11 But you heard my questioning of
12 Commissioner Fischer relative to the
13 consolidation of the neighborhoods, those
14 prison facilities that have two or three
15 facilities within the same neighborhood,
16 actually adjoining each other. The
17 commissioner's response was that you could
18 not do away with superintendents.

19 Now, he didn't say depths of security,
20 he said superintendents. What's your
21 opinion of that?

22 NYSCOPBA PRESIDENT ROWE: My opinion
23 is a quote from one of my members: At 4
24 o'clock and on weekends and holidays,

1 correctional facilities run similar if not
2 better than they do when the administrators
3 are there.

4 I'm not saying we don't need -- we're a
5 paramilitary organization. But we get the
6 job done with our rank-and-final and
7 rank-and-file supervision.

8 SENATOR NOZZOLIO: I counted over
9 twenty facilities that could easily share
10 superintendencies. And with the
11 consolidation would go eliminations of those
12 costs, including perks, houses, cars,
13 pensions and the like. Is that position of
14 your organization?

15 NYSCOPBA PRESIDENT ROWE: I believe
16 that would be very productive in cost
17 savings for this agency. Certainly we do
18 not need the administrative levels, when
19 they are that close to each other, to manage
20 a correctional facility.

21 SENATOR NOZZOLIO: Thank you for your
22 testimony.

23 Thank you, Mr. Chairman.

24 CHAIRMAN FARRELL: Thank you.

1 Jeff Aubry.

2 ASSEMBLYMAN AUBRY: Good afternoon,
3 Donn. How are you?

4 What is the ratio of security staff to
5 inmates?

6 NYSCOPBA PRESIDENT ROWE: Security
7 staff to inmates, I believe it's roughly 1
8 to 3. But that number that you're using, 1
9 to 3, is if every correctional staff would
10 work 24 hours a day, seven days a week, 356
11 days a year. So my ratio would be about 1
12 to 60.

13 ASSEMBLYMAN AUBRY: One to 60?

14 NYSCOPBA PRESIDENT ROWE: Correct.

15 ASSEMBLYMAN AUBRY: And this 1 to 3
16 would be -- you would break it up based on
17 eight-hour shifts, is that --

18 NYSCOPBA PRESIDENT ROWE: One to 3
19 would be the number that the commissioner
20 would use, basically how many security staff
21 he has and how many inmates he has. But we
22 all know we cover 24 hours a day, seven days
23 a week, 356. Certainly there's different
24 levels on different shifts.

1 ASSEMBLYMAN AUBRY: And in your
2 estimation, the department's claim that
3 there are unused facilities in that system,
4 your response is that those facilities are
5 not unused or are they being emptied out
6 arbitrarily, is that --

7 NYSOPBA PRESIDENT ROWE: The
8 capacity difference here arises from what
9 beds you count. We utilize the Department
10 of Correctional Services' reporting policy
11 up to April '09, where they provided the
12 information to us, where it said the
13 percentages. And then shortly after that,
14 when we used that in our testimony, they
15 changed their reporting.

16 Basically, what you're talking about,
17 we're talking about general confinement
18 beds. Just as you know, if an inmate goes
19 from a general confinement bed to a special
20 housing bed or to an infirmary or out to the
21 hospital, his bed is not counted as empty.
22 He owns that bed. He's going to come back
23 someday.

24 The commissioner at this point is

1 counting that bed as empty because he is
2 determined in his mindset that so many
3 inmates will be in the hospital, so many
4 inmates will be in disciplinary housing.
5 It's like saying, you know, so many children
6 are going to be out of school today sick, so
7 we have empty chairs in our school system.

8 ASSEMBLYMAN AUBRY: And the reduction
9 in the size of the prison population from
10 70,000 down to, where are we, 57,000 now,
11 how has that impacted, in your mind, the
12 operation of the prisons and the workload
13 for your members?

14 NYSCOPBA PRESIDENT ROWE: Well, I
15 think in some cases we certainly have
16 decreased down, but we've decreased down in
17 numbers as far as coverage is concerned. We
18 have a very lax coverage in many areas that
19 we used to have when we had 71,000 inmates.
20 But at that time, again, we were housed --
21 as you're aware, we were housed in
22 gymnasiums and so much temporary housing
23 that it was -- it reached a point where we
24 had no other place for inmates.

1 And I'd like to point out that
2 Commissioner Fischer in his own slide, and I
3 haven't seen his report, shows a vacancy of
4 4,000 beds during 1999. Which I don't know
5 how you can show that you had 4,000 empty
6 beds. He must have been counting slop sinks
7 and every nook and cranny.

8 ASSEMBLYMAN AUBRY: Is there an
9 attempt to use technology now to replace the
10 manpower that we provided? I'm made to
11 understand that we have one of the lower
12 correction-staff-to- inmate ratios around
13 the country, the average being like 6 to 1,
14 and we're at like 3 to 1. Are we using
15 technology to fill that gap?

16 NYSCOPBA PRESIDENT ROWE: We do
17 things differently than other states. We
18 certainly have some facilities like -- that
19 are built just recently that have less staff
20 than a normal maximum-security facility that
21 we know. But when we house more than 50
22 percent in dormitory settings, in retrofit
23 buildings, you need -- there's no way of
24 using any kind of technology to watch these

1 inmates or control these inmates.

2 We have an enormous amount of our
3 population are not locked in cells. And
4 even at our maximum-security facilities they
5 are not normally locked in their cells for
6 any less than 8 to 10 hours.

7 ASSEMBLYMAN AUBRY: And when you say
8 "retrofit," are you talking about the
9 cookie-cutters or are you talking about --

10 NYSCOPBA PRESIDENT ROWE: No, the
11 cookie-cutters would be a cookie-cutter
12 facility. When we say a retrofit, we talk
13 about an old psych center, possibly, old --
14 we took over every building that was open in
15 '99. Or earlier.

16 ASSEMBLYMAN AUBRY: All right. Thank
17 you very much.

18 NYSCOPBA PRESIDENT ROWE: You're
19 welcome.

20 CHAIRMAN DeFRANCISCO: Senator
21 Little.

22 SENATOR LITTLE: Thank you, Donn.

23 Just on what Assemblyman Aubry was
24 saying about the technology, we have a

1 maxi-maxi-security prison in Upstate where
2 they're in their cells 23 out of 24 hours
3 and only outside in the exercise area
4 outside their cell. And we do have
5 double-bunking there. And didn't we have an
6 inmate who was killed by a cellmate a number
7 of years ago, and by the time anybody got to
8 him the fellow had died?

9 NYSCOPBA PRESIDENT ROWE: I believe
10 so. I couldn't talk personally on it.

11 SENATOR LITTLE: Well, it's in my
12 district, so --

13 NYSCOPBA PRESIDENT ROWE: But again,
14 as you say, that is a new facility and it
15 has less staff than, say, an older facility
16 like Great Meadow might have because of the
17 technology it uses.

18 SENATOR LITTLE: But they are
19 double-bunked in the cell for 23 out of
20 24 hours together. And it obviously causes
21 some friction.

22 So thank you. Thank you for being here
23 today.

24 NYSCOPBA PRESIDENT ROWE: You're

1 welcome.

2 CHAIRMAN DeFRANCISCO: Anyone on this
3 side? Yes, go ahead.

4 ASSEMBLYMAN LANCMAN: Good afternoon.

5 NYSOPBA PRESIDENT ROWE: Good
6 afternoon.

7 ASSEMBLYMAN LANCMAN: So you very
8 diplomatically pointed out that there are
9 differences of opinion between yourself and
10 your members and Commissioner Fischer. So I
11 just want to understand where those
12 differences are and your perspective on what
13 might account for those differences.

14 The first thing is -- and I'm the first
15 to admit I'm not an expert in this field.
16 And I was grateful to get a tutorial on the
17 difference between double-celling and
18 double-bunking beforehand. But basically I
19 read in your testimony that the prisons are
20 at 100 percent capacity, and Commissioner
21 Fischer testified that there are at least
22 3500 unused, underutilized available beds or
23 spots.

24 And in his written testimony he claims

1 or he asserts that he arrives at that number
2 by not including beds for offenders serving
3 disciplinary sanctions or in need of any of
4 a range of mandated medical, mental health
5 and other services. So he's saying that
6 he's arriving at that 3500 by not including,
7 you know, the prisoner who's sent to the
8 infirmary and, you know, therefore that bed
9 is open for three days.

10 So we're at 100 percent capacity, or
11 there are 3500 available beds? That's my
12 first question.

13 NYS COPBA PRESIDENT ROWE: Well, he
14 claims 8,000 empty beds. And he's saying
15 that he would like to close 3500 beds.

16 And I'd like to add that I did
17 understand your question to him prior. I
18 believe he was asked about double cells and
19 you were talking about all double occupancy,
20 and he utilized the number of 800.

21 When we come to our conclusion, we
22 utilized their numbers. We utilized their
23 reporting to us. They count double bunks,
24 they count temporary beds as available beds.

1 ASSEMBLYMAN LANCMAN: All right, so
2 that's where he gets the 3500 from. But
3 having heard his testimony that --

4 NYSOPBA PRESIDENT ROWE: If you
5 looked at the inmate population right now
6 with the double bunks, you know, he claims
7 he has 8,000 empty beds. If you minus the
8 6,784 which are occupied double bunks that
9 were never built to be occupied by two
10 inmates, you come to a conclusion of 1216
11 empty beds. Now, if you take out the 5,000
12 in special housing, infirmaries, outside
13 hospitals, you would end up with a shortage
14 of 3,784.

15 And again, I'd like to repeat that up
16 until April of '09 this is the way they
17 reported their capacity to us and to the
18 Federal Bureau of Prisons. Which is one bed
19 for one inmate, general confinement.

20 ASSEMBLYMAN LANCMAN: Okay. Now, do
21 you share his view that the double-celling
22 in the cells that were not built for
23 double-celling does not present a safety
24 hazard?

1 NYS COPBA PRESIDENT ROWE: No, I would
2 disagree with that and refer to some of what
3 Senator Little said. It causes a friction
4 between inmates. Sometimes it works,
5 sometimes it doesn't. We have many
6 double-cell units that we have inmates,
7 especially in disciplinary, that we can only
8 use it for one inmate because he won't take
9 a second inmate in his cell.

10 ASSEMBLYMAN LANCMAN: Well, I'll ask
11 you the same question that I asked the
12 commissioner, in fairness. Is there any
13 data or facts to back that up? Other than
14 just your experience, which I value and
15 respect.

16 But I'm just curious, has anyone done
17 some kind of analysis on assaults or violent
18 incidences or anything of that sort in
19 double cells versus single cells?

20 NYS COPBA PRESIDENT ROWE: Just their
21 data this year, which shows significant
22 increases in inmate-on-inmate assault. And
23 I can provide it to you. It's their report.
24 And it's inmate-on-staff assault, suicides

1 have doubled from '09 to 2010 --

2 ASSEMBLYMAN LANCMAN: And these are
3 in double cells that were not built to --

4 NYSCOPBA PRESIDENT ROWE: I cannot
5 specifically attribute them to double cells,
6 no. But when you have almost 7,000 occupied
7 double bunks in a system, I think -- you
8 know, that's approximately 30 percent of
9 your population, I mean I think it can be
10 attributed to this consolidation, this
11 squeezing approach.

12 ASSEMBLYMAN LANCMAN: The double
13 bunks that are in the dormitory settings, do
14 they also present, in your view, an
15 additional safety hazard?

16 NYSCOPBA PRESIDENT ROWE: Yes. I
17 mean, if you've ever been in a six-by-nine
18 enclosure with two bunk beds, steel bunk
19 beds, lockers, chairs -- you know, an
20 inmate -- when this all came about, there
21 was a lot of uproar about it and we had a
22 lot of issues with it.

23 Have some inmates conformed to it?

24 Yes. But we have more a violent felon at

1 this time. Certainly with the laws that
2 were enacted to release our less violent
3 offenders, the majority of our population
4 now is violent offenders.

5 ASSEMBLYMAN LANCMAN: All right. And
6 my last question, just to complete the
7 circle. I assume it's your opinion that if
8 there were closings and consolidations,
9 mergers, whatever it would be, that if the
10 commissioner did hit his target of reducing
11 3500 extra capacity, as he puts it, that
12 would result in more double-bunking and more
13 double-celling? Or is it possible to do
14 that kind of reduction without increasing
15 double-bunking and double-celling?

16 NYSCOPBA PRESIDENT ROWE: He could do
17 it without increasing double-bunking, but
18 he's going to be filling beds and filling
19 facilities to limits that they were never
20 built to hold. You're going to have maximum
21 capacity in your special housing units,
22 you're going to have maximum capacity in
23 your infirmaries, you're going to have
24 maximum capacity in your general confinement

1 beds.

2 ASSEMBLYMAN LANCMAN: Okay. All
3 right, thank you very much.

4 CHAIRMAN DeFRANCISCO: Senator
5 Bonacic.

6 SENATOR BONACIC: Thank you,
7 Commissioner Rowe, for being here. I'm just
8 going to ask you a couple of simple
9 questions --

10 NYSCOPBA PRESIDENT ROWE: I'd rather
11 be president. Thank you, Senator.

12 (Laughter.)

13 SENATOR BONACIC: I'm going to put
14 two hats on you today.

15 We know that when you put more human
16 beings in a smaller space, there's a
17 propensity for increased violence. Or you
18 could say in a small home, you could say
19 that in a prison. And I want to get back to
20 this two prisoners in a cell. Everybody's
21 talking around it, trying to pinpoint the
22 amount of beds, and there's a dispute as to
23 what's available.

24 Can you say unequivocally that two

1 prisoners in a cell increases risk of
2 danger, one, to the prisoner, number two, to
3 correction officers who have to eliminate an
4 assault or have to come in and try to
5 minimize the violence? Can you say that
6 unequivocally?

7 NYSOPBA PRESIDENT ROWE: Certainly.
8 In my 29 years as a correction officer, I
9 can say absolutely.

10 SENATOR BONACIC: And if you were the
11 commissioner and not the president --

12 NYSOPBA PRESIDENT ROWE: Thank you.

13 SENATOR BONACIC: -- and you were
14 concerned with prisoner safety and you were
15 concerned with your correction officers and
16 their safety, would you take the two
17 prisoners out of the cell and put one in
18 each cell; in other words, a single-cell
19 prisoner? Would that work better?

20 NYSOPBA PRESIDENT ROWE: Absolutely.
21 It's safer for the inmates you're charged to
22 house, and it's safer for your staff.

23 SENATOR BONACIC: So in conclusion,
24 if we have to reach these savings in

1 Corrections, we should be concentrating
2 where it's top-heavy in administration?

3 NYSOPBA PRESIDENT ROWE: I believe
4 that's a very easy and significant cut that
5 could occur with little impact on the
6 running, on the effective running and the
7 mission of the agency.

8 SENATOR BONACIC: And I know it used
9 to be this way; I don't know if it still is.
10 Is the shortest life expectancy of employees
11 involved in public unions that of correction
12 workers?

13 NYSOPBA PRESIDENT ROWE: I believe
14 it still is, at 58.

15 SENATOR BONACIC: Thank you,
16 Mr. President.

17 NYSOPBA PRESIDENT ROWE: I'll be 50
18 Friday.

19 (Laughter.)

20 CHAIRMAN FARRELL: Happy birthday.
21 Assemblyman Hayes.

22 ASSEMBLYMAN HAYES: Thank you,
23 Mr. Rowe. I just want to ask you a quick
24 question about the DOB characterization of

1 savings that is slated to come out of the
2 central administration as part of the
3 Governor's budget submittal.

4 You know that back in March of 2010,
5 just last March, the Assemblyman
6 Republicans, after going around and conduct
7 hearings throughout the state on the very
8 question of the overstaffing of the
9 administration, came up with quite a
10 significant amount of money that could be
11 saved if that was streamlined and cut back.

12 And my understanding is that the
13 Governor may have picked up the ball a
14 little bit -- maybe not as much as we did,
15 but picked up the ball a little bit in his
16 budget submittal, where he's calling for
17 that 10 percent to be also included in an
18 administration cut. That's estimated by DOB
19 to be about \$5 million.

20 The question is additional savings
21 still on the table there. That's only, you
22 know, a small step for man. We could get a
23 larger step for mankind there if somebody
24 really put the sharpened pencil to the

1 paper.

2 NYS COPBA PRESIDENT ROWE: I really
3 couldn't see a savings of -- I believe they
4 have vacant items. I mean, of course in the
5 commissioner's testimony last year, that's
6 how he talked about cost savings. If you
7 look at the administrative budget from the
8 Executive Budget, there's no change in it
9 this year, just like there was no change in
10 it last year.

11 Whether he's going to cut vacant
12 items -- which I believe that's what they
13 would be -- I think the \$5 million is
14 somewhere's around 70 positions. You know,
15 I really don't know where they come from and
16 if they're truly coming from management.

17 You know, again, just like you are, as
18 far as the task force issue, we're kind of
19 in the dark on it.

20 ASSEMBLYMAN HAYES: So the point
21 being we should in the Legislature, as part
22 of our process over the next several weeks,
23 be looking very closely at that issue about
24 where that cut is actually coming from.

1 have a substantially greater number.

2 So my question is, can we get a number
3 from you as simply the double-bunking in
4 facilities that were not designed for
5 double-bunking, so we're comparing apples to
6 apples?

7 NYSOPBA PRESIDENT ROWE: As far as
8 right now, we're talking double bunks that
9 were never designed would be 6,784.

10 CHAIRMAN DeFRANCISCO: 6,784, and
11 he's somewhere around 800?

12 NYSOPBA PRESIDENT ROWE: Well, he --
13 rather than being completely truthful, he
14 talked about maximum cells. He did not talk
15 about cubicles. His answer was the maximum
16 cells, and he continued his conversation
17 along that line.

18 CHAIRMAN DeFRANCISCO: Okay, thank
19 you. Thanks for the clarification.

20 One other thing. The prison population
21 from several years ago, I don't know what
22 the number is you just gave.
23 Seventy-some-odd thousand to 50-some-odd
24 thousand? Can you give me those numbers

1 again?

2 NYSCOPBA PRESIDENT ROWE: The
3 population went from -- I believe it spiked
4 at 71,000 in '99, and today we're at about
5 57,000.

6 CHAIRMAN DeFRANCISCO: Now, during
7 that same period, can you tell me the loss
8 of corrections officers, so that I can
9 compare the percentage of --

10 NYSCOPBA PRESIDENT ROWE: Approximat
11 ely 2,000.

12 CHAIRMAN DeFRANCISCO: Out of how
13 many back in 1999? How many were in '99,
14 approximately?

15 NYSCOPBA PRESIDENT ROWE: It was
16 about 20,000 to 22,000 I believe.

17 CHAIRMAN DeFRANCISCO: Twenty-two
18 thousand? So it's around 10 percent, a
19 10 percent reduction? Okay, thank you.

20 NYSCOPBA PRESIDENT ROWE: You're
21 welcome.

22 CHAIRMAN DeFRANCISCO: Okay, I think
23 that's it -- oh, I'm sorry.

24 SENATOR HASSELL-THOMPSON: Just one

1 very quick question, and the question has to
2 do with definition. Define for me
3 double-bunking.

4 NYSOPBA PRESIDENT ROWE: Double-
5 bunking as far as our definition is the
6 confining of an inmate in a cubicle or a
7 cell with another inmate. Your living
8 quarters are by the means of a double bunk.

9 SENATOR HASSELL-THOMPSON: So you're
10 saying that -- I've seen some of the cells,
11 and some who are built for two. But you're
12 talking about double-bunking is when two are
13 in a cell that's built for one?

14 NYSOPBA PRESIDENT ROWE: Correct.
15 Or in a cubicle. Or in a room.

16 SENATOR HASSELL-THOMPSON: Okay,
17 whatever the enclosure is.

18 Who establishes the definition of
19 double-bunking?

20 NYSOPBA PRESIDENT ROWE: That's a
21 good question. Because prior to I believe
22 the mid-'90s, don't quote me on that, but
23 the Department of Correctional Services
24 received -- had to receive upwards of 4,000

1 to 5,000 variances from the Commission on
2 Corrections regarding double-bunking. And
3 at one time the regulation was changed to
4 allow two inmates to reside in a 6-by-9
5 cubicle or 6-by-10 cubicle, I believe it is.

6 The department still at this time, they
7 do receive variances for several hundred
8 beds that they have double-bunked. But not
9 as large a number as they did before.

10 SENATOR HASSELL-THOMPSON: So with
11 these variances, then, it allows them to
12 expend on the rule?

13 NYSCOPBA PRESIDENT ROWE: Correct.
14 But I believe the regulation has been
15 changed by the Commission on Correction in
16 the past. It's a regulation.

17 SENATOR HASSELL-THOMPSON: And he has
18 that authority.

19 NYSCOPBA PRESIDENT ROWE: Not the
20 commissioner, the Commission on Corrections.

21 SENATOR HASSELL-THOMPSON: And he has
22 that authority.

23 NYSCOPBA PRESIDENT ROWE: They have
24 that authority, correct.

1 SENATOR HASSELL-THOMPSON: So who
2 provides the variances? Before the regs
3 were changed, who provided the variances
4 that allowed double-bunking to occur?

5 NYSOPBA PRESIDENT ROWE: Well,
6 certainly during '99 the Commission on
7 Corrections looked at this very diligently.
8 And not only did they allow these temporary
9 variances, but they also stated that they
10 needed -- you needed more staff on these
11 units to cover this many inmates.

12 SENATOR HASSELL-THOMPSON: But who
13 gave the authority for it to happen?

14 NYSOPBA PRESIDENT ROWE: The
15 Commission on Corrections.

16 SENATOR HASSELL-THOMPSON: Okay. All
17 right. Maybe that accounts for why there's
18 flexibility in the definition of
19 double-bunking.

20 CHAIRMAN DeFRANCISCO: Thank you.

21 NYSOPBA PRESIDENT ROWE: Thank you.

22 CHAIRMAN DeFRANCISCO: The next
23 speaker is Thomas Mungeer, New York State
24 Troopers PBA. On deck, Robert Tembeckjian.

1 TROOPERS PRESIDENT MUNGEER: Chairman
2 DeFrancisco, Chairman Farrell, members of
3 the Legislature, I appreciate this time to
4 allow me to speak today. Since I sat here
5 last year -- again, my name is Tom Mungeer,
6 president of the New York State Troopers
7 PBA. We represent 6,000 uniformed troopers,
8 supervisors and retirees.

9 Since I sat here last year and spoke to
10 you, I'm on my fourth superintendent. And
11 even though I am very optimistic about our
12 present leadership and the future of the
13 State Police, one thing hasn't changed. We
14 haven't had an academy class since 2008. My
15 attrition rate has remained steady at 130
16 troopers a year. And given that, you can't
17 put an ad in the paper and expect to hire a
18 trooper within two weeks. It takes 18
19 months to make a trooper: Background
20 investigations, academy, field training and
21 what have you.

22 So in Governor Cuomo's proposed budget
23 there is no allocation for an academy class.
24 So given that, if we have an allocation next

1 year, I am not going to see boots on the
2 ground, new troopers, until probably early
3 2014, given the present attrition rate.

4 And what goes hand in hand with that,
5 with reduced troopers on the road, again,
6 that ups response time. Troopers are taking
7 on more and more area throughout rural New
8 York to patrol. And I think we have to give
9 our troopers more tools in order to do their
10 job if there's not going to be backup or
11 adequate backup readily available.

12 I have nearly 20 years on the job. And
13 I believe during that whole time they've
14 been working on a statewide radio system so
15 our troopers can communicate. In this
16 technology that we have today, I think you
17 could probably follow the mayor of Hong Kong
18 on Tweets, but a trooper can't contact his
19 station 20 miles away in some parts of the
20 state.

21 They are working towards -- the
22 technology is there; they are working
23 towards fixing that. I do believe there's
24 \$30 million in this year's budget. There's

1 a federal mandate looming that narrows the
2 bands on the radio system. And that will
3 give us the bare minimum and move us to the
4 future. I'm just asking you that we could
5 use more money to, you know, bring us up to
6 the bare minimum, but we need that money in
7 there so my troopers can call for backup or,
8 you know, call their station when they're
9 out there.

10 The other thing that would help us a
11 lot, given the past couple of years there's
12 been numerous instances where at least the
13 bad guys had rifles and we haven't. The
14 Bucky Phillips situation out in Western
15 New York -- where I had three troopers shot,
16 one fatally -- the recent I-90 shooting a
17 couple of years ago in this area, has shown
18 as the criminals, they're better armed and
19 they're better armed than the troopers.

20 I was successful in obtaining about 260
21 patrol rifles for my troopers out of -- I
22 have approximately 2600 uniformed men and
23 women out there that are patrolling the
24 roadways of New York State. Given this

1 budget crunch and the fiscal crisis that's
2 out there, I would love to have a patrol
3 rifle for every trooper, but I know that
4 that's not possible.

5 So I would like to have a rifle for
6 each car, at least, so at least a trooper --
7 again, have another tool for the toolbox
8 when they're out there by themselves, no
9 backup readily available, that they would be
10 able to properly defend themselves in this
11 day and age.

12 I'm happy to answer any questions.

13 CHAIRMAN DeFRANCISCO: What would it
14 cost for a rifle in every car?

15 TROOPERS PRESIDENT MUNGEER: Probably
16 to -- the rifles themselves, without the
17 ammunition, probably under a million
18 dollars. Given the investigative reporting
19 of the *New York Post*, I guess I have about
20 1200 patrol vehicles out there.

21 (Laughter.)

22 TROOPERS PRESIDENT MUNGEER: So, you
23 know, given the 260 I have out there,
24 probably 900-plus rifles would probably do

1 it.

2 CHAIRMAN DeFRANCISCO: Thank you.

3 Anyone else?

4 CHAIRMAN FARRELL: Assemblyman

5 Lentol.

6 ASSEMBLYMAN LENTOL: Yes. Thank you
7 very much for your testimony.

8 I know that there's been some question
9 about the reduction of the State Police, and
10 I wondered if the response time has suffered
11 as a result. Has it increased the response
12 time of the State Police?

13 TROOPERS PRESIDENT MUNGEER: It has
14 increased. There are some counties out in
15 the western part of the state where there's
16 only one trooper sometimes patrolling that
17 whole county by his or herself. So when you
18 take 130 troopers out of the force every
19 year, you know, into the foreseeable future,
20 the response time has to go down because
21 we're doing more with less.

22 ASSEMBLYMAN LENTOL: Thank you.

23 CHAIRMAN DeFRANCISCO: Thank you,

24 sir.

1 TROOPERS PRESIDENT MUNGEER: Thank
2 you.

3 CHAIRMAN DeFRANCISCO: Next speaker,
4 Robert Tembeckjian, Commission on Judicial
5 Conduct. To be on deck, Stephen Younger,
6 president of the Bar Association of the
7 State of New York.

8 Mr. Tembeckjian, it's my understanding
9 that the budget for your organization, you
10 could live with under this --

11 MR. TEMBECKJIAN: Yes. So I expect
12 that I'll be very brief.

13 CHAIRMAN DeFRANCISCO: When you're
14 winning the argument and you haven't been
15 cut, it's a very big risk as an attorney to
16 continue speaking. But go ahead.

17 (Laughter.)

18 MR. TEMBECKJIAN: So essentially I'm
19 going to limit my remarks to thanking the
20 Governor and this committee, because it was
21 this committee, led by Senator DeFrancisco
22 in 2007, and vigorously supported by
23 Assemblywoman Weinstein and Assemblyman
24 Lentol, that the commission's budget was

1 balanced for the first time in a generation.

2 And since then, as attorney general and
3 now as governor, Governor Cuomo has been
4 very supportive of the commission's
5 constitutional independence, its mission,
6 and has been very cooperative in our
7 discussions about what an appropriate level
8 of funding would be.

9 So our funding of \$5.384 million, which
10 is slightly less than last year, is
11 sufficient for us to continue meeting our
12 constitutional obligations for the current
13 year, realizing that we'll have to make some
14 sacrifices and find some savings to account
15 for contractual increases in some of the
16 services that we provide.

17 CHAIRMAN DeFRANCISCO: On behalf of
18 this committee and Governor Cuomo, you're
19 very welcome.

20 (Laughter.)

21 MR. TEMBECKJIAN: Thank you very
22 much.

23 CHAIRMAN DeFRANCISCO: After Stephen
24 Younger will be Karen Murtagh-Monks,

1 executive director, Prisoners' Legal
2 Services.

3 Right now, Stephen Younger, president
4 of the Bar Association.

5 MR. YOUNGER: Thank you very much,
6 Chairman DeFrancisco, Chairman Farrell, and
7 members of the Legislature. Unlike most
8 lawyers, I'll try to speak less than what's
9 in my script, given the hour.

10 At the outset, I'd like to thank the
11 Legislature for their passage of the
12 Judicial Pay Commission bill. We greatly
13 appreciate that.

14 I'd like to first address the Judiciary
15 budget. Year in and year out, our courts
16 handle millions of disputes that are very
17 important to our society and to the rule of
18 law. The caseload statistics are
19 dramatically up. I can point to a couple of
20 examples -- for example, foreclosure filings
21 have doubled in the last five years. Our
22 city courts and civil courts have gone up by
23 over 90 percent, reflecting the consumer
24 credit crisis. We believe that that doesn't

1 capture all of the increased workload,
2 because in many areas, like Family Court,
3 foreclosures have increased requirements of
4 hearings so there's more work within each
5 case.

6 So we believe that the Legislature
7 ought to provide adequate funding to sustain
8 the essential function of our courts, and we
9 appreciate your consideration of the budget.

10 I'd like to just touch on one thing
11 that's not in my remarks. Senator Bonacic
12 addressed the issue of consolidation. We
13 are studying that issue right now. It would
14 require a constitutional amendment. We
15 believe that there could be some savings if
16 you consolidated some courts. You can't do
17 it overnight, it requires a constitutional
18 amendment, and we'd like to be back with you
19 with a report on that when our study is
20 over.

21 A critical issue for the State Bar is
22 funding for civil legal services for poor
23 New Yorkers. And there are two issues
24 raised this year. The first is the IOLA

1 crisis. As you know, thanks to the
2 Legislature, back in 1983 lawyers pay into a
3 fund out of our client funds to fund legal
4 services. Unfortunately, mostly because of
5 the declining interest rates, those funds
6 have declined dramatically. They went down
7 from \$32 million in 2009 down to \$8 million
8 last year.

9 We appreciate the \$15 million that you
10 appropriated last year to make up for that
11 crisis, and another \$15 million is being
12 requested this year. And we think it's
13 essential. In a time of crisis, legal
14 services for the poor are so essential.

15 In addition, we were pleased to work
16 with the Chief Judge's Task Force on Access
17 to Justice, holding hearings around the
18 state. That task force had findings which
19 are truly overwhelming. They show that 2
20 million New Yorkers go to court every year
21 in our state without a lawyer. And that's
22 just not our justice system. Some courts --
23 for example, in eviction cases, 98 percent
24 of tenants are unrepresented. Similarly, in

1 our civil courts, 99 percent of our
2 borrowers go in represented.

3 The task force found that there's
4 savings that can be achieved by bringing
5 federal monies in when you have a lawyer,
6 because a lawyer can protect the right to
7 benefits. Interestingly, both banks and
8 landlords supported the right to access to
9 justice.

10 So we applaud the \$25 million that
11 Judge Lippmann has requested this year, and
12 we hope that you will support it as well.

13 I'm sure you know that lawyers provide
14 a lot of pro bono services. The
15 conservative number is about 2 million
16 hours. That alone is not going to go to fix
17 this crisis.

18 I'd also like to talk briefly about
19 indigent criminal defense. Chief Judge Kaye
20 commissioned a report which raised very
21 troublesome issues about our indigent
22 defense system.

23 Last year your budget called for the
24 creation of an Office of Indigent Legal

1 Services. We view that as a very positive
2 step in addressing this issue. This year's
3 budget calls for \$3 million for that office.
4 We commend the Governor for requesting it,
5 and we hope that you will consider that with
6 pleasure.

7 The last point is Prisoners' Legal
8 Services. We were at the forefront of this
9 issue; at the State Bar we formed the first
10 Prisoners' Legal Services back in 1970s.
11 The Legislature first funded it in 1978.
12 Unfortunately, this year's budget has no
13 money for Prisoners' Legal Services. We
14 talked a lot about corrections, we talked a
15 lot about, you know, the issues that came
16 about from the Attica riots. Having a
17 lawyer helps reduce tensions in a prison.
18 It gives people an outlet. And we request
19 that that money be restored next year.

20 I'd be glad to answer any questions you
21 may have. But we believe that access to
22 justice for poor New Yorkers is a critical
23 issue, especially right now when there's so
24 many people in this state in foreclosure and

1 in consumer credit problems.

2 Thank you.

3 CHAIRMAN FARRELL: Question on the --
4 is the majority of those people who don't go
5 to court without a lawyer, are those all in
6 the lower courts, like housing cases and
7 small claims? Do you count those in?

8 MR. YOUNGER: Very much so in the
9 small courts. Civil courts are one of the
10 worst. Evictions, consumer credit cases,
11 well over 95 percent of people don't have a
12 lawyer.

13 But it's also in foreclosures. I mean,
14 foreclosures are in Supreme Court, and those
15 people don't have a lawyer either. About
16 half the people in a foreclosure don't have
17 a lawyer.

18 CHAIRMAN FARRELL: If you can afford
19 a lawyer, you would have paid your rent.
20 There's a slight problem there.

21 MR. YOUNGER: There's an axiom there.

22 CHAIRMAN FARRELL: And what they did
23 a couple of years ago, we got a very bad
24 ruling. I'm told I can't -- I'm not a

1 lawyer -- I can't walk in and just say, you
2 know, this tenant, blah, blah, blah. We
3 used to be able to have people -- a lot of
4 people were going in, a lot of housing
5 groups were doing work even though they were
6 not lawyers, they were doing a good job to
7 make sure no one really got into trouble.
8 And when they took that out, now it's -- I'm
9 speaking of New York City -- it's
10 impossible.

11 MR. YOUNGER: Well, we actually have
12 programs like that in the Family Court,
13 where a lot of people are unrepresented, for
14 example, in custody cases and there are
15 access educational materials for them in the
16 courts that we help to fund with foundation
17 grants.

18 But you're absolutely right, we can't
19 get a lawyer for every single person who
20 needs it. This money is going to be just a
21 drop in the bucket. But it's the cases that
22 need it most that we have to prioritize.

23 CHAIRMAN FARRELL: Maybe we should
24 create a second-level attorney, as you've

1 done with paralegals, maybe we should create
2 a little lower than that just to be able to
3 do that.

4 MR. YOUNGER: Well, maybe I can just
5 give you one example where a lawyer helps.

6 Judge Pfau talked about the robo signing
7 crisis. That was discovered by a lawyer
8 working pro bono who helped somebody in a
9 foreclosure. Millions of people were saved
10 from foreclosure by one lawyer who was a
11 volunteer. So having a lawyer knowing your
12 legal rights can be very, very helpful.

13 CHAIRMAN DeFRANCISCO: You expressed
14 support for the Judiciary budget, and I know
15 all lawyers -- most lawyers, or a lot of
16 lawyers appear before judges. Is there
17 anything in the budget that you disagree
18 with or you think should be cut? Because I
19 hear a lot of lawyers in the trenches
20 complaining about the bureaucracy of the
21 Office of Court Administration, the needless
22 paperwork, difficulties along those lines.

23 Has the Bar Association ever tried to
24 come with up with some savings as a result

1 of the bureaucracy that's developed over the
2 years?

3 MR. YOUNGER: Well, one of them would
4 be from consolidation. If there was a
5 consolidation plan, which takes a
6 constitutional amendment, there would be
7 savings.

8 In terms of specific programs, we have
9 not identified any that ought to be cut. I
10 think our core focus is, one, the
11 courtrooms. We need to keep our courtrooms
12 open. They have to be accessible because
13 the courts can't stop taking cases.

14 But we're also concerned about the back
15 offices. There were a lot of court clerks,
16 very experienced court clerks who took early
17 retirement this year, and I'm sure you may
18 have heard about this from some of the
19 lawyers in your community. And if we cut
20 those staffs too much, then you can't
21 process the paperwork.

22 There should be savings because of the
23 growing use of e-filing. That should create
24 some savings. But I can't speak to whether

1 there's a particular program that needs to
2 be cut today.

3 CHAIRMAN DeFRANCISCO: Could you
4 bring back your board of directors'
5 suggestion that maybe there are savings in
6 the cost -- or actually, put it in the
7 attorney's point of view, savings in time
8 that attorneys can realize if some of the
9 regulations and some of the requirements --
10 I'll give you one example. You've got to
11 file a statement whenever you have a
12 contingency fee -- in some departments, not
13 all of them -- and then when you're done,
14 you have to file a closure statement. I
15 mean, I don't know what that provides to
16 anyone other than some filing
17 responsibilities by someone in a back
18 office.

19 So the point is there must be some
20 situations that lawyers don't like that
21 could be eliminated without any effect
22 whatsoever on the judicial system, and that
23 would be helpful.

24 MR. YOUNGER: I'll give you one

1 MR. YOUNGER: We'd be very glad to
2 look at that, Senator.

3 CHAIRMAN DeFRANCISCO: Thank you.

4 CHAIRMAN FARRELL: Thank you.

5 MR. YOUNGER: Thank you very much.

6 CHAIRMAN DeFRANCISCO: The next
7 speaker is Karen Murtagh-Monks, executive
8 director, Prisoners' Legal Services of
9 New York. And John Dunne. I knew he'd be
10 here at some point.

11 On deck is Edwina Martin.

12 MS. MURTAGH: Good afternoon,
13 Chairman DeFrancisco, Chairman Farrell,
14 members of the joint committee. Thank you
15 for this opportunity to testify before you
16 today. My name is Karen Murtagh. I'm the
17 executive director of PLS. And with me
18 today is former Senator John Dunne. With
19 your indulgence, we'll split our time. We
20 won't take any extra time. And we will rely
21 on our submitted testimony.

22 I'd just like to highlight three points
23 that were in my testimony. They are PLS
24 needs funding. The fact that PLS saves the

1 state money and actually pays for itself,
2 and the fact that New York State needs PLS.

3 First, we are here today fighting for
4 our very existence. We did not receive any
5 funding in the 2010-2011 budget last year,
6 and we are not in the Executive Budget this
7 year. Eighteen of our 29 employees have
8 received layoff notices already. Without
9 funding, we will be closing our doors this
10 fall.

11 PLS actually pays for itself, when it
12 comes down to it. A lot of our core work is
13 in correcting jail time and sentencing
14 errors and in getting reversals of
15 disciplinary hearings that were unlawfully
16 or illegally held. In 2009 and 2010, our
17 work saved 192 years of jail time and
18 sentencing time off of prisoner's sentences.
19 The average cost to house an inmate in a New
20 York State prison is \$36,000. So if you do
21 the math, in the past two years PLS has
22 saved the state \$7.5 million.

23 That doesn't even take into account the
24 fact that we continually discourage the

1 filing of lawsuits that have no merit by
2 educating our clients about their legal
3 rights, reviewing their claims, and telling
4 them that they just shouldn't go to court
5 because there's nothing there.

6 The money that we save the AG's office,
7 DOCS, the Judiciary by discouraging
8 frivolous lawsuits, and the money that we
9 save when we are counseled on lawsuits
10 because we know how to navigate the judicial
11 system, all of those costs we can measure in
12 dollars. What we can't measure is the cost
13 of presenting another Attica. And Senator
14 Dunne will speak to that because he was
15 actually there. But Attica cost this state
16 well over \$100 million in actual dollars,
17 not to mention the 39 lives that were lost
18 in September 1971.

19 Why should the state fund PLS? Because
20 you need us. Attica proved that to you. If
21 there are no checks on the prison system,
22 abuses will occur. And let me just give you
23 two examples of this.

24 In 1999, PLS was shut down for a very

1 short period of time, and during that time
2 the Department of Corrections thought that
3 there was going to be a Y2K strike by
4 inmates, so they rounded up hundreds of
5 inmates and put them in solitary
6 confinement. There was no strike. When PLS
7 was refunded, we went in and reviewed the
8 disciplinary hearings of over 60 of those
9 inmates, and we obtained reversals on all of
10 them, because there was little to no
11 evidence that these prisoners had planned
12 anything.

13 A more recent example is the case of
14 the 16-year-old boy that was in a shock
15 facility this past October, and he had been
16 locked in a closet overnight to try to scare
17 him a little bit. And a couple of days
18 later he was on work release, and a
19 20-year-old prisoner comes up to him says,
20 "Do you want to get out of here?" and he
21 says yeah. And they run across the field,
22 because there's no perimeter on a shock
23 facility, and they run into the woods. He
24 spends the night in the woods, cold, hungry.

1 The State Police find him the next day.
2 He's charged with escape, of course, because
3 he left a correctional facility. But he's
4 also charged internally by the Department of
5 Corrections for escaping, and they hold a
6 disciplinary hearing and this 16-year-old
7 boy is put in solitary confinement for three
8 years.

9 We got the phone call from his mother
10 and the community that had been trying get
11 him out. No one was listening. We hired an
12 expert on the effects on your mental health
13 being in solitary confinement, and a
14 pediatrician who talked about the
15 development of the adolescent brain in an
16 affidavit. We filed our appeal, and our
17 client is now out of the box.

18 If PLS wasn't here, that boy would have
19 spent three years in the box and would have
20 been released to society after spending his
21 formative years in isolation. What does
22 that say about our reentry efforts, and what
23 will happen to society if we don't have an
24 organization like PLS fighting for these

1 people?

2 I want to give the time to Senator
3 Dunne. Let me just say funding PLS is not
4 just the economically right thing to do,
5 because we pay for ourself, it's the right
6 thing to do.

7 Senator Dunne.

8 SENATOR JOHN DUNNE: Thank you. And
9 my former colleagues, thank you for -- oh,
10 the mike. We didn't have these when I was
11 around.

12 (Laughter.)

13 SENATOR JOHN DUNNE: Thank you for
14 the opportunity to come and appear before
15 you once again. I'll be brief.

16 Karen made frequent reference during
17 this hearing to the Attica prison riot --
18 and I must tell you, it's difficult for me
19 to talk about that without a bit of
20 emotion -- which resulted in death and
21 destruction of an unparalleled level in the
22 nation's history of corrections. And
23 although it did occur 40 years ago, my
24 personal recollection of those five days

1 spent by me as a mediator continues to burn
2 in my memory.

3 Sitting across the negotiating table
4 from leaders of the more than 1,000
5 prisoners, I witnessed and saw in their eyes
6 the rage, the hate, the pent-up frustration
7 and the anger which spontaneously exploded
8 into that disaster. But perhaps the most
9 forceful of their demands -- not for
10 freedom, since they all knew just why they
11 were there, but for a voice to proclaim
12 their grievances for the denial of basic
13 rights which even they as convicted
14 criminals were entitled to have protected.

15 And their specific demand was to have
16 access to legal representation to present
17 their claims of injustice to the authorities
18 and, if necessary, to the courts. Another
19 example of the need for civil, not criminal,
20 but civil legal services.

21 It took years of hearings and
22 investigations to include that their lack of
23 access to justice could no longer be
24 ignored, which led to the birth of PLS,

1 which has clearly filled that void. As
2 President Younger pointed out, it is
3 literally a safety valve against tensions
4 and unrest in these facilities.

5 We cannot risk the possibility of
6 another Attica whose prospects I truly
7 believe can be greatly diminished by
8 continuing the critical work of PLS.
9 Please, please do not allow this voice of
10 justice to be stilled.

11 Thank you.

12 CHAIRMAN DeFRANCISCO: Senator
13 Montgomery.

14 SENATOR MONTGOMERY: Yes, I would
15 just like to take this opportunity to say
16 thank you, particularly to Senator Dunne for
17 your many, many years of service and for
18 also being an extremely important voice in
19 this hearing.

20 I just want to ask what are your
21 suggestions in terms of what we should do
22 specifically as it relates to PLS legal
23 services for people who are incarcerated.
24 It's right now not a lined-out item, and I'm

1 assuming that you're suggesting that we need
2 to make sure that that happens.

3 SENATOR JOHN DUNNE: Let me have
4 Karen, who is on the firing line, respond to
5 that.

6 SENATOR MONTGOMERY: All right, thank
7 you.

8 MS. MURTAGH: Yes, presently we are
9 not in the budget at all. And it is our
10 request to this committee to fight to
11 include PLS in the budget.

12 I have laid off 18 of the 29 employees,
13 keeping two attorneys in each of our four
14 offices just to answer mail and try to
15 respond to emergencies at this point. But
16 the money is going to run out, and we will
17 have to close our doors.

18 SENATOR MONTGOMERY: All right. And
19 I thank you for that. And I know that the
20 leaders, our leaders are all attorneys
21 themselves, so I'm sure that they are
22 listening especially to you in this regard.
23 I know how I feel, but I know that my
24 colleagues feel the same too. Thank you.

1 CHAIRMAN FARRELL: Assemblyman

2 Aubry.

3 ASSEMBLYMAN AUBRY: Thank you very

4 much.

5 I just wanted to remind colleagues and
6 even you that we just last year finished
7 paying out the last \$2 million that we
8 determined was owed to the staff of Attica
9 and their families for the abuse they
10 received in the same process. So riots like
11 that that occurred in Attica not only take a
12 toll on those who were incarcerated, they
13 take a toll and can be abusive even to those
14 who work for us. The idea of justice for
15 those who are incarcerated is both safety
16 and justice for those who work in those
17 facilities.

18 Thank you.

19 CHAIRMAN DeFRANCISCO: Thank you very

20 much. We really appreciate your coming in.

21 MS. MURTAGH: Thank you.

22 CHAIRMAN DeFRANCISCO: The next

23 speaker, Edwina Martin, director of

24 communications and government relations,

1 Legal Services of New York City.

2 On deck is Dennis Hawkins.

3 MS. MARTIN: Good afternoon.

4 Chairmen, members of the Senate, members of
5 the Assembly, my name is Edwina Frances
6 Martin. I am the director of communications
7 and government relations for Legal Services
8 NYC.

9 With a network of community-based
10 offices in each borough of the city and a
11 staff of almost 400 attorneys, social
12 workers, paralegals and support staff, Legal
13 Services NYC is the nation's largest
14 organization exclusively devoted to
15 providing free civil legal services to the
16 poor -- services such as foreclosure
17 prevention, domestic violence, and
18 disability, to name just a few.

19 I am here today first and foremost to
20 thank you for the tremendous support we have
21 received for funding for civil legal
22 services from the Legislature over the
23 years. We think of you as our partners in
24 helping those who have nowhere else to turn

1 in our society. I am also here today to ask
2 that you restore funding for civil legal
3 services in the state budget to the fiscal
4 year 2010-2011 levels and to support the
5 fiscal year 2011-2012 Judiciary budget,
6 which includes a commitment that will help
7 to ensure a stable funding source for civil
8 legal services and once again includes an
9 IOLA rescue, because that fund is
10 dramatically down.

11 This year Legal Services NYC is
12 confronting a confluence of difficult
13 funding challenges: Dramatically decreased
14 funding from IOLA once again; dramatically
15 decreased general funding from the state in
16 last year's budget, down almost 70 percent;
17 and steady decreases in New York City
18 funding, a 21 percent decrease last year on
19 top of a 40 percent decrease the year
20 before.

21 To give you a visual, if you think of
22 the decreased funding on one side of the
23 scales of justice, on the other side you
24 have a cascade of increasing poverty

1 indicators recently analyzed from the last
2 census. For example, increased hunger in
3 New York City, with 17.2 percent of city
4 residents turning to food stamps in 2009, a
5 3 percent increase over 2008. A dramatic 3
6 percent increase in 2009, compared to 2008,
7 in unemployment. Half of the state's
8 foreclosures in 2009 occurring in New York
9 City, with 70 percent of them in Queens and
10 in Brooklyn. And indeed, a dramatic 16
11 percent spike in foreclosures in the city
12 the first quarter of 2010.

13 At Legal Services NYC, last year we saw
14 increases in all of our practice areas, but
15 in particular -- and I have this in my
16 testimony -- in unemployment, from 959 cases
17 in 2008 to 1334 in 2010; in foreclosure, 622
18 cases in 2008 to 1760 in 2010.

19 To try to tip the scales back in favor
20 of the people, last year you and your
21 colleagues supported the efforts led by
22 Chief Judge Lippmann to enact a \$15 million
23 IOLA rescue. This did indeed happen, and we
24 are quite grateful for it.

1 The lack of funding for civil legal
2 services is unfortunate, not only because
3 people in desperate situations are not being
4 helped but because the work we do saves the
5 state money and brings money into low-income
6 communities.

7 In addition to the IOLA funding in last
8 year's Judiciary budget, the Chief Judge
9 also established a task force, which I know
10 they spoke about earlier today and Steve
11 Younger just spoke about a little bit ago.
12 There were a number of findings in the
13 report that they issued last fall, such as
14 statewide savings from the work of civil
15 legal services programs of \$6.2 million in
16 domestic abuse cases, \$97.5 million in
17 emergency shelter costs, \$321 million in
18 federal benefits and grants coming into
19 low-income communities. These are just a
20 few of the statistics included in the task
21 force report.

22 All of this while meeting only 20
23 percent of the need. What an incredible
24 return on investment for a small amount of

1 money that we give to civil legal services.
2 Think of what we should accomplish together
3 if 30 or 40 or even 50 percent of the need
4 was being met. Indeed, funding for civil
5 legal services is in keeping with the
6 Governor's goal to set our state on the path
7 towards prosperity.

8 So this is a golden opportunity for
9 New York State, an opportunity to put forth
10 a vision of how to ensure a basic tenet of
11 the promise of America, justice for all, and
12 to even those scales a little bit.

13 Thank you very much for allowing me to
14 speak to you today, and I'm happy to answer
15 any questions.

16 CHAIRMAN FARRELL: Thank you.

17 CHAIRMAN DeFRANCISCO: Thank you.

18 ASSEMBLYWOMAN WEINSTEIN: Thank you.

19 MS. MARTIN: Thank you.

20 CHAIRMAN DeFRANCISCO: Dennis
21 Hawkins, executive director of the Fund for
22 Modern Courts, followed by Tracie Gardner.

23 MR. HAWKINS: Good afternoon,
24 Chairman DeFrancisco, Chairman Farrell, and

1 members of the Legislature. My name is
2 Dennis Hawkins, and I'm the executive
3 director of the Fund for Modern Courts.

4 The Fund for Modern Courts is an
5 independent, nonpartisan statewide court
6 reform organization committed to improving
7 the court system for all New Yorkers. And I
8 will not be reading from my submission,
9 since you have it, but I will make reference
10 to a few points.

11 Modern Courts supports the Judiciary
12 budget as presented in order to ensure that
13 every New Yorker has the access to justice
14 that he and she deserves. Our concern about
15 trying to reduce the budget, trying to do
16 more with less, involves the issue of where
17 does that less come from.

18 Modern Courts runs a program called
19 Citizens Court Monitoring. For the past
20 couple of years, our lay citizens have been
21 going out to courts throughout the state,
22 most recently in Warren and Washington
23 County Family Court; we're currently in
24 Suffolk Court.

1 Those monitors report to us that the
2 Family Court operates with huge caseloads,
3 has very complex cases, they see many, many,
4 many unrepresented litigants and
5 petitioners, and they see the court spending
6 a great deal of time trying to walk those
7 unrepresented petitioners through the
8 system. Many, many adjournments as a result
9 of the lack of representation.

10 And all of that says to us that if we
11 take just one area like Family Court and
12 think about budget reductions, what gets
13 reduced?

14 The positive thing that we hear from
15 our court monitors is that the nonjudicial
16 personnel, especially the petition clerks,
17 are invaluable in resolving these family
18 issues. I heard earlier Judge Pfau talk
19 about how much of the budget is personnel.
20 And from our perspective. And from our
21 perspective, if the 90-plus percent of the
22 budget is personnel and that nonjudicial
23 personnel is cut, there's going to be a
24 problem.

1 Now, a lot of us have used the phrase
2 over the years "doing more with less." And
3 I think just one thing that I'd like to
4 point out from my submitted testimony is
5 that over the past couple of years many
6 legislators have fought to increase the
7 number of Family Court judges in order to
8 deal with the increasing volume and
9 complexity. If the Legislature or if
10 members of the Legislature thought that was
11 necessary and ultimately the bill did not
12 pass, it means that we're operating in a
13 system that already is doing more with less,
14 because there was an anticipation -- and
15 Modern Courts supported this -- to increase
16 the number of Family Court judges throughout
17 the state. And that's just one concern that
18 we have based on very practical experience
19 with our court monitors.

20 The only other thing that I'd like to
21 point out is that Modern Courts was very
22 much involved in the Commission on Civil
23 Legal Services. It was actually our
24 organization that raised the funds on behalf

1 of the commission to conduct the legal-needs
2 survey that you've heard about. I won't
3 repeat any of the dramatic statistics that
4 have already been testified to, but the one
5 thing that I know our organization walked
6 away with is that unrepresented litigants
7 take more of the court's time and attention
8 than people who are represented.

9 And so to cut back on those nonjudicial
10 personnel that actually assist the
11 unrepresented litigants through the system
12 could spell disaster and limit access to
13 justice for New Yorkers.

14 Thank you very much. And if you have
15 any questions, I'd be glad to answer them.

16 CHAIRMAN DeFRANCISCO: Yes. How is
17 Modern Courts funded?

18 MR. HAWKINS: Half of our budget is
19 funded by contributions of board members and
20 other attorneys, and approximately half
21 through the Office of Court Administration
22 for a specific program called the Citizens
23 Jury Project.

24 CHAIRMAN DeFRANCISCO: And how was it

1 created? What organization created Modern
2 courts?

3 MR. HAWKINS: It was a group of
4 attorneys, businessmen and laypeople back in
5 1955 that thought the court system was not
6 as well known as the legislative and
7 executive system, that public attention
8 should be drawn to how to improve the
9 functioning of the courts. And it's just a
10 voluntary, not-for-profit organization.

11 CHAIRMAN DeFRANCISCO: Was there any
12 involvement in the court system -- I don't
13 know whether if there was an Office of Court
14 administration at that time -- but in the
15 creation of the organization?

16 MR. HAWKINS: No, there was not.

17 CHAIRMAN DeFRANCISCO: Okay. But
18 right now half of your funding comes from
19 the courts?

20 MR. HAWKINS: Right. And that's over
21 about the last 10 years, the Citizens Jury
22 Project.

23 CHAIRMAN DeFRANCISCO: And you
24 believe that you're independent as far as

1 your positions?

2 MR. HAWKINS: Yes, I do.

3 CHAIRMAN DeFRANCISCO: Okay, thank
4 you.

5 MR. HAWKINS: And, Senator, just in
6 terms of what that service is, again, it's
7 service to jurors. We send in, you know,
8 college students to provide information and
9 to collect information from jurors about
10 their service and how things are working,
11 and we make recommendations to the court
12 system. Indeed, in our contract it's called
13 an ombuds service because we are designed,
14 through our contract, to be independent and
15 to be able to say it's not working here, you
16 need better security, you need better ways
17 of communicating to jurors.

18 So we advocate on behalf of jurors, and
19 it's designed to provide us with the
20 independence we need to be critical of OCA.

21 CHAIRMAN FARRELL: Wasn't there also
22 a -- one of the responsibilities they chose
23 to take was to try to change the election of
24 judges to the appointment of judges?

1 MR. HAWKINS: Modern Courts, yes.

2 CHAIRMAN FARRELL: As a matter of
3 fact, for about 20 years that was the only
4 thing they were doing.

5 MR. HAWKINS: Since the beginning of
6 the organization, that has been --

7 CHAIRMAN FARRELL: That was basically
8 the underlying --

9 MR. HAWKINS: And the second pillar
10 of reform back to 1955 was court
11 restructuring, which we heard some from
12 Steve Younger and others. And, Senator
13 DeFrancisco, there's a potential for savings
14 with court restructuring. I know that, you
15 know, you can do things with numbers to show
16 savings when perhaps there aren't, but there
17 are studies that say there are savings.

18 And if we even put the finances aside,
19 court restructuring could balance the
20 caseload of Family Court judges who have
21 over 2,000 dispositions a year, and Supreme
22 Court justices, who only have 500 a year.
23 It could balance and distribute cases
24 throughout the system and perhaps make it

1 more efficient even if not saving any money.

2 CHAIRMAN DeFRANCISCO: But getting
3 back to the funding, half of your funding
4 comes from the court system, the Office of
5 Court Administration. Although you have
6 students going to the courts, it helps pay
7 your employees to continue the work,
8 whatever the work might be, for the Modern
9 Courts; right?

10 MR. HAWKINS: The money that we get
11 from the state we devote only to that
12 particular program. So it's training, it's
13 providing the students with computer access
14 and terminals. So I'm very careful about
15 making sure that money isn't used for any
16 other purpose except the Citizens Jury
17 Project.

18 CHAIRMAN DeFRANCISCO: How much money
19 is provided by the Office of Court
20 Administration?

21 MR. HAWKINS: Approximately \$350,000
22 a year.

23 CHAIRMAN DeFRANCISCO: Okay, thank
24 you.

1 MR. HAWKINS: Thank you, Senator.

2 CHAIRMAN DeFRANCISCO: Senator
3 Montgomery.

4 SENATOR MONTGOMERY: Yes, I just
5 wanted to ask on the innovation, the Center
6 for Court Innovation, how do you connect
7 with --

8 MR. HAWKINS: It's a separate
9 organization. I very much respect their
10 work. And when they come up with an idea
11 that seems, you know, to be a way to make
12 the courts more efficient, we might advocate
13 for that.

14 Our organization writes op-ed pieces,
15 we conduct forums and trainings up here in
16 Albany. At least once a year we have a
17 forum that might highlight an important
18 issue in the court system for the public in
19 general.

20 SENATOR MONTGOMERY: Thank you.

21 CHAIRMAN DeFRANCISCO: Thank you.

22 Next is Tracie Gardner, director of
23 New York State Policy ATI & Reentry
24 Coalition, to be followed by Ann Erickson

1 and Kristine Brown Lilley, Empire Justice
2 Center.

3 MS. GARDNER: Good afternoon. My
4 name is Tracie Gardner. I'm actually the
5 director of New York State policy for the
6 Legal Action Center. I think a number of
7 you know that the Legal Action Center is the
8 only public interest law and policy
9 organization in New York and in the United
10 States. Our sole mission is to fight
11 discrimination against and protect the
12 privacy of people in recovery, people living
13 with HIV and AIDS and people with criminal
14 records.

15 I'm not going to read word by word from
16 my testimony but do want to highlight a
17 number of things, including our request to
18 the Legislature for this year. We are
19 fortunate enough to work very closely with a
20 coalition of alternative to incarceration
21 and reentry and related programs. We are
22 the not-for-profit arm of the community
23 supervision that many of you were talking
24 about. Parole and probation cannot do it

1 alone. We are the resources that they refer
2 to.

3 We're in the communities working with
4 folks around not just criminal justice
5 issues, but also other issues. We get
6 funded from a variety of different sources.
7 We are primarily administered by DCJS.

8 We appreciate that DCJS, DOCS, Parole
9 and Probation recognize our role in the
10 New York criminal justice system and,
11 moreover, our role in helping New York to be
12 one of the only states to have both a
13 lowered incarceration rate as well as a
14 lowered crime rate. And I have included
15 some statistics in the paper. And we don't
16 think that that's an accident; New York is
17 the only state to have a very extensive and
18 invested-in ATI and reentry network.

19 We strongly support Governor Cuomo's
20 proposals to reduce prison capacity, excess
21 prison capacity. We believe, though, in
22 supporting that proposal and even putting
23 that proposal forth to deal with the fiscal
24 crisis that the state faces, that it's going

1 to be incumbent to keep the ATI & reentry
2 program network strong enough to deal with
3 the implications of these closures.

4 So we are cheeky enough and bold enough
5 to completely reject the 8 percent reduction
6 that's proposed in aid to localities and,
7 for as much as possible, we'd like the
8 legislative adds from prior years restored
9 to ATI, reentry and probation. We are the
10 other part of this equation of the closure
11 of prisons, and surely that will be
12 discussed in the course of the task force.

13 This comes also -- we make this
14 recommendation to have the 8 percent
15 restored to us because we have, in many ways
16 more so than other fields that are so
17 directly impacted by changes in law in terms
18 of Rockefeller reforms and also the ensuing
19 decline in prison population, we have seen
20 cuts in city, state and federal dollars, and
21 yet demand has continued to grow.

22 So we are especially also concerned
23 about the lump-sum approach. We are very
24 concerned that the lack of detail will make

1 cuts more likely and certainly does not help
2 us and help the Legislature monitor what's
3 going on in the work that we're doing.

4 While last year's merger proposal for
5 probation and correctional alternatives was
6 smooth, and we did benefit from that, we
7 believe that community corrections should
8 have a clear and distinct identity within
9 the division.

10 As I said, we do support the proposal
11 to close prisons. And I would just point
12 your attention to one other piece because of
13 the reentry work that we do, and to try to
14 make sure that you're aware that some of the
15 barriers to successful reentry are issues
16 that we in the ATI & Reentry Coalition and
17 Legal Action Center in particular work on.

18 For the past seven years the
19 Legislature has passed a number of important
20 pieces of legislation that lower barriers to
21 reentry and the encourage the employment of
22 individuals with criminal records. Tough
23 budget times make it even more urgent that
24 we lower the barriers to keep qualified

1 people with criminal records from becoming
2 taxpaying citizens.

3 One major barrier is the dissemination
4 of rap sheets and arrest histories that
5 contain incomplete or sealed information.
6 To prevent this from happening, we recommend
7 that DCJS and OCA should be prohibited from
8 disclosing old and undisposed case
9 information. And a bill to address this was
10 introduced and was a DCJS program bill last
11 year, so they obviously are supportive.

12 And, two, that no governmental entity
13 other than OCA and DCJS should be allowed to
14 provide arrest or criminal history records
15 to employers. We do know that some counties
16 are selling local databases, and these
17 databases include both inaccurate
18 information from the DCJS rap sheets and
19 also information that's been sealed.

20 Thank you for your attention. And if
21 there are any questions?

22 CHAIRMAN DeFRANCISCO: Senator
23 Montgomery.

24 SENATOR MONTGOMERY: Yes, thank you.

1 Thank you, Tracie, for your testimony.

2 I want to ask you a couple of
3 questions. One is have you looked at or I'd
4 ask that you would look at the proposal to
5 merge Parole with Corrections. And I would
6 really like to know the position of your
7 organization on that and what you think that
8 would mean. And if you don't have it right
9 now --

10 MS. GARDNER: You know we'll get it.
11 It's a 500-page monster, Senator Montgomery.

12 We are in the process of looking at the
13 merger proposal. We know that there's a lot
14 of information in there that has a lot of
15 impact on ATI, reentry -- and particularly
16 reentry, you mentioned earlier in your
17 questions issues around the certificates of
18 relief and rehabilitation --

19 SENATOR MONTGOMERY: Yes.

20 MS. GARDNER: -- where we are
21 analyzing it. We are inclined to be okay
22 with that particular element, for example,
23 that the board has less jurisdiction over
24 that and that it is based more on the staff

1 who are directly working with people who
2 need those certificates.

3 But there are a number of other
4 elements in that proposal, in the merger
5 proposal that we're examining, and we will
6 definitely get the analysis to you.

7 SENATOR MONTGOMERY: That would be
8 helpful.

9 And the second question that I have is
10 whether or not some of what you are looking
11 at vis-a-vis removing barriers, if you have
12 proposed any language, if there's any
13 legislation that, you know, you're working
14 on with someone over here. And if so, we
15 would love to know that.

16 And if not, I'm sure that that's the
17 kind of thing that we would hope to work
18 with you on, how do you really approach
19 this. And you perhaps, having more
20 experience, would know how to -- what we
21 need to do, A, B, and C, one, two and three.

22 MS. GARDNER: Absolutely.
23 Absolutely. Every year we develop a docket
24 of reentry legislation. We have worked very

1 closely with members who are on this
2 panel -- Senator Thompson, Senator Nozzolio,
3 Assemblyman Lentol, the whole public
4 protection table.

5 So we wanted to limit this discussion
6 to budget. But you will definitely see the
7 roster of reentry legislation that we have
8 for this year.

9 SENATOR MONTGOMERY: Great. Thank
10 you. Thank you very much.

11 CHAIRMAN DeFRANCISCO: Thank you very
12 much.

13 MS. GARDNER: Do I get to wish
14 Assemblyman Aubry a belated happy birthday?

15 CHAIRMAN DeFRANCISCO: He's not
16 accepting birthday wishes any longer, once
17 he turned 39.

18 (Laughter.)

19 CHAIRMAN DeFRANCISCO: The next two
20 speakers are Anne Erickson and Kristine
21 Brown Lilley from the Empire Justice Center.

22 On deck is Steve Banks and Deborah
23 Wright from Legal Aid Society and
24 Association of Legal Aid Attorneys.

1 Is Kristine coming?

2 MS. ERICKSON: No, I'm just going to
3 do it myself.

4 CHAIRMAN DeFRANCISCO: Okay, you're
5 on.

6 MS. ERICKSON: Thank you very much.
7 My name is Anne Erickson, and I'm president
8 and CEO of the Empire Justice Center. And I
9 want to thank you for the opportunity to be
10 here today to speak with you about the
11 Executive Budget. So thank you, Senator
12 DeFrancisco and Assemblyman Farrell and
13 members of the panel.

14 At the Empire Justice Center, we're a
15 statewide organization that engages
16 basically in three areas of activities. I'm
17 summarizing my testimony, so I will try to
18 go quickly. We basically provide training,
19 support, and technical assistance to the
20 legal services programs and other local
21 organizations around the state so that they
22 can be kept up-to-date on any change in law,
23 rule or regulation that's going to impact
24 their clients.

1 We do this through providing continuing
2 legal education, we run a very vibrant
3 website, we do a lot of information-sharing,
4 we act as an information clearinghouse. So
5 that's kind of one area of service.

6 The other activities that we engage in,
7 we engage in legislative and administrative
8 advocacy. I'm here today; we've been part
9 of the effort since the early 1990s to try
10 to secure funding for legal services. We
11 are also a resource to the Legislature on
12 about 30 areas of poverty law. As you look
13 to make changes in laws that are going to
14 impact those in need, we provide information
15 and assistance.

16 We also engage in administrative
17 advocacy, where we work with the state
18 agencies as they implement these changes to
19 make sure that the rubber hits the road in
20 the way it was intended.

21 And then we are a law firm, so we
22 provide legal assistance to those in need.
23 We have offices in Rochester, Albany, White
24 Plains, and Long Island. We provided a

1 range of direct legal assistance and impact
2 litigation.

3 And each of these activities feeds on,
4 informs and strengthens the others. So what
5 we learn with our work in the field informs
6 what we bring to the Legislature; what work
7 we do in the Legislature informs the
8 training that we put out into the community,
9 and so on. It's a very dynamic
10 organization.

11 As you heard earlier, we have a
12 brand-new day here. And I know we've been
13 talking about new days for a long time. But
14 with Chief Judge Lippmann putting forward in
15 his budget this year a new approach to
16 funding legal services, I think for the
17 first time we are really seeing a major
18 breakthrough in an area that has desperately
19 needed attention.

20 In New York State funding for legal
21 services has really been legislatively
22 driven, as you well know. I mean, it has
23 primarily been the Legislature that has
24 restored funding each year that's been

1 eliminated by the Executive. I think we now
2 have a partnership that we have not had
3 before.

4 I was honored and am honored to serve
5 on the task force that the Chief Judge put
6 together, and I can tell you he is an
7 extremely hard taskmaster. In addition to
8 holding the four hearings that you've heard
9 mentioned, we also did tremendous data
10 collection. As the Fund for Modern Courts
11 mentioned, we also did a legal-needs survey.

12 And I was stunned to learn through this
13 process that we now have 2.3 million
14 New Yorkers who come into court each year
15 without benefit of representation, and that
16 70 percent of all civil matters that come
17 before the courts involve family law,
18 consumer credit and housing-related cases --
19 core fundamental issues that our individuals
20 and families are confronting.

21 Research undertaken by Lake Research, a
22 national independent polling firm, found
23 that almost 3 million low-income New
24 Yorkers -- and these are New Yorkers living

1 at or below 200 percent of poverty, so
2 that's about \$36,620 annually for a family
3 of three. But 3 million of these low-income
4 New Yorkers confront a civil legal issue
5 every year, and about 1.2 million confront
6 three or more issues. And as you can
7 imagine, the intersection between living on
8 a low income and issues involving the law
9 are tremendous. Whether it's unemployment,
10 housing, eviction, securing benefits, the
11 intersection with the law is pretty
12 dramatic.

13 The study found that nearly half of
14 low-income New Yorkers will experience at
15 least one civil legal need in any given
16 year.

17 We also looked at the cost benefit of
18 providing legal services, and you heard some
19 of the data earlier. But one that struck
20 me, over \$320 million in federal support is
21 driven into New York State's economy by
22 civil legal services -- and that was just in
23 2009. That's securing federal benefits for
24 people that are disabled or elderly when

1 they are denied those benefits and we can
2 secure them for them, bringing in food stamp
3 allocations that we don't want to leave on
4 the table at the federal level. Those are
5 dollars into our economy that circulate
6 throughout, whether it's paying rent, buying
7 groceries, shopping for necessities.

8 One of the other things we did as a
9 task force is we asked the legal services
10 providers, those at the front line, what
11 they're seeing. And the most dramatic
12 change they saw was the increase in the
13 number of previously moderate-income
14 households now coming forward for
15 assistance.

16 One of the other things that the
17 providers pointed out is that we've already
18 undergone tremendous reductions. Almost
19 60 percent of the providers responding have
20 already reduced staff, eliminated positions,
21 left positions unfilled, or have increased
22 cost-sharing for health and other benefits.
23 So we have tightened our belt way beyond
24 anywhere we can go.

1 I urge you to take a look at the
2 testimony. As Helene Weinstein mentioned
3 earlier, it was really unprecedented, the
4 amount of support that came out -- from the
5 Banking Association, from the Rent
6 Stabilization Association, from the Greater
7 New York Hospital Association, each and
8 every one of them testifying that having
9 legal services available makes their lives
10 easier, makes things flow smoother, makes
11 justice more of a reality.

12 Again, we are here on the budget. We
13 urge you to please obviously adopt the
14 recommendations of Judge Lippmann. I think,
15 as I said, we finally have a tremendous
16 partner. I hope the Governor will join us
17 as well. He talked in his budget message
18 about budgets not just being dollars and
19 cents but being a statement of our values,
20 and I think this is one of the core values
21 that we should be embracing.

22 And I would also urge that we restore
23 the legislative funding that we had in last
24 year's budget. As you remember, we had been

1 at about \$13 million in 2009. We took about
2 a 66 percent cut last year, and we would
3 urge that those funds be restored at least
4 to last year's levels. The system is in
5 crisis, the needs are tremendous. We want
6 to do all we can to make things run more
7 smoothly both for the courts and, more
8 importantly, for the clients that so
9 desperately need our help.

10 So thank you, and I'll be happy to
11 answer any questions.

12 CHAIRMAN DeFRANCISCO: Thank you.

13 Questions? No questions.

14 Excellent presentation. You obviously
15 know your topic, and you don't have to read
16 us anything to get your points across, and
17 very forcefully. Thank you.

18 MS. ERICKSON: Thank you, Senator.

19 And one thing I did want to mention, on the
20 simplification issues, that is something
21 that the task force will be tackling. And
22 we are already putting mechanisms in place
23 to engage the community about how can we
24 simplify these processes.

1 And in terms of realignment, the legal
2 services community a number of years ago
3 went through a multiyear planning process.
4 I was honored to cochair that, and the end
5 result was a report to the Legal Services
6 Corporation in Washington in 2002 where we
7 really did a lot of merger and
8 consolidation. So I think we're in pretty
9 good shape in New York in terms of having a
10 tight system, but we are going to be looking
11 at further efficiencies.

12 CHAIRMAN DeFRANCISCO: Thank you.

13 MS. ERICKSON: Thank you, Senator.

14 CHAIRMAN DeFRANCISCO: Steven Banks,
15 from the Legal Aid Society, and Deborah
16 Wright, Association of Legal Aid Attorneys.

17 On deck is Jonathan Gradess.

18 MR. BANKS: Good afternoon. Thank
19 you very much for the opportunity to
20 testify. You have our testimony for the
21 record; we just want to hit a few key
22 points.

23 Let me start off by thanking you for
24 your support over the years for both our

1 criminal defense services and for our civil
2 legal services. And I particularly want to
3 mention your support, Senator DeFrancisco,
4 and your support, Assemblywoman Weinstein,
5 for the law guardian -- now attorneys for
6 children -- case cap legislation three years
7 ago.

8 In that legislation you really took the
9 first step in making sure that our staff
10 lawyers have proper caseloads when
11 representing New Yorkers who turn to the
12 courts for relief. And so that piece of
13 legislation took a situation in which, on
14 average, our lawyers were representing 250
15 children at a time, and many were
16 representing in excess of 400, and you
17 brought that down to 150 at a time. Not
18 necessarily a low level, but much better
19 than where it was. And we really appreciate
20 the effort. It's made a great difference
21 for the children that our juvenile rights
22 practice represents.

23 I also have to acknowledge the work of
24 the Legislature two years ago in enacting

1 the criminal defense case cap legislation,
2 what has been cited as one of two major
3 breakthroughs nationally in terms of
4 criminal defense representation, in which
5 you authorized the chief administrative
6 judge to set caseload limitations similar to
7 the law guardian or attorneys for children
8 legislation.

9 And that too is having a significant
10 impact. As you know, last year you
11 supported the Judiciary's budget, which
12 included the initial allocation to begin to
13 bring down the caseloads of clients who must
14 turn to criminal defense representation in
15 New York City. And that process is
16 continuing in the Judiciary's budget this
17 year, and we urge you to support it. And it
18 is having a significant effect. The
19 400-weighted-case average is the one
20 standard that the First Department had
21 adopted and that the chief administrative
22 judge adopted, based upon your legislation.
23 And at the time of passage we came before
24 you and said it was critically needed

1 because our lawyers were handling a weighted
2 average of 682 cases.

3 And I can tell you, with the beginning
4 implementation of the case cap legislation,
5 it's bringing that level down so that
6 New Yorkers in the city accused of crimes
7 can be represented by lawyers with
8 appropriate caseloads, particularly because
9 in so many instances individuals are wrongly
10 accused. So we appreciate your support.

11 Equally important to the Judiciary
12 funding to enable us to provide a
13 constitutionally mandated defense, however,
14 is Aid to Defense funding. For many years
15 the Legal Aid Society, as the primary
16 criminal defense provider, has been
17 allocated Aid to Defense funding directly by
18 the Division of Criminal Justice Services.
19 The funding this year is included in those
20 various lump sums that Senator Saland
21 referred to.

22 We have some of the same concerns that
23 Senator Saland highlighted in terms of how
24 exactly will both aid to the prosecution and

1 aid to defense be allocated. For years, the
2 prosecutors have had an allocation and the
3 Legal Aid Society has had an allocation, and
4 we are concerned with how it will be
5 allocated. Obviously, there's a 10 percent
6 cut from those lump sums; we understand
7 those are the times in which we're living.

8 So our concern is really to ensure that
9 there's no disproportionate reduction in the
10 Legal Aid Society's allocation to any other
11 thing in that lump sum and that in fact that
12 it be provided to us so we can continue to
13 provide an adequate defense and continue to
14 make progress in reducing caseloads. It
15 would be counterproductive to lose money at
16 the same time as you passed a law to give us
17 the resources to be able to bring down the
18 caseloads. So this is a very important
19 consideration for us.

20 I also want to highlight that aid to
21 defense is probably -- it's certainly one of
22 the areas in which the state budget has
23 actually decreased in recent years rather
24 than increased. And it went from a world in

1 which we were getting \$10.8 million to now a
2 level of \$6.8 million this year, now reduced
3 by 10 percent. But this is critical that we
4 continue to receive these dollars in order
5 to provide a constitutionally mandated
6 defense.

7 Similarly, legislative funding is
8 critical. Last year was a very difficult
9 year for legislative funding. You were able
10 to provide 28 percent of the funding for
11 what we had previously received. It's
12 desperately important that that continue.
13 We understand all the challenges that you
14 have faced, and we appreciate what you were
15 able to do last year and ask you to continue
16 it.

17 Last but not least, on the civil legal
18 services side, a lot has been said about it
19 so I just want to highlight a few facts that
20 really we think enhance the reasons or
21 contribute to the reasons for why civil
22 legal services is so important as part of
23 the Judiciary budget.

24 First, in New York City we represent

1 every community district in the city. We're
2 able to handle only one out of every nine
3 New Yorkers who come to us for help. And
4 that's just a basic fact in terms of where
5 we are. So the Judiciary support is
6 critically important to begin to bridge that
7 gap.

8 The task force found that at best 20
9 percent of the need was being met. We at
10 the Legal Aid Society during this downturn
11 are experiencing incredible increases,
12 exponential increases. We've seen a 29
13 percent increase in individuals coming to us
14 for help with unemployment benefits, a 40
15 percent increase in individuals coming to us
16 for help with healthcare, a 21 percent
17 increase in evictions, a 16 percent increase
18 in domestic violence. You've heard the
19 astounding numbers of increases in
20 foreclosures.

21 This is critically important to provide
22 the support that we need, as well as the
23 continued legislative funding where, again,
24 that is part of our ability to provide the

1 services that we need to provide to
2 New Yorkers who are coming to us in the
3 midst of the continuing economic downturn
4 who need the assistance.

5 We recommend that you take a look at
6 the task force report if you have not done
7 so already. The individuals that testified
8 are not the usual suspects -- Kathy Wylde
9 from the Partnership, Michael Helfer from
10 CitiGroup, Joe Strasburg from the Rent
11 Stabilization Association, Kenneth Raske
12 from the Hospital Association. Individuals
13 who care very much about the bottom line all
14 said in the hearings that providing legal
15 services really had a positive effect on the
16 bottom line. So we commend their support,
17 and we think it's really an important
18 element of considering the need.

19 MS. WRIGHT: I actually agree with
20 everything that my colleague has just
21 stated. I just want to actually
22 highlight --

23 CHAIRMAN DeFRANCISCO: Well, that's
24 good, because you came down together. In

1 fact, that's very important.

2 (Laughter.)

3 MS. WRIGHT: It may seem a little odd
4 at times, but I actually do. And I just
5 want to highlight a couple of points, just
6 basically bringing the perspective of my
7 membership, who happens to be the staff
8 attorneys at the Legal Aid Society who
9 actually do the work.

10 One thing I do want to stress is just
11 the need to maintain our Aid to Defense
12 funding. As Steve Banks pointed out, we are
13 just starting to make some progress in
14 actually getting the caseloads down. We
15 still have a ways to go to actually make the
16 First Department standards that have been
17 promulgated, but we're starting to see the
18 difference in the offices.

19 And to have that baseline funding taken
20 away from us while we're starting to make
21 that progress would be devastating, because
22 what would actually wind up happening is
23 we'll be facing layoffs. And what you would
24 then be left with are attorneys who already

1 had really high caseloads -- although
2 they're coming down, they're still extremely
3 high -- left basically to be distributed in
4 offices with other attorneys who have way
5 too high caseloads and would not be able to
6 absorb them. So it would actually become a
7 crisis situation. So it is important,
8 obviously, to maintain that funding.

9 We are actually seeing the great
10 progress that you can make on your cases
11 with the case cap law that Steve Banks
12 referred to before for our law guardians in
13 our juvenile rights division. That law has
14 now been in place for several years, and our
15 members who do the work there are able,
16 finally, to do so much more work on their
17 cases and make such an impact on the
18 children's lives and those children that
19 they represent in Family Court.

20 So these are wonderful things,
21 obviously, that are finally taking place,
22 things that should have happened a long time
23 ago, and it's just necessary, obviously, to
24 keep that progress going.

1 I just also would like to echo my
2 support and my membership's support,
3 obviously, for the initiatives put forth in
4 the Judiciary budget for the additional
5 money for civil legal services. I have to
6 say that the progress that we have made in
7 our juvenile rights division and also in our
8 criminal defense division, you know, there
9 had obviously been a crisis situation that
10 is left in our civil division. We have
11 staffs there in those offices that basically
12 are working even less than bare bones in
13 many of those situations. And one of the
14 hardest things, obviously, for our members
15 is on intake days having to basically turn
16 families away who are basically there and
17 just really need help, and unfortunately, we
18 are beyond capacity to be able to assist
19 them in any way.

20 So obviously having that increase in
21 funding is not only necessary, as everybody
22 testified to earlier, it is something also
23 that will, I think, have a great impact,
24 obviously, on the great work that our

1 members are already doing.

2 The other two things that I just want
3 to talk about very briefly -- and again, I
4 would just want to start off by thanking
5 everyone for extending the educational loan
6 forgiveness that was originally given to
7 district attorneys to also the indigent
8 defense and the civil legal services
9 attorneys in the fiscal 2009-2010 budget. I
10 can't tell you how appreciative my
11 membership is of that. You know, you're
12 talking about, obviously, attorneys who
13 don't make a lot of money compared to what
14 they could make in the private sector,
15 attorneys who are trying to live in a very
16 expensive city while being strapped with
17 very high educational debt. So we are very
18 grateful for that.

19 It's my understanding that that money
20 is also in part of the lump sum that is out
21 there that's linked with some of the Aid to
22 Defense money. And we would just ask again
23 that that be continued for all of us again
24 this year.

1 And I know obviously we are facing very
2 extreme financial conditions in the state --

3 CHAIRMAN DeFRANCISCO: Excuse me a
4 moment. Have you ever argued an appeal?

5 (Laughter.)

6 MS. WRIGHT: Have I ever argued an
7 appeal? No.

8 CHAIRMAN DeFRANCISCO: Well, they
9 have lights on with an appeal when your time
10 is running down. You see all those zeros
11 there?

12 MS. WRIGHT: Yes.

13 CHAIRMAN DeFRANCISCO: Your partner
14 took up more than half of the time, so don't
15 be upset with us. Can you wrap it up,
16 though?

17 MS. WRIGHT: Yes, I am.

18 I just wanted to talk about the fact
19 that everybody's talking about cost savings.
20 I would just like to highlight that we have
21 done our part now for several years, and we
22 had actually started doing this back in 2008
23 basically to keep the doors of the Legal Aid
24 Society open. Our membership has given back

1 quite a bit that used to be in their
2 collective bargaining agreements -- not like
3 we ever really had that much. But we
4 started contributing to our healthcare years
5 ago. We do not have a defined-benefit
6 pension plan like a lot of our brothers and
7 sisters in labor do. We have been under a
8 cost of living -- basically a freeze since
9 2008. So we have done that.

10 And basically what we're just asking is
11 that we get our continued funding so we can
12 keep the doors open and continue doing the
13 work that we do.

14 Thank you.

15 CHAIRMAN DeFRANCISCO: Thank you.

16 Just so you know, when you argue an
17 appeal and the light comes on, they stop you
18 in midsentence. We're much more courteous
19 here in the Legislature. Thank you.

20 MS. WRIGHT: Thank you.

21 MR. BANKS: We appreciate it. Thank
22 you.

23 CHAIRMAN DeFRANCISCO: The next
24 speaker is Jonathan Gradess, followed by

1 Lillian Moy.

2 And those who are keeping tallies here,
3 my understanding is the following speaker,
4 Sandra Rivera, is not going to be here. Is
5 that correct, she's not here? Okay, we can
6 cross her off.

7 You're on. Jonathan.

8 MR. GRADESS: Thank you. I want to
9 tell you of two events that I thought of as
10 I thought about coming here before you. The
11 first was a conversation I had at DOB about
12 a month and a half ago, and the other was
13 something that happened this morning.

14 I went to the Division of the Budget
15 trying to urge our funding in this year's
16 budget, and the conversation went something
17 like this: "Well, why should we give you
18 more money?" And I answered them with the
19 answer that I gave to this Legislature as to
20 why we should be funded in the first place
21 back 30 years ago.

22 And then this morning the event was I
23 looked on the website and found that most of
24 the members of your joint committees were

1 not here when the backup center was first
2 funded, and as a consequence I just want to
3 tie that together and share with you the
4 history of our organization, briefly,
5 because it's critical to the decision you
6 make this year. When you look at the
7 budget, it's going to look like we are
8 asking for a big increase. And given what
9 you've been through this day and will be
10 going there again, that may strike you as
11 odd.

12 But what happened back in 1980 was that
13 we came to the state after an experience of
14 having been privately funded and inundated
15 with requests for assistance from all across
16 New York. And then Lieutenant Governor
17 Mario Cuomo recommended to Governor Carey
18 that we be funded. He was supported in that
19 by the State Association of Counties, which
20 is where we were housed at the time. And
21 the Assembly Speaker Stanley Fink, and
22 Warren Anderson in the Senate, based on the
23 recommendations of the Codes Committees from
24 both houses, put us into the budget for a

1 couple of reasons.

2 The first is because you bear a Sixth
3 Amendment obligation to improve the quality
4 of public defense services, and because the
5 Division of Criminal Justice Services, which
6 had been performing some of the services
7 that we perform, was found by its own staff
8 in an internal audit to have conflict
9 because it dealt with prosecution and
10 couldn't therefore deal with defense.

11 And so largely to provide mandate
12 relief and quality representation, we were
13 funded in 1981. And the idea was very much
14 like Governor Cuomo has presented this
15 year -- centralize services in one place,
16 provide mandate relief to localities, save
17 the counties money, and do the job on behalf
18 of the state that we have delegated to you.

19 And for every year since we were first
20 funded, I have been under an obligation to
21 recommend to the Executive the amount that
22 we concluded ought to be spent for that
23 backup center function. And when we went to
24 that meeting in DOB this year, we reduced

1 that number by a million dollars. Now, we
2 have a bumper sticker up in our office. It
3 reads -- it's like how we hope someday to
4 have to raise money if we're really left out
5 in the dark by you. It says "Sharing the
6 Pain Since 1981."

7 We have been cut in this process -- in
8 1995 by 11 percent; in 2001 by 19 percent;
9 in 2003, 9 percent; in 2007, 4 percent; in
10 2008, 5 percent; and last year, 21.8
11 percent. We're actually at the end of our
12 fiscal rope as we come before you and as we
13 came before Budget then.

14 And I want to share with you why I want
15 and hope that you will seriously look at
16 this issue of mandate relief and what we
17 need to do. With the budget that is
18 apparently being proposed this year -- and I
19 say "apparently" because, and you've heard
20 it all day, this lump sum, as Commissioner
21 Byrne said this morning, there's a
22 possibility that we won't even be in the
23 budget. But assuming that it is an 8.35
24 percent cut, we'd be in for an amount that

1 is approximately -- it's lower in 2011 than
2 we received 15 years ago from you to do this
3 job.

4 And what is the job? The job is
5 assisting localities to provide this
6 service. We have, for example, in 40 sites
7 throughout the state, the only public
8 defense case management system that counties
9 are using. It's in 30 counties. If you
10 look at Footnote 5 of the testimony, you'll
11 see that 36 of the members of this committee
12 have it in their jurisdiction. I was told
13 this morning by our accountant that 50
14 percent of our staff will be eliminated if
15 this budget goes through with the
16 purported -- and I'm only saying purported
17 because I have no idea what the lump sum
18 actually provides -- 50 percent of our staff
19 will be cut.

20 And that means, for localities, right
21 now we do 2,000 cases a year of straight
22 defender requests, a thousand immigration
23 requests, and what localities would do with
24 a good number of those requests if we were

1 not helping would be charge -- counties
2 would be charged \$75 an hour for the
3 research that is done in our office for
4 free. So if it takes one of our lawyers 12
5 hours to do a memorandum, or 10, that's \$750
6 that is not being charged locally. And it
7 is a memorandum that then can serve in 30
8 counties or 50 counties of the state.

9 This has been going on now for some
10 45,000 cases since you opened us. And what
11 this budget promises to do essentially is to
12 close us, or to cut us so radically that
13 consideration will have to be given as to
14 what thing goes out the window first, and
15 none of them are really expendable.

16 So I would ask, as you look at this
17 office, to look at it very carefully in
18 terms of its mandate relief qualities and
19 the impact on localities. We can't on the
20 one hand say we're going to consolidate
21 services, which is what we have done by
22 consolidating expertise in one place and
23 passing on savings to localities, we can't
24 talk about consolidation and mandate relief

1 and gut the backup center.

2 I want to talk to you in context about
3 four other problems of mandate relief in
4 this budget. The last speakers laid out to
5 you the problem with Aid to Defense, and I
6 absolutely share their point of view. But I
7 also share what was said earlier in today's
8 hearing, is that the lump-sum approach seems
9 to provide a problem because counties have
10 already budgeted against Aid to Defense.
11 They may, yes, have been conscious of some
12 cut, but they are depending on this money.
13 And we are down now from something like \$20
14 million in 1988 to an amount of \$8 million.
15 The amount cut in this budget, some
16 \$787,000, needs to be restored. If it isn't
17 restored, you really must do something about
18 the lump sum, because you can't afford to
19 lose Aid to Defense.

20 Nor can you afford to continue the
21 elimination of the Indigent Parolee
22 Representation Program, which last year was
23 zero except for a small amount of Byrne
24 funding to Wyoming County, and this year

1 clearly is zero. This is a program that was
2 started in 1978 to relieve counties of the
3 burden of the representation costs in cases
4 that are required by statutes written by
5 this Legislature.

6 I want to share with you something else
7 very important. Last year you did something
8 terrific -- you created the Office of
9 Indigent Legal Services. And that office is
10 going soon to be up and running, but the
11 Division of the Budget swept \$28 million
12 from its fund, from the fund that it is
13 going to distribute.

14 You must look carefully at this. The
15 sweeping of that fund will return us to the
16 place where we were when you looked at the
17 crisis in public defense services and did
18 something about it. That has to be an
19 exception. That fund has to be protected.
20 It has to be protected because the structure
21 of the program that you created requires
22 that the trajectory of increased funds be
23 used by localities to improve the quality of
24 defense services. If you eat in each year,

1 reduce the amount, provide grants which will
2 be subsumed each year, four years from now
3 you will be in worse shape than you were
4 before.

5 So I'd like us all to be looking at
6 that. I'd love the opportunity to speak
7 with your staffs. This is a constitutional
8 issue, it is mandate relief, and it's
9 pragmatically going to undermine what you
10 did last year.

11 Lastly, I want to speak to one issue
12 that will and may surprise you. It may even
13 surprise John Dunne and Karen Murtagh. In
14 1998, when Governor Pataki vetoed Prisoners'
15 Legal Services, there was a fallout that
16 very people are aware of. Attached as
17 Exhibit 5 to my testimony is a 14-or-15-page
18 memorandum which I would urge you to have
19 your staffs look at. One of the things that
20 happened when PLS was vetoed is that our
21 phone began to ring, and the phones of every
22 public defender in this state who had a
23 prison in their jurisdiction began to ring.
24 And mail began to be distributed to them,

1 and requests for assistance went to them,
2 and all of the workload of Prisoners' Legal
3 Services became another unfunded mandate,
4 and one that was an unmitigated disaster and
5 difficult to work with because most of the
6 issues that PLS works with are civil and
7 public defenders, as you know, do criminal
8 and Family Court work.

9 I urge you to look at all five of these
10 mandates as part of a mosaic. And it's a
11 mosaic that you have started to repair and
12 lift up, and it is one that requires your
13 direct attention, particularly our office,
14 which really does function as the glue
15 holding much of this together. We need your
16 direct examination, and we need an amount of
17 \$1.8 million.

18 Thank you.

19 CHAIRMAN DeFRANCISCO: Thank you very
20 much.

21 CHAIRMAN FARRELL: Thank you.

22 CHAIRMAN DeFRANCISCO: The next
23 speaker is Lillian Moy, the Legal Services
24 Funding Alliance, to be followed by Terry

1 O'Neill, director of the Constantine
2 Institute.

3 MS. MOY: Good afternoon. I'm
4 Lillian Moy. My day job is as the executive
5 director of the Legal Aid Society of
6 Northeastern New York here in Albany.

7 I'm joined today by my colleague, Lewis
8 Creekmore, who is the deputy director of
9 Legal Services of the Hudson Valley, and
10 together we represent the Legal Services
11 Funding Alliance, an alliance of the 15
12 primary providers of civil legal services to
13 the poor and needy in all of New York State
14 out of New York City. We provide
15 comprehensive core legal services to your
16 low-income constituents and in a broad
17 variety of areas.

18 We are very grateful to be before you
19 today. As well, we thank you for all of the
20 support both the Assembly and the Senate has
21 provided to us over the years, especially in
22 taking a statewide approach to this issue.
23 It's been essential to helping us to
24 leverage pro bono services, to provide

1 training and backup services to human
2 services and other legal services providers.

3 We have created a network of 34 offices
4 around the state, in upstate New York and
5 Long Island, in order to reach into the most
6 rural areas of the state, the suburbs of New
7 York City, and our upstate urban areas. We
8 use technology to provide our services
9 efficiently and effectively. But to be
10 candid, it is never enough.

11 We are here today to ask you, as our
12 colleagues have, to support the Judiciary
13 budget in its entirety, because we think it
14 is both good public policy with respect to
15 its funding for civil legal services and it
16 is financially prudent.

17 I think many people have highlighted
18 the results of the Chief Judge's task force
19 report, both most particularly the return of
20 \$5 for every \$1 invested in civil legal
21 services in New York. I think that's not a
22 bad return on investment nowadays.

23 And we wanted to especially highlight
24 this kind of economic benefit in New York

1 State outside of New York City. It's just
2 the same as it is in the city, and Lewis is
3 going to speak briefly about the cost
4 savings that local governments achieve when
5 our advocates prevent homelessness for
6 clients threatened with eviction.

7 MR. CREEKMORE: Within the testimony
8 that we submitted -- and Lillian introduced
9 me; I'm Lewis Creekmore. I'm from Legal
10 Services of Hudson Valley. My organization
11 covers the seven counties just north of
12 New York City.

13 Within the testimony you'll see a
14 number of statistics about the cost savings
15 to counties and to the state when
16 organizations like mine prevent evictions.
17 We were quite astounded when we first took a
18 good look at the dollar value that we could
19 put on this. And we started questioning
20 some of it, and we actually realized that we
21 may indeed be low-balling some of these
22 costs that are included in our statement.
23 Because we use a lower estimated monthly
24 cost per family, per household than our

1 local county Departments of Social Services
2 do.

3 So I just wanted to say that those
4 numbers really are a great investment for
5 the State of New York, and they may actually
6 be a better investment than what we
7 estimate.

8 Our organizations are very lean and
9 efficient organizations. We don't waste
10 money. You've heard about low salaries,
11 you've heard about high caseloads. An
12 individual attorney in one of our offices
13 can prevent as many as 100 to 150 evictions
14 a year depending on their years of
15 experience and their knowledge of the local
16 court system and what they apply as their
17 skills in their day-to-day work. So the
18 money that flows into our system not at all
19 wasted.

20 But I also think it's important for the
21 Legislature to take a look at some of the
22 costs that we can't really put a dollar
23 amount on in our statement. When a family
24 becomes homeless, and if that family has

1 minor children, typically those children are
2 set back at least six months in their
3 education. If that family ends up living in
4 a shelter, then those children have to be
5 bussed from the shelter to their school.
6 The costs just grow and grow. And when a
7 family gets placed in a shelter, they don't
8 necessarily get placed in a shelter that's
9 close to their school, so they could be
10 bussed, in the case of some of our rural
11 counties, 50 miles or more morning and
12 evening.

13 So that's a tremendous cost in human
14 potential when you start talking about the
15 children and the effects on the children and
16 the effects on their future and their
17 ability to grow and improve and be educated,
18 contributing individuals.

19 And when you talk about the parents of
20 those families, the parents of those
21 children, when they're uprooted, when they
22 become homeless, their ability to improve
23 their income is devastated. I can't tell
24 you how many times I've been on the phone or

1 in person with somebody that's come into the
2 office and they've told me either that they
3 had lost their job because they were
4 spending days in court trying to prevent an
5 eviction or they lost their job because they
6 became homeless and they could no longer
7 travel back and forth to their place of
8 work.

9 Those costs are, you know, impossible
10 to measure, but they are absolutely an
11 integral piece of what we bring to the
12 table. We keep a family in their home, they
13 maintain their ties to the community, the
14 children know where they're going to school,
15 they don't carry the stigma with them to
16 school of being from a shelter. They come
17 to school having had breakfast prepared in a
18 kitchen. If they're living in a shelter, do
19 they have a kitchen? Probably not.

20 So I'm going to conclude my remarks. I
21 think that those pieces of the picture are
22 not evident from all the discussions that
23 you've heard today, but they're important
24 pieces for you to know.

1 Thank you.

2 MS. MOY: I think the other side of
3 the fiscal issue is the work we do in
4 representing clients to qualify for Social
5 Security disability benefits. I'll be brief
6 and just say our direct dollar impact in
7 terms of generating, by the Legal Services
8 Funding Alliance members, social Security
9 and SSI benefits right into our communities,
10 we estimate that at about \$45 million for
11 2009 alone.

12 Adding to that the usual federal
13 multiplier, the effect of a transfer payment
14 into a community where clients then use that
15 dollar to buy food, pay rent, buy medicine,
16 that adds another \$68 million in economic
17 stimulus effect. And that is as the result
18 of just this one slice of generating federal
19 benefits to bring into our communities.

20 Add to that the costs related to
21 representing victims of domestic violence.
22 Using a very conservative cost savings
23 figure, just trying to quantify the lost
24 wages that are saved, the medical costs that

1 are saved, the police resources that are
2 saved, and we come to a little over \$7
3 million.

4 So I think, when I say funding civil
5 legal services is fiscally prudent, I can
6 point to you this direct dollar benefit in
7 2009 of about \$89 million. Adding in the
8 economic stimulus effect of the direct
9 federal dollars, Legal Services Funding
10 Alliance members are responsible for an
11 overall economic benefit of about \$157
12 million. And that is a conservative
13 estimate that looks just at a few slices of
14 our work.

15 So again, funding civil legal services
16 is good policy. It's what we should do as a
17 society to allow others to gain all of us to
18 gain justice. And in addition, it makes
19 good fiscal sense in a year when this state
20 is facing incredible fiscal pressures.

21 So we hope that you will do what we you
22 can.

23 CHAIRMAN DeFRANCISCO: Thank you. If
24 you bring in \$45 million from Social

1 Security claims, I assume that that goes to
2 the client.

3 MS. MOY: Yes.

4 CHAIRMAN DeFRANCISCO: Do you get a
5 fee for that, like --

6 MS. MOY: No, we do not, sir.

7 CHAIRMAN DeFRANCISCO: Why not? I
8 mean, if a client hires an attorney and they
9 have to go into court, the attorney is
10 entitled to a certain fee. It seems to me
11 that if you're bringing that same service
12 that the client is not paying for, that some
13 of those funds going to that client should
14 go back to your organization to help fund
15 your organization so you can do \$50 million
16 next year, or \$60 million next year.

17 MS. MOY: Well, we are committed to
18 using the public funding we receive --

19 CHAIRMAN DeFRANCISCO: Well, wait
20 a --

21 MS. MOY: -- so that low-income
22 people can receive the legal services --

23 CHAIRMAN DeFRANCISCO: Time out.
24 Time out.

1 MS. MOY: Okay.

2 CHAIRMAN DeFRANCISCO: You're
3 permitted to use public funding. However,
4 if you're providing a service for someone
5 who can't pay a fee, rather than public
6 funding why shouldn't you get a percentage
7 or a part of the funding that that client is
8 getting that the client would otherwise have
9 to pay if they had money so that you can
10 continue on doing your wonderful work?

11 MS. MOY: Well, I think that there
12 are certainly some Social Security cases
13 that a private lawyer will take and will
14 take for a fee. But so many of our clients
15 are bare bones --

16 CHAIRMAN DeFRANCISCO: But my
17 point -- you're missing the point. You're
18 missing the point. They might not take it
19 for a fee, but you're taking it. You're
20 providing the same service that some -- if
21 the person had money they would have to pay
22 for.

23 So my point is if -- you know my point.
24 The point is simply that if you're providing

1 when they get an award of retroactive
2 supplemental security insurance benefits, a
3 major portion of that is recouped by the
4 local Departments of Social Services. And
5 that's one of the reasons that we get paid
6 public money to help these people, is so
7 that that money gets recouped and goes back
8 into the county and state coffers. So that
9 most of the time, once they get their
10 ongoing monthly benefits, there's very
11 little left over for somebody like us to
12 claim and use.

13 CHAIRMAN DeFRANCISCO: If I bring a
14 lawsuit and there's a lien by the Medicaid
15 or the Department of Social Services or
16 whatever organization, the Department of
17 Social Services are getting a windfall as a
18 result of my benefit. They participate --
19 they receive some of the funds back and they
20 help pay the attorney's fees.

21 Traditionally, if your attorney's fees
22 are one-third on a claim where some state
23 agency or federal agency benefits from it,
24 they're willing to reduce their recovery by

1 a portion of the fees because they're
2 benefiting from it. That happens in private
3 cases. There is no reason they wouldn't be
4 willing to do the same thing if your very
5 existence is being compromised.

6 MR. CREEKMORE: If I understand,
7 you're suggesting that the local departments
8 should not recoup the money and they should
9 allow us to collect it?

10 CHAIRMAN DeFRANCISCO: They should
11 participate in the payment of the legal fees
12 because you have done them a service.
13 That's exactly -- any other private
14 plaintiff's litigation, that's what happens.
15 They have a social services lien on, and
16 before the money goes over, there's a
17 negotiation as to what portion goes to the
18 lawyers.

19 To me, that's a most stable source of
20 revenue to fund your valuable services than
21 coming in hat in hand in a budget time when
22 it's very difficult to do this funding.

23 MR. CREEKMORE: Well, essentially
24 that's what happens now, because the local

1 districts are responsible for a large
2 portion of the money that goes into the
3 programs to assist and represent people to
4 get off of public assistance and onto the
5 federal source of benefits.

6 CHAIRMAN DeFRANCISCO: I would
7 suggest that you talk to the plaintiff's bar
8 in your area, see what they do and how they
9 get reimbursed for -- or how the people who
10 they get money for to satisfy liens, how
11 that gets reduced, and consider doing the
12 same thing.

13 If you don't want to do it, fine. But
14 if the money's not in the budget, then I'm
15 giving you a suggestion. It isn't for my
16 benefit.

17 MR. CREEKMORE: We thank you for the
18 suggestion. Just -- the plaintiff's bar
19 tends to take the Title 2 cases, which are
20 the people who have a working history and
21 their retro awards are much greater. We
22 take the Title 16 cases.

23 CHAIRMAN DeFRANCISCO: I don't care
24 if you could take a Title 81 case. If

1 you're recovering something and you're
2 giving a benefit to the local government,
3 they should participate in the payment of
4 the fees. You're recovering \$45 million, it
5 doesn't matter whether it's a Title 16 or
6 whatever the title may be. The concept
7 remains the same.

8 And rather than resisting this concept,
9 it just seems to me there's another
10 potential source of income that you might
11 want to explore. I just think it's very
12 important for you to explore it.

13 MR. CREEKMORE: We take your point.

14 MS. MOY: Thank you, Senator.

15 MR. CREEKMORE: Thank you.

16 CHAIRMAN DeFRANCISCO: Thank you.

17 The next speaker is Terry O'Neill, the
18 Constantine Institute, followed by Lisa
19 Frisch of The Legal Project.

20 MR. O'NEILL: Good afternoon, ladies
21 and gentlemen, Senator DeFrancisco, Chairman
22 Farrell, other members. And I note an old
23 friend from Brooklyn, Assemblywoman
24 Weinstein; nice to see you again.

1 My name is Terry O'Neill. I'm the
2 director of the Constantine Institute. Our
3 corporate purpose is set forth in the
4 introduction to my written testimony. And I
5 could say that some months ago I did a show
6 with Public Radio in Rochester, and the host
7 referred to us as a think tank. So I think
8 that's a good enough description. As you
9 can see by my written testimony, we think
10 about quite a great number of things.

11 But what I'd like to talk to you about
12 this afternoon kind of comes from my recent
13 experience in the trenches, and it relates
14 to Governor's proposal to consolidate all of
15 the local assistance funding that is
16 administered by the Division of Criminal
17 Justice Services.

18 On its face, we like that idea quite a
19 bit. That gives the division the
20 flexibility to develop a way of getting this
21 assistance out to communities that might
22 more nearly match the needs and concerns of
23 individual communities.

24 And the way I come to that conclusion

1 is that here in our city of Albany over the
2 past five years or so there's been a very
3 intensive public discussion on how to deal
4 with issues of community violence and the
5 nature of the police service that people
6 want to see.

7 Several years ago, as a result of
8 number of shocking homicides involving young
9 people around the age of 15, we formed, by
10 an act of the city council, a gun violence
11 task force. And the task force worked for
12 almost two years holding numerous public
13 hearings, calling in experts and academics,
14 and they came up with a set of 19
15 recommendations. I have them here. And the
16 task force report is on the Albany City
17 website.

18 And when the city council started
19 soliciting input in how are we going to
20 implement these recommendations and where
21 are we going to get the resources and what
22 resources might come from the state, at one
23 of the hearings I told them that
24 unfortunately the only major state local

1 assistance program that funds public safety
2 initiatives like that is Operation IMPACT,
3 and in my experience IMPACT wouldn't fund a
4 single one of these things.

5 Now, these are the priorities that our
6 community has identified as to how we in
7 Albany want to deal with the problem of gun
8 violence here. At the same time, we had a
9 lot of community discontent with the style
10 of policing that we were getting. And
11 Albany is a city that has three IMPACT
12 zones, and those obviously are designated by
13 the amount of crime that's in them. It's
14 statistics-driven policing not unlike the
15 COMPSTAT program down in New York City.

16 The chief that we had for four years
17 responded to all criticism of -- all
18 expressions of dissatisfaction by the public
19 by saying "You have to look at the numbers.
20 Crime is down in Albany on my watch." But
21 the fact is that people felt no better. And
22 I am finding, you know, through my network
23 of contacts in law enforcement all over the
24 country that a lot of our leading figures in

1 American law enforcement are saying that the
2 advent of computer or statistics-driven
3 policing -- COMPSTAT in New York City in the
4 mid-'90s -- has led all over the country to
5 an increasing reliance on statistics to
6 drive the provision of police services, the
7 allocation of manpower and, you know, the
8 expectation that people are going to be
9 satisfied with declining crime.

10 As some of you may know, recently in
11 New York City, 15 years of COMPSTAT has
12 begun to show some serious drawbacks. My
13 two colleagues Dr. John Eterno and Eli
14 Silverman have studied COMPSTAT, and they've
15 come to the conclusion that 15 years of
16 precinct commanders being beat up to every
17 week to show steady downward trending crime
18 has led to the appearance that some of them
19 are underreporting crime, they are
20 underclassifying felonies and downgrading
21 them to misdemeanors, and they are
22 discouraging victims from coming forward and
23 making complaints. So that is something
24 that needs to be investigated.

1 But it does show that this long trend
2 of policing by the numbers is putting an
3 undue pressure on commanders to provide
4 those numbers, and it's also not addressing
5 fundamental public dissatisfaction with the
6 kind of police services that people are
7 getting.

8 Now, in Albany this was an issue. And
9 what happened was the City Council and the
10 leadership team at the Albany Police
11 Department created a forum for discussing
12 how we want to see police service provided
13 in the city. And I'm happy to say that just
14 a few weeks ago one of the graphic results
15 of that was this plan. This is a map of
16 downtown Albany, and all the nice little
17 colored numbered spots here are the new
18 individual police beats. And this is --
19 these are the names of all the officers who
20 are permanently assigned to those beats, and
21 they have a mandate to provide community
22 policing service.

23 So this is what people in Albany want.
24 And this is not the city divided into three

1 high-crime IMPACT zones where all the state
2 aid that comes to us is spent only in those
3 zones. This is what people want throughout
4 the city.

5 And I'm honored recently to have been
6 appointed to a commission to reorganize the
7 Buffalo Police Department, and I can tell
8 you that the commissioners that I'm sitting
9 with -- and we've had three meetings so
10 far -- this is what they want in Buffalo
11 too.

12 So when you begin discussions with the
13 Governor's administration about how this new
14 program of local assistance is going to be
15 structured and how the commissioner is going
16 to come up with a plan for spending that
17 money, I hope that you will take into
18 consideration that out in communities people
19 are increasingly knowledgeable about what
20 kind of policing options are available to
21 them, and they want to be heard. They don't
22 want, you know, their district attorney and
23 their police chief and people from DCJS to
24 sit down and decide how to spend all the

1 available money. They want community input.

2 And that's one thing that I'm sorry
3 that Assemblywoman Destito is not here. I
4 want to call attention to the fact that a
5 couple of years ago she called me into her
6 office, and she was concerned about this.
7 And so I drafted for her a little bill that
8 she's been carrying ever since that creates
9 a system around the state of community
10 justice councils that would work together --
11 these would include law enforcement and
12 various organizations, crime victims,
13 providers -- and they would come up with
14 local criminal justice plans that would set
15 forth the priorities of their community.
16 Those plans would be filed with DCJS, and
17 all grants that come down to communities
18 from state agencies or from DCJS would have
19 to further some of the interests that are
20 set forth in those locally developed plans.

21 So with that being said, I thank you
22 very much for this opportunity to speak to
23 you. If you have any questions, please.

24 CHAIRMAN DeFRANCISCO: Thank you.

1 CHAIRMAN FARRELL: Thank you.

2 CHAIRMAN DeFRANCISCO: You're also an
3 accomplished poet. I read your poem about
4 the State Police.

5 MR. O'NEILL: Thank you.

6 CHAIRMAN DeFRANCISCO: That doesn't
7 need a comment, I'm just giving you a --

8 (Laughter.)

9 MR. O'NEILL: Well, I'm a very big
10 fan of the State Troopers, Senator, and you
11 know what they've been through in recent
12 years.

13 CHAIRMAN DeFRANCISCO: I could see
14 that. I could see that. Thank you.

15 Lisa Frisch, executive director of
16 The Legal Project -- as opposed to The
17 Illegal Project -- and Harvey Epstein,
18 chairman of the board of the LEAP Coalition.

19 MS. FRISCH: Good afternoon. As you
20 know, my name is Lisa Frisch. I'm the
21 executive director of The Legal Project
22 located here in Albany. We serve the
23 Capital Region. I'm providing this
24 testimony on behalf of a consortium of

1 programs, upstate legal services programs,
2 entitled PULSE, the Partnership of Upstate
3 Legal Services.

4 I know it's late in the day, so I
5 promise I won't read my testimony and just
6 hit on some of the points.

7 Just for a little background, we
8 established PULSE as part of an effort to
9 respond to the unmet legal needs of the
10 underserved and rural poor in upstate
11 New York. We'll be working together and
12 sharing resources in our work to both save
13 money across our different programs as well
14 as to enhance our services and also to
15 provide input on statewide policy and
16 advocacy to low-income, rural and other
17 underserved populations.

18 PULSE consists of The Legal Project,
19 Farmworker Legal Services of New York, Legal
20 Services for the Elderly, Disabled and
21 Disadvantaged of Western New York, and the
22 Rural Law Center of New York. I've attached
23 some additional information on this in the
24 written testimony for your review.

1 I'd also like to thank you. I know
2 you've been thanked before, today, but we
3 really appreciate the support that we've
4 gotten over the years from the Senate and
5 Assembly for civil legal services and know
6 that you recognize the importance of the
7 work that our programs do across the state.

8 And I'm testifying today again to ask
9 for your support, to support the Judiciary
10 budget in its entirety and also to restore
11 the legislative funds that you found most
12 vital in the 2010-2011 budget.

13 I know that you're hearing pleas from
14 everyone, and you will be continuing through
15 your hearings to hear pleas from everyone
16 around their needs around the budget, and I
17 certainly don't want to diminish the
18 requests that others are making. But I know
19 that you've also heard today and have seen
20 in a lot of the testimony and the task force
21 testimony that Judge Lippmann put in place
22 that our community partners have testified
23 and spoken at great lengths about the
24 importance of civil legal services in

1 supporting their clients and other
2 nonprofits and governmental organizations.
3 There was testimony from district attorneys
4 and law enforcement and housing and business
5 leaders and so on about the difference that
6 it made in the lives of their clients.

7 And the need for specialized services
8 for the underserved is particularly a
9 challenge, particularly in hard-to-reach
10 populations like elderly, domestic violence
11 victims, and the rural poor. At the same
12 time that our funding is at risk or has been
13 cut, our numbers, as you know, have gone up
14 exponentially.

15 In my written testimony I've given you
16 additional information about our PULSE
17 partners and the tremendous increase in
18 demand on our services. And just as an
19 example, at The Legal Project, where we
20 serve domestic violence victims and the
21 working poor in the Capital Region, the
22 numbers of victims coming to us for help in
23 Family Court or to escape their abuser
24 through divorce rose an amazing 40 percent

1 in just one year. And we assisted nearly
2 3,000 people in 2010 with a staff of only 15
3 and a panel of pro bono attorneys who are
4 very generous with their time.

5 And that's one thing that's a little
6 unusual, I think, with legal services is
7 that we all make use of pro bono attorneys
8 to expand and enhance our resources to
9 assist people at no cost, which is very
10 creative and specific to the legal
11 community.

12 The rural poor present unique
13 challenges for access to justice, and the
14 Rural Law Center of New York is the only
15 program in the state that focuses solely on
16 rural legal issues, and they provide
17 critical services in family law, housing,
18 employment and consumer debt. They develop
19 creative and cost-saving programs to try and
20 overcome obstacles such as lack of
21 transportation and isolation that
22 disproportionately impact the rural poor.

23 Low-income New Yorkers living in those
24 rural counties face critical issues that

1 affect their income, their housing, and
2 their safety, and they have often virtually
3 no access to legal assistance. There's 20
4 counties without a legal services office in
5 them, and without transportation it makes it
6 almost impossible for them to access
7 services.

8 The elderly who live in remote counties
9 often face predatory lenders, illegal debt
10 collection, unfair evictions, and denial of
11 healthcare without benefit of counsel. This
12 ends up being a burden on the courts because
13 many of these rural individuals go to the
14 town and village justice courts for legal
15 assistance and legal help, and they don't
16 get counseled there either, so it
17 overburdens the courts in those rural
18 communities.

19 One thing that came up in some of the
20 testimony prior was how it affects our
21 ability to run our programs because of the
22 lack of stability when you have that lack of
23 resources, and asking our attorneys -- who
24 really get paid far, far less than their

1 colleagues in the private firms -- to be
2 able to also deal with the lack of stability
3 and awareness of whether or not they're
4 going to have a paycheck down the road.

5 So it's very expensive to have to deal
6 with turnover and training of attorneys. We
7 have attorneys with experience that are
8 excellent, and we want to be able to
9 maintain those attorneys. It's much more
10 cost-effective to do that. So being able to
11 maintain that stability for our staff will
12 allow us to continue with the creative
13 efforts I think that we have made across the
14 state in our programs to come up with ways
15 to be as cost-effective as possible, using
16 non-attorneys where possible for providing
17 assistance, and partnering and doing
18 collaboration across our different regions.

19 So we do quite a bit in terms of trying
20 to save money, but we need to your help to
21 be able to maintain the stability that we do
22 have through the Judiciary budget and the
23 legislative funds that you have provided us
24 in the past. And we really appreciate the

1 support and appreciate the understanding,
2 know that you've heard from many, many
3 people all day, and thank you for all of
4 your efforts.

5 CHAIRMAN DeFRANCISCO: Thank you.

6 CHAIRMAN FARRELL: Thank you.

7 CHAIRMAN DeFRANCISCO: The next
8 speaker is Harvey Epstein, chairman of the
9 board, LEAP Coalition. On deck, Samuel
10 Seymour, president of the New York City Bar.

11 MR. EPSTEIN: Good afternoon. My
12 name is Harvey Epstein. I'm the director of
13 community development at the Urban Justice
14 Center and also the chair of LEAP, which is
15 a coalition of nine legal services
16 organizations across New York City which was
17 founded in 2004. The members of LEAP are
18 CAMBA Legal Services, the Goddard Riverside
19 Community Center, SRO Law Project, Housing
20 Conservation Coordinators, Lenox Hill
21 Neighborhood Houses, Make the Road New York,
22 MFY Legal Services, New York Lawyers for the
23 Public Interest, Northern Manhattan
24 Improvement Corporation, and the Urban

1 Justice Center.

2 Collectively, we have over 120 lawyers
3 and 110 support staff, and we serve over
4 40,000 New Yorkers every year. And our
5 critical legal services is as important, as
6 you all well know.

7 As other speakers before me spoke, the
8 Judiciary budget is fundamentally important
9 to our work. Judge Pfau spoke to you
10 earlier today, and Chief Judge Lippmann gave
11 a report talking about the critical need for
12 legal services. Judge Lippmann has stated
13 "There is no issue more fundamental to our
14 constitutional mandate of providing equal
15 justice under the law than ensuring adequate
16 legal representation." And that's what he's
17 done in his budget. He's put aside money to
18 ensure some portion of low-income New
19 Yorkers can have access to legal services.

20 We all know that it's not sufficient.
21 We all know instead of one out of five
22 New Yorkers getting access to it, it might
23 be two out of five. But it's a step in the
24 right direction. And we hope that you all,

1 in your negotiations with the Governor,
2 ensure that what Chief Judge Lippmann did
3 hasn't gone in vain, that there will be
4 access to legal services, that his budget
5 won't be demolished in a really horrible
6 budget year.

7 The last thing I want to talk about is
8 what Senator DeFrancisco raised earlier
9 about access to attorney's fees. And I know
10 this is an issue all our legal services
11 offices look for, any opportunity that there
12 is that we can get attorneys fees from
13 cases, we ensure that we do. We use pro
14 bono lawyers, and sometimes they donate
15 their attorneys fees back to our office. If
16 we're in litigation that allows for
17 attorneys fees, we seek those attorneys
18 fees.

19 So we understand the need for having
20 access to other sources of funding. We
21 don't rely specifically on government
22 dollars alone. But the government dollars
23 are critical to our work, and we can't
24 function without those government dollars.

1 Most of our organizations, 50 percent of
2 their funding is government dollars.

3 That doesn't mean we won't look for
4 foundation funds, it doesn't mean we won't
5 look for other private sources -- donations,
6 attorneys fees. But without this critical
7 support, the legal needs of low-income poor
8 people, whether it's housing or eviction or
9 domestic violence or consumer debt or
10 foreclosure, all the areas you've heard
11 about earlier, are going to without
12 representation.

13 And the reality is that low-income
14 New Yorkers without representation lose
15 their rights. People get evicted, they lose
16 their homes, they get foreclosed on, they
17 get judgments entered against them. It's
18 just the reality that they face.

19 And we hope to have your support this
20 year in negotiations with the Governor to
21 ensure civil legal services is protected.

22 Thank you.

23 CHAIRMAN DeFRANCISCO: Thank you.

24 Would you explain to Lillian Moy of the

1 Legal Services Funding Alliance how you do
2 it? Because apparently they're not.

3 MR. EPSTEIN: I will. Thank you very
4 much, Senator.

5 CHAIRMAN DeFRANCISCO: Thank you.

6 The next speaker is Samuel Seymour,
7 president of the New York City Bar
8 Association.

9 On deck, Jack Beck.

10 MR. SEYMOUR: Good afternoon.

11 CHAIRMAN FARRELL: Good afternoon.

12 MR. SEYMOUR: Chairman DeFrancisco,
13 Chairman Farrell, and members of the
14 committees, thank you very much for giving
15 me a few minutes to appear before you. My
16 name is Sam Seymour, and I'm president of
17 the New York City Bar Association. We are
18 23,000 members strong, lawyers and judges.
19 We also have 1100 law student members. And
20 while it's true that most of our members are
21 concentrated in the five boroughs of New
22 York City, we have members from all over the
23 state, all over the country, and around the
24 world.

1 The New York City Bar Association has a
2 very proud tradition of working towards the
3 improvement of the administration of
4 justice, making our courts more fair and
5 more efficient and working to make that
6 justice system accessible to all. And in
7 that spirit I appear before you to echo the
8 remarks that are in my written remarks,
9 which I certainly won't go through given the
10 late hour today, in favor of the Judiciary
11 budget. And our reasoning, as you will see,
12 is very similar to those that you heard from
13 the president of the New York State Bar
14 Association, with whom we've work closely in
15 studying this issue and coming forward.

16 I want to point out that our
17 organization also includes a branch called
18 the City Bar Justice Center, which is a pro
19 bono organization. We raise money -- not
20 government money, we raise private money to
21 pay for staff of that organization which, in
22 turn recruits pro bono lawyers from the
23 private sector. And we have been able to
24 leverage off the private sector to get

1 thousands and thousands of hours of
2 volunteer time to help out those in need in
3 New York and elsewhere, to defend against
4 cases and help them in the sorts of civil
5 legal services that are the subject of so
6 much testimony today.

7 I must agree with Steve Younger,
8 though, that pro bono is ultimately not
9 enough. Lawyers can always do more, and
10 they should be asked to do as much as they
11 possibly can. But I do come before you
12 today to also offer support for that \$25
13 million civil legal services piece of the
14 budget. I'm very mindful of the fiscal
15 crisis that we all face and that I know you
16 all must wrestle with, and it does seem
17 counterintuitive to be asking for that kind
18 of money at this time.

19 All I would say is that having studied
20 it -- and clearly the questions from you all
21 today emphasize the need for finding greater
22 efficiencies everywhere. We study a lot of
23 ways that the courts and the court system
24 and the legal profession can be more

1 efficient, but at the end of the day there
2 are people without means and some of whom
3 have cases that would not lend themselves to
4 a contingent fee arrangement who need to be
5 represented in order for the system to be
6 fair.

7 The Supreme Court many years ago in the
8 Gideon case came down and said, you know, a
9 criminal defendant who appears in court
10 without a lawyer really is not getting a
11 fair day in court. We all accept now the
12 constitutional right to a lawyer in a
13 criminal case. It seems second nature and
14 there doesn't really seem to be any question
15 about it.

16 I believe, and I'm only speaking for
17 myself, that in our lifetimes some of those
18 same rights will be imposed in certain types
19 of civil cases, and future generations will
20 look back and say how could people have
21 thought that it was fair for an
22 unrepresented person trying to keep their
23 benefits, trying to keep their house, trying
24 to keep some valuable right for themselves

1 and going up against another party who had
2 counsel, how could that be fair?

3 I'm not asking you to predict the
4 future or asking you to agree with me. I'm
5 simply saying that in certain types of
6 cases, in order to make justice true
7 justice, counsel is needed for unrepresented
8 people who are really fighting for their
9 rights. And we support others in seeking
10 that allotment. It will only be partial,
11 and it will not solve all the problems, but
12 we think it's the right thing to do and we
13 think for the reasons that the Chief Judge's
14 task force came up with, it's long-term,
15 smart. There are some efficiencies and some
16 cost savings that we think will accrue over
17 time.

18 So it's too late in the day to go any
19 further. I just want to say that on behalf
20 of the City Bar Association, I again thank
21 you for letting us speak and urge you to
22 approve the budget, including that \$25
23 million allocation.

24 Thank you, and I'm happy to answer any

1 questions.

2 CHAIRMAN FARRELL: Thank you.

3 CHAIRMAN DeFRANCISCO: Thank you very
4 much.

5 Believe it or not, we're only a half
6 hour behind, which is miraculous.

7 Jack Beck, Correctional Association of
8 New York, followed by the featured speaker,
9 the final speaker, Barbara Smith, New York
10 State Coalition for Operation SNUG.

11 MR. BECK: Good afternoon. I want to
12 thank you for this opportunity to testify
13 today on behalf of the Correctional
14 Association. We're a private nonprofit
15 group that since the 1840s has had the
16 obligation to come to the prisons and look
17 at them and then report to the Legislature
18 about what we observe.

19 I'm here today to try to focus on one
20 of the primary issues that I think you are
21 facing. This is about the downsizing of the
22 prison system. I'm not going to read my
23 testimony, I'm going to just try to
24 summarize the major features. But I think

1 we have some observations from our own work
2 that I think might be useful to you.

3 We very much commend the Governor for
4 taking a bold step in proposing downsizing
5 the prisons. It is really long overdue and
6 I think it's a responsible act that should
7 be supported by the Legislature.

8 And why do we believe that? Well, one
9 is, the first reason, there is excess
10 capacity. We go into the prisons regularly,
11 we tour them, we go into every housing area,
12 we go into every program area, and there are
13 beds that are available. We believe that
14 the estimates that the department is
15 providing are relatively accurate and should
16 be relied upon.

17 I disagree with the notion that
18 NYSCOPBA puts out that you should really be
19 judging the population only by
20 general-population beds, because there are
21 many special housing units that are
22 regularly filled. And to say that you're
23 going to keep a prison open because you have
24 empty beds that are available in other

1 locations in the prison is not really, I
2 think, a responsible position to take in
3 lights of where we are fiscally.

4 So we believe there are plenty of
5 opportunities for consolidation. And
6 another point, consolidation, if it actually
7 involves closure, is not just NYSCOPBA. If
8 they're going to close a facility, that
9 means they're also going to lose that
10 executive staff that they're talking about.
11 So the pain is not just being focused in one
12 area.

13 But what's very important about
14 closures is that is a way to reduce the
15 budget of the Department of Correctional
16 Services with having minimal impact, in my
17 opinion, on the impact population. Because
18 what is essential for the inmate population
19 is that they provide the services that they
20 need once they're inside.

21 In closing a prison but moving to
22 another location, you still can provide
23 those services, and you're saving a lot of
24 money with minimal impact.

1 The second thing is that the arguments
2 are often made that this is going to somehow
3 have a negative impact on safety. And I
4 think there are two pieces of that. One is
5 the general argument about public safety,
6 and I think many people have talked to you
7 that we've had more than a 20 percent
8 reduction in the prison census over more
9 than 10 years, and at the same time we've
10 had a 28 percent reduction in crime. So
11 having less people incarcerated does not
12 increase problems with public safety.

13 But I think a very genuine issue is
14 would this have a negative impact inside the
15 prisons. And to be very honest, for us this
16 is a very serious question because we are
17 primarily concerned about conditions inside
18 the prison. The last thing we would want to
19 do is advocate for anything that would raise
20 problems of prison safety.

21 And I have to say, and actually am
22 somewhat surprised about it, that we do not
23 see and have not observed problems about
24 safety with the current level of

1 double-bunking that goes on. I have been
2 and my visiting team has visited many, many
3 housing areas. We particularly have visited
4 the dorms that have the bunks on the back.
5 And we do not observe problems with sight
6 lines or problems where it appears that
7 people are unsafe.

8 But I'm not just going to rely on
9 something where an outside group comes in.
10 We have done more than 5,000 surveys of
11 inmates over the last five years, and during
12 those surveys we ask questions about safety,
13 many questions about safety. And only in a
14 handful of cases has anyone ever said that
15 they've had a problem with double-bunking.
16 It just is not an issue. And they raise
17 many, many problems, but double-bunking is
18 not a problem that they raise.

19 We do not necessarily support the
20 double-celling in the large maximum-security
21 prisons. But the reality is that is a small
22 number of what we're talking about. And
23 whether you do downsizing or not, that is
24 not going to be affected by that. That

1 exists because the downsizing that they're
2 talking about is in medium and minimum
3 security, so you're really not even talking
4 generally in terms of having an impact on
5 that part of the population.

6 So we believe it makes sense
7 economically, we think it makes sense in
8 terms of safety that this is the best way.

9 Now, there can be a concern of will
10 we -- if you do downsizing, will you get
11 into trouble because you don't have capacity
12 in the prisons anymore. Well, as my
13 testimony contains, there are a number of
14 provisions that we could even reduce
15 further. If you really want to get rid of
16 the double cells, there are many other
17 things -- and I won't go into them in
18 detail, but there is improvements in parole,
19 there's work release, and there is Maritime,
20 areas where major savings could still occur.
21 So I don't think we should view it as the
22 job is done, but rather there is more that
23 can be done because we have demonstrated
24 that you can reduce the prison population

1 without hurting the public safety and the
2 safety inside the prisons.

3 The next I would like to go to, though,
4 is I think you could have major savings in
5 terms of downsizing, but I also want to
6 caution you that you at the same time do not
7 make major reductions in program services,
8 and there's a few points of that.

9 There are current proposals to have
10 11 percent reduction in the medical personal
11 service budget as well as 11 percent
12 reduction in the nonpersonal service, which
13 really gets down to medication and specialty
14 care inside the prisons. That is a real
15 problem. These are essential services that
16 go to whether someone is going to survive or
17 not. And to imagine that you could have an
18 11 percent reduction in that area -- I'm not
19 saying any savings, but it's very difficult
20 to imagine how you're going to do that.

21 Similarly, the services for programs,
22 particularly educational/vocational, they
23 are also taking an 11 percent hit. When I
24 go to these prisons, the simplest numbers

1 have cut themselves, who have gone through
2 terrible situations. And this was not --
3 this is actually a way to improve the safety
4 of everyone when you give appropriate
5 services to people with severe needs.

6 I do want to make a comment about one
7 of the proposals for reorganization, and
8 that's the State Commission of Correction.
9 As another person testified earlier, there's
10 been this huge increase this past year, a
11 doubling of the number of suicides from 10
12 per year for the two previous years to 20
13 last year.

14 Over the last decade there has been
15 some publications about it, that there's
16 been an increase in suicide inside even
17 while there's efforts that are being done to
18 try to increase mental health services.

19 Well, one of the best ways to kind of
20 look at that situation and why it's going on
21 is to look at those deaths. And the Medical
22 Review Board of the State Commission of
23 Correction is the only kind of public way
24 that we get any information about what's

1 going on. They are terribly taxed already.
2 A lot of their reports come out even more
3 than a year after the death.

4 Now, under the current proposal,
5 they're taking away the commissioner that
6 was focused on that to put it just to the
7 chair -- a commissioner, by the way, that is
8 a doctor with a specialty in mental health
9 services -- to put it under the chair who is
10 going to have many -- I mean the chair of
11 the State Commission of Corrections, and
12 then also to put that whole process under
13 DCJS. Which means that those reports are
14 going to be reviewed by them. They're going
15 to be further delayed.

16 And as was I think was pointed out
17 earlier, all the State Commission of
18 Corrections staff are assigned to DCJS.
19 There's no guarantee that they're going to
20 get the staff that they need to do this
21 work.

22 So I think it's very important to very
23 carefully examine that operation. I am not
24 opposed and I don't think the Correctional

1 Association is opposed to making some
2 reorganization, but we have to see what the
3 impact of that reorganization is going to be
4 on those essential core services.

5 And what should be emphasized is why
6 the talk about constitutional care. The
7 talk of constitutional care is because the
8 Constitution require requires the State
9 Commission of Corrections. This is not even
10 just a legislative piece.

11 I want to thank you very much for this
12 opportunity, and if you have any questions,
13 I'd gladly respond.

14 CHAIRMAN FARRELL: Senator.

15 SENATOR HASSELL-THOMPSON: Thank you,
16 Mr. Chairman.

17 I appreciate the fact that I was able
18 to stay for the full day and hear some of my
19 concerns being expressed by you as well.
20 This oversight -- and I'm looking at your
21 presentation, but it was one of the notes
22 that I made.

23 The Medical Review Board has only just
24 begun to get a handle on what's happening

1 inside, and they've had less than two years
2 to really rightsize some things that they're
3 finding, and to do this would throw us even
4 further back than we were three years ago.

5 So I, like you, am very interested in
6 seeing what SAGE has to say. And this is an
7 area, one particularly that I emphasize,
8 because I think we need to proceed with
9 caution, and I thank you for that.

10 CHAIRMAN FARRELL: Thank you.

11 MR. BECK: Thank you very much.

12 CHAIRMAN FARRELL: Thank you.

13 To close, Barbara Smith, advocate,
14 Albany Operation SNUG, for the New York
15 State Coalition for Operation SNUG.

16 MS. SMITH: Good afternoon. I am
17 joined by Assistant Chief Brendan Cox of the
18 Albany Police Department; Lisa Good, who is
19 the program director for Operation SNUG in
20 Albany at the Trinity Alliance; and David
21 Kaczynski, who is the executive director of
22 New Yorkers for Alternatives to the Death
23 Penalty.

24 There are many people who remain here

1 in the audience who came also in support of
2 Operation SNUG.

3 Chairman DeFrancisco, Chairman Farrell
4 and distinguished members of the
5 Legislature, I appreciate this opportunity
6 to speak to you on behalf of the New York
7 State Coalition for Operation SNUG. We
8 represent 10 SNUG sites across the state
9 that are currently engaged in critical
10 life-saving work to curtail gun violence.
11 SNUG, which is "gun" spelled backwards, is
12 based in neighborhoods in Brooklyn,
13 Manhattan, Queens, Yonkers, Mount Vernon,
14 Rochester, Syracuse, Buffalo, Niagara Falls,
15 and Albany that have been devastated by an
16 epidemic of violence.

17 SNUG uses a public health approach
18 based upon the nationally acclaimed Chicago
19 CeaseFire model to eradicate shooting and
20 killing by stopping violence at its source.
21 Specially trained SNUG workers who are
22 streetwise, credible messengers, focus on
23 those who are at the highest risk of
24 becoming involved in violence. They mediate

1 disputes and prevent retaliation. They also
2 provide alternatives to participants who
3 want to get away from a life of violence by
4 connecting them with employment, education,
5 training, and social services resources.

6 An important program component is
7 hospital-based intervention. SNUG staff
8 members meet shooting victims and their
9 families in the emergency room, intervene
10 among family and associates to reduce
11 retaliation, and offer additional resources
12 to those who express interest.

13 The five core components of SNUG are
14 street-level outreach, public education,
15 community mobilization, faith leader
16 involvement, and law enforcement. Operation
17 SNUG is highly effective. Operation SNUG
18 works.

19 A United States Department of Justice
20 evaluation of CeaseFire conducted by
21 Northwestern University indicates that the
22 model reaches the highest-risk young people,
23 reduces shooting hot spots, and is
24 responsible for an up to 100 percent drop in

1 reciprocal -- that is, retaliatory --
2 murders.

3 The research also shows that "in every
4 program area that there was a substantial
5 decline in the median density of shootings
6 following the introduction of CeaseFire."

7 SNUG is extremely cost-effective.
8 Every shooting that SNUG prevents saves the
9 state and taxpayers millions of dollars. In
10 2010 the average medical cost for a shooting
11 victim in New York State was \$29,338. Since
12 many shooting victims are uninsured, these
13 bills are paid by public funds and the
14 taxpayer. In 2006 the cost to incarcerate
15 the youth in a secure OCFS facility was more
16 than \$127,000 year. The average loss of
17 productivity of each homicide victim is \$1.3
18 million.

19 I live in Arbor Hill, one of the SNUG
20 target communities of Albany. I also
21 represent Arbor Hill as a member of the
22 Albany Common Council. From January 2009 to
23 the beginning of February 2011 there have
24 been 73 shootings in Albany. This may seem

1 like a small number, but just listen to the
2 cost.

3 I want to explain that what I did is
4 instead of assuming that all 73 of these
5 shooting victims all needed the same kinds
6 of services and that they were all homicide
7 victims, what I did is I took percentages of
8 the 73 total shootings and just did a
9 ballpark of what the cost would be if not
10 every single one of them required the same
11 services.

12 The hospital expenses of 43 -- or
13 60 percent -- of these shooting victims
14 would total \$1,261,534. If 20 of the 73 who
15 were shot were incarcerated in a youth
16 facility, that cost for one year would be
17 \$2,540,000. If 10 of those who were shot
18 died, their lost productivity over a
19 lifetime would be \$13 million.

20 I asked Assistant Chief Cox to give me
21 the accurate statistics of how many of those
22 73 shootings were indeed homicides in the
23 City of Albany. Instead of 10, 11 of those
24 victims were -- the total was 11; seven of

1 them were as a result of gun violence. Some
2 were stabbings and others.

3 For 73 shootings, then, attributing a
4 single cost factor to each, the total cost
5 would be \$16,801,434. In other words, the
6 cost of 73 shootings of Albany, one of
7 New York's smaller cities, would be
8 sufficient to fund 10 SNUG programs
9 statewide for four whole years.

10 Our program was budgeted at \$4 million.
11 As I said, there are 10 sites. Let me just
12 repeat that. The cost of 73 shootings in
13 the relatively small city of Albany, that
14 comes out to more than \$16 million, would
15 fund all ten SNUG programs for four years
16 going forward.

17 To understand the gravity of this
18 situation, we have to look at more than
19 monetary costs, however. We also must
20 examine the human toll. Violence is tearing
21 up the social fabric of our communities. It
22 has a negative impact upon economic
23 development, job creation and educational
24 success. The people living in these

1. communities find themselves caught up in a
2. cycle of violent crime, unresolved trauma,
3. and despair that is very difficult if not
4. impossible to overcome. Each violent
5. incident negatively affects hundreds of
6. lives.

7. Operation SNUG is providing New York
8. residents all over the state with tools that
9. they need to reduce violence, shift cultural
10. acceptance of violence, and improve the
11. quality of life in their communities.
12. Supporting SNUG is common sense on every
13. level. We urge the Legislature to
14. reappropriate funding from the fiscal
15. 2009-2010 and fiscal 2010-2011 state budgets
16. and to include \$4 million in sustained
17. funding for Operation SNUG in fiscal year
18. 2011-2012.

19. On behalf of New Yorkers from the 10
20. SNUG communities across New York State, we
21. deeply appreciate your support. We will be
22. happy to respond to any questions.

23. CHAIRMAN FARRELL: Thank you very
24. much. Questions?

1 Senator Montgomery.

2 SENATOR MONTGOMERY: Yes, thank you.
3 Thank you, Mr. Chairman.

4 I just want to compliment the Albany
5 SNUG operation. I was fortunate to be able
6 to see what you're doing because you were
7 aired on the news. And I'm especially
8 pleased that you have the police department.
9 And I must say that it's really quite
10 refreshing to see that the Albany Police
11 Department has an attitude that accepts what
12 I would consider, for lack of a better way
13 of referring to it, a nontraditional way of
14 approaching a very difficult issue, and that
15 is street-level violence. And I'm very
16 happy to see that you've utilized people who
17 probably know more about that than any of us
18 in this room, because they've been there.

19 And one of the groups in Brooklyn is
20 also a nontraditional program, Man Up, which
21 is the SNUG project in Brooklyn.

22 So I really appreciate that, and I hope
23 that you can be one of those voices that
24 speaks to the fact that in order to really

1 address those kinds of issues we need to
2 think out of the box and it's not always the
3 traditional academic approach that works.
4 So thank you. I compliment you and thank
5 you for your testimony.

6 CHAIRMAN FARRELL: Senator
7 Hassell-Thompson.

8 SENATOR HASSELL-THOMPSON: Thank you,
9 Mr. President.

10 As one of the legislators who is
11 fortunate enough to have had a SNUG program
12 in their community and having been very
13 intimately involved, I too want to commend
14 the Operation SNUG.

15 When I first pushed to have this made
16 as a budget item, I had had 10 homicides in
17 10 months -- I'm sorry, 15 homicides in
18 15 months in my community, young men between
19 the ages of 25 and 45. We've brought in a
20 new police commissioner and instituted
21 Operation Peacekeepers, and in 17 months we
22 have not had one gang violent homicide.

23 I think that -- the tragedy I think is
24 that it takes something this dramatic in

1 order to get the kind of cooperation that
2 SNUG has allowed us to create. Police
3 departments across the state had not been as
4 actively participatory with their
5 communities as they have had to become under
6 this initiative.

7 And from that perspective, I just think
8 that it just makes such a tremendous
9 difference to the whole idea of public
10 safety, but community involvement and taking
11 back communities on the part of the
12 citizenry in participation with their police
13 department.

14 The City of Mount Vernon is
15 70-plus-thousand people with less than
16 200 police officers. There's no way that we
17 can police a community like that without the
18 participation of its community. So I
19 commend you here in Albany. And I am a
20 little bit fluent with what some of the
21 other sites are doing around the state, but
22 you've done an extraordinary job, and I'm
23 proud to say that so has Mount Vernon. And
24 I think that they have two model projects

1 that need to be the testament to what the
2 community can do when it uses all of its
3 resources, all of its talent in a
4 coordinated way to bring safety to our
5 streets, and I thank you for that.

6 And you can be sure that I will push
7 very hard to ensure that everything that can
8 be done to do an allocation for SNUG will be
9 in this budget.

10 Thank you, Mr. Chairman.

11 CHAIRMAN FARRELL: Thank you very
12 much.

13 MS. SMITH: Thank you.

14 CHAIRMAN FARRELL: Meeting is
15 adjourned. Thank you.

16 (Applause from the audience.)

17 (Whereupon, at 4:41 p.m., the
18 budget hearing concluded.)

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