

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

2 -----

3 JOINT LEGISLATIVE HEARING

4 In the Matter of the  
2016-2017 EXECUTIVE BUDGET ON  
5 PUBLIC PROTECTION

6 -----

7 Hearing Room B  
Legislative Office Building  
8 Albany, New York

9 February 4, 2016  
10 9:40 a.m.

11 PRESIDING:

12 Senator Catharine M. Young  
Chair, Senate Finance Committee

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

15 PRESENT:

16 Senator Liz Krueger  
Senate Finance Committee (RM)

17 Assemblyman Robert Oaks  
18 Assembly Ways & Means Committee (RM)

19 Senator John J. Bonacic  
Chair, Senate Committee on Judiciary

20 Assemblywoman Helene Weinstein  
21 Chair, Assembly Committee on Judiciary

22 Senator Patrick M. Gallivan  
23 Chair, Senate Committee on Crime Victims,  
Crime and Correction

24

1 2016-2017 Executive Budget  
Public Protection  
2 2-4-16

3 PRESENT: (Continued)

4

5 Senator Michael F. Nozzolio  
Chair, Senate Committee on Codes

6

7 Assemblyman Joseph Lentol  
Chair, Assembly Committee on Codes

8

9 Senator Thomas D. Croci  
Chair, Senate Committee on Veterans,  
Homeland Security and Military Affairs

10

11 Assemblyman Daniel O'Donnell  
Chair, Assembly Committee on Correction

12

13 Senator Frederick J. Akshar II

14

15 Assemblyman Michael Montesano

16

17 Senator Diane Savino

18

19 Assemblyman Al Graf

20

21 Assemblywoman Janet L. Duprey

22

23 Senator Rich Funke

24

Assemblyman J. Gary Pretlow

1

2 Senator Velmanette Montgomery

3

4 Senator Ruth Hassell-Thompson

5

6 Assemblyman Joseph M. Giglio

7

8 Senator Martin Golden

9

10 Senator Joseph P. Addabbo, Jr.

11

12 Assemblywoman Crystal Peoples-Stokes

13

1 2016-2017 Executive Budget  
Public Protection  
2 2-4-16

3 PRESENT: (Continued)

4

5 Senator Daniel Squadron

6 Assemblyman John T. McDonald III

7 Assemblyman Joseph S. Saladino

8 Senator Gustavo Rivera

9 Assemblywoman Diana C. Richardson

10 Senator Leroy Comrie

11 Assemblywoman Nicole Malliotakis

12 Senator Phil M. Boyle

13 Assemblywoman Patricia Fahy

14 Assemblyman John T. McDonald III

15

16

17

18

19

20

21

22

23

24

1 2016-2017 Executive Budget  
 Public Protection  
 2 2-4-16

3 LIST OF SPEAKERS

4		STATEMENT	QUESTIONS
5	Honorable Lawrence K. Marks		
	Chief Administrative Judge		
6	NYS Office of Court		
	Administration	9	20
7			
	John P. Melville		
8	Commissioner		
	NYS Division of Homeland Security		
9	and Emergency Services	106	113
10			
	Michael C. Green		
	Executive Deputy Commissioner		
11	NYS Division of Criminal		
	Justice Services	180	186
12			
	Anthony J. Annucci		
13	Acting Commissioner		
	NYS Department of Corrections		
14	and Community Supervision	257	264
15			
	Joseph D'Amico		
	Superintendent		
16	NYS Division of State Police	361	370
17			
	Margaret Miller		
	NYS Chief Information Officer		
18	Director, NYS Office of		
	Information Technology Services	422	430
19			
	William J. Leahy		
20	Director		
	NYS Office of Indigent		
21	Legal Services	465	474
22			
	Robert H. Tembeckjian		
	Administrator and Counsel		
23	New York State Commission on		
	Judicial Conduct	483	488
24			

1 2016-2017 Executive Budget  
 Public Protection  
 2 2-4-16

3 LIST OF SPEAKERS, Cont.

4		STATEMENT	QUESTIONS
5	Thomas H. Mungeer President		
6	New York State Troopers PBA	492	495
7	Christopher M. Quick President		
8	New York State Police Investigators Association	497	502
9			
10	Michael B. Powers President		
11	NYS Correctional Officers & Police Benevolent Assn.	504	511
12	Patrick J. Lynch New York City Patrolmen's		
13	Benevolent Association	524	530
14	Steve Drake NYSDOCCS		
15	Paul Rigby NYSDOCCS		
16	Nikki Brate Vice President		
17	NYS Public Employees Federation (PEF)	561	579
18			
19	Jonathan E. Gradess Executive Director		
20	Art Cody Legal Director, Veterans		
21	Defense Programs NYS Defenders Association	611	
22			
23	Mark Williams President-Elect		
24	Chief Defenders Association of New York State	620	625

1 2016-2017 Executive Budget  
 Public Protection  
 2 2-4-16

3 LIST OF SPEAKERS, Cont.

4	STATEMENT	QUESTIONS
5 Patrick Cullen President		
6 New York State Supreme Court Officers Association	634	
7 Pamela Browne President		
8 New York State County Clerks Association	643	
10 Billy Imandt President		
11 Court Officers Benevolent Assn. of Nassau County	651	
12 William Dobbins President		
13 Suffolk County Court Employees Association	664	
15 Colonel Jack Ozer New York Wing of the Civil Air Patrol	672	
17 Charlotte Carter Executive Director		
18 NYS Dispute Resolution Assn. -and-		
19 Julie Loesch Director		
20 Center for Resolution and Justice		
21 Child & Family Services	676	
22 Connie Neal Executive Director		
23 NYS Coalition Against Domestic Violence	681	688
24		

1 2016-2017 Executive Budget  
 Public Protection  
 2 2-4-16

3 LIST OF SPEAKERS, Cont.

4		STATEMENT	QUESTIONS
5	Soffiyah Elijah Executive Director		
6	Correctional Association of New York	690	696
7			
8	Karen L. Murtagh Executive Director		
9	Thomas Curran Board Member		
10	Prisoners' Legal Services of New York	700	
11			
12	Page Pierce Executive Director		
13	Families Together in NYS	707	
14			
15	Terry O'Neill Director		
16	The Constantine Institute	714	
17			
18			
19			
20			
21			
22			
23			
24			

17

18

19

20

21

22

23

24

1                   CHAIRWOMAN YOUNG: Good morning.

2                   CHAIRMAN FARRELL: Good morning.

3                   CHAIRWOMAN YOUNG: Could we have some  
4 order, please.

5                   Welcome to the Joint Legislative  
6 Budget Hearing on Public Protection. I'm  
7 Senator Catharine Young, chair of the Senate  
8 Finance Committee.

9                   Pursuant to the State Constitution and  
10 Legislative Law, the fiscal committees of the  
11 State Legislature are authorized to hold  
12 hearings on the Executive Budget proposal.  
13 Today's hearing will be limited to a  
14 discussion on the Governor's proposed budget  
15 for public protection.

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

20                   I would like to welcome Judge Lawrence  
21 K. Marks, chief administrative judge of the  
22 Office of Court Administration; John P.  
23 Melville, executive deputy commissioner of  
24 the Division of Homeland Security and

1           Emergency Services; Michael C. Green,  
2           executive deputy commissioner of the Division  
3           of Criminal Justice Services; Anthony J.  
4           Annucci, acting commissioner of the  
5           Department of Corrections and Community  
6           Supervision; Joseph A. D'Amico,  
7           Superintendent of the Division of State  
8           Police; and Margaret Miller, director and  
9           chief information officer of the Office of  
10          Information Technology Services.

11                     At this time I would like to begin  
12          with testimony of Judge Lawrence K. Marks,  
13          chief administrative judge of the Office of  
14          Court Administration.

15                     Welcome, and good morning.

16                     CHIEF ADMINISTRATIVE JUDGE MARKS:

17          Good morning. Good morning. Thank you.

18                     CHAIRWOMAN YOUNG: Before we begin,  
19          though, Assemblyman Farrell, who keeps me in  
20          line, reminded me that we need to introduce  
21          our members. So if you'd hold on one second.

22                     I'd like to introduce Senator Liz  
23          Krueger, who is ranking member of the Senate  
24          Finance Committee; Senator Michael Nozzolio,

1           who is chair of the Senate Codes Committee;  
2           Senator Patrick Gullivan, who is chair of the  
3           Crime and Corrections Committee; Senator Fred  
4           Akshar; Senator Rich Funke; Senator Joe  
5           Addabbo; Senator John Bonacic; Senator Diane  
6           Savino; and Senator Marty Golden.

7                         Assemblyman?

8                         CHAIRMAN FARRELL:   We've been joined  
9           by Assemblywoman -- and chair -- Weinstein,  
10          Assemblyman Lentol, Assemblyman O'Donnell,  
11          and Assemblywoman Peoples-Stokes.

12                        We also have Mr. Oaks, who will give  
13          us his names.

14                        ASSEMBLYMAN OAKS:   Thank you,  
15          Chairman.

16                        We've been joined also by Assemblyman  
17          Giglio, Assemblyman Montesano, Assemblyman  
18          Graf, and Assemblywoman Malliotakis.

19                        CHAIRMAN FARRELL:   Good morning.

20                        CHAIRWOMAN YOUNG:   Good morning.

21                        So, Judge, we do welcome you once  
22          again, and we're ready for your testimony.

23                        CHIEF ADMINISTRATIVE JUDGE MARKS:

24          Okay, thank you very much.   I'm Lawrence

1           Marks. I'm the chief administrative judge of  
2           the courts. And thank you so much for the  
3           opportunity to speak to you today about the  
4           Unified Court System's budget request. And  
5           I'd just like to take 10 minutes, if I may,  
6           to lay out the key issues in our budget  
7           request. And then of course I'd be happy to  
8           answer any questions that you may have.

9                         But just before I do that, I'd like to  
10           make note of our new chief judge, Janet  
11           DiFiore, just confirmed by the Senate two  
12           weeks ago. Everyone in the court system is  
13           excited about Judge DiFiore assuming the  
14           leadership of the Judiciary. The Governor  
15           certainly made a terrific decision in  
16           nominating her. And on behalf of her and the  
17           entire court system, I want to say that we  
18           very much look forward to continuing to work  
19           closely and cooperatively with the  
20           Legislature in the coming years.

21                         So turning to our budget request, I  
22           would start by providing some brief context.  
23           In fiscal year 2009-2010, the General Fund  
24           state operations portion of the court

1 system's budget was approximately  
2 \$1.78 billion. Today, six years later, that  
3 amount is approximately \$1.85 billion, an  
4 increase of only \$64 million, or 3.5 percent,  
5 which averages out to about six-tenths of  
6 1 percent of an increase each year over that  
7 six-year period.

8           Yet during that same period of time,  
9 the Judiciary has absorbed nearly  
10 \$400 million in higher costs. These higher  
11 costs include mandated employee salary  
12 increases, increased contractual expenses,  
13 funding for indigent criminal defense to meet  
14 statutory caseload standards, and funding for  
15 civil legal services.

16           And because our budget is  
17 overwhelmingly -- roughly 90 percent --  
18 salaries and fringe benefits, we've managed  
19 to do this -- that is, absorb increased costs  
20 that have been far higher than the very  
21 minimal increases in our budget  
22 allocations -- we've been able to do this  
23 primarily by decreasing our employment  
24 levels. Indeed, the number of nonjudicial

1 employees in the court system has decreased  
2 by about 2,000 since 2009, which is a 12  
3 percent reduction in our workforce. That  
4 means we have fewer court officers, fewer  
5 court clerks, court reporters, court  
6 interpreters, court attorneys, back-office  
7 staff, and so on.

8 And although we've worked tirelessly  
9 to try to minimize the impact of this through  
10 innovation and streamlining -- and in our  
11 budget submission we highlight steps we've  
12 taken in that regard -- those efforts have  
13 been only partially successful. Without  
14 question, we, and more importantly the  
15 public, are still suffering consequences from  
16 our reduced staffing levels. These  
17 consequences include delays on some days in  
18 opening courtroom parts, delays in entering  
19 judgments in the clerk's offices, lines to  
20 get into courthouses, lines in the clerk's  
21 offices, just to name a few of these  
22 consequences.

23 So given that context, this year we  
24 are asking for an increase in our budget.

1           And while you've helped us with additional  
2           budgetary support in the last two years, this  
3           year our situation is a little more  
4           complicated. And I want to take a moment to  
5           explain that to you.

6                        As I think you know, under the State  
7           Constitution the Judiciary is required to  
8           submit its proposed budget to the Governor on  
9           the December 1st preceding the upcoming  
10          fiscal year. But this year, as we were  
11          preparing our budget request, and when we  
12          submitted it to the Governor on December 1,  
13          the commission on Legislative, Judicial and  
14          Executive Compensation had not yet issued its  
15          findings and determinations with regard to  
16          judicial salary increases.

17                       Under the statute creating the Salary  
18          Commission, the commission's findings and  
19          determinations as to judicial salaries were  
20          not due until the end of December. So by the  
21          time we were required by law to submit our  
22          proposed budget to the Governor, we had no  
23          idea what the Salary Commission would be  
24          doing with regard to judicial salaries. We

1           were certainly hopeful that the commission  
2           would be voting for a judicial salary  
3           increase, but we had no idea what the salary  
4           levels would be, and therefore we had no idea  
5           how much they would cost.

6                         Consequently, what we did was note in  
7           our budget request that we were awaiting the  
8           Salary Commission's determinations and that  
9           we might well be seeking additional funding  
10          to pay for judicial salary increases,  
11          depending on what the Salary Commission ended  
12          up doing.

13                        As it happened, later that month in  
14          December, the Salary Commission issued its  
15          report, which called for phased-in salary  
16          increases for New York judges, using the  
17          Federal District Court judge salary as a  
18          benchmark, and providing for the largest  
19          portion of the phase-in to take effect this  
20          April 1st.

21                        Now, I'm not planning on going into  
22          the details of the Salary Commission's  
23          findings now in my prepared remarks, but I'll  
24          certainly answer any questions that you may



1 main issue I want to talk to you about and  
2 highlight for you this morning -- is that the  
3 cost of the first year of the phase-in of the  
4 judicial salary increase, beginning on  
5 April 1st of this year, is \$27 million.  
6 That's a cost we were not able to budget for  
7 when we submitted our proposed budget to the  
8 Governor on December 1st, for the reasons  
9 that I've explained. Our budget request  
10 submitted on December 1st sought a 2.4  
11 percent increase in our General Funds  
12 operating budget, which is an increase of  
13 \$44.4 million. An increase is necessary  
14 because we are again facing significant cost  
15 increases, which include mandatory salary  
16 increases for court employees, increases in  
17 contractual obligations, such as our  
18 contracts with local governments to provide  
19 courthouse security in certain portions of  
20 the state, annualization of the cost of the  
21 five Family Court judgeships that the  
22 Legislature created effective January 1,  
23 2016, and additional funding for civil legal  
24 services.

1                   But because of the additional cost of  
2                   judicial salary increases, a cost we could  
3                   not estimate when we submitted our budget  
4                   request on December 1st, we now must seek  
5                   additional funding to meet that cost. What  
6                   we are proposing to you, and what we are  
7                   respectfully urging you to support, is an  
8                   additional \$19.6 million to help pay for this  
9                   increased cost. We are proposing that we  
10                  apply the four-tenths of 1 percent part of  
11                  the 2.4 percent increase we requested in our  
12                  December 1 submission -- and the four-tenths  
13                  of 1 percent part of that is about \$7.4  
14                  million. We're proposing applying that  
15                  toward the cost of the judicial salary  
16                  increase, and then we also proposing that the  
17                  Legislature add to our budget the remaining  
18                  \$19.6 million of the full cost. That would  
19                  pay for the cost of judicial salary increases  
20                  in the upcoming fiscal year, and it would  
21                  leave the courts with an increase of  
22                  2 percent -- which is the Governor's target,  
23                  as we know -- or \$37 million in our operating  
24                  budget to cover our increased expenses,

1 including the mandated court employee salary  
2 increases, increased contractual expenses,  
3 and additional funding for civil legal  
4 services.

5 We firmly believe that what we are  
6 seeking is fair and reasonable. The newly  
7 arising cost of the judicial salary increase  
8 has resulted from a statutory process that  
9 was designed to inject fairness, objectivity,  
10 and transparency into the method for  
11 determining judicial salaries. That  
12 statutory process worked, and the Salary  
13 Commission's determinations were fully  
14 supported by the Legislature's two  
15 representatives on the commission.

16 We respectfully submit that the fair  
17 thing to do now is to provide the funding to  
18 implement those results. Without that  
19 funding, it will be increasingly difficult to  
20 replace employees when they leave the court  
21 system, further decreasing our employment  
22 level and resulting in the consequences that  
23 will entail. With that funding, the  
24 Judiciary will be able to furnish the quality

1 of service that we need to provide to the  
2 people of this state, a quality of service  
3 that we all agree the public fully deserves.

4 Thank you very much, and I'd be happy  
5 to answer any questions.

6 CHAIRWOMAN YOUNG: Thank you, Chief  
7 Administrative Judge Marks.

8 We have been joined by Senator Gustavo  
9 Rivera.

10 And our first speaker will be Senator  
11 John Bonacic, who is chair of the Senate  
12 Judiciary Committee.

13 SENATOR BONACIC: Good morning,  
14 Your Honor.

15 CHIEF ADMINISTRATIVE JUDGE MARKS:  
16 Good morning.

17 SENATOR BONACIC: It's good to see  
18 you.

19 Before I ask you some questions, I  
20 just would like to say that I always enjoy  
21 working with my counterpart, Helene  
22 Weinstein, who chairs the Judiciary in the  
23 Assembly. We've been having discussions how  
24 to work through this Judiciary Budget to try

1 to be fair to all concerned.

2 Your budget, I think, for court  
3 administration is between 2.8 and 2.9  
4 billion; would I be correct?

5 CHIEF ADMINISTRATIVE JUDGE MARKS:  
6 That's correct.

7 SENATOR BONACIC: Okay. Now, we have  
8 a concern, what we see happening in the court  
9 system. As you pointed out, a lack of  
10 staffing, shorter hours.

11 We now see the Hurrell-Harring case,  
12 which basically stated that there's not  
13 enough district attorneys for first  
14 appearance for defendants in criminal  
15 actions. So for five counties that brought a  
16 lawsuit, monies were given to those five  
17 counties. So there's a need for more monies  
18 for criminal representation for mainly  
19 upstate. That's another developing future  
20 cost on the court system.

21 As, you know, you explained, it  
22 appears to me that the priorities are to take  
23 care of the judicial salaries, which we're  
24 all supportive of. We think the judges are

1           deserving of raises. You're struggling with  
2           the 2 percent cap, how to live with all of  
3           this, with a judicial court system with  
4           access to justice that is deteriorating  
5           rather than getting stronger.

6                        So when I look at your budget, one of  
7           the priorities, in addition to the raises, is  
8           civil services. Now, that item has jumped  
9           from \$70 million to \$85 million this year.  
10          So that's free legal services for civilian  
11          actions. Civil service; right? As opposed  
12          to criminal.

13                       CHIEF ADMINISTRATIVE JUDGE MARKS:  
14          Civil cases.

15                       SENATOR BONACIC: Right. So  
16          middle-class families have to pay for legal  
17          fees, but there's a movement to have the poor  
18          have free legal services. I just point that  
19          out.

20                       I think for this year, that's a wrong  
21          priority. I think that part of the budget  
22          should be no gain, because last year they got  
23          a \$15 million bump, they're up to \$70 million  
24          now for free legal services for civil

1 actions. And you now want to take it to 85.  
2 There's \$15 million. If you kept that level,  
3 you would help reach your other priorities of  
4 making the court system stronger and/or  
5 helping to support the raises. So I throw  
6 that out to you.

7 I haven't asked you a question yet. I  
8 have not asked you a question.

9 (Laughter.)

10 CHIEF ADMINISTRATIVE JUDGE MARKS: I'm  
11 waiting for the question.

12 SENATOR BONACIC: Right. But things  
13 like CASA and the dispute resolution, I think  
14 these are very worthwhile services. A lot of  
15 them are on a volunteer basis. They help  
16 children and families in preventive action  
17 before it even gets to the courts. They help  
18 relieve court congestion.

19 We did the divorce law amendments this  
20 past year; that's supposed to clean up  
21 94 percent of matrimonial actions with court  
22 congestion. So we're trying.

23 So I would say to you that those two  
24 volunteer programs are very helpful. You

1 should look to see what you can do there.

2 CHIEF ADMINISTRATIVE JUDGE MARKS: And  
3 we are continuing, proposing to continue the  
4 funding for those programs in this budget.

5 SENATOR BONACIC: So now I'm going to  
6 come to the \$64,000 -- more than the \$64,000  
7 question.

8 If the Governor is insisting on the  
9 2 percent cap, have you given any thought to  
10 how you're going to reconcile making the  
11 court stronger, doing the judicial raises,  
12 and what has to be saved and what has to be  
13 cut?

14 CHIEF ADMINISTRATIVE JUDGE MARKS:  
15 Well, so you're asking if we don't get  
16 additional money and we had to stay within  
17 the 2 percent, how would we cope with that?

18 SENATOR BONACIC: Which the Governor's  
19 kind of indicating that's where he wants to  
20 go. I'm not speaking for the Governor, but I  
21 just --

22 CHIEF ADMINISTRATIVE JUDGE MARKS: No,  
23 if you read his commentary on our budget  
24 submission, that is what he said, that's

1 right.

2 SENATOR BONACIC: Yes.

3 CHIEF ADMINISTRATIVE JUDGE MARKS: So  
4 I'll answer that. But let me -- if I could,  
5 let me just respond to your comments about  
6 civil legal services.

7 SENATOR BONACIC: Could you speak into  
8 the mic a little?

9 CHIEF ADMINISTRATIVE JUDGE MARKS:  
10 Sure. I was saying if -- and I'll answer  
11 your question, but if I may just initially,  
12 if I could respond to your question about --

13 SENATOR BONACIC: Sure.

14 CHIEF ADMINISTRATIVE JUDGE MARKS: --  
15 your comments about civil legal services.

16 Look, this is a critically important  
17 program. I mean, everyone here on this  
18 panel, every member of the Legislature should  
19 really support money for civil legal  
20 services.

21 Our program, money goes to every  
22 single county in the state, all 62 counties.  
23 This is not a New York City program, it's not  
24 an upstate program, it's a statewide program.

1           And every legislative district in this state  
2           has -- every one of you has constituents that  
3           benefit from this money. You know, as you  
4           all know, there's a legal right in a criminal  
5           case, if you can't afford an attorney, one  
6           will be provided for you free of charge.  
7           There's no such right, generally speaking, in  
8           civil cases.

9                         And this is money that goes to provide  
10           lawyers, again, in every county in this  
11           state -- people who are facing potential  
12           eviction, people who are facing potential  
13           foreclosure, victims of domestic violence in  
14           Family Court proceedings, veterans seeking  
15           disability payments. This is money that is  
16           very well spent. There have been studies  
17           done by economists that have concluded that  
18           for every dollar spent on civil legal  
19           services, government can save as much as \$6.  
20           And that's because if someone is evicted or  
21           their house is foreclosed on or they don't  
22           receive federal benefits, that leads to  
23           further problems and further costs imposed on  
24           government. This is a critically important

1 program that I really can't emphasize enough  
2 that everyone here should really be  
3 supporting.

4 And this last \$15 million that we're  
5 seeking in this budget is the last  
6 installment in a plan that was announced five  
7 years ago, five, six years ago, where each  
8 year -- and by the way, each year in years  
9 that were fiscally much weaker than this  
10 particular year, where the state economy is  
11 relatively strong now -- the Legislature  
12 provided money for each of the last four or  
13 five years. And this would be the last  
14 installment that would get us to  
15 \$100 million, which will meet the goal that  
16 we set for funding civil legal services.

17 So again, I really can't emphasize  
18 enough how this is a program that benefits  
19 people throughout the state in all  
20 62 counties. And I would urge that you  
21 support the additional funding that we're  
22 seeking for civil legal services.

23 Having said that, in the doomsday  
24 scenario where we don't get any additional

1 money -- and this is to answer your question,  
2 Senator Bonacic, what would we do. Well, you  
3 know, we don't have a lot of choices in the  
4 Judiciary budget, since we're roughly  
5 90 percent salaries and fringe benefits. We  
6 don't have a capital budget, we don't have --  
7 other than civil legal services, we don't  
8 have a whole lot of programs that we could  
9 cut. We're primarily people, and that's what  
10 makes up the vast percentage of our budget.

11 So if we had to absorb the full cost  
12 of this judicial salary increase, the  
13 \$27 million, you know, we would have to look  
14 at attrition, not replacing people when they  
15 leave the court system. Which is how we  
16 managed far more difficult budgets going back  
17 to 2011, where we sustained a massive budget  
18 cut that year which resulted in layoffs that  
19 year because the budget cut was so extreme.  
20 And that was followed by two years of flat  
21 budgets. And the way we managed that --  
22 because every year our costs go up, they  
23 don't go down. Costs go up.

24 So the way we managed that those years

1 was through attrition. When people left, we  
2 didn't replace them. We had a strict hiring  
3 freeze. So if we were not successful in  
4 getting this additional money, we would  
5 inevitably have to look at attrition, not  
6 replacing people when they leave, and we  
7 would have to look at the civil legal  
8 services money as well, as you've suggested.

9 SENATOR BONACIC: Thank you.

10 My only point is the Legislature has  
11 been supportive of monies for civil legal  
12 services. But times change. And it's a  
13 question of priorities this year. And we're  
14 suggesting to you that maybe judicial  
15 salaries are more important than that area.  
16 But I would certainly never like to hear you  
17 say that you're going to cut more personnel  
18 from the Judiciary Budget for the  
19 administration of the courts, which are now  
20 not up to par where they should be, in terms  
21 of the hours, the staffing. That would be  
22 really not a good thing to do.

23 CHIEF ADMINISTRATIVE JUDGE MARKS: I  
24 agree with you. We would be loath to do

1           that. We're 2,000 employees fewer, as I  
2           mentioned in my remarks, than we were in  
3           2009. And that absolutely has consequences  
4           on the operation of the courts. And the last  
5           few years we have finally been able to kind  
6           of get our heads above water and replace  
7           people when they leave and maybe even  
8           slightly increase our employment level.

9                     But again, it's the last thing we  
10           would want to do, is to go back to the  
11           scenario of a few years ago where we were  
12           bleeding people and, you know, when they left  
13           that we couldn't replace them.

14                    Please don't misunderstand me. I'm  
15           not suggesting that we would favor further  
16           reducing our employment level. It's the last  
17           thing we would want to do. But in the end,  
18           because our budget is overwhelmingly, you  
19           know, 90 percent salaries and fringe  
20           benefits, when we don't have sufficient  
21           money, that's really where we look. And we  
22           have no choice.

23                    SENATOR BONACIC: My only last comment  
24           is I believe that there's \$15 million there

1 in civil services that you should not give  
2 this year to make sure that the judges get  
3 their raises, which we all think they're  
4 entitled to.

5 And I thank you very much, Your Honor,  
6 for coming today.

7 CHIEF ADMINISTRATIVE JUDGE MARKS:  
8 Thank you.

9 CHAIRWOMAN YOUNG: Thank you, Senator  
10 Bonacic.

11 We've been joined by senator Thomas  
12 Croci, chair of the Veterans, Homeland  
13 Security, and Military Affairs Committee, and  
14 also Senator Leroy Comrie.

15 Chairman Farrell.

16 CHAIRMAN FARRELL: Yes. Mr. Oaks.

17 ASSEMBLYMAN OAKS: Yes, we've been  
18 also been joined by Assemblyman Saladino.

19 CHAIRMAN FARRELL: Next to question,  
20 Chairperson Weinstein.

21 ASSEMBLYWOMAN WEINSTEIN: Thank you,  
22 Mr. Chairman.

23 Judge Marks, it's a pleasure to see  
24 you here today. And as Senator Bonacic said,

1 we work closely together. But in relation to  
2 the civil legal services, it's a point where  
3 we diverge in terms of this increase.

4 And I just wanted to continue that  
5 discussion a little bit more. I looked at  
6 the task force, permanent commission's last  
7 report, and I just want to make sure that I  
8 read correctly that, based on the  
9 commission's finding, that New York State  
10 realized \$260 million in taxpayer savings in  
11 the form of reduced emergency shelter costs  
12 alone as a result of legal services.

13 So that was one of their findings?

14 CHIEF ADMINISTRATIVE JUDGE MARKS:

15 That's correct.

16 ASSEMBLYWOMAN WEINSTEIN: And that the  
17 overall -- the finding that the overall  
18 investment in civil legal services has  
19 resulted in an overall economic benefit to  
20 New York State of \$2.4 billion through 2014?

21 CHIEF ADMINISTRATIVE JUDGE MARKS:

22 Yeah, that's -- I think that's correct. And  
23 that goes to the point that I made a moment  
24 ago that investing in civil legal services in

1 the end can save state and local government,  
2 you know, significant amounts of money.

3 ASSEMBLYWOMAN WEINSTEIN: So if we  
4 were to cut out of the Judiciary Budget the  
5 \$15 million for civil legal services and  
6 dedicate it to a different purpose, as my  
7 colleague suggests, it would actually cost  
8 New York State money in this next year going  
9 forward?

10 CHIEF ADMINISTRATIVE JUDGE MARKS:  
11 Yes. There have been studies by economists  
12 that have suggested that, that if -- that  
13 expenditures on civil legal services is  
14 cost-effective.

15 ASSEMBLYWOMAN WEINSTEIN: And could  
16 you just maybe go into a tiny bit more detail  
17 as to how the funding that's in the Judiciary  
18 Budget for civil legal services is allocated  
19 around the state, and perhaps restate some of  
20 the services, the kinds of populations that  
21 benefit from civil legal services?

22 CHIEF ADMINISTRATIVE JUDGE MARKS:  
23 Yeah, the money is divided up based on a  
24 formula, 200 percent -- each county's

1 population that's less than 200 percent of  
2 the federal poverty level -- the formula is  
3 based on that. So it's equally divided to  
4 the state's 62 counties based on that  
5 formula.

6 And the money goes to really kind of  
7 the essentials of life. People who find  
8 themselves in court without a lawyer, or who  
9 would otherwise find themselves in court  
10 without a lawyer -- in landlord-tenant  
11 proceedings, so facing eviction; in  
12 foreclosure proceedings, where people are  
13 facing the potential loss of their home.  
14 Victims of domestic violence in family  
15 offense proceedings in the Family Court  
16 receive lawyers under this program.

17 I mentioned veterans are a significant  
18 component of the people who benefit from  
19 these services. Veterans who may be facing  
20 eviction, facing foreclosure, seeking  
21 disability benefits.

22 And so those are some of the examples  
23 of the types of people who benefit from this  
24 program in every county in the state.

1 ASSEMBLYWOMAN WEINSTEIN: And I was  
2 just wondering, from the court's perspective,  
3 how do unrepresented litigants impact the  
4 functioning of the courts, people who come in  
5 without an attorney?

6 CHIEF ADMINISTRATIVE JUDGE MARKS:  
7 It's -- actually, I can speak personally for  
8 this, because I sit -- in addition to my  
9 administrative responsibilities, I sit in  
10 Supreme Court. And I can tell you, from the  
11 court's perspective and the judge's  
12 perspective, when someone comes in without a  
13 lawyer, it's just a -- it's a night-and-day  
14 situation.

15 You know, it's very difficult for the  
16 judge because judges ethically can't advise  
17 litigants on the law. The court staff can't  
18 do that. You know, people are basically on  
19 their own. It's not an equal playing field,  
20 obviously, when that happens. It's not -- I  
21 mean, my own view, which I know is shared by  
22 the new chief judge, is that a justice system  
23 just doesn't make sense when you have  
24 hundreds of thousands of people coming into

1 court without a lawyer, their opponents often  
2 represented by lawyers. It's just -- it's  
3 not a justice system, you know, that we could  
4 all be proud of, you know, when that's as  
5 serious a problem as it has been in New York.

6 ASSEMBLYWOMAN WEINSTEIN: And beyond  
7 just the impact on the individual litigant  
8 who's unrepresented, does it also impact the  
9 courts? Are there additional delays? You  
10 mentioned the court staff that are asked  
11 questions. Does it actually increase costs  
12 to the court system and use up resources that  
13 would not be needed if those litigants were  
14 represented?

15 CHIEF ADMINISTRATIVE JUDGE MARKS:  
16 Yeah. I mean, I would say that cases in  
17 which litigants are self-represented become  
18 more labor-intensive for the court -- for the  
19 judge, for the judge's staff, for the clerk's  
20 office, for the court personnel.

21 So yes, I would agree with that very  
22 much.

23 ASSEMBLYWOMAN WEINSTEIN: And to go to  
24 the defense side, I know and I agree with my

1 colleague that there is a need for increased  
2 services for indigent defendants,  
3 particularly in first appearances that go  
4 beyond the Hurrell decision. And I  
5 understand that the Indigent Legal Services  
6 Board has asked for increased resources to be  
7 able to address those needs. And I think  
8 that that is something obviously that  
9 personally I would support, and I think other  
10 members also.

11 Can I just -- I just want to ask you a  
12 question about the staffing. You mentioned  
13 that there's been a reduction of 2,000  
14 nonjudicial employees, and I think you  
15 mentioned it was 12 percent; is that correct?

16 CHIEF ADMINISTRATIVE JUDGE MARKS:  
17 Since 2009, that was the high level mark for  
18 us, we have 2,000 fewer employees since that  
19 year.

20 ASSEMBLYWOMAN WEINSTEIN: And I  
21 probably should know the answer, but perhaps  
22 do you know how that compares to state  
23 agencies?

24 CHIEF ADMINISTRATIVE JUDGE MARKS: The

1 executive branch?

2 For us, it's a 12 percent decrease in  
3 the court system, the roughly 2,000 fewer  
4 employees. In the executive branch,  
5 depending on how you define the executive  
6 branch -- but if you include CUNY and SUNY,  
7 the executive branch employment level since  
8 2009 has dropped between 8 and 8.5 percent.

9 So our employment level has declined  
10 more than the executive branch.

11 ASSEMBLYWOMAN WEINSTEIN: Thank you.  
12 Thank you on that. And I think for the  
13 moment that's all the questions,  
14 Mr. Chairman.

15 CHAIRWOMAN YOUNG: Thank you very  
16 much.

17 Our next speaker is Senator Michael  
18 Nozzolio, who is chair of the Codes  
19 Committee.

20 SENATOR NOZZOLIO: Thank you,  
21 Chairwoman Young.

22 Good morning, Judge Marks.

23 CHIEF ADMINISTRATIVE JUDGE MARKS:  
24 Good morning.

1                   SENATOR NOZZOLIO: We're used to  
2                   seeing Judge Prudenti in that chair. I don't  
3                   see much of a resemblance --

4                   (Laughter.)

5                   SENATOR NOZZOLIO: -- at least in  
6                   outward appearances. But she certainly --  
7                   there's big shoes to fill, and I wish you all  
8                   the luck in this endeavor.

9                   CHIEF ADMINISTRATIVE JUDGE MARKS:

10                  Thank you.

11                  SENATOR NOZZOLIO: I want to follow up  
12                  on the questioning that's already occurred.  
13                  Senator Bonacic and I have discussed this  
14                  issue a number of times over the last few  
15                  weeks.

16                  One of the things about Judge Prudenti  
17                  is that she always looked for creative ways  
18                  to solve problems, that in large part because  
19                  of the creativity she exhibited, the CASA  
20                  program was revived when budgetary axes had  
21                  to fall. And Senator Bonacic, myself and  
22                  others worked very closely with her to  
23                  restore that program.

24                  I share your admiration for civil

1           legal services. I think it's a great  
2           program. I probably, in the course of my  
3           service, have had many more requests for  
4           legal assistance through the Assembly and  
5           Senate offices that I served in than you as a  
6           judge would have ever had. Literally  
7           hundreds of people have asked.

8                       We supported, I have supported,  
9           through special grants, civil legal services  
10          in the Finger Lakes region. I understand its  
11          importance. However, Senator Bonacic, I  
12          think, stated it very clearly. We believe  
13          we're your partner in the Legislature as we  
14          try to tackle these budget challenges. The  
15          Judicial Pay Commission was a commission  
16          established by the Legislature because we  
17          believed there was a need to have judicial  
18          salaries increased. And we look to be a  
19          partner with you in the court system in  
20          meeting the obligations established by the  
21          commission. That's public policy. We need  
22          to do that.

23                      At the same token, a major increase in  
24          the budget from one year to the next,

1           21 percent, for albeit a very noble program,  
2           just is not appropriate for this period of  
3           time. And that we look to see you develop  
4           the creativity that we know you are likely to  
5           have in solving this problem.

6                     And certainly we understand the time  
7           frame, we understand the budgetary  
8           restrictions. I think logically, though, to  
9           say it saves money for the state -- yes, it  
10          does, but if that was the case, then we  
11          should raise civil legal services to  
12          \$100 million, we should increase the budget  
13          by 75 percent, 100 percent. Because if we're  
14          going to have such a great savings, obviously  
15          more would be helpful.

16                    But that's not the reality. And it's  
17          not a dollar-for-dollar savings.

18                    I want to hear from you, in your  
19          capacity as leader of the court system, what  
20          types of creative solutions are here. Judge  
21          Lippman spent a lot of time discussing pro  
22          bono work, established requirements for pro  
23          bono services for attorneys to be admitted,  
24          for attorneys to continue in other services.



1 mean, we started back in 2011 with a  
2 \$170 million budget cut. That was followed  
3 by a flat budget the following year. And of  
4 course a flat budget is really a negative  
5 budget because costs go up, they don't go  
6 down.

7 The year after that was another flat  
8 budget. And the last two years we've  
9 received, you know, very modest increases in  
10 the range of 2 percent -- which we greatly  
11 appreciate, and I'm not being ungrateful  
12 about that in the least, don't misunderstand  
13 me. But at some point where costs have been  
14 going up and up and up, which is what they  
15 do, you can be creative only so much. And,  
16 you know, you run out of ideas at some point.

17 So I can't sit here today and tell you  
18 about all the creative ideas that are in my  
19 head as to how we'll deal with this if we  
20 don't get additional money, because I'm very  
21 much hoping that we get additional money.  
22 I'm hoping that we can get your support about  
23 that.

24 But in the end, frankly, if we don't,

1 we'll have to prepare for that eventuality  
2 because that's certainly a possibility. And,  
3 you know, we will find a way to manage this  
4 in one way or the other. The courts will  
5 remain open. I'm not suggesting in any way  
6 at all that we won't continue to keep  
7 courthouses open and we won't be providing  
8 justice to the people of this state. But  
9 we're going to have to be very, very  
10 creative, I agree with you.

11 SENATOR NOZZOLIO: And again, we are  
12 not trying to shirk the responsibilities of  
13 the Legislature one bit. We believe strongly  
14 that the issues of judicial salary increases  
15 have to be met, can't totally be absorbed  
16 within the traditional court budget, judicial  
17 budget.

18 But we look to these other  
19 expenditures as -- so expect you'll have  
20 advocates to help in that endeavor, but we  
21 want you to also find ways to help the  
22 taxpayers who are paying for these bills, to  
23 find creative ways to stretch, to cut, and to  
24 provide the services in less costly ways.

1 CHIEF ADMINISTRATIVE JUDGE MARKS: And  
2 I appreciate that. And I agree with you.

3 SENATOR NOZZOLIO: Thank you.

4 And thank you, Madam Chairman.

5 CHAIRWOMAN YOUNG: Thank you, Senator.

6 But we've been joined by Senator Phil  
7 Boyle and Senator Daniel Squadron.

8 CHAIRMAN FARRELL: Mr. Montesano.

9 ASSEMBLYMAN MONTESANO: Thank you,  
10 Mr. Chairman.

11 Good morning, Judge.

12 CHIEF ADMINISTRATIVE JUDGE MARKS:

13 Good morning.

14 ASSEMBLYMAN MONTESANO: Judge, in your  
15 response to the different questions, and in  
16 comments you made, you know, what I'm  
17 concerned about is -- and I'll address the  
18 indigent legal services in a moment, for the  
19 civil part.

20 But, you know, as a practicing  
21 attorney, I get into the courts quite a bit  
22 in Nassau County, and I can't begin to tell  
23 you the decimation of our court system in  
24 Nassau County over the last several years.

1 In our surrogate's court alone, we lost  
2 approximately 35 operational staff, which  
3 resulted in limited cashier hours, limited  
4 record room access. And some of those things  
5 have cured a little bit down the line.

6 In our Supreme Court, many parts are  
7 down on a daily basis because there's no  
8 court officers or clerks to staff them. So  
9 while we give this free indigent legal  
10 services in the civil parts, it's all well  
11 and good when the litigant comes in with the  
12 free attorney, but there's no courtroom to  
13 appear in.

14 We have one clerk covering three  
15 parts. So they run from one courtroom to the  
16 next, or they're handling three calendars at  
17 the same time.

18 So when you indicated that a lot of  
19 these costs that OCA is incurring over the  
20 last several years has to do with personnel  
21 and salaries, when many of the -- and I'm not  
22 going to put myself in the middle of the  
23 contract negotiations. But many of those  
24 unions that you're talking about, the court

1 officers and clerks specifically, they've  
2 gotten zero contracts over the last several  
3 years. So I don't understand where there's  
4 an increase in salaries, because they haven't  
5 gotten anything.

6 So -- yet there's a \$15 million bump  
7 in the free civil legal services. So I'd  
8 like to get an idea from you what's driven  
9 that uptick --

10 CHIEF ADMINISTRATIVE JUDGE MARKS: I'm  
11 sorry, which what?

12 ASSEMBLYMAN MONTESANO: What is  
13 driving the uptick in the civil legal  
14 services to warrant another \$15 million?

15 CHIEF ADMINISTRATIVE JUDGE MARKS:  
16 Well, just -- we don't have a contract with  
17 the Nassau court employees union, that's  
18 correct. Unfortunately, we don't. We would  
19 like to have a contract with them. We have  
20 12 labor unions in the court system, and at  
21 the moment we have contracts with eight of  
22 the 12.

23 So with respect to the employees in  
24 those unions, they've received salary

1 increases, modest salary increases over the  
2 last couple of years. And that's the reason  
3 for our increasing salary costs. It's the --  
4 we have contracts with two-thirds of our  
5 unions, but not in Nassau, unfortunately.  
6 And hopefully we will reach agreement with  
7 them shortly.

8 But the -- yes, you know, what you're  
9 describing in the courts in Nassau, there  
10 have been consequences of our reduced  
11 staffing levels. And I'm sure you've  
12 accurately described some of those, you know,  
13 based on your firsthand experience.

14 And, you know, that's my concern, is  
15 that we -- and I think there have been  
16 improvements over the last year or two. And  
17 I very much want to be able to continue that  
18 trend and be able to improve from year to  
19 year. Which is why I'm very much arguing  
20 for, asking you and pleading with you to  
21 provide this additional money that I firmly  
22 believe we need to continue improvement and  
23 to mitigate some of the problems that you're  
24 describing in the courts in Nassau County,

1 for example.

2 ASSEMBLYMAN MONTESANO: And, Judge,  
3 just to go in a different direction for a  
4 second.

5 The bail system, I know that a process  
6 has been instituted -- I think it started in  
7 the city -- that when bail is set on a  
8 defendant, it can go to another judge of the  
9 same court who's going to review the judge's  
10 bail. Now, it just seems odd to me that a  
11 judge of the same jurisdiction and the same  
12 court is acting as an appellate review of a  
13 judge's bail.

14 Legally, how did that come about?

15 CHIEF ADMINISTRATIVE JUDGE MARKS: Let  
16 me explain it to you. It's just in New York  
17 City, by the way, not in your district.

18 There's a review -- if it's requested  
19 by the defendant or the defense counsel,  
20 there's a review, not to a judge of the same  
21 jurisdiction, but to a judge in the Supreme  
22 Court. And this is for misdemeanor cases  
23 only, only the low-level offense. And it's  
24 perfectly authorized under the law. It's --

1 Section 530.30 of the Criminal Procedure Law,  
2 if you take a look at it, gives the Supreme  
3 Court the authority, upon an application by  
4 the defendant, to review bail that was set by  
5 the lower court judge. So it was based on  
6 that statutory authority.

7 ASSEMBLYMAN MONTESANO: Thank you,  
8 Judge.

9 And just a last follow-up on my  
10 question before, can you give us just a quick  
11 overview of the justification for the  
12 \$15 million increase on the indigent legal  
13 fund? What's driven that uptick and that  
14 cost over the last year?

15 CHIEF ADMINISTRATIVE JUDGE MARKS: The  
16 justification for it is it's the last  
17 installment of a five-, six-year plan to  
18 reach \$100 million for civil legal services  
19 in this state. Which, by the way, doesn't  
20 solve the problem of the justice gap. There  
21 will still be multitudes of people who do not  
22 have lawyers and won't have lawyers. But  
23 because of this money, for example, in this  
24 fiscal year there will be over 450,000 people

1           who have lawyers because of the money that  
2           we're providing.

3                       And this would be the very last  
4           installment that will fulfill the goal that  
5           was set five, six years ago to reach  
6           \$100 million for civil legal services.

7                       And we were able to add money to it in  
8           more difficult budget years, more difficult  
9           fiscal years than this year. So we feel that  
10          it's very important, it benefits hundreds of  
11          thousands of people who need help throughout  
12          the state. It levels the playing field in  
13          the courts, and we feel it's very important.  
14          And that's why we're urging the Legislature  
15          to provide that funding.

16                      ASSEMBLYMAN MONTESANO: Thank you,  
17          Judge. Thank you, Chairman.

18                      CHAIRWOMAN YOUNG: Thank you,  
19          Assemblyman.

20                      Our next speaker is Senator Diane  
21          Savino.

22                      SENATOR SAVINO: Thank you, Senator  
23          Young.

24                      Good morning, Judge Marks.

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Good morning.

3 SENATOR SAVINO: I'm happy to see in  
4 your testimony that you guys are actually  
5 asking for more money. If you recall, at  
6 Judge DiFiore's nomination and her  
7 confirmation on the Senate floor, I mentioned  
8 the fact that she's inheriting a court system  
9 that is overburdened in many ways and has  
10 suffered from a shortage of resources. In  
11 fact, Sunday's New York Times detailed the  
12 long slog through the court system that it  
13 took one particular young man who was  
14 injured, and it took several months for cases  
15 to move that should have taken much less  
16 time. So we know that our courts are  
17 overburdened.

18 But I have a question. I know you've  
19 had several collective bargaining units in  
20 the court system. Are all of them now  
21 settled? Have you settled all their  
22 contracts?

23 CHIEF ADMINISTRATIVE JUDGE MARKS: No.  
24 I was saying before we have 12 unions in the

1 court system. We have contracts with eight  
2 of the 12, and we're eager to reach agreement  
3 with the remaining four.

4 SENATOR SAVINO: Do you feel that the  
5 proposed budget by the Governor is sufficient  
6 to meet the financial settlements of those  
7 contracts?

8 CHIEF ADMINISTRATIVE JUDGE MARKS: It  
9 would be very difficult.

10 SENATOR SAVINO: It would be very  
11 difficult.

12 CHIEF ADMINISTRATIVE JUDGE MARKS:  
13 Yes. Yes.

14 SENATOR SAVINO: And in addition,  
15 there was a lawsuit brought against the  
16 courts by the Court Officers Association that  
17 triggered a hiring mandate. From what I  
18 understand, there was supposed to be 350  
19 court officers hired; 150 have been actually  
20 accomplished, and there's another 200  
21 outstanding. Is there sufficient money in  
22 your budget to meet that additional hiring?

23 CHIEF ADMINISTRATIVE JUDGE MARKS:  
24 Well, court officers -- you know, we're down,

1 as I was saying before, 12 percent in our  
2 workforce since 2009. We have -- court  
3 officers have been hit less hard. At least  
4 when you look at it today, statewide we're  
5 about 6.2 percent fewer court officers than  
6 we were in 2009, which is proportionally less  
7 than some of the other titles. And in  
8 fact -- because, look, public safety, you  
9 know, in the courts, there's really nothing  
10 more important than that.

11 SENATOR SAVINO: No doubt.

12 CHIEF ADMINISTRATIVE JUDGE MARKS:

13 People who work in the courts, people who  
14 come into the courts have to be secure and  
15 safe. And we would never compromise that.

16 In fact, we're starting a court  
17 officer class in our academy, which when we  
18 hire court officers, they have to go through  
19 the academy, obviously. There's a class of I  
20 think it's 150 recruits starting later this  
21 month. Once they are deployed in the courts  
22 when they graduates from the academy, you  
23 know, later this year, we'll be down to maybe  
24 only 3 percent or so less -- 3 percent fewer

1 court officers than we had in 2009.

2 So frankly, I'm less concerned about  
3 the number of court officers. Although it's  
4 not perfect, and we do need more court  
5 officers, particularly in some parts of the  
6 state. But I think we're in better shape  
7 with regard to court officers than we are  
8 with some of the other titles.

9 SENATOR SAVINO: I'm glad to see you  
10 feel that way. But again, there's certainly  
11 a shortage of court officers, court clerks,  
12 court stenographers, and basically  
13 courtrooms.

14 I spoke previously about the problem  
15 we have in Richmond County. You know, the  
16 state created a separate judicial district  
17 for Staten Island, Richmond County, in 2007.  
18 To date, we have yet to receive the seven  
19 judges that we're entitled to. We owe three  
20 to Brooklyn. You know, we're entitled to 10  
21 judges for the County of Richmond. We don't  
22 have them. We have a brand-new courthouse  
23 that we outgrew already.

24 And this is not your problem. I'm

1 just saying this to make the point that while  
2 the discussion today seems to be between  
3 civil legal services and judges' salaries, I  
4 think it goes beyond that. We still have a  
5 court system that is overburdened,  
6 under-resourced, regardless of how we decide  
7 whether you should get civil legal services  
8 or whether judges should get a raise.

9 By the way, I think we should do both.  
10 But I think we also need to increase funding  
11 to the court system because we're not able  
12 to, in my opinion, deliver what Judge DeFiore  
13 says is most important to her, the speedy and  
14 efficient administration of justice.

15 So I would just hope that while we  
16 continue to listen to you today, people take  
17 into consideration it shouldn't be just civil  
18 legal services versus judges' salaries, it's  
19 how do we appropriately fund a court system  
20 so that we can meet that mandate of speedy  
21 and efficient administration of justice.

22 Thank you, Judge Marks.

23 CHIEF ADMINISTRATIVE JUDGE MARKS:

24 Thank you.

1                   CHAIRMAN FARRELL: Assemblyman Lentol,  
2 Chairman Lentol.

3                   ASSEMBLYMAN LENTOL: Thank you,  
4 Mr. Chairman.

5                   And congratulations, Mr. Marks, for  
6 your ascendancy to this very good position --

7                   CHIEF ADMINISTRATIVE JUDGE MARKS:  
8 Thank you.

9                   ASSEMBLYMAN LENTOL: -- chief  
10 administrative judge.

11                   I guess I'm a little bit torn, because  
12 I know that having appeared in court and  
13 knowing judges like I do -- and even  
14 legislators like I do -- that none of us  
15 would like to see a wounded warrior not have  
16 a lawyer in court at the expense of my not  
17 getting a raise or a judge not getting a  
18 raise. I would not like to see a homeless  
19 person who lost his home because of a bank  
20 who foreclosed on him illegally.

21                   And so I guess that I believe that, as  
22 Diane Savino said, that we surely have to do  
23 both. But I certainly wouldn't advocate for  
24 taking money away from legal services and

1 putting additional people out on the  
2 streets -- and, since we're going to be in  
3 Afghanistan for a while, not having legal  
4 representation for the veterans of the United  
5 States of America.

6 Actually, I wanted to ask you about  
7 raising the age of criminal responsibility,  
8 because the chief judge, as you know, has  
9 created an adolescent diversion court part in  
10 the adult criminal court in nine counties  
11 dedicated exclusively to handling cases of  
12 16-and-17-year-olds. And since the Governor  
13 has again talked about this in his State of  
14 the State, and it's in his budget, might you  
15 provide us with an update on the status and  
16 operation of these new adolescent diversion  
17 court parts?

18 CHIEF ADMINISTRATIVE JUDGE MARKS:  
19 Well, they're continuing. This was a program  
20 that was started by the prior chief judge,  
21 Judge Lippman, at the same time that he  
22 called for statutory reform, the Legislature  
23 raising the age of criminal responsibility.  
24 Which I think, as we all know, we're one of

1           only two states in the country that sets the  
2           age of criminal responsibility at 16.

3                     And so the adolescent diversion court  
4           parts were a complement to the legislative  
5           proposal. The legislation is the ultimate  
6           solution.

7                     But in the meantime, these are court  
8           parts that were set up -- I think we have 11  
9           of them now throughout the state. They have  
10          been successful. They're set up in  
11          cooperation with the district attorneys in  
12          those jurisdictions, who have been  
13          supportive. They're a limited solution to  
14          the problem, I think it's fair to describe it  
15          that way. They're mostly dealing with  
16          misdemeanors. I think a few may deal with  
17          some -- a modest number of nonviolent  
18          felonies. But they've been certainly  
19          successful. We're continuing them. There's  
20          been evaluations done, scholarly evaluations  
21          of the results of the adolescent diversion  
22          parts, and they've been shown to reduce  
23          recidivism for the 16-and-17-year-olds  
24          participating in the program.

1                   So it's been a successful program, but  
2                   it's somewhat of a limited program. And we  
3                   feel and certainly the new chief judge feels  
4                   that way, that the ultimate solution is to  
5                   statutorily raise the age of criminal  
6                   responsibility in New York.

7                   ASSEMBLYMAN LENTOL: Now, both the  
8                   Assembly and the Executive proposals talk  
9                   about a large amount of cases being shifted  
10                  from the criminal part to the Family Court.  
11                  And since we're talking about the lack of  
12                  resources for all the court system, I'm  
13                  wondering if you believe the necessary  
14                  resources are available to implement that.

15                  CHIEF ADMINISTRATIVE JUDGE MARKS:  
16                  Yeah, the -- we've taken the position we  
17                  could accommodate the -- there would be more  
18                  cases in Family Court. So there wouldn't be  
19                  more cases overall in the court system, there  
20                  would be a shift of some cases that are now  
21                  in the criminal courts to the Family Court.  
22                  And Family Court certainly has challenges --  
23                  I'm not going to suggest otherwise -- but  
24                  Family Court does have 25 new judges. Thanks

1 to the support of the Legislature, we have 25  
2 additional judges in Family Court around the  
3 state.

4 So the other thing is when Judge  
5 Lippman --

6 ASSEMBLYMAN LENTOL: Has that helped,  
7 the 25 additional Family Court judges?

8 CHIEF ADMINISTRATIVE JUDGE MARKS:  
9 Absolutely. Yeah, it absolutely helps. We  
10 are very happy that the Legislature approved  
11 that two years ago.

12 But the number of 16-and-17-year-olds  
13 who have been arrested, that number has  
14 plummeted over the last half dozen years or  
15 so. It's a fraction of what it once was.

16 So there might be a need for some  
17 additional resources in Family Court, but my  
18 sense is that it would not be draconian. So  
19 it would be a problem that we would cope  
20 with. And if the legislation passed, I think  
21 under all the proposals -- I know this about  
22 the Governor's proposal -- the effective date  
23 would not be for, you know, a year and a half  
24 down the road, so there would be time to

1           prepare for it. There might be some modest  
2           additional expense in costs for the court,  
3           but we feel -- and, you know, we've thought  
4           about this a great deal over recent years --  
5           that we would be able to handle that. And --  
6           it would be a good problem to have, in other  
7           words. You know, we view it that way.

8                         ASSEMBLYMAN LENTOL: Thank you very  
9           much.

10                        SENATOR KRUEGER: Next is Senator Ruth  
11           Hassell-Thompson, ranker on Judiciary. We're  
12           going to make a chair trade.

13                        SENATOR HASSELL-THOMPSON: Thank you,  
14           Madam Chair.

15                        Good morning, Judge.

16                        CHIEF ADMINISTRATIVE JUDGE MARKS:  
17           Good morning.

18                        SENATOR HASSELL-THOMPSON: I just have  
19           a couple of questions. I understand that  
20           most of the questions that I had wanted to  
21           pose have already been asked of you, so I  
22           won't be redundant.

23                        But I would like to just ask, are you  
24           committed to the bail reform process that was

1           begun by Chief Judge Lippman last year? And  
2           how soon do you think, if you're committed,  
3           that that would roll out?

4                        CHIEF ADMINISTRATIVE JUDGE MARKS:

5           Well, the bail reform process has mostly been  
6           put in place. The new Chief Judge supports  
7           it. We're going to continue that. We feel  
8           that there are a number of people who are not  
9           a threat to anyone -- you know, people who  
10          don't have a history of violence, who are  
11          detained pending the outcome of the  
12          disposition of their case simply because they  
13          can't afford to make bail.

14                      There are a lot of alternatives that  
15          we feel that judges could be using to avoid  
16          that situation. We're trying to encourage  
17          judges -- in the end, it's a judge's  
18          decision, an individual judge's discretion on  
19          whether to set bail or not and how much. But  
20          we are trying to be supportive of judges and  
21          to provide them with sufficient resources and  
22          alternative resources so that people -- look,  
23          some people, you know, should be detained who  
24          clearly are a threat to society, a threat of

1 committing further violence, but many people  
2 are not. And they're sitting in jail  
3 awaiting the disposition of their case simply  
4 because they don't have the means to make  
5 bail, and that's a problem that we're trying  
6 address.

7 There's also a statutory solution  
8 which has been proposed, and I think we'll  
9 pursue that as well. And I think that the  
10 new Chief Judge will want to pursue that as  
11 well.

12 But this is a problem that we're  
13 committed to addressing and committed to  
14 trying to resolve it as best we can.

15 SENATOR HASSELL-THOMPSON: What have  
16 been some of the barriers to getting it  
17 resolved?

18 CHIEF ADMINISTRATIVE JUDGE MARKS:  
19 Statutorily? The proposal that we sent to  
20 the Legislature a couple of years ago would  
21 address, number one, the fact that in  
22 New York -- and it's almost kind of  
23 completely upside down, if you think about  
24 it. In New York, judges are not permitted to

1 take risk to public safety into account when  
2 they make a bail determination, which doesn't  
3 seem to make any sense. We're one of only a  
4 few states that prohibits judges from taking  
5 that into account.

6 Judges should be able to take that  
7 into account, so that if there is someone  
8 with a real propensity for violence before  
9 them, that that should be a factor that the  
10 judge should consider in setting bail.

11 But on the other hand, we feel that  
12 where someone does not present a risk of  
13 violence and does not present a risk of  
14 failing to return to court if they're  
15 released, that there should be a presumption  
16 of release without bail.

17 So it sort of addresses two kind of  
18 different but in some ways related problems  
19 that we feel, you know, the Legislature  
20 should take a careful look at. And both of  
21 those problems could be resolved, we feel, in  
22 the bill that we presented to the  
23 Legislature.

24 SENATOR HASSELL-THOMPSON: I'm



1 the vast majority of states in the country --  
2 that in making a bail determination a judge  
3 should be able to take into account whether  
4 the person before them is a violent person  
5 and may, if released, commit a further act of  
6 violence. To us, that seems like a very  
7 commonsense approach and an approach that  
8 should be reflected in the bail statutes in  
9 New York.

10 SENATOR HASSELL-THOMPSON: Thank you.

11 Just to go back for a minute to the  
12 explanation that you were giving on the  
13 implementation of Raise the Age. Answer for  
14 me again, how many new parts and attorneys  
15 will OCA need in order to fully implement --  
16 I know you have -- you know, the  
17 implementation is not going to occur in '16.  
18 But we're also looking at you absorbing a  
19 tremendous deficit this year in terms of the  
20 new judges that have come on, and judge  
21 raises and a lot of other issues. I would  
22 not like to see any of these issues become a  
23 barrier to us implementing this program as we  
24 move out.

1                   So what would the numbers mean given  
2                   the financial straits that you find OCA in at  
3                   this moment?

4                   CHIEF ADMINISTRATIVE JUDGE MARKS:

5                   Frankly, I don't think we would need  
6                   additional resources to accommodate a  
7                   statutory raise of the age of criminal  
8                   responsibility. I think we could accommodate  
9                   the -- again, it wouldn't create more cases  
10                  in the court system, it would move certain  
11                  cases from one court to another court.

12                  So, you know, we have flexibility in  
13                  reassigning judges from one court to another  
14                  court. We have flexibility in reassigning  
15                  court staff -- the court officers, court  
16                  clerks and the like -- from one court to  
17                  another court.

18                  If you combine that with the 25  
19                  additional Family Court judgeships that we  
20                  have now and the fact that the rest of  
21                  16-and-17-year-olds, you know, are much lower  
22                  than they were a few years ago, we feel that  
23                  we could accommodate this change -- which,  
24                  again, would not be more cases, it would be

1 moving cases from one court to another. We  
2 feel we can accommodate that with what we  
3 have.

4 SENATOR HASSELL-THOMPSON: Is it not  
5 true that when you took the last budget cut  
6 that you lost close to 2,000 employees across  
7 the spectrum? So I'm --

8 CHIEF ADMINISTRATIVE JUDGE MARKS:  
9 Yes. But we're dealing with -- it's the same  
10 number of cases. Raise the Age doesn't  
11 necessarily reduce the number of cases,  
12 although it can. It could lead to more  
13 diversion of cases out of the courts and 16-  
14 and 17-year-olds going into programs. You  
15 know, rather than having their cases go  
16 through the court system.

17 But we're not expanding the number of  
18 cases, we're merely moving them from one  
19 court to another. We feel a court that --  
20 cases can be better served and can be better  
21 handled in the Family Court than in the  
22 criminal courts. So given that and given our  
23 flexibility to move judges around and our  
24 flexibility to move court employees around,

1           since this wouldn't be more cases for the  
2           court system, it would be the same number of  
3           cases or maybe even fewer cases, that we  
4           could accommodate them.

5                     SENATOR HASSELL-THOMPSON: Okay, my  
6           time is going to run out. But I guess the  
7           crux of the question for me is we've given  
8           you 20 new judges, but do you have the court  
9           support staff for those 20 judges in the  
10          numbers given the cuts that you've taken?

11                    CHIEF ADMINISTRATIVE JUDGE MARKS:  
12          Yes.

13                    SENATOR HASSELL-THOMPSON: And I think  
14          that's the basis of my question, because  
15          these are Family Court judges.

16                    CHIEF ADMINISTRATIVE JUDGE MARKS: We  
17          have sufficient staff for the new Family  
18          Court judges, yes, we do.

19                    SENATOR HASSELL-THOMPSON: Thank you,  
20          Judge.

21                    Thank you, Mr. Chairman.

22                    CHAIRMAN FARRELL: Thank you.

23                    Next, Assemblyman Graf.

24                    ASSEMBLYMAN GRAF: Hi, Judge, how are

1           you?

2                   CHIEF ADMINISTRATIVE JUDGE MARKS:

3           Good morning.

4                   ASSEMBLYMAN GRAF: Now, you have one  
5           program where at arraignments everyone gets  
6           assigned an attorney. Right? And even if  
7           the person is making \$200,000, \$300,000 -- or  
8           no matter what he makes, right, they get  
9           assigned an attorney at arraignment. How  
10          much is that costing us?

11                   CHIEF ADMINISTRATIVE JUDGE MARKS:

12          People making \$200,000, \$300,000 a year are  
13          getting attorneys at arraignments? I can't  
14          tell you that that's never happened, but I  
15          can honestly say I don't believe that's a  
16          major problem in the court system.

17                   ASSEMBLYMAN GRAF: Well, that's what  
18          happening. In Suffolk County they have  
19          assigned attorneys, okay, that sit in the  
20          courtroom. And if somebody doesn't have an  
21          attorney, and it doesn't matter what they  
22          make, for arraignment they're getting an  
23          attorney.

24                   CHIEF ADMINISTRATIVE JUDGE MARKS: :

1           Yeah, I think that attorneys staff the  
2           arraignment parts in places like Suffolk  
3           County. And, you know, the courts are under  
4           a very strict mandate from the Court of  
5           Appeals that people have to be arraigned  
6           within 24 hours of their arrest. So if  
7           someone is arrested, is brought by the police  
8           to the courthouse, is brought to the  
9           courtroom to be arraigned and there's a  
10          lawyer assigned to that arraignment part,  
11          yes, that could happen, that somebody who  
12          otherwise could afford a lawyer would have  
13          the services of that lawyer for the very  
14          brief arraignment proceeding.

15                 ASSEMBLYMAN GRAF: Well, they have --

16                 CHIEF ADMINISTRATIVE JUDGE MARKS: But  
17           they would not receive a free lawyer for the  
18           pendency of the case.

19                 ASSEMBLYMAN GRAF: If I can, Judge.  
20           You have Legal Aid assigned to the courtroom,  
21           but there are income requirements. All  
22           right? So anyone that doesn't meet the  
23           income requirement in Suffolk County, right,  
24           who cannot be assigned Legal Aid is being

1 assigned almost like an 18-B attorney. All  
2 right? Even if they're making \$200,000 a  
3 year, if they're being arraigneded.

4 That money -- and I'm looking -- could  
5 be better used, all right, to staff court  
6 personnel. Because let me explain what's  
7 happening. It takes me, in Suffolk County in  
8 district court, up to three and a half years  
9 to get a hearing. I just did a trial on a  
10 misdemeanor. It took me five years, five  
11 years, to get a jury trial.

12 And what's happening is we've come to  
13 a point where we've cut the court staff so  
14 much in an attempt to save money that it's  
15 actually costing us money.

16 So what's happening in Suffolk  
17 County -- and I don't know about the rest of  
18 the state, because that's mainly where I  
19 practice -- is if somebody has to be taken  
20 into custody, the entire courtroom shuts  
21 down. That slows down the entire process,  
22 right, and leads to court congestion.

23 There are times where they have to  
24 bring a person from custody up to the



1 and I'm not blaming the judges and I'm not  
2 blaming the administration, I'm blaming us  
3 for not looking at the problems here and  
4 identifying these problems and making sure  
5 that we're not stepping over a dollar to pick  
6 up a dime, which is what I think we're doing  
7 here.

8           You've seen the slowdowns in the  
9 courtroom. You know, you watch the  
10 calendars. So, I mean, do you agree with the  
11 fact that we've gotten to the point where  
12 it's actually costing us money because it's  
13 slowing down the process?

14           CHIEF ADMINISTRATIVE JUDGE MARKS:

15 Yeah. No, I think there are delays in cases  
16 throughout the court system.

17           But I have to tell you, if it's taking  
18 five years to get a misdemeanor trial in  
19 Suffolk County, that is absolutely  
20 unconscionable. And I will -- I can promise  
21 you I will look into that today, this  
22 afternoon, because that's -- that's  
23 unconscionable in a --

24           ASSEMBLYMAN GRAF: Judge, half the

1 other problem, if you want to relieve the  
2 congestion, is the 30.30 statute doesn't  
3 exist in New York State. Okay? Because all  
4 we get is it's always court time, it's always  
5 court time. That's nonsense. They're  
6 denying clients' rights to a speedy trial.

7 And I look at the appellate decisions,  
8 and never, never is there a decision on  
9 30.30, for the most part. So it's like --

10 CHIEF ADMINISTRATIVE JUDGE MARKS: The  
11 30.30 is -- I agree with you, it's a  
12 misnomer. It's never been an effective  
13 speedy trial statute. It is not effective in  
14 moving cases to trial. I agree with you  
15 completely on that.

16 ASSEMBLYMAN GRAF: Well, year after  
17 year I keep saying that we have to do  
18 something with this. You know, it's  
19 nonsense, when I sit there -- and I've been  
20 in front of judges and I'm ready for trial,  
21 I'm ready for a hearing, and the judge goes,  
22 "Well, we can't do a trial today." I say,  
23 "Well, send me to another courtroom." Okay?  
24 And I get court time. And then if I do an

1 appeal, it's never decided on 30.30.

2 So basically we're ignoring the  
3 Constitution in the State of New York, and  
4 that's causing court congestion.

5 So, I mean, I have a lot of problems  
6 with what's going on in our courtrooms,  
7 especially with the staffing requirements.  
8 All right? And I do think that we're  
9 stepping over a dollar to pick up a dime  
10 here, and by not funding especially  
11 correction officers and clerks and everything  
12 else, right, it's actually costing us money.

13 The last thing is the recording  
14 devices that we have for transcripts, it's  
15 not the same as a person that is actually  
16 taking it down, a court reporter. Because  
17 when we get that back, there's nothing but  
18 errors and everything else in the time  
19 period.

20 So I would say, you know, we need to  
21 fund court personnel. If you really want to  
22 save money, we need to hire more court  
23 personnel.

24 CHIEF ADMINISTRATIVE JUDGE MARKS: I

1 agree with you.

2 CHAIRMAN FARRELL: Thank you.

3 Senator.

4 CHAIRWOMAN YOUNG: Thank you. Our  
5 next speaker is Senator Dan Squadron.

6 SENATOR SQUADRON: Thank you very  
7 much, Madam Chair, and the committee. It's  
8 good timing, and I want to pick up right  
9 where Assemblymember Graf left off, with I  
10 think you referred to it as the nonexistent  
11 30.30 statute. In fact, we might be better  
12 off with none than with this.

13 The current 30.30 statute was written  
14 in order to keep the federal government from  
15 coming into New York State in the early '70s,  
16 signed by Governor Rockefeller, in  
17 contradiction to a report from the court on  
18 how to actually fix our speedy trial statute,  
19 at a time when court congestion wasn't as bad  
20 as it is today.

21 I appreciate your testimony. I  
22 understand that the Commission on Judicial  
23 Pay ties your hands a little bit. But I do  
24 want to say when we have the kind of delay

1 and backup that we see, when we have the kind  
2 of violation of the accused's constitutional  
3 rights, the kind of cost and pain suffered by  
4 victims from the sort of court delay that we  
5 have, I really urge -- and I've done the same  
6 thing to the incoming chief judge -- an  
7 aggressive look at a crisis of court delay, a  
8 crisis of constitutional rights to a speedy  
9 trial being absolutely ignored in New York  
10 State. In fact, the statute to protect them  
11 is used to damage them.

12 In my home borough of Brooklyn, we're  
13 up 26 percent on court delays in 2015. In  
14 2013 in New York City, 594 days citywide mean  
15 age at disposition. Five hundred ninety-four  
16 is almost two years. It's 732 days in the  
17 Bronx. In 2012, 55 percent of felony cases  
18 in New York City were pending for more than  
19 six months. That is a crisis.

20 In fact, the Advisory Committee on  
21 Criminal Law and procedure gave a report to  
22 you last year that said most would agree --  
23 as you have already, which I really  
24 appreciate -- that 30.30 has been largely

1           unsuccessful in moving criminal trials in an  
2           expeditious fashion.

3                     It also says the problem is more than  
4           just a lack of sufficient judicial resources.  
5           It also involves a willingness to go to  
6           trial.

7                     You said, in response to Senator  
8           Hassell-Thompson, that people are sitting in  
9           jail because they can't make bail. I would  
10          amend that. They're sitting in jail because  
11          they can't make bail and because of the kind  
12          of court delays we have.

13                    I carry a bill to fix this named for  
14          Kalief Browder, who spent more than a  
15          thousand days in jail before having his case  
16          dismissed. Tragically, he committed suicide  
17          last year.

18                    What's the solution? How are we going  
19          to do it together this year?

20                    CHIEF ADMINISTRATIVE JUDGE MARKS:  
21          Well, I think the -- these are all real  
22          problems that you've discussed, and the  
23          solution is -- and I think the new chief  
24          judge is very interested in this problem, and

1 I think you'll be hearing more from her  
2 shortly about this. But I think she wants to  
3 address and focus her attention on this.

4 And this has to be a priority. It  
5 will be a priority. But I think the ultimate  
6 solution -- you know, the criminal justice  
7 system has many components and obviously the  
8 court system is a central component within  
9 the criminal justice system. But to  
10 eliminate some of these problems, address  
11 these delays, streamline the process, we have  
12 to work together with the other components of  
13 the criminal justice system. There's a lot  
14 that we can do ourselves, that the judiciary  
15 can do, but we can't do it all. And we need  
16 to work with law enforcement, with the  
17 defense bar, with the institutional criminal  
18 defense providers, with probation  
19 departments. I mean, we need to work  
20 together with all the components of the  
21 criminal justice system to solve these  
22 problems. That's the only way to do it.

23 SENATOR SQUADRON: And just explain to  
24 me the role of the court system and then the

1           role of the other partners you just  
2           described.

3                   CHIEF ADMINISTRATIVE JUDGE MARKS:  
4           It's -- we have a major role, maybe the  
5           critical role in --

6                   SENATOR SQUADRON:   And what is that  
7           role?  Just sort of more specifically.

8                   CHIEF ADMINISTRATIVE JUDGE MARKS:  
9           Well, in the end, it's the judge that can  
10          move the case to trial.  I mean, the parties  
11          have to be ready, but if there's delay or  
12          lack of readiness, if there are excuses, in  
13          the end it's the judge that has to ensure  
14          that there's a quick resolution and an  
15          expeditious resolution of the case.

16                   So first and foremost and ultimately,  
17          the responsibility is with the court system  
18          and with judges.

19                   SENATOR SQUADRON:  Let me just ask  
20          this question directly.  If court congestion  
21          didn't stop the clock, wouldn't that move  
22          trials a lot more quickly?

23                   CHIEF ADMINISTRATIVE JUDGE MARKS:  If  
24          court congestion --

1                   SENATOR SQUADRON:  If court congestion  
2                   wasn't a reason to stop the speedy trial  
3                   clock, wouldn't that move trials much more  
4                   quickly?

5                   CHIEF ADMINISTRATIVE JUDGE MARKS:  
6                   Absolutely.

7                   SENATOR SQUADRON:  Is that something  
8                   you support?

9                   CHIEF ADMINISTRATIVE JUDGE MARKS:  Is  
10                  that what?

11                  SENATOR SQUADRON:  Something you  
12                  support --

13                  CHIEF ADMINISTRATIVE JUDGE MARKS:  Oh,  
14                  sure.

15                  SENATOR SQUADRON:  -- allowing the  
16                  clock to run for the entire time between  
17                  trial or hearing dates even if it's court  
18                  congestion that's leading to the delay?

19                  CHIEF ADMINISTRATIVE JUDGE MARKS:  You  
20                  mean if court congestion is the reason for  
21                  the delay --

22                  SENATOR SQUADRON:  The prosecutor asks  
23                  for a week and gets a date three weeks hence.  
24                  Is that seven days or is that 21 days?

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Under the speedy trial statute?

3 SENATOR SQUADRON: Currently it's  
4 seven. If it were 21, I think that would be  
5 the beginning of solving this problem. I'm  
6 asking, is that something that the courts --

7 CHIEF ADMINISTRATIVE JUDGE MARKS:

8 Look, a more effective speedy trial statute  
9 could make a great contribution to  
10 eliminating delays in criminal cases, no  
11 question.

12 SENATOR SQUADRON: So it sounds like  
13 you also agree that we don't need more money  
14 before we talk about fixing speedy trial --  
15 we should fix 30.30 and then next year we'll  
16 talk about the money that we need to make  
17 that work. Is that the right order of  
18 operations?

19 CHIEF ADMINISTRATIVE JUDGE MARKS: I  
20 think there are a lot of things we can do  
21 without more money.

22 SENATOR SQUADRON: Thank you very  
23 much. I really appreciate it.

24 CHIEF ADMINISTRATIVE JUDGE MARKS:

1 Thank you.

2 CHAIRWOMAN YOUNG: We have been joined  
3 by Senator Velmanette Montgomery.

4 Assembly?

5 ASSEMBLYMAN OAKS: We've also been  
6 joined by Assemblywoman Duprey.

7 CHAIRMAN FARRELL: Any questions on  
8 this side? Oh. Danny O'Donnell.

9 ASSEMBLYMAN O'DONNELL: Well, it's  
10 been a rough morning for me, Judge.

11 CHIEF ADMINISTRATIVE JUDGE MARKS:  
12 It's part of the job.

13 ASSEMBLYMAN O'DONNELL: Senator  
14 Nozzolio suggested \$100 million for legal  
15 services; I almost passed out. And I agree  
16 with Al Graf, so that's really quite a  
17 morning for me.

18 (Laughter.)

19 ASSEMBLYMAN O'DONNELL: I had chosen  
20 not to speak, because I would like to go home  
21 sometime in my lifetime today, so -- but  
22 there's a couple of things I want to raise.

23 One is I want to say that I  
24 100 percent agree with Senator Squadron. And

1 just so you know, I was a full-time public  
2 defender from 1987 to 1995. And at the  
3 beginning of that time, if a DA came into the  
4 courtroom and said, "Your Honor, my key  
5 witness is in Florida, and I'll be ready  
6 tomorrow," and the case was adjourned for a  
7 month, the judge charged that whole month to  
8 the people on the running of the clock.

9 So now there's an absolute  
10 manipulation of that, where they say "But  
11 I'll be ready tomorrow," and then they  
12 adjourn the case for two months and only  
13 charge one day to the people. With all due  
14 respect, sir, that's the judge's fault. The  
15 judge doesn't have to do that. The judge  
16 could say "Well, you're not ready today,  
17 you're not ready."

18 And in the time that I worked there,  
19 it went from when you could expect some  
20 attempt to try a case within the speedy trial  
21 limits to a point where it could never ever  
22 happen. Which leads me to my statement about  
23 bail.

24 We have too many people in jail



1 people are you aware of that have been  
2 accused of murder who have never been accused  
3 before who get released on bail?

4 CHIEF ADMINISTRATIVE JUDGE MARKS: I  
5 couldn't say on that --

6 ASSEMBLYMAN O'DONNELL: I would like  
7 someone -- one of the minions that work for  
8 you -- to tell me what the answer to that  
9 question is. Because the answer, in my  
10 opinion, is almost nobody -- except if you're  
11 white and rich, but that's not your fault.  
12 Almost no one.

13 So if in fact almost no one is  
14 released when they're charged with murder,  
15 then what that means is in effect the system  
16 is taking into account what the risk might be  
17 to society to let them out, and we don't need  
18 to change the bail statute to give more  
19 people reasons to keep more people in jail.

20 We need to change the bail statute so  
21 that we're not having people sit in places  
22 like Rikers island for years -- years --  
23 before they can assert their constitutional  
24 right to the presumption of innocence.

1                   And I think the judiciary needs to  
2                   take a better role and look at this and not  
3                   advocate for changing it to make the bail  
4                   statute even harder on people who don't have  
5                   resources.

6                   Thank you, sir.

7                   CHIEF ADMINISTRATIVE JUDGE MARKS:

8                   Thank you.

9                   CHAIRMAN FARRELL: Thank you.

10                  CHAIRWOMAN YOUNG: Thank you.

11                  Senator Liz Krueger.

12                  SENATOR KRUEGER: Thank you. I also  
13                  wasn't planning to ask too many questions  
14                  because so many of us are here today.

15                  But just going back to civil legal  
16                  services, even though there has been the  
17                  growth in money available, can you tell me  
18                  how many people have to go to a court  
19                  situation without an attorney in the civil  
20                  system?

21                  CHIEF ADMINISTRATIVE JUDGE MARKS:

22                  It's still about -- although there's been  
23                  great improvement with that problem, there's  
24                  still a great majority of the people in civil

1 cases who can't afford a lawyer, still don't  
2 have a lawyer. It's as much as 70 percent.

3 SENATOR KRUEGER: And someone gave me  
4 the number that we were at 2.3 million cases  
5 without attorneys, and we're down to  
6 1.8 million. Does that seem a realistic  
7 number to you of the number of people who  
8 don't have attorneys for civil cases?

9 CHIEF ADMINISTRATIVE JUDGE MARKS: I  
10 know -- it's very difficult to kind of  
11 document this. But I think that sounds  
12 correct, if I recall. I know that the  
13 estimates are that over the last five, six  
14 years, the percentage of people in civil  
15 cases who can't afford an attorney who have  
16 an attorney has gone from 20 percent to  
17 30 percent, which is actually a 50 percent  
18 increase, if my math is correct.

19 But obviously that still leaves the  
20 great majority of people without a lawyer.  
21 So it's -- it's an ongoing problem. This  
22 additional money has made, you know, an  
23 enormous difference in the lives of the  
24 people who do have lawyers because of it, and

1           it's hundreds of thousands of cases a year  
2           where people now have lawyers because of this  
3           money. But it's a gargantuan problem, no  
4           question.

5                         SENATOR KRUEGER: I certainly -- I  
6           represent a part of Manhattan Island, and I  
7           certainly can verify that the difficulty in  
8           finding somebody -- representation in endless  
9           numbers of civil cases for disproportionately  
10          the elderly, the disabled, tenants -- and  
11          again, the biggest issue I see in the  
12          problems here are that in a civil case where  
13          it's not you versus the government, it's you  
14          against someone, the someone else always has  
15          an attorney. And so the unfairness of going  
16          through the court process to me seems fairly  
17          extreme.

18                        So, you know, for the record, we can't  
19          support reducing funding for civil legal  
20          services. We have to continue our commitment  
21          that was a multiyear commitment to expanding  
22          funds for civil legal services.

23                        Thank you.

24                        CHIEF ADMINISTRATIVE JUDGE MARKS:

1 Thank you.

2 CHAIRWOMAN YOUNG: Thank you, Senator.

3 CHAIRMAN FARRELL: Assemblywoman  
4 Peoples-Stokes.

5 ASSEMBLYWOMAN PEOPLES-STOKES: Thank  
6 you. Thank you, Mr. Chairman.

7 Judge, I appreciated hearing all your  
8 comments today, and I actually appreciated  
9 hearing the questions and responses from my  
10 colleagues. But I just have one really quick  
11 point I want to raise, and hopefully you're  
12 able to give me that number today. And, if  
13 not, I can look forward to receiving it soon.

14 What is the total number of staff on  
15 the Office of Court Administration? And what  
16 is the total number of counsel on civil legal  
17 services? And what are the diversity numbers  
18 there?

19 CHIEF ADMINISTRATIVE JUDGE MARKS: I'm  
20 sorry, I don't have that with me. But I'll  
21 absolutely get you those numbers. We have  
22 them. And we'll get them to you.

23 ASSEMBLYWOMAN PEOPLES-STOKES: The  
24 numbers and the diversity.

1 CHIEF ADMINISTRATIVE JUDGE MARKS:

2 Yes.

3 ASSEMBLYWOMAN PEOPLES-STOKES: Thank  
4 you, sir.

5 CHAIRWOMAN YOUNG: Thank you.

6 Senator Marty Golden.

7 SENATOR GOLDEN: Thank you very much,  
8 Madam Chair.

9 I have to believe judges should have  
10 the discretion to set bail and the ability of  
11 the defendant to return to court and also set  
12 the risk assessment of the violence. And I  
13 think you're doing an outstanding job. And I  
14 do believe that we have to help you correct  
15 the imbalance in the system in putting more  
16 dollars made available so we can have more  
17 judges and more employees to be able to move  
18 these cases through the system.

19 Real quick question. I'm also the  
20 chair of the Public Employees, and I had them  
21 up in my office about a month ago. And I  
22 thought I heard 14 percent they're down, and  
23 that's different from the number that you've  
24 given.

1                   The court officers across the State of  
2                   New York are 14 percent off from where they  
3                   were in 2009?

4                   CHIEF ADMINISTRATIVE JUDGE MARKS:  
5                   That -- could you repeat that? I'm sorry.

6                   SENATOR GOLDEN: The number of court  
7                   officers presently are down 14 percent from  
8                   the number in 2009 that I have.

9                   CHIEF ADMINISTRATIVE JUDGE MARKS:  
10                  It's 6 percent. But depending on who came to  
11                  you, they might have been talking about a  
12                  particular court or type of court.

13                  SENATOR GOLDEN: That was statewide.

14                  CHIEF ADMINISTRATIVE JUDGE MARKS:  
15                  Statewide it's 6 percent. I'll show you the  
16                  numbers.

17                  SENATOR GOLDEN: If you could get  
18                  those numbers for me, I'd appreciate it.

19                  CHIEF ADMINISTRATIVE JUDGE MARKS: I  
20                  will.

21                  SENATOR GOLDEN: Thank you,  
22                  Your Honor.

23                  CHIEF ADMINISTRATIVE JUDGE MARKS:  
24                  Thank you.

1 CHAIRWOMAN YOUNG: Thank you, Senator.

2 CHAIRMAN FARRELL: That's it.

3 CHAIRWOMAN YOUNG: Okay. Senator  
4 Velmanette Montgomery.

5 SENATOR MONTGOMERY: Thank you, Madam  
6 Chair.

7 Judge, good morning.

8 CHIEF ADMINISTRATIVE JUDGE MARKS:  
9 Good morning.

10 SENATOR MONTGOMERY: I just have one  
11 question that I would like to ask. You are  
12 familiar with the Center for Court  
13 Innovation?

14 CHIEF ADMINISTRATIVE JUDGE MARKS:  
15 Yes.

16 SENATOR MONTGOMERY: And one of the  
17 issues or one of the sort of experimental, if  
18 you will, I guess we can say, courts that  
19 they have come up with and have been actually  
20 put into action by -- under the auspices of  
21 Chief Justices Kaye and Lippman, and I hope  
22 that we're looking to make that a permanent  
23 and central part of our court system, and  
24 that is the youth courts.

1                   So I'm not -- I'm not -- I don't  
2 understand and I don't know how you view  
3 that. It has worked so beautifully in one of  
4 the community courts in my district. And all  
5 of the information that I have in those areas  
6 other than the Red Hook Youth Court, which is  
7 in my district, have really benefited young  
8 people extremely well.

9                   It's also an opportunity to teach  
10 young people how the system works, to give  
11 them an opportunity to develop some skill and  
12 some understanding of the system because they  
13 play the roles of all of the different  
14 components of the court. And so it keeps  
15 young people out of the system, but it also  
16 acts as an extremely important leadership  
17 development program.

18                   So I'm wondering what you think about  
19 it and if we can look forward to continuing  
20 to support that court and make it more  
21 central to what we do as it relates to young  
22 people in our state.

23                   CHIEF ADMINISTRATIVE JUDGE MARKS:

24                   Yeah, the youth courts are terrific. And,

1           you know, we have them in Brooklyn, we have  
2           them in places all over the state. They're  
3           supported by defense attorneys offices where  
4           we have them. And, you know, they're a  
5           terrific idea. You find them in other states  
6           around the country, not just New York. And  
7           we're totally committed to continuing to  
8           support them.

9                         SENATOR MONTGOMERY: Thank you.

10                        CHAIRWOMAN YOUNG: Thank you, Senator.

11                        Senator Michael Nozzolio.

12                        SENATOR NOZZOLIO: Thank you again,

13           Madam Chair.

14                        Judge, coming to the issue of bail,  
15           that Judge Lippman drafted a bill but because  
16           Judge Lippman is not a member of the  
17           Legislature, I as chair of the Codes  
18           Committee, as a professional courtesy,  
19           introduced his legislation. It's been  
20           pending before the Codes Committee for a  
21           number of months.

22                        And I'd like to have your reaction to  
23           a comment made that says the reform of the  
24           so-called broken jail system, Judge Lippman's

1 bill, insults judges, overlooks that bail  
2 review is available presently, fails to  
3 provide a complete record of bail release  
4 decisions, and intrudes on the judiciary's  
5 independence.

6 Now, that's not by a member of the  
7 Legislature, that's by a co-Supreme Court  
8 judge, Judge McLaughlin in the City of  
9 New York, who indicated that these provisions  
10 would establish what he called a two-tier  
11 system of justice where you'd see an  
12 automatic judicial review triggered when a  
13 defendant is unable to make bail.

14 Now, that means, to me, that we'd have  
15 50,000 appeals automatically. And you were  
16 talking about clogging the system earlier,  
17 the demands on the budget. Certainly I know  
18 those have to be weighed. We're seeking  
19 justice here. But from a logistical  
20 standpoint -- and I think it would be very  
21 fair for you to be able to comment publicly  
22 on Judge McLaughlin's public opposition to  
23 the legislation.

24 CHIEF ADMINISTRATIVE JUDGE MARKS:

1 Well, I have to say I strongly disagree with  
2 that assessment of that program. Fifty  
3 thousand cases, it's just -- that's just not  
4 true.

5 It's a misdemeanor program. It takes  
6 advantage of an existing statutory provision  
7 in the law which gives a Supreme Court judge  
8 de novo review -- authority, on the  
9 application of a defendant, to conduct a de  
10 novo review, a full review of a lower court's  
11 bail ruling.

12 We've simply set up a part in Supreme  
13 Court to allow for that, if the defendant  
14 makes an application, to have the case  
15 calendared in the Supreme Court part. It's  
16 not a lot of cases. It's limited to  
17 low-level cases. It's not insulting to  
18 judges at all. Judges -- you know, judges --  
19 bail is set in the arraignment parts where  
20 the volume is enormous. There's strict  
21 constitutional and statutory time limits on  
22 how quickly cases have to be arraigned.

23 In the arraignment part, it quickly  
24 follows the arrest. The defense lawyer

1 doesn't really know much about the defendant  
2 at that point. The prosecutor doesn't know  
3 much about the defendant. The judge  
4 certainly doesn't know much about the  
5 defendant. And the process that was put in  
6 place is merely to give an option to the  
7 defendant to make an application later on to  
8 a Supreme Court judge where there will be  
9 more time to evaluate the case, there will be  
10 more information at that point.

11 And there's nothing insulting to  
12 judges about this at all. It's a fairer  
13 process that's been put in place that's  
14 entirely consistent with what the law now  
15 authorizes.

16 SENATOR NOZZOLIO: Nonetheless, Judge  
17 McLaughlin felt pretty insulted by this. And  
18 I -- certainly opinion differs. And that  
19 we'll look to you for further explanation of  
20 this from your vantage as a judge  
21 experienced.

22 It seems as though, just on its  
23 surface, that any defense counsel would be  
24 tiptoeing around malpractice if they didn't

1 seek an automatic appeal under this  
2 provision. And to me, that begs the question  
3 in the real world, wouldn't they be doubly  
4 encouraged to pursue extrajudicial review?

5 CHIEF ADMINISTRATIVE JUDGE MARKS:

6 Well, that's an interesting point.

7 But, you know, this is in place now.  
8 It's not -- it's been implemented. And the  
9 experience of the last couple of months since  
10 it was implemented is completely to the  
11 contrary. There have been very few  
12 applications made to the Supreme Court judge.  
13 Actually, surprisingly few.

14 So it hasn't opened the floodgates.  
15 Any suggestion that it would, that hasn't  
16 turned out to be the case at all.

17 SENATOR NOZZOLIO: Thank you for your  
18 insights.

19 CHIEF ADMINISTRATIVE JUDGE MARKS:

20 Sure.

21 SENATOR NOZZOLIO: Thank you, Madam  
22 Chair.

23 CHAIRWOMAN YOUNG: Thank you, Senator.

24 Senator Tom Croci.

1                   SENATOR CROCI: Thank you, Madam  
2                   Chair.

3                   Thank you, Judge, for your appearance  
4                   here today.

5                   I represent the Third Senate District,  
6                   which includes the Central Islip Court  
7                   Complex on Long Island, which as you know is  
8                   collocated with a federal courthouse as well.

9                   Some of my concerns come out of a  
10                  recent visit there where there is long lines  
11                  outside of the courthouse. In light of  
12                  what's happened in San Bernardino and other  
13                  places, it comes to our attention that having  
14                  long lines of civilians standing outside of  
15                  federal buildings, state, county, town  
16                  government buildings, is probably not a good  
17                  idea.

18                  Recognizing that some of the staffing  
19                  levels the court officers are contending with  
20                  lead to some of these long lines, and also  
21                  recognizing that on Long Island our law  
22                  enforcement has stepped up their approaches  
23                  to combating the heroin and opioid epidemic  
24                  on Long Island, we're seeing more individuals

1           who are incarcerated for those crimes and who  
2           are going through the court system.

3                       So I have two concerns. One is the  
4           lines and the security situation that it  
5           presents. And then two is inside the  
6           courthouse, we've had instances where rival  
7           drug gangs are actually having altercations,  
8           and the staffing levels, it seems to me,  
9           we're spreading them pretty thin.

10                      So I was wondering if you could  
11           address that in your remarks. Thank you.

12                      CHIEF ADMINISTRATIVE JUDGE MARKS:  
13           Well, I mean it's a good point that you  
14           raise. You know, lines outside the  
15           courthouse aren't good because, as you say,  
16           they can create public safety concerns.

17                      But it's also unfair to the people who  
18           have to wait on line. Weather can be  
19           inclement, and we don't want people waiting  
20           in lines to get into courthouses. It can be  
21           a problem. You know, I recognize that.

22                      And it again goes back to staffing  
23           shortages and, you know, not enough court  
24           officers in the lobbies at the magnetometers,



1 have tried to address.

2 SENATOR CROCI: And one follow-up.

3 Are court officers instructed in the use and  
4 administration of Narcan?

5 CHIEF ADMINISTRATIVE JUDGE MARKS: I'm  
6 sorry?

7 SENATOR CROCI: I said, are court  
8 officers instructed in the administration of  
9 Narcan, the anti-heroin overdose drug?

10 CHIEF ADMINISTRATIVE JUDGE MARKS: I  
11 believe so, but I'll to check that for you.  
12 I'm not sure.

13 SENATOR CROCI: Thank you.

14 CHIEF ADMINISTRATIVE JUDGE MARKS:  
15 Thank you.

16 CHAIRWOMAN YOUNG: Thank you.

17 Thank you very much for your testimony  
18 today.

19 CHIEF ADMINISTRATIVE JUDGE MARKS:  
20 Thank you.

21 CHAIRWOMAN YOUNG: We truly appreciate  
22 it. Look forward to continuing to work with  
23 you. So thank you.

24 CHIEF ADMINISTRATIVE JUDGE MARKS:

1 Thanks so much.

2 CHAIRMAN FARRELL: Thank you.

3 CHAIRWOMAN YOUNG: Our next speaker is  
4 Commissioner John P. Melville, commissioner,  
5 New York State Division of Homeland Security.

6 (Pause.)

7 CHAIRWOMAN YOUNG: If we could have  
8 some order, please. We need to get underway.  
9 We have a long, long list of speakers.

10 Welcome, Commissioner.

11 COMMISSIONER MELVILLE: Thank you,  
12 Senator.

13 CHAIRWOMAN YOUNG: Proceed.

14 COMMISSIONER MELVILLE: Thank you.

15 Good morning. Thank you, Chairwoman  
16 Young, Chairman Farrell, and distinguished  
17 members of the Joint Committee. I am John  
18 Melville, commissioner of the Division of  
19 Homeland Security and Emergency Services.

20 I appreciate the opportunity to  
21 discuss with you today some of the good work  
22 of the agency over the past year as well as a  
23 few of the highlights of Governor Cuomo's  
24 public safety budget.

1           The division is charged with an  
2           enormous responsibility, which includes an  
3           all-hazards prevention, preparedness,  
4           response and recovery mission. The  
5           Governor's budget provides the resources  
6           needed to accomplish our mission and protect  
7           public safety. Total appropriations are  
8           \$1.5 billion, up \$583 million over last year.  
9           Six hundred million dollars is added in the  
10          event of future disaster. A reduction of  
11          \$3.2 million in one-time appropriations for  
12          citizen preparedness, reduced need for  
13          capital financing in the amount of  
14          \$15 million, and the addition of \$1.3 million  
15          for an expanded counterterrorism program, all  
16          contribute to the change.

17                 Unfortunately, this past year our  
18          nation witnessed an increase in the number of  
19          terrorist attacks and plots -- three here in  
20          New York alone. The most recent example was  
21          the New Year's Eve Rochester arrest, which  
22          ultimately proved to be an intelligence and  
23          operational success.

24                 In December, Governor Cuomo stated

1           that the threat of terrorism is a "new  
2           normal" for Americans. Unfortunately, I have  
3           to agree.

4                     Let me discuss some of the efforts we  
5           are undertaking to ensure the safety of  
6           New Yorkers from Montauk to Buffalo. This  
7           past year, the Governor launched the "See  
8           Something, Send Something" mobile application  
9           so that people can report suspicious  
10          activities. To date, it has been downloaded  
11          over 40,000 times.

12                    In addition to community-level  
13          awareness, we have to arm our first  
14          responders with the intelligence information  
15          they need to keep pace with emerging  
16          terrorism trends. The Governor outlined a  
17          plan to consolidate the division's  
18          intelligence and analysis function into the  
19          New York State Police to continue their work  
20          at the New York State Intelligence Center,  
21          which serves all law enforcement and public  
22          safety agencies throughout the state. This  
23          will allow the division, as a primary  
24          consumer of the intelligence, to focus on key

1 preparedness activities, and will be used to  
2 inform our decision-making in the areas of  
3 grant funding, the homeland security strategy  
4 and target hardening.

5           Ultimately, the collective goal is to  
6 provide quick and actionable intelligence to  
7 our local law enforcement and public safety  
8 partners who, along with vigilant private  
9 citizens, truly are the first line of  
10 defense.

11           The Governor also proposes  
12 \$1.3 million in funding to drastically  
13 increase the number of vulnerability  
14 assessments -- or, as we term them, "Red Team  
15 exercises" -- the division will execute  
16 across the state.

17           In conjunction with Operation  
18 Safeguard activities and our "See Something"  
19 campaigns, we want to increase the state's  
20 collective detection capacity of tactics that  
21 may be used by terrorists in preoperational  
22 planning.

23           The division's Red Team will then  
24 test, through a series of adversary-based

1 assessments, to determine the success of the  
2 preparedness strategy. As a target-rich  
3 state, New York continues to rely on federal  
4 homeland security funding.

5 In 2015, New York State received over  
6 \$262 million from the Homeland Security Grant  
7 Program, which has been used in communities  
8 throughout the state to prevent, protect and  
9 prepare for terrorism and other catastrophic  
10 events.

11 The division continues to advance the  
12 state's preparedness posture for all hazards,  
13 including natural disasters. Last August,  
14 the Governor announced a new incident  
15 management system called "NY Responds" to  
16 establish a uniform electronic system to be  
17 used throughout the state and by all  
18 counties. We completed the first phase of  
19 the transition in December, with a full  
20 implementation expected to be completed this  
21 year.

22 We also continue our recovery work,  
23 which includes the reimbursement of over  
24 \$5 billion to New York communities for Sandy,

1 Irene and Lee rebuilding and resiliency  
2 projects.

3 Last year the Governor announced the  
4 first-in-the-nation College of Emergency  
5 Preparedness, Homeland Security and  
6 Cybersecurity at the University at Albany.  
7 To date, 159 students have enrolled in the  
8 college's minor program and, by fall of this  
9 year, the major program should be available  
10 as an official offering.

11 The college also leverages the network  
12 of resources of the State Preparedness  
13 Training Center in Oriskany for  
14 out-of-classroom, hands-on training. The  
15 SPTC is quickly being recognized as a  
16 world-class facility.

17 The U.S. Departments of Defense and  
18 Justice chose the SPTC to host the annual  
19 Raven's Challenge, which is an  
20 interoperability exercise to test the  
21 capabilities of bomb squads and military  
22 explosive ordnance disposal units. It was  
23 such a success that, this May, New York will  
24 once again host the Raven's Challenge at the

1 SPTC.

2 Moving to citizen preparedness  
3 training, in conjunction with the National  
4 Guard, the Red Cross and together with our  
5 partners in the Legislature, we have been  
6 able to train over 95,000 new people.

7 Last year the Governor announced that  
8 the Office of Fire Prevention and Control  
9 would be deploying 19 trailers equipped with  
10 firefighting foam to local fire departments  
11 and county hazmat teams. Prepositioning this  
12 equipment ensures the state is well-prepared  
13 to confront fires caused by crude oil and  
14 other highly flammable substances.

15 Finally, the division's Office of  
16 Interoperable and Emergency Communications is  
17 modifying its approach to the state's  
18 interoperable communications grant  
19 distribution strategy. This year there will  
20 be two separate programs: One will include a  
21 formula-based distribution, and the second  
22 includes a targeted distribution of  
23 \$20 million towards statewide  
24 interoperability.

1           While not possible to cover all the  
2           great work of the division during my  
3           testimony today, I hope that I have provided  
4           you with an idea of the priorities for the  
5           Division of Homeland Security and Emergency  
6           Services into the next fiscal year. These  
7           include strengthening response integration  
8           and coordination, intelligence-driven target  
9           hardening, training, and thoughtful  
10          investments of state grants to bolster the  
11          state's preparedness and response posture.

12                 I appreciate the opportunity to be  
13          here and appear before you today, and I am  
14          pleased to answer any questions you may have.

15                 CHAIRWOMAN YOUNG: Thank you,  
16          Commissioner, for that testimony. Protecting  
17          our communities and our citizens is job one  
18          for New York State government, and there's an  
19          intense interest in what you have to say  
20          today by the Senate.

21                 At this time I would like to introduce  
22          our chair of the Homeland Security, Veterans  
23          and Military Affairs Committee, and that's  
24          Senator Tom Croci.

1                   SENATOR CROCI: Thank you, Madam  
2                   Chair.

3                   And thank you, Commissioner, for your  
4                   appearance today. It's been a great  
5                   privilege to have the opportunity to work  
6                   with you and the staff over the past year.

7                   One of the things I'd like to  
8                   compliment you on is your investment in the  
9                   prevention and preparedness for the State of  
10                  New York. I think that was best seen in he  
11                  recent blizzard that we had downstate.  
12                  Pre-staging of assets certainly saved a lot  
13                  of time in responding when the storm finally  
14                  stopped, and I think that it's partly due or  
15                  in large part the amount of snow that was  
16                  able to be moved was because of that  
17                  investment in prevention and preparedness.

18                  COMMISSIONER MELVILLE: Thank you,  
19                  sir.

20                  SENATOR CROCI: I listened with  
21                  interest to your testimony, and of course  
22                  we've had conversations about some of the  
23                  proposals in the budget. In talking about  
24                  the Article VII language in Part D of the

1 ELFA budget bill, you mentioned in your  
2 testimony that the transfer of certain  
3 assets, human assets in this case, would  
4 focus on key preparedness activities, will be  
5 used to inform our decision-making in certain  
6 areas.

7 So I'm wondering, with respect to that  
8 transfer of personnel to State Police, what  
9 if any counterterrorism functions does the  
10 Division of Homeland Security retain in that  
11 transfer?

12 COMMISSIONER MELVILLE: Thank you,  
13 Senator. We propose to transfer 10 people,  
14 or 10 positions, from our intel and analysis  
15 section in the Division of Homeland Security  
16 and Emergency Services to the State Police.

17 That transfer sounds a little more  
18 ominous than it really is. In actuality,  
19 those people will probably be sitting in the  
20 same seats they sit in now. They work at the  
21 New York State Intelligence Center with the  
22 State Police. They are supervised not only  
23 by us, but by the State Police. And what we  
24 plan to do is just streamline the chain of



1 remain the same, Senator. We will still be  
2 receiving that intelligence information. I  
3 still will remain the homeland security  
4 advisor to the Governor. I will report to  
5 the legislature. And I am still the point of  
6 contact for the Department of Homeland  
7 Security of the federal government.

8 SENATOR CROCI: So you mentioned that  
9 you'll still receive the information  
10 regardless of where these analysts are  
11 positioned and where they're sitting. That's  
12 not clear statutorily in the budget. I guess  
13 we would have to statutorily amend the  
14 article in order so that you receive that  
15 information? Because otherwise how would  
16 that information flow from the State Police  
17 now up to you?

18 COMMISSIONER MELVILLE: Well, the  
19 analysts will actually physically be  
20 supervised by the State Police in this  
21 proposal.

22 I will still be a consumer of that  
23 intelligence information. As a matter of  
24 fact, we recently took on a director in the

1 Office of Counterterrorism in the Division of  
2 Homeland Security and Emergency Services.  
3 His name is Mike Cerretto. He's very  
4 qualified, well respected, a 30-year member  
5 of law enforcement. And he is actually still  
6 a member of the New York State Police even  
7 though he has been detailed to the Division  
8 of Homeland Security and Emergency Services  
9 and in actuality works for us now. So Mike's  
10 still being -- Director Cerretto's still  
11 being a member of the New York State Police  
12 will ensure that we receive that information,  
13 as I have no doubt.

14 SENATOR CROCI: So hypothetically we  
15 have a new -- someday we have a new  
16 commissioner, we have a new director and  
17 another governor, maybe a Republican  
18 governor, so the relationships will change.  
19 How do we ensure that that information flow  
20 remains the same regardless of those  
21 relationships?

22 COMMISSIONER MELVILLE: Well, the  
23 analysts will be at the NYSIC, working for  
24 the New York State Police. The NYSIC is the

1 fusion center for all of New York, all of our  
2 law enforcement partners. It's federally  
3 funded, and the mandate to the New York State  
4 Police, who runs the NYSIC, is to share that  
5 information with everybody.

6 I fortunately have the unique  
7 distinction of having worked in the New York  
8 State Police for 32 years before I became the  
9 commissioner in the Division of Homeland  
10 Security. I have the utmost respect and  
11 confidence, I know how the organization  
12 works, and its main goal, main mission, main  
13 function is to push that intel out to the  
14 people that need it. It will not be  
15 stovepiped.

16 SENATOR CROCI: But there's nothing  
17 that's going to be in statute to ensure that.  
18 It's because we have great relationships,  
19 very qualified individuals in yourself and  
20 your new director, no doubt about that. But  
21 there's no formal pipeline that's laid out in  
22 statute. Is that your understanding?

23 COMMISSIONER MELVILLE: I believe,  
24 Senator, that the fact that it is New York

1 State's fusion center, funded by the  
2 Department of Homeland Security, they are  
3 mandated to share that information with  
4 everyone.

5 SENATOR CROCI: Okay. Obviously  
6 you've had a very distinguished career. And  
7 again, it's been a great privilege to work  
8 with you and get to know you personally.

9 In your professional opinion -- and  
10 you better than anyone personally dealt with  
11 the attacks of September 11th, as did so many  
12 in this room and so many in our state -- do  
13 you believe that we're doing everything we  
14 can as New Yorkers, as the State of New York,  
15 to protect us, to protect our residents?

16 COMMISSIONER MELVILLE: I do, Senator.  
17 Unfortunately, the threat remains to New York  
18 State. New York State is certainly a target.  
19 I believe we certainly put our resources into  
20 every effort that we can to keep New Yorkers  
21 safe. That is our main function, is  
22 emergency preparedness, training, response  
23 coordination, recovery. I think that we have  
24 what we need to do that, and we do do it.

1           And we do it very well.

2                       SENATOR CROCI:  So one concern, in  
3           looking at the proposal, is that information  
4           flow, and to ensure that not only the  
5           individuals charged with the counterterrorism  
6           mission in the state in the executive branch,  
7           at the higher levels, who are advising the  
8           Governor on these matters, are receiving the  
9           latest and the best intelligence and the most  
10          timely intelligence that they possibly can.

11                      The National Security Act and the way  
12          the National Security Councils have been set  
13          up is there just for that reason, so that the  
14          decisionmakers, the policymakers are  
15          receiving that information on which to make  
16          good legislative decisions and good executive  
17          actions.  So I'm looking forward to working  
18          with staff and finding a way that we can  
19          accomplish this and ensure that regardless of  
20          who sits in our chairs -- my chair, your  
21          chair, or your very experienced and diligent  
22          staff -- we want to make sure that that  
23          information flow happens regardless of  
24          personality, regardless of relationship.  The

1 process piece I think is something we need to  
2 continue to work on.

3           And with regard to your training  
4 center, I think I've mentioned that one of  
5 the key lessons from the 9/11 Commission  
6 report, and certainly something we've learned  
7 locally in the wake of Superstorm Sandy and  
8 recent weather events, is that we should  
9 train the way we fight. So on the ground in  
10 response and recovery operations,  
11 preparedness as well, we should train at the  
12 local level the first responders who actually  
13 will be responding to those disasters,  
14 whether it's New York City or Buffalo or  
15 Suffolk and Nassau counties.

16           While it's great that we have these  
17 statewide investments in the training  
18 centers, I hope we can work with the  
19 Executive and with your department to make  
20 sure that we're pushing some of that training  
21 and those training dollars down to the local  
22 level -- to the cities, to the counties --  
23 who are asking us for that, to bring fire,  
24 law enforcement, police, your first

1 responders, your ambulance companies, bring  
2 them together for realistic training at the  
3 local level, because in the event of a  
4 catastrophic attack or weather event, they're  
5 going to be responding together.

6 And going back to that personality  
7 issue, it's great that those personalities  
8 know each other before they're responding, as  
9 I'm sure you could attest to in your  
10 distinguished career. I think it's very  
11 important, and I hope to work with the staff  
12 and your division to ensure that that occurs.

13 COMMISSIONER MELVILLE: I look forward  
14 to that, Senator.

15 SENATOR KRUEGER: Assembly, thank you.

16 CHAIRMAN FARRELL: Thank you.

17 Assemblywoman Peoples-Stokes.

18 ASSEMBLYWOMAN PEOPLES-STOKES: Thank  
19 you, Mr. Chairman.

20 And thank you, Mr. Melville, for your  
21 testimony this morning. I would join my  
22 other colleagues who have already expressed  
23 how the number-one issue for everyone who  
24 lives and represents this government is that

1           our citizens must be safe. And we do realize  
2           that we live in a difficult time. And so  
3           your due diligence to make sure that we are  
4           safe is very much appreciated.

5                     I did want to just really comment on  
6           the citizen preparedness. I have had a few  
7           of them in the district, and they've been  
8           located in different places and different  
9           citizens have attended it, and they have very  
10          much appreciated that. So while, you know,  
11          our first responders are highly skilled and  
12          trained, I think it's also important to --  
13          for the average citizen to understand what  
14          should you do in case of some disaster. So  
15          thank you for that.

16                    I understand from looking at the  
17          budget that there's \$14 million in additional  
18          dollars for counterterrorism in New York City  
19          by the State Police, and an additional  
20          \$23 million by the National Guard for  
21          New York City. And so I guess my question is  
22          clearly New York City, having been targeted  
23          before, and the seat of finance is in our  
24          state -- and quite frankly, the seats of

1 finance in the world should be protected.  
2 But I'm just wondering how far will, you  
3 know, these dollars be able to go to protect  
4 other parts of the state? I did hear your  
5 comments about Rochester. And as you know,  
6 I'm located very close to that, so we were  
7 paying attention to that issue. But we are a  
8 state that borders Canada, 15 minutes if  
9 you're in Buffalo, and closer in some other  
10 places.

11 And so I wondered could you speak a  
12 little bit about why all those dollars are  
13 being designated -- excess dollars are being  
14 designated to New York City?

15 COMMISSIONER MELVILLE: Sure,  
16 Assemblywoman. Thank you for your comments  
17 about the citizen preparedness; we're very  
18 proud of that training effort.

19 We fund -- we, being the Division of  
20 Homeland Security and Emergency Services,  
21 fund every county in the state through our  
22 State Homeland Security Grant program. We  
23 also fund different areas across the state  
24 through our targeted grant programs and other

1 grants that we administer. There's also a  
2 UASI federal grant that a lot of money goes  
3 to New York City, Long Island, Westchester.  
4 That is a decision that is made by the  
5 federal government with respect to where  
6 UASI -- it stands for Urban Area Security  
7 Initiative -- where they are. We don't  
8 decide that, the federal government does.

9 I believe -- and I really can't speak  
10 to the National Guard budget items or the  
11 State Police. But I would suspect that that  
12 money is probably going to be used to  
13 continue the Governor's initiative of putting  
14 troopers and National Guard soldiers in the  
15 very important transportation hubs in and  
16 around New York City, whether it be Grand  
17 Central, Penn Station or those types of --  
18 but that's -- probably that can be better  
19 answered by either the superintendent or  
20 General Murphy.

21 ASSEMBLYWOMAN PEOPLES-STOKES: Okay.  
22 Well, I was very excited about the  
23 announcement of the cybersecurity curriculum  
24 at UAlbany. And I note from your comments

1           that there are some 159 students that have  
2           availed themselves of that opportunity. That  
3           might seem like a large number now, but it's  
4           really not, particularly with the increasing  
5           rates of people being hurt, average citizens  
6           being hurt by people abusing the internet.  
7           Not to withstand what could happen from a  
8           violent perspective, but from a consumer  
9           perspective, it's a huge issue.

10                   And so is there any thought by your  
11           agency -- or I guess I can also ask this  
12           question of Nancy Zimpher from SUNY as well,  
13           and CUNY -- if there's any thought about  
14           expanding this curriculum to other colleges  
15           and universities throughout the state.

16                   COMMISSIONER MELVILLE: I can't answer  
17           that, Assemblywoman. I don't know. I can  
18           tell you that the college originally was  
19           hoping for 50 students to sign up for the  
20           minor; they got 159. The major will  
21           hopefully be available this fall.

22                   We're excited at the Division of  
23           Homeland Security and Emergency Services  
24           about the college because it will prepare

1 professionals that we can utilize in our  
2 field. We're looking forward to that.

3 We're also excited about it because  
4 the SPTC, the training center in Oriskany,  
5 will be the out-of-classroom training spot  
6 for the students who attend the State  
7 University of New York at Albany College of  
8 Homeland Security and Emergency Preparedness  
9 and Cybersecurity. So we're happy to  
10 showcase that, and we hope the students find  
11 that that is a world-class facility.

12 ASSEMBLYWOMAN PEOPLES-STOKES: Thank  
13 you.

14 I recently had the opportunity to  
15 speak to some veterans in the state of  
16 Florida who -- where they've established a  
17 program specifically to train veterans in  
18 cybersecurity. So I'd like to connect with  
19 you real soon, perhaps late next week, and  
20 have an additional conversation about that  
21 end of it. Thank you.

22 COMMISSIONER MELVILLE: Perfect.  
23 Thank you, Assemblywoman.

24 CHAIRMAN FARRELL: Thank you.

1 Senator?

2 SENATOR KRUEGER: Thank you.

3 Next, Senator Joe Addabbo, ranker on  
4 the committee.

5 SENATOR ADDABBO: Thank you, Madam  
6 Chair, and thank you, Commissioner, for being  
7 here today.

8 COMMISSIONER MELVILLE: Thank you.

9 SENATOR ADDABBO: And let me echo the  
10 sentiments of my colleagues: The daunting  
11 task of protecting the roughly 20 million  
12 people in New York State, I want to again  
13 thank you very much for your efforts on that  
14 of the division.

15 I think the critical movement of the  
16 services to New York State Police is a major  
17 move, certainly for, again, protection of our  
18 people. I'd like to know the further  
19 details, if I may. I need to convince, as we  
20 all do, our constituency that this is a more  
21 efficient move for the protection of our  
22 people.

23 Briefly, how do we convince our  
24 residents that this is a more efficient move

1 as we look to secure, again, the people of  
2 our state?

3 COMMISSIONER MELVILLE: Sure, Senator.  
4 And, you know, I've been in this position for  
5 a little over a year and have had the  
6 opportunity to look at the agency as a whole  
7 and all the different missions that we were  
8 charged with. And the counterterrorism  
9 mission is certainly at the forefront of all  
10 of those.

11 So we constantly evaluate how we do  
12 things and why we do things and, you know,  
13 can we do them better. And during the course  
14 of this past year I've had several  
15 conversations with members of my staff as  
16 well as the State Police, and eventually Ray  
17 Kelly, the former commissioner in New York  
18 City, who was asked by the Governor to review  
19 the counterterrorism efforts of all the state  
20 agencies. After that year of review, my  
21 discussions with the superintendent and other  
22 public safety partners, and Commissioner  
23 Kelly, we all agreed that we thought that  
24 this was a smart move.

1                   What it really does is just defines  
2                   the line of communication and the chain of  
3                   command a little bit clearer. As I said,  
4                   those people work in the NYSIC. They're very  
5                   talented, I'm very proud of them. They're  
6                   literally probably not going to change their  
7                   seat at their desk, it's just that the line  
8                   of authority will be right to the  
9                   State Police, it will get to the people that  
10                  need that information instantaneously.

11                  I use that information to pass out to  
12                  constituents across the state, but I don't  
13                  need that actionable intelligence as fast as  
14                  they do. I can set the state homeland  
15                  security strategy the next day, depending on  
16                  the intel; they need it right then and there  
17                  to push out. And that's really the reason,  
18                  it's just to try and streamline the chain of  
19                  command and make things work better, faster,  
20                  safer for the public.

21                  SENATOR ADDABBO: We've seen obviously  
22                  the importance of information-gathering.  
23                  Rochester you mentioned earlier as well in  
24                  your testimony. So getting that information

1           quicker certainly makes it more efficient.  
2           And I look forward to working with you and  
3           furthering obviously this critical change.

4                     But that being said, with the change  
5           going, with services to the New York State  
6           Police, the terror alert system, the New York  
7           State Police will then have the authority to  
8           use the terror alert system? It would be  
9           under their jurisdiction at that point?

10                    COMMISSIONER MELVILLE: Well, we're  
11           not giving up any authority in the Division  
12           of Homeland Security and Emergency Services.  
13           As I said, Senator, I remain the state  
14           homeland security advisor, the point of  
15           contact from the federal government and to  
16           the Governor and to the Legislature. So that  
17           will -- inasmuch as it does now, it will  
18           remain with us.

19                    SENATOR ADDABBO: So basically there  
20           is some sense of shared responsibilities  
21           here.

22                    COMMISSIONER MELVILLE: Yes. We still  
23           are maintaining our core mission, which is --  
24           much of that is counterterrorism. This is

1 just a small piece, albeit a very important  
2 piece of it.

3 SENATOR ADDABBO: The restoration of  
4 \$600 million to now get the total to  
5 \$1.2 billion for disaster assistance locally,  
6 can we talk about possibly how the plan is to  
7 spend that money?

8 COMMISSIONER MELVILLE: That money,  
9 Senator, the \$600 million, is just an  
10 appropriation. It gives us the authority to  
11 spend that if we have to. That's really to  
12 be used for future disasters. Hopefully we  
13 don't have to spend it, but it's there in  
14 case we need to.

15 SENATOR ADDABBO: I would be remiss if  
16 I didn't say thank you. A third of my  
17 district was affected by Sandy. You know,  
18 the areas of Howard Beach, Broad Channel,  
19 Rockaway. I still have roughly over 4,000  
20 people still on the road to recovery three  
21 years after the storm. So again, I want to  
22 say thank you.

23 There has been, again, monies for  
24 Sandy. Can you detail or explain those

1 additional monies for Sandy recovery?

2 COMMISSIONER MELVILLE: Sure. We have  
3 funneled more than \$5 billion in recovery  
4 money to the victims of Superstorm Sandy,  
5 Irene and Lee. We've also funneled  
6 approximately \$1.4 billion through these what  
7 we call HMGP grants, which are Hazard  
8 Mitigation Grant Programs.

9 The Hazard Mitigation Grant program  
10 money that has been used in your district,  
11 Senator, has basically been used for big  
12 projects that would benefit whole  
13 communities. The individual homeowner would  
14 not really be covered through us under that.  
15 That would be under a different funding  
16 stream, a HUD funding stream, CDBG money that  
17 comes under a different -- the Office of  
18 Storm Recovery. So if those people in your  
19 district are struggling, we'd be happy to  
20 talk about that and to help them in any way  
21 we can, but we don't really control that  
22 funding.

23 SENATOR ADDABBO: No, and again, I  
24 understand. I just want to thank the efforts

1 of all those associated with New York Rising,  
2 and working with HUD and their requirements.  
3 But -- and certainly helping not only my  
4 constituents, but those throughout the state  
5 who are still, again, recovering from  
6 Superstorm Sandy.

7 And lastly, you had mentioned in your  
8 testimony the "See Something" app, 40,000  
9 downloads. Can you just walk us through the  
10 process of somebody downloading that app and  
11 the information that you may receive and how  
12 it goes forward after that?

13 COMMISSIONER MELVILLE: Sure. Happy  
14 to. It's a free app. Any cellphone, you  
15 Google it, you'll find it, you can download  
16 it.

17 And what it allows you to do is take a  
18 picture of whatever you might term  
19 suspicious. You can add a text to it and  
20 send it along, or you can just send the  
21 picture. And what it does is it goes to the  
22 New York State Intelligence Center, where it  
23 is then reviewed and evaluated by members at  
24 the center, and it is pushed out to -- the

1 way we handle -- or the way the State Police  
2 in the NYSIC now, it's pushed out to the  
3 Joint Terrorism Task Force in the particular  
4 area that it might have been sent from. They  
5 have the right of first refusal per se. And  
6 if they don't feel it's appropriate for them  
7 to adopt the case, it will go to a local  
8 police department.

9 It can be geotagged so even if you  
10 don't include a text, we can tell, normally,  
11 where it comes from.

12 SENATOR ADDABBO: I was going to say,  
13 those who give the information, is it  
14 confidential information on their end?

15 COMMISSIONER MELVILLE: It is.

16 SENATOR ADDABBO: It is, okay.

17 COMMISSIONER MELVILLE: I believe that  
18 the State Police and the people at the NYSIC  
19 reserve the right to try and contact them if  
20 they need to, but they don't have to.

21 SENATOR ADDABBO: Commissioner, once  
22 again, thank you very much for your efforts.  
23 And of course through our good chair, Senator  
24 Croci, I look forward to working with you as

1 well.

2 COMMISSIONER MELVILLE: Thank you,  
3 Senator.

4 SENATOR KRUEGER: Assembly?

5 CHAIRMAN FARRELL: Thank you very  
6 much.

7 Assemblyman Lentol.

8 ASSEMBLYMAN LENTOL: Good morning,  
9 Commissioner.

10 COMMISSIONER MELVILLE: Good morning,  
11 sir.

12 ASSEMBLYMAN LENTOL: And thank you for  
13 your service.

14 I just was wondering, while you were  
15 testifying -- maybe I'm behind the times, but  
16 I remember after 9/11 how much we were  
17 shortchanged by the federal government in the  
18 resources that New York City as well as New  
19 York State deserved because we were the  
20 primary target of terrorism.

21 So I have two questions leading from  
22 that. Is that still true? And does your  
23 agency have an advocacy function in  
24 Washington to make sure that we get the

1 resources from them that we deserve for this  
2 problem?

3 COMMISSIONER MELVILLE: Well, I can  
4 tell you that we are always advocating for  
5 more money from the federal government. And  
6 I believe that the Governor's office has that  
7 issue handled for the most part. We do not  
8 really lobby Washington for that. But we  
9 deal with FEMA and the Department of Homeland  
10 Security all the time.

11 We receive, in New York State,  
12 probably 30 percent or in the area of  
13 30 percent of the UASI money that's  
14 distributed throughout the country, and I  
15 would say 18 percent or so of the State  
16 Homeland Security Grant Program. Is that  
17 enough? I don't know if we could ever have  
18 enough. But we certainly do great things  
19 with that amount of money that we do get from  
20 the federal government.

21 ASSEMBLYMAN LENTOL: As far as  
22 disaster preparedness goes, I remember, even  
23 though it wasn't my district, but in some  
24 places upstate during Irene and Lee, there

1           were people who were flooded out and who died  
2           as a result of not being able to be rescued.  
3           And I wonder, since then, if we've developed  
4           a better, for lack of a better word, roadmap  
5           to be able to go by boat, by helicopter or  
6           any other means in order to rescue people who  
7           may in the future need to be rescued from a  
8           storm like Sandy, Lee or Irene.

9                        COMMISSIONER MELVILLE: Unfortunately,  
10           Assemblyman, we do learn from the tragedies,  
11           and we react to them. We change our training  
12           structure and our tactics all the time based  
13           on the intelligence that we've received and  
14           the events that have occurred in New York  
15           State and around the world. We have targeted  
16           tech rescue grants, we call them now, that go  
17           to fire departments. We have swift water  
18           rescue programs that we train on.

19                      So we're well aware of that. Our  
20           first responders and our Office of Fire  
21           Prevention and Control teach many, many, many  
22           courses around the state in just that type of  
23           circumstance.

24                      ASSEMBLYMAN LENTOL: Thank you, sir.

1 COMMISSIONER MELVILLE: Thank you.

2 CHAIRWOMAN YOUNG: Thank you.

3 Our next speaker is Senator Michael  
4 Nozzolio.

5 SENATOR NOZZOLIO: Thank you,  
6 Chairwoman.

7 Good afternoon, I guess it is now.  
8 Good afternoon, Commissioner Melville.

9 COMMISSIONER MELVILLE: Good  
10 afternoon, Senator.

11 SENATOR NOZZOLIO: Kudos to you and  
12 the division for taking charge, working with  
13 the Governor, under his direction, in  
14 managing the emergency preparedness of our  
15 state. The reaction in storm management,  
16 communication, ensuring safety is improving  
17 with every instance of those kinds of  
18 challenges, and I thank you and your division  
19 for that effort.

20 COMMISSIONER MELVILLE: Thank you,  
21 Senator.

22 SENATOR NOZZOLIO: I would like to  
23 focus, however, on some issues that are not  
24 so seen, they're unseen, but personally could

1 be extremely devastating to individuals,  
2 taxpayers, constituents of this state -- and  
3 that's the issue of security, and  
4 specifically cybersecurity.

5 That your division's experiences with  
6 cybersecurity -- and with all admiration for  
7 encouraging student participation in  
8 education, tell us beyond that, what is the  
9 division doing to beef up our cybersecurity  
10 efforts?

11 COMMISSIONER MELVILLE: Well, the  
12 analysts that we have now, Senator, are  
13 collocated at the NYSIC with the Multistate  
14 Information Sharing and Analysis Center,  
15 which is the federal government's  
16 cybersecurity watchdog, if you will. They  
17 also work with the state --

18 SENATOR NOZZOLIO: Is that in  
19 Rensselaer? Where is that located?

20 COMMISSIONER MELVILLE: Yes, it is.

21 SENATOR NOZZOLIO: Rensselaer?

22 COMMISSIONER MELVILLE: Yeah. That's  
23 collocated with our New York State  
24 Intelligence Center. And the State Police

1           also are collocated there with their  
2           cybersecurity investigative teams.

3                         Probably in 2013, the Division of  
4           Homeland Security and Emergency Services --  
5           cybersecurity was taken away as one of our  
6           core functions, and removed to the ITS, along  
7           with our funding and personnel.

8                         We don't have a main role in  
9           cybersecurity. We're well aware of it, we  
10          use it in terms of intel passing all the  
11          time. We have a critical infrastructure unit  
12          that goes all around the state and is  
13          legislated in some respects to do certain  
14          types of critical infrastructure, in others  
15          not. But they take a cybersecurity component  
16          with them from ITS to do the cybersecurity  
17          inspections of, say, pipelines or energy  
18          transmission facilities, things of that  
19          nature.

20                         SENATOR NOZZOLIO: This expands on  
21          Senator Croci's comments, that you were  
22          finding the Division of Homeland Security not  
23          having direct reportable information by law  
24          and channel, that is strengthened by law,

1           that provides that security function. And  
2           I'll be probing this with those  
3           representatives of Office of Information  
4           Technology later today and others.

5                     That you'd have to be totally immune  
6           from what's going on if we didn't recognize  
7           this. Last year alone, we've seen cyber  
8           attacks on the Internal Revenue Service, the  
9           Office of Personnel Management, even the  
10          Joint Chiefs of Staff. And if that's the  
11          case, isn't the New York State Department of  
12          Taxation and Finance going to be next? We've  
13          seen a major security breach in the largest  
14          repository of health and financial data  
15          probably in this state, in the data breach  
16          that occurred with Excellus last year.

17                     So I am wondering what type of  
18          commitment do we have to help, first, guard  
19          our public sector-held information and,  
20          secondly, encourage and assist those private  
21          companies in doing business in New York to  
22          protect the data of its citizens.

23                     COMMISSIONER MELVILLE: Senator, we're  
24          well aware of the cybersecurity threat. We

1 at the Division of Homeland Security and  
2 Emergency Services view our role in  
3 cybersecurity as an intelligence-driven role,  
4 passing information along about schemes,  
5 attacks, issues.

6 We also have the role of responding to  
7 an emergency that would occur as a result of  
8 a cyber attack. So it would not necessarily  
9 be the attack itself, but the issues that  
10 follow after that attack. And that's really  
11 what we would be functioning or at least  
12 focusing on with our Office of Emergency  
13 Management.

14 I think that the state is  
15 well-prepared with their Multistate ISAC, the  
16 NYSIC, and the State Police and the other  
17 efforts across the state from ITS, to deal  
18 with those types of investigations. It's  
19 just not what we do per se.

20 SENATOR NOZZOLIO: And I understand  
21 that, Commissioner. I'm not suggesting that  
22 you be an investigatory or law enforcement  
23 operation. That's not your role, it's not  
24 something I would even suggest.

1           However, just as you are involved in  
2           storm preparedness, just as you are involved  
3           in other disaster preparedness, why are we  
4           not having you involved -- and I ask that  
5           question because I think it's something the  
6           Legislature ultimately has to deal with,  
7           along with the Governor -- why aren't we  
8           involved, Homeland Security involved in  
9           issues of cybersecurity protection? Ensuring  
10          that someone is overseeing, with security in  
11          mind, the vast data systems that are being  
12          held by state government? That's what I  
13          believe we need to address.

14                 And certainly your -- after the fact  
15          is too late. The horse is out of the barn,  
16          it's too late a question for you to be  
17          involved. Then it's a question for law  
18          enforcement.

19                 But what should be done proactively by  
20          the Division of Homeland Security to protect  
21          the data of New Yorkers?

22                 COMMISSIONER MELVILLE: I believe we  
23          are doing what we need to do now, Senator.  
24          We react to issues that may or may not be



1 the ITS, the State ITS, as well as the State  
2 Police and their partners at the NYSIC.

3 SENATOR NOZZOLIO: Commissioner, thank  
4 you. We'll certainly be probing that issue.  
5 And it may be something that our chair of the  
6 homeland security, Commander Croci, is going  
7 to be dealing with in the months ahead. So I  
8 appreciate your candor and your forthcoming  
9 comments. Thank you.

10 COMMISSIONER MELVILLE: Thank you,  
11 Senator.

12 CHAIRWOMAN YOUNG: Thank you, Senator.

13 CHAIRMAN FARRELL: Assemblyman Ortiz.

14 ASSEMBLYMAN ORTIZ: Good morning,  
15 Commissioner.

16 COMMISSIONER MELVILLE: How are you,  
17 sir?

18 ASSEMBLYMAN ORTIZ: I am doing well.

19 I have a few questions, very quick, if  
20 I can put on my glasses.

21 My first question is, what is the  
22 working relationship that you have with the  
23 ICE and Homeland Security at the federal  
24 government?

1                   COMMISSIONER MELVILLE: The federal  
2 Homeland Security?

3                   ASSEMBLYMAN ORTIZ: No, yours. What  
4 is the relationship between your Homeland  
5 Security and the federal Homeland Security?  
6 Do you guys talk to each other often? And  
7 how often?

8                   COMMISSIONER MELVILLE: We do talk to  
9 each other often. I would say more through  
10 email communication, but I do have  
11 conversations with people in Washington. I  
12 am the homeland security advisor for the  
13 Governor, so I am the point for contact for  
14 certain things with the Department of  
15 Homeland Security.

16                  ASSEMBLYMAN ORTIZ: Okay. So right to  
17 my second question, so you are familiarized  
18 with the Obama deportations approach  
19 throughout the country; correct?

20                  COMMISSIONER MELVILLE: The what? I'm  
21 sorry.

22                  ASSEMBLYMAN ORTIZ: The Obama  
23 deportation, the President of the United  
24 States has said we -- you know, he has given

1 ICE the green light to go through state by  
2 state to deport folks after January 2014.

3 COMMISSIONER MELVILLE: Okay.

4 ASSEMBLYMAN ORTIZ: Are you  
5 familiarized with that?

6 COMMISSIONER MELVILLE: Somewhat.

7 ASSEMBLYMAN ORTIZ: Okay. So my third  
8 question goes along the lines of if you are  
9 somewhat familiarized with it, I represent  
10 the areas of Sunset Park in Brooklyn. I have  
11 a lot of undocumented immigrants who live in  
12 my district. And what we've been getting in  
13 my office is that there has been some folks  
14 from ICE, some local enforcements, who has  
15 been knocking on their doors and going  
16 through the churches and looking for folks  
17 who are not legally in this country.

18 Are you familiarized with this?

19 COMMISSIONER MELVILLE: No, I'm not,  
20 Assemblyman. And really that has -- that  
21 issue, albeit a very important issue, has  
22 really no place in the Division of Homeland  
23 Security and Emergency Services at a state  
24 level. That's a federal program and a

1 federal issue. We don't have anything to do  
2 with that.

3 ASSEMBLYMAN ORTIZ: So you have not  
4 anything to do -- despite the fact that you  
5 have a relationship with the Homeland  
6 Security/ICE agency at the federal  
7 government?

8 COMMISSIONER MELVILLE: My  
9 relationship with the Homeland Security  
10 people at the federal level really has to do  
11 with our grant funding, what we get from  
12 them, what we spent it on, how we spend it,  
13 what we target. It really has nothing to do  
14 with immigration issues.

15 ASSEMBLYMAN ORTIZ: Okay. And you  
16 just stated that you serve as an advisor to  
17 the Governor to ICE, to Homeland Security;  
18 correct?

19 COMMISSIONER MELVILLE: I am the  
20 advisor to the Governor for homeland security  
21 issues here in New York State.

22 ASSEMBLYMAN ORTIZ: Well, let me just  
23 recommend a couple of things. I think that  
24 we do have a lot of serious issues regarding

1 law enforcement. And I know the -- I  
2 addressed this issue to the superintendent  
3 last year about folks in the law enforcement  
4 stopping individuals, Hispanic individuals in  
5 Buffalo, in the Western Hemisphere {sic} and  
6 then that came to Long Island as well.

7 I think that if you are the advisor to  
8 ICE and you work for our Governor, my advice  
9 will be probably to try to have a more  
10 preactive action plan, that these families  
11 will not have fear, these families will not  
12 have fear as they have bring their children  
13 to the hospital, their children to the  
14 schools. Right now in my district we have  
15 seen a decrease of kids going to school as a  
16 result of this initiative.

17 So if you are the advisor, I would  
18 recommend that you take that message back to  
19 those folks that you're speaking to, either  
20 via email -- on behalf of the people that we  
21 represent in our own community.

22 And thank you for the job that you  
23 continue to do in serving us in the state.  
24 Thank you.

1                   COMMISSIONER MELVILLE: Thank you,  
2                   Assemblyman, and I would love to have a  
3                   dialogue with you about that at some point.

4                   CHAIRWOMAN YOUNG: Thank you.  
5                   Senator Marty Golden.

6                   SENATOR GOLDEN: Thank you, Madam  
7                   Chair.

8                   And thank you for your service.  
9                   You're doing an outstanding job.

10                  COMMISSIONER MELVILLE: Thank you,  
11                  Senator.

12                  SENATOR GOLDEN: I don't want to beat  
13                  a dead horse, but -- I know we went over  
14                  this, seven -- two downstate, five upstate,  
15                  and we probably beat it to death. But just  
16                  in my family, my son went down with the viral  
17                  last weekend, I went down with the viral on  
18                  Wednesday and Thursday, my wife went down  
19                  with the viral on Friday, Saturday, and  
20                  Sunday. When the wife goes down, the whole  
21                  house gets shut down. All right? So we went  
22                  down, it was different.

23                  You got seven people, two downstate  
24                  and five upstate. How do we -- if there's

1           any type of sickness, vacations, how is that  
2           manned? How does that work?

3                    COMMISSIONER MELVILLE: You're  
4           referring to the intelligence analysts,  
5           Senator?

6                    SENATOR GOLDEN: Yes.

7                    COMMISSIONER MELVILLE: Yeah, we have  
8           seven presently. There's 10 actually being  
9           proposed to be transferred. We have three  
10          openings that we haven't been filled yet, and  
11          we probably -- we're waiting till this  
12          transfer occurs and they go to the State  
13          Police.

14                   But each one of those analysts is  
15          cross-trained in different types of  
16          counterterrorism, and they have different  
17          expertises, although some are experts more so  
18          in one field than the other. So if one is  
19          out, another covers. But for the most part,  
20          that's never been an issue for us.

21                   SENATOR GOLDEN: What was a little  
22          shock for me last week is when the Port  
23          Authority -- not the Port Authority, but the  
24          ILA went out on strike and ports were shut

1 down in Jersey and in New York. Anybody  
2 having some idea that that was going to  
3 happen obviously would have had some  
4 advantage.

5 How did -- were we informed of that?  
6 Did we know about that? And how do we stay  
7 in touch with our ports, and how are we  
8 dealing with our maritime.

9 COMMISSIONER MELVILLE: The  
10 longshoremen issue that was last week? Yeah,  
11 I was made aware of it after it happened,  
12 actually, and was made aware of it when it  
13 ended. But it wasn't really a -- I would say  
14 a counterterrorism issue per se. So even  
15 though our analysts track all open-source  
16 intel about all different things, the ports  
17 being one of those areas, I don't think we  
18 received any previous Intel that this was  
19 coming.

20 SENATOR GOLDEN: But we are in touch  
21 with maritime? If there's a ship coming in,  
22 we have problems with the ship, or a cruise  
23 ship or a tanker?

24 COMMISSIONER MELVILLE: We have

1 analysts that brief monthly at the ports who  
2 are very familiar with shipping industries  
3 and the Coast Guard and all the partners that  
4 certainly are involved in various ports  
5 around the state.

6 SENATOR GOLDEN: Thank you.

7 The Superstorm Sandy -- which again,  
8 you did an outstanding job -- but again,  
9 we're in our fourth year and there are still  
10 thousands of people that are still not in  
11 their homes and still waiting to get their  
12 homes razed, and there's still a whole lot  
13 that has to be done and hardening of our  
14 arteries. And you've explained to us and  
15 expressed to us how to fund it and gotten  
16 money out from the federal government and  
17 from the state government into the city and  
18 state and Long Island. Is there anything  
19 that's not -- are there any obstacles in your  
20 way of not getting that money out? Is there  
21 anything that's not giving you the  
22 opportunity to let that money flow more  
23 freely?

24 COMMISSIONER MELVILLE: I would have

1 to say no, Senator. We had over 12,000  
2 contracts for public assistance -- repairing  
3 bridges and tunnels and roadways and things  
4 like that -- and we're current on all 12,000.

5 The issue with some of those funding  
6 problems is the work has to be done first.  
7 The municipality has to pay for the work.  
8 Once that municipality pays, we reimburse  
9 through the federal government. So it's  
10 not -- we just can't give the money up-front  
11 and say okay, go do your project. It has to  
12 be done, the work has to be completed, it has  
13 to be inspected, it has to be paid, and then  
14 we reimburse.

15 And we are current on all those  
16 contracts. We don't have any outstanding  
17 bills as far as I know.

18 SENATOR GOLDEN: So you're working  
19 closely with the Army Corps of Engineers and  
20 in certain areas where we need dredging to be  
21 able to get our police boats, our fire boats  
22 in and out of -- and get them operable when  
23 needed, you're on top of all of that?

24 COMMISSIONER MELVILLE: I believe so,

1           Senator. That's probably those HMGP grants  
2           that aren't really targeted at individuals or  
3           communities. They're large-scale projects.  
4           For example, they're -- one of the projects  
5           is bridge scour projects for 106 bridges  
6           across the state. There's projects like that  
7           that HMGP money goes for that just take a  
8           long time to complete. And we pay as the  
9           bills come in. So, you know, those 12,000  
10          contracts that we have open, we are current  
11          on, but they just take a long time to get to  
12          the end.

13                    SENATOR GOLDEN: I have a town hall  
14           coming up in Garrison Beach, Manhattan Beach  
15           and Sheepshead Bay in the Brooklyn area in  
16           the City of New York. I may ask somebody  
17           from your office to attend. It's coming up  
18           on March 1st, March 2nd. So if I can get  
19           somebody to attend, I would appreciate it.  
20           Because I'm going to have both -- not only  
21           the homes and the people that are affected by  
22           Build It Back and by other streams of funds  
23           that are being made available for the  
24           building and rebuilding of these homes, but

1           also they're going to have people there from  
2           the hardening of the arteries in and around  
3           those areas, to make sure that that water  
4           doesn't come in and hit them again.

5                        So if you can, I'd appreciate somebody  
6           from your office at that, if I can. I'll  
7           send a memo to your office.

8                        COMMISSIONER MELVILLE: We'll  
9           certainly look forward to that, Senator.

10                      SENATOR GOLDEN: The settlement funds,  
11           are you guys getting any of the settlement  
12           funds that the -- coming in from the Attorney  
13           General and other areas? Is Homeland  
14           Security getting any of that at all?

15                      COMMISSIONER MELVILLE: Settlement  
16           funds? I'm not familiar with that.

17                      SENATOR GOLDEN: Settlement funds from  
18           the different settlements that the Attorney  
19           General has made or others have made with  
20           financial institutions of wrongdoing, where  
21           we see billions of dollars coming into the  
22           State of New York. Are you getting any of  
23           those funds coming into your organization?

24                      COMMISSIONER MELVILLE: Those funds

1 don't get channeled through us.

2 SENATOR GOLDEN: They don't get  
3 channeled at all. Last question, or last  
4 series of questions.

5 The interoperability, how long is this  
6 going to take? I know that it's a tough  
7 question, but I've still got the Port  
8 Authority in one area and I still got NYPD in  
9 another area. And we know the 9/11 was  
10 Port Authority. So we want to make sure  
11 we're on top of that in the city, and for the  
12 state. If you can -- I know it's a leap  
13 here, but if you can give us some timeline as  
14 to when this interoperability is going to be  
15 in effect across the State of New York or,  
16 more so, when it's going to be effective with  
17 Port Authority and NYPD, I would greatly  
18 appreciate it.

19 COMMISSIONER MELVILLE: Hey, I  
20 understand the issue, Senator. And I'm no  
21 radio geek, so that's a hard thing for me to  
22 say. I asked the same question when I came  
23 to the agency: How long is this going to  
24 take? We keep throwing money, money, money

1 at this. You know, \$228 million, I think, to  
2 the counties to get this done.

3 It's a hard problem. You'll probably  
4 hear from the superintendent later this  
5 afternoon about the issues maybe they had in  
6 Dannemora with radio interoperability. And  
7 we sent people up there to assist with that.

8 We're close. We're throwing another  
9 \$75 million at this problem this year to the  
10 counties to take care of this.

11 We're trying to fill gaps now. We're  
12 almost there. I would say our goal is to be  
13 interoperable statewide by the end of 2017.  
14 But New York's a big state, it's got a lot of  
15 topography issues, a lot of -- it's just a  
16 hard issue to finish. But we're almost  
17 there.

18 SENATOR GOLDEN: My time is up. If  
19 you could let me know when Port Authority --

20 CHAIRWOMAN YOUNG: Yes, it is.

21 SENATOR GOLDEN: -- NYPD is going to.  
22 If you can get a memo to my office on Port  
23 Authority and NYPD. I would appreciate it.

24 COMMISSIONER MELVILLE: We will do

1           that, Senator.

2                    SENATOR GOLDEN: Thank you very much.

3                    CHAIRWOMAN YOUNG: Thank you, Senator  
4 Golden.

5                    SENATOR GOLDEN: You're quite welcome,  
6 Madam Chair.

7                    CHAIRWOMAN YOUNG: Assembly?

8                    ASSEMBLYMAN OAKS: I think we're done.

9                    CHAIRWOMAN YOUNG: Senator Bonacic.

10                   SENATOR BONACIC: Thank you,  
11 Commissioner. I think you're doing a  
12 terrific job since you've taken on this  
13 responsibility.

14                   COMMISSIONER MELVILLE: Thank you,  
15 Senator.

16                   SENATOR BONACIC: Especially  
17 outstanding when it comes to natural  
18 disasters -- floods, fire, Sandy. And  
19 dealing with us, as Senator Golden said.

20                   But I want to talk about terrorism.  
21 Terrorism has now moved up to maybe the top  
22 two things that are on Americans' minds, that  
23 we want to be safe in America. And I myself,  
24 a little upset when I hear the Governor say

1           that terrorist attacks on America is the new  
2           normal. If we're the greatest country in the  
3           world, we should never have the mindset of  
4           terrorist attacks on the homeland being  
5           normal. It's a crisis. Okay?

6                     And I know you don't walk on water,  
7           and I know many of these things that are  
8           happening are beyond your control. But my  
9           view of this -- and I'm not a dramatist -- I  
10          think there is a clear and present danger to  
11          New York and America. New York especially  
12          has the biggest bull's-eye of all the states  
13          in America. And how we handle the Syrian  
14          crisis, with refugees, how we handle  
15          deportation for visas that have expired, how  
16          we handle our borders, how we handle  
17          immigration issues -- when are we going to  
18          stop gutting the military? -- all of these  
19          factors are happening, challenges, because of  
20          a failure of leadership in Washington.

21                    So I wanted just to say that. And I  
22          know that may not be within your province.  
23          But Senator Croci, Senator Nozzolio and I  
24          have talked about -- at length about this

1           cybersecurity. Now, we've seen a pattern  
2           over the last few years. We see the Chinese  
3           hacking our military secrets. We see them  
4           hacking the IRS. We see them hacking Hillary  
5           Clinton's personal server that has national  
6           security issues.

7                        So I just think -- and this has gone  
8           on for a while. I think they're sleeping at  
9           the switch, some of these people in  
10          Washington. There's a loss of confidence, in  
11          my mind. This is only me speaking.

12                       So I would suggest to you, if it's  
13          within your power in working with the  
14          Governor, to come up with a budget on how we  
15          can do more cybersecurity in the State of  
16          New York, to give you more resources so you  
17          don't have to depend on what other  
18          bureaucracies and what other people are  
19          doing, because I see us as having the biggest  
20          bull's-eye in New York.

21                       So if it's within your power, I would  
22          certainly be supportive of more money for  
23          homeland security -- on cybersecurity,  
24          in-house, under your leadership and whatever

1 agencies you need to make us the best that we  
2 can be.

3 And for the law enforcement that we  
4 have in New York and in this country, I think  
5 they have the most challenges in the world  
6 and they're doing the best job that they can  
7 with all that's facing them. And we're so  
8 grateful for the work that they do.

9 Thank you, Commissioner.

10 COMMISSIONER MELVILLE: I agree.

11 Thank you, Senator.

12 CHAIRWOMAN YOUNG: Thank you very  
13 much, Senator Bonacic.

14 Our next speaker is Senator Squadron.

15 SENATOR SQUADRON: Thank you very  
16 much, Madam Chair.

17 Thank you, Commissioner, for the work  
18 you do and the testimony you're providing.

19 So as we look at a growing mandate,  
20 for the reasons we've heard and so many  
21 others, speak just briefly to something I've  
22 worked with the department on going back many  
23 years, to the coordination especially with  
24 New York City -- which as we know is a

1 central target, has been centrally impacted  
2 by Sandy and other severe emergencies, and  
3 has in its NYPD one of the great  
4 counterterrorism programs in the nation, and  
5 in its own Office of Emergency Management a  
6 very, very sophisticated emergency response  
7 system. How is that coordination with the  
8 City of New York going?

9 COMMISSIONER MELVILLE: Excellent.

10 SENATOR SQUADRON: Great. So that's  
11 true vis-a-vis NYPD?

12 COMMISSIONER MELVILLE: Yes, it is. I  
13 meet with Chief Waters regularly, the chief  
14 of counterterrorism. Superintendent D'Amico  
15 of the State Police and I are good friends,  
16 we converse often about those types of  
17 issues. And the cooperation between the  
18 Office of Emergency Management in New York  
19 City, the Police Department, and us is  
20 outstanding.

21 SENATOR SQUADRON: Great. And the  
22 office of Fire Protection and the FDNY?

23 COMMISSIONER MELVILLE: Perfect.

24 SENATOR SQUADRON: Excellent. I

1 passed a bill a number of years ago that  
2 produced a report about some of the real  
3 dangers to residents in New York City and  
4 FDNY due to the fact that state buildings,  
5 buildings under the state code in New York  
6 City are not covered by the city building  
7 code, historically did not have shared  
8 building plans, which meant that tragically,  
9 in my district, when FDNY went to respond to  
10 a fire at 130 Liberty Street at the World  
11 Trade Center site, they didn't have the same  
12 plans on file they would for another  
13 high-rise fire, and in that case leading to  
14 truly tragic circumstances.

15 There had been a plan to embed State  
16 Office of Fire Protection personnel with FDNY  
17 in their emergency response so that it was  
18 much easier to coordinate that information  
19 up-front and make sure that we weren't  
20 putting FDNY personnel at risk and were  
21 ensuring the kind of safety we have in state  
22 buildings in city buildings.

23 Is that program still continuing? And  
24 what confidence can we have that FDNY is

1 going to have the same information going into  
2 a building under state jurisdiction as it  
3 does every other building in the city?

4 COMMISSIONER MELVILLE: Can you just  
5 provide some context as far as a date for  
6 that, Senator? Because I've only been here a  
7 year, and I don't know if that goes way back  
8 or --

9 SENATOR SQUADRON: Sure, of course.  
10 Yeah, that report I believe came out in 2012.  
11 And then through 2012 and '13 and into the  
12 beginning of 2014, we worked with  
13 then-Commissioner Cassano and Hauer on this  
14 quite extensively.

15 COMMISSIONER MELVILLE: Okay. I'm  
16 going to have to get back to you, if that's  
17 okay, Senator. I know there was some issue  
18 about state buildings in the city and it was  
19 a legal issue that our legal team was looking  
20 at. I don't know if it's the same issue that  
21 you're referring to -- it may be. But I  
22 don't have an answer for you.

23 SENATOR SQUADRON: Okay. Well, this  
24 is a critically important issue. We need a

1 path to a solution here. And we can't, you  
2 know, rely on sort of the status quo or on,  
3 you know, bureaucratic attempts to hold on to  
4 one role or the other.

5 The fact is building plans are  
6 available to FDNY when they get an emergency  
7 in every building in the city unless it's not  
8 under city jurisdiction, which means all the  
9 state buildings, the Port Authority  
10 buildings, the buildings at the World Trade  
11 Center site are not automatically shared in  
12 that way.

13 COMMISSIONER MELVILLE: Okay.

14 SENATOR SQUADRON: Further, some of  
15 the roles and the consistency between the  
16 roles and the processes for how you create  
17 safe buildings or fire-safe buildings are not  
18 the same. And therefore, it can create  
19 concerns and risks both for the users of  
20 those buildings and for emergency personnel  
21 who are responding.

22 This is something that has to be  
23 better coordinated than it has been in the  
24 past. We started that process, and it sounds

1           like -- and thank you for your sort of  
2           straightforwardness in this answer -- it's  
3           not clear that process has been completed in  
4           a way that's sufficient. So I would love a  
5           report on where that is and why it is that we  
6           can have more comfort now than a half-decade  
7           ago when tragic consequences ensued and  
8           firefighters lost their lives at 130 Liberty  
9           Street related to this issue.

10                    COMMISSIONER MELVILLE: Yeah, don't  
11           misunderstand me, Senator; I don't know if  
12           that issue has been resolved. I do know that  
13           we have a wonderful working relationship  
14           between our Office of Fire Prevention and  
15           Control and the FDNY. I would assume that if  
16           it was some critical issue, as you described,  
17           I would be aware of it. I really haven't  
18           heard -- I know there was an issue about  
19           building inspections or something --

20                    SENATOR SQUADRON: Exactly.

21                    COMMISSIONER MELVILLE: -- but it  
22           hadn't risen to the level of really a  
23           critical problem that I certainly would hope  
24           that I would be aware of.

1                   So it may be solved, it may be done,  
2                   but I guarantee I'll get back to you.

3                   SENATOR SQUADRON: I mean, one of the  
4                   issues is this long-standing problem folks  
5                   have gotten used to -- which doesn't mean  
6                   it's not a problem but sometimes it doesn't  
7                   rise to the level of an alarm bell being  
8                   rung. It's smoldering as opposed to sort of,  
9                   you know, really burning out of control right  
10                  now. But let's stop it while it's  
11                  smoldering.

12                  So I'll look forward to some feedback  
13                  and follow-up on where we are with that issue  
14                  over the next couple of weeks. Thank you so  
15                  much.

16                  COMMISSIONER MELVILLE: As do I.  
17                  Thank you.

18                  CHAIRWOMAN YOUNG: Thank you very  
19                  much. Senator Krueger.

20                  SENATOR KRUEGER: Thank you very much.  
21                  And thank you for your excellent work.

22                  A number of my colleagues were  
23                  discussing their support for even more money  
24                  for your agency. My question actually is,

1 your agency is receiving \$600 million  
2 additional in federal revenue this year  
3 compared to last year. So last year you had  
4 \$653,774,000 in federal special revenue; this  
5 year it increases by \$600 million.

6 Where is all this money going in the  
7 current budget?

8 COMMISSIONER MELVILLE: That  
9 \$600 million increase in Aid to Localities,  
10 Senator, is really just an appropriation, in  
11 case we need to pass federal funds through  
12 for a future disaster, that we have the  
13 ability and the appropriation to do that.

14 We don't have any plans to use that  
15 money. I hope we don't.

16 SENATOR KRUEGER: So it's a cash  
17 infusion from the feds or a line of credit,  
18 that if something happens, we can make  
19 requests for certain categories of things?

20 COMMISSIONER MELVILLE: The latter, is  
21 my understanding.

22 SENATOR KRUEGER: Okay. Can you talk  
23 a little bit about how you used last year's  
24 \$653 million, or is that also still just a

1 line of credit that we drew down some of but  
2 not all of?

3 COMMISSIONER MELVILLE: That is  
4 correct. And this is just increasing that  
5 \$600 million in case we need to use it.

6 SENATOR KRUEGER: Did we use any of  
7 that \$653 million from the fiscal year that's  
8 closing?

9 COMMISSIONER MELVILLE: We did not  
10 have a federally declared disaster in all of  
11 2015. I'm taking credit for that. But --

12 (Laughter.)

13 COMMISSIONER MELVILLE: So I'm going  
14 to say no, Senator. But as much as I'm not a  
15 radio geek, I'm really not a budget person  
16 either. But I -- that's my understanding.

17 SENATOR KRUEGER: And do you know, is  
18 there a specific set of language somewhere,  
19 and perhaps that you could get us, that  
20 explains under what circumstances we can draw  
21 that money down?

22 COMMISSIONER MELVILLE: Certainly.

23 SENATOR KRUEGER: I would appreciate  
24 that.

1                   And do you have any understanding of  
2                   whether, if we don't spend it by some date,  
3                   do we not have access to it?

4                   COMMISSIONER MELVILLE: I think it  
5                   just gets -- my understanding -- and again,  
6                   take it from where it's coming from -- is  
7                   that it would have to be reappropriated next  
8                   year. But I'm not sure.

9                   SENATOR KRUEGER: Thank you very much.

10                  CHAIRWOMAN YOUNG: Thank you,  
11                  Commissioner. By the way, good work on not  
12                  tapping that fund, so keep it up.

13                  I want to just quickly ask, to follow  
14                  up on Senator Krueger's question, so  
15                  generally that fund would be used, for  
16                  example, for FEMA disasters or some kind of  
17                  terrorism attack, is that basically it?

18                  COMMISSIONER MELVILLE: If we had a  
19                  flood, if we had a hurricane, if we had a  
20                  tornado, that type of disaster, we would be  
21                  able to appropriate those funds. Because the  
22                  Legislature had said it was okay to do that.

23                  And that money would come to us  
24                  through FEMA or DHS.

1                   CHAIRWOMAN YOUNG: Correct. Thank  
2                   you.

3                   Our final speaker, to wrap up, is  
4                   Senator Croci.

5                   SENATOR CROCI: Well, thank you, Madam  
6                   Chair, for the opportunity to ask a couple of  
7                   follow-up questions, Commissioner. And I  
8                   appreciate your patience here today with us.

9                   COMMISSIONER MELVILLE: My pleasure.

10                  SENATOR CROCI: We touched on a little  
11                  about the Governor's statement about a "new  
12                  normal." My colleague brought that out. And  
13                  I think Commissioner Kelly, Ray Kelly, is one  
14                  of those individuals who helped redefine what  
15                  our actions needed to be, particularly in  
16                  New York City, in the wake of the attacks in  
17                  the early '90s on Lower Manhattan, but also  
18                  specifically after September 11th and the  
19                  kind of counterterrorism unit and capability  
20                  that the NYPD built.

21                  So I'm very interested in having the  
22                  opportunity, perhaps the Legislature to see  
23                  that report. Given his expertise and his  
24                  national recognition, it would be very

1 interesting to see that.

2 But I am curious -- you have a direct  
3 one-on-one relationship with the head of  
4 counterterrorism at the NYPD. And I'm just  
5 curious, why we would take away statutory  
6 language that puts you in charge of  
7 counterterrorism in the State of New York by  
8 taking that title away, along with bodies, if  
9 you are the individual who has relationships  
10 in counterterrorism. That's a question that  
11 I had, if you had any follow-up answer.

12 COMMISSIONER MELVILLE: Sure. I don't  
13 view this transfer of the analysts from my  
14 division to the Division of State Police as  
15 anything more than getting them in line to  
16 streamline their intel to the people who need  
17 it first, and then we'll get it.

18 I don't think that I will not be  
19 considered a counterterrorism person anymore.  
20 I mean, I'll still have those relationships,  
21 I'll still have different functions with  
22 respect to counterterrorism in the Division  
23 of Homeland Security and Emergency Services,  
24 just not the intel and analysis report.

1                   SENATOR CROCI: So why take that  
2                   statutory responsibility away from you, then,  
3                   counterterrorism, by changing that language  
4                   in the statute as proposed here?

5                   COMMISSIONER MELVILLE: Are you  
6                   referring to the analysts?

7                   SENATOR CROCI: Well, but it also --  
8                   there's a deletion of the term  
9                   "counterterrorism." So I was just wondering  
10                  if that's something that you had a thought  
11                  on.

12                 COMMISSIONER MELVILLE: My impression,  
13                 Senator, is that it's just the analysts  
14                 moving over and that all other  
15                 counterterrorism responsibilities lie with  
16                 the Division of Homeland Security and  
17                 Emergency Services, the ones that we have  
18                 now.

19                 I remain, again, the homeland security  
20                 advisor to the Governor and the contact for  
21                 the Department of Homeland Security in  
22                 Washington. And I really don't think it's  
23                 going to change anything other than make it a  
24                 little clearer for the analysts to get their

1 information to the people that need it first,  
2 and then we'll get it. And so will everybody  
3 else.

4 SENATOR CROCI: Touching on what  
5 Senator Nozzolio mentioned about the transfer  
6 of cybersecurity responsibilities to ITS and  
7 then, two years later now, a proposal to take  
8 counterterrorism and certain bodies out of  
9 that pool, I think it's a conversation that  
10 we'll have to continue to have. I'm  
11 concerned at the deemphasis of it because I  
12 believe at the executive level, the lessons  
13 of 9/11 and the "new normal" have suggested  
14 that we need to continually augment that and  
15 we need to continually highlight that from  
16 the executive level. And that I would want  
17 any executive, but particularly the Governor  
18 of this state and his staff, to be getting  
19 the most timely and accurate intelligence  
20 possible so that good decisions could be made  
21 and good policies could be passed to protect  
22 New Yorkers.

23 My last statement was just that I  
24 really -- I do believe that you have, in the

1 year, been able to work well with the  
2 Legislature. These are very complicated  
3 issues. I share my colleagues' concerns that  
4 we're out of time with regard to attacks.  
5 And if Paris and San Bernardino and going  
6 back to the attacks in the Boston Marathon  
7 and others, if that isn't indicative of  
8 what's coming -- it's an inevitability that I  
9 hate to concede, and I'm sure every New  
10 Yorker hates to concede. But I believe that  
11 there are things we can do, there are  
12 prevention preparedness moves that we can  
13 make in the State of New York, legislative  
14 and others.

15 It does take us out of our normal  
16 comfort zone, and that's the new normal, that  
17 we have to take actions we ordinarily  
18 wouldn't as a Legislature, and look at laws  
19 and administrative controls for the Governor  
20 and authorities that we wouldn't ordinarily.

21 So I'm concerned about what's coming  
22 for us, certainly. I heed the message of the  
23 director of the FBI, who has since last year  
24 asked state and local governments to look at

1           this in a new light and to come up with  
2           innovative ways to assist our federal  
3           partners. And I just don't want to  
4           deemphasize that in statute, I don't want to  
5           deemphasize that in our administrative rules,  
6           and I would hope that we could continue to  
7           work together with the Governor's office to  
8           make sure that we're doing everything we can  
9           to protect New Yorkers. We have no higher  
10          priority. We have no more solemn duties than  
11          the security of our state and the residents  
12          of New York.

13                        So thank you, and I look forward to  
14          working with you in the future.

15                        Thank you, Madam Chair.

16                        CHAIRWOMAN YOUNG: Thank you, Chairman  
17          Crocì.

18                        Commissioner, we truly appreciate your  
19          participation today and for being so patient  
20          and sticking with us as we had our questions  
21          asked and answered. So thank you for that.

22                        And our next speaker is Executive  
23          Deputy Commissioner Michael C. Green --

24                        CHAIRMAN FARRELL: Thank you.

1                   CHAIRWOMAN YOUNG: Thank you.

2                   -- New York State Division of Criminal  
3 Justice Services.

4                   (Pause.)

5                   CHAIRWOMAN YOUNG: Could I have your  
6 attention, please. Thank you.

7                   Executive Deputy Commissioner Green,  
8 welcome. We're glad to have you here. We  
9 look forward to your testimony.

10                  EX. DEP. COMMISSIONER GREEN: Thank  
11 you.

12                  Good afternoon, Chairwoman Young,  
13 Chairman Farrell, and distinguished members  
14 of the Legislature. I'm Mike Green, head of  
15 the Division of Criminal Justice Services,  
16 and I appreciate you having me here today.

17                  Governor Cuomo's proposed budget for  
18 fiscal year 2016-2017 will allow DCJS to  
19 support the criminal justice system in  
20 communities across our state, expand the use  
21 of evidence-based programs proven to be  
22 effective and cost-efficient, and continue  
23 the development of innovative programs that  
24 position New York as a national leader in

1 effective public safety policy.

2 New York continues to experience  
3 reductions in crime and prison population.  
4 Reported crime reached an all-time low in  
5 2014, and that year we maintained our  
6 standing as the safest large state in the  
7 nation. New York also has the lowest  
8 imprisonment rate of any large state.

9 Statewide crime data is not yet  
10 available for 2015, but preliminary trends  
11 indicate that crime continued to decline last  
12 year. And we will have better numbers by  
13 mid-spring.

14 In addition to reintroducing  
15 legislation to raise the age of criminal  
16 responsibility, the Governor has proposed a  
17 range of other reforms to enhance the  
18 fairness and effectiveness of our criminal  
19 justice system and build trust between law  
20 enforcement agencies and communities.

21 In his Built to Lead agenda, Governor  
22 Cuomo advocates for legislation requiring  
23 recording of interrogations in serious cases,  
24 and reforming identification procedures, to

1 bring New York in line with 49 other states  
2 that allow photo-array identifications into  
3 evidence at trial.

4 Law enforcement agencies have embraced  
5 recording, and we have already provided  
6 approximately \$3 million for them to purchase  
7 and install the technology. DCJS plans to  
8 announce additional funding this year.

9 The Innocence Project and the District  
10 Attorneys' Association support these  
11 concepts; it's time they became law.

12 The Governor also is committed to  
13 reforming New York's bail statute. New York  
14 is one of only four states that prohibit  
15 judges from considering risk to public safety  
16 as a factor when setting bail. A commonsense  
17 amendment will allow judges to consider that  
18 risk when setting bail or allowing release  
19 and permit them to use proven risk  
20 assessments to aid in pre-trial release  
21 decisions. Other jurisdictions have  
22 successfully implemented the use of risk  
23 assessments, which has resulted in fewer  
24 individuals being detained pre-trial as well

1 as increased public safety.

2 Through the Pew-MacArthur Results  
3 First Initiative, DCJS has strengthened the  
4 state's community-based alternative to  
5 incarceration network, funding programs that  
6 are effective in reducing recidivism and  
7 cost-efficient. We are training ATI  
8 providers, in addition to implementing a  
9 fidelity and evaluation system to ensure the  
10 programs we fund are delivered as designed.

11 New York's ATI realignment work has  
12 been touted by Pew-MacArthur in a recently  
13 published case study as a best practice for  
14 other states to follow to reduce recidivism  
15 and maximize taxpayer dollars.

16 The Governor's budget invests nearly  
17 \$26.2 million through DCJS in programming  
18 that reduces incarceration and recidivism.  
19 That figure includes new funding: \$1 million  
20 to expand the state's County Re-Entry Task  
21 Forces to include new task forces in Queens  
22 and increase the capacity of existing county  
23 task forces; and \$1 million to create new  
24 defendant screening and assessment programs

1 in jurisdictions outside New York City.

2 In its second year, New York's Gun  
3 Involved Violence Elimination initiative, or  
4 GIVE, supports the use of proven strategies  
5 to reduce shootings and save lives. GIVE  
6 targets the 17 counties that collectively  
7 report 87 percent of the violent crime  
8 outside of New York City. GIVE provides  
9 police departments and their county law  
10 enforcement partners \$13.3 million in  
11 funding, in addition to training and  
12 technical assistance from national experts to  
13 help implement programs proven to be  
14 effective.

15 New York is unique among states in its  
16 commitment to funding only evidence-based  
17 work through GIVE. The initiative's emphasis  
18 on procedural justice -- which focuses on  
19 ensuring that interactions between law  
20 enforcement and individuals are fair, and  
21 that individuals who come in contact with  
22 police believe they are being treated fairly  
23 and respectfully -- also sets GIVE apart.

24 More than 200 law enforcement

1 professionals recently attended a two-day  
2 symposium to help them put procedural justice  
3 into action. Research shows that positive  
4 police-community relations contribute to  
5 safer communities.

6 To help stem the tide of gun violence  
7 that continues to claim too many lives,  
8 particularly those of young men of color,  
9 DCJS encourages GIVE jurisdictions to  
10 implement street outreach work into their  
11 strategies. We've provided additional  
12 funding to support street outreach in 10 GIVE  
13 jurisdictions and in the Bronx. The  
14 Governor's budget proposal funds GIVE and  
15 street outreach work at the same level as the  
16 current budget.

17 This 2016-2017 budget proposal will  
18 allow DCJS to continue supporting our local  
19 partners, expanding our evidence-based work,  
20 and implementing initiatives designed to  
21 foster fairness, respect and transparency in  
22 the state's criminal justice system.

23 I thank you for the opportunity to  
24 speak with you today, and I'd be happy to

1 take any questions you have.

2 CHAIRWOMAN YOUNG: Thank you,  
3 Executive Deputy Commissioner Green.

4 Our first speaker is Senator Gallivan,  
5 who is chair of the Senate Crime and  
6 Corrections Committee.

7 SENATOR GALLIVAN: Thank you, Madam  
8 Chair.

9 Good afternoon, Commissioner.

10 EX. DEP. COMMISSIONER GREEN: Good  
11 afternoon, Senator.

12 SENATOR GALLIVAN: I have questions in  
13 three different areas that is outside of the  
14 testimony that you just gave us. And you may  
15 not or may not be aware -- and if this is not  
16 your area of responsibility, if you can point  
17 me in the right direction so I can follow  
18 through.

19 EX. DEP. COMMISSIONER GREEN:  
20 Certainly.

21 SENATOR GALLIVAN: Two years ago, in  
22 the 2014-2015 budget, there was language in  
23 that budget to provide for a statewide law  
24 enforcement records management system. And

1 the goal, of course, was to do a number of  
2 things -- to increase the ability of law  
3 enforcement agencies statewide to interact  
4 with each other, streamline reporting, help  
5 them provide better service in the area of  
6 case management, things like that.

7 What is the status of that?

8 EX. DEP. COMMISSIONER GREEN: I am  
9 aware of the issue you're speaking about, and  
10 it's an issue that involves both DCJS and the  
11 New York State Police. The State Police side  
12 of it -- and I'm sure the superintendent can  
13 address this better than I do -- is that  
14 their records management system needs to be  
15 updated. The technology that it's built  
16 upon, as I understand it, is on the verge of  
17 becoming unsupported.

18 Basically the same records management  
19 system through DCJS is offered to local law  
20 enforcement agencies. At one time there were  
21 well over 200 local law enforcement agencies  
22 that took advantage of that offer and used  
23 that as their records management system.  
24 Again, that same system has the same problems

1 as the State Police one, in that the  
2 technology was becoming unsupported two years  
3 ago when that proposal was put forward.

4 That proposal was subject to the  
5 approval by the Legislature of a plan  
6 submitted to the Legislature by the  
7 Executive. The State Police and DCJS put  
8 together that plan, submitted it to the  
9 Legislature, we met with legislative staff  
10 repeatedly. And it's my understanding that  
11 to this date there is still not legislative  
12 approval for that plan.

13 What's happening on the ground, in the  
14 meantime, is I have local law enforcement  
15 agencies calling me literally every week  
16 saying, I need a new records management  
17 system, do I need to go out and buy my own  
18 records management system or is this ever  
19 going to happen? Just last week I received  
20 an outreach from the Sheriffs Association  
21 asking me the same thing. So I really  
22 appreciate you raising the issue. I think it  
23 is an issue that needs to be addressed  
24 urgently. And we're still waiting for

1 approval.

2 SENATOR GALLIVAN: I was aware, I  
3 think it was late last session and into the  
4 summer, perhaps into the fall, I was aware  
5 that there was discussions that were ongoing.  
6 Has there been recent discussions over the  
7 past several months, to your knowledge?

8 EX. DEP. COMMISSIONER GREEN: I have  
9 not personally heard anything from the  
10 Legislature. I've met, I'd say, at least  
11 three or four times with staff, we've  
12 answered questions in person, we've responded  
13 to all the written questions that we've  
14 received. So I'm not aware of any  
15 unaddressed inquiries from the Legislature to  
16 DCJS.

17 SENATOR GALLIVAN: How can I find out  
18 where this is, the status of it?

19 EX. DEP. COMMISSIONER GREEN: Again,  
20 to the best of my understanding -- and I have  
21 been following this on a weekly basis because  
22 of the inquiries and the concerns I get from  
23 local law enforcement -- is that we're just  
24 waiting for approval from the Legislature,

1           that the RFP is drafted and ready to go, the  
2           RFP was provided to the Legislature. The  
3           plan was drafted, it was amended a number of  
4           times in response to concerns that the  
5           Legislature raised. The plan was provided to  
6           the Legislature.

7                        So, you know, everything is done,  
8           ready to go, and the RFP is waiting to go out  
9           the door. And the only thing we're waiting  
10          on is the legislative approval.

11                       SENATOR GALLIVAN: All right, thank  
12          you.

13                       The next question has to do -- it does  
14          have to do with the Governor's budget  
15          proposal this year, but more so pointing to  
16          last year. So in the last fiscal year there  
17          was \$60 million allocated, the category was  
18          for law enforcement safety equipment. But it  
19          was to include vehicles for State Police and  
20          then some other equipment, bulletproof vests,  
21          things of that nature.

22                       There was a recent news article within  
23          the past three or four weeks where a  
24          spokesperson for the Governor said that that

1 money was contingent on the Legislature  
2 reaching an agreement with the Governor on  
3 last year's various criminal justice  
4 proposals. I was in on many of those  
5 meetings; I don't recall any time that that  
6 funding was contingent when we put that  
7 budget forward.

8 So this year's budget essentially  
9 takes that \$60 million for badly needed State  
10 Police cars, for badly needed equipment and  
11 the other things, and reallocates it for  
12 different things. I do know that there was a  
13 much smaller amount allocated for equipment,  
14 I think it was \$4 million or something of  
15 that nature. Are you able to comment on that  
16 and maybe allay our concerns that the State  
17 Police does not need vehicles, does not need  
18 additional equipment?

19 EX. DEP. COMMISSIONER GREEN: First of  
20 all, you would certainly have better  
21 information than I in terms of what was said  
22 in the negotiating sessions. I wasn't there.

23 I am well aware of the \$60 million you  
24 talk about. What I can tell you is that that

1 money was never provided to DCJS. Originally  
2 there was conversation about DCJS doing an  
3 RFP or solicitation for local law  
4 enforcement. I know one issue related to the  
5 appropriation language. The way the language  
6 was drafted, it did not give DCJS the  
7 authority to pass that money through on the  
8 local assistance grants. I know that the  
9 Executive and DCJS provided input as to  
10 language that would fix that problem, and  
11 it's my understanding that language never  
12 made it into the bill.

13           You know, I do know that the state  
14 does invest through other sources in -- you  
15 know, for example, bulletproof vests and  
16 other funding sources that law enforcement  
17 can use. But that \$60 million has never come  
18 to us for distribution.

19           SENATOR GALLIVAN: Fair enough. Where  
20 can you point me to get answers?

21           EX. DEP. COMMISSIONER GREEN: Again,  
22 you know, I think there were negotiations  
23 between the Executive and the Legislature.  
24 And I -- you know, I know one of the things

1           that would need to be fixed is that  
2           appropriation language.

3                         SENATOR GALLIVAN: All right. Thank  
4           you.

5                         The last question has to do with an  
6           overall small item in the State Budget, but  
7           very significant for some of the local law  
8           enforcement agencies that enforce the  
9           navigation law. The Governor's budget calls  
10          for a reduction in reimbursements to those  
11          specific local agencies that provide those  
12          services -- some of the Finger Lakes, Lake  
13          Erie, Lake Ontario, agencies like that.

14                        The budget -- the reduction was from  
15          50 percent to 25 percent. In the overall  
16          scheme of the State Budget, \$1 million is not  
17          significant. But to these local agencies,  
18          it's huge. Some of them have expressed to me  
19          they won't have the ability to provide the  
20          enforcement of the navigation on these  
21          various bodies of water.

22                        How can you suggest we deal with that?

23                        EX. DEP. COMMISSIONER GREEN: Again, I  
24          do not believe that that is through the DCJS

1 budget, because I'm not familiar with that  
2 and I believe I know our budget fairly well.  
3 But I can certainly look into it and get you  
4 information on what budget stream that is in.

5 SENATOR GALLIVAN: All right. Thank  
6 you.

7 SENATOR KRUEGER: Assembly?

8 CHAIRMAN FARRELL: Yes. Assemblyman  
9 Joe Lentol -- Chairman Joe Lentol.

10 ASSEMBLYMAN LENTOL: Thank you,  
11 Chairman, Chairman Dennis Farrell.

12 (Laughter.)

13 ASSEMBLYMAN LENTOL: And thank you,  
14 Commissioner Green, for the work that you've  
15 been doing. I've been watching you, and I  
16 admire all the work that you've done in this  
17 job.

18 EX. DEP. COMMISSIONER GREEN: Thank  
19 you.

20 ASSEMBLYMAN LENTOL: I just wanted to  
21 digress from some of the questions that I  
22 wanted to ask you because of some of your  
23 testimony, and following up on what  
24 Mr. Gallivan asked. And I guess the first

1           thing I'm going to ask is about the cloud  
2           that he discussed. And we have had and we  
3           have sent letters over to you regarding some  
4           issues that we'd like to resolve in order for  
5           us to get on board with some legislation  
6           that's needed either independently or in the  
7           budget. So I'm just hoping that you'll be  
8           able to meet with our staff, that your staff  
9           will be able to meet with our staff to clear  
10          up some of those issues.

11                       EX. DEP. COMMISSIONER GREEN: I'm  
12           sorry, I missed -- you said with regard to  
13           what issue?

14                       ASSEMBLYMAN LENTOL: With the cloud.

15                       EX. DEP. COMMISSIONER GREEN: I guess  
16           I -- when you say cloud, I really don't know  
17           what you're talking about. The issue is a  
18           records management system --

19                       ASSEMBLYMAN LENTOL: Yes.

20                       EX. DEP. COMMISSIONER GREEN: -- it's  
21           not a cloud.

22                       So, you know, we have met every single  
23           time we've been asked to meet; we've reached  
24           out and asked for meetings. To my knowledge,

1 we've answered every single inquiry.

2 ASSEMBLYMAN LENTOL: Okay.

3 EX. DEP. COMMISSIONER GREEN: And I  
4 will make myself available at any time going  
5 forward to meet with you, your staff, or  
6 anyone else from the Legislature with regard  
7 to the records management system.

8 ASSEMBLYMAN LENTOL: Thank you.

9 That's all I can ask.

10 And secondly, I'm very perplexed by  
11 the Governor's commitment to reforming the  
12 bail statute. Because the mayor of the City  
13 of New York as well -- it's not only the  
14 Governor -- have proposed issues like the  
15 Governor is proposing with respect to public  
16 safety being required and having a statutory  
17 change in order to include public safety in  
18 bail reform.

19 At the same time, trying to implement  
20 a program to allow people to get out, rather  
21 than -- on bail, as opposed to having them  
22 languish for two or three years and then  
23 committing suicide like what happened in the  
24 case in the Bronx.

1                   And so I don't want to ask a long  
2                   question, but I know historically that -- and  
3                   I don't know if you were here to hear  
4                   Mr. O'Donnell's questions earlier --

5                   EX. DEP. COMMISSIONER GREEN: Yes, I  
6                   heard the questions.

7                   ASSEMBLYMAN LENTOL: -- about bail  
8                   reform and how we know that judges take into  
9                   account all of the things involving public  
10                  safety when they set bail.

11                  So my most important concern is that  
12                  this will prevent the judges from letting  
13                  anybody out if they have a new component  
14                  that's added to the statute regarding risk  
15                  assessment or public safety. Because I don't  
16                  know, some of the judges that I've seen  
17                  aren't brave, and they might take the  
18                  position, well, the Legislature just passed a  
19                  statute that we have to take public safety in  
20                  mind, so why should I let anybody out who  
21                  comes before me? That's my question.

22                  EX. DEP. COMMISSIONER GREEN: I think  
23                  that's a very good question. You know, and I  
24                  know you've spent a great deal of time both

1 in and dealing with the criminal justice  
2 system, as has Assemblyman O'Donnell.

3 And I think that sometimes your first  
4 instinct is to say, well, if you let judges  
5 consider that type of risk, we're going to  
6 hold more people. You know, and certainly I  
7 can admit that when I first heard the issue,  
8 that was one of the things that crossed my  
9 mind.

10 But I'm a firm believer in  
11 evidence-based work. I think that we  
12 constantly need to look at our system and see  
13 how can we make it better. I think we need  
14 to look at what's happening in other parts of  
15 the country in terms of new practices that  
16 have been studied and shown results, and see  
17 what we can learn from them. And this is one  
18 of the areas where I think we can learn.

19 If you look at, for example, some of  
20 the work the Arnold Foundation has done where  
21 you allow judges to consider that risk and at  
22 the same time you provide a framework -- so  
23 right now, assuming what Assemblyman  
24 O'Donnell said is true -- and I certainly

1           can't tell what's going on in the mind of  
2           judges, but, you know, I have to say that I  
3           think the inference that he asked people to  
4           draw is reasonable -- then you have judges  
5           right now with no guidance, no legislative  
6           authority, considering that risk.

7                        I would argue that it's much better to  
8           put it in legislation, establish guidelines,  
9           and then allow judges to use evidence-based,  
10          validated risk assessment instruments as a  
11          tool -- not to replace their judgment, but as  
12          a tool in addition to their judgment -- and  
13          train judges and prosecutors and defense  
14          lawyers on how to use those instruments. And  
15          what the evidence has shown in the  
16          jurisdictions that have done that is that you  
17          actually end up holding fewer people, not  
18          more people, and at the same time you have  
19          fewer crimes committed by people who are  
20          released because you're making better  
21          decisions as a system as to who to release.

22                       And, you know, to your point about  
23          judges being concerned or not wanting to take  
24          a risk, if you have valid risk assessment

1 instruments, in some cases that may give the  
2 judge the cover that the judge feels he or  
3 she needs to make that decision and release  
4 somebody who doesn't pose a public safety  
5 risk and could safely be released.

6 ASSEMBLYMAN LENTOL: Just to let you  
7 know that I'm kind of a student of history,  
8 because my father had been here before I was,  
9 and he was here during the 1965 revision of  
10 the State Penal Law, when the Republican  
11 Party controlled both houses of the  
12 Legislature and the Governor was a  
13 Republican.

14 And at that time, the Penal Law was  
15 amended by a sentencing commission, I guess,  
16 or a -- I'm sorry, a law revision commission  
17 that was basically headed by Mr. Bartlett,  
18 Assemblyman Bartlett, who was a Republican  
19 member -- I guess from Ms. Duprey's district,  
20 I'm not sure, upstate New York.

21 And that commission recommended, after  
22 a long arduous discussion about the issue of  
23 preventative detention, that we should leave  
24 it out of the Penal Law, we should put in

1 provisions to allow judges to make the  
2 assessment based on the risk factors that  
3 Mr. O'Donnell mentioned earlier about it, so  
4 that a judge's hands wouldn't be tied by a  
5 preventative detention statute that would  
6 require them to set high bail in most every  
7 case.

8 I just wanted to point that out to  
9 you, because that was done in 1965 when the  
10 Penal Law was revised. So ...

11 EX. DEP. COMMISSIONER GREEN: From the  
12 question, it sounds like you have an  
13 advantage and may be a little bit older than  
14 I am --

15 (Laughter.)

16 ASSEMBLYMAN LENTOL: Just a little  
17 bit.

18 EX. DEP. COMMISSIONER GREEN: But, you  
19 know, I think that that's a good point, that  
20 we should learn from history. But I think we  
21 also have to learn from the experiences. And  
22 I'm not sure that the science behind risk  
23 assessment that exists today existed back  
24 then when they were making that decision.



1 independent monitor would have no resources  
2 at all within which to work, and the Attorney  
3 General would have a multitude of resources  
4 to handle these cases -- why are we asking  
5 again for an independent monitor and why not  
6 let the Attorney General handle these cases  
7 as a special prosecutor?

8 EX. DEP. COMMISSIONER GREEN: To  
9 address your first point, it is not a mistake  
10 that it was put back in. I think -- at least  
11 from my position, I think the Governor made  
12 clear last year that he believed that the  
13 best option was the legislative option that  
14 he put forward.

15 As I know you're well aware, there are  
16 many very important considerations to be  
17 balanced here. One of those is that every  
18 county has an elected district attorney that  
19 the people of that county elected to handle  
20 cases like this and make decisions like this  
21 in their county.

22 And a countervailing consideration is  
23 public confidence in the criminal justice  
24 system, which we know is critical, you know,

1 for a number of different reasons. One of  
2 which is studies show that when public  
3 confidence in the criminal justice system  
4 erodes, one of the things that can follow is  
5 lawlessness and higher crime rates.

6 So in balancing those things, the  
7 Governor put forth a proposal that would not  
8 automatically take away the district  
9 attorney's ability to handle cases but would  
10 put a provision in place when the district  
11 attorney either did not go to the grand jury  
12 within a reasonable time on the case or the  
13 grand jury issued no bill, to have an  
14 independent monitor come in, review the facts  
15 of the case, review the grand jury  
16 proceedings and make a report to the  
17 Governor, so when the Governor exercised his  
18 or her powers in terms of whether or not to  
19 appoint a special prosecutor, it would be  
20 made based on solid information about the  
21 facts and circumstances of that particular  
22 case. And if the Governor felt that there  
23 was an injustice or that there was new  
24 evidence, the Governor could appoint a

1 special prosecutor.

2 And I don't agree with your assessment  
3 that there would be no resources, because I  
4 think that it is envisioned under their  
5 proposal that both the independent monitor  
6 and, if necessary, the special prosecutor  
7 would have the resources necessary.

8 Now, last year the Governor made clear  
9 that that was his preference, but that if it  
10 didn't pass, he felt something had to be  
11 done. And when nothing was passed, he felt  
12 something needed to be done, he signed the  
13 executive order.

14 We're obviously in a different  
15 position this year. You know, now there's an  
16 executive order in place. But that doesn't  
17 change the fact that the Executive feels that  
18 the best path forward is a path that creates  
19 that balance between those two very important  
20 considerations. And I believe that that is  
21 the reason why this legislation is put back  
22 in again in the Governor's Article VII  
23 budget.

24 ASSEMBLYMAN LENTOL: I listened very

1           carefully to the Governor at his State of the  
2           State message, and I thought I heard him  
3           say -- and maybe I'm mistaken, because you  
4           said I'm getting older; my hearing may be  
5           getting bad. But I thought the Governor said  
6           that he was asking for not an independent  
7           monitor but passage of the Keith Wright bill  
8           to make permanent a grand jury -- I'm sorry,  
9           a special prosecutor in the Attorney  
10          General's office to prosecute these cases and  
11          investigate whether or not an additional  
12          prosecution is necessary.

13                   EX. DEP. COMMISSIONER GREEN: I was  
14           sitting much farther back than you were, so I  
15           might not have heard right either. But my  
16           comments are based on the language of the  
17           Article VII bill that was submitted. And I  
18           believe what I have just indicated in my  
19           comments is consistent with the language  
20           that's in that Article VII bill.

21                   ASSEMBLYMAN LENTOL: Okay.

22                   CHAIRMAN FARRELL: You're at zero now.

23                   ASSEMBLYMAN LENTOL: I'm at zero, so  
24           I'll turn my time over to the next speaker.

1                   SENATOR KRUEGER: Thank you.

2                   CHAIRMAN FARRELL: Thank you very  
3 much.

4                   SENATOR KRUEGER: Our next speaker is  
5 Senator Mike Nozzolio.

6                   SENATOR NOZZOLIO: Thank you very  
7 much.

8                   EX. DEP. COMMISSIONER GREEN: Good  
9 afternoon.

10                  SENATOR NOZZOLIO: Mr. DCJS  
11 Commissioner, former district attorney and  
12 good friend. How are you, Mike?

13                  EX. DEP. COMMISSIONER GREEN: Good,  
14 thank you.

15                  SENATOR NOZZOLIO: Senator Funke and  
16 Senator Akshar may be talking about other  
17 issues regarding parole, and I want to put  
18 you on notice in this forum that we are very  
19 concerned with -- by we, those of us in the  
20 Senate -- as we review the budget, in terms  
21 of the allocation of resources for parole. I  
22 know that's not directly within your purview,  
23 but certainly we will be probing that with  
24 Acting Commissioner Annucci and others.

1                   But I wanted you to know that that's a  
2                   big concern of ours, and particularly in  
3                   Western New York. The supervision and the  
4                   problems we've had with the caseload of  
5                   parole officers as well as the results of  
6                   very tragic incidents occurring in your  
7                   hometown over the last few years regarding  
8                   those who are out on parole and committing  
9                   very violent crimes soon after their  
10                  discharge. So putting you on notice of that,  
11                  Mike.

12                  Again in your region, but this is --  
13                  we're finding this happening throughout the  
14                  state, is the scourge of heroin. It's a  
15                  scourge, it's a deeply rooted problem that is  
16                  no longer isolated in the inner cities but  
17                  expanding well into the suburbs and rural  
18                  areas.

19                  Just as an aside, the sheriff of  
20                  Seneca County had a forum late last fall, and  
21                  it was discussed how those traveling from the  
22                  Central Finger Lakes, going to Rochester and  
23                  Syracuse to buy their supplies, and then  
24                  coming home, a round trip of 80 to 100 miles

1 and actually distributing, as dealers of  
2 heroin, and having a market in the Central  
3 Finger Lakes, which never existed before.

4 But you travel the Thruway, we travel  
5 the Thruway. Just think of those who are  
6 high on heroin going back and forth to their  
7 places of obtaining supplies and being high  
8 on the road -- in fact, inebriated, under the  
9 influence. And that just is nonetheless a  
10 very disturbing situation.

11 What is DCJS doing, your agency, to  
12 stem the heroin epidemic and to address the  
13 heroin epidemic in our state?

14 EX. DEP. COMMISSIONER GREEN: That's a  
15 very good question. You know, and I  
16 certainly agree with you that heroin is a  
17 very serious problem. One thing I'd say to  
18 preface my remarks, as you noted, I was a  
19 prosecutor, I spent 25 years in the DA's  
20 office, the last eight years as the DA. And  
21 I can't tell you how many wiretap  
22 applications I signed on drug cases, how many  
23 search warrants, you know, how many thousands  
24 of drug dealers were prosecuted and, you

1 know, God knows how many pounds of heroin and  
2 coke and whatever else. And none of it made  
3 the drug problem go away.

4 So, you know, when we think about this  
5 problem, I think we need to think about it  
6 from more than just a law enforcement  
7 perspective. You know, if all we do is  
8 figure out how to arrest people and how to  
9 confiscate drugs, we're on a never-ending  
10 treadmill and we'll just keep doing that with  
11 no change.

12 So, you know, a huge part of the  
13 equation has to be on the treatment side.  
14 And I, in my remarks, briefly talked about  
15 how we are bringing evidence-based practices  
16 to the support of the funding that we do, to  
17 make sure that the money that we provide to  
18 Alternative to Incarceration programs -- so  
19 when people come into the criminal justice  
20 system, need help and get referred to help,  
21 the help that they're getting is effective  
22 help that's done by agencies that are running  
23 in a way that is designed to make sure that  
24 they get effective treatment and don't keep

1 cycling through the system. So that's one  
2 area that we're working in.

3 We've also been very active in terms  
4 of Naloxone, working with a number of other  
5 state agencies. We've been engaged in a  
6 program for about two years now to train and  
7 provide law enforcement officers across the  
8 state with Naloxone. So far, over 8,000  
9 officers have been trained as part of that  
10 program, including about 2,500 trainers under  
11 the Train the Trainer model. They've  
12 administered Naloxone about a thousand times.  
13 Over 900 of those 1,000 administrations have  
14 resulted in saves.

15 In addition, we've provided funding  
16 and do provide funding to the special  
17 narcotics prosecutor, to district attorney's  
18 offices across the state, some of which is  
19 used for the prosecution of drug cases. And  
20 then through our work with crime analysis  
21 centers, we provide resources to local law  
22 enforcement on the crime analysis side to  
23 help fight this. So those are some of our  
24 efforts. I'd be happy if you want to follow

1 up.

2 SENATOR NOZZOLIO: Is there any area  
3 of the state that is doing better than -- is  
4 establishing better successes than maybe  
5 other areas of the state?

6 EX. DEP. COMMISSIONER GREEN: I travel  
7 the entire state from, you know, the North  
8 Country to Buffalo to Long Island and  
9 everywhere in between. And I -- you know, I  
10 consistently hear that this is an issue. I  
11 couldn't point to one area and say they've  
12 got it figured out.

13 SENATOR NOZZOLIO: Well, please --  
14 there are many -- in our conference and all  
15 across the Legislature, they're deeply  
16 concerned about this issue. And your  
17 suggestions and guidance in the future will  
18 be very helpful as we try to appropriately  
19 provide legislative solutions.

20 And I must say the task force that a  
21 number of members have served on, the Heroin  
22 Task Force, has not just relied on the  
23 traditional law enforcement measures. We  
24 agree with you that treatment is paramount to

1 ever finalizing and reducing the demand.

2 EX. DEP. COMMISSIONER GREEN: I  
3 certainly share your concern, appreciate it,  
4 and would look forward to working with you on  
5 this very important issue. And I also wanted  
6 to thank you for your service as a Senator,  
7 too.

8 SENATOR NOZZOLIO: Thank you, Madam  
9 Chair.

10 CHAIRWOMAN YOUNG: Thank you, Senator.  
11 Assembly?

12 CHAIRMAN FARRELL: Assemblyman Graft  
13 {sic}.

14 ASSEMBLYMAN GRAF: Thank you, Denny.  
15 You can leave off the T, though.

16 (Laughter.)

17 CHAIRMAN FARRELL: I'll take it off if  
18 I find it.

19 ASSEMBLYMAN GRAF: Okay, a few  
20 questions. Going back to the police vests.  
21 Now, the report that I read was that, you  
22 know, we had money allocated to upgrade vests  
23 for police officers. And the Governor didn't  
24 get his whole package, and he basically took

1 his ball and went home. And he gave the  
2 money to the DOT. That's the report that I  
3 had. Right?

4 So I don't know if the plows need  
5 Kevlar, that the snowmen are shooting at  
6 them, but I don't appreciate the Governor  
7 sitting there and playing politics with the  
8 lives of hardworking police officers. And  
9 now I look at this reform package that the  
10 Governor has, and he's just jumping on the  
11 anti-cop bandwagon again.

12 As far as special counsel, now, you  
13 know the grand jury proceedings have been  
14 secret, and there's a reason that they're  
15 secret, for -- you know, from the inception.  
16 And I'm reading through this stuff. And if  
17 I'm not mistaken -- and you can correct me if  
18 I'm wrong -- most of this stuff here says  
19 they're allowing the DA to turn over a report  
20 if they don't indict. Is that correct? It  
21 allows them to.

22 EX. DEP. COMMISSIONER GREEN:  
23 Basically the provision would allow the  
24 district attorney to either do a report or

1 write a letter to make information available  
2 to the public explaining why the case  
3 resulted the way it did.

4 And I can tell you, you know, I first  
5 of all spent my entire career trying to  
6 support law enforcement, and I strongly  
7 disagree with your characterization. But  
8 secondly, I personally have been in a  
9 position where I have presented high-profile  
10 cases to the grand jury where police shot  
11 somebody -- and shot and killed somebody, in  
12 circumstances -- and I felt like my hands  
13 were unduly tied in those circumstances,  
14 where I had to go out and tell the public,  
15 this is what happened, and by law I'm not  
16 allowed to tell you one additional word.

17 You know, I don't think anyone wants  
18 to disclose names of witnesses that testified  
19 or other information that would compromise  
20 anybody. But to give the public just a basic  
21 level of information so that there can be  
22 some understanding. If the case gets  
23 no-billed and the determination was that a  
24 police officer was justified in doing what he

1 or she did, then I think it's only fair not  
2 only to the public but to the police officer  
3 that the community have some understanding of  
4 why that happened so that they don't have  
5 this notion in their head that there was some  
6 kind of fix that happened and it was a bad  
7 result.

8 ASSEMBLYMAN GRAF: You know, we have  
9 duly elected DAs, and that's their job to  
10 make this decision whether they're going to  
11 indict or not. And this just looks to me,  
12 for political purposes, all right, to be able  
13 to get another bite at the apple when it  
14 comes to police officers. That's --

15 EX. DEP. COMMISSIONER GREEN:  
16 Actually, it does not. This does not give  
17 anybody another bite at the apple. This does  
18 not in any way, shape or form change the law.

19 Right now, under existing law if a  
20 case goes to a grand jury and the grand jury  
21 no-bills, there's a provision in the law that  
22 allows the district attorney or any other  
23 prosecutor who's duly appointed to go to a  
24 judge in that jurisdiction and seek

1 permission to get that case re-presented to a  
2 grand jury based on either new evidence or  
3 some flaw with the posterior proceeding.

4 ASSEMBLYMAN GRAF: But you're removing  
5 that.

6 EX. DEP. COMMISSIONER GREEN: That  
7 same rule would continue to apply. There is  
8 no new bite at the apple. This simply goes  
9 to who it is that will be carrying out that  
10 function. Will it be the district attorney,  
11 or will it be a special prosecutor? But it  
12 does not create --

13 ASSEMBLYMAN GRAF: But wait a minute,  
14 wait a minute, wait a minute --

15 EX. DEP. COMMISSIONER GREEN: -- a  
16 second bite.

17 ASSEMBLYMAN GRAF: Wait a minute.  
18 Now, if the special prosecutor does not like  
19 the way that the DA presented the case to the  
20 grand jury, right, the special prosecutor can  
21 bring the case again; correct?

22 EX. DEP. COMMISSIONER GREEN: No.

23 ASSEMBLYMAN GRAF: That's the way I  
24 read it.

1                   EX. DEP. COMMISSIONER GREEN: First of  
2 all, "does not like" is not the standard in  
3 the bill. There has to be a substantial flaw  
4 with what happened, or there has to be new  
5 evidence.

6                   And secondly, the law right now  
7 requires anybody who wants to go back into a  
8 grand jury after there's been a no-bill to  
9 get permission from a judge. And under this  
10 proposal, it simply says that there would be  
11 a special prosecutor, not the DA. But it  
12 does nothing to change that existing section  
13 of law.

14                   And that special prosecutor would  
15 still have to go back in front of a judge and  
16 show the judge that there was cause under the  
17 existing standard to go back into grand jury  
18 before he or she could do so.

19                   ASSEMBLYMAN GRAF: Okay. And -- so  
20 the way I'm reading this, a lot of this  
21 allows the DA, the DA may -- correct? He  
22 doesn't have to give a statement. He doesn't  
23 have to write a letter.

24                   EX. DEP. COMMISSIONER GREEN: Correct.

1                   ASSEMBLYMAN GRAF: He doesn't have to  
2 go out there.

3                   EX. DEP. COMMISSIONER GREEN: But if  
4 the DA, like me in that situation I was in,  
5 felt that it's important that the public  
6 understand at a basic level what happened, it  
7 gives them the ability to do that.

8                   ASSEMBLYMAN GRAF: Okay.

9                   Now, is part of this the video cameras  
10 for the police officers too? Is that what  
11 he's looking at, with the ones that they  
12 wear?

13                   EX. DEP. COMMISSIONER GREEN: Yes,  
14 that is one of the items that the Governor  
15 has put forward -- not as a budget bill, but  
16 in his State of the State, the Build to Lead  
17 agenda book.

18                   And frankly, my recollection is that  
19 two years ago in his State of State, it was  
20 something he talked about. I know there was  
21 legislation last year that both the District  
22 Attorneys Association and the Innocence  
23 Project had signed off on that I believe  
24 passed the Senate. And that same framework

1 is the framework that the Governor is  
2 proposing.

3 You know, A, we're the only state in  
4 the country that doesn't allow photo-array  
5 identifications into evidence at trial. And  
6 all of the research on this issue suggests  
7 that if it's done properly, your best  
8 identification is the one that's done first  
9 and soonest in time to the crime, which  
10 almost always is a photo-array  
11 identification. And yet we keep that best  
12 identification from the jury.

13 So that was half of the package. The  
14 other half of the package is video recording  
15 of interrogations in serious cases. And  
16 again, you know, the MPTC has adopted  
17 policies regarding it. Almost every major  
18 police department in the state is recording.

19 You know, I can tell you, as someone  
20 who tried cases, the last case I tried was a  
21 case where two police officers were shot and  
22 one of my best pieces of evidence was  
23 3½ hours of a recorded interview with the  
24 person who was convicted of attempting to

1 murder those police officers.

2 You know, it's something that I think  
3 almost everyone who's up on these issues in  
4 law enforcement agrees we should be doing.

5 ASSEMBLYMAN GRAF: Yeah, I'm talking  
6 about the body cams. Is that part of these  
7 proposals?

8 EX. DEP. COMMISSIONER GREEN: No, I  
9 don't believe there's legislation with regard  
10 to body cameras.

11 ASSEMBLYMAN GRAF: Okay. Thank you.

12 CHAIRWOMAN YOUNG: Thank you.

13 Senator Squadron.

14 SENATOR SQUADRON: Thank you very  
15 much.

16 I've got a lot to cover here. I don't  
17 know if you were here earlier when we had  
18 that extensive conversation about speedy  
19 trial or the absolute lack of speedy trials  
20 in New York State.

21 EX. DEP. COMMISSIONER GREEN: I was  
22 listening to all of it.

23 SENATOR SQUADRON: I appreciate it.  
24 What if any data does DCJS keep on the period

1 from arraignment to disposition or trial  
2 delays in general?

3 EX. DEP. COMMISSIONER GREEN: I don't  
4 have it with me, but I do believe we have  
5 county-by-county data on time from  
6 arraignment to disposition.

7 SENATOR SQUADRON: County by county.  
8 Also related to charge levels -- felony, A  
9 and B misdemeanors -- to sort of track the  
10 ready for trial statute?

11 EX. DEP. COMMISSIONER GREEN: I'd have  
12 to check and see how far it's broken down.  
13 But I can certainly find out and get back to  
14 you on that.

15 SENATOR SQUADRON: Great. And then  
16 sort of taking off the data hat and putting  
17 on the policy hat, what do you think DCJS can  
18 do to help solve this crisis?

19 EX. DEP. COMMISSIONER GREEN: I think  
20 that it's mainly an issue within OCA. You  
21 know, our role -- you know, we provide  
22 support, provide funding to prosecutors. We  
23 provide a very small amount of aid to  
24 defense. It's mainly the Office of Indigent

1           Legal Services that does that.

2                       So I think our role is minor. I do  
3           agree with you that it's a very important  
4           issue. You know, when we talk about things  
5           like the number of people being held in  
6           jails, you know, one part of it is who's  
7           going to jail, but another part of it is how  
8           long are they in jail. And certainly on the  
9           pretrial side it's a huge issue.

10                      So, you know, I'd be happy to follow  
11           up on the data piece and certainly be willing  
12           to work with you, OCA, and anyone else on  
13           what I think is a very important issue.

14                      SENATOR SQUADRON: Great. Thank you  
15           very much. We'd really like to see trends  
16           especially. I mean, you know, it's something  
17           that the five boroughs of New York City know  
18           a lot about. We heard about it from the  
19           Long Island perspective as well.

20                      Speaking of reporting, the Governor  
21           proposes the sort of expanded reporting for  
22           summonses, et cetera, similar to last year's  
23           proposal, as I understand it. Is that fair  
24           to say?

1                   EX. DEP. COMMISSIONER GREEN:  Yes.  
2                   Basically right now we get fingerprintable  
3                   offenses and we can do all kinds of reports  
4                   or data with regard to fingerprintable  
5                   offenses.  This would give us information  
6                   with regard to non-fingerprintable offenses.

7                   SENATOR SQUADRON:  Great.  And last  
8                   year we covered that it would be sort of part  
9                   of a unified database with the  
10                  fingerprintable offenses so there would be  
11                  ways to sort of cut it to include  
12                  fingerprintable and non-fingerprintable  
13                  offenses in terms of how it was sort of  
14                  stored and analyzed.

15                  EX. DEP. COMMISSIONER GREEN:  Yeah, I  
16                  don't want to say unified.  I don't know in  
17                  terms of the logistics.  I don't think they  
18                  would be combined.

19                  But certainly our intention would be  
20                  to be able to provide the same level of data  
21                  with regard to those offenses that we provide  
22                  you now with regard to the fingerprintable  
23                  ones.

24                  SENATOR SQUADRON:  Great.  And

1 Assemblymember Lentol and I carry a bill that  
2 would do this.

3 Let me just kind of speed around here  
4 for a second. Which of these factors either  
5 would be authorized or required to be  
6 included in the information? Obviously,  
7 offenses and violations are included; right?

8 EX. DEP. COMMISSIONER GREEN: Yes,  
9 like harassment, disorderly conduct.

10 SENATOR SQUADRON: Demographics on an  
11 individual's charge, race, ethnicity,  
12 et cetera?

13 EX. DEP. COMMISSIONER GREEN: Yes.

14 SENATOR SQUADRON: Whether the summons  
15 or appearance ticket contained a custodial  
16 arrest or not?

17 EX. DEP. COMMISSIONER GREEN: I don't  
18 know if the proposal is that specific. And  
19 I'd have to check. But there may be language  
20 in there that indicates that it is subject to  
21 regulation by the commissioner of DCJS in  
22 terms of how it gets reported.

23 SENATOR SQUADRON: Disposition?

24 EX. DEP. COMMISSIONER GREEN: No, I

1 don't believe it's disposition, because it's  
2 coming -- the requirement is for the police  
3 department. So I don't believe they would  
4 have the disposition information.

5 SENATOR SQUADRON: And therefore not  
6 sentence, either, right? Neither disposition  
7 nor sentence.

8 EX. DEP. COMMISSIONER GREEN: No, that  
9 would have to be information that would come  
10 from OCA.

11 SENATOR SQUADRON: Great. And then of  
12 course that could be aggregated countywide,  
13 statewide, any -- regionally, et cetera?

14 EX. DEP. COMMISSIONER GREEN:  
15 Absolutely.

16 SENATOR SQUADRON: Okay. That's  
17 important. And hopefully this year we can  
18 get that over the top, since knowing what  
19 we're talking -- you said fact-based a number  
20 of times; I couldn't agree more.

21 Speaking of which, let's talk about  
22 the Arnold Foundation briefly that you  
23 referenced earlier. How do you ensure that  
24 sort of algorithm that goes into the

1 predictive score that the Arnold Foundation  
2 throws out is sufficiently transparent?  
3 Sure, it's showing preliminarily to do a  
4 better job of having fewer people held on  
5 bail and arguably or potentially lowering  
6 violent crimes or violent actions among those  
7 who are out in that period. But for each  
8 individual case, how do we know that there's  
9 a relationship between what that individual  
10 has actually done in the past and the  
11 likelihood that they'll be given the capacity  
12 to get out on bail?

13 EX. DEP. COMMISSIONER GREEN: I guess  
14 two points I'd make.

15 First, I indicated that we believe  
16 that this should be given to judges as a  
17 tool. I don't think you can ever replace the  
18 judgment of a judge with a tool. But I think  
19 the more tools you can give a judge to help  
20 them exercise that discretion so -- you know,  
21 there may be a case where the risk instrument  
22 says one thing but a judge, you know, given  
23 his or her experience, says I can safely  
24 release this person regardless of what --

1           because there's some factor that didn't get  
2           put in here.

3                       Secondly, as to the algorithm, we in  
4           other settings have taken algorithms that  
5           have been developed, used our research staff  
6           and our DCJS data and improved on them to  
7           make them New York-specific, to be as  
8           tailored as they can to, you know, our  
9           particular circumstances here in New York.

10                      And I certainly would anticipate that  
11           we do that. And I think it's got to be a  
12           very transparent process. I think that in  
13           creating that, you know, we need to make sure  
14           everyone understands what we're doing.

15                      And then the last thing I would say is  
16           I mentioned training. You can't just put an  
17           instrument out, throw it out there and say,  
18           use it. I think it's important, if you're  
19           going to do this and do it right and expect  
20           to get the results that we truly do lower  
21           jail populations and increase public safety,  
22           everyone needs to be trained. So the judges,  
23           the lawyers on both sides using this know  
24           what the algorithm is, know how we came up

1 with it, know what it means, you know, know  
2 how to use it.

3 And I think if you do all those  
4 things, the evidence shows that you do get to  
5 a point where you can drive down the jail  
6 population and at the same time make the  
7 state safer.

8 SENATOR SQUADRON: I would strongly  
9 urge that anytime we're talking about these,  
10 whether as part of a change in the  
11 methodology as proposed by the Governor or  
12 not, that we are a lot more careful about  
13 telling the judges and requiring the judges  
14 consider what it really means, what the  
15 underlying factors are that go into that risk  
16 assessment, not just -- you know, it's very  
17 appealing to simplify everything and every  
18 human being to a score. That actually is not  
19 how the criminal justice system works. It's  
20 the reason we have the criminal justice  
21 system we have.

22 And to implement a score absent a  
23 whole lot of requirements for due diligence  
24 and understanding by the judge is likely to

1 cause constitutional among other problems.

2 EX. DEP. COMMISSIONER GREEN: I  
3 couldn't agree with you more.

4 SENATOR SQUADRON: Briefly, I believe  
5 just a final issue on transparency. We did  
6 talk about body cams before briefly. Does  
7 DCJS have an opinion or a willingness to be  
8 part of the solution on how we make body cam  
9 footage available to the public while still  
10 protecting individual privacy rights?

11 EX. DEP. COMMISSIONER GREEN: We  
12 certainly have spent time with the issue of  
13 body cameras. Specifically the issue was  
14 considered by the Municipal Police Training  
15 Council. We're the staff arm for that  
16 council. We did a lot of research over the  
17 period of about a year. The council recently  
18 adopted a model policy with regard to the use  
19 of body cameras which does touch on some of  
20 those issues but certainly I don't think is  
21 the end of the discussion.

22 But yes, you know, I think body  
23 cameras clearly have a place. And I think  
24 that there are a lot of issues that go along

1 with them that are very important issues that  
2 need to be hashed out. So we'd be happy to  
3 be involved.

4 SENATOR SQUADRON: They have the  
5 potential to really help both law enforcement  
6 and civilians who are in contact with law  
7 enforcement. Frankly, I would like to see  
8 some funding in here to help us devise a  
9 system and a storage capacity for how that  
10 becomes public and when it becomes public.  
11 Because absent that, the truth is that's  
12 going to hold up any kind of expansion of  
13 body cameras, which I think there's  
14 increasingly a consensus is something we need  
15 to do. We're not going to be able to do it  
16 without funding sort of the back end data  
17 question. That's not an additional question  
18 when it comes to this new technology, it's a  
19 core question about whether the technology  
20 can move forward.

21 EX. DEP. COMMISSIONER GREEN: No,  
22 that's the cost. The cost of the cameras  
23 up-front is almost nonexistent compared to  
24 the data shortage and management cost.

1                   SENATOR SQUADRON: And "management"  
2                   being the key word there, even more than  
3                   storage, probably, if the curve continues on  
4                   storage.

5                   EX. DEP. COMMISSIONER GREEN: Yeah, if  
6                   you never need it, it's easy to store it.

7                   SENATOR SQUADRON: Finally, the  
8                   special counsel was proposed. I asked a  
9                   question last year, there was a little  
10                  ambiguity on it. It's been a year, the  
11                  special counsel proposal seems similar to  
12                  last year's, so maybe there's more clarity  
13                  this year.

14                  The Governor appoints a special  
15                  counsel to consider whether to recommend an  
16                  independent prosecutor is appointed. That  
17                  special counsel has the capacity to access  
18                  the grand jury findings and transcripts, all  
19                  of the information related to the grand jury  
20                  proceeding.

21                  Is the special counsel able to share  
22                  that information with the Executive or not?  
23                  And if not, is the special counsel able to  
24                  make a recommendation other than yea or nay

1 to justify or explain why the recommendation  
2 is what it is?

3 EX. DEP. COMMISSIONER GREEN: The way  
4 I read and understand the proposal, the  
5 special counsel would have the ability to  
6 share as much information as necessary in the  
7 context of making a recommendation to the  
8 Governor.

9 I don't believe that a reasonable  
10 reading of this bill or a reasonable  
11 interpretation would say that the special  
12 counsel is limited to walking into the  
13 Governor's office and saying yes or no and I  
14 can't answer any other questions.

15 SENATOR SQUADRON: And would the  
16 Governor be allowed to share that information  
17 in announcing to the public his or her  
18 decision, or would the Governor be under the  
19 same limitations on sharing information that  
20 emanates from a grand jury proceeding as  
21 everyone else is?

22 EX. DEP. COMMISSIONER GREEN: I don't  
23 read the bill in a way that would allow for  
24 additional disclosure of that information

1           beyond from the special counsel to the  
2           Governor.

3                         SENATOR SQUADRON:  Doesn't that take  
4           the black box of the grand jury room, extend  
5           it into the Executive, and then stop it right  
6           there, so that from the perspective of the  
7           public and policymakers and law enforcement  
8           in general, they're left with the same black  
9           box, just one where a different branch of  
10          government has also the ability to come out  
11          and tell us no more than we've heard before,  
12          which is just yes or no?

13                        EX. DEP. COMMISSIONER GREEN:  If that  
14          were the end of the day, you know, you could  
15          make that argument, I think.  But first of  
16          all, you're balancing or trying to balance  
17          some very important policy considerations  
18          here, and grand jury secrecy is one.

19                        And secondly, if the Governor,  
20          following a recommendation from the special  
21          counsel, appoints a special prosecutor, you  
22          know, I would argue that it's not the  
23          Governor's position at that point to be  
24          making public statements about the case

1           before the special prosecutor has a chance to  
2           do his or her work. I think that the  
3           appropriate course of action at that time  
4           would be not to disclose anything further  
5           until the special prosecutor has had an  
6           opportunity to do their job.

7                     SENATOR SQUADRON: Look, it's both --  
8           it's those two competing conclusions that  
9           lead to such concerns about this. You're  
10          probably right about that, but what does that  
11          say about the overall proposal? I think  
12          that's something that we still need to really  
13          consider.

14                    Thank you.

15                    EX. DEP. COMMISSIONER GREEN: Thank  
16          you.

17                    SENATOR KRUEGER: Thank you.  
18          Assembly.

19                    CHAIRMAN FARRELL: Thank you.  
20          Assemblyman O'Donnell.

21                    ASSEMBLYMAN O'DONNELL: Thank you very  
22          much.

23                    Once again, I agree with Mr. Graf.  
24          Okay? So I will take some medication when I

1 get home --

2 (Laughter.)

3 ASSEMBLYMAN O'DONNELL: -- to make  
4 sure I arrive tomorrow in the same state I  
5 arrived yesterday.

6 But I believe in the secrecy of the  
7 grand jury. And I believe that it serves a  
8 very important function. And mostly what I  
9 believe, that it's outrageous to suggest that  
10 because a defendant happens to be a member of  
11 law enforcement that her or his rights are  
12 less than all the other people who are  
13 defendants in a grand jury.

14 So having said that, I don't believe  
15 we should be opening them up. I don't  
16 believe we should be giving the names of  
17 witnesses. And I don't believe we should be  
18 giving out what the nature of the testimony  
19 is.

20 EX. DEP. COMMISSIONER GREEN: I guess  
21 that's --

22 ASSEMBLYMAN O'DONNELL: However --  
23 there's a however -- what a DA charges to the  
24 grand jury is different. You and your

1 cohorts who are DAs are elected, they owe an  
2 obligation to their citizenry.

3 So to that end, I have a bill that  
4 would allow any citizen to request from a DA  
5 what did you charge that grand jury in this  
6 case. Because in the cases where we've had  
7 these problems where there's been great  
8 public outcry, I fear that the DA is not  
9 charging the grand jury in a way that many of  
10 their constituents would have wanted them to  
11 do.

12 And so just like my votes are public,  
13 just like my speech here will probably be put  
14 up by one of the people in this room a little  
15 while from now, the actions of DAs should be  
16 subject to the same scrutiny.

17 So do you think it would be  
18 appropriate to require that DAs be required  
19 to release what charges they gave to a grand  
20 jury in cases where the public wants to know?

21 EX. DEP. COMMISSIONER GREEN: First of  
22 all, I think I differ with you in terms of  
23 your characterization of the proposal. I  
24 don't think it subjects police to a different

1 standard. Right now the Governor --

2 ASSEMBLYMAN O'DONNELL: No, sir, I  
3 wasn't saying that was in the proposal, I was  
4 saying that was my opinion.

5 EX. DEP. COMMISSIONER GREEN: I'd  
6 appreciate the opportunity to respond.

7 ASSEMBLYMAN O'DONNELL: Okay.

8 EX. DEP. COMMISSIONER GREEN: Right  
9 now the Governor has the power to appoint a  
10 special prosecutor. I remember the death  
11 penalty case in the Bronx where Governor  
12 Pataki exercised that power, and frankly the  
13 ability to review that power is very limited.  
14 And right now the information that the  
15 Governor has at his or her disposal when  
16 making that very important decision is very  
17 limited.

18 What this proposal does is not give  
19 the Governor any additional powers in terms  
20 of appointing a special prosecutor in cases  
21 involving police, because frankly he can do  
22 that already. What it does is give the  
23 Governor a mechanism to get information other  
24 than what's reported in the press, but real,



1 the picture looks like. Now what we know  
2 from just reading the paper, when famous  
3 celebrities who are really drop-dead  
4 gorgeous, they get paid millions of dollars  
5 because of how good-looking they are, when  
6 they get arrested, they look like they went  
7 to hell in a handbasket. Right? So even  
8 among the most gorgeous creatures in America,  
9 their arrest photos, they look guilty as can  
10 be.

11 So isn't there some inherent risk in  
12 putting in front of a jury a picture of a  
13 criminal defendant in their worst possible  
14 moment, looking the worst they could possibly  
15 look, and creating a -- and trampling on the  
16 presumption of innocence by putting such an  
17 image in front of them?

18 EX. DEP. COMMISSIONER GREEN: I guess  
19 the first thing I'd say is that the Innocence  
20 Project has been strenuously advocating for  
21 this, to me and publicly, for some period of  
22 time. And I can't believe that the Innocence  
23 Project would advocate for this if they felt  
24 that it was trampling on people's rights.

1                   And secondly, you know, in this day  
2                   and age -- you know, there was a time where I  
3                   think it would be reasonable to say if you  
4                   have a photo, it must be an arrest photo. If  
5                   I want a photo of someone in this day and  
6                   age, I go on the internet -- you know, and I  
7                   don't know how to do it as well as, you know,  
8                   so many --

9                   ASSEMBLYMAN O'DONNELL: Your  
10                  grandkids. Yes, I understand.

11                  EX. DEP. COMMISSIONER GREEN: -- other  
12                  people could, but you pull up a Facebook  
13                  photo, you pull up any other photo. You  
14                  know, so I think that the idea that the  
15                  public perception that you have a photo, it  
16                  must be an arrest photo may have been true 40  
17                  years ago. If I asked my kids today, I don't  
18                  think their first instinct would be you got  
19                  it from an arrest, I think their first  
20                  instinct would be you got it off the  
21                  internet.

22                  So, you know, I think things are  
23                  changing. And I think that all of those  
24                  things are important considerations, but at

1 the end of the day, when the Innocence  
2 Project is advocating for me saying this is  
3 the best way to ensure against wrongful  
4 identifications that lead to wrongful  
5 convictions, and this is what you should  
6 do -- and I think the last thing I'll say is  
7 they do that with a caveat, that the photo  
8 arrays have to be assembled and put together  
9 properly and the procedure has to be  
10 conducted properly before it's a good idea to  
11 let a jury see it. So it's not just that any  
12 photo array should go in and a jury should  
13 see it; we should have guidelines and  
14 standards about how the arrays have to be put  
15 together and about how the procedures have to  
16 be done. And if and only if you meet those  
17 standards, then we should allow a jury to  
18 hear them.

19 ASSEMBLYMAN O'DONNELL: I wouldn't  
20 dream of questioning Mr. Scheck or  
21 Mr. Neufeld and their commitment to  
22 innocence. And in fact, Mr. Scheck once  
23 tracked me down and congratulated me on my  
24 skills at cross-examination during one of

1           these hearings, so I consider that a high  
2           mark.

3                       But most of the defender organizations  
4           in the state do oppose this idea. And I  
5           guess this is one of those cases where the  
6           devil will always be in the details.

7                       The third point I'd like to raise has  
8           to do with these verified instruments that  
9           you want to talk about. You know, we have  
10          some experience in putting verified  
11          instruments out there. Where do we do that  
12          legislatively? We did that before the Parole  
13          Board. The Parole Board is currently  
14          required to use a verified instrument in  
15          determining release rates. And you know what  
16          happens? They ignore it. They ignore it,  
17          sir. We made them use them, they've used  
18          them, they look at them and say despite the  
19          fact that this instrument says X, I'm going  
20          to keep you in prison for two more years  
21          because I think that's the right thing to do.

22                      So in the end, any instrument, no  
23          matter how good it is, is only as useful as  
24          the person who's using its ability to use it

1           correctly. And so from my own personal --  
2           I'm not speaking for the panel -- from my own  
3           personal perspective, I would be unwilling to  
4           do that anywhere else in the state until you  
5           can talk to the people who work in the Parole  
6           Board to get them to do the job that we  
7           mandated that they do, which is take into  
8           account the information on that very  
9           instrument.

10                   EX. DEP. COMMISSIONER GREEN: I  
11           certainly can't speak for the Parole Board,  
12           but I agree with your point that the  
13           instruments are only as good as the use that  
14           the people who need to use them make of them.

15                   ASSEMBLYMAN O'DONNELL: Thank you very  
16           much.

17                   EX. DEP. COMMISSIONER GREEN: Thank  
18           you.

19                   CHAIRWOMAN YOUNG: Thank you,  
20           Assemblyman.

21                   Our next speaker is Senator Ruth  
22           Hassell-Thompson.

23                   SENATOR HASSELL-THOMPSON: Thank you,  
24           Madam Chair.

1                   Good afternoon, Mr. Green.

2                   EX. DEP. COMMISSIONER GREEN: Good  
3                   afternoon.

4                   SENATOR HASSELL-THOMPSON: I'd like to  
5                   explore some of the stuff we've been talking  
6                   about, but my time is going to be very  
7                   limited. So let's flip the switch a little  
8                   and go to the GIVE initiative that you talk  
9                   about and certainly that's in the budget.

10                  We understand that the GIVE initiative  
11                  is a replacement for Operation Impact, for  
12                  the most part. But you don't discuss the  
13                  specificity of what these outreach programs  
14                  are. Would you identify SNUG as perhaps  
15                  being one of those, or that type of model?

16                  EX. DEP. COMMISSIONER GREEN:  
17                  Absolutely.

18                  GIVE did replace Impact, you're right.  
19                  Whereas Impact allowed a wider focus, GIVE  
20                  focuses on shootings and homicides, and GIVE  
21                  identifies four strategies that law  
22                  enforcement can receive training and  
23                  technical assistance on and that we'll fund.  
24                  That's focused deterrence, hotspot policing,

1 crime prevention through environmental  
2 design, and street outreach work.

3 So street outreach work is  
4 specifically one of those four strategies  
5 that we will support, that we do support and  
6 we provide training on.

7 SENATOR HASSELL-THOMPSON: Okay, then  
8 I may be confused, then. You're saying that  
9 the street outreach that's a part of GIVE is  
10 not SNUG.

11 EX. DEP. COMMISSIONER GREEN: No. As  
12 part of GIVE, one of the requirements of GIVE  
13 is that all of the efforts that are funded by  
14 the state to get at shootings and homicides  
15 be aligned, so that we shouldn't have a GIVE  
16 initiative over here designed to reduce  
17 shootings and homicides and a SNUG initiative  
18 over here designed to do the same thing, but  
19 no coordination between the two.

20 SENATOR HASSELL-THOMPSON: Okay.  
21 Okay, good.

22 EX. DEP. COMMISSIONER GREEN: You  
23 know, and that's not to say we don't  
24 recognize that in a good street outreach

1 program, you know, there are pieces of it  
2 that can't be aligned with the police.

3 For example, when your outreach  
4 workers are out on the street, it's very  
5 important that people do not view them as an  
6 arm of the police. But by the same token,  
7 they both have the exact same goals. There's  
8 information they both have at a higher level  
9 that's very useful to both of them. So there  
10 has to be at least some level of coordination  
11 between those efforts.

12 SENATOR HASSELL-THOMPSON: How  
13 successful do you believe that the  
14 outreach -- it's been a year. And how  
15 successful do you think, number one, the  
16 outreach overall has been? And number two,  
17 its coordination with SNUG in terms of  
18 reducing crime in your hotspots?

19 EX. DEP. COMMISSIONER GREEN: We're  
20 actually heading into our third year, I  
21 believe, with the street outreach work. And  
22 I think that it is a huge asset. I think  
23 it's something we all should be very proud  
24 of. You know, certainly the Legislature for

1 providing the funding.

2 We've provided a structure, we have a  
3 statewide coordinator for the street outreach  
4 programs across the state. He visits every  
5 program at least once a month. He  
6 communicates with them regularly. In  
7 addition, we have a training director now, so  
8 we train every program manager, every  
9 supervisor, every outreach worker.

10 If you look at the jurisdictions  
11 across the state, you know, some are more  
12 advanced than others, they have different  
13 strengths. But, you know, there are  
14 instances in one jurisdiction where the  
15 police were having a spike in homicides and  
16 they reached out to the street outreach  
17 program, who on at least two separate  
18 occasions helped them get a handle on what  
19 was going on and really quashed the violence.

20 You know, there are stories from  
21 around the state where in different ways  
22 those street outreach programs have really  
23 helped control shootings, so -- and the other  
24 thing I'd say is I'm not aware of any other

1 state that has a statewide street outreach  
2 network that's organized and coordinated the  
3 way ours is.

4 So, you know, I think it's a huge tool  
5 in the toolbox and would certainly advocate  
6 that at a bare minimum we continue it.

7 SENATOR HASSELL-THOMPSON: We've used  
8 the Chicago Ceasefire model and some other  
9 models. Do you see us moving toward creating  
10 a New York model?

11 EX. DEP. COMMISSIONER GREEN: Yes.

12 You know, as with everything that I  
13 do, I like to look at everything that's out  
14 there, try and understand what the strong  
15 points are of all of the different  
16 approaches, and then take the strong points  
17 of all of them and put them into what I think  
18 is the best approach.

19 And, you know, certainly there are a  
20 lot of really good ideas in the Ceasefire  
21 Chicago Cure Violence model. But, for  
22 example, Teny Gross, out of the Institute for  
23 Nonviolence, has been doing this work since  
24 the mid-nineties and has a lot of good ideas

1 as well, and has done a lot of good work.  
2 And his ideas aren't necessarily the same as  
3 all of the Cure Violence ones out of Chicago.

4 So what we've tried to do is really  
5 work with Teny and understand his program and  
6 his thoughts, work with Cure Violence and  
7 understand theirs. And yes, at the end of  
8 the day I do envision us taking all of those  
9 ideas and putting them into what we think is  
10 the best model.

11 SENATOR HASSELL-THOMPSON: Thank you.

12 CHAIRWOMAN YOUNG: Thank you, Senator.  
13 Our next speaker -- well, I'm sorry. Do we  
14 have anyone from the Assembly?

15 Okay, our next speaker is Senator  
16 Velmanette Montgomery.

17 SENATOR MONTGOMERY: Thank you, Madam  
18 Chairwoman.

19 Good afternoon. It's finally  
20 afternoon.

21 EX. DEP. COMMISSIONER GREEN: Good  
22 afternoon.

23 SENATOR MONTGOMERY: I just wanted to  
24 ask you about the -- I guess two areas. One

1 is the reentry issue, and the other one is  
2 juvenile justice.

3 On reentry, I'm looking at the  
4 proposed budget for this time which reflects  
5 the Governor's -- some of the Governor's  
6 primary concerns, one of them being the whole  
7 question of reentry. And I know that the  
8 Governor has been working on that for some  
9 time, and I really appreciate the fact that  
10 this has become a primary concern.

11 I am, however -- I don't understand  
12 why it is that at the same time that we are  
13 concerned about reentry, there's  
14 \$12.8 million in reductions or eliminations,  
15 proposed eliminations of programs that are  
16 basically community-based, many of them  
17 specifically related to providing support  
18 services to people reentering the community.

19 And so I have a big question as to --  
20 obviously, many of these are legislative  
21 adds. However, I would like to hear from you  
22 how you, from your perspective, will be  
23 ensuring that we continue some of those very  
24 critical services. Because when people

1 return to community, when they return home,  
2 they look for people like me to find out  
3 where they can get some help immediately.  
4 They need housing, they are looking for  
5 employment, they need services that help them  
6 repair or access necessary papers that they  
7 -- or other information that they would need.

8 So where will those services fit into  
9 your budget as proposed?

10 EX. DEP. COMMISSIONER GREEN: And I  
11 can't speak to the legislative adds. It's my  
12 understanding that those are things that will  
13 be discussed as you go forward with the  
14 budget negotiations.

15 But in terms of the Governor's budget,  
16 there is no reduction in the DCJS budget with  
17 regard to any of our reentry or Alternative  
18 to Incarceration funding streams. And in  
19 fact, there's a \$2 million increase.

20 There's a \$1 million increase -- the  
21 prior budget was just over \$3 million for  
22 19 reentry task forces around the state.  
23 This year in the Governor's proposed budget  
24 it gives us another million dollars. That

1 will allow us to, assuming -- or if it is  
2 approved, start a 20th reentry task force in  
3 Queens, which obviously, given the volume of  
4 cases, is in need of a task force, but also  
5 strengthen all of the task forces across the  
6 state.

7           And then, secondly, there's an  
8 additional million-dollar add with regard to  
9 the Alternative to Incarceration programs  
10 that would allow us to help develop screening  
11 and assessment programs to make sure that the  
12 people coming into the criminal justice  
13 system at a very early point in time are  
14 screened and assessed so that their needs are  
15 understood by those making decisions --  
16 defense attorneys, judges, prosecutors -- and  
17 at the same time they understand what the  
18 needs are, they understand the inventory of  
19 programs available in that area so that  
20 people can get matched to the right programs  
21 and we have the best chance of breaking that  
22 cycle of recidivism.

23           So as to the programs or as to the  
24 funding streams for DCJS in the Governor's

1 proposed budget, none of them were cut and in  
2 fact they were increased by \$2 million.

3 SENATOR MONTGOMERY: All right. I  
4 just -- when I look at this list and I see  
5 programs like Exodus Transitional Community  
6 Center and Fortune Society and Community  
7 Service Society and those programs -- so  
8 obviously they will be coming to the  
9 Legislature to say we need funding. And  
10 these are, relatively speaking, small  
11 amounts -- \$100,000, \$200,000, and so forth.

12 However, the fact of the matter is  
13 each of those programs -- and if you put all  
14 of that together, we then begin to have a  
15 real network of reentry organizations, and  
16 each one is important and related to our  
17 success. The task forces, all due respect, I  
18 appreciate the work that they do, but they're  
19 not on the ground providing actual services.  
20 And so that's what I feel is missing, and I  
21 certainly hope that together we're going to  
22 ensure that the programs that need support  
23 will receive it.

24 And I would like to, in order for me

1 to see where the programs -- some of them  
2 certainly in my district, but in the city in  
3 particular -- where they fit into your  
4 framework, I would really appreciate having a  
5 list of those, because I don't know exactly  
6 where they all are at this point.

7 The second question -- and I'm out of  
8 time, unfortunately -- but I have a real  
9 interest in the juvenile justice work that  
10 you're doing and where you are with that,  
11 especially as it relates to Alternative to  
12 Incarceration programs.

13 EX. DEP. COMMISSIONER GREEN: I  
14 just -- I know you're out of time. I'll  
15 briefly say the Governor's budget does put  
16 \$26.2 million through DCJS into those  
17 on-the-ground programs you're talking about.  
18 I don't have the list with me. We'll  
19 certainly get it to you.

20 SENATOR MONTGOMERY: Thank you.

21 EX. DEP. COMMISSIONER GREEN: But just  
22 for example, Fortune gets a sizable amount of  
23 money --

24 SENATOR MONTGOMERY: Fortune Society?

1                   EX. DEP. COMMISSIONER GREEN: Fortune  
2                   Society, for their employment-based work,  
3                   working with people who are reentering, on  
4                   employment services.

5                   SENATOR MONTGOMERY: And there are  
6                   several others that you will let me know  
7                   where they stand as well?

8                   EX. DEP. COMMISSIONER GREEN: Yes.  
9                   We'll provide you a list of our funded  
10                  programs.

11                  SENATOR MONTGOMERY: Thank you very  
12                  much.

13                  EX. DEP. COMMISSIONER GREEN: Thank  
14                  you.

15                  CHAIRWOMAN YOUNG: Thank you, Senator.  
16                  That closes our discussion. So I want  
17                  to thank you very much, Executive Deputy  
18                  Commissioner Green. It's good to see you  
19                  again. And thank you for your testimony  
20                  today.

21                  EX. DEP. COMMISSIONER GREEN: Thank  
22                  you, Senator. Appreciate the time.

23                  CHAIRWOMAN YOUNG: Great. Our next  
24                  speaker is Acting Commissioner Anthony

1           Annucci, New York State Department of  
2           Corrections and Community Supervision.

3                     Thank you very much. Could I have  
4           some order, please.

5                     Welcome, Acting Commissioner Annucci.  
6           We're very glad to have you here today. I'm  
7           sure that the members, between the Senate and  
8           the Assembly, will have a lot of questions,  
9           and we look forward to your testimony. And  
10          at this time, you may begin.

11                    ACTING COMMISSIONER ANNUCCI: Thank  
12          you.

13                    Good afternoon, Chairwoman Young,  
14          Chairman Farrell, and other distinguished  
15          chairs and members of the Legislature. I am  
16          Anthony J. Annucci, acting commissioner of  
17          the Department of Corrections and Community  
18          Supervision. It is my honor to discuss some  
19          of the highlights of Governor Cuomo's  
20          Executive Budget plan.

21                    The Governor's policies are moving  
22          corrections in the right direction. Last  
23          year New York State's inmate population  
24          continued to decline, and there are now over

1           20,000 fewer inmates than there were in 1999.  
2           Still, New York State continues to be the  
3           safest large state with the lowest  
4           incarceration rate.

5                        To continue this trend of reduced  
6           incarcerations coupled with increased public  
7           safety, the department's proposed Executive  
8           Budget contains a number of important new  
9           initiatives. These include groundbreaking  
10          special housing unit reforms; the increased  
11          use of technology and updated policies to  
12          better supervise and secure our facilities;  
13          and several reentry initiatives designed to  
14          further reduce recidivism by upgrading  
15          educational opportunities and vocational  
16          training.

17                      Within our \$310 million capital  
18          budget, we are also moving forward with plans  
19          to transform Hudson into a hybrid youth  
20          facility for 16-and-17-year-olds. Despite  
21          the reduction in inmate population, the  
22          Executive Budget does not recommend any  
23          prison closures this year.

24                      Prison discipline is vital to the

1 safety of correction officers and inmates  
2 alike. We will undertake historical reforms  
3 in our approach to solitary confinement which  
4 will modernize prison discipline. These  
5 reforms will improve conditions within our  
6 segregation units and revise our disciplinary  
7 guidelines, while preserving safety and  
8 security. As we did for the seriously  
9 mentally ill, we will develop specialized  
10 programs to safely provide out-of-cell  
11 programming and treatment to inmates.

12 Inmate reentry programming, including  
13 education and vocational training, is a vital  
14 part of the reform process. DOCCS will  
15 continue its expansion of college programming  
16 through \$7.5 million in funding from the  
17 Manhattan district attorney's office. This  
18 expansion will not cost taxpayer dollars.

19 College programming has been shown to  
20 significantly lower recidivism and increase  
21 the likelihood of a successful transition  
22 back into society. It also creates positive  
23 role models for other inmates to follow,  
24 ultimately leading to safer prisons.

1                   Further, in an effort to increase the  
2                   issuance of high school diplomas, we will  
3                   hire psychologists to diagnose adult inmates  
4                   with learning disabilities, and update our  
5                   Thinking for a Change program with a new  
6                   version issued by the National Institute of  
7                   Corrections, or NIC. In an effort to  
8                   modernize vocational training, we will also  
9                   upgrade several vocational print shops and  
10                  expand our computer vocational shops to  
11                  include computer coding.

12                  The department is focused on creating  
13                  the safest environment possible. In  
14                  partnership with the unions, we will continue  
15                  to develop strategies to reduce violence  
16                  within prisons and to conduct security  
17                  staffing reviews as outlined in the fiscal  
18                  year 2014-2015 budget. Last year we hired  
19                  103 correction officers.

20                  Also, we have either begun or will  
21                  pursue technological enhancements, training  
22                  improvements, and policy changes that will  
23                  enhance overall safety and security within  
24                  DOCCS facilities. These initiatives include

1 installation of fixed cameras, the deployment  
2 of thermal imaging and heartbeat detection  
3 devices, the installation of the rounds  
4 tracker system, the procurement of portable  
5 metal detectors, and the piloted use of body  
6 cameras to be worn by staff. The department  
7 will also be refining training in the areas  
8 of use of force and interpersonal  
9 communications to provide our staff with  
10 additional avenues to deescalate situations,  
11 before force becomes necessary.

12 In the upcoming year, we will also be  
13 pursuing many policy changes such as a new  
14 rule designation for synthetic marijuana, the  
15 expanded use of K-9 units, the elimination of  
16 metal containers from our commissaries, the  
17 use of secure vendors for packages, the  
18 piloting of pepper spray, and enhancement of  
19 tool control practices.

20 Our internal investigations unit has  
21 been completely overhauled and is now called  
22 the Office of Special Investigations, or OSI.  
23 A new chief and a new director of operations  
24 have been appointed. The chief now reports

1 directly to me, and we meet regularly. The  
2 new leaders are both attorneys with  
3 significant law enforcement backgrounds.  
4 Under their leadership, a number of new  
5 initiatives have been implemented to foster  
6 an atmosphere of ethical behavior and  
7 thorough investigations.

8 OSI has also bolstered its ranks with  
9 highly qualified investigators and analysts  
10 with decades of experience from outside law  
11 enforcement agencies.

12 Most importantly, DOCCS will be  
13 working with our federal partners to  
14 establish best practices. In 2015, the NIC  
15 conducted comprehensive security audits at  
16 several facilities, and in 2016 they will  
17 audit several more. The NIC will also review  
18 our training academy, and train selected  
19 staff members on how to conduct security  
20 audits.

21 To build upon these best practices,  
22 DOCCS will be instituting a process for  
23 unannounced security audits and risk  
24 assessments in line with NIC's suggestions.

1 DOCCS is also responsible for  
2 approximately 36,000 parolees. In 2014, we  
3 issued a recidivism report showing that just  
4 nine percent of ex-offenders released in 2010  
5 were sent back to prison within three years,  
6 based upon a new felony conviction. This  
7 figure was the lowest since 1985. And for  
8 those released in 2011, the figure has been  
9 lowered further to 8.6 percent. We are  
10 making an impact.

11 Despite this positive trend, we know  
12 there is still work to do. we have undertaken  
13 an enhanced supervision project in  
14 Monroe County that focuses on our  
15 highest-risk parolees with GPS monitors and a  
16 lower caseload ratio. We also launched  
17 combined operations, involving Community  
18 Supervision and our Office of Special  
19 Investigations, to apprehend parole violators  
20 in careful coordination with our federal,  
21 state and local Law enforcement partners.

22 We also implemented last year's law  
23 ensuring next-day reporting, and we arranged  
24 for inmates to be released from facilities in

1 closer proximity to their home communities.

2 Opioid abuse is a serious concern when  
3 it comes to recently released inmates. To  
4 address this, DOCCS has started an opioid  
5 overdose prevention program, in collaboration  
6 with DOH and the Harm Reduction Coalition.  
7 We now issue Naloxone kits -- the opioid  
8 antidote -- to inmates scheduled for release,  
9 and provide training on how to use it. To  
10 help prevent relapse, DOCCS will also be  
11 using Vivitrol paired with traditional drug  
12 treatment counseling.

13 In conclusion, there again will be  
14 many challenges and expectations for DOCCS  
15 and the thousands of hardworking employees  
16 who perform their responsibilities in an  
17 exemplary manner, often under dangerous and  
18 difficult circumstances. The Governor's  
19 proposed budget will place DOCCS in an  
20 advantageous position to fulfill these  
21 expectations.

22 Thank you, and I will be happy to  
23 answer any questions.

24 CHAIRWOMAN YOUNG: Thank you very

1 much.

2 Our first speaker is Senator Mike  
3 Nozzolio.

4 SENATOR NOZZOLIO: Thank you, Madam  
5 Chair.

6 Good afternoon, Acting Commissioner.

7 ACTING COMMISSIONER ANNUCCI: Good  
8 afternoon, Senator.

9 SENATOR NOZZOLIO: Another year of  
10 acting, Anthony.

11 But you've had a hard year. All  
12 kidding aside, it's been a very, very  
13 difficult year for the department, for the  
14 people who work in the department. And I  
15 want to probe just a couple of things  
16 regarding what was so costly an effort last  
17 year.

18 The cost of the prison break from  
19 Clinton, what does the department estimate  
20 those costs to be?

21 ACTING COMMISSIONER ANNUCCI: \$12.7  
22 million for the escape.

23 SENATOR NOZZOLIO: Now, are these  
24 exclusively personnel costs, or how do you

1 estimate those elements?

2 ACTING COMMISSIONER ANNUCCI: Mostly  
3 those expenses were related to overtime for  
4 staff involved in the pursuit. Some  
5 ancillary services like food and things of  
6 that nature, lodging. But mostly the  
7 overtime.

8 SENATOR NOZZOLIO: That those costs  
9 are exclusively for the department --

10 ACTING COMMISSIONER ANNUCCI: Yes.

11 SENATOR NOZZOLIO: -- not inclusive of  
12 costs that coordinating agencies,  
13 particularly the New York State Police, had  
14 to engage in; is that correct?

15 ACTING COMMISSIONER ANNUCCI: Those  
16 were just DOCCS's expenses.

17 SENATOR NOZZOLIO: Our estimates have  
18 the total cost on or about \$23 million to  
19 \$25 million. Does that sound about right to  
20 you?

21 ACTING COMMISSIONER ANNUCCI: I really  
22 can't speculate on those other costs,  
23 Senator.

24 SENATOR NOZZOLIO: Tell us what kinds

1 of things has the department had to  
2 reevaluate since that prison break?

3 ACTING COMMISSIONER ANNUCCI: There  
4 are many steps that we have taken to bolster  
5 security. I've had conversations with  
6 every one of my superintendents, in  
7 particular my maximum security  
8 superintendents. We've issued a number of  
9 memoranda to reinforce basic security  
10 protocols, basic frisk practices, ensuring  
11 that superintendents understand their  
12 responsibility to oversee all three shifts,  
13 to be there at unannounced times, to ensure  
14 that security supervisors are making rounds.

15 We are also investing in a lot of new  
16 equipment to better enable our security staff  
17 to perform their responsibilities. We have  
18 the thermal imaging devices, we have portable  
19 metal detectors. We are enforcing a lot more  
20 frisking of staff periodically. Going  
21 forward with our training, we have the Games  
22 Inmates Play video so that that will be shown  
23 to every employee, and they can understand  
24 the dangers involved with becoming too

1 familiar with inmates.

2 There are many, many things that we've  
3 done, Senator. I can provide you a full  
4 list. I don't want to take up too much time.

5 SENATOR NOZZOLIO: I think that broad  
6 outline is important, it's important that you  
7 provide it to our members of the Public  
8 Protection Budget Subcommittee, especially  
9 Senator Gallivan, as chair of the Crime and  
10 Corrections Committee.

11 And I'm not going to ask you any more  
12 questions about those issues; that's, I  
13 think, certainly a topic Senator Gallivan  
14 wants to pursue.

15 There is one area that I'd like to ask  
16 you about, and that's the employee Joyce  
17 Mitchell. Obviously you're familiar with who  
18 that is, one of the linchpins in the ability  
19 for the prisoners to escape. Do you know  
20 what her title was?

21 ACTING COMMISSIONER ANNUCCI: I think  
22 it was industrial training specialist,  
23 something along those lines.

24 SENATOR NOZZOLIO: It's my

1           understanding that it's something to that  
2           effect, industrial training, in the prison  
3           tailor shop, as a prison tailor shop  
4           instructor. Her salary, we looked it up, is  
5           \$57,697 a year.

6                     Did Joyce Mitchell have any advisory  
7           capacity to the Department of Corrections in  
8           any way, any management or reporting beyond  
9           management within the correctional facility?

10                    ACTING COMMISSIONER ANNUCCI: Senator,  
11           before I go further, I cannot comment on  
12           anything that is the subject of a pending  
13           investigation.

14                    SENATOR NOZZOLIO: The inspector  
15           general -- I know Senator Gallivan has asked  
16           a number of these questions, and we've gotten  
17           the same answer so far, Commissioner. Do you  
18           have any idea how long that investigation  
19           will take and when a report will be issued?

20                    ACTING COMMISSIONER ANNUCCI: I cannot  
21           answer that.

22                    SENATOR NOZZOLIO: Here's my -- let me  
23           just ask you, then, not about Joyce Mitchell  
24           but about your other industrial training

1 supervisors across the correctional system.  
2 Do any of your industrial training  
3 supervisors have policymaking  
4 responsibilities within the Department of  
5 Corrections?

6 ACTING COMMISSIONER ANNUCCI: I have  
7 met with my industrial training  
8 superintendents. The Corcraft industry  
9 aspect of our operations is very important.  
10 Inmates are meaningfully employed, they learn  
11 a skill, they provide an important service  
12 for our customers throughout the state. And  
13 I am hopeful of continuing that and upgrading  
14 it in many ways.

15 They can occasionally sit in on  
16 executive staff meetings at the facility  
17 level, because everybody is important. And  
18 they certainly should listen to all the  
19 security concerns and other  
20 cross-disciplinary issues. But I don't think  
21 they have formal policy roles as you define  
22 it, if I understand your question correctly.

23 But they certainly -- every one of my  
24 staff -- and I hammer this to the

1           superintendents: Your primary  
2           responsibility, among other things, is you  
3           have to know your jail. You have to walk and  
4           talk with everybody. Every employee is  
5           important in this agency. Everyone might  
6           have possible suggestions for you as to how  
7           to better improve operations for everybody's  
8           safety and security. So that is fundamental  
9           to me, that they have to make those kinds of  
10          rounds regularly.

11                    SENATOR NOZZOLIO: And that's  
12          exemplary. I know you've always listened to  
13          us. We're hopeful that you continue to  
14          listen to all the correctional employees with  
15          their suggestions and their input.

16                    But I guess in the hypothetical, it's  
17          safe to say that normally the industrial  
18          training supervisor doesn't have policymaking  
19          responsibilities within the correctional  
20          system. Is that safe to say?

21                    ACTING COMMISSIONER ANNUCCI: I  
22          believe that's safe to say, if I understand  
23          your question.

24                    SENATOR NOZZOLIO: And yet

1           potentially, if an industrial training  
2           supervisor was involved -- again, in the  
3           hypothetical -- directly involved with  
4           criminality regarding a prison escape which  
5           cost the taxpayers of this state at least  
6           \$12 million from the Department of  
7           Corrections, and our estimates are another  
8           \$11 million to \$13 million for the Department  
9           of State Police, as well as other federal  
10          costs to the FBI -- that one industrial  
11          training supervisor could have cost the  
12          taxpayers of this state at least \$25 million.

13                   And that employee of the State of  
14          New York and the taxpayers of this state has  
15          had absolutely no policy implications, or  
16          extremely limited policy implications within  
17          her -- within their position of  
18          responsibility. I think that's the point  
19          that glares to me, Commissioner, that the  
20          impact of wrongdoing within state employment,  
21          entrusted to the taxpayers through state  
22          employment, can have enormous financial  
23          implications. Not to mention the havoc that  
24          it created within your department in trying

1 to deal with these issues, and that you're  
2 going to continue to deal with these issues.

3 I know Senator Gallivan is awaiting  
4 the inspector general's report, certainly  
5 other members of the Corrections Committee as  
6 well as the Codes Committee are waiting for  
7 that report, and we hope that we'll have the  
8 opportunity to sit down with you as you  
9 continue to make improvements in the  
10 correctional system on a day-to-day basis.

11 So thank you for your dialogue, and I  
12 appreciate the important responsibilities  
13 that you have.

14 ACTING COMMISSIONER ANNUCCI: Thank  
15 you, Senator, especially for all your years  
16 of service to our agency. We will miss you.

17 SENATOR NOZZOLIO: Thank you,  
18 Commissioner.

19 SENATOR KRUEGER: Assembly?

20 ASSEMBLYMAN McDONALD: Thank you. Our  
21 next speaker is Assemblymember O'Donnell.

22 ASSEMBLYMAN O'DONNELL: Good  
23 afternoon. It's very nice to see you again.

24 ACTING COMMISSIONER ANNUCCI: Good

1           afternoon.

2                   ASSEMBLYMAN O'DONNELL: I was watching  
3           TV last night; I got to watch Mr. Sweat's  
4           sentencing time, and he was sentenced to  
5           \$80,000 of restitution. Which I thought was  
6           an odd number, given the number you just gave  
7           us, \$12 million. And of course when you pay  
8           your inmates \$1.25 an hour, I don't think  
9           you're going to get back that \$80,000 anytime  
10          soon.

11                   But I also assume you don't have a  
12          budget line for escapes, right? So where did  
13          the \$12 million come from?

14                   ACTING COMMISSIONER ANNUCCI: The  
15          Division of the Budget provided the money for  
16          us.

17                   ASSEMBLYMAN O'DONNELL: So did you  
18          call somebody up and say "We need \$12 million  
19          for overtime?" Is that what -- like that?

20                   ACTING COMMISSIONER ANNUCCI: They  
21          found a funding source for us.

22                   ASSEMBLYMAN O'DONNELL: They're very  
23          good like that. Funny how that is.

24                   Let me talk about this new Office of

1 Special Investigations, which used to be the  
2 inspector general's office, is that correct?

3 ACTING COMMISSIONER ANNUCCI: Yes.

4 ASSEMBLYMAN O'DONNELL: You know, the  
5 other day I went out and bought some new  
6 jeans and they were called skinny jeans. But  
7 that doesn't mean I'm skinny. You know what  
8 I mean?

9 So I wonder if by changing the name  
10 from one entity to another is enough to  
11 effectuate real change. I just heard you  
12 answering some of the Senator's questions. I  
13 don't want you to divulge anything you know  
14 about the inspector general and when and if  
15 her report will be coming out, nor about what  
16 it says. But internally, your own inspector  
17 general's office had a report against  
18 Ms. Mitchell that they found lacking in  
19 veracity or whatever you want to say, and  
20 dismissed that.

21 Isn't that of great concern to you,  
22 that the entity that is in charge,  
23 investigating internally, ignored the fact  
24 that this inappropriate relationship was

1 going on? I mean, I'm not suggesting that  
2 you would have guessed that would have led to  
3 a \$12 million overtime charge for an escape.  
4 But doesn't that give you concern?

5 ACTING COMMISSIONER ANNUCCI: I cannot  
6 comment on something that's the subject of a  
7 pending investigation.

8 ASSEMBLYMAN O'DONNELL: Well, then  
9 let's talk about the budget. You have 125  
10 investigators. Can you tell me what is the  
11 budget of the Office of Special  
12 Investigation?

13 ACTING COMMISSIONER ANNUCCI: I can  
14 get that information for you. I don't know  
15 the exact amount.

16 ASSEMBLYMAN O'DONNELL: We did a  
17 hearing last year, the end of last year,  
18 where you unfortunately couldn't come -- we  
19 missed you, Tony -- to look at the question  
20 of how do other places in the country and in  
21 the world deal with this problem. Right? So  
22 we have this very high-profile escape that  
23 cost us possibly up to \$25 million, people's  
24 lives were upended. And seemingly, the

1 mechanisms that you had to provide oversight  
2 within your system failed.

3 And what we learned was that in  
4 something like 42 other states, they have a  
5 separate office of an ombudsman. In Canada,  
6 in England and in Wales, they all have their  
7 own outside agency specifically for the  
8 purpose of conducting investigations inside  
9 the prison system. What do you think of  
10 that?

11 ACTING COMMISSIONER ANNUCCI: Well,  
12 Assemblyman, we have a lot of outside  
13 entities that have access to our prisons  
14 right now. The State Commission of  
15 Correction can visit at will, any member of  
16 the Legislature can visit at will, together  
17 with any number of their aides. We've  
18 entertained requests where aides can come by  
19 themselves. Any district attorney can visit.  
20 We have outside entities like PAMI that come  
21 and do investigations with respect to their  
22 clients. We have the Justice Center that  
23 comes in. The Justice Department can come  
24 in, and U.S. Attorneys in connection with any

1 pending investigation.

2 We know the Correctional Association  
3 comes in, they do their site visits, they  
4 come in with as many as eight to 12 people.  
5 We accord them privileged correspondence  
6 rights so that any inmate that writes to  
7 them, it goes out sealed, it comes in sealed,  
8 it's not read by staff.

9 So there are a lot of entities now  
10 that presently have access.

11 I'd like to for a moment talk briefly  
12 about how we have reformulated significantly  
13 our OSI office. First, there's an attorney  
14 at the top now. That wasn't the case. He  
15 has an extensive law enforcement background.  
16 He brought in another attorney with an  
17 extensive law enforcement background. They  
18 have since made significant efforts to link  
19 with the U.S. Attorneys, with the FBI, with  
20 all local district attorneys. They bring  
21 cases to them. They've also brought in many  
22 other outside investigators.

23 So we have new energy from the outside  
24 mixing in with experienced people. You have

1 to understand how jails operate in order to  
2 conduct a proper investigation. They have  
3 changed how they process cases, they have a  
4 new initiative where they're going to do an  
5 analysis of an entire facility and they're  
6 going to speak to every employee and get  
7 feedback from inmates so that we can get  
8 better results on our investigations.

9 There's a lot of things that they are  
10 doing that I am very hopeful about, including  
11 now they directly report to me, and I meet  
12 with them regularly to go over where they've  
13 gone. So I think we are moving in the right  
14 direction in this area.

15 ASSEMBLYMAN O'DONNELL: Well, I  
16 appreciate your point of view. I just want  
17 to share with you that we are the outlier  
18 here in New York in how we do this. Those  
19 left-wing places like Indiana do it  
20 differently, and we had great information and  
21 testimony that was provided all day, both  
22 from those ombudspersons and what they do.

23 And then we also had family members  
24 who were not here -- family members of

1 inmates do not complain about the treatment  
2 by the corrections officers. In fact, most  
3 of them were complaining about their  
4 treatment by other inmates -- but by their  
5 inability to get information from somebody  
6 until they found me.

7 And so I think the time has come for  
8 New York to say is this the right way to do  
9 this, is there another way to run this  
10 railroad, and we'll be taking that up under  
11 consideration.

12 In this year's budget you have  
13 requested \$3.1 billion, which was up from  
14 last year's \$2.9 billion, an increase of  
15 8.02 percent -- despite the fact that the  
16 prison population went from 53,000 to 51,000.

17 Can you address that?

18 ACTING COMMISSIONER ANNUCCI: Well,  
19 there are increased costs related to health  
20 services, \$120 million alone just for  
21 medications. We are spending more money to  
22 implement the new SHU settlement, which is  
23 groundbreaking. There's a lot of rehab that  
24 has to be done, there will be new staff added

1 for that.

2           There are other initiatives related to  
3 reentry that are important for the Governor,  
4 and they make a lot of sense, related to  
5 upgrading our vocational programming, our  
6 Thinking for a Change. So there's a lot of  
7 initiatives there, as well as for the youth  
8 initiative with respect to the Hudson  
9 Correctional Facility. There are additional  
10 staff added there. And a lot for the capital  
11 projects that we have to undertake to make  
12 that happen.

13           ASSEMBLYMAN O'DONNELL: Thank you for  
14 bringing that up. I'd like to address that  
15 issue. I, as you well know, have been to 27  
16 prison visits in my capacity as chair of the  
17 Corrections Committee, and I have been to  
18 Hudson and Coxsackie twice.

19           And so my first question for you is  
20 given the small number of prisoners that you  
21 have who are 16 and 17, why are you not  
22 putting them all together? So why are you  
23 keeping a small cadre of them at Coxsackie  
24 and still yet also building a second -- not

1 building, renovating, whatever you call that,  
2 the Hudson? So are you removing all the  
3 adults from the Hudson?

4 ACTING COMMISSIONER ANNUCCI:  
5 Eventually, yes. Right now what we  
6 implemented was a housing arrangement where  
7 16- and 17-year-olds are either placed at  
8 Woodbourne, at Greene, or at Cocksackie if  
9 they require maximum security placement.

10 Going forward, the plan is for all 16-  
11 and 17-year-olds to be removed to Hudson,  
12 with the exception of those that still  
13 require maximum security placement.

14 ASSEMBLYMAN O'DONNELL: I was at  
15 Greene when they began the process of the  
16 renovation of Greene to allow for 16- and  
17 17-year-olds. That was to be in PREA  
18 compliance. So why the change? Like why did  
19 you originally come up with the idea we're  
20 going to put the medium security  
21 PREA-compliant units in different places?  
22 And then why did you decide now, no, they all  
23 have to be in the same place?

24 ACTING COMMISSIONER ANNUCCI: This is

1 the next logical step. The Governor is  
2 really committed to removing 16- and  
3 17-year-olds from adult prisons globally, the  
4 Raise the Age initiative. We're tied with  
5 North Carolina in last place, so to speak.  
6 It would be a lot easier for us as a system  
7 if every person walking through our door was  
8 at least 18 or over.

9 The PREA requirements require us to  
10 separate, by sight and sound, all 16- or  
11 17-year-olds. And to do that effectively, we  
12 looked at the existing services at the time.  
13 And it made sense to use Woodbourne because  
14 it had some cells, it made sense to use  
15 Greene, and it made sense to use Cocksackie  
16 for those that would require maximum security  
17 placement.

18 Now this initiative is the next step,  
19 because it's going to completely remove them  
20 from the adult prisons. But Hudson will  
21 still remain as a correctional facility.

22 So it is our hope that you do raise  
23 the age, because the other thing is this.  
24 With any 17-year-old right now on our system,

1           if they come in just two months shy of their  
2           birthday, they have to go into one of these  
3           facilities where we currently cohort them,  
4           either Woodbourne, Cossackie, and, in future,  
5           Hudson. But once they turn 18, we have to  
6           immediately uplift them and move them to a  
7           general confinement facility.

8                         So the Raise the Age initiative will  
9           allow the Office of Children and Family  
10          Services to hold on to them, to continue in  
11          their program, to decide when the appropriate  
12          time is to transfer them to us as adults,  
13          either at 21 or possibly later. That, I  
14          think, is the best possible solution going  
15          forward for everyone.

16                        ASSEMBLYMAN O'DONNELL: But back to  
17          the problem at hand with segregating out the  
18          maximum security prisoners into Cossackie.  
19          As I spoke to you beforehand, when I went  
20          there relatively recently, they were one  
21          unhappy group of people who -- not because  
22          they were in prison, but they felt that they  
23          were almost in solitary, that they were being  
24          punished. And they kept on saying to me and

1 the other people there, Why did you do this  
2 to us?

3 So what do you intend to do at Hudson  
4 to prevent that from being repeated for the  
5 medium-security 16- and 17-year-olds that  
6 you're putting into that facility?

7 ACTING COMMISSIONER ANNUCCI: Well,  
8 the numbers will be much more significant.  
9 And they'll be out and they'll be  
10 participating in the general-confinement  
11 program, they'll have free rein of the  
12 facility because we don't have to worry about  
13 any separation by sight or sound. There will  
14 be no one 18 or over at that facility.

15 ASSEMBLYMAN O'DONNELL: Well, one last  
16 question, thank you.

17 When I originally toured Hudson you  
18 were a little upset with me because I went to  
19 the crappy dorm, or I went to the one place  
20 that was really like crumbling down. It was  
21 really decrepit.

22 Are you intending to put those 16- and  
23 17-year-olds into that crappy dorm? I don't  
24 know what the word would be. But you know

1           what I'm talking about, right? So like  
2           literally there were rooms that eight inmates  
3           slept, you know, in beds next to one another  
4           in a room that was probably built for four.

5                     Is that where you're putting these  
6           kids?

7                     ACTING COMMISSIONER ANNUCCI: We are  
8           upgrading. We're spending a lot of money to  
9           upgrade the place to make it suitable for  
10          children.

11                    ASSEMBLYMAN O'DONNELL: And there will  
12          still be adults on the work release side of  
13          the prison?

14                    ACTING COMMISSIONER ANNUCCI: Yes.  
15          That is outside the secure perimeter. So the  
16          temporary release, industrial training  
17          program, will still continue to operate in  
18          that building.

19                    ASSEMBLYMAN O'DONNELL: Okay. I just  
20          want to take an opportunity to thank you for  
21          how responsive you have been to me and my  
22          staff and for answering all the letters that  
23          I take the time to write. Thank you very  
24          much.

1                   ACTING COMMISSIONER ANNUCCI: Thank  
2                   you, Assemblyman.

3                   ASSEMBLYMAN McDONALD: Thank you.  
4                   Senate?

5                   CHAIRWOMAN YOUNG: Thank you very  
6                   much. Our next speaker is Senator Patrick  
7                   Gallivan, chair of Crime and Corrections.

8                   SENATOR GALLIVAN: Thank you, Madam  
9                   Chair.

10                  Commissioner, good afternoon.

11                  ACTING COMMISSIONER ANNUCCI: Good  
12                  afternoon, Senator.

13                  SENATOR GALLIVAN: I can't help but  
14                  add to the comments of Senator Nozzolio. You  
15                  have had a very challenging year, and we  
16                  understand that.

17                  I also understand that the inspector  
18                  general report is still pending, there's  
19                  pending investigations related to the escape  
20                  and looking into it. And I think -- I'd like  
21                  you to understand how frustrating it is for  
22                  us. We've got a responsibility, an oversight  
23                  responsibility, starting with the  
24                  Constitution, the various laws, the rules of

1 the Senate. And I'll get into some of the  
2 safety and security issues.

3 But when we see overdoses, when we see  
4 assaults on staff, when we see assaults on  
5 inmates, when we see drugs in facilities and  
6 so on -- I mean, there's a very real  
7 frustration when, as chair of the Crime and  
8 Corrections Committee, people say: What are  
9 you doing about it? And how are you trying  
10 to address it?

11 And I've tried to be very respectful  
12 of the investigations that are going on, to  
13 not impede on any of them. But there will  
14 have to come a time when they're out that  
15 we'll have to have a more extensive public  
16 airing of the events leading up to that.

17 But nonetheless, I hope you understand  
18 that handicaps us right at this point,  
19 especially when we're considering a package  
20 that's spending \$3 billion, 3 billion  
21 taxpayer dollars.

22 So safety and security. That is --  
23 it's evident throughout your testimony, very  
24 appropriately so. And since my time in this

1 chair and yours in that chair, I know that  
2 that is something that you've talked about  
3 each time that you're before us, and pretty  
4 much every time you and I have a  
5 conversation.

6 And I want to point to just a couple  
7 of different things. I have a letter that  
8 you wrote to all the inmates back in April of  
9 2015 -- which I commend you for taking a very  
10 responsible action while at the same time  
11 admitting failures of the system and warning  
12 them about the dangers of synthetic  
13 marijuana. And we really should rightly be  
14 concerned about that.

15 I've got some data regarding  
16 contraband in facilities that has continued  
17 to increase each of the last four years, last  
18 year being the highest total ever.

19 Inmate-on-staff assaults, same thing, have  
20 continued to increase each of the last three  
21 or four years, highest total ever.

22 Inmate-on-inmate assaults, same thing.

23 So no matter how we look at it, we've  
24 got problems and concerns. And it doesn't

1 matter if you are there defending the  
2 correction officer or some family member very  
3 concerned about their brother, sister,  
4 whomever it might be in a correctional  
5 facility. Your foremost obligation is to  
6 provide for the safety, security, humane  
7 constitutional treatment inside those  
8 facilities.

9 So of course it begs the question,  
10 what are we doing about all this? We're  
11 going in the wrong direction each of the last  
12 three or four years.

13 But having said that, I know your  
14 testimony started to address that. So the  
15 security staffing reviews that we took on two  
16 years ago, can you tell me where they -- and  
17 I know you briefly mentioned them. But can  
18 you tell me where you are along that process?

19 ACTING COMMISSIONER ANNUCCI: We've  
20 completed the next -- I think it's 18 audits.  
21 We've shared that information with the two  
22 unions -- NYSCOPBA, Council 82. We're  
23 awaiting their feedback. And then we'll send  
24 the final set of recommendations to the

1 Division of the Budget.

2 SENATOR GALLIVAN: When did you  
3 anticipate the review of the entire system  
4 will be completed, of all the facilities?

5 ACTING COMMISSIONER ANNUCCI: The  
6 third year will be next year.

7 SENATOR GALLIVAN: And partly in  
8 response, I'm assuming, to some of the things  
9 that have taken place as you're doing your  
10 internal review of the escape at Clinton, as  
11 well as the security staffing reviews, your  
12 testimony talked about the technological  
13 enhancements, training improvements, policy  
14 changes -- begun some things, are going to  
15 begin some others.

16 ACTING COMMISSIONER ANNUCCI: Mm-hmm.

17 SENATOR GALLIVAN: It can't come soon  
18 enough. I think you agree with that. But  
19 how far along are we with these things, and  
20 how can we accelerate it so these -- which  
21 you can't see, but obviously the chart that  
22 goes up --

23 ACTING COMMISSIONER ANNUCCI: Yes.

24 SENATOR GALLIVAN: -- starts going in

1 the other direction?

2 ACTING COMMISSIONER ANNUCCI: Right.

3 The first thing is that we have made  
4 arrangements to change our rules, our  
5 disciplinary rules, so that K2, or synthetic  
6 marijuana, is defined as a drug for purposes  
7 of our disciplinary system.

8 That required a formal change in a  
9 rule and then serving it on every inmate. So  
10 I think the date where it officially will  
11 take effect is the next couple of weeks or  
12 few weeks. So that will enhance our ability  
13 to discipline appropriately the individuals  
14 that engage in that.

15 The next thing that we've done is  
16 we've sent out notices to advise the vendors  
17 that supply products to our commissaries that  
18 we will no longer be able to accept canned  
19 goods. There are too many instances where  
20 can lids are being used for weaponry. And  
21 we've talked to other systems, we're one of  
22 the few states that's in this area that still  
23 does that sort of thing.

24 So we're confident that we can supply

1 other products that are packaged in ways so  
2 that ultimately we will be removing can lids  
3 from our commissaries.

4 And we will make similar steps, you  
5 know, when you buy from secure vendors. So  
6 that's the next change. We're going to allow  
7 inmates to buy only from secure vendors that  
8 we've identified. Because this would  
9 prevent -- assuming no one is compromised by  
10 the secure vendors we select, and they will  
11 have to prove to us their track record --  
12 that purchasing goods from the outside and  
13 coming into the facilities, A, will not have  
14 can lids and, B, hopefully will no longer  
15 have drugs secreted --

16 SENATOR GALLIVAN: If I can just stay  
17 right along the commissaries, I had -- I know  
18 this has been talked about for years. I had  
19 a meeting with the deputy secretary for  
20 public safety several months ago, and he  
21 talked about an RFP either being prepared or  
22 going out for -- for a central commissary, I  
23 think?

24 ACTING COMMISSIONER ANNUCCI: Yes.

1                   SENATOR GALLIVAN: Is that still a  
2 plan?

3                   ACTING COMMISSIONER ANNUCCI: The  
4 commissary RFP is still out there. But  
5 meanwhile, for the existing vendors, we want  
6 to implement this now. That will also be  
7 part of the long-range RFP for the winning  
8 bidder there, but right now we want to make  
9 this change.

10                  SENATOR GALLIVAN: All right, let's --  
11 there will be much more to follow, I mean,  
12 with all the specific items, about trying to  
13 prevent contraband from coming into  
14 facilities, trying to stop the various  
15 assaults on staff or inmates. So I know  
16 we'll have many more discussions.

17                  If I may just talk very briefly -- you  
18 talked briefly about it as well in your  
19 testimony -- inmate discipline, the whole  
20 process. I know you had the settlement, you  
21 had the SHU lawsuit. Some things were  
22 prompted by that. And you've talked about  
23 the revamping of an inmate discipline system  
24 in your testimony.

1           Some of the concerns that people have  
2           come to me with from various facilities  
3           across the state is that inmate discipline  
4           has gone in the wrong direction and there's a  
5           feeling that that has contributed to the  
6           increase in assaults, be it on inmates or  
7           staff. Can you comment on that?

8           ACTING COMMISSIONER ANNUCCI: We  
9           continue to study and meet with our unions to  
10          get feedback.

11          Certainly, as we know -- we spoke  
12          about this maybe a year ago or two years  
13          ago -- the demographics of our population  
14          have changed. Many years ago we had 24,000  
15          drug offenders, mostly low-level drug  
16          offenders. And now, disproportionately, we  
17          have more violent felony offenders in our  
18          system, I think maybe 64 percent. We have  
19          9,500, 9,600 inmates that are serving  
20          sentences with maximums of life terms.

21          So those are changing demographics.  
22          That may be one of the reasons that we're  
23          seeing the uptick in assaults.

24          No assault is good. The majority of

1           assaults that do happen -- and as I  
2           explained, our definition of what constitutes  
3           an assault is much lower than what's in the  
4           Penal Law. It does not require physical  
5           injury. I throw this cup of water, I don't  
6           cause you injury, but it's an assault, it's  
7           a --

8                         SENATOR GALLIVAN: No, I understand  
9           that. And just if I may -- sorry to  
10          interrupt -- we can call it anything, but  
11          there should never be a time that an inmate  
12          puts his hands on another inmate or an inmate  
13          puts his hands on a correction officer.

14                        So I appreciate the semantics of it,  
15          but I think we're on the same page with that.  
16          I mean it's the order within a facility  
17          that's of concern.

18                        ACTING COMMISSIONER ANNUCCI: Mm-hmm.  
19          And I think, moving to the reforms that we've  
20          implemented or are planning to implement with  
21          the changes, we see that as very analogous to  
22          what we've done with the seriously mentally  
23          ill. And we planned that out, we spent the  
24          right amount of money, we developed programs

1           like the RMHU at Marcy, the one at Five  
2           Points, where we can safely bring inmates who  
3           were otherwise very problematic out of their  
4           cells to receive programming and treatment  
5           using secure "Re-Start" chairs.

6                         So we envision that this will help  
7           safety, because we're going to do the  
8           step-down program at one of our facilities, a  
9           couple of other step-down to the communities.  
10          We're going to change -- we have this  
11          elaborate CCP program that we're planning.  
12          We have a whole array of options, similar to  
13          what we did with the seriously mentally ill.

14                        And I think staff for the most part,  
15          unless I'm wrong, will tell you that they see  
16          what we've done with the seriously mentally  
17          ill in those programs at Marcy as working.  
18          And we're effectively changing behavior,  
19          which is our ultimate goal. We want to  
20          change behavior by difficult inmates.

21                        We see that going the same way  
22          ultimately -- it will take some time, we have  
23          to be patient. When we bring everything  
24          online, we think we'll have a safer system

1 for everybody.

2 SENATOR GALLIVAN: Commissioner, thank  
3 you. I would love to go on, but the chair is  
4 going to turn my microphone off because my  
5 time's up. Thank you very much.

6 CHAIRWOMAN YOUNG: Thank you, Senator.

7 ASSEMBLYMAN McDONALD: Thank you.

8 Our next speaker is Assemblymember  
9 Duprey.

10 ASSEMBLYWOMAN DUPREY: Good afternoon,  
11 Commissioner.

12 ACTING COMMISSIONER ANNUCCI: Good  
13 afternoon, Assemblywoman.

14 ASSEMBLYWOMAN DUPREY: Before I start,  
15 I would really be remiss -- several people  
16 have already spoken about the event that  
17 happened in my district in June, and I want  
18 to extend my thanks to you personally,  
19 Commissioner, to your administrative staff  
20 for your tremendous cooperation during the  
21 most difficult 23 days that I think probably  
22 the Department of Corrections, certainly  
23 anyone in my district, has ever had to  
24 endure.

1                   We're glad it didn't go on any longer.  
2                   I might have asked all of you to register to  
3                   vote, so -- but I know you were all there,  
4                   and you were there a lot and for a long time,  
5                   and your support was greatly appreciated.

6                   ACTING COMMISSIONER ANNUCCI: Thank  
7                   you, Assemblywoman.

8                   ASSEMBLYWOMAN DUPREY: And continues  
9                   to be.

10                  A couple of the Senators mentioned the  
11                  IG report, and I can tell you that there's no  
12                  one waiting for it more than I am in the  
13                  State Legislature, as well as several hundred  
14                  of my constituents. And I know,  
15                  Commissioner, that we share our concern on  
16                  safety issues. Certainly there are -- and  
17                  again, there's been some talk about the  
18                  assaults. The media seems to want to  
19                  certainly talk a lot about the inmates, the  
20                  assaults on inmates. And none of us condone  
21                  those. I've also seen way too many assaults  
22                  on our correction officers.

23                  And could you just again -- and I hate  
24                  to ask you to repeat, but so that I'm clear

1 on what your recent initiatives are to  
2 enhance the safety of our correction officers  
3 in these facilities.

4 ACTING COMMISSIONER ANNUCCI: Well,  
5 among the other things that we're spending  
6 some money on for new equipment are these  
7 portable medical detectors that we are  
8 issuing in maximum security facilities to  
9 start with. They are much better than the  
10 fixed areas, because the inmates know where  
11 the metal detector equipment is now. These  
12 we can put and move about and therefore  
13 effectively conduct metal detection searches  
14 on inmates, which is one of the things that  
15 we think will help significantly.

16 I mentioned the intention to get rid  
17 of the cans, the intention to get secure  
18 vendors. Because being the only way that  
19 goods can come in, this will mean changes in  
20 our package rooms, because we're one of the  
21 few states that continues to allow packages  
22 from anyone. And with new technology, people  
23 can disguise, in seemingly a can of  
24 vegetables from the store, anything.

1           We have great security staff that  
2           review these, and they're terrific sometimes  
3           at finding them. But no matter how diligent  
4           they are, things get in. Scalpel blades get  
5           in. All those things present a safety threat  
6           to our staff and to other inmates.

7           And we continue to regularly meet with  
8           our partners in the unions to hear what their  
9           suggestions are. And we're looking at things  
10          also to deescalate situations. We want to  
11          introduce pepper spray into the department to  
12          see how that works. That may be a way of  
13          safely defusing a situation. A lot of other  
14          jurisdictions use that.

15          We have deescalation training. We're  
16          sharing that with the unions now, we're  
17          rewriting our policies, we're going to get  
18          their feedback before putting anything out.  
19          But we recognize that everybody's in this  
20          together. Nobody has the single answer to  
21          every problem. The only answer is that  
22          everything requires either hard work or a lot  
23          of hard work. But we're willing to do it  
24          together and get the job done.

1 ASSEMBLYWOMAN DUPREY: Thank you.

2 And I also want to address something  
3 that is, I think, difficult. I'm sure it's  
4 difficult for the department, difficult for  
5 me. But we recently had a very well  
6 respected sergeant in one of my correctional  
7 facilities who committed suicide. He left  
8 behind a loving family and certainly  
9 coworkers in shock. It's one more example of  
10 the incredible stress that our correctional  
11 officers face every day.

12 About six years ago a retired  
13 corrections lieutenant who's a personal  
14 friend of mine came to my office in  
15 Plattsburgh, and he actually broke down,  
16 talking about the flashbacks, the depression  
17 that he went through soon after his  
18 retirement. Coincidentally, that same day I  
19 was having lunch with a couple of  
20 psychologists who started talking to me about  
21 their wanting to work more with veterans.  
22 And I asked them to start working with our  
23 correction officers.

24 They've done that. I introduced the

1 two of them. They've had great success with  
2 PTSD programs. I think we need to be very  
3 open that our correction officers --  
4 certainly some who are currently working, but  
5 those who retire -- are facing PTSD the same  
6 as our veterans are. We have now in the  
7 North Country, in the Plattsburgh area,  
8 trained local licensed mental health  
9 counselors. They recently held a seminar.

10 Commissioner, I know you're trying to  
11 reach out to those in need in my district,  
12 but I'm also concerned -- and I believe we've  
13 done that pretty well -- I'm concerned about  
14 correction officers across the state. And  
15 can you just tell us about what the  
16 department is doing to address the stress  
17 that these officers are facing? And I worry  
18 about their stress, the stress of their  
19 families.

20 ACTING COMMISSIONER ANNUCCI: Sure.  
21 And I commend the gentleman that started that  
22 program. I read the article on it, I think  
23 it was very impressive. I think people don't  
24 realize the nature of the job -- mostly for

1 correction officers with stress, but for all  
2 staff working inside correctional facility,  
3 what they face every day. And they  
4 internalize it a lot, and that can build up  
5 over time.

6 Two years ago I was concerned about  
7 the uptick in suicides among our staff, so I  
8 put out a notice to all staff. We had worked  
9 to give out some materials to our EAP  
10 coordinators, resources to refer people to.  
11 The notice I created was with help from my  
12 assistant commissioner in charge of mental  
13 health services, where we basically explained  
14 depression is something that can affect  
15 anybody. And when you reach that state where  
16 you think the only solution to your problem,  
17 you're so depressed you think the only  
18 solution to your problem is to take your  
19 life, it's a very unfortunate circumstance.

20 There are countless individuals alive  
21 today who were at that stage but got help in  
22 time, and now they're leading healthy and  
23 productive lives.

24 So in my notice two years ago I urged

1           that, you know, if you see a fellow worker  
2           that's at risk, take advantage of these  
3           materials. They have resources in the  
4           community.

5                         Now, more recently, we are working  
6           with our partners in NYSCOPBA and the  
7           Governor's Office of Employee Relations. We  
8           are using joint labor-management funding.  
9           They've selected a vendor who's going to roll  
10          out a training program to our union stewards  
11          and EAP coordinators on how to prevent  
12          suicide.

13                        Suicide is a terrible tragedy, and we  
14          owe it to the hardworking men and women, both  
15          inside our institutions and in the  
16          communities, to do everything possible to get  
17          them help before these tragedies reach  
18          fruition.

19                        ASSEMBLYWOMAN DUPREY: Thank you. I  
20          know my time is up, but thank you for that  
21          answer. It's certainly something that none  
22          of us want to continue to deal with.

23                        ACTING COMMISSIONER ANNUCCI: Thank  
24          you.

1 ASSEMBLYWOMAN DUPREY: Thank you, sir.

2 CHAIRWOMAN YOUNG: Thank you very  
3 much. Our next speaker is Senator Funke.

4 SENATOR FUNKE: Thank you, Madam  
5 Chairwoman.

6 Commissioner, thank you for the  
7 challenging work that you do.

8 ACTING COMMISSIONER ANNUCCI: Thank  
9 you. Good afternoon.

10 SENATOR FUNKE: I'd like to talk to  
11 you about parole today and what's going on in  
12 my particular district, Monroe and Ontario  
13 counties. Thomas Johnson, III, was a parolee  
14 who murdered Rochester police officer Daryl  
15 Pierson. Johnny Blackshell Jr., another  
16 parolee accused of killing three people  
17 outside the Boys & Girls Club in Rochester.  
18 David Alligood, another parolee accused of  
19 shooting up a bar in Gates and killing one,  
20 injuring six others. Michael Carruthers,  
21 released on parole and only hours later raped  
22 a 14-year-old girl. The list goes on.

23 People in my community believe that if  
24 the parole system is not broken, it is

1 severely cracked. We have 30 program  
2 officers in Rochester responsible for 1200  
3 parolees in Rochester metro, with three cars.  
4 They tell me the cars have about 150,000  
5 miles on them, too.

6 Have parole issues become lost in  
7 DOCCS since the two have been merged  
8 together? Because it sure seems like it to  
9 me. How can we better ensure the public  
10 safety, the safety of our community, the  
11 safety of these parole officers as well? How  
12 can we better have parolees reporting when  
13 they're supposed to report? And what's being  
14 done to address those issues, please?

15 ACTING COMMISSIONER ANNUCCI: Senator,  
16 your points are very well taken. And the  
17 community supervision aspect of this agency  
18 is extremely important.

19 When the Governor merged these two  
20 agencies, his vision was that there should be  
21 a seamless transition between when a person  
22 enters the front door of a correctional  
23 facility, throughout their incarceration, and  
24 then released into the community to continue

1 with the services. And at that time, even  
2 though I had many, many years of experience  
3 and work with the Division of Parole, I  
4 really learned firsthand the tough job that  
5 parole officers do.

6 It's tough enough dealing with some of  
7 the convicted felons behind the walls, where  
8 you know they don't have access to guns. But  
9 in the community when you're doing a home  
10 visit and you don't know if he's on drugs,  
11 you don't know if there's a gun in the room.  
12 And our parole officers are very  
13 professional, very well trained.

14 What is going on in Rochester has  
15 caused us great concern. And we've rolled  
16 out several important initiatives that we  
17 think are making difference.

18 First and foremost, before someone is  
19 released to the Rochester area, we have a  
20 screening process so that if they are  
21 identified as what we call a high-risk  
22 parolee, through our risk and needs  
23 assessment, we first arrange for that person  
24 to get closer to a facility so that they're

1 not traveling a long distance. We then put  
2 GPS bracelets on them at the correctional  
3 facility. We then transport them to the  
4 field office for their official report, so  
5 that there's no break in the release, so that  
6 they're not in the community before they  
7 officially understand, yes, I'm a parolee,  
8 I'm still serving the sentence, I'm subject  
9 to jurisdiction.

10 We make sure that we have the right  
11 individuals on the right supervision level.  
12 And we work with our local law enforcement  
13 partners. Recently we joined forces with our  
14 BSS unit, our OSI unit, to conduct an  
15 initiative whereby we would round up  
16 absconders in the Rochester area. I forget  
17 the raw number that we ended up with, but by  
18 all accounts it was successful. Local law  
19 enforcement welcomed the cooperative  
20 initiative.

21 We just recently did one in New York  
22 City that went over very, very well, and the  
23 police commissioner acknowledged us in that  
24 effort. So we envision continuing to do

1 things along those lines.

2 The vehicle issue you mentioned has me  
3 greatly concerned. We've been working on a  
4 business plan, which I was informed today has  
5 been approved by OGS. So instead of the  
6 existing ratio -- and I can get the exact  
7 ratio. I have it in my notes somewhere that  
8 we'll be moving to. But over a three-year  
9 period we are going to acquire a lot more  
10 vehicles that are going to be going to  
11 community supervision. The first year has  
12 been approved, so we will be, I think,  
13 spending about \$800,000. I think the number  
14 is like 37 or 38 more vehicles for use by  
15 parole officers so they can do their  
16 responsibilities.

17 SENATOR FUNKE: One quick question.  
18 Assemblyman Peter Lawrence and the police  
19 chiefs in Monroe County have suggested  
20 expanding the database within police agencies  
21 on parolees, so that if it should happen that  
22 a parolee is stopped, a police officer could  
23 make an arrest right then and there. Is that  
24 something that you would support?

1                   ACTING COMMISSIONER ANNUCCI: Well,  
2                   right now if we have already lodged an  
3                   absconding warrant, that's on a system that  
4                   anybody can acknowledge and any police  
5                   officer in the state can take someone into  
6                   custody based upon the fact that they're a  
7                   parole absconder.

8                   SENATOR FUNKE: Thank you, sir.

9                   CHAIRWOMAN YOUNG: Thank you.

10                  ASSEMBLYMAN McDONALD: Our next  
11                  speaker is Assemblymember Lentol.

12                  ASSEMBLYMAN LENTOL: Hello,  
13                  Commissioner.

14                  ACTING COMMISSIONER ANNUCCI: Hi,  
15                  Assemblyman.

16                  ASSEMBLYMAN LENTOL: First of all, I  
17                  don't want to give you too much praise, but I  
18                  have a great deal of affection as well as  
19                  respect for your knowledge, not only of  
20                  corrections but also of the sentencing law  
21                  which we studied together -- which I studied  
22                  and you knew. And I learned a great deal  
23                  from you when we served on the Sentencing  
24                  Commission together.

1                   But I too want to talk about parole,  
2                   but a different aspect of parole, which is  
3                   the Parole Board. And I looked at some of  
4                   the proposals that the Governor has  
5                   propounded in order to open up parole to the  
6                   public regarding having people come into  
7                   watch parole or video of the live interview,  
8                   of the interaction between the Parole Board  
9                   and the inmates.

10                   And my question is when I looked at  
11                   this proposal, it looks like a Sunshine Law.  
12                   But then after reading it or understanding  
13                   it, it sounds likes it's designed to keep  
14                   people in prison. Because I don't know how  
15                   an inmate in the prison would be forthcoming  
16                   or the Parole Board folks would be able to  
17                   ask appropriate questions given the fact that  
18                   they know they're on tape.

19                   And furthermore, if the public heard  
20                   the details of the crime, the Parole Board  
21                   may be unwilling to release anybody, because  
22                   they'd be afraid to.

23                   So I'm just wondering how and why we  
24                   have this proposal in the budget.

1                   ACTING COMMISSIONER ANNUCCI: Well, I  
2                   think what the Governor was responding to was  
3                   the concern by a lot of individuals in the  
4                   community who get frustrated at repeated  
5                   denials of parole. And they want to make  
6                   sure that the Parole Board is weighing all of  
7                   the appropriate factors that they're  
8                   obligated to weigh under the law.

9                   She's not here today, but I have the  
10                  utmost respect for Chairwoman Stanford.  
11                  She's a terrific individual, she's provided  
12                  great leadership to the board. In my  
13                  conversations with all the individual parole  
14                  commissioners, they want to do the right  
15                  thing. They really do. They want to weigh  
16                  the entire record that an inmate has done.  
17                  No inmate can go back in time and change the  
18                  original crime. That's fixed as is. But  
19                  they want to be judged on what they've done  
20                  over the course of their incarceration.

21                  So we certainly -- my job, and this  
22                  was part of the merger, is to make sure they  
23                  have all the resources they need to do their  
24                  job. But their decision making still has to

1           be independent from me. The decisions of the  
2           ALJs have to be independent.

3                     One of the things that we're exploring  
4           is potentially using outside lawyers in some  
5           role to assist the inmate with the  
6           preparation of his packet. The Governor  
7           reached out, and there are a number of  
8           lawyers who are willing to come forward as  
9           the Pardon Initiative and the Clemency  
10          Initiative. And I had several staff members  
11          participate in a webinar to train them so  
12          that they could understand all of the  
13          different documents that are part of our  
14          documentation -- what the commitment means,  
15          what program participation means, what a  
16          disciplinary record means.

17                    Some of these lawyers who might be  
18          taking on inmates for clemency applications  
19          might also be tapped for responsibilities  
20          along this line, to potentially help an  
21          inmate prepare his package and appear before  
22          the Parole Board.

23                    So there's a lot to be discussed,  
24          there's a lot to be considered. It's not a

1 black-and-white issue, it's not easy to get  
2 people into our correctional facilities. A  
3 lot of the Parole Board hearings are done by  
4 televideo, so it could be possible that  
5 somebody could be at a remote site and listen  
6 to what's going on.

7 We certainly support transparency, but  
8 we also want to be fair to everybody.

9 ASSEMBLYMAN LENTOL: And isn't it also  
10 true that in parole hearings there are  
11 certain facts that never come to light,  
12 either in video or at the Parole Board,  
13 because there are confidential communications  
14 between the district attorney and the judge,  
15 as well as others who may have their thoughts  
16 not ever brought up at any of these hearings?  
17 So the public would be denied knowledge of  
18 why somebody was denied because of those  
19 confidential communications.

20 ACTING COMMISSIONER ANNUCCI: I am  
21 reluctant to give you a hard and fast answer.  
22 I know the crime victim's statement is  
23 absolutely confidential. The inmate never  
24 gets it. And we take extraordinary means to

1           make sure that that gets delivered to the  
2           parole commissioners at the time of the  
3           hearing; they take that into consideration.

4                     I'm not sure what the practice is if a  
5           district attorney writes a letter. I'm  
6           tending to think that it's part of the record  
7           that should be made available --

8                     ASSEMBLYMAN LENTOL: I don't think it  
9           is.

10                    ACTING COMMISSIONER ANNUCCI: -- but I  
11           don't want to give you a definite answer.  
12           I'd have to check with the Board of Parole.

13                    ASSEMBLYMAN LENTOL: Thank you, sir.

14                    SENATOR KRUEGER: Senator Ruth  
15           Hassell-Thompson.

16                    SENATOR HASSELL-THOMPSON: Thank you,  
17           Madam Chair.

18                    Good afternoon, Commissioner.

19                    ACTING COMMISSIONER ANNUCCI: Good  
20           afternoon, Senator.

21                    SENATOR HASSELL-THOMPSON: I know  
22           there was mention made of both Hudson and  
23           Coxsackie's correctional facilities, but just  
24           a couple of quick follow-up questions,

1           really.

2                         What would be the impact -- you talked  
3           in your presentation about \$300 million in  
4           the capital budget. And some of that is  
5           going to be for the renovation and the  
6           reengineering of Hudson. What impact is that  
7           going to have on services provided to inmates  
8           that are currently at Hudson?

9                         ACTING COMMISSIONER ANNUCCI: Well,  
10          eventually the inmates that are currently at  
11          Hudson are going to be moved to other  
12          facilities.

13                        The first phase of the construction  
14          project is slated to be completed so that we  
15          can start to move 16- and 17-year-olds there  
16          by August. We want to move as quickly as  
17          possible.

18                        The existing inmates that are there  
19          will continue to get services while we're  
20          still doing the rehabilitation. Gradually  
21          they will attrit out and eventually, for  
22          those that remain behind, we can transfer  
23          them. We have enough vacancies throughout  
24          our system. So we do not envision that as

1           being a challenge to us.

2                       SENATOR HASSELL-THOMPSON: And you  
3           know I want to ask you how is that going to  
4           impact Close to Home, but I'll leave that for  
5           another day.

6                       Tell me about Cocksackie. You know,  
7           will those housing units be modified to reach  
8           the goals that are in our age-appropriate  
9           behavioral modification protocols?

10                      ACTING COMMISSIONER ANNUCCI: We don't  
11           have any further construction changes planned  
12           for Cocksackie. These changes were already  
13           made as part of the first initial settlement  
14           we made with NYCLU.

15                      So Cocksackie has a general confinement  
16           unit, I forget the number of beds -- it's  
17           either 15 or 30 -- and then a comparable  
18           number if we have to segregate an inmate for  
19           disciplinary reasons at Cocksackie. Cocksackie  
20           will be used for 16- and 17-year-olds going  
21           forward who require maximum security  
22           placement.

23                      SENATOR HASSELL-THOMPSON: No, that  
24           I'm aware of. But how does -- looking at

1 Coxsackie as it current exists, is it part of  
2 the developmental plan to meets the goals of  
3 this new population?

4 ACTING COMMISSIONER ANNUCCI: Yes.

5 SENATOR HASSELL-THOMPSON: That's the  
6 question.

7 ACTING COMMISSIONER ANNUCCI: It is  
8 part of the goal.

9 SENATOR HASSELL-THOMPSON: Okay. Tell  
10 me a little bit about the hepatitis C crisis  
11 that's in the prison population and what's  
12 being done to address the rising costs and  
13 the proliferation of this disease within the  
14 populations?

15 ACTING COMMISSIONER ANNUCCI: Well,  
16 rising costs are something we really can't  
17 control. If you need treatment, we have to  
18 provide it.

19 Several years ago it was triple  
20 therapy, it was pegylated-interferon and  
21 ribavirin and a protease inhibitor that  
22 combined for the treatment. Now there are  
23 new treatments. The cost could be \$84,000  
24 for a treatment round. It depends upon the

1 extent of the disease. And we have to  
2 provide it. We have to offer it and we have  
3 to provide it.

4 I think there's a new law that says  
5 that you have to offer the test to everybody  
6 between the ages of 45 and 55. So we are  
7 doing that. And those that want the  
8 treatment, we have to provide it to them.

9 And we also have arrangements to  
10 continue the treatment in the community as  
11 well, so that we hook that up -- them up as  
12 well. But it is very expensive. It could  
13 rise as much as up to \$24 million for that  
14 this year.

15 SENATOR HASSELL-THOMPSON: That rolls  
16 over into my last question, because my clock  
17 just seems to be ticking faster than anybody  
18 else's. But the aging and the medical cost  
19 for older patients, what is being done to do  
20 consideration of release for this population?  
21 Looking at the \$16 billion additional for  
22 this population, is nobody cognizant of that?

23 ACTING COMMISSIONER ANNUCCI: Good  
24 point, Senator. We're very cognizant of it.

1                   SENATOR HASSELL-THOMPSON: No, no, no.  
2                   I don't mean you, but I mean people outside.  
3                   Because we keep talking about the rising  
4                   costs of everything, but these are people who  
5                   pose absolutely no threat to public safety,  
6                   and yet we are keeping them in a facility  
7                   that exacerbates an already bad condition,  
8                   and it's costing us an extra \$16 billion.  
9                   You know, everybody wants to be a cost-saver,  
10                  but that's not a consideration that we're  
11                  making.

12                  Plus it's inhumane. Let's not leave  
13                  that out of the equation either.

14                  ACTING COMMISSIONER ANNUCCI: Senator,  
15                  medical parole is an avenue that I personally  
16                  would like to use more. We've changed the  
17                  law last year to try and short-circuit the  
18                  cases where certain nonviolent inmates who  
19                  are terminally ill can avoid the Parole Board  
20                  appearance and instead I can make that  
21                  decision.

22                  But the list of crimes that make you  
23                  eligible are very narrow. Typically like a  
24                  drug offense. Drug offense sentences now are

1 very small compared to what they used to be.  
2 So typically you have to be inside for a  
3 while for a terminal condition to make itself  
4 known.

5           There have only been two cases so --  
6 well, there's actually been three cases so  
7 far. And what I have done is turn them  
8 around very quickly, but unfortunately the  
9 individuals died before the requisite time  
10 frame within which I had to get feedback,  
11 because the law requires me to do that. I  
12 have to write to the judge, I write to the  
13 sentencing court, the district attorney and  
14 the defense lawyer, and I have to allow them  
15 a period of time before I can make it  
16 official.

17           But the list of crimes is very narrow.  
18 I have instructed my chief medical officer --  
19 because he is the one that forwards the case  
20 on to me. He sends it to me by an email. I  
21 try and answer him the same day. I look up  
22 the case, I look up his description. If I  
23 have any questions, I will ask him. But --  
24 and I get a million emails, but I've told him

1           if he doesn't get an answer from me that day,  
2           the next day, get back to me. Because I  
3           don't want any delays.

4                     I'm very sensitive to the humanitarian  
5           aspects of this. If we can at all, if at all  
6           possible, these individuals deserve to die  
7           with dignity in a setting other than a  
8           correctional facility.

9                     But for those that do stay in our  
10          facilities, we do have hospice programs  
11          within our regional medical units. We've  
12          trained inmates how to be hospice aides, how  
13          to be the companion. Because we don't want  
14          anybody to ever die alone in our system.

15                    And we are looking at ways to try and  
16          expedite the process. I know there's a lot  
17          of frustration. People want to see a lot  
18          more medical paroles. We get it. We're  
19          going to be taking steps to look, how can we  
20          improve things? My initial inclination is we  
21          probably have to start backing up the  
22          decision a little earlier so that the normal  
23          process that has to be followed -- the  
24          letters that have to go to the district

1 attorneys, et cetera, can go out earlier.

2 The challenge is the standard you have  
3 to apply is that you have to be convinced  
4 that the person is too sick to present a risk  
5 of harm. What does that mean? If you can  
6 fire a gun, are you potentially a risk?

7 So we're trying to weigh and balance  
8 all those factors and accelerate the process.  
9 It's not easy, but we definitely want to make  
10 a lot more progress in that area.

11 SENATOR HASSELL-THOMPSON: Thank you,  
12 Commissioner.

13 ASSEMBLYMAN McDONALD: Thank you.  
14 We've been joined by Assemblymember  
15 Richardson, and we will now hear from  
16 Assemblymember Graf.

17 ASSEMBLYMAN GRAF: Hi, how you doing,  
18 Commissioner? I'm going to be kind of short  
19 here because it's been a long day.

20 Can you tell me the percentage of your  
21 inmates that are coming into this system that  
22 are opiate-addicted or have a heroin  
23 addiction? Do you have a percentage number?

24 ACTING COMMISSIONER ANNUCCI: I can't

1 tell you a percentage that are coming in  
2 opioid-addicted. I might be able to; I know  
3 that the inmates coming in with a substance  
4 abuse need is very high, so at some point we  
5 have to put them into some type of drug  
6 treatment program.

7 But heroin is a serious concern. I  
8 have had inmates die of overdoses inside the  
9 institutions. We've had parolees die of  
10 overdoses. So the two initiatives I  
11 described we think will be helpful.

12 We have a program whereby inmates who  
13 will shortly be released -- it's a program we  
14 developed in partnership with the Harm  
15 Reduction Coalition and the Department of  
16 Health. We train them on Naloxone kits, and  
17 then we offer it to them as they're leaving,  
18 free of charge. And we know that there have  
19 been a couple of instances where a parolee  
20 has used his Naloxone kit to bring someone  
21 back to life who is an apparent overdose from  
22 heroin.

23 We're also the first state agency  
24 that's approved by the Department of Health

1 for our nurses to give the injectable  
2 Naloxone to any inmate or visitor, volunteer,  
3 whomever, that apparently is suffering from  
4 an opioid overdose.

5 So this is part of the Governor's  
6 initiative. We're trying to take all  
7 reasonable steps. But it is a rising  
8 concern, there's no question about it, in our  
9 communities.

10 ASSEMBLYMAN GRAF: It's becoming a big  
11 problem. Would you say in your population,  
12 when you're getting new inmates, this is  
13 becoming a big problem with the heroin or  
14 some type of addiction?

15 ACTING COMMISSIONER ANNUCCI: If I  
16 heard your question correctly, you're asking  
17 if I have a problem --

18 ASSEMBLYMAN GRAF: No, has this been  
19 an increasing problem as far as --

20 ACTING COMMISSIONER ANNUCCI: Yes, in  
21 general I would say it's been an increasing  
22 problem.

23 ASSEMBLYMAN GRAF: All right. Now,  
24 the Vivitrol that you said you're giving some

1 inmates, Vivitrol, once they're released, are  
2 they released into a program or are they just  
3 released?

4 ACTING COMMISSIONER ANNUCCI: Yeah,  
5 this is a pilot program that we've started at  
6 Edgecombe in conjunction with Odyssey House  
7 and of course our partners at OASAS. And the  
8 program is for parolees actually who have  
9 relapsed on heroin. And we have this parole  
10 diversion program where we can put them in  
11 for 45 days at Edgecombe.

12 So while they're there, recognizing  
13 that they have this problem, this addiction,  
14 this drug, if they voluntarily will take it,  
15 coupled with all of the counseling that we're  
16 going to give them in the community, will  
17 block the effects of opioid as well as the  
18 euphoria from drinking alcohol.

19 So we've just started this, we've  
20 mapped it all out, there's a lot of things  
21 that to be lined up -- the physician that's  
22 going to give the injection at Edgecombe, the  
23 follow-up injection in the community if they  
24 follow up accordingly, the identification

1           that they have to wear. We've just lined  
2           this all up; we haven't yet had a test case.  
3           But it is something that we are hoping, if it  
4           produces positive results there, we also have  
5           PD programs at Hudson and at Orleans for the  
6           parole violators who have this opioid  
7           relapse, come into our system, and then we  
8           offer that as a means of trying to block the  
9           effects and deal with their addiction.

10           ASSEMBLYMAN GRAF: Now, the Vivitrol,  
11           are you able to buy that in bulk when you  
12           bring it? Because I know it's like a  
13           thousand dollars a shot.

14           ACTING COMMISSIONER ANNUCCI: Yeah, I  
15           think that's being supplied by Odyssey House.  
16           This is not a department expense for that.

17           ASSEMBLYMAN GRAF: Okay. Thank you  
18           very much.

19           CHAIRWOMAN YOUNG: Thank you.

20           Our next speaker is Senator Krueger.

21           SENATOR KRUEGER: Good afternoon.

22           ACTING COMMISSIONER ANNUCCI: Good  
23           afternoon, Senator.

24           SENATOR KRUEGER: You talked about the

1           mental health issues in the prisons in your  
2           testimony.  What's your estimate of what  
3           percentage of the prisoners in DOCCS are  
4           suffering from mental illness?

5                    ACTING COMMISSIONER ANNUCCI:  That  
6           number keeps growing.  We've crossed the  
7           10,000 number.  We have over 10,000 on the  
8           caseload.  I think it's 19 percent of our  
9           population now that are on the OMH caseload.

10                   SENATOR KRUEGER:  And as we are  
11           releasing people from DOCCS back into their  
12           communities, how is the system of ensuring  
13           they are processed for Medicaid before they  
14           leave prison going?

15                    ACTING COMMISSIONER ANNUCCI:  Yeah,  
16           that's a big initiative on our part to enroll  
17           as many inmates as possible into the Medicaid  
18           program.

19                    We've prioritized which inmates we  
20           should put to the front of the list, so to  
21           speak -- the ones that might get an illness,  
22           the elderly inmates, et cetera.  I think  
23           we're averaging something like 500-and-some-  
24           odd registrations per month.

1           And another big initiative that we  
2           have that came out of the Reentry Council,  
3           the Governor's Reentry Council, their  
4           suggestion -- and we were able to coordinate  
5           this with our Department of Health  
6           partners -- is that we will be able, some  
7           time this year, in the not too distant  
8           future, to activate the Medicaid card prior  
9           to release. I think it's 30 days prior to  
10          release.

11          That will help us greatly with  
12          placements. It will help us with the elderly  
13          inmates that we're trying to place into  
14          nursing homes, where some of them want the  
15          inmate on Medicaid with his card prior to  
16          leaving. It will help us hook up with  
17          certain services in the community. So we're  
18          very hopeful about that as well.

19          SENATOR KRUEGER: I represent the East  
20          Side of Manhattan, where the intake for the  
21          New York City homeless shelter system for men  
22          is located. And we were provided an estimate  
23          recently that there are 2,000 people who come  
24          out of DOCCS and their discharge plan sends

1           them to the Bellevue Men's Shelter entry  
2           system.

3                     Do you believe that's an appropriate  
4           discharge plan from the New York State  
5           prisons?

6                     ACTING COMMISSIONER ANNUCCI: Well, we  
7           can't legally hold someone past their release  
8           date if they are homeless. The law requires  
9           us to notify the local DSS if someone is  
10          coming out of prison and requires homeless  
11          shelter services. So we do that throughout  
12          the 62 counties of the state.

13                    We try very hard to work with the  
14          parolee to know in advance his release date,  
15          to ascertain if he has any relative, any  
16          friend, anyone who might be willing to offer  
17          them a place to stay. The reality is there  
18          are significant numbers of individuals who  
19          leave the prison system without a home to go  
20          to.

21                    We have contract beds that we use, we  
22          have various programs for employment that  
23          hopefully get them the money that they can  
24          then secure private residences. The numbers

1 in New York City I think were significantly  
2 affected by the loss of three-quarter  
3 housing. So that amplified the numbers.

4 But the number of undomiciled  
5 individuals is significant, and the  
6 subpopulation of that is the number of sex  
7 offenders who are covered by the Sexual  
8 Assault Reform Act, which requires that any  
9 residence that they get can't be within a  
10 thousand feet of a school. So we will not  
11 release someone to a homeless shelter who's  
12 covered by that law unless the city or the  
13 county tells us: We have a bed for that  
14 person that's SARA-compliant.

15 What we've been doing instead is  
16 relying on our authority to put these people  
17 into what are called residential treatment  
18 facilities. They're usually located near the  
19 community. We have one, I believe it's  
20 Lincoln, and we give them transitional  
21 services, we pay them \$10 a day to work on an  
22 outside crew, and they come back and they  
23 sleep at the facility until such time as we  
24 do find a SARA-compliant residence. But it

1 is a huge, complicating problem.

2 SENATOR KRUEGER: I am familiar with  
3 the sex offender issue, and in fact I think  
4 the City of New York is working very hard to  
5 make sure that released sex offenders are  
6 going into appropriate locations. That has  
7 also been an issue in my community.

8 But I will say that there seems to be  
9 a pattern of release of mentally ill people  
10 from prison without Medicaid kicking in  
11 before they get to the city, ending up at the  
12 front door of the shelter system. And I  
13 propose to you that's a guarantee that those  
14 people will end up right back in the prison  
15 system or having some terrible trauma happen  
16 in the community.

17 So I'm hoping that DOCCS can take a  
18 more active review of whether a discharge  
19 plan ought to be "there's no other option, so  
20 we'll just drop them off at the Bellevue  
21 Men's Shelter."

22 ACTING COMMISSIONER ANNUCCI: We try  
23 very hard to avoid that. We work very  
24 closely now with OMH on discharge planning.

1           We have identified seriously mentally ill who  
2           also might be violent well in advance, when  
3           they come into the system, as part of our  
4           reception centers, to put them into special  
5           programs. We know that ultimately they're  
6           going to be released. We want to make sure  
7           we give them the best opportunities to  
8           succeed.

9                         We're establishing new special  
10           discharge ICPs for this population. One is  
11           going to be at Auburn, one is at Sing Sing,  
12           where we already have the core program. We  
13           release them with medication, I think it's  
14           either two or three weeks' worth of  
15           medication that they have, with scrips to  
16           refill.

17                        And your point is well taken, to the  
18           extent there may be some that may not have  
19           been registered on Medicaid, if they've  
20           fallen through the cracks, I will make sure  
21           that we prioritize getting them Medicaid  
22           cards as well before release, Senator.

23                        SENATOR KRUEGER: Thank you.

24                        ASSEMBLYMAN McDONALD: Thank you.

1                   Our next speaker will be

2                   Assemblymember Giglio.

3                   ASSEMBLYMAN GIGLIO: Good afternoon.

4                   ACTING COMMISSIONER ANNUCCI: Good  
5                   afternoon, Assemblyman.

6                   ASSEMBLYMAN GIGLIO: I only have two  
7                   quick questions for you, Commissioner. And I  
8                   wouldn't wish the last year you've spent on  
9                   my worst enemy.

10                  But besides that, my first question is  
11                  you said there are 103 new correction  
12                  officers. How many retired?

13                  ACTING COMMISSIONER ANNUCCI: How many  
14                  of those 103 retired?

15                  ASSEMBLYMAN GIGLIO: No, no. You  
16                  hired a new 103. How many have you lost in  
17                  the same period of time?

18                  ACTING COMMISSIONER ANNUCCI: I should  
19                  know that off the top of my head because we  
20                  lose a lot every two weeks. It's something  
21                  like 54 retire. But we keep -- the 103 are  
22                  added over our BFL. So we keep doing  
23                  training classes to try and replace the  
24                  attrition.

1                   ASSEMBLYMAN GIGLIO:  When you lose  
2                   that kind of institutional knowledge, how do  
3                   you make it up?

4                   ACTING COMMISSIONER ANNUCCI:  You  
5                   can't replace experience, there's no question  
6                   about that, Assemblyman.  I wish our staff  
7                   would stay longer.  It's a tough job, they're  
8                   eligible to retire after 25 years, that's the  
9                   retirement law.  But they're very valuable,  
10                  especially because a lot of them have learned  
11                  how to deal with a violent situation by using  
12                  their wits as opposed to the normal uses of  
13                  force.

14                  So we value very much our experienced  
15                  correction officers.  I can't prevent anybody  
16                  from retiring who wants to retire.  But we  
17                  keep replacing them with classes from the  
18                  training academy as quickly as we can.

19                  ASSEMBLYMAN GIGLIO:  In our limited  
20                  conversations, you've always been concerned  
21                  with staffing ratios and those kind of  
22                  things, to keep it safe and secure.  And you  
23                  talked about that in your testimony.

24                  The only other question I have now is

1           this Office of Special Investigations. In  
2           that, you said that you hired two attorneys  
3           to run it. My question is very simple.  
4           There was no one within the Department of  
5           Corrections that had moved up to the ranks  
6           that could have filled those two roles?

7                     ACTING COMMISSIONER ANNUCCI: There  
8           was nobody within that unit that was an  
9           attorney.

10                    ASSEMBLYMAN GIGLIO: But you think  
11           it's necessary to have an attorney then go  
12           talk to the men and women on the line to tell  
13           the attorneys what's wrong with the facility?

14                    ACTING COMMISSIONER ANNUCCI: I lost  
15           the question.

16                    ASSEMBLYMAN GIGLIO: My point is this.  
17           You said during your testimony that these two  
18           new hires would then, as part of their  
19           duties, go talk to individual correction  
20           officers about what's going on in the  
21           facility. My question to you is, would we be  
22           better off bringing people up through the  
23           ranks and through your command staff that you  
24           already have to fill these positions, instead

1 of asking outside lawyers to come in and ask  
2 the very people you're supposed to work with  
3 what's wrong with the facility?

4 ACTING COMMISSIONER ANNUCCI:

5 Assemblyman, I think the answer is that we  
6 have the combination, the best of both  
7 worlds. There are still people that have  
8 risen through the ranks, and they're still  
9 directors, or at least they occupy  
10 supervisory roles. Those are very  
11 experienced individuals. They started out as  
12 correction officers.

13 But we definitely needed to bring in  
14 an outside perspective, individuals that had  
15 extensive experience dealing with law  
16 enforcement, prior experience with district  
17 attorney's offices, prior experience working  
18 with the Attorney General. And they can  
19 bring in the linkages they have to work with  
20 the U.S. Attorney's office, to work with the  
21 federal Civil Rights Bureau, with the  
22 Department of Justice, to work with the  
23 marshals and bring all of that to bear so  
24 that we can be a much stronger office.

1 ASSEMBLYMAN GIGLIO: Do you think  
2 that's what's going to help you when you  
3 charge inmates and/or correction officers  
4 with any crimes behind the walls?

5 ACTING COMMISSIONER ANNUCCI: I think  
6 it will.

7 ASSEMBLYMAN GIGLIO: Thank you very  
8 much.

9 CHAIRWOMAN YOUNG: Thank you,  
10 Assemblyman.

11 Acting Commissioner, I had a couple of  
12 questions. And it's related to an issue that  
13 you just discussed with Senator Krueger. And  
14 I know you remember the notorious case of  
15 Daniel St. Hubert, who was a paranoid  
16 schizophrenic, violent in prison, was  
17 released and ended up stabbing to death  
18 little 6-year-old P.J. Avitto in Brooklyn;  
19 his 7-year-old playmate Mikayla Capers was  
20 stabbed, did survive. He was a suspect in  
21 some other murders. And he had been released  
22 from the state prison system.

23 As a result of that, Assemblyman  
24 O'Donnell and I did a chapter together to try

1 to address some of the issues. And last year  
2 the Legislature included in the final budget,  
3 along with the Governor, a \$20 million  
4 expenditure I believe that you were  
5 referencing when you talked about discharge  
6 planning and that sort of thing.

7 And I did discuss the issue with the  
8 OMH commissioner yesterday. And just as  
9 background, there was \$20 million in last  
10 year's budget for enhanced services to reduce  
11 recidivism and potential violence in the  
12 community. This includes additional  
13 supportive housing, assertive community  
14 treatment, team services for at-risk  
15 individuals discharged from prisons and  
16 psychiatric centers, increased mental health  
17 assessments in prison, treatment for  
18 high-risk inmates, enhanced discharge  
19 planning, staff training, and placement of  
20 individuals in OMH facilities.

21 So I'm happy to hear you say that you  
22 believe things are going better. One of the  
23 issues I'd like to raise with you, however,  
24 is that when I questioned the OMH

1 commissioner yesterday about how much of that  
2 money had been utilized so far, she did say  
3 \$18 million out of the \$20 million line item.  
4 I would assume that you would think that  
5 these sorts of initiatives have been  
6 beneficial -- at least that's what I'm  
7 gathering from your testimony today -- and  
8 you would recommend that that program  
9 continues. Because if there's only  
10 \$2 million left, I don't see anything in the  
11 budget, unless I'm missing something or  
12 you're aware of something, to replenish those  
13 funds.

14 Could you comment on that, please?

15 ACTING COMMISSIONER ANNUCCI: I really  
16 can't comment on these specific  
17 appropriations and how they're being spent  
18 from OMH's side of the ledger. But I can  
19 reaffirm that we are very excited about the  
20 discharge planning units that are going to be  
21 launched at Auburn and at Sing Sing, the  
22 continued work with the core program, and the  
23 continued collaboration that we do with our  
24 community supervision and OMH staff,

1 including making sure that when someone has  
2 to get to a program, we arrange many times  
3 for direct transport.

4 I'm also excited about the early  
5 identification of inmates when they come into  
6 the system who are both seriously mentally  
7 ill and could have these violent  
8 proclivities.

9 So I think ultimately we will make a  
10 big difference in this area.

11 CHAIRWOMAN YOUNG: So you would  
12 obviously be supportive of such programming  
13 to continue in the same format? You're  
14 saying to us as a Legislature that this has  
15 been beneficial in the correctional system?

16 ACTING COMMISSIONER ANNUCCI: It's  
17 been beneficial, yes.

18 CHAIRWOMAN YOUNG: Very beneficial in  
19 reducing violence, okay. Thank you.

20 ASSEMBLYMAN McDONALD: Thank you,  
21 Senator.

22 Our next speaker will be  
23 Assemblymember Oaks.

24 ASSEMBLYMAN OAKS: Hi, Commissioner.

1 Thank you.

2 I just wanted to follow up a little  
3 bit. Senator Funke had talked about parole  
4 issues, and he listed off a number of  
5 different situations of individuals who had  
6 recommitted while on parole. And I had, you  
7 know, myself one of those types of situations  
8 in my district, a recent parolee who broke  
9 into a home, the people were away, but he  
10 happened on a mother and her daughter who  
11 were there to feed the cat, and they ended up  
12 losing their lives in that incident and  
13 whatever.

14 So all of us, I think, have some of  
15 those things. And the issue of parolees  
16 obviously it's an opportunity for individuals  
17 to find their way back into society, but it  
18 doesn't always work.

19 And I think back to Assemblyman  
20 Funke's question about Assemblyman Lawrence's  
21 legislation, the one thing of making  
22 information -- right now police officers stop  
23 individuals for whatever, to check. They can  
24 tell that a person is on parole, but they

1           have no information about the conditions of  
2           the parole. And so if the individual by  
3           their activity at that moment is violating  
4           the parole, they would have no way of knowing  
5           that. And so then it goes through a process  
6           of letting the parole officer know that  
7           that's happened, and then through a process  
8           of trying to figure out what happens.

9                        Certainly for those who might offend  
10           quickly after they've been released but may  
11           have violated in some way before, his  
12           proposal would try to make that information  
13           available to police and also give police the  
14           opportunity, empower them to do something  
15           then, as opposed to having to take several  
16           days or time down the down the road of  
17           dealing with this.

18                      And so I think the question -- I know  
19           you said if the person has been an absconder  
20           or had a problem, obviously they can tell,  
21           they can be a help. This would be a way of  
22           strengthening that. And I just go back to  
23           that, of saying I welcome a comment on it  
24           and/or just a willingness to work with us in

1           looking at it. If we can strengthen parole  
2           in this way, I think it makes communities  
3           safer, makes parole work better for those who  
4           are going to follow the conditions of it.

5                    ACTING COMMISSIONER ANNUCCI: Well, we  
6           value all of the working relationships we  
7           have with local law enforcement, so we're  
8           always willing to share as much information  
9           as possible.

10                   With respect to the specific  
11           legislative proposal or concept, we follow a  
12           protocol where we submit any feedback,  
13           thoughts, to our Governor's counsel's office.  
14           But we don't independently provide comments  
15           or suggestions on the substance or  
16           well-thought-outness of a particular  
17           proposal.

18                   ASSEMBLYMAN OAKS: Understood. I just  
19           think it could end up making your job better  
20           and easier, and have us working better  
21           together. Thank you.

22                   CHAIRWOMAN YOUNG: Thank you,  
23           Assemblyman.

24                   Senator Savino.

1                   SENATOR SAVINO: Thank you, Senator  
2 Young.

3                   I'll be very brief because many of the  
4 questions that I had have already been  
5 answered.

6                   But you'll recall, Commissioner, that  
7 in the past we've been somewhat critical of  
8 your agency's level of overtime. So backing  
9 out the extra overtime that was related to  
10 the prison break, can you give me a sense of  
11 the level of overtime in the past year?

12                  ACTING COMMISSIONER ANNUCCI: I can  
13 tell you that if we back out the overtime  
14 related to Clinton -- and there was also a  
15 significant expenditure related to an  
16 individual that was lost in the North Country  
17 for a number of days, and we were  
18 participating in the search -- that our  
19 process shows we were only a little over  
20 where we were last year. Which is not good.

21                  SENATOR SAVINO: No.

22                  ACTING COMMISSIONER ANNUCCI: But the  
23 good news is that we have started a process  
24 whereby, A, I've communicated to all my



1           increase hiring in the correctional officers  
2           titles. But I'm concerned about the other  
3           professional titles -- the nurses. You know,  
4           thank God that one poor nurse finally  
5           retired, because every year she would wind up  
6           as the highest overtime earner in the state,  
7           as if she was doing something wrong. As if  
8           she had a choice about whether she was going  
9           to stay.

10                        So my concern continues to be about  
11           the level of hiring so that we can  
12           sufficiently staff the facilities so you  
13           don't have overworked correction officers or  
14           nurses or psychiatrists or social workers or  
15           anybody else that's there because of the  
16           level of, you know, security that is so  
17           important in maintaining a prison like that.

18                        So I just want to keep it on your  
19           radar, we're going to continue to watch this.  
20           You know, it's something that is of concern  
21           to us, the level of overtime -- not because  
22           you're spending money, but because you're  
23           spending it because you don't have sufficient  
24           staff to meet the needs of the institution.

1 Thank you.

2 ACTING COMMISSIONER ANNUCCI: Okay,  
3 Senator.

4 CHAIRWOMAN YOUNG: Thank you. I don't  
5 believe there are any other Assembly  
6 speakers. So Senator Montgomery.

7 SENATOR MONTGOMERY: Good afternoon,  
8 Commissioner.

9 ACTING COMMISSIONER ANNUCCI: Good  
10 afternoon, Senator.

11 SENATOR MONTGOMERY: I will start by  
12 offering thanks to you for a couple of  
13 things, and then I'll make my complaints,  
14 I'll register my complaints.

15 (Laughter.)

16 SENATOR MONTGOMERY: So first of all I  
17 want to say my last visit to Sullivan, my  
18 staff and I were up there and we were -- it  
19 was a very, very interesting and -- it was a  
20 good experience. And I want to thank the  
21 superintendent and her staff because she  
22 really made it what I thought to be a very  
23 worthwhile experience. So I appreciate that.

24 And I also want to thank you for the

1 fact that you agreed to do the advisory  
2 council for the parole facility that's also  
3 in my district. And that has really  
4 contributed to a lot of reduction in the  
5 tension that was around that facility when it  
6 first opened. So I thank you for that.

7 And I will just ask a couple of  
8 questions, raise a couple of issues with you.  
9 And in the interests of my time not running  
10 out, I'll do it all together and you can  
11 answer accordingly.

12 I am very pleased to see how much  
13 emphasis you are placing on the whole issue  
14 of offering college and looking at training  
15 programs and those programs that really  
16 prepare people for a successful reentry back  
17 into the communities. I appreciate that.

18 The question about that -- two things.  
19 One is, have we ever thought about the  
20 possibility of creating sort of an  
21 educational training facility where one of  
22 your buildings, one of your facilities could  
23 become sort of a hub, if you will, for this  
24 kind of activity? I'm so impressed -- I've

1           been to Sullivan, obviously, there's really  
2           such a great group up there -- Sing Sing,  
3           eastern and the others that I have not  
4           visited but I've heard of them. And I'm  
5           always so impressed with the degree of  
6           excitement of the men in there. And people  
7           who have expressed very serious intentions of  
8           coming back to their communities and giving  
9           back and becoming productive citizens again.

10                        So you will play a very major role in  
11           that, and I certainly would like to know how  
12           you're moving with that and what can we do to  
13           enhance that.

14                        And the second part of that is, how do  
15           we align what you do inside, the kind of  
16           training and the experiences that people have  
17           inside, creating some sort of a certification  
18           so that when they do return to the community,  
19           they have something that says I have these  
20           skills, and that that can be acknowledged and  
21           accepted as a legitimate representation of  
22           that person's experience?

23                        So those are the two things that I'm  
24           asking. Thank you.

1                   ACTING COMMISSIONER ANNUCCI: Okay,  
2                   Senator. First let me thank you for all the  
3                   efforts you expended to help with the opening  
4                   of the new parole office in Brooklyn. There  
5                   was originally a lot of controversy. I know  
6                   you helped us out. I know it's very well  
7                   accepted now.

8                   SENATOR MONTGOMERY: Yes, it sure is.

9                   ACTING COMMISSIONER ANNUCCI: In fact  
10                  I think we've actually proven that the crime  
11                  rates in that precinct have gone down --

12                  SENATOR MONTGOMERY: That's right.

13                  ACTING COMMISSIONER ANNUCCI: -- since  
14                  we've been there. But it couldn't have  
15                  worked without your assistance, and we're  
16                  very grateful for that.

17                  I'll take your second question first.  
18                  We've already started to work with the  
19                  Department of Labor to create  
20                  preapprenticeship programs. We're going to  
21                  have our first meeting, and we're looking at  
22                  different voc programs that we have and we're  
23                  look at what's available in the community so  
24                  that we can start a preapprenticeship program

1 and then continue it in the community,  
2 wherever it's selected. So we're going to  
3 depend upon the DOL to give us some good  
4 advice in that area.

5 And thank you for acknowledging the  
6 college programming. That's another big  
7 initiative. Courtesy of the Manhattan  
8 district attorney's office, \$7.5 million of  
9 asset forfeiture money. College is very,  
10 very useful, not just in terms of lowering  
11 recidivism, but also as a positive role model  
12 in the institutions.

13 I saw the three gentlemen that were  
14 graduates of Bard with the Governor at the  
15 announcement. I went over, I congratulated  
16 them, and I just said "Make sure you succeed,  
17 because you're carrying the torch for a lot  
18 of other individuals coming after you."

19 And we know how excited the whole  
20 country was when the three individuals in the  
21 debate team went up and beat Harvard, which  
22 was an amazing story, and they were from  
23 Eastern.

24 So we're very excited about that. And

1 I can tell you that you've asked me have I  
2 given thought to a building possibly being an  
3 educational institutional.

4 SENATOR MONTGOMERY: Fantastic.

5 ACTING COMMISSIONER ANNUCCI: The  
6 answer is I've given it thought.

7 SENATOR MONTGOMERY: Great.

8 ACTING COMMISSIONER ANNUCCI: But it's  
9 too early to talk about, you know, what the  
10 possibilities are. We have to do some  
11 outreach with various individuals.

12 But the whole idea of an educational  
13 institution, so to speak, is something that's  
14 at least worthwhile pursuing and exploring to  
15 see if that can be done.

16 SENATOR MONTGOMERY: Great. Thank  
17 you.

18 CHAIRWOMAN YOUNG: Thank you.

19 Senator Nozzolio to close.

20 SENATOR NOZZOLIO: Thank you again.

21 Senator Montgomery, it's not unusual  
22 that we disagree on subjects and that she and  
23 I have had wonderful debates in the past, and  
24 I'm sure we're going to have a few more this

1 session, that we're going to be scrutinizing  
2 whether or not taxpayers' dollars are in fact  
3 utilized for this purpose. I know that there  
4 are -- it's the purpose of providing free  
5 tuition for inmates.

6           However, Senator Montgomery and I do  
7 agree on issues regarding training for  
8 skilled opportunities to provide inmates in  
9 their exit from prison, entry into the  
10 community, to have skill sets that are  
11 marketable for jobs. And that's something  
12 that I don't need you to get in the middle  
13 of, but it's something that we are going to  
14 be scrutinizing.

15           What I do need you to focus on --  
16 Senator Funke mentioned this -- it's  
17 something that is outside the prison walls,  
18 but relative to parole. And we talked about  
19 the ratios, we talked about Western New York.  
20 I think your three-point program regarding  
21 analysis of high risk, moving inmates closer  
22 to the facility they exited from, GPS  
23 bracelets, and transferring to official  
24 reporting, makes a lot of sense.

1                   But if our parole officers don't have  
2                   the appropriate tools, don't have the  
3                   vehicles -- you said 38 more vehicles. Since  
4                   you made that statement, I've been trying to  
5                   find in the State Budget where that is.

6                   ACTING COMMISSIONER ANNUCCI: It's not  
7                   in the budget. It was just approved today,  
8                   Senator.

9                   SENATOR NOZZOLIO: Just approved  
10                  today.

11                  ACTING COMMISSIONER ANNUCCI: The plan  
12                  by OGS.

13                  SENATOR NOZZOLIO: Is this a -- Danny  
14                  O'Donnell's -- assemblyman O'Donnell's  
15                  comment, it's nice that we have these kinds  
16                  of appropriations available from time to  
17                  time. It would be nice if the Legislature  
18                  knew about it. But the fact is if you were  
19                  able to take those out of last fiscal year,  
20                  monies from the current fiscal year as  
21                  opposed to next fiscal year, that this was  
22                  approved and these are going to be  
23                  forthcoming by the end of March?

24                  ACTING COMMISSIONER ANNUCCI: I don't

1 know the schedule. I just got the news that  
2 our plan, it's a three-year plan to increase  
3 the vehicle totals. I think the total we  
4 have now is 248. So it's 30-something --  
5 don't hold me to 38, if it's 38 or 35 -- that  
6 we will be able to get this year.

7 SENATOR NOZZOLIO: And why we're  
8 discussing this is because we live in areas  
9 in upstate New York in particular that are  
10 vast in terms of geography, and that for the  
11 parole officers, as it is they have  
12 significantly higher ratios than ever before.  
13 That we have sheets on the types of offenders  
14 and the types of cases and the caseload, and  
15 the ratios are anywhere from 25 to 1 to 160  
16 to 1, 200 to 1, in terms of the types of  
17 caseloads that individual parole officers are  
18 asked to absorb.

19 And I think that in spite of your very  
20 good attention to this criteria, without you  
21 having more staff in the field, I just think  
22 this is not going to work. You're getting  
23 infrastructure, cars -- that's a good thing.  
24 Thank you for that. Thank you for addressing

1 the issues. But the question of more  
2 officers -- not just taking those with only  
3 Department of Correctional Services training,  
4 CO training, and moving them into -- I mean,  
5 we have many great COs who became parole  
6 officers. But the fact is to have them now  
7 from the prison into parole officer capacity  
8 without adequate training is very, very  
9 concerning.

10 (Applause from audience.)

11 SENATOR NOZZOLIO: Please address,  
12 Commissioner, the issues going beyond the  
13 foundation you set up. And again, I'm here  
14 to thank you for that. But let's -- what are  
15 your plans to move forward with the  
16 deployment of additional personnel?

17 ACTING COMMISSIONER ANNUCCI: Well,  
18 right now I know we have at least two  
19 additional classes scheduled for this year  
20 for parole officers, Senator.

21 We've also gotten other equipment.  
22 We've gotten radios, we've gotten replacement  
23 vests, we're replacing -- I believe we may  
24 have already completed it -- the weaponry,

1 the Glock that they use. There's no question  
2 that they need the appropriate equipment.

3 The ratios are driven by the risk  
4 management plan that tells us whether someone  
5 is a high risk or a low risk, et cetera. We  
6 haven't changed that. But what I can tell  
7 you is that there is the ability by the  
8 parole officer to make changes, to identify  
9 someone as, Listen, this guy needs to be  
10 supervised at a higher level than what he  
11 currently is. And so that's been recognized  
12 and adopted.

13 But I can't speak to you exactly what  
14 the ratios are in various parts of the state.  
15 But I'll certainly go back, we'll look at it  
16 and, you know, make recommendations for  
17 adjustments as warranted.

18 SENATOR NOZZOLIO: Your attention to  
19 this is most welcome. I guess you're taking  
20 an absconder as a low security risk or lower  
21 security risk, because the ratios there --  
22 our numbers show a 200-to-1 ratio, 200  
23 parolees to one parole officer. That sex  
24 offenders, 25 to 1. Now, that's not -- I

1 think most of the parole officers, if they  
2 only had that to deal with, they would feel  
3 more comfortable in their job in terms of  
4 being able to manage the system.

5 But what Senator Funke mentioned,  
6 those disastrous criminality that occurred in  
7 Rochester by parolees, it's symptomatic of  
8 the structure. And I'm not blaming you for  
9 the structure, you're a career correctional  
10 personnel. You came up through the ranks. I  
11 appreciate the fact that you know corrections  
12 and you've gotten a good job with  
13 corrections.

14 But I think in terms of parole,  
15 something that was thrust upon you a few  
16 years ago -- we discussed it very briefly at  
17 this table, if you recall, when the proposal  
18 first came through, a proposal that ended up  
19 being accepted. But it's a proposal that  
20 still needs ironing out some important  
21 wrinkles.

22 And if the public knew about these  
23 ratios, I believe they would be extremely  
24 concerned with public safety. And I think

1           that you -- if you would --

2                         (Applause from audience.)

3           SENATOR NOZZOLIO:  -- if you would  
4           continue the work to address, let us know  
5           what more resources you need to make this  
6           happen.  You have partners here, and I know  
7           you're well-intentioned.  Let's try to  
8           understand that we've got to solve this  
9           problem.

10                        Thank you, Commissioner.

11           ACTING COMMISSIONER ANNUCCI:

12           Certainly, Senator.  Thank you.

13           CHAIRWOMAN YOUNG:  Thank you very  
14           much.  I think that concludes our speakers.  
15           So again, we appreciate you being here today  
16           and all of the answers that you gave.

17                        Our next speaker is Superintendent  
18           Joseph D'Amico, New York State Division of  
19           State Police.

20                        (Pause.)

21           CHAIRWOMAN YOUNG:  Good afternoon,  
22           Superintendent.

23                        Could I have some order, please.

24           Could we please have some order.  Thank you

1 very much.

2 We welcome you today. I know it's  
3 been a lengthy day so far, but it's always  
4 difficult under Public Protection because we  
5 have so many commissioners and leaders of the  
6 different state agencies. And we certainly  
7 are very happy to have the State Police and  
8 you here today.

9 So if you'd like, we would love to  
10 hear your testimony.

11 SUPERINTENDENT D'AMICO: Good  
12 afternoon. Thank you.

13 Thank you, Chairwoman Young, Chairman  
14 Farrell, and distinguished members of the  
15 committees for this opportunity to discuss  
16 with you Governor Cuomo's budget for the  
17 Division of State Police.

18 I'd like to take this opportunity to  
19 thank the Legislature for its past support of  
20 the State Police. Because of your support,  
21 the New York State Police continues to enjoy  
22 its --

23 CHAIRWOMAN YOUNG: Can we have some  
24 order, please, at the top of the room. Thank

1           you.

2                         Sorry, Superintendent.

3                         SUPERINTENDENT D'AMICO: That's okay.

4                         Because of your support, the New York  
5           State Police continues to enjoy its well-  
6           deserved reputation as one of the leading law  
7           enforcement agencies in the nation.

8                         On April 11, 1917, Governor Whitman  
9           signed the Wells-Mills Bill into law,  
10          establishing the State Police. As we  
11          approach the agency's 100th anniversary next  
12          year, our role in New York is essentially  
13          unchanged to this day. The bill stated: "It  
14          shall be the duty of the State Police to  
15          prevent and detect crime and apprehend  
16          criminals. They shall also be subject to the  
17          call of the Governor and empowered to  
18          cooperate with any other department of the  
19          State or with local authorities."

20                         And the importance of this original  
21          charter is as significant now as it was back  
22          then.

23                         Since its inception, the State Police  
24          has consistently provided public service

1 through its core missions, adapting mission  
2 priorities constantly to societal changes,  
3 and we have continually improved these  
4 services. Our current mission priorities  
5 include reducing the number of deaths,  
6 injuries and property damage caused by motor  
7 vehicle accidents through vehicle and traffic  
8 enforcement and motorist education, providing  
9 professional police services to communities  
10 and investigative support to departments  
11 around the state, engaging in emergency  
12 preparedness, planning and response  
13 activities and serving a crucial role in the  
14 State's counterterrorism efforts through our  
15 collaborative work with federal, local and  
16 other state agencies. Our mission and goals  
17 all focus on ensuring the continued safety of  
18 the people of New York State.

19 The Governor continues to dedicate  
20 funding to Joint Task Force Empire Shield to  
21 enhance efforts to detect and deter terrorism  
22 in a time when such acts are constantly a  
23 threat to the safety of New Yorkers. As a  
24 result, New York remains one of the safest

1 large states in the nation. Using  
2 intelligence-based investigative techniques  
3 and targeted enforcement, state troopers have  
4 been assigned to potential target locations  
5 and, with local partners, provide greater  
6 protection for the public through asset  
7 integration strategies. This effort is being  
8 permanently implemented in New York City with  
9 the new assignment of 55 State Police  
10 personnel dedicated solely to this mission.

11 The State Police is unique as the only  
12 law enforcement agency in New York State with  
13 the ability to deploy large numbers of  
14 professionally trained police officers  
15 anywhere in the state on short notice in  
16 response to an emergency or natural disaster.

17 The State Police is also available for  
18 large-scale deployments to meet an immediate  
19 need for law enforcement services in any  
20 community. This was clearly demonstrated  
21 over 23 days this past summer, during the  
22 Clinton Correctional escape in Dannemora,  
23 where we deployed as many as 532 troopers and  
24 200 investigators from around the state to

1           assist with that investigation. At its peak,  
2           State Police directed 1560 personnel from 16  
3           different agencies in the investigation.

4                     In addition, we continue our  
5           partnerships with the Office of Emergency  
6           Management and the Division of Homeland  
7           Security and Emergency Services, with a focus  
8           on disaster preparedness and response  
9           readiness.

10                    Our first and foremost priority  
11           continues to be the safety of the public and  
12           our troopers who protect them. Toward that  
13           goal, we will continue to provide our  
14           troopers with the necessary equipment and  
15           other resources to ensure safety as they  
16           perform their duties. The Governor  
17           recognizes this need after observing the  
18           level of sophistication and tactics employed  
19           at criminal events in the United States and  
20           abroad, and has committed to new funding for  
21           additional patrol rifles, rifle-resistant  
22           body armor plates and ballistic helmets for  
23           State Police patrols statewide.

24                    Illegal drug use and its impact

1 continues to dominate headlines in our  
2 country. Heroin availability and abuse  
3 continues. State Police will continue to  
4 aggressively work in partnership with local  
5 police agencies to investigate drug-related  
6 crimes and to arrest offenders.

7 Our troopers, as first responders,  
8 continue to patrol with Naloxone, the opioid  
9 reversal drug which we have administered  
10 132 times in medical emergencies involving  
11 overdoses. One hundred fourteen of those  
12 administered Naloxone survived as a result of  
13 troopers' efforts.

14 The use of social media to foster the  
15 relationship between the agency and the  
16 citizens we serve has been successful in  
17 improving cooperation with law enforcement  
18 efforts in the communities we serve. By  
19 posting safety-related and crime alert  
20 information on Twitter and Facebook, the  
21 State Police has generated enhanced  
22 investigative capabilities that have led to  
23 successful case resolutions and shared  
24 important public safety information.

1                   This year will be the first full year  
2                   for the Sexual Assault Victims Unit that  
3                   arose from passage of the "Enough is Enough"  
4                   legislation and the Governor's commitment to  
5                   combating sexual assault on college and  
6                   university campuses. Fifteen State Police  
7                   personnel will work statewide to ensure  
8                   uniformity in the handling of campus sexual  
9                   assault investigations, provide investigative  
10                  assistance and training to campus or local  
11                  police investigating these cases, and to  
12                  educate individuals and campus communities  
13                  regarding victims' rights and their available  
14                  resources.

15                  Agency staffing remains an area of  
16                  constant executive-level discussion within  
17                  the State Police. We continue to request and  
18                  conduct academy classes so that adequate  
19                  staffing levels are maintained to perform our  
20                  core mission priorities without sacrificing  
21                  the response time or the safety of our  
22                  troopers. We will continue to look for  
23                  additional efficiencies through our  
24                  partnerships with other law enforcement

1 agencies throughout the state and through  
2 consolidation of state government services  
3 where practical and possible.

4 And as you're aware, 85 percent of the  
5 appropriations made for State Police  
6 operations are in support of personnel  
7 service obligations, of which approximately  
8 93 percent supports the salaries and overtime  
9 expenses of our sworn members. The vast  
10 majority of the non-personal service  
11 appropriations are best characterized as  
12 non-discretionary expenditures. Expenditures  
13 for vehicles, equipment, facilities and  
14 communications are all essential to providing  
15 the tools necessary for the men and women of  
16 the State Police to fulfill their law  
17 enforcement missions.

18 New Yorkers have come to expect public  
19 service from a stable, well-deployed and  
20 adequately resourced State Police. I am  
21 proud to say that New Yorkers can be  
22 confident their expectations are being met.  
23 It is the integrity, knowledge, dedication  
24 and quality of our men and women that

1 distinguishes the New York State Police. I  
2 am honored and privileged to be a part of  
3 such a professional police agency and its  
4 great traditions and to serve alongside our  
5 members.

6 I thank you for your support of the  
7 State Police and for this opportunity today  
8 to address you.

9 CHAIRWOMAN YOUNG: Thank you,  
10 Superintendent.

11 Our first speaker is Senator Tom  
12 Croci.

13 SENATOR CROCI: Thank you,  
14 Superintendent, for your appearance here  
15 today. I know it's been a difficult year in  
16 the United States for law enforcement. And  
17 for me, who grew up in a small town, we grew  
18 up thinking, you know, police were good and  
19 drugs were bad. There's a lot of mixed  
20 messages out there for young people today.

21 But at a time when we have incidents  
22 like San Bernardino, California, and the  
23 heroin epidemic that you raised, it's nice to  
24 know that we have the troopers out there

1 watching out for us. And I commend you on  
2 your leadership of that organization.

3 SUPERINTENDENT D'AMICO: Thank you.

4 SENATOR CROCI: We have previously  
5 questioned the commissioner of DHSES,  
6 Commissioner Melville, who just recently  
7 appeared today to talk about the Article VII  
8 language in Part D of the ELFA, which seeks  
9 to transfer some of the counterterrorism  
10 responsibilities from that organization to  
11 the State Police.

12 With respect to that specific Article  
13 VII language, who in your knowledge, in your  
14 mind, would be responsible for  
15 counterterrorism in the state should that  
16 occur?

17 SUPERINTENDENT D'AMICO: The  
18 counterterrorism initiatives and  
19 responsibility is really a partnership of the  
20 State Police and the Division of Homeland  
21 Security and Emergency Services. We've  
22 shared that since that agency was formed  
23 after 9/11.

24 I heard Commissioner Melville's

1 testimony this morning and if I could just  
2 build on the answer that he gave. You know,  
3 currently the 10 analysts who are assigned  
4 and employed in the Intelligence and Analysis  
5 section of OCT in DHSES, the Office of  
6 Counterterrorism, work at the New York State  
7 Intelligence Center, in the Terrorism Center  
8 and the CTC, and basically report up and are  
9 managed by State Police personnel, as it's  
10 happening right now.

11 So what happens is information comes,  
12 whether it's by phone, email, phone app or  
13 suspicious activity reporting by law  
14 enforcement. The information is worked on  
15 and analyzed and built and vetted by those  
16 analysts, and the whole goal here is to  
17 develop actionable intelligence that we could  
18 then hand off to people who could react to  
19 it -- whether it's State Police or Joint  
20 Terrorism Task Force partners, or just alerts  
21 or information that has to go out.

22 Currently the information travels up  
23 almost simultaneously through DHS management,  
24 DHSES management and State Police management.

1           So by making the change from having people  
2           employed by DHSES over to the State Police  
3           side functionally changes nothing. And all  
4           it will allow us to do, we'll be more  
5           efficient in use of those people, backing up  
6           those people when people are out -- because  
7           there's a criminal side and a terrorism side,  
8           and they complement each other. A lot of the  
9           people are interchangeable.

10                    I mean, my goal -- the information  
11           that travels upward for us has to be  
12           operational. For DHSES it has to be to  
13           develop policy, to react, to brief the  
14           Executive. Both important. That's not going  
15           to change.

16                    SENATOR CROCI: So on initial glance,  
17           that's the appearance of what's occurring  
18           here. I just want to ask you a series of  
19           questions, because this is what the proposed  
20           language would get rid of and not replace  
21           either with the State Police or DHSES.

22                    So would you agree that the following  
23           in 2016 is an important function for the  
24           State of New York to be engaged in: To

1 coordinate state resources for the collection  
2 and analysis of information with relation to  
3 terrorist threats and terrorist activities?

4 SUPERINTENDENT D'AMICO: Yes.

5 SENATOR CROCI: Okay. The  
6 responsibility to coordinate, facilitate  
7 information-sharing among state, federal  
8 agencies to ensure appropriate intelligence  
9 to assist in the early identification and  
10 response to potential terrorist activities?

11 SUPERINTENDENT D'AMICO: Yes, of  
12 course.

13 SENATOR CROCI: The responsibility of  
14 the Office of Counterterrorism to collect,  
15 analyze and share information relating to  
16 terrorist threats and terrorist activities  
17 throughout the State of New York?

18 SUPERINTENDENT D'AMICO: Yes.

19 SENATOR CROCI: So part of the reason  
20 that I have some concern, listening to  
21 Commissioner Melville, whose understanding  
22 was we're simply transferring resources,  
23 we're shedding the counterterrorism language  
24 in the statute so DHSES no longer has

1 statutory responsibility. I can't find  
2 anywhere in the State Police authority for  
3 direct counterterrorism responsibilities.  
4 And those functions that are being  
5 transferred to you don't include the three  
6 sections that I just read to you, which I  
7 think the genesis of these statutes post-9/11  
8 were to ensure that the kind of information  
9 sharing, the kind of fusion that should  
10 occur, and the kind of relationships that  
11 need to be built up and down echelon existed.

12 So to the members of the committee and  
13 to the chairperson, I just want to emphasize  
14 the fact that it appears that in transferring  
15 these bodies, you're also eliminating the  
16 term "counterterrorism" at the statutory  
17 level in the executive branch. And then to  
18 an agency which is now going to have the  
19 responsibility, presumably, of doing the  
20 work, you don't have the statutory  
21 responsibility in writing, you don't have the  
22 language "counterterrorism," and you also  
23 don't have a reporting requirement up and  
24 down chain.

1                   So do you see that you're going to be  
2                   able to perform these functions in a time of  
3                   crisis, understanding that you're not going  
4                   to have the statutory authority to do the  
5                   mission and that DHSES will no longer have  
6                   the statutory authority? So the question is,  
7                   who has the responsibility if there's no  
8                   authority?

9                   SUPERINTENDENT D'AMICO: So even  
10                  though the language may not be there, you  
11                  know, in the function of NYSIC, New York  
12                  State Intelligence Center, as the state's  
13                  recognized fusion center, those are the roles  
14                  of NYSIC.

15                 You know, when DHS put out the  
16                 guidelines back in 2008 in a document called  
17                 "Baseline Capabilities for State and Major  
18                 Urban Area Fusion Centers," they talk about  
19                 information sharing, they talk about  
20                 briefings. And three of the things that come  
21                 along with intelligence and information  
22                 dissemination is to develop a dissemination  
23                 plan, to develop a plan for high-level  
24                 discussions up and down the chain, be able to

1           brief the state, local, tribal agencies on  
2           occurring incidents. It requires sharing of  
3           information with other fusion centers in  
4           surrounding states. It requires reporting of  
5           information to the federal government,  
6           whether it's DHS or DOJ or the FBI.

7                     Now, while that's not required for  
8           funding, it's the way we operate. It's the  
9           way the center operates. It's the function  
10          of the fusion center. A number of years ago  
11          we were actually acknowledged by DHS for the  
12          excellent way that we do carry out activities  
13          there. It's an integral part of the  
14          counterterrorism program for New York State.

15                    So whether the language is there or  
16          the language isn't there, that's the way we  
17          function. That's the way the guidelines from  
18          DHS are dictated, and we follow them. And I  
19          think that's what would fill the gap without  
20          the statutory language.

21                    SENATOR CROCI: So many of the  
22          recommendations that I'm told are being  
23          proposed in the Governor's budget come from a  
24          review that former Commissioner Ray Kelly

1 did, and I think we all acknowledge that he  
2 was a pioneer in some of the most innovative  
3 and effective counterterrorism policies for a  
4 police force that we've ever seen, which is  
5 being duplicated worldwide.

6 Have you had the opportunity to read  
7 this report?

8 SUPERINTENDENT D'AMICO: I don't  
9 believe that Commissioner Kelly or former  
10 Commissioner Kelly has issued a report.

11 I had met with him and his staff a  
12 number of months ago when they were going  
13 through just a review of the state's  
14 procedures. And since that time, you know,  
15 I've heard it verbally, I heard it at the  
16 State of the State, but I don't know that  
17 there's a written report actually presented.

18 SENATOR CROCI: Because it would be  
19 very interesting to know if this was fleshed  
20 out in that analysis, to know whether or not  
21 those three areas, which will disappear from  
22 the role of New York State government -- some  
23 sound pretty important. Collection and  
24 analysis of information related to terrorist

1 threats; sharing among state and appropriate  
2 intelligence partners.

3 I think that you would agree that in  
4 law enforcement and the military that there  
5 are those relationships, those sharing  
6 relationships. But in the weeks, months and  
7 years before September 11, 2001, those  
8 relationships existed, yet information at the  
9 FBI was stovepiped to CIA, the military  
10 intelligence community, the Department of  
11 State.

12 And the post-9/11 Commission made  
13 recommendations that we have the kind of  
14 executive focus on these issues to ensure  
15 that all departments and agencies within the  
16 state -- to my colleagues and to you, I don't  
17 see, without explicit statutory  
18 responsibility by either the State Police or  
19 by DHSES -- I see seams created again. And  
20 if those relationships as you currently have  
21 aren't there -- new superintendent, new  
22 commissioner, new governor; law enforcement  
23 personnel, as you know, rotate all the  
24 time -- I'm afraid we're recreating seams

1           that the 9/11 commission said we specifically  
2           should avoid.

3                       SUPERINTENDENT D'AMICO: Well, I mean,  
4           just to go back to the report by former  
5           Commissioner Kelly, I'm not aware of a  
6           report. I don't believe a report was issued.  
7           I mean, I don't know if he has intentions on  
8           addressing those issues in his report.

9                       You know, I can only tell you, as kind  
10          of the custodian of NYSIC and a very large  
11          counterterrorism function, not only at the  
12          troop level but with the federal partners,  
13          you know, I'm fairly confident that the  
14          information will flow. Especially between us  
15          and DHSES. You know, we've always had that  
16          partnership, the DHSES commissioner still  
17          retains the ownership as chairman of the  
18          state's Executive Committee on  
19          Counterterrorism, still coordinates the  
20          activity of the 16 counterterrorism zones.  
21          That really hasn't changed. He's still the  
22          arbiter of Homeland Security funding, and a  
23          lot of that funding funds the New York State  
24          Intelligence Center.

1                   So I mean, you know, I would think  
2                   that if he wasn't satisfied with the  
3                   information that was flowing, you know, he  
4                   controls the funding purse strings, and there  
5                   would be an issue there.

6                   I would just like to say, you know,  
7                   the law enforcement committee pre-9/11 and  
8                   post-9/11 are two different worlds.

9                   SENATOR CROCI: Absolutely.

10                  SUPERINTENDENT D'AMICO: You know, no  
11                  doubt about it. The same with the military  
12                  and the intelligence communities.

13                  You know, we shared before 9/11, but  
14                  since 9/11, it's so much more seamless.  
15                  We're open, we work together. You know, it's  
16                  about collaboration and cooperation. It's  
17                  just a whole different world in law  
18                  enforcement.

19                  SENATOR CROCI: Well, as I -- and I  
20                  know I'm out of time, Madam Chair. I would  
21                  just close with under this construct, as I  
22                  read it -- and I've had a lot of very smart  
23                  minds look at it as well -- if you were to  
24                  have a liaison meeting with the JTTF and they

1           were to provide you information about a  
2           pending attack on New York, in this construct  
3           you don't have to share it with the  
4           commissioner at DHSES. You would have no  
5           statutory responsibility to do so. You may,  
6           of course, and I know you would. But that's  
7           my concern, and I think my colleagues and I  
8           will have to continue to address it.

9                     But I appreciate your testimony today,  
10           and I'll turn it over to the chair. Thank  
11           you.

12                    SUPERINTENDENT D'AMICO: Thank you,  
13           Senator.

14                    CHAIRWOMAN YOUNG: Thank you.

15                    ASSEMBLYMAN McDONALD: Thank you,  
16           Senator. Our next speaker is Assemblymember  
17           Duprey.

18                    ASSEMBLYWOMAN DUPREY: Good afternoon,  
19           Superintendent.

20                    SUPERINTENDENT D'AMICO: Good  
21           afternoon, ma'am.

22                    ASSEMBLYWOMAN DUPREY: The last time  
23           that you and I saw each other was at a very  
24           emotional day in my district, just hours

1 after the capture of Sweat. I guess more  
2 than questions, I first want to extend my  
3 heartfelt thanks to you as the  
4 superintendent; to certainly Major Chuck  
5 Guess, Troop B commander; our hometown hero,  
6 Sergeant Jay Cook; and all of law  
7 enforcement. Certainly our SORT teams who  
8 put unbelievable hours tromping through the  
9 mud and the mess of some of our North Country  
10 territory, to have a successful conclusion to  
11 the escape, which none of us will soon  
12 forget.

13 And I want to take a moment to extend  
14 personal thanks to you because I -- you know,  
15 I was -- my body was down here, my heart and  
16 my mind were in my district for those  
17 23 days. But I was surrounded every day by  
18 some of my colleagues and friends who  
19 continued to say to me: Matt and Sweat are  
20 long gone, we're wasting tax dollars, we  
21 shouldn't have 1500 law enforcement in such a  
22 small area.

23 And I thank you, on behalf of my  
24 thousands of constituents who were incredibly

1           frightened, that you stood behind Major Guess  
2           in your belief and his belief that those two  
3           were still there. And certainly you were  
4           proven right. And for that, I thank you,  
5           because I can't imagine what my district  
6           would have gone through had you pulled those  
7           troops out. So thank you, sir.

8                        SUPERINTENDENT D'AMICO: Thank you.

9                        And I really need to thank your  
10           constituents, your communities, who were  
11           tremendously supportive of law enforcement,  
12           who were out there 24 hours. They helped  
13           with shelter and drink, refreshments and food  
14           and everything else. They were tremendously  
15           supportive, they were helpful in information,  
16           and it was really a good partnership between  
17           law enforcement and community.

18                       ASSEMBLYWOMAN DUPREY: I've never been  
19           more proud to represent folks than I was  
20           during that time. So thank you for that too.

21                       SUPERINTENDENT D'AMICO: Thank you.

22                       ASSEMBLYWOMAN DUPREY: I do want to  
23           mention the one -- and I don't want to really  
24           call it a glitch, but I think it's something



1 naming any companies, but the cell carriers  
2 were excellent in coming in with, as best as  
3 they could support us, with trailered  
4 equipment. But there's a tremendous void up  
5 in that part of New York State.

6 ASSEMBLYWOMAN DUPREY: Yeah, now  
7 they're gone, so -- we need them all the  
8 time.

9 And my only other question to you,  
10 sir, is -- and I hear it not all the time,  
11 but fairly often, that the need to have newer  
12 vehicles that so many of the troop cars --  
13 you know, the vastness of that region, of  
14 Troop B, is huge. That so many of the troop  
15 cars are way over 100,000 miles on their  
16 odometers, that they're breaking down. And,  
17 you know, certainly a nightmare of mine is  
18 that we will have a trooper out there alone  
19 some night without cell service and with a  
20 car broken down.

21 And so are you addressing that in this  
22 budget and going forward?

23 SUPERINTENDENT D'AMICO: Yes, we are.  
24 I mean, we've been working that for at least

1 a couple of years now. It is a major  
2 concern. It's one of our biggest needs in  
3 the State Police, are vehicles. You know,  
4 followed by people. And probably half of our  
5 fleet is at 100,000 miles on the odometer.

6 So, you know, we need a tremendous  
7 infusion in this year's budget to kind of  
8 make a leap so that at the end of the year we  
9 could -- our goal is 125,000 miles on the  
10 cars. You know, I think through our  
11 maintenance program, inspection program, the  
12 vehicles can certainly have that kind of  
13 life. There may be a year life span also,  
14 like seven years, that might be appropriate  
15 for a fleet.

16 But in this year's budget we do have  
17 sufficient money that I expect at the end of  
18 the fiscal year all of our patrol vehicles,  
19 all of our investigator vehicles, and all of  
20 our officer vehicles with -- that are  
21 currently at 100,000 miles now will be  
22 replaced. So I think we'll be in a much  
23 healthier place at the end of the fiscal  
24 year. We'll come back next year and look to

1 find the right amount to kind of maintain  
2 that number so we don't fall back into that.

3 You know, for us it was a couple of  
4 years of insufficient vehicle purchases,  
5 problems with procurement contracts, and  
6 obviously just not enough funding in the  
7 budget to do adequate vehicle purchases.

8 So I think that this year we should  
9 get a good place, and then we just have to  
10 figure out what's the right maintenance  
11 number to keep us at a good mileage.

12 ASSEMBLYWOMAN DUPREY: Thank you.  
13 Thank you for your service.

14 SUPERINTENDENT D'AMICO: Thank you.

15 CHAIRWOMAN YOUNG: Thank you,  
16 Assemblywoman.

17 Senator Gallivan.

18 SENATOR GALLIVAN: Thank you, Madam  
19 Chair.

20 Good afternoon, Superintendent. And  
21 as always, thank you for your service and  
22 that of the thousands of professional men and  
23 women who make the State Police one of the  
24 finest agencies in the country.

1 SUPERINTENDENT D'AMICO: Thank you.

2 SENATOR GALLIVAN: And I'm very proud  
3 to have come from the State Police, as you  
4 well know. And perhaps because of that, I  
5 have a special interest in the things that  
6 take place and the maintenance of the  
7 professionalism, and that the State Police  
8 maintains that high level of service.

9 The Governor's budget, you talked  
10 about it just a little bit. The Governor's  
11 budget provided \$40 million, some of it for  
12 additional State Police personnel for  
13 New York City, some National Guard for  
14 permanent staffing down there as well. And  
15 the reference I think in the Governor's  
16 presentation had to do with homeland security  
17 issues. My question has to do with, are you  
18 sufficiently staffed to meet the needs of the  
19 citizens of the rest of the state?

20 SUPERINTENDENT D'AMICO: Yeah, I think  
21 right now the staffing levels, we're at --  
22 we're about 4750 on the sworn side, is a good  
23 number. You know, a couple of dozen more,  
24 I'd be much happier. I think that, you know,

1 we'll get back to that. We had dropped down  
2 very low a couple of years ago; we've been  
3 putting in consistent academy classes, and  
4 we've been able to build back that number.  
5 And obviously we don't want to lose it.

6 As far as the \$40 million, I believe  
7 that's for counterterrorism. It's to extend  
8 the counterterrorism surge, if you want to  
9 call it that, throughout the state -- you  
10 know, beyond New York City. Last year we put  
11 troopers down supporting MTA and other  
12 agencies in the counterterrorism effort,  
13 especially in the transportation  
14 infrastructure. And this year's budget is --  
15 since we now permanently assign troopers to  
16 do that in New York City, it's to take that  
17 money and spend it elsewhere in the state.

18 And we've done some of that already  
19 after some of the terrorist attacks we've  
20 seen around the world. But I would  
21 anticipate you'll see additional troopers at,  
22 you know, high-profile public events, whether  
23 they be sporting events or parades or  
24 concerts or school events, college campuses,

1 things like that.

2 And, you know, I think we're all aware  
3 that whether it's crime, traditional crime,  
4 or terrorism, increased uniform presence has  
5 a profound impact on that.

6 SENATOR GALLIVAN: What is your  
7 current plan for future classes? In this --  
8 in the current fiscal year or the year  
9 beginning April 1st.

10 SUPERINTENDENT D'AMICO: Well, in this  
11 fiscal year we plan on putting in a class in  
12 March, which is the end of the fiscal year.  
13 We're anticipating somewhere around 200.  
14 We're anticipating a second academy class in  
15 next fiscal year, which will follow.

16 And as far as the numbers, you know,  
17 we'll look at attrition between now and then,  
18 we'll look at the people who don't make it  
19 through the academy. We'll look at new  
20 needs, such as Enough is Enough and casino  
21 gaming, and we'll work with Budget to come up  
22 with the right number when we're ready to put  
23 the class in.

24 But two classes in the next 12 months,

1 in 12 months, the first one being probably  
2 200, somewhere around there.

3 SENATOR GALLIVAN: I'd like to  
4 continue on a couple of the topics the  
5 Assemblywoman had talked about. First,  
6 vehicles. Last year's budget, we know -- you  
7 testified about the critical needs for -- the  
8 critical state of your fleet last year, as  
9 did the Troopers PBA, State Police  
10 Investigators Association. And your  
11 testimony convinced us; we provided a  
12 significant amount of money in the budget  
13 for, among other things, State Police  
14 vehicles and various equipment needs.

15 I am pleased to see that the Governor  
16 has included some of that in this year's  
17 budget that you testified to, a significantly  
18 smaller amount of dollars spent on it than  
19 what we allocated last year.

20 Nonetheless, though, the Governor's  
21 spokesman, within the past month or so, said  
22 that that \$60 million that was provided last  
23 year is going to be reallocated to different  
24 things in this upcoming fiscal year.

1           Because, they said, it was contingent on  
2           policy proposal acceptance of the  
3           Legislature, the Governor's proposals last  
4           year.

5                         Many of us were at that table, as we  
6           talked about that. It wasn't contingent on  
7           anything. We provided the funding for it.

8                         So I guess -- my question has to do  
9           with your fleet, and I just want to make sure  
10          that I'm hearing you okay, that you have  
11          plans to address the fleet, however you came  
12          up with the money in last year's budget that  
13          wasn't part of the \$60 million, combined with  
14          monies planned for this fiscal year. So  
15          you're -- do you need more funding from us  
16          for your fleet?

17                        SUPERINTENDENT D'AMICO: No, I --

18                        SENATOR GALLIVAN: Other than what was  
19          proposed.

20                        SUPERINTENDENT D'AMICO: No, I don't  
21          believe so. I mean, I've been working with  
22          Budget on this.

23                        The last couple of years we've spent  
24          about \$15 million consistently each year on

1 fleet. You know, we thought that probably  
2 this year if we spend \$20 million, we'll be  
3 able to bring our mileage down and get it to  
4 a healthy place. And as we get closer to  
5 budget, we do our analysis and realized  
6 \$20 million is not going to do it. We're  
7 currently looking at \$30 million from Budget  
8 to put into fleet purchase, which as I said  
9 will have a tremendous impact and help us to  
10 get almost completely healthy by the end of  
11 the fiscal year, and then we just need to  
12 kind of figure out the maintenance going  
13 forward on how do we keep it at that level.

14 You know, as far as what you're  
15 speaking about, the \$60 million or what  
16 conditions or terms, I --

17 SENATOR GALLIVAN: Not your area.

18 SUPERINTENDENT D'AMICO: I wasn't part  
19 of any of that discussion, so --

20 SENATOR GALLIVAN: The point that I  
21 wanted to make is that we had provided money  
22 that was not allocated for that purpose, and  
23 I want to make sure that your fleet is being  
24 taken care of.

1 SUPERINTENDENT D'AMICO: Yes, it is.

2 SENATOR GALLIVAN: All right, thanks.

3 The next area is communications. Very  
4 interesting, nearly 20 years ago during my  
5 time with the State Police and then as Erie  
6 County sheriff, I was involved in a number of  
7 different committees regarding statewide  
8 communication system interoperability.

9 Almost 10 years ago, the Bucky  
10 Phillips escape, and the after-action report  
11 identified communications problems as the  
12 biggest problem, the most critical issue  
13 facing us.

14 While I don't know if you've completed  
15 your own internal after-action on the escape,  
16 the Assemblywoman alluded to the problem.  
17 There was some testimony before, we hear it  
18 time and time again. Once again, if not the  
19 biggest problem issue up there, one of the  
20 most significant. I don't expect you  
21 necessarily to have an answer or be able to  
22 write the check to fix it, but my question  
23 is, how do we solve this? I mean, money has  
24 gotten thrown at it, at least as far as I

1 know, for over 20 years, and we continue to  
2 have the same problem.

3 And we look at the geography of the  
4 state, North Country is difficult, Southern  
5 Tier is difficult, Western New York is  
6 difficult. We have these dead spots across  
7 the state. We have local agencies that can't  
8 communicate with others, the interoperability  
9 issues. How do we fix it?

10 SUPERINTENDENT D'AMICO: I mean,  
11 communications obviously is a big issue. You  
12 know, if you were to come back to the State  
13 Police today, Senator, you could pick up a  
14 radio and -- right where you left off,  
15 because the technology and the way we do it  
16 is old. The equipment is new, you know, and  
17 it works, but it's -- you know, time has  
18 changed and we haven't caught up to it.

19 Over a year ago I charged our  
20 communications people with looking at the  
21 State Police system, the communications  
22 system, with a view on upgrading. Now  
23 obviously for a lot of years we sat back  
24 waiting for the SWN to come on board, which

1           didn't happen. So there were a lot of years  
2           lost. And then there was narrowbanding from  
3           the FCC, which caused us to have to regroup  
4           to make deadlines.

5                     But, I mean, at this time we're  
6           looking probably to go forward with a  
7           multiyear plan to upgrade our own  
8           infrastructure to a much more modern system.  
9           Whether it's digital or repeated or -- still  
10          has yet to be told. We've met with vendors,  
11          including Motorola, who made proposals to us  
12          just to give us some ideas on where we might  
13          be able to go. But, you know, at this time  
14          it's still premature to say that their  
15          solution is the one we like or anything like  
16          that.

17                    So we're still looking at it. It's  
18          one of my goals that I would like to  
19          accomplish in the near future.

20                    As far as the communications and  
21          interoperability issue, you know, I read the  
22          Bucky Phillips after-action as well, and it  
23          struck me that we identified it back then and  
24          we had the same type of issues this time.

1 But the issues weren't exact. So back in  
2 Bucky Phillips, we had unencrypted analog  
3 transmissions that everybody listened to and  
4 knew where our police were and what they were  
5 doing. And in some cases they were helped,  
6 and in some cases they were hindered.

7 So since that time, you know, we've  
8 moved ahead, we've gone to digital and  
9 encryption on some of our tactical  
10 frequencies, and we get up to the northern --  
11 the Adirondack region, where, you know, you  
12 couldn't have been in a more difficult  
13 terrain to try to support communications up  
14 there. And then add to that, we bring in,  
15 you know, ten partner agencies who all have  
16 different radio systems and everything else.  
17 And even when you were both on VHF and said,  
18 Wow, this should be easy -- well, this  
19 agency's encryption doesn't comport with this  
20 agency's encryption.

21 So in the end, you know, we ended up  
22 with unencrypted analog VHF like we did in  
23 the Bucky Phillips days. And because of  
24 that, less so that the community was

1 monitoring, but the news media was  
2 monitoring. And in the case of our escapees,  
3 they had a radio -- you know, a  
4 transistorized radio -- and they were  
5 listening to the news reports of what the  
6 police were doing.

7           So it certainly is in the draft  
8 after-action that we're working on right now.  
9 It's something that if we could solve it in  
10 the Adirondack region, we could take that  
11 anywhere and just -- because as I said, you  
12 know, we sent communications trucks up there,  
13 but there's no infrastructure. There's no  
14 towers to climb and put up an antenna or  
15 anything like that. So it was as difficult  
16 as it could be.

17           It's one of our priorities not to come  
18 back and see this in another after-action  
19 report in the future, and to work with our  
20 partners on the encryption issues and the  
21 different, you know, frequencies and things  
22 like that.

23           SENATOR GALLIVAN: All right. Thank  
24 you, Superintendent.

1 SUPERINTENDENT D'AMICO: Sure.

2 ASSEMBLYMAN McDONALD: Thank you,  
3 Senator.

4 Our next speaker will be  
5 Assemblymember Lentol.

6 ASSEMBLYMAN LENTOL: Good afternoon.

7 SUPERINTENDENT D'AMICO: Good  
8 afternoon.

9 ASSEMBLYMAN LENTOL: I just wanted to  
10 say that -- in fact, I wanted to thank you,  
11 by the way --

12 SENATOR KRUEGER: Microphone.

13 ASSEMBLYMAN LENTOL: Sorry. I don't  
14 know how to use these technological equipment  
15 things. I think this is encrypted the wrong  
16 way.

17 (Laughter.)

18 ASSEMBLYMAN LENTOL: But I wanted to  
19 say how pleased I was, since the Bucky  
20 Phillips incident, how well and hard you've  
21 worked on equipping the State Police with the  
22 modern armaments and the necessary tools in  
23 order to do their job. And I saw in the  
24 budget proposal that there's \$4 million to

1 provide uniformed troopers statewide with  
2 rifles, body armor, and ballistic helmets.  
3 And I just wanted to ask you, is that enough?

4 SUPERINTENDENT D'AMICO: Yeah. I  
5 mean, my goal in the equipment was to get a  
6 patrol rifle into the hands of every trooper  
7 who's out there on patrol. You know, right  
8 now it's a -- it's going to a major effort to  
9 train everyone and bring them up to speed,  
10 get the equipment to get them into the cars,  
11 because we have a limited number right now.  
12 We probably have 500 patrol rifles in  
13 addition to shotguns, and this will increase  
14 us by 425 or somewhere around there.

15 I think for this fiscal year, yeah, I  
16 think it's what we can handle. It will get  
17 them into the hands of all the troopers. We  
18 have some in the -- some of the plainclothes  
19 units have them as well. And, you know, once  
20 we get this completed, we'll come back and  
21 evaluate needs maybe for next fiscal year.

22 ASSEMBLYMAN LENTOL: That would be  
23 good.

24 And I listened with great interest to



1 Chair.

2 Superintendent, welcome again to these  
3 discussions.

4 SUPERINTENDENT D'AMICO: Thank you,  
5 Senator.

6 SENATOR NOZZOLIO: I would feel  
7 confident to make the case to anyone that  
8 your efforts have, I believe, qualified you  
9 to be the best superintendent in the history  
10 of the State Police. I say that with all  
11 sincerity and directness.

12 We were involved from the first day of  
13 your confirmation. You have done nothing but  
14 impress and continued to work with  
15 distinction throughout your tenure, and I  
16 congratulate you for that.

17 SUPERINTENDENT D'AMICO: Thank you,  
18 sir.

19 SENATOR NOZZOLIO: The world has  
20 certainly changed since you became a police  
21 officer many years ago. That we live in a  
22 much more dangerous place. And that I'm  
23 concerned certainly with -- I have no concern  
24 with the ability of the State Police and the

1 record of the State Police in general law  
2 enforcement functions, in dealing with  
3 disasters, and even taking the additional  
4 steps that you have taken regarding drug  
5 addiction and the administration of a very  
6 difficult antidote to heroin overdoses.

7 Time and time again, the department  
8 has done yeoman work in getting things done.  
9 Assemblywoman Duprey was talking about the --  
10 we all watched you work in her district  
11 during those times. We also looked to a huge  
12 amount of additional costs. We're glad that  
13 those are being absorbed, although we know it  
14 puts stress on other portions of the budget.

15 It appears, in your answers to Senator  
16 Gallivan, that we are fine in terms of at  
17 least a runway for solution -- we're on the  
18 runway for solution to the vehicle issue.  
19 That we couldn't find those monies in the  
20 budget, although it appears that you are  
21 going to be using those deployed from  
22 particular settlement funds to be able to put  
23 into additional vehicles. That's fine.  
24 That's good. It's extending resources. And

1 at meetings like this, we've certainly heard  
2 the need. So we'll be working with you and  
3 monitoring that situation to see what  
4 additional needs there are.

5 Senator Croci's comments, echoed by  
6 Assemblymember Lentol, you can't comment on  
7 it, but I just need to emphasize so that you  
8 understand our position. That we have every  
9 confidence that right now that communication  
10 is taking place. Senator Croci has mentioned  
11 this many times to us in conference. He's  
12 analyzed this. There's nobody better to do  
13 it than him, through his experience.

14 But this isn't about one person, one  
15 superintendent. We're looking to structure  
16 something in the future. And we could  
17 support the change if we had assurances that,  
18 moving forward, there was a statutory  
19 template for action.

20 That I asked Commissioner Melville  
21 earlier today about cybersecurity and its  
22 relationship to homeland security. And what  
23 I'm fearful of is that we're falling through  
24 the cracks on a particular area of security

1 protection. And I'd like you to address this  
2 issue from the standpoint of you, as you're  
3 working counterterrorism, you are certainly  
4 dealing with public protection -- but the  
5 question of individual protection through the  
6 cyber networks, through entrusting the state  
7 government. What role now does the State  
8 Police have in this issue of cyber  
9 protection?

10 SUPERINTENDENT D'AMICO: Okay, so the  
11 New York State Police is involved on a number  
12 of different levels. You know, we start kind  
13 of from the bottom up. We do retail kind of  
14 cyber crime, whether it's theft of  
15 information or social media hacking, things  
16 like that which are really kind of, you know,  
17 customer-based to our New Yorkers who make  
18 crime complaints.

19 As it moves up into kind of larger  
20 cyber crime, we have a cyber analysis unit  
21 that we created in partnership with the  
22 MS-ISAC, which is part of the center in  
23 East Greenbush that we spoke about earlier.  
24 And what we do is MS-ISAC is responsible for

1 monitoring most of the state networks and  
2 state systems. Information that comes in  
3 through the MS-ISAC -- we're part of the  
4 operations center. Our analysts and our  
5 investigators, we're at the dailies, we work  
6 with them hand in hand all day long, and  
7 we're able to see what kind of threats are  
8 going on throughout the country to other  
9 states' infrastructure.

10 Anything that comes in that affects a  
11 state agency or a state network goes to ITS.  
12 ITS has their security piece; they're  
13 responsible for that.

14 Anything below that, you know, whether  
15 it's local government, whether it's, you  
16 know, utilities, whether it's anything less  
17 that we can address at the state level, we  
18 do. Whether it's just getting the  
19 information out, whether it's trying to, you  
20 know, make criminal cases on it -- there's  
21 really a tough line there, because so much of  
22 what happens cyber is federal. We work very  
23 closely with the federal partners in the FBI  
24 and Secret Service because so much of what

1 goes on, even though it seems like it's in  
2 your backyard here, is coming from, you know,  
3 Eastern Europe or Asian countries. And so,  
4 you know, we just don't have that reach.

5 We've been trying to find, since we  
6 stood up the cyber analysis unit, what really  
7 is the niche. And we think the niche is  
8 local government, local utilities,  
9 mom-and-pop banks, things like that which  
10 fall below that federal threshold.

11 Fortunately, a lot of what comes in  
12 through MS-ISAC that we're sitting at the  
13 table and we know it, gets funneled over to  
14 ITS and they're able to react or patch or do  
15 what they have to do so it doesn't become a  
16 problem in New York State. I mean, a lot of  
17 what happens is kind of preemptive. You  
18 know, we've been very fortunate here. I'm  
19 not saying it's never going to happen, it  
20 happens to some of the best organizations at  
21 some of the highest levels. But that's the  
22 infrastructure that's in play here.

23 I personally think the gap is below  
24 that, you know, for these small communities

1           that just don't have the support of a  
2           cybersecurity team or anything like that.  
3           And being that it's all part of the New York  
4           State Intelligence Center, we intentionally  
5           collocated for this purpose, because we are  
6           concerned about cyber going into the future.  
7           We're able to take the information, put it  
8           out as informational, put it out as  
9           intelligence, refer it to the federal  
10          partners, work with them. That's kind of  
11          where we're at on the cybersecurity piece.

12                     Myself, Division of Homeland Security  
13                     and Emergency Services, and many members of  
14                     the chamber sit on the Cyber Advisory Board.  
15                     We're part of it, either in an advisory  
16                     capacity or as actual members, together with  
17                     Financial Services, Public Service  
18                     Commission. And we all are constantly  
19                     working with the private sector to discuss  
20                     what are the emerging threats, how do we  
21                     target-harden.

22                     And when it comes to things like  
23                     utilities and finance, it's not just the  
24                     cyber piece, it's kind of cyber and physical

1 put together. You know, you have to be able  
2 to protect from both sides.

3 And, you know, we're still -- I would  
4 say we're still young at this in New York  
5 State. But, you know, as states go I would  
6 say we're probably -- as to effectiveness,  
7 we're one of top ones. I think we're, you  
8 know, a couple from the top maybe, but I  
9 think we're doing a good job at it for the  
10 amount of time we've been invested in it.

11 SENATOR NOZZOLIO: And I have no doubt  
12 that upon receipt of questionable information  
13 about potential threats that have occurred,  
14 about trying to isolate who did those, I  
15 would imagine you and your partners are up to  
16 that task.

17 What I fear is that the state  
18 government itself does not have someone that  
19 can tap them on the shoulder and say, You  
20 aren't having appropriate protections  
21 within -- protecting the data that you're  
22 entrusted to hold. Whether it be the  
23 Department of Taxation and Finance, whether  
24 it be one of our health organizations,

1           whether it be even the DMV, are we having --  
2           are you able to, or is it too early or are  
3           you too thin in manpower at this stage to be  
4           able to act as a coach, if you will, a cyber  
5           consultant to those state government agencies  
6           that have to protect this data?

7                        SUPERINTENDENT D'AMICO:  I mean, to  
8           steal a line from Commissioner Melville, I'm  
9           not a computer geek.  But, you know, I think  
10          that we've had conversations with ITS about  
11          them becoming part of the operations center  
12          at the Intelligence Center with the Center  
13          for Internet Security and the MS-ISAC, so  
14          that we're not just a pass-through on that  
15          type of information -- when we hear about  
16          something that's affecting a network or  
17          affecting other states or that's directly  
18          targeted at something in New York State that  
19          we have people at the table with us who could  
20          react to it and we don't have to be the  
21          pass-through to send it over to ITS.  I think  
22          that's kind of the improvement we could make,  
23          just, you know, better cooperation in that  
24          respect.

1           I don't mind being the coach to get  
2           this done. You know, the whole discussion  
3           about merging New York State Police, Intel  
4           Center and Center for Internet Security, you  
5           know, it was done about three years ago and  
6           we all saw the value of it. It's just  
7           something we've been trying to grow. And,  
8           you know, in the world of units, it's still  
9           relatively young. It's probably a year --  
10          you know, a year in the making for us. We  
11          have an investigator and I think three or  
12          four analysts who are actually assigned there  
13          full-time.

14                 So I don't mind being a coach to drive  
15                 it forward, because I do agree with you that  
16                 no matter what you're talking about, cyber is  
17                 a tremendous threat to us.

18                 SENATOR NOZZOLIO: Superintendent,  
19                 thank you very much. Thank you for your  
20                 answers, and thank you for your service.

21                 SUPERINTENDENT D'AMICO: Thank you,  
22                 senator.

23                 CHAIRWOMAN YOUNG: Thank you, Senator.  
24                 Senator Savino.

1                   SENATOR SAVINO: Thank you, Senator  
2 Young.

3                   Thank you, Superintendent. I'm not  
4 going to go over the issues of the aging  
5 fleet and the number of miles on it, because  
6 I think you've addressed it. And also I  
7 understand you have a class in the academy  
8 that's expected to graduate -- is it March?

9                   SUPERINTENDENT D'AMICO: No, we  
10 graduated a class in September.

11                  SENATOR SAVINO: When is the next one?

12                  SUPERINTENDENT D'AMICO: In March.  
13 They're going in in March.

14                  SENATOR SAVINO: They're going in in  
15 March.

16                  SUPERINTENDENT D'AMICO: Right. So  
17 you figure they'll be out by probably  
18 September, and then we're hoping to follow up  
19 with another class in a couple of weeks,  
20 maybe October.

21                  SENATOR SAVINO: So what do you think  
22 the estimated new hire rate will be by the  
23 time these two classes are over?

24                  SUPERINTENDENT D'AMICO: I mean, my

1 goal always is, you know, keep flat with  
2 attrition, consider new needs.

3 So, you know, our attrition yearly is  
4 probably 230, you know, average. It goes up  
5 a little, it goes down a little. You know,  
6 you add new needs, whether they're casino  
7 gaming or Enough is Enough or any other kind  
8 of initiatives, and that's what I need to do.  
9 You know, I bill 10 percent above that for  
10 people who don't make it through the academy.  
11 And like I said, I think we're at a healthy  
12 place numberwise for the agency, and I don't  
13 want to lose that.

14 SENATOR SAVINO: Is there some  
15 concern, though, that you might see some  
16 accelerated rate of retirement because of --  
17 the collective bargaining agreement does have  
18 a couple of zeros in it, so there's almost no  
19 incentive to stick around for some of the  
20 members who are approaching retirement age.  
21 Have you factored that in to the calculation?

22 SUPERINTENDENT D'AMICO: Yeah, we  
23 anticipate -- PBA settled their contract, and  
24 we anticipated a little rise in retirements,

1           which we did see. NYSPI is currently in  
2           negotiations, and I would assume that, you  
3           know, maybe they're months away from theirs.  
4           We'll expect to see people going out the door  
5           at an increased rate right after that.

6                         We also last year spent a lot of  
7           overtime in New York City on counterterrorism  
8           and other areas, and a lot of those people  
9           are going to see the opportunity to retire.

10                        So yeah, I mean, we say 230. And what  
11           I like about the two academy classes is that  
12           by the time we get to the second one, we can  
13           kind of adjust for actual retirements. So if  
14           it's up higher, we'll have a bigger class.

15                        SENATOR SAVINO: Well, hopefully we'll  
16           continue.

17                        I want to turn to an issue that  
18           Senator Klein has been out in front on with  
19           respect to restricting firearm purchases for  
20           people who are on the FBI's, you know,  
21           terrorist screening database or the no-fly  
22           list.

23                        Has the State Police had discussions  
24           with the FBI? Do they give you access to

1           that list?

2                   SUPERINTENDENT D'AMICO:  Yeah, I mean,  
3           we do have access to that list for  
4           counterterrorism purposes.  You know, it's a  
5           different discussion to be able to use it  
6           for, you know, denying pistol permits.

7                   You know, part of the issue there is  
8           you can be placed on the terrorist watch list  
9           or the no-fly list for a number of reasons.  
10          You know, one is you're kind of a bona fide  
11          terrorist, you know, you've been identified  
12          that way.  But there are people who are --  
13          who have active investigations, you know,  
14          that are not quite, you know, at the bona  
15          fide terrorist level, who are placed there --  
16          you know, and the standards for being placed  
17          there are kind of loose, you know.

18                   And it gives us the ability to  
19          restrict people from traveling and the safety  
20          issues related to that, but I don't know that  
21          it's the kind of thing that we want to  
22          publicize where people would be able to know  
23          they're on the no-fly list so they'll -- you  
24          know, why am I on the no-fly list, maybe

1           they're looking at me for this or for that.

2                       So I think that's a concern. Before  
3 we say, well, let's take the list and make it  
4 available, you know, for denying pistol  
5 permits, I think you have to vet out that  
6 whole situation. But that's a discussion  
7 with the feds. It's their information. And  
8 as of now, they haven't given anyone  
9 permission to use it for denying pistol  
10 applications.

11                   SENATOR SAVINO: And finally, in the  
12 last minute -- I think I have a minute and  
13 20 -- you were instrumental in helping us  
14 develop the Compassionate Care Act, the  
15 medical marijuana program. It has been up  
16 and running now, dispensaries are opening,  
17 the grow houses are growing. Has there been  
18 any security leaks, any concerns that the  
19 State Police have encountered with the  
20 implementation of the program?

21                   SUPERINTENDENT D'AMICO: No, ma'am.  
22 None at all. I guess we're, what, about  
23 three weeks maybe, now --

24                   SENATOR SAVINO: A little more.

1                   SUPERINTENDENT D'AMICO:  -- going  
2                   towards four weeks?  We haven't seen any  
3                   criminal acts, we haven't seen any  
4                   improprieties.  Obviously we're charged with  
5                   the public safety aspects of it.  We speak to  
6                   DOH and their Bureau of Narcotics Enforcement  
7                   all the time.  And no, as of now, we haven't  
8                   had any issues.

9                   SENATOR SAVINO:  That's great.  Thank  
10                  you.

11                  CHAIRWOMAN YOUNG:  Thank you,  
12                  Superintendent.

13                  I wanted to ask this question on  
14                  behalf of Senator Golden, who had a pressing  
15                  district event he had to get to.  And as you  
16                  know, we've had lengthy testimony today.

17                  But the question is, what is the  
18                  coordination between the NYPD and the  
19                  Executive's proposal to permanently deploy  
20                  State Police and National Guard members to  
21                  New York City?

22                  SUPERINTENDENT D'AMICO:  So I kind of  
23                  have an unfair advantage, because I am a  
24                  graduate of NYPD.  And the people who are in

1 place down there at all levels are people  
2 that, you know, were peers of mine. So I do  
3 have the ability to have the conversations.

4 Early on when we started bringing  
5 troopers down on overtime, before they were  
6 permanently assigned there, we had  
7 discussions with NYPD, with MTA police, to  
8 make it seamless, to make sure that we're  
9 complementing each other and not, you know,  
10 doing kind of redundant work. The safety  
11 issues, the safety issues of having another  
12 law enforcement agency kind of planted in  
13 there, to make sure we had communications and  
14 everything else.

15 As we went into 55 permanent troopers  
16 assigned there, we continued the discussions.  
17 We've expanded our role where we're doing  
18 some commercial vehicle enforcement at the  
19 bridges and tunnels on the East River. We  
20 invited NYPD in, we did them hand in hand  
21 with them, it's been joint operations,  
22 standing together. You know, State Police is  
23 7 percent of the state's law enforcement, but  
24 we do well over 90 percent of the commercial

1 vehicle enforcement in the state. So we do  
2 bring something to the table, and I think we  
3 were great partners with NYPD.

4 Same thing with MTA. We've worked  
5 hand in hand with them in Grand Central, Penn  
6 Station, and on train patrols, both through  
7 Metro North and Long Island railroad.

8 You know, our biggest issue here is to  
9 make sure our troopers are armed with the  
10 information they need, have access to  
11 communications, and that they're completely  
12 safe while they're operating there.

13 CHAIRWOMAN YOUNG: Thank you for that.

14 Just one more question. You  
15 referenced in your testimony that there are  
16 15 troopers assigned to the Sexual Assault  
17 Victims Unit within the State Police. What  
18 will be the coordination between this unit,  
19 local police departments, and colleges? If  
20 you could expound on that, please.

21 SUPERINTENDENT D'AMICO: Okay, so the  
22 makeup of the Sexual Assault Victims Unit is  
23 15 people. It's 12 members of the State  
24 Police -- so it's 11 senior investigators,

1           one lieutenant who coordinates the program,  
2           it's an office aide, it's a press person to  
3           kind of work on the outreach issues.

4                     You know, the way we see our role here  
5           is to provide outreach and education to  
6           college campuses, whether it's the student  
7           population, whether it's the security or  
8           police force or it's college administration.  
9           The way we see our role with local police is  
10          to coordinate with them on the investigation  
11          to make sure that none of the victims who  
12          need police response, you know, aren't able  
13          to get what they need.

14                    Whether it's a State Police response  
15          or a local police response, we're looking to  
16          do training for our own investigators to make  
17          them better at investigating sex crimes. And  
18          we'll be affording the same training to the  
19          locals. I've spoken to the Chiefs and the  
20          Sheriffs Associations and offered those  
21          services.

22                    You know, we don't know that there's a  
23          tremendous void there, but we think that we  
24          could work together so that we're all better

1 at it.

2 CHAIRWOMAN YOUNG: Thank you for that.

3 Anyone else?

4 Well, I think that concludes your part  
5 of the testimony. We truly appreciate you  
6 being with us today and for taking the time  
7 and for the great work that you do on behalf  
8 of the citizens of New York State to protect  
9 them. Thank you, Superintendent.

10 SUPERINTENDENT D'AMICO: Thank you.

11 CHAIRWOMAN YOUNG: Our next speaker is  
12 Margaret Miller, director and chief  
13 information officer from the New York State  
14 Office of Information Technology Services.

15 Welcome, Director Miller.

16 DIRECTOR MILLER: Thank you.

17 CHAIRWOMAN YOUNG: Whenever you're  
18 ready, proceed.

19 DIRECTOR MILLER: Thank you.

20 Good afternoon, Chairwoman Young,  
21 Chairman Farrell, and distinguished members  
22 of the Legislature. I'm Margaret Miller, the  
23 state's chief information officer and  
24 director of Information Technology Services.

1 Thank you for the opportunity to speak with  
2 you today and share our request for budget  
3 expenditure and our plans for ITS.

4 The 2016-2017 Governor's Executive  
5 Budget includes \$567 million in General Fund  
6 support to enable ITS to provide consolidated  
7 statewide information technology services.  
8 The Executive Budget also includes  
9 \$85 million in capital funds for IT  
10 innovation in enterprise-level applications  
11 and programs. This funding will allow ITS to  
12 continue the progress of the state's  
13 multiphase, multiyear IT transformation to  
14 make government work smarter for citizens, to  
15 spur economic growth, and make the state more  
16 accessible to business.

17 We've encountered, and will continue  
18 to encounter, challenges in this multiyear  
19 journey. But those challenges don't deter  
20 us. Rather, they inspire us to be even more  
21 creative, innovative, and dedicated to  
22 achieving service excellence and the best  
23 possible experience for our citizens.

24 Our transformation progresses in

1 multiple phases. First there was  
2 consolidation, then stabilization, and now  
3 transformation of the citizen experience. At  
4 every stage, plans have been created based on  
5 the best information available at that time,  
6 and then we've been agile in adapting these  
7 plans whenever we need to as we learn more  
8 about the challenges we face.

9 Each phase requires a different focus,  
10 different capabilities, and different  
11 partners, but has built inexorably on the  
12 previous one.

13 Having made significant progress with  
14 building a sound technology and  
15 infrastructure foundation, we are beginning  
16 to shift our focus to transforming the whole  
17 life-cycle experience of our citizens to one  
18 that they have the right to expect in the  
19 digital era.

20 We're bringing together what was once  
21 a highly decentralized, inefficient IT  
22 structure across more than 50 disparate  
23 agencies into a single agency that is ITS.  
24 We can now work to maximize the tremendous

1 talent in the workforce, standardize the  
2 myriad systems and applications implemented  
3 in each agency, and create an environment in  
4 which ITS can leverage IT investments across  
5 all state government, adopt industry best  
6 practices, and enhance service delivery to  
7 our partner agencies, businesses interacting  
8 with the state, and the citizens New York  
9 State serves, providing needed services more  
10 rapidly and cost-effectively, to fuel the  
11 innovation economy.

12 In the 2016-2017 fiscal year, in  
13 addition to our continuing program of work to  
14 support the mission of the agencies, our  
15 transformation program will focus on a number  
16 of broad areas.

17 We'll continue to drive up the  
18 maturity continuum of operational excellence,  
19 adopting standard best practice processes and  
20 tools to deliver reliable, secure services at  
21 minimum cost to the taxpayer.

22 One of the benefits of the Governor's  
23 IT transformation program which created ITS  
24 is that we now have visibility to the risks

1           inherent in our whole infrastructure. During  
2           the consolidation and stabilization phases of  
3           the IT transformation --

4           CHAIRWOMAN YOUNG: Director, could I  
5           ask a favor? Could you get a little bit  
6           closer to the microphone?

7           DIRECTOR MILLER: Oh, I beg your  
8           pardon.

9           CHAIRWOMAN YOUNG: Thank you. If you  
10          could pull the mike a little closer.

11          DIRECTOR MILLER: I'm short.

12          CHAIRWOMAN YOUNG: Thank you.

13          DIRECTOR MILLER: One of -- is that  
14          better?

15          CHAIRWOMAN YOUNG: Yes.

16          DIRECTOR MILLER: Okay, thank you.

17          One of the benefits of the Governor's  
18          IT transformation program which created ITS  
19          is that we now have visibility to the risks  
20          inherent in our infrastructure. During the  
21          consolidation and stabilization phases of the  
22          IT transformation, it became clear that a  
23          significant technology debt had accumulated  
24          over many decades of underinvestment, across

1 the state, creating operational, legal and  
2 financial risks. During 2016-2017 we'll be  
3 prioritizing a significant investment of  
4 funds -- in fact approximately \$40 million --  
5 and resources to eliminate this debt.

6 ITS continues cybersecurity  
7 improvements in 2016, with key programs to  
8 address cyber risk and comply with industry  
9 best practice standards of the National  
10 Institute of Standards and Technology, or  
11 NIST, which is part of the U.S. Department of  
12 Commerce, and ISO standards and regulatory  
13 rules for all agencies we support.

14 ITS carries over a comprehensive NIST  
15 800.53 assessment from 2015 into 2016, and a  
16 comprehensive NIST Top 20 Cyber Controls  
17 Assessment. These two assessments will be  
18 the primary baseline used to guide risk-based  
19 investment and cybersecurity best practice  
20 improvement through 2016 and beyond.

21 ITS is engaging key suppliers and  
22 organizations, and the New York State  
23 Intelligence Center, the NYSIC, to assist in  
24 implementation of our enterprise-wide

1 programs, close high-risk gaps, and guide the  
2 deployment of cybersecurity best practices.

3 With the cybersecurity function  
4 centralized under ITS, the state can  
5 implement the policies consistently, and  
6 react swiftly across all IT assets when we  
7 receive intelligence about potential threats.

8 Our current technology landscape has  
9 been created over decades by more than  
10 50 different agencies, each entirely focused  
11 on their own mission without a unifying  
12 vision of the citizen experience or the  
13 underlying technology or data strategies.  
14 The resulting environment is massively  
15 complex and expensive to support reliably and  
16 securely.

17 We also have significant staffing  
18 challenges due to this complexity. The  
19 skills of our staff are locked into skill  
20 silos, leading to excessive spend on third  
21 parties and an inability to offer the most  
22 exciting career paths to our brightest and  
23 best, too many of whom are stuck supporting  
24 legacy technologies.

1                   Most importantly, this complexity  
2                   leads to a negative citizen experience. To  
3                   address these issues, we are building a set  
4                   of strategic platforms comprising a portfolio  
5                   of tools and services which not just  
6                   individually, but as an integrated set, will  
7                   deliver an enhanced citizen experience across  
8                   all agencies.

9                   Our staff are a vital asset in  
10                  delivering the best possible service to our  
11                  citizens, businesses, partner agencies and  
12                  all other digital visitors to New York State.  
13                  We have much to do to ensure that all team  
14                  members have the opportunity to reach their  
15                  potential and make the greatest contribution  
16                  to our transformation program.

17                  We plan, then, to focus on a number of  
18                  initiatives with regard to our staff. We'll  
19                  increase the frequency and quality of our  
20                  team communication at all levels to ensure  
21                  all team members understand the overall ITS  
22                  strategy and how their work contributes to  
23                  the mission of ITS and our partner agencies.  
24                  We'll ensure our training and development

1 plans are closely aligned with our  
2 transformation strategy and that team members  
3 have the skills needed to be effective and to  
4 progress in their careers. We'll implement  
5 an intensive hiring program to ensure we're  
6 bringing in sufficient new team members to  
7 allow us to fulfill our objectives and allow  
8 existing team members to progress in their  
9 careers. And we will continue to seek ways  
10 we can reward and promote outstanding talent.

11 Thank you for the opportunity to speak  
12 with you today and share our plans. I  
13 welcome your questions and comments.

14 CHAIRWOMAN YOUNG: Thank you,  
15 Director.

16 Our first speaker is Senator Croci.

17 SENATOR CROCI: Thank you, Madam  
18 Chair. And thank you, Ms. Miller, for  
19 joining us today.

20 The department that you head, is it  
21 statutorily charged with providing the  
22 protection of the state's -- our entire state  
23 government's cybersecurity infrastructure,  
24 including but not limited to identifying --

1 identification and mitigation of  
2 vulnerabilities as well as deterring and  
3 responding to cyber events and promoting  
4 cyber awareness? Is that the statutory  
5 charge?

6 DIRECTOR MILLER: Well, we took over  
7 the responsibilities that were formerly with  
8 the Department of Homeland Security and  
9 Emergency Services, as you know. And they --  
10 under Section 715 of the Executive Law, the  
11 core mission of their Office of Cybersecurity  
12 was to protect the state's executive  
13 agencies' cybersecurity infrastructure and to  
14 provide coordination of policies, standards  
15 and programs related to cybersecurity.

16 And they did that in three different  
17 ways. They had information security  
18 management, managed security services, and a  
19 cyber incident response team. Those were the  
20 functions that we took over from them. They  
21 never had enforcement functions. Those were  
22 always split between multiple agencies, and  
23 hence the creation of the fusion center.

24 So those are the three functions that

1 we took over, as well as the geographical  
2 information services that we took.

3 Would it be helpful if I explained how  
4 the responsibility now splits?

5 SENATOR CROCI: I think you just  
6 answered the question. Thank you.

7 Could you describe for me a typical --  
8 you were talking about some staffing  
9 challenges. Can you describe for me a  
10 typical cyber team employee? Do they have  
11 delegated roles and responsibilities when  
12 they're hired? How do they work together?  
13 Do they work in teams, do they work  
14 independently? And do they have other roles  
15 other than their cyber roles? Are they doing  
16 some other IT-related work that's outside of  
17 the scope of cyber.

18 DIRECTOR MILLER: Well, first of all,  
19 I'd like to say how delighted I am that we  
20 just managed to hire a new chief information  
21 security officer, Jim Garrett, who's with us  
22 here today. And he joins us with a very  
23 distinguished career in cybersecurity and was  
24 formerly chief information security officer

1 with 3M and Ingram Micro; he has a great  
2 pedigree. And he is currently reorganizing  
3 his team and has been pleasantly surprised at  
4 the caliber of staff that we have.

5 In answer to your direct question,  
6 they are a dedicated team and have no other  
7 responsibilities for other aspects of ITS.  
8 Their role is very much focused on  
9 cybersecurity, which is forefront in all our  
10 minds.

11 SENATOR CROCI: Okay. We actually  
12 have had a hearing on this last May 20th, and  
13 you were invited to testify. Is there any  
14 reason why you didn't come to testify at the  
15 hearing last May 20th? I know your office  
16 was invited. And I believe Dr. Bloniarz is  
17 the individual who was here, but --

18 DIRECTOR MILLER: That's right.

19 SENATOR CROCI: -- I think he came  
20 from the Governor's staff, not from yours.

21 DIRECTOR MILLER: That's right. In  
22 fact, Professor Bloniarz was at that point  
23 fulfilling multiple roles. So as you know,  
24 he chairs the Governor's advisory committee,

1 but that was before our new chief information  
2 security officer was appointed, and he was  
3 interim in that role also. So that's why we  
4 felt that he was probably the best person to  
5 come and testify.

6 SENATOR CROCI: Okay. But you were  
7 aware that you were invited to testify?

8 DIRECTOR MILLER: I'm sure I was at  
9 the time. I don't remember, to be honest.  
10 But we honestly felt, out of respect for your  
11 time, that we should send the person best  
12 capable to answer your questions.

13 SENATOR CROCI: Is Dr. Bloniarz here  
14 today?

15 DIRECTOR MILLER: I'm not sure if he's  
16 physically in the room, but I know he's  
17 watching.

18 SENATOR CROCI: Okay, very good.

19 What if anything has been done in the  
20 past year, since we've seen now, over a  
21 process of about two years, the integration  
22 from DHSES into ITS -- and it's an  
23 interesting case study, since the Executive  
24 Budget proposes a similar consolidation or

1 transfer of individuals from DHSES now to the  
2 State Police, of course in a different  
3 function. So I'm curious as to the  
4 success -- if anything, what has been done in  
5 the past year? Do you have success stories  
6 in response to any cyber attacks that have  
7 occurred?

8 And based on what's transpired with  
9 the attacks on the federal government, OPM,  
10 and then, of course, in the commercial  
11 industry, what have we done as a state to  
12 protect our infrastructure? Do you have any  
13 success stories that you can discuss about  
14 how this transfer of responsibilities has  
15 been -- I've been cut off. That means it's  
16 time for me to stop talking.

17 CHAIRWOMAN YOUNG: Keep going. Keep  
18 going, Senator. Finish your question.

19 DIRECTOR MILLER: So first of all, I'd  
20 like to speak to the role of ITS versus the  
21 Department of Homeland Security and Emergency  
22 Services previously. It would have been very  
23 difficult previously, because DHSES would  
24 only have sight of a small piece of the life

1 cycle, if you will, of cybersecurity.

2 ITS manages the infrastructure that  
3 houses the data that we're trying to protect,  
4 of course. So we are able to look across the  
5 whole NIST life cycle of identify, protect,  
6 detect, respond and recover. We can see  
7 across the whole piece. And so it's far  
8 easier for us both to make sure that the  
9 systems that we're building are built to a  
10 high standard of security so we can build  
11 that in from the get-go, for us to be able to  
12 see potential threats, for us to protect our  
13 environment to make sure that it's fully  
14 hardened, that we're up to speed with  
15 patching and that we've implemented the best  
16 possible protections, and then to detect any  
17 attempted intrusions and then to help recover  
18 when they do happen.

19 What I would say is that I guess the  
20 success is that we haven't had -- touching  
21 wood; I hope I'm not tempting fate -- any  
22 major intrusion events. We monitor on a  
23 daily basis for attempts, and we do record a  
24 high number of attempts to penetrate our

1 security. But we have not had any very  
2 significant intrusion exposures.

3 SENATOR CROCI: One final question.  
4 Are you aware if your department is fully  
5 compliant with the statutory set-asides for  
6 minority-owned, women-owned and service-  
7 disabled veteran businesses?

8 DIRECTOR MILLER: Yes. I'm afraid I  
9 don't have the number at the tip of my  
10 fingers, but actually we exceed the number by  
11 a significant amount.

12 SENATOR CROCI: Okay. Very good. And  
13 you mentioned staffing silos. So could you  
14 please explain to me how you're overcoming  
15 those challenges?

16 DIRECTOR MILLER: Right. We have a  
17 staffing crisis looming with a huge number of  
18 retirements, which will see a great many very  
19 experienced staff lost from state service.

20 SENATOR CROCI: Specifically with  
21 regard to cyber --

22 DIRECTOR MILLER: No, with regard to  
23 the overall IT environment.

24 And one of the ways we will address

1           this is to focus and standardize on a smaller  
2           number of technologies, which will make it  
3           far easier for us to share expertise across  
4           all agencies. At the moment we have staff  
5           who are specialists in a large -- small  
6           numbers of staff who are specialists in a  
7           huge number of different technologies. Which  
8           isn't good for their career paths, and it  
9           isn't good for providing the best, most  
10          cost-effective service.

11                        So by standardizing on a smaller  
12          number of key technologies, we can both  
13          provide a better career path for them and  
14          provide a better service.

15                        SENATOR CROCI: Very good. Thank you,  
16          Madam Chair. And thank you very much.

17                        DIRECTOR MILLER: Thank you.

18                        CHAIRWOMAN YOUNG: Thank you.

19                        Assemblyman?

20                        ASSEMBLYMAN McDONALD: Director, thank  
21          you for being here. I too wanted to actually  
22          pick up where Senator Croci had left off in  
23          regards to -- I was struck by your comments  
24          about the skills of our staff are locked into

1 silos. It sounded as if there was a  
2 resistance to change, but I don't think  
3 that's what you meant. Is that correct?

4 DIRECTOR MILLER: No. No. I  
5 apologize if that's how it sounded. No,  
6 indeed, it's not a resistance to change,  
7 quite the opposite. It has to do with the  
8 fact that we have this huge complexity in our  
9 environment, which we are addressing through  
10 standardizing.

11 But we also have a problem with  
12 experience. As I said, we will lose -- in  
13 the next few years we'll lose 25 percent of  
14 our staff through retirements. And that  
15 means that the average experience level will  
16 go -- at the most senior levels will go from  
17 40 years to 11 years.

18 Now, expertise, of course, is a  
19 mixture of training plus experience. Just as  
20 you wouldn't take a doctor straight out of  
21 med school and make him head of brain  
22 surgery, we need a combination of training  
23 plus experience. And because we see that  
24 huge skills gap, it results in us having to

1           rely very heavily on contract staff. We  
2           currently have 1200 contract staff that cost  
3           the state \$245 million a year, because we  
4           rely on them for that mid-level of expertise  
5           that includes the required experience. And  
6           that means that the more junior folk aren't  
7           able to progress.

8                        I would love to find a way of  
9           increasing the permanent staff in those  
10          middle levels, maybe through insourcing that  
11          we were able to do some years ago, or other  
12          initiatives that we might agree with the  
13          unions and the Civil Service that would allow  
14          us to inject expertise into the middle ranks  
15          and reduce our dependence on very expensive  
16          contractors. So we would really look to find  
17          a way of doing that.

18                       And by that means, we would be able to  
19          release those more junior staff from those  
20          silos and be able to give the best  
21          opportunities to our brightest and best  
22          staff, which is something I very passionately  
23          believe in.

24                       ASSEMBLYMAN McDONALD: I think that

1 speaks to your final comments about staff  
2 development.

3 And I will say, particularly being a  
4 member from the Capital Region, I represent  
5 many great, fine people who have been part of  
6 those silos for years that do want to advance  
7 their skills and want to be given the  
8 opportunity. And I also respect the  
9 complexity of technology, that there are  
10 going to be times when you do need the  
11 specialists. But we don't want the  
12 specialists the norm at all costs possible.

13 I think one of the great things about  
14 experience that you talk about is there are  
15 many people who can say, Oh, yeah, we've done  
16 that before, and here's why it didn't work.  
17 Or here's how it may work.

18 DIRECTOR MILLER: Right.

19 ASSEMBLYMAN McDONALD: So I am  
20 encouraged by your comments about increasing  
21 development and training. I would think that  
22 would mean particularly for our current  
23 workforce -- that is in place, that has the  
24 opportunity -- but also recruitment, which

1 indicates to me that we will be hiring more  
2 staff to help move things along. Is that a  
3 correct assessment? And does this budget  
4 proposal support that in regards to positions  
5 and also training and development dollars?

6 DIRECTOR MILLER: I believe we have  
7 the appropriate budget to hire the staff that  
8 we're in a position to hire. Of course they  
9 have to be entry level. The skills gap is in  
10 the middle and at the senior levels. That's  
11 what's the problem.

12 ASSEMBLYMAN McDONALD: So to address  
13 the skills gap, is the funding for  
14 development and training going to help  
15 address some of that?

16 DIRECTOR MILLER: To address the  
17 training part. It's the experience that's  
18 the problem.

19 ASSEMBLYMAN McDONALD: Thank you.

20 CHAIRWOMAN YOUNG: Thank you. Our  
21 next speaker is Senator Nozzolio.

22 SENATOR NOZZOLIO: Thank you, Madam  
23 Chair.

24 Good after -- good evening. I guess

1 we're getting into the evening.

2 I must admit I believe you've been  
3 before the general finance committees in the  
4 past, I believe you've testified before us.  
5 Is that not correct?

6 DIRECTOR MILLER: Last year, yes.  
7 That's shortly after I joined, yes.

8 SENATOR NOZZOLIO: Last year I didn't  
9 pay much attention to what you said at all.  
10 This year I've listened to every word.

11 It is a different day in this nation  
12 and in the world. Senator Croci began this  
13 discussion; the cyber attacks to agencies of  
14 the federal government that are generally  
15 well protected show that they weren't so well  
16 protected.

17 I don't -- I don't doubt for a second  
18 that you've had managerial issues. It sounds  
19 as though you have addressed a number of  
20 those issues during your tenure. But I want  
21 to probe, in the time I have, on  
22 cybersecurity and what role that is playing  
23 within the information technology that you  
24 manage. And that you casually indicated that

1           there have been a high-level number of  
2           attempts to develop security breaches in our  
3           area. Any particular aspect of that data?

4           DIRECTOR MILLER: No, I --

5           SENATOR NOZZOLIO: For instance, the  
6           Department of Motor Vehicles, the Parks  
7           system, Taxation and Finance? What levels of  
8           attack and what type of data are you  
9           referring to?

10          DIRECTOR MILLER: We experience the  
11          same sort of attacks and the same categories  
12          of attacks as the general business  
13          population. In fact, we work with the  
14          Multistate ISAC, as do DHSES and State  
15          Police, to garner intelligence about what's  
16          happening in the broader world, and we see  
17          exactly the same level of attack and same  
18          nature of attack as the general business  
19          community. And --

20          SENATOR NOZZOLIO: And the general  
21          business community has, over the last  
22          12 months, as you know, in New York State  
23          experienced a huge amount of data breaches.

24          DIRECTOR MILLER: Indeed. Indeed. So

1 we adopt a stance at --

2 SENATOR NOZZOLIO: So you've achieved,  
3 then, a huge amount of data breaches, is that  
4 what you're telling us?

5 DIRECTOR MILLER: No, not at all. No,  
6 we experience a huge number of attempts. So  
7 there are a large number of attempted attacks  
8 on our environment.

9 SENATOR NOZZOLIO: Thank you for  
10 clarifying that. Where are the attempts  
11 being made? Where are they centered?

12 DIRECTOR MILLER: They vary very  
13 widely. I wouldn't single out any one  
14 source. In fact, our posture is to be  
15 vigilant whatever the source. And we remain,  
16 I would say, confidently paranoid --

17 SENATOR NOZZOLIO: That's good. Do  
18 you have a priority, though? You've said in  
19 your testimony that you're understaffed and  
20 basically overworked. What, then, are we  
21 establishing as priorities within your  
22 department?

23 DIRECTOR MILLER: Right. The biggest  
24 priority we have is cybersecurity. And as

1           you will see, we've increased the budget very  
2           significantly in cybersecurity over the last  
3           few years. And the Governor himself and  
4           members of the Governor's staff have  
5           repeatedly asked whether we are spending  
6           enough. Our judgment is that we have the  
7           right budget for this year, but it's been  
8           made very clear to us that should we require  
9           additional funding, we should ask for it.

10           SENATOR NOZZOLIO: Well, you indicate  
11           that 2016, the improvements you've made --  
12           and your testimony says that you've  
13           established key programs to address cyber  
14           risk and comply with industry best practices.  
15           What steps have been taken to achieve that  
16           objective?

17           DIRECTOR MILLER: Let me list out some  
18           of it. So first of all, we're aggressively  
19           remediating all out-of-date hardware and  
20           software that could pose a risk to our  
21           environment.

22           We've engaged third-party experts to  
23           assess our cyber control risk related to  
24           regulated data and third-party-managed data.

1                   And then we focus on the most  
2                   sensitive citizen data and data regulated by  
3                   law, to ensure that these NIST controls are  
4                   in place for that data as a priority.

5                   We also make sure that the legal  
6                   contractual language for any third parties we  
7                   use reflects the best standards of regulatory  
8                   control and best practice.

9                   And we also are implementing a  
10                  comprehensive risk-management program to  
11                  raise the visibility and track mitigation of  
12                  high-risk areas of weakness.

13                  And we're also making significant  
14                  process improvements in areas such as the  
15                  enterprise cyber command center, enterprise  
16                  risk assessments, enterprise identity  
17                  management, and so forth, which are the  
18                  cornerstones of a best-practice cybersecurity  
19                  program.

20                  SENATOR NOZZOLIO: Are you a  
21                  cybersecurity expert yourself?

22                  DIRECTOR MILLER: I am not, sir.  
23                  That's why --

24                  SENATOR NOZZOLIO: Have you had any

1           cybersecurity experience in other positions  
2           prior to your becoming IT head?

3                   DIRECTOR MILLER: No. I have  
4           experience extensively as a chief information  
5           officer, and that's why I'm very pleased that  
6           we've hired Jim Garrett, as I mentioned  
7           earlier, as our chief information security  
8           officer. He's a --

9                   SENATOR NOZZOLIO: What experts -- you  
10          said you've deployed experts. Does that mean  
11          your agency has contracted with experts in  
12          the field --

13                   DIRECTOR MILLER: Yes.

14                   SENATOR NOZZOLIO: -- for consultant  
15          services?

16                   DIRECTOR MILLER: We're currently  
17          working with Deloitte.

18                   SENATOR NOZZOLIO: With -- pardon me.  
19          Stewart? I couldn't hear.

20                   SENATOR KRUEGER: Repeat the name?

21                   DIRECTOR MILLER: With Deloitte.

22                   SENATOR NOZZOLIO: Oh, Deloitte.

23                                What additional steps have you  
24          suggested to the agencies that hold the most

1 private of information, particularly the Tax  
2 Department, the Health Department? What have  
3 your technology people done with the  
4 technology people from those departments to  
5 establish appropriate firewall safeguards?  
6 Industry best practices, certainly. But is  
7 Deloitte -- are they giving your agency  
8 consulting expertise and suggestions with  
9 additional infrastructure to establish within  
10 the IT systems?

11 DIRECTOR MILLER: Well, we have  
12 information security experts embedded in  
13 every agency. And they are part of the chief  
14 information security office's team. And they  
15 are experts in the particular challenges of  
16 that agency, whether it be HIPAA, whether it  
17 be federal law related to tax, and so on and  
18 so forth. So that we have experts embedded  
19 in each team.

20 And we are working with every agency  
21 to educate them in the risks of cybersecurity  
22 and to undertake steps such as classification  
23 of their data, to make sure that every  
24 agency, every agency head understands the

1           vulnerabilities of their data and what needs  
2           to be protected when.

3                    SENATOR NOZZOLIO: I guess what I --  
4           I'm doubly concerned about the fact we're  
5           relying on each agency, which primarily has  
6           had a workforce that has not been exposed to  
7           cyber attacks, are not expert in those  
8           fields, yet you're indicating they're the  
9           centerpiece of reliance on protecting this  
10          data. And what type of real-world  
11          experience, particularly from the private  
12          sector, is being brought into the public  
13          sector to provide the real-life experience --  
14          I mean government, thank God, has not been  
15          the recipient of major attacks yet at the  
16          state level, although you're indicating that  
17          the breaches are pretty uniform and  
18          broad-based -- or the attacks, not breaches.

19                   DIRECTOR MILLER: Right.

20                    SENATOR NOZZOLIO: The attacks are  
21          broad-based. What I -- I'm just trying to  
22          probe -- and this is what the subject of  
23          Senator Croci's hearing was about last year  
24          that you couldn't attend. But this is the

1 kind of thing that we're trying to probe.  
2 What type of protections are being provided  
3 to New Yorkers that their data is being held  
4 in a secure way with the most appropriate  
5 cyber protections available?

6 DIRECTOR MILLER: Let me clarify.  
7 Cybersecurity is a centralized function  
8 within ITS. It's not devolved to the  
9 agencies, although we have representatives of  
10 the cyber team embedded with each agency to  
11 make sure that we're mindful of any  
12 particular requirements in each agency.

13 It's a very highly skilled, very  
14 specialized team. And we do rely on  
15 third-party experts wherever we deem it  
16 necessary. So as I said before, we are -- we  
17 remain paranoid rather than complacent, and  
18 at every occasion we ask ourselves do we have  
19 the expertise in-house for a particular  
20 aspect of cybersecurity or do we need to rely  
21 on a third party.

22 And in fact as part of the arrangement  
23 with the Multistate ISAC and the Center for  
24 Internet Security, we have access to external

1 experts through those relationships.

2 SENATOR NOZZOLIO: That this is a  
3 subject that I believe the Senate should  
4 probe further, and that we definitely will be  
5 back to you. We appreciate your discussions  
6 today in this budgetary context. You have a  
7 very important responsibility, and we need to  
8 make sure that you have the resources  
9 available to you to conduct that protection  
10 of our data, particularly in light of the  
11 rest of the world and what's happening out  
12 there.

13 So thank you very much for your time  
14 and your answering our questions.

15 DIRECTOR MILLER: Thank you.

16 CHAIRWOMAN YOUNG: Thank you, Senator.

17 Our next speaker is Senator Krueger.

18 SENATOR KRUEGER: Good afternoon, or  
19 close to evening.

20 Many of us sat through a double  
21 hearing yesterday, and one of the hearings  
22 was on workforce development for the state.  
23 And there was testimony that in the last two  
24 years your department lost 6 percent of your

1 state workforce but you've increased the  
2 number of consultants by five times, from 164  
3 to 849.

4 So you just testified about the  
5 exacerbation of significant retirement. So  
6 I'm just curious, even as you're seeing some  
7 shrinkage already in the workforce, how can  
8 you explain such a radical growth in the  
9 number of consultants in your department?

10 DIRECTOR MILLER: It's -- it's a  
11 challenge. And as I just said, we can hire  
12 at the entry level very aggressively, which  
13 we are doing. But we don't just need skill,  
14 we need experience as well as skill. And of  
15 course what we're losing is experience. So  
16 that's a huge challenge for us.

17 And we had hoped in this budget cycle  
18 to repeat the insourcing initiative, whereby  
19 some years ago we were allowed to actually  
20 hire a large number of those contractors as  
21 state staff and bring them into the  
22 workforce, bring them into the union  
23 workforce. And that would provide an  
24 injection of expertise, experience and skill

1 to plug the gap and reduce the spend on  
2 contractors.

3 We were very much hoping to do that.  
4 Unfortunately, our local PEF colleagues  
5 weren't prepared to work with us on that.  
6 But we're very optimistic that the senior PEF  
7 leadership will work with us on that in the  
8 future. That seems to be the most obvious  
9 and most -- the quickest way of plugging that  
10 gap.

11 Otherwise, you know, I'm open to  
12 suggestions as to how to fill that gap.  
13 Given the restrictions we work within, it's  
14 very difficult.

15 SENATOR KRUEGER: So I'm a little  
16 confused. So what prevents you from hiring  
17 new more senior people? You said you can  
18 only hire junior people. Is there some rule  
19 that prevents you from hiring --

20 DIRECTOR MILLER: Under civil service  
21 law, we can only hire at entry level from the  
22 external world.

23 SENATOR KRUEGER: Only at entry level.  
24 Okay. And do you agree with PEF's analysis

1           that the cost for consultants is  
2           significantly higher per person than state  
3           employees?

4                     DIRECTOR MILLER:  I do.  That's why we  
5           would very much like to turn some of those  
6           consultants into state employees.  We'd love  
7           to.

8                     SENATOR KRUEGER:  Certain agencies are  
9           desperately in need of modernization for  
10          their technology and computerization.  The  
11          Department of Housing and Development, HDS --  
12          HCR, excuse me.  I'm getting my letters  
13          confused -- Housing and Community  
14          Development, thank you, has literally -- I'm  
15          not even going to say it's computers, maybe  
16          ancient DOS computers, but in a number of its  
17          divisions, just huge piles of paper records.  
18          They were promised to somehow be on a  
19          priority list of computerization, I think  
20          when Governor Cuomo first got in.

21                    Can you update me at all about where  
22          computerization of that agency is?

23                    DIRECTOR MILLER:  Yes, certainly.  
24          That particular initiative is something I've

1           been personally involved in over the past  
2           year. There's been certain delays, but what  
3           I would say is that the RFP for that work is  
4           just about ready to issue. And we look  
5           forward to implementing a 21st-century system  
6           for them as soon as we practically can.

7                     SENATOR KRUEGER: Can you give me an  
8           estimated time?

9                     DIRECTOR MILLER: I don't want to do  
10          that quite yet until we have the responses  
11          from the RFP. But we haven't --

12                    SENATOR KRUEGER: And you've only been  
13          here two years or --

14                    DIRECTOR MILLER: A year and a bit.  
15          Year and two months, I think.

16                    SENATOR KRUEGER: So it was my  
17          understanding they were like in the top list  
18          of priority agencies. Are there other  
19          agencies that are also in queue and haven't  
20          gotten to even the RFP process yet?

21                    DIRECTOR MILLER: Well, we've just  
22          been through a very rigorous process of  
23          prioritizing initiatives in the budget for  
24          the new year. So we asked every agency to

1 put forward their proposals for the projects  
2 that they wanted to pursue in the new year,  
3 and for them to choose what was most  
4 important. And we're about to publish, I  
5 think maybe next week, the final list of  
6 projects that have been requested by the  
7 agencies and that DOB have verified there is  
8 funding for. So it really is entirely up to  
9 the agencies what they prioritize.

10 SENATOR KRUEGER: We passed a law,  
11 often just nicknamed the SAFE Act, that  
12 required the state to develop a database for  
13 ammunition. What's the process and what  
14 stage are you at in preparing a request for  
15 software development for this database, or do  
16 we already have that done?

17 DIRECTOR MILLER: Well, the budget was  
18 provided, as you know, in 2013-2014, and  
19 there was some \$27 million in capital funds,  
20 I think, at that point for the SAFE Act.

21 We've spent \$9.3 million already, and  
22 we're ready with the pistol permitting  
23 process. That is pretty much ready to be  
24 rolled out. Because as you know, we need to

1 begin that process in January 2017. So we're  
2 confident that that piece of the program will  
3 be rolled out in time so that we don't end up  
4 with a huge workload for the county clerks.

5 The ammunition sales database is --  
6 that's something that's been a little  
7 problematic. We've been doing a great deal  
8 of research on that, and we've offered  
9 Superintendent D'Amico three different  
10 solutions. But unfortunately, to date, we  
11 haven't come up with a solution that is  
12 acceptable to him, either for cost or  
13 usability reasons. So we're continuing to  
14 research to see if we can find a solution  
15 that's acceptable to State Police.

16 SENATOR KRUEGER: So you believe you  
17 came up with three alternatives to model that  
18 database, but the State Police have not  
19 approved any of the three?

20 DIRECTOR MILLER: Not to date. As I  
21 say, either for cost or usability reasons.  
22 So we'll keep working on it until we can find  
23 something that they believe is workable.

24 SENATOR KRUEGER: Do you know what the

1 current obstacles are that we still cannot  
2 overcome?

3 DIRECTOR MILLER: Not in detail, I'm  
4 afraid. Not in detail.

5 SENATOR KRUEGER: And was your office  
6 involved in the I-STOP technology? The  
7 I-STOP -- I, dash, STOP -- that was for  
8 opioid prescription tracking.

9 DIRECTOR MILLER: Oh. No, sorry. No.

10 SENATOR KRUEGER: So questions about  
11 that aren't relevant for your office.

12 Thank you.

13 DIRECTOR MILLER: Thank you.

14 (Discussion off the record at  
15 committee table.)

16 CHAIRWOMAN YOUNG: Senator Croci.

17 SENATOR CROCI: Thank you, Madam  
18 Chair.

19 One additional question, ma'am.

20 You said 1200 contract staff. What's  
21 the total cost?

22 DIRECTOR MILLER: It's approximately  
23 \$245 million a year.

24 SENATOR CROCI: \$245 million. And

1           these are individuals who have to have  
2           specialized skill sets, I'm assuming some  
3           sort of a thorough vetting process before  
4           they're given access to sensitive information  
5           procedures.

6                     DIRECTOR MILLER: Oh, indeed. Yes.

7                     SENATOR CROCI: What kind of vetting  
8           goes on for these individuals? Does the  
9           contract agent -- are they required to  
10          provide employees who are properly vetted, or  
11          is there additional vetting done by your  
12          agency?

13                    DIRECTOR MILLER: We apply the same  
14          vetting as we do to our permanent staff,  
15          including fingerprinting.

16                    SENATOR CROCI: And 1200 -- is it one  
17          agency that's providing these individuals, or  
18          is it multiple companies?

19                    DIRECTOR MILLER: No. No, it's a  
20          range. A great many of them are HBITS staff  
21          and sourced from minority- and women-owned  
22          businesses.

23                    SENATOR CROCI: Okay. And with regard  
24          to that, since you raised it, OGS has a

1 conflict with your data on veterans,  
2 disabled-veteran-owned businesses --

3 DIRECTOR MILLER: I'm sorry, I didn't  
4 hear.

5 SENATOR CROCI: OGS, who did a report  
6 on the minority-, women-, and service-  
7 disabled-owned businesses, differs -- there's  
8 a disparity in their accounting of your  
9 agency's compliance with the service-disabled  
10 veteran set-aside. So I'd ask for -- at some  
11 point for you to get that information back to  
12 us --

13 DIRECTOR MILLER: Oh, sure.

14 SENATOR CROCI: -- just to ensure that  
15 there's not a disparity.

16 DIRECTOR MILLER: Yeah.

17 SENATOR CROCI: And with regard to  
18 your staffing issues, the great expertise  
19 that's been developed over the years started  
20 in the Department of Defense, I believe,  
21 certainly within the services. And there are  
22 a lot of veterans who have this skill set and  
23 are eager to be employed. So perhaps that's  
24 a potential answer for us that would satisfy

1           Senator Krueger's desire to bring some of  
2           this in-house, and certainly our desire to  
3           hire veterans in New York.

4                     DIRECTOR MILLER: I'm glad you raised  
5           that, sir. There is a particular initiative  
6           that I'm associated with out of Columbia  
7           University, called Workforce Opportunity  
8           Services that actually looks to specifically  
9           train veterans in IT skills and place them  
10          with employers. We are actively looking at  
11          making use of that initiative if we can find  
12          the right procurement vehicle.

13                    SENATOR CROCI: Well, I'm happy to be  
14          of assistance in any way. Thank you, ma'am.

15                    DIRECTOR MILLER: Thank you. Thank  
16          you.

17                    SENATOR KRUEGER: Thank you.

18                    Any other legislator want to ask  
19          questions?

20                    CHAIRWOMAN YOUNG: Thank you.

21                    I believe that you made a statement a  
22          little while ago saying that there was over  
23          \$27 million allocated in the 2013-2014 budget  
24          specifically for the SAFE Act that was

1 capital. That is not a true settlement.  
2 There was no lining out in the state budget  
3 regarding those funds.

4 So I just want to point that out,  
5 because that was not a correct statement,  
6 number one.

7 DIRECTOR MILLER: I apologize.

8 CHAIRWOMAN YOUNG: Number two, you  
9 said that you've actually used \$9 million  
10 toward the ammunition database. And when was  
11 that?

12 DIRECTOR MILLER: Not for the  
13 ammunition database, no. This is for the  
14 pistol research part of the work. We  
15 haven't -- we have not yet spent money on the  
16 ammunition database.

17 CHAIRWOMAN YOUNG: You have not spent  
18 money on the ammunition database.

19 DIRECTOR MILLER: That's correct.

20 CHAIRWOMAN YOUNG: And you're aware of  
21 the MOU that's in place.

22 DIRECTOR MILLER: I'm sorry?

23 CHAIRWOMAN YOUNG: You're aware of the  
24 memorandum of understanding that's in place

1 right now not to develop the database.

2 DIRECTOR MILLER: I am indeed. As I  
3 testified earlier, we have done research, but  
4 that's all we've done with regard to the  
5 ammunition database.

6 CHAIRWOMAN YOUNG: Thank you.

7 That concludes the testimony, so thank  
8 you for being here.

9 DIRECTOR MILLER: Thank you.

10 CHAIRWOMAN YOUNG: So this is where  
11 we're at, just to let the speakers know. We  
12 have 26 speakers in the queue now. A few of  
13 those are multiperson panels. And the time  
14 is late, obviously; it's 5:30. We had five  
15 state agencies on Public Protection testify  
16 today, the judiciary testified today.

17 And so I just want to ask of the  
18 speakers, if you have written testimony  
19 that's lengthy, we would prefer that you did  
20 not read the whole thing. And if you could  
21 try to come down and hit the most salient  
22 points, maybe do your presentation in five  
23 minutes, just so we can get all the speakers  
24 in before midnight. And then based from

1           that, I'm sure that our members may have  
2           questions or may not. So let's start this  
3           portion of the hearing.

4                     And first we have Bill Leahy, director  
5           of the New York State Office of Indigent  
6           Legal Services.

7                     And if speakers would prefer to submit  
8           their testimony, they may do that also if  
9           they don't want to stay.

10                    Following Mr. Leahy, Director Leahy,  
11           we will have the administrator of the New  
12           York State Commission on Judicial Conduct.

13                    Welcome, Director.

14                    DIRECTOR LEAHY: Thank you, Madam  
15           Chairwoman.

16                    And congratulations on your position,  
17           even though at this hour you might be  
18           regretting it. And greetings to all the  
19           Senators and Assemblymembers who are here.

20                    Let me begin -- and I will try to  
21           address the salient points. I'm here to talk  
22           about the current situation with respect to  
23           the provision of counsel in the State of  
24           New York pursuant to County Law 18-B.

1           And I come here at a time when we are  
2           just a couple of weeks away from the fifth  
3           anniversary of the creation of my office, the  
4           Office of Indigent Legal Services. And  
5           before the legislative session is over, we  
6           will have hit the 10th anniversary of the  
7           Kaye Commission report.

8           And for those of who you don't  
9           remember, that Kaye Commission report in 2006  
10          described the state of the provision of  
11          counsel for people who cannot afford to  
12          retain counsel in the State of New York as a  
13          "fragmented system of county-operated and  
14          largely county-financed indigent defense  
15          services that fails to satisfy the state's  
16          constitutional and statutory obligations to  
17          protect the rights of the indigent accused."

18          Quite a serious indictment of the  
19          State of New York's compliance with one of  
20          its basic governmental responsibilities.

21          Partly as a result of that Kaye  
22          Commission report, my agency was created and  
23          I came in as director. As I mentioned  
24          earlier, it's five years that we've been

1 here. I happen to have a five-year term,  
2 which is also shortly to expire. Thanks to  
3 the unanimous recommendation of my board --  
4 one of whose members, Senator John Dunne, is  
5 here today -- and thanks to the cooperation  
6 of Governor Cuomo, I am happy to say that I  
7 am embarking on a new five-year term in about  
8 three weeks. And I'm glad I can, because  
9 there's an awful lot of work yet to be done.

10 We've made some great strides. We've  
11 made it with the cooperation of this  
12 Legislature. We're very grateful to you.

13 Let me tell you where we are today in  
14 the wake of the Executive Budget. A year  
15 after the Kaye Commission report was filed,  
16 the New York Civil Liberties Union filed the  
17 Hurrell-Harring lawsuit that has been  
18 referenced a few times by earlier speakers  
19 today, and by members. That lawsuit came to  
20 a negotiated settlement in October 2014  
21 between the State of New York, five counties  
22 of Ontario, Onondaga, Schuyler, Suffolk and  
23 Washington, and my agency was chosen as the  
24 implementing agency.

1                   So that happened in October 2014. And  
2                   what I said at that time were two things that  
3                   are still very important today. One, the  
4                   State of New York, the Governor deserved an  
5                   enormous amount of credit for acknowledging  
6                   for the very first time since County Law 18-B  
7                   was enacted in 1965 that it is the state's  
8                   responsibility, not an individual county's  
9                   responsibility, to make sure that the  
10                  Constitution and the laws are complied with  
11                  and to make sure, to cite one of my favorite  
12                  quotes from one of my favorite Attorneys  
13                  General of the nation, Janet Reno, "the best  
14                  protection against wrongful convictions is  
15                  the presence of a good lawyer."

16                  And so at that time the two things I  
17                  said were, one, that the Governor was right  
18                  to acknowledge that it is the state's  
19                  responsibility. He was right to vest the  
20                  implementation in an independent professional  
21                  agency that, just as the superintendent of  
22                  State Police who testified so impressively,  
23                  knows what it's about, knows what it is  
24                  doing, knows how to make things right.

1           And then the second thing, of course,  
2           was I pointed out there's one big problem.  
3           And I wasn't the only one who pointed it out.  
4           Mark Williams, the Cattaraugus County public  
5           defender and the president-elect of the Chief  
6           Defenders Association of New York -- you'll  
7           be hearing from him I hope shortly -- he said  
8           it at the time as well, that it's just simply  
9           unfair that five counties receive the  
10          benefits of appropriate representation,  
11          state-funded representation, and all the rest  
12          of the upstate counties do not.

13                 Of course New York City, 2009, this  
14          Legislature acted to reduce caseloads, with  
15          ample state funding that goes to New York  
16          City now to the tune of about \$55 million a  
17          year.

18                 So flash-forward now to the Executive  
19          Budget. First I want to say the  
20          implementation in those five counties --  
21          because there were skeptics who said, Well,  
22          yeah, the Governor entered into this  
23          settlement, but are he and his people really  
24          going to support it, are they really going to

1           comply with its provisions, are they really  
2           going to fund it? Yes, yes, and yes.

3                     The Governor has cooperated at every  
4           step. His first assistant legal counsel,  
5           Sandi Toll, has shepherded and honored our  
6           independent implementation. She and his  
7           office have supported us at every turn. So  
8           there are no worries on that score, and I  
9           want to be clear about that.

10                    The second thing is I want to  
11           congratulate and thank the Governor with  
12           respect to the Hurrell-Harring portion of the  
13           Executive Budget, because we have been given  
14           all the tools, all the staff, all the funding  
15           that we need to implement that settlement  
16           effectively. That's a big deal. Because for  
17           once, New York is going to get it right with  
18           respect to indigent defense. And that's big  
19           news.

20                    Now the other big news is the Tale of  
21           Two Cities or the Tale of Two Counties or the  
22           Tale of Two States, however you want to  
23           characterize it. I put in my written  
24           testimony, you know, Clinton in the northeast

1 and Chautauqua in the southwest and Niagara  
2 in the northwest and all of that.

3 But really the best way to graphically  
4 illustrate it, I think, is just to take the  
5 two counties on Long Island, the two most  
6 populous counties in the state outside of New  
7 York City. And they both have huge needs,  
8 they've both made great efforts as counties.  
9 They have both partnered with us over five  
10 years very effectively, but with minimal  
11 funding. Now Suffolk will get a big chunk of  
12 the \$10.4 million in this Executive Budget,  
13 should you approve it -- and I urge you to  
14 approve it -- to reduce caseloads to  
15 appropriate levels, New York City-type  
16 levels. Nassau County, under fiscal control,  
17 doing its best, working hard with a terrific  
18 public defender, Kent Moston, one of the  
19 smartest, wisest, best public defenders in  
20 the state -- they're left behind.

21 And if you want to take another look,  
22 go a little more traditional upstate, you can  
23 go to the two cities of Syracuse and  
24 Rochester. Very similar cities, they have

1           their struggles, they're trying hard.  
2           Syracuse is getting very significant  
3           assistance under this settlement. We've had  
4           terrific cooperation from the county  
5           attorney's office in Syracuse. I'm going to  
6           be going out to see Bob Durr, the new county  
7           attorney, next week to continue the path  
8           forward.

9                     And then you have Rochester.  
10           Rochester has another great public defender,  
11           Tim Donaher. They've had terrific county  
12           leadership. What they don't have is state  
13           funding. And so the city court caseloads are  
14           wildly in excess of any rational maximum in  
15           the City of Rochester.

16                     And on the appellate side, we have a  
17           great appellate unit -- there's a three-year  
18           delay before someone gets his or her right to  
19           appeal. And they're sitting in prison or  
20           jail.

21                     So what can be done? Well, we have  
22           \$34 million that we requested in our budget  
23           request, and the final two pages of our  
24           handout tells the whole story as far as the

1 numbers are concerned. One page is our  
2 request, \$139.26 million. The second page is  
3 the Executive Budget. And yes, there's an  
4 over \$12 million increase. It's big, we're  
5 very grateful for it. It's the biggest  
6 increase we've ever seen. It pales in  
7 comparison to a lot of the numbers that have  
8 been thrown around here earlier today, but  
9 it's a big number to us, and we're deeply  
10 grateful to the Governor for it.

11 The problem is New York cannot  
12 tolerate -- Senator DeFrancisco said this  
13 recently better than I ever could. He said:  
14 Who could be against this idea that there  
15 should be one standard of justice in this  
16 state? There can't be two. And right now  
17 that's what we have.

18 So we're coming to you and we're  
19 asking you to do what we tried unsuccessfully  
20 to get the Executive to do, which is to  
21 provide significant funding in the  
22 legislative budget for the  
23 non-Hurrell-Harring counties.

24 For what reasons? Primarily two. We

1 start to reduce the caseloads, number one.  
2 And number two, eliminate this intolerable  
3 lack of compliance with the most fundamental  
4 legal obligation, to have a lawyer at a  
5 defendant's side when that magistrate or  
6 judge is considering whether to leave the  
7 person at liberty or put them into pretrial  
8 detention. That is just intolerable.

9 At the Court of Appeals, it's been six  
10 years since the Court of Appeals has said so.  
11 And the fact that we still have large swaths  
12 of upstate in which there is no counsel at  
13 arraignment is just -- just should not be  
14 tolerated a minute longer.

15 That's probably a little bit more than  
16 you wanted, but I'm open for questions.

17 CHAIRWOMAN YOUNG: Thank you.

18 The Assembly?

19 ASSEMBLYMAN McDONALD: We will hear  
20 from Member Lentol.

21 ASSEMBLYMAN LENTOL: Thank you very  
22 much, Mr. Chairman.

23 Is my mic on? No.

24 ASSEMBLYMAN McDONALD: How many years

1           have you been here?

2                       (Laughter.)

3           ASSEMBLYMAN LENTOL:   Too long.

4                       First of all, Bill, I want to thank  
5           you for the five wonderful years that you've  
6           given us.  You've really lifted this office  
7           to where none of us ever would have thought  
8           it could have gone.  And you've been just  
9           tremendous in changing the whole landscape of  
10          providing legal defense services for the  
11          indigent.

12                      DIRECTOR LEAHY:  Thank you.

13                      ASSEMBLYMAN LENTOL:  And so I couldn't  
14          agree with you more about the Hurrell-Harring  
15          problem, that we need to have all of the  
16          counties on an equal footing.  This is a  
17          disservice to all of the counties.  This is  
18          really what some of my colleagues can call an  
19          unfunded mandate.  And it's an unfunded  
20          mandate for legal services that are required  
21          by the Constitution of the United States of  
22          America.

23                      So I just wanted to talk to you a  
24          little bit about the bill that I introduced

1 last year that OCA -- a program bill to  
2 transfer authority to approve bar association  
3 plans for the operation of an assigned  
4 counsel program of conflict defender, from  
5 the chief administrator of the courts to your  
6 office, to the Office of Indigent Defense  
7 Services, with the statutory mission to make  
8 sure that we have quality 18-B, as we call  
9 it, services provided for indigent  
10 defendants.

11 And I think I know the answer, but do  
12 you support this legislation?

13 DIRECTOR LEAHY: Oh, certainly we do.  
14 And really this has been, you know, kind of  
15 an understanding with OCA since our probably  
16 first year. The OCA responsibility goes back  
17 to the day when there was no state agency  
18 with the expertise or the resources to  
19 undertake this responsibility. And I know  
20 there is a big backlog of county conflict  
21 defender plans that have been sitting with  
22 OCA, essentially waiting for the day when we  
23 can take over that responsibility. We're  
24 ready, willing and able.

1 ASSEMBLYMAN LENTOL: Okay. And I  
2 guess you would agree that that would enhance  
3 your ability to provide quality 18-B services  
4 to indigent defendants.

5 DIRECTOR LEAHY: Yes, absolutely, in  
6 continuation of our partnership with the  
7 counties and the providers.

8 ASSEMBLYMAN LENTOL: That would be  
9 great. Thank you, sir.

10 CHAIRWOMAN YOUNG: Thank you.

11 Our next speaker is Senator Ruth  
12 Hassell-Thompson.

13 SENATOR HASSELL-THOMPSON: Thank you,  
14 Madam Chair.

15 ASSEMBLYMAN LENTOL: And by the way,  
16 before I finish, I just want to congratulate  
17 Assemblywoman Fahy and Assemblyman McDonald  
18 for introducing that bill in the Assembly to  
19 actually bring us into the 21st century in  
20 providing legal services for indigents  
21 throughout the State of New York.

22 DIRECTOR LEAHY: I join you in that.  
23 I just had the pleasure of reading  
24 Assemblyman McDonald's -- I think it was the

1           blog in the Times Union. That was very  
2           eloquent.

3                   CHAIRWOMAN YOUNG: Thank you.  
4                   Senator?

5                   SENATOR HASSELL-THOMPSON: Thank you.  
6           I was afraid you'd moved into my time.

7                   CHAIRWOMAN YOUNG: We know better than  
8           that.

9                   SENATOR HASSELL-THOMPSON: No, I don't  
10          have a lot of questions. Most of them you  
11          answered. And as I was trying to read  
12          quickly through your presentation, some of  
13          the answers are there.

14                   You know, I too would like to  
15          congratulate you, Mr. Leahy, for an  
16          extraordinary five years. It was a struggle,  
17          and we got a lot of pushback. But I  
18          appreciate your tenacity and certainly the  
19          fact that you were one of the first ones here  
20          today, and still here to give your testimony,  
21          is just a statement of how tenacious you are  
22          about something that you really care about  
23          and believe in. And so I just want you to  
24          know that I appreciate that.

1                   As we began to talk before  
2                   Hurrell-Harring was settled, we had an idea  
3                   of what the five counties' issues were in  
4                   terms of their backlog. What's your sense of  
5                   the backlog for the 52 counties that we're  
6                   now going to -- that will be Phase 2 of our  
7                   next struggle, I suppose?

8                   DIRECTOR LEAHY: Well, I think in  
9                   general you can say that the average  
10                  situation in the 52 counties is slightly  
11                  worse than the situation was in New York City  
12                  when this Legislature came to the rescue of  
13                  New York City in 2009. In other words, the  
14                  average weighted caseload in our most recent  
15                  upstate caseload report, 616 cases among  
16                  institutional providers. It was around 582,  
17                  I believe, in New York City back in 2009.

18                  SENATOR HASSELL-THOMPSON: Two years  
19                  ago we went to Washington, D.C., for the  
20                  anniversary of Gideon, and we were deeply  
21                  concerned about civil legal services as well.  
22                  But just making sure that people who come to  
23                  court are represented. But we came back  
24                  really looking at this thing and saying it's

1           wonderful to have all these attorneys and  
2           have all these laws on the books, but without  
3           the case caps and some of the other pieces  
4           that we've added to it, most of the attorneys  
5           were showing up in court with a folder and  
6           saying, "Plead out, because I don't have time  
7           to study it. You know, I just have a  
8           caseload that's unbelievable."

9                     Are you telling me that that's what's  
10           going on now in the 52 counties?

11                    DIRECTOR LEAHY: Back when I was  
12           serving in Massachusetts, I was quoted as  
13           saying that control of caseloads is a sine  
14           qua non of good representation. You can't  
15           have good representation without controlled  
16           caseloads, no matter how good of a lawyer you  
17           are, no matter how much you care.

18                     So your point is an excellent one.

19                    SENATOR HASSELL-THOMPSON: Right.  
20           Well, again, I just -- I would like to be  
21           sure that the fact that this budget is flat  
22           is going to give you, number one, what you  
23           need to satisfy Hurrell-Harring and, number  
24           two, that this level budget will not have a

1 negative impact on your goals for 2015-2016.

2 DIRECTOR LEAHY: Well, as I say, we  
3 need help from the Legislature and we will  
4 need help from the Governor at the table to  
5 achieve some progress for the upstate  
6 counties. I mean, all that we have right  
7 now -- in fact, we have the threat where some  
8 counties -- we have 25 counties right now who  
9 are participating in our Counsel at First  
10 Appearance Grant Program. The three years of  
11 that program comes due at about the end of  
12 this year. So we will be putting out a new  
13 RFP.

14 Now, there is \$800,000 in the  
15 Governor's budget to protect the four out of  
16 the five lawsuit counties, to hold them  
17 harmless so that they don't -- they're  
18 participating in that, among the 25 counties,  
19 in that Counsel at Arraignment Program. So  
20 if they were to be unsuccessful in their  
21 effort.

22 But the point is there's only \$4  
23 million in that fund. And without support  
24 from the Legislature, we know that now -- now

1           that all counties do understand -- they  
2           didn't five years ago -- that there is a  
3           legal right to representation. This is not  
4           just some liberal idea, this is the law, and  
5           everybody knows it now. And so we expect the  
6           other 32 counties will be coming in. So, you  
7           know, the \$4 million that's being used now,  
8           not only does it only cover 25 counties, but  
9           it only covers portions of those counties.

10                         So the need is great. I mean, we  
11           requested \$8 million additional. We know  
12           that economies can be made, and we're working  
13           with OCA to come up with a potential  
14           legislative solution that would allow for  
15           centralizing arraignments maybe in one or two  
16           locations in rural counties, rather than 30  
17           or 40, as at present. Which I think  
18           everybody could get behind, and I think  
19           everybody would be enthusiastic about it.

20                         It's -- and I think it is underway.  
21           We hope to have it here in this session. But  
22           still, there's an undeniable cost to  
23           providing a lawyer at arraignment, just as  
24           there is with providing a lawyer anywhere.

1                   SENATOR HASSELL-THOMPSON: Thank you.

2 Thank you, Madam Chair.

3                   CHAIRWOMAN YOUNG: Thank you, Senator.

4                   And thank you, Director, for being

5 here today. We truly appreciate it.

6                   DIRECTOR LEAHY: Thank you.

7                   CHAIRWOMAN YOUNG: Our next speaker is

8 Robert Tembeckjian, the administrator of the

9 New York City office of the New York State

10 Commission on Judicial Conduct.

11                   Welcome, Administrator. And my first

12 question is, how badly did I butcher your

13 name?

14                   ADMINISTRATOR TEMBECKJIAN: Yes, you

15 pronounced it correctly. You got it exactly

16 right.

17                   CHAIRWOMAN YOUNG: Exactly right, wow.

18 I'm happy to hear that.

19                   ADMINISTRATOR TEMBECKJIAN: Yes, thank

20 you. My mother would be pleased if you'd

21 come to dinner.

22                   I appreciate the opportunity to speak

23 to the budget committee here about the

24 Executive recommendation for the Commission

1 on Judicial Conduct.

2 CHAIRWOMAN YOUNG: Could you pull your  
3 mic a little bit closer, please? Thank you.

4 ADMINISTRATOR TEMBECKJIAN: Yes, happy  
5 to.

6 As you know, the commission is created  
7 in the State Constitution. We are the entity  
8 of government that is responsible for  
9 enforcing judicial ethics on the 3500 members  
10 of the state judiciary. We are not an  
11 executive agency, but our budget is submitted  
12 to the Legislature in the Executive Budget  
13 with a recommendation by the Governor so that  
14 the Judiciary would not be in a position to  
15 control the commission's budget. That  
16 decision was made at the commission's  
17 inception about 40 years ago.

18 For the sixth year in a row, the  
19 Executive Budget is recommending a flat  
20 budget for the commission, not one penny  
21 more. Over the last six or seven years, the  
22 economies that we have been required to  
23 initiate in order to live within the  
24 constraints of the budget that has been

1 recommended by the Governor, has resulted in  
2 a reduction of our staff by about 18 percent,  
3 from 55 authorized full-time employees to 45  
4 actual full-time employees.

5 Now, unlike any other Executive Budget  
6 recommendation -- certainly if we're thinking  
7 or talking about executive agency heads -- I  
8 would not be in a position to come before you  
9 and disagree with the Executive Budget  
10 recommendation. But because the commission  
11 is an independent entity in the State  
12 Constitution, I can and I have in the past  
13 asked the Legislature for help where the  
14 Executive Budget has tended to treat us with  
15 some benign neglect.

16 And the Legislature has come through.  
17 Three times since 2007, I have asked for help  
18 from the Legislature, and you have come  
19 through each time. This will be the fourth  
20 time that I'm doing it. I'm asking for an  
21 additional \$186,000 so that we can maintain  
22 the status quo -- not have to reduce staff  
23 any further, not have to reduce our services  
24 any further in order to stay where we are

1           now.

2                       That number, it seems to me, pales in  
3           significance to the overall State Budget,  
4           certainly. And it pales in significance  
5           compared to what we have heard other agencies  
6           testify as to what the Division of Budget is  
7           able to do when they determine that agencies  
8           ought to be helped in the Executive Budget to  
9           fulfill their mission.

10                    The reduction in staff, the reduction  
11           in services has meant that it takes longer to  
12           discipline judges who are found guilty of  
13           misconduct, which is a disservice to the  
14           public interest, and it means that it takes  
15           longer for us to exonerate those judges who  
16           have been wrongly accused, which is  
17           disrespectful to the independence of the  
18           Judiciary and to the individual judges who  
19           have to endure investigation for longer  
20           periods than is right or fair.

21                    We're not asking for much. And in an  
22           era when enhanced public interest has been  
23           demonstrated in ethics in government, with a  
24           commission that is arguably the most

1 effective ethics enforcer in the state -- in  
2 40 years the commission has handled over  
3 52,000 complaints of misconduct, we have  
4 initiated 10,000 preliminary inquiries, we  
5 have conducted 8,000 full-fledged  
6 investigations, and we have publicly  
7 disciplined 801 judges, including 224 who  
8 have been removed from office or publicly  
9 stipulated to permanent resignation because  
10 of misconduct. That is an exemplary record  
11 that is being threatened or challenged by  
12 inappropriately low levels of funding.

13 As I said, I'm not asking for much  
14 help. \$186,000, which would bring our  
15 overall budget up to \$5.77 million, is really  
16 a drop in the bucket Compared to the  
17 140-some-odd billion State Budget. And in a  
18 time when revenue expenditures or revenue  
19 projections are going up, when executive  
20 agencies have been asked to limit their  
21 growth to 2 percent, the fact that we're not  
22 getting one penny more from the Executive  
23 Budget seems to me to be unfair, unnecessary,  
24 and unduly inhibiting our ability to fulfill

1           our mission.

2                        So again, as I have in the past --  
3           with success -- asked for your help, I'm  
4           asking for it again here. I don't think it  
5           is too much or should be too difficult. But  
6           I am aware that there is a lot of competition  
7           for, as high as it is, a relatively finite  
8           amount of money. And I'm hoping that the  
9           Legislature will, as it has before, consider  
10          judicial ethics enforcement to be an  
11          important priority for the state. And to  
12          augment with relatively little what we need  
13          to just keep the status quo and stop the  
14          growing backlog and the decline of our  
15          services.

16                      CHAIRWOMAN YOUNG: Thank you,  
17          Administrator Tembeckjian. I said it right  
18          again, right --

19                      ADMINISTRATOR TEMBECKJIAN: You're  
20          very welcome, Senator Young. Thank you.

21                      CHAIRWOMAN YOUNG: -- so two?  
22          Senator Krueger.

23                      SENATOR KRUEGER: Thank you again for  
24          your testimony this year.

1           You're right, your ask seems so  
2           minimal it's actually a little shocking that  
3           you don't get the same formula percentage  
4           increase that we're seeing for other  
5           agencies. So I empathize with your being  
6           the, I guess, the orphan child --

7           ADMINISTRATOR TEMBECKJIAN: The orphan  
8           child, yes. Exactly right.

9           SENATOR KRUEGER: Exactly.

10          I'm just curious that we do keep  
11          increasing the number of judges in New York  
12          State, and many people who participate on  
13          these panels would argue we don't have enough  
14          of them yet. If you were listening earlier  
15          today, there was much discussion about  
16          backlogs. So it seems to me, by definition  
17          of having busier courts and more judges, on  
18          some formula there would be more complaints  
19          brought to you -- not necessarily because of  
20          the quality of our judges per se, but just  
21          statistically based on the potential for  
22          problems that need to be investigated and  
23          addressed.

24          Can you tell me sort of where you are

1 in relationship to a growth in the judiciary  
2 over the last few years?

3 ADMINISTRATOR TEMBECKJIAN: Yes. Last  
4 year we received 1958 new complaints. That  
5 is the second highest in our history. And at  
6 the same time, our backlog grew at year end  
7 by about 25 percent. We went from 171 at the  
8 end of 2014 to 204 at the end of last year.

9 We have reduced our staff by one,  
10 again last year, as we had for the previous  
11 four years. So that the number of judges is  
12 increasing, as you say, the number of  
13 complaints that we're receiving is  
14 increasing, but the resources are staying  
15 static.

16 As you know, a flat budget is really a  
17 cut. If we need \$186,000 just to meet our  
18 additional rent expenses and other  
19 contractual obligations, and don't get it, it  
20 means that we have to reduce our current  
21 budget, which is just a little under  
22 \$5.6 million, by that \$186,000. Somehow I've  
23 got to find it. And the only way we've been  
24 able to do that in the last five years has

1           been through the attrition of staff, not  
2           replacing some people who have left, or --  
3           and this is good budgeting -- when someone at  
4           a senior level leaves, if we can replace them  
5           with someone more junior and save some money  
6           that way, we have always done that.

7                     But our workload is increasing, and  
8           the time it's taking us to do that job is  
9           also increasing because the budget is not  
10          proportionately increasing.

11                    SENATOR KRUEGER: Thank you very much  
12          for your work.

13                    ADMINISTRATOR TEMBECKJIAN: Thank you,  
14          Senator.

15                    CHAIRWOMAN YOUNG: Thank you very  
16          much. I don't believe the Assembly has any  
17          questions for you. So you did a very  
18          thorough job, Administrator Tembeckjian.

19                    ADMINISTRATOR TEMBECKJIAN: Thank you  
20          very much.

21                    CHAIRWOMAN YOUNG: Now, I said it  
22          correctly I believe three times.

23                    ADMINISTRATOR TEMBECKJIAN: Three for  
24          three, Senator, yeah.

1                   CHAIRWOMAN YOUNG: Does that qualify  
2 me for a movie with that dinner?

3                   ADMINISTRATOR TEMBECKJIAN: Breakfast,  
4 lunch, and dinner. One apiece.

5                   CHAIRWOMAN YOUNG: Okay, thank you  
6 very much.

7                   ADMINISTRATOR TEMBECKJIAN: Thank you  
8 very much.

9                   CHAIRWOMAN YOUNG: And thank you for  
10 being here today.

11                   Our next speaker -- and again, I'd  
12 like to remind people, just for the sake of  
13 time -- and I apologize, it's 6 o'clock  
14 now -- but we would welcome President Tom  
15 Mungeer, of the Police Benevolent Association  
16 of the New York State Troopers.

17                   So thank you very much, and we look  
18 forward to what you have to say. And we also  
19 appreciate you sticking with us for so long.

20                   PRESIDENT MUNGEER: Thank you, Madam  
21 Chair.

22                   Distinguished members of the  
23 Legislature, it's an honor; this is my  
24 seventh year in a row addressing you. I'm

1 just going to hit some very quick points; I'm  
2 sure you're relieved to hear that.

3 Listening to my superintendent, I'm  
4 not privy to some of the stuff -- recent  
5 conversations he had with Budget, but I am  
6 relying on the Governor's Executive Budget in  
7 regards to rifles and cars.

8 This past year we've been through a  
9 lot. We went over it before with the Clinton  
10 County Dannemora prison break, the ratcheting  
11 up of terrorist threats. There's never any  
12 lack of missions for my troopers to do. On  
13 top of that, in the last 10 years I've  
14 suffered 18 line-of-duty deaths. So it is a  
15 dangerous job. And I appreciate everybody's  
16 support up here in the Legislature, giving us  
17 the necessary tools.

18 Those tools, number one, are vehicles.  
19 The superintendent indicated that he should  
20 be fine with the replacement of the vehicles.  
21 Currently we have 50 percent of the vehicles  
22 that are over 100,000 miles; I do agree with  
23 him on that. But in the Governor's Executive  
24 Budget, only \$15 million was allocated to

1           replace those vehicles.

2                     In my math, anyway, we're going to  
3           need another \$20 million. I know that's kind  
4           of shocking compared to the last guy, who  
5           wanted \$186,000. But, you know, we're  
6           looking for \$20 million to bring it up and  
7           replace these vehicles. We're going from  
8           high speeds of zero to 100, back down to  
9           zero, all day. And they do -- it's a lot of  
10          wear and tear.

11                    Other than that, manpower. The last  
12          seven years I've harped that we need more  
13          manpower. It's getting a lot better. In the  
14          Governor's budget, there are allocation for  
15          210 bodies. There is an academy class  
16          they're planning for next month. But there  
17          is not enough for two classes. Again, I'm  
18          not privy to the conversation the  
19          superintendent has had.

20                    But, you know, it's absolutely  
21          necessary that we have two classes of at  
22          least 150 troopers to take care of the  
23          attrition and also the expanded duties that  
24          we're given every day.

1                   So thank you.

2                   CHAIRWOMAN YOUNG: Thank you very  
3 much.

4                   Senator Gallivan.

5                   SENATOR GALLIVAN: Thank you, Madam  
6 Chair.

7                   Mr. President, welcome again. Thanks  
8 for the work that you and your members do.

9                   PRESIDENT MUNGEER: Thank you,  
10 Senator.

11                  SENATOR GALLIVAN: You touched -- the  
12 superintendent -- a number of us spoke with  
13 the superintendent, and his testimony spoke  
14 of the rifles and vehicles. I would just ask  
15 that if you have follow-up with the  
16 superintendent, there appears to be a little  
17 bit of difference. He did mention  
18 \$30 million. I don't know if that's from  
19 money that's in this year's budget somewhere  
20 else --

21                  PRESIDENT MUNGEER: Yeah, I --

22                  SENATOR GALLIVAN: -- which is the 15  
23 you just mentioned. But just -- if we need  
24 to do work on it, let's just be sure to

1 follow up over the course of the next several  
2 weeks as we go through the process.

3 PRESIDENT MUNGEER: I do have many  
4 conversations with the superintendent in any  
5 given week. And again, what's black and  
6 white is the \$15 million. Whatever  
7 conversations he's had with budget, it is not  
8 reflected in the Governor's Executive Budget.  
9 So we have to, you know --

10 SENATOR GALLIVAN: Understood. But he  
11 spoke fairly confidently that it was going to  
12 get done. But we just want to make sure that  
13 it is done before we vote on a budget.

14 PRESIDENT MUNGEER: Absolutely.  
15 Absolutely.

16 SENATOR GALLIVAN: Thank you.

17 CHAIRWOMAN YOUNG: All set? Well, I  
18 think we're all set. But on behalf of me, I  
19 just want to say -- and my colleagues, I want  
20 to say how much we appreciate the jobs that  
21 your members do every single day, standing up  
22 and protecting the public. They have very  
23 difficult circumstances sometimes, but  
24 they're professional, and we truly value what

1           they do.

2                       So thank you for being here.

3                       PRESIDENT MUNGEER: Thank you, Madam  
4           Chair.

5                       CHAIRWOMAN YOUNG: Our next speaker is  
6           Christopher Quick, New York State Police  
7           Investigators Association.

8                       And behind President Quick is  
9           President Mike Powers from NYSCOPBA.

10                      So good evening. Welcome.

11                      PRESIDENT QUICK: Good evening. Thank  
12           you.

13                      Good evening, Senators and  
14           Assemblymembers. I am Christopher Quick, an  
15           investigator with the New York State Police,  
16           and I also serve as president of the New York  
17           State Police Investigators Association,  
18           otherwise known as NYSPIA. NYSPIA is the  
19           employee union that represents 1,086 State  
20           Police senior investigators and investigators  
21           throughout the state.

22                      State Police investigators are  
23           assigned to stations or special details that  
24           are referred to as the Bureau of Criminal

1 Investigation or BCI. Our investigators work  
2 on everything from larcenies, robberies,  
3 burglaries, identity theft, sex crimes, and  
4 homicides. We also have investigators  
5 assigned to special details,  
6 including computer crimes, forensics,  
7 narcotics, auto theft, dignitary protection,  
8 special investigations, gaming, and  
9 counterterrorism.

10 The most public example of some of the  
11 work we do was our investigation into the  
12 escape of the two inmates from Clinton  
13 Correctional Facility this past June. Our  
14 investigators worked around the clock for  
15 22 days, gathering and analyzing evidence  
16 that would ultimately lead to an end to the  
17 manhunt without a member of the public being  
18 harmed.

19 Demand on the resources of the State  
20 Police, particularly investigators, has  
21 increased, whether it's to keep up with the  
22 background checks for casinos being built in  
23 New York State or keeping the public safe in  
24 the face of the changing world we live in,

1 involving terrorism and mass attacks on the  
2 public. To ensure the safety of New Yorkers  
3 and its visitors, we must have the proper  
4 equipment and manpower.

5 One area in particular that is of  
6 utmost importance is our aging fleet, as  
7 you've heard earlier today, of our unmarked  
8 vehicles. The BCI fleet is currently  
9 numbered at 1,177 vehicles. There are 688  
10 vehicles with more 100,000 miles; that's  
11 58 percent of the BCI fleet. There are 755  
12 vehicles that are seven years or older, and  
13 165 of them are 10 years or older.

14 Due to the age of our fleet, we have  
15 experienced a number of mechanical,  
16 electrical, and structural damages to the  
17 vehicles, including brake lines rusting  
18 through, causing loss of brakes; loss of  
19 headlights due to electrical wiring that's  
20 become corroded; and rusting of integral  
21 structural components that make up the body  
22 or unibody of the vehicle. The results could  
23 have been catastrophic to the member or the  
24 public or both. We are lucky no one was

1 injured, but it is a risk we should not have  
2 to take.

3 Many of our investigators perform  
4 undercover operations. In these cases, our  
5 investigators need to blend in with the  
6 community, both in disguise and with their  
7 vehicles. These undercover operations can  
8 range from drug surveillance to  
9 counterterrorism investigations. The  
10 criminal element does its homework, and many  
11 are aware of the type of undercover vehicles  
12 we typically use.

13 For that reason, we propose a pilot  
14 program to allow for the leasing of vehicles  
15 for these special details. A leased vehicle  
16 will allow our investigators many more  
17 choices of diverse makes and models and, most  
18 importantly, non-police-type vehicles for  
19 undercover work.

20 Leasing vehicles will also help reduce  
21 the maintenance costs we currently  
22 experience.

23 In addition to the desperate need for  
24 more unmarked vehicles, the Division of State

1           Police must be made whole again in terms of  
2           manpower in order to meet today's security  
3           threats.

4                        Terrorism in the United States is on  
5           the rise. The Governor recognizes this and  
6           has dedicated a significant uniform trooper  
7           presence in New York City as a result.

8                        Superintendent D'Amico has repeatedly  
9           stressed and fought for the need to have  
10          recruit basic school classes at our academy  
11          to bolster the needs of the division. We  
12          have not been able to keep up with the  
13          attrition.

14                       We strongly urge this Legislature to  
15          ensure our investigators are safe, as well as  
16          the public, by adequately funding the  
17          Division of State Police to allow for the  
18          purchase of unmarked vehicles and other  
19          necessary safety equipment as well as funding  
20          new and regular academy classes so we can  
21          accomplish our core mission of protecting and  
22          serving the people of this great state.

23                       I appreciate your time in allowing me  
24          to give testimony, and I'm happy to answer

1 any questions you may have.

2 CHAIRWOMAN YOUNG: Thank you.

3 Any questions? Senator Gallivan.

4 SENATOR GALLIVAN: Thank you, Madam  
5 Chair.

6 Mr. President, thanks for your  
7 testimony, for the work you do, and your  
8 members as well.

9 I want to focus on the cars. We  
10 understand the message on manpower; it's been  
11 a consistent message along with the PBA and  
12 the superintendent.

13 When the superintendent testified, the  
14 talk was about vehicles in general, without a  
15 breakdown between marked cars and unmarked  
16 vehicles. Is it your understanding -- if you  
17 know at all -- when the superintendent was  
18 talking about the plan to replace cars, that  
19 that included all vehicles? Or was he just  
20 talking marked vehicles?

21 PRESIDENT QUICK: No, he included  
22 officers' vehicles. And once the officer  
23 vehicles that are unmarked, that would be the  
24 remedy to push the cars down the line into

1 the back rooms and special details.

2 SENATOR GALLIVAN: Have you had  
3 conversations with him as -- the plan that he  
4 put forward, is it adequate to meet the needs  
5 of your members?

6 PRESIDENT QUICK: Can you repeat that  
7 again?

8 SENATOR GALLIVAN: When the  
9 superintendent testified about his plan over  
10 the next year or two to replace those  
11 vehicles, does that satisfy the needs of your  
12 investigators? The plan that he put forward.

13 PRESIDENT QUICK: It does. And the  
14 consideration of leasing the unmarked cars,  
15 that would give a more diverse choice, would  
16 be an instant remedy to get more cars into  
17 the field right away, versus ordering a fleet  
18 of cars and waiting six months down the road.

19 SENATOR GALLIVAN: Understood. Thank  
20 you.

21 CHAIRWOMAN YOUNG: Thank you.

22 The Assembly?

23 ASSEMBLYMAN McDONALD: We're good.

24 Thank you.

1 PRESIDENT QUICK: Thank you.

2 CHAIRWOMAN YOUNG: Well, thank you,  
3 President, again. Please extend our  
4 gratitude to your members.

5 PRESIDENT QUICK: Thank you.

6 CHAIRWOMAN YOUNG: And thank you for  
7 being here today.

8 Next up we have President Mike Powers,  
9 New York State Correctional Officers And  
10 Police Benevolent Association.

11 Welcome, President.

12 PRESIDENT POWERS: Thank you, Madam  
13 Chair.

14 CHAIRWOMAN YOUNG: Could you introduce  
15 the people joining you today?

16 PRESIDENT POWERS: I will. To my left  
17 is Executive Vice President Tammy Sawchuck.

18 CHAIRWOMAN YOUNG: Welcome.

19 PRESIDENT POWERS: To my right is the  
20 Northern Region Vice President Chris Hansen.

21 CHAIRWOMAN YOUNG: Great. Thank you  
22 for being here.

23 PRESIDENT POWERS: And in the interest  
24 of time and your lengthy agenda here, we'll

1 be quick.

2 Good afternoon, Assemblyman Farrell,  
3 Senator Young, and esteemed members of the  
4 fiscal committees. Thank you for allowing me  
5 the opportunity to speak today on behalf of  
6 my entire membership regarding the Governor's  
7 proposed budget for the upcoming fiscal year.

8 My name is Michael Powers, and I have  
9 the privilege of serving as president of the  
10 New York State Correctional Officers & Police  
11 Benevolent Association, known as NYSCOPBA.

12 Among other titles, NYSCOPBA  
13 represents approximately 20,000 dedicated  
14 correctional officers and sergeants who are  
15 charged with maintaining the care, custody  
16 and control of our state's prison population,  
17 a thankless job that is becoming more  
18 dangerous each year.

19 I'll begin by stating the obvious.  
20 Since we visited with you a year ago, the  
21 correctional system in New York State has  
22 faced the greatest challenge in its recent  
23 history. Of course I'm talking about the  
24 escape at the Clinton Correctional Facility

1 last June. We are all waiting for the  
2 inspector general to complete her  
3 investigation -- an investigation, we trust,  
4 that will not only reveal the specific facts  
5 associated with the escape, but will also  
6 address the root causes of such a breakdown  
7 in one of the most critical institutions in  
8 our society, namely our correctional  
9 facilities.

10 When that investigation is complete  
11 and we have had time to thoroughly digest its  
12 findings and conclusions, I can assure you  
13 that NYSCOPBA will clearly, forcefully and  
14 frequently share its recommendations for how  
15 New York's correctional system can be  
16 improved.

17 NYSCOPBA can do this because of the  
18 working knowledge its members have of our  
19 correctional system. We have shared these  
20 recommendations with this administration and  
21 with prior administrations, and we will  
22 continue to do so until the one goal of every  
23 corrections advocate, regardless of political  
24 or ideological persuasion, has been achieved.



1 data on the amount of K2 or other drugs  
2 possessed by inmates. But anecdotal evidence  
3 and the contraband data suggest that they are  
4 rampant in most, if not all, facilities.

5 Let me remind you that this alarming  
6 rise in assaults and confiscation of  
7 contraband have been occurring while the  
8 inmate population has been falling by more  
9 than 5 percent.

10 Let me also repeat that it is our  
11 belief that no one supports the more violent  
12 system depicted by these graphs. We just do  
13 not agree on the root causes of this epidemic  
14 or how to reverse it.

15 I would like to clearly and concisely  
16 state what the dedicated professionals of  
17 NYSCOPBA believe. We believe it takes  
18 resources to effectively provide care,  
19 custody and control of inmates. This is  
20 especially true because a larger percentage  
21 of the inmates inhabiting correctional  
22 facilities -- nearly 2 out of 3 -- have been  
23 convicted of violent felonies.

24 It is also the case that inmates that

1           were originally assigned to maximum-security  
2           facilities based on the nature of their  
3           conviction have been reshuffled to  
4           medium-security facilities to address  
5           overcrowding at the maximum-security  
6           prisons -- overcrowding, I should mention,  
7           that still exists today.

8                     The necessary resources I just  
9           mentioned come in the form of a sufficient  
10          number of regularly and uniformly trained  
11          corrections officers outfitted with equipment  
12          that enables them to both do their job and  
13          return home safely to their family each  
14          night.

15                    While we are encouraged by the  
16          increase in correctional officer positions  
17          that have been filled in the current fiscal  
18          year, we have not yet reached a staffing  
19          ratio that allows posts critical to the  
20          safety of inmates and staff to remain open as  
21          their security plan dictates.

22                    Meaningful training is not regularly  
23          available once a corrections officer leaves  
24          the academy. All too often what is provided

1 does not focus on the tools and techniques  
2 corrections officers need to provide security  
3 to a facility.

4           While we are encouraged by the  
5 additional money proposed in this budget for  
6 better equipment at Clinton and certain other  
7 facilities, in many cases the equipment  
8 correction officers rely on is embarrassingly  
9 outdated and inadequate. And we are not  
10 talking about high-tech devices you may see  
11 in the movies; we're talking about basic  
12 needs such as flashlights, batons, radios,  
13 vehicles and the like.

14           NYSCOPBA has articulated its stance on  
15 these critical issues frequently and  
16 consistently at hearings like this and  
17 through official channels like  
18 labor-management meetings at both the state  
19 and facility levels. All too often, the  
20 response has been a polite acknowledgement  
21 but no meaningful follow-through by the  
22 department.

23           NYSCOPBA hopes that the release of the  
24 inspector general's report will spur

1 meaningful and concerted action to reform a  
2 correctional system that had already been in  
3 crisis prior to June of 2015 -- a crisis that  
4 no one can now deny.

5 The men and women of NYSCOPBA, each of  
6 whom walks the toughest beat in law  
7 enforcement, as Senator Nozzolio often  
8 states, remain committed to such reform.

9 Thank you again for the opportunity to  
10 share our views. We'll do our best to answer  
11 any questions you may have.

12 CHAIRWOMAN YOUNG: Thank you,  
13 President Powers.

14 Senator Gallivan.

15 SENATOR GALLIVAN: Thank you, Madam  
16 Chair.

17 Mr. President, thanks for your  
18 testimony, the work that you and of course  
19 all of your members do.

20 We all acknowledge that this past year  
21 has been a challenging year. I sense some of  
22 the frustration in your voice that we share  
23 while we all wait for that inspector general  
24 report.

1                   I know that you sat through  
2                   Commissioner Annucci's testimony. There was  
3                   talk about resources, there was talk about --  
4                   certainly an emphasis on safety and security  
5                   in facilities. I actually talked with him  
6                   about the same data that you made reference  
7                   to in your testimony here, and he  
8                   acknowledged that, and that something has to  
9                   be done.

10                   But nonetheless, he outlined some  
11                   things in his testimony, focusing on  
12                   technological enhancements, training  
13                   improvements and policy changes. The one  
14                   thing that we did not talk about, we did not  
15                   talk about the proper classification of  
16                   inmates. And I recognize that, point noted,  
17                   and I share that concern.

18                   But nonetheless, as he talked about  
19                   the technological enhancements, training  
20                   improvements, policy changes, he mentioned a  
21                   number of different things, like expanded use  
22                   of canine units, elimination of metal  
23                   containers and such. What other things do  
24                   you think need to be done that he did not

1            mention, to ensure that our facilities are  
2            safe and secure for everybody?

3            PRESIDENT POWERS: Through much of our  
4            communication with the department and the  
5            administration, much of our concerns are  
6            actual posts. While we recognize a rise in  
7            our staffing levels -- which still has quite  
8            a ways to go to balance out and to be  
9            effective in the field -- what we're lacking  
10           are actual posts in our facilities. We have  
11           an issue with post closings and actual posts  
12           in the facilities and the staff to staff it.  
13           That's just one of many things.

14           You know, he mentioned new technology  
15           and --

16           SENATOR GALLIVAN: Can we stay with  
17           the posts for a minute? So post closings I  
18           understand. When you say posts, do you mean  
19           that there are posts that you believe should  
20           exist that do not?

21           PRESIDENT POWERS: Yes. And with --  
22           the post closings, as you're familiar with,  
23           create breaches in security in the facility.

24           If I can give you an example real

1           quick here, and for something for you to  
2           understand, as you look outside of this hall  
3           and you recognize the men's room on the other  
4           side of this wall over here, and the angle at  
5           which that hall juts and comes down -- if the  
6           men's room or the hallway down at the end of  
7           the hall was an area of recreation, and that  
8           post was closed and we didn't have a staff  
9           member in there, you can see the blind spot  
10          from the front of this, the entrance of this  
11          hall. And then as we come down the hall, we  
12          don't have security staff there.

13                         And that could be a viable post. I  
14                         mean, and sometimes those posts get closed.  
15                         And that's where the staff comes in to be  
16                         able to allow us to staff those positions in  
17                         some of the blind spots in our facilities.

18                         EX. VICE PRES. SAWCHUCK: What  
19                         President Powers is saying is that you could  
20                         give us a hundred new correction officers,  
21                         but if you close a hundred posts, we've  
22                         gained nothing.

23                         SENATOR GALLIVAN: No, I understand  
24                         about the post closings. What I wanted to

1 understand better was the existence of --  
2 your belief that additional posts should  
3 exist.

4 Now, I'm assuming that -- I think I  
5 understand correctly that that becomes part  
6 of the staffing security analysis that you  
7 have the opportunity to weigh in on?

8 PRESIDENT POWERS: We do. We do.  
9 We've -- and as Tammy was alluding, we've  
10 seen an increase in items, officers, but  
11 we're not seeing the posts that are critical  
12 in our facilities.

13 SENATOR GALLIVAN: Would you be able  
14 to follow up and be more specific for the  
15 various facilities? I mean -- I don't mean  
16 today, but --

17 PRESIDENT POWERS: Absolutely.

18 SENATOR GALLIVAN: -- like going  
19 through the facilities --

20 PRESIDENT POWERS: Be happy to share  
21 that with you. With anybody, of course.

22 SENATOR GALLIVAN: -- the things that  
23 you think should exist that don't.

24 There was some discussion with the

1 commissioner about the renaming,  
2 restructuring of the Office of Special  
3 Investigations. What are your thoughts about  
4 that?

5 PRESIDENT POWERS: I know they had  
6 their issues a while back. I believe those  
7 issues still exist. We have our own concerns  
8 with OSI. We realize that it's new and they  
9 may be feeling their way, but that doesn't  
10 stop the day-to-day operations that we have.

11 You know, they talk of new plans and  
12 implementation, yet they discipline us  
13 towards the old style, so to speak. We're  
14 coming in, thanks to a lot of our  
15 intervention and a lot of our barking, if you  
16 will, to the department to implement new  
17 changes, and we're starting to see some of  
18 that. But we're being treated as if we're  
19 the old guard, so to speak, and it's becoming  
20 an issue for us. And it's coming through  
21 timeliness, through disciplines towards  
22 staff, and towards the lack of discipline,  
23 sometimes, to deter criminal activity in our  
24 correctional settings.

1                   SENATOR GALLIVAN: Is it your opinion  
2                   or do you have any thoughts on whether or not  
3                   the so-called internal affairs, for lack of a  
4                   better way of saying it, should be run by the  
5                   department? Or should there be separate  
6                   outside oversight, as some have proposed? If  
7                   you have thoughts.

8                   PRESIDENT POWERS: We provide care,  
9                   custody and control. You know, we're charged  
10                  with providing that. We have our issues, we  
11                  share them with the department. And in the  
12                  interim, until we either get the fair shake  
13                  that we just rightly deserve, then we'll  
14                  decide whether or not we proceed forward with  
15                  any of our concerns.

16                  SENATOR GALLIVAN: Fair enough. Thank  
17                  you.

18                  PRESIDENT POWERS: Thank you.

19                  CHAIRWOMAN YOUNG: Thank you, Senator.  
20                  Anyone on the Assembly side?

21                  ASSEMBLYMAN McDONALD: We're good.

22                  CHAIRWOMAN YOUNG: Senator Nozzolio.

23                  SENATOR NOZZOLIO: Thank you very  
24                  much, Madam Chair.

1                   President Powers, always good to see  
2                   you. Thank you for the work that your  
3                   members do each and every day to keep us  
4                   safe.

5                   PRESIDENT POWERS: Thank you.

6                   SENATOR NOZZOLIO: That's not said  
7                   enough. I appreciate you quoting me in  
8                   the -- I hope those words live forever. The  
9                   fact is, you do walk the toughest law  
10                  enforcement beat in America. Your members  
11                  are put in harm's way each and every day,  
12                  each and every hour of every day, with  
13                  nothing much to protect them other than their  
14                  wits and your abilities.

15                  There's \$47 million of capital money  
16                  in the State Budget proposal by Governor  
17                  Cuomo to reflect the settlement with the  
18                  special housing -- the SHU settlement, the  
19                  special housing. That NYSCOPBA and I worked  
20                  very closely when I had Senator Gallivan's  
21                  responsibilities, closely on the issue of  
22                  establishing different special housing for  
23                  those mentally ill inmates.

24                  And I must say, NYSCOPBA was terrific

1 in ensuring the seamless transition of that  
2 very major program in our state correctional  
3 facilities. It wasn't easy, but major  
4 expenditures -- down at Auburn, down at even  
5 Five Points, who didn't have that type of  
6 facility constructed.

7 Tell us what types of anticipated  
8 concerns or protocols, procedures, safety  
9 issues that you see in the development of  
10 this new settlement. And just to preface  
11 that question with a statement, that I  
12 understand what special housing has been.  
13 It's been to, in many cases -- certainly in  
14 some cases to discipline, but in many cases  
15 to ensure the protection of the inmate, so an  
16 inmate who may have needed special housing.

17 Tell me what this new settlement looks  
18 to develop.

19 PRESIDENT POWERS: Well, thank you for  
20 the acknowledgment. We consider ourselves  
21 the best in the nation in this line of law  
22 enforcement. And it's a good question, and  
23 I'm glad you asked, because quite frankly  
24 you're the only one that's asked us.

1           And with that being said, you know,  
2           minus the mental health aspect -- and the  
3           commissioner mentioned, I believe, 18 percent  
4           of the population has mental health issues.  
5           And the NYCLU settlement addresses that quite  
6           well. But from a disciplinary standpoint,  
7           when you take out the mental health issue,  
8           from a disciplinary standpoint and an  
9           operational standpoint in the Department of  
10          Corrections and Community Supervision, to  
11          keep the facilities operating in a timely  
12          fashion, these -- these -- this new  
13          settlement has -- doesn't have a deterrent to  
14          criminal activity.

15                 And there's plenty of criminal  
16          activity inside the walls and fences of our  
17          correctional facilities. And I'm not to say  
18          that -- you know, a majority of them go to  
19          program, go to -- you know, they're looking  
20          for their rehabilitation process. But we  
21          have a small factor, and that factor that  
22          comes into play, that acts out criminally,  
23          doesn't have the deterrent anymore after a  
24          short SHU sentence or a -- or a longer one,

1 to come back out and modify his behavior or  
2 her behavior from that aspect.

3 I believe Tammy could speak a bit on  
4 it as well, as she was a supervisor in a SHU  
5 for many years and we -- you know, I mean, we  
6 have our concerns with it, but we implement  
7 it, we'll roll it out, because we are the  
8 best at what we do. And, you know, we'll  
9 work with it. We'll have to wait and see.

10 I mean, in 2014 the interim  
11 stipulation settlement that was agreed to in  
12 the NYCLU case didn't significantly drop the  
13 numbers of acts of violence in our  
14 facilities. I mean, with the reintroduction  
15 of heroin and the introduction of K2 and the  
16 epidemic of K2, that the -- even the  
17 commissioner acknowledges has created a very  
18 violent workplace. And it's created a --  
19 a -- a mode of behavior that doesn't have a  
20 deterrent to bad behavior.

21 SENATOR NOZZOLIO: Do you think  
22 that -- this proposal, are you suggesting,  
23 will basically eliminate, significantly  
24 reduce, at best, the deterrent factor in

1 terms of inmate discipline?

2 PRESIDENT POWERS: I'm sorry, could  
3 you repeat that?

4 SENATOR NOZZOLIO: This settlement,  
5 this proposal to construct additional -- to  
6 retrofit the housing, taking -- you believe  
7 it takes away the deterrent tool of -- that  
8 exists today for deterrence --

9 PRESIDENT POWERS: Yes.

10 SENATOR NOZZOLIO: -- with special  
11 housing?

12 PRESIDENT POWERS: Yes.

13 SENATOR NOZZOLIO: So that -- how --  
14 to those who haven't worked in our  
15 correctional facilities, what does that mean?

16 PRESIDENT POWERS: If there's a  
17 criminal act that takes place in the  
18 correctional setting -- I'll give you an  
19 example. If we suspect somebody of using a  
20 narcotic inside the facility, and we test  
21 them for that narcotic, there's usually a --  
22 you know, there could be a confinement, they  
23 could be confined from their programs,  
24 confined from recreation, confined from

1           certain privileges that they get. Not  
2           necessarily visitation or anything  
3           family-related; they still have  
4           correspondence and everything with that. But  
5           from a privilege inside the facility, they  
6           could lose that.

7                     That's being modified significantly at  
8           this point with this settlement. And that is  
9           not -- we'll continue to see the action. If  
10          an individual didn't submit to the urine  
11          sample and the urinalysis, then the penalty's  
12          not there anymore. So, you know, is there a  
13          deterrent for drug use? No.

14                    SENATOR NOZZOLIO: Very difficult  
15          situation going to be made worse.

16                    PRESIDENT POWERS: Makes it extremely  
17          difficult for our front-line staff.

18                    SENATOR NOZZOLIO: My time is long  
19          since up. Thank you very, very much for your  
20          work and your testimony.

21                    PRESIDENT POWERS: Thank you. Thank  
22          you for your service to the people of the  
23          State of New York. And best wishes.

24                    CHAIRWOMAN YOUNG: Thank you, Senator.

1                   And thank you, President Powers and  
2                   all of you for what you do for us on behalf  
3                   of the people of New York State to keep us  
4                   safe every single day. We appreciate you  
5                   very much. So thank you.

6                   PRESIDENT POWERS: Thank you for your  
7                   time.

8                   ASSEMBLYMAN McDONALD: Thank you.

9                   CHAIRWOMAN YOUNG: Our next speaker is  
10                  President Patrick J. Lynch, New York City  
11                  Patrolmen's Benevolent Association.

12                  Welcome, President Lynch. It's great  
13                  to see you again.

14                  PRESIDENT LYNCH: Thank you. Good to  
15                  be with you.

16                  CHAIRWOMAN YOUNG: So happy you can  
17                  join us. I'm sorry this is a marathon, not a  
18                  sprint today, but we're getting there.

19                  Could you please introduce the  
20                  gentlemen at the table with you?

21                  PRESIDENT LYNCH: Sure. To my left is  
22                  Mubarak Abdul-Jabbar, he's our second vice  
23                  president in the PBA. And our counsel,  
24                  Michael Murray.

1                   CHAIRWOMAN YOUNG: Thank you very  
2 much.

3                   PRESIDENT LYNCH: And also the people  
4 that do the work, actually -- behind me is  
5 John Nutholtz {ph} and Valerie Dabas in the  
6 gallery.

7                   CHAIRWOMAN YOUNG: Great. Welcome to  
8 each and every one of you, and we look  
9 forward to your testimony today.

10                  PRESIDENT LYNCH: Thanks very much.

11                  Good evening, Senators and  
12 Assemblymembers. Thank you for the  
13 opportunity to testify.

14                  In the interests of time, I will  
15 summarize the written remarks that I've  
16 submitted on to the record, and I know it's  
17 been a long day of testimony for all of you.

18                  As many of you may know, New York City  
19 police officers have made extraordinary gains  
20 in restoring our city's public safety over  
21 the past 25 years. This renaissance has been  
22 tremendously important to New York City's  
23 economic vitality, to its fiscal health, and  
24 by extension to the health of New York State

1 as a whole.

2           Unfortunately, we're not currently  
3 receiving the support we need to maintain  
4 these public safety gains. To help remedy  
5 this situation, we respectfully request your  
6 support for the following initiatives in the  
7 budget process and also in the legislative  
8 session.

9           One priority is the three-year  
10 extension of the Taylor Law's interest  
11 arbitration provisions, which is included in  
12 the Governor's Executive Budget. As you may  
13 know, the Taylor Law's impasse resolution  
14 process represents New York City police  
15 officers' only recourse in the face of the  
16 city's long-standing refusal to pay us at a  
17 rate even approaching our local and national  
18 counterparts. Our salaries have fallen  
19 30 percent or more behind our counterparts in  
20 comparable local jurisdictions, largely due  
21 to the one-sided bargaining environment and  
22 skewed impasse resolution process that we  
23 faced throughout the 1990s.

24           This Legislature attempted to help

1 close that gap when it granted the PBA the  
2 right to resolve impasses under the Taylor  
3 Law in 1998. Nearly two decades later,  
4 however, we remain in virtually the same  
5 uncompetitive position as we were under the  
6 previous administration's regime, for several  
7 reasons.

8 One glaring issue is the complete lack  
9 of codified ethical standards for neutral  
10 arbitrators. Given the current scrutiny on  
11 public officials and police officers at all  
12 levels of government, it is especially  
13 important for taxpayers and public employees  
14 to be able to trust that the arbitration  
15 process is unbiased. We are therefore  
16 seeking legislation to establish a code of  
17 conduct for arbitrators in Taylor Law  
18 proceedings, modeled on the ethical codes  
19 already in widespread use in other private-  
20 and public-sector arbitrations.

21 The second item of concern: Our  
22 current lack of training and equipment  
23 necessary to counter the type of  
24 active-shooter style and terrorist attacks

1           that we've recently witnessed, unfortunately,  
2           in Paris, San Bernardino, and other places.

3                   Law enforcement best practices now  
4           dictate that the first police officers on the  
5           scene of an active-shooter incident, usually  
6           a police officer on routine patrol, must  
7           immediately engage the attacker to minimize  
8           any further casualties. According to a  
9           report by the Public Executive Research  
10          Forum, PERF, one-third of police officers who  
11          attempt to stop an active shooter alone are  
12          shot by that attacker.

13                   New York City police officers on  
14          patrol are currently equipped with only a  
15          .9mm handgun and basic ballistic restraint  
16          vests that provide no protection from a  
17          high-powered rifle round. In this respect,  
18          the NYPD lags behind many other law  
19          enforcement agencies nationwide, which  
20          already train and equip their patrol officers  
21          with long guns, ballistic helmets and  
22          enhanced body armor.

23                   The Governor has also requested  
24          funding for similar equipment and training

1           for all New York State troopers in his  
2           Executive Budget. We believe that the police  
3           officers who patrol our nation's top terror  
4           target must be similarly trained and  
5           equipped. We will therefore be asking and  
6           seeking legislation that will provide a  
7           mandate for the NYPD to equip every New York  
8           City police officer with an Anti-Terrorism  
9           Response Kit of the type I have just  
10          outlined, and provide training in advanced  
11          counterterrorism tactics.

12                     The third item of concern: Our city  
13           and our state's moral obligation to provide  
14           for police officers who are disabled in the  
15           line of duty. That obligation is not being  
16           met for New York City police officers hired  
17           after July 1, 2009, under the Tier 3 pension  
18           plan. Although they face the same dangers as  
19           their more senior colleagues, they are  
20           subject to a reduced accident disability  
21           benefit that would not allow them to feed or  
22           care for their families if they are disabled  
23           on the job. They are the only police  
24           officers in the state who face this unjust

1 situation.

2           Simply put, it is not in the public  
3 interest for police officers to ask  
4 themselves whether they can risk their  
5 families' financial future by going into  
6 harms way. We are therefore calling upon  
7 the Legislature to establish a statewide  
8 minimum standard for police officers'  
9 accident disability benefits that will  
10 equalize those benefits for New York City  
11 police officers in Tier 3.

12           The issues I've just outlined  
13 represent our members' top concerns heading  
14 into the budget cycle, but there are many  
15 other issues that we'll want to address as  
16 the legislative session moves forward.

17           I thank you once again for your time  
18 and your consideration of my testimony. A  
19 longer version has been submitted. I  
20 appreciate the opportunity to testify here  
21 today.

22           SENATOR KRUEGER: Senator Diane  
23 Savino.

24           SENATOR SAVINO: Thank you, Senator

1 Krueger.

2 Good afternoon, President Lynch.

3 As you know, I was the sponsor of the  
4 bill that was unfortunately vetoed by  
5 Governor Paterson in 2009, I think it is now.  
6 Last year we attempted to resolve the  
7 situation, but we ran into a roadblock with  
8 the City Council of the City of New York who  
9 decided that they couldn't provide us a home  
10 rule message.

11 Are we making any progress with the  
12 council with respect to that?

13 PRESIDENT LYNCH: No, we've made no  
14 progress whatsoever with both sides of City  
15 Hall, whether the City Council or the Mayor's  
16 Office as well.

17 SENATOR SAVINO: So they still remain  
18 obstinate about this issue?

19 PRESIDENT LYNCH: Absolutely, every  
20 step of the way.

21 SENATOR SAVINO: And since the veto of  
22 the Tier 2 extender, can you tell me how many  
23 New York City police and firefighters are  
24 currently affected by that veto?

1                   PRESIDENT LYNCH: We have, just in the  
2                   NYPD, we have upwards of 10,000 younger New  
3                   York City police officers on patrol who are  
4                   covered under Tier 3.

5                   SENATOR SAVINO: How many of them have  
6                   been injured on the job since then?

7                   PRESIDENT LYNCH: That exact number I  
8                   can get you. But as we go through that  
9                   number, just the risk itself has an effect on  
10                  every police officer.

11                  SENATOR SAVINO: Right.

12                  PRESIDENT LYNCH: If you have a more  
13                  senior police officer like myself in a radio  
14                  car who's covered by Tier 3, and my partner  
15                  sitting next to me is Tier 3, it's unfair  
16                  that we both go into the same job, face the  
17                  same risk, but unfortunately, if we're  
18                  disabled together, I'll be able to take care  
19                  of my family on into the future but my  
20                  partner won't be able to do that, under  
21                  Tier 3.

22                  SENATOR SAVINO: I really would be  
23                  interested in finding out the number of  
24                  officers that have been injured that are now

1 facing this financial burden.

2 PRESIDENT LYNCH: I've heard that --

3 SENATOR SAVINO: You don't have to  
4 give it to me today, but it will be helpful  
5 in us pushing this -- what is really an  
6 unfair situation.

7 PRESIDENT LYNCH: I'm looking forward  
8 to getting you that information.

9 SENATOR SAVINO: Thank you.

10 PRESIDENT LYNCH: Thank you, Senator.

11 SENATOR KRUEGER: Evening.  
12 Assembly?

13 ASSEMBLYMAN McDONALD: Thank you,  
14 Senator. We will hear from Assemblymember  
15 O'Donnell.

16 ASSEMBLYMAN O'DONNELL: Thank you for  
17 staying around.

18 PRESIDENT LYNCH: Good evening.  
19 Thanks.

20 ASSEMBLYMAN O'DONNELL: You sound like  
21 a true New Yorker, may I say, and you spoke  
22 very quickly. So I wanted to just ask one  
23 quick question.

24 PRESIDENT LYNCH: Sure.

1                   ASSEMBLYMAN O'DONNELL: You said in  
2                   the beginning that you are compensated at  
3                   less of a level than comparable other  
4                   officers, so I'm curious to know what you  
5                   meant by comparable. Do you mean compared to  
6                   Boston or Philadelphia? Do you mean compared  
7                   to Westchester or Nassau? What did you mean?

8                   PRESIDENT LYNCH: Actually, both.

9                   ASSEMBLYMAN O'DONNELL: Okay.

10                  PRESIDENT LYNCH: When you compare us  
11                  across the country, both locally and  
12                  nationally, we're 30 percent behind. All  
13                  those --

14                  ASSEMBLYMAN O'DONNELL: So you're  
15                  30 percent behind what they pay in  
16                  Washington, D.C., and Philadelphia and  
17                  Boston?

18                  PRESIDENT LYNCH: The exact numbers I  
19                  can get you. But when you average it  
20                  nationally across the country as well as  
21                  locally, we're 30 percent behind.  
22                  Absolutely.

23                  ASSEMBLYMAN O'DONNELL: But there's  
24                  nothing really we can do about that, right?

1           That's a negotiation between you folks and  
2           the City of New York --

3                     PRESIDENT LYNCH:  Yeah.

4                     ASSEMBLYMAN O'DONNELL:  -- and whoever  
5           the mayor and City Council happen to be at  
6           the time, right?

7                     PRESIDENT LYNCH:  What's important,  
8           though, in what we're asking, is that be a  
9           code within the arbitration process.  First,  
10          that we --

11                    ASSEMBLYMAN O'DONNELL:  I understood  
12          you very clearly.  I'm just trying to get to  
13          the money part.

14                    PRESIDENT LYNCH:  Sure.

15                    ASSEMBLYMAN O'DONNELL:  The money part  
16          is -- there's nothing here in the State  
17          Capitol that can really be done to address  
18          the money part.  It's your own negotiation  
19          with the collective bargaining agreement with  
20          the City of New York; correct?

21                    PRESIDENT LYNCH:  Right.  And what we  
22          can do is encourage the city to reasonably  
23          negotiate, which they haven't.  They rely on  
24          a negotiation that says pattern bargaining,

1           one size fits all. And as we know, whether  
2           it's a pair of gloves or it's negotiation,  
3           one size never fits all.

4                     So what you should do at the  
5           bargaining table is negotiate to solve  
6           problems on both sides.

7                     ASSEMBLYMAN O'DONNELL: Right.

8                     PRESIDENT LYNCH: Pattern bargaining  
9           doesn't do that. So our only recourse is to  
10          go to the Taylor Law, to go to arbitration in  
11          that process.

12                    So first we need to make sure that law  
13          gets re-signed, and then we want to add some  
14          fairness and ethics into that process as  
15          well.

16                    ASSEMBLYMAN O'DONNELL: I didn't mean  
17          for you to slow down. I heard you the first  
18          time.

19                    (Laughter.)

20                    ASSEMBLYMAN O'DONNELL: Speak as slow  
21          or as quickly as you want.

22                    I just want to say that I have  
23          extraordinarily good working relationships  
24          with the 2-4 and 2-6 in my district, and I

1           thank you for being here and for your  
2           service.

3                   PRESIDENT LYNCH:  And thank you for  
4           being a voice for us.

5                   SENATOR KRUEGER:  Senator Michael  
6           Nozzolio.

7                   SENATOR NOZZOLIO:  Thank you,  
8           Senator.

9                   President Lynch, it's good to see you  
10          again.

11                   PRESIDENT LYNCH:  Thank you, Senator.

12                   SENATOR NOZZOLIO:  Thank you for your  
13          cogent testimony.

14                   A big surprise that for all that we  
15          have been through as a city, a state -- all  
16          our cities are going through today, with  
17          New York City being blessed with the most  
18          professional police force possible -- but  
19          it's a shock to hear of the lack of tools  
20          that you have on the front lines.

21                   Tell us, is the administration doing  
22          anything to heighten the awareness of -- this  
23          is a serious homeland security issue.  It's  
24          one that the federal government should be

1           invested in. Tell us about any discussions  
2           you've had on that score.

3                   PRESIDENT LYNCH: Sure. Our concern  
4           is this. In any active shooter-style  
5           incident -- and we see from the attacks that  
6           we've had, they can happen anyplace, at any  
7           time. It can happen in a cafe, it can happen  
8           in a mall in one of our boroughs, or the  
9           subway system as well. So the first police  
10          officer that will respond to that attack or  
11          that 911 call will be a local police officer  
12          on patrol, what we call our sector police  
13          officers. When they respond, they're going  
14          to respond with bullet-resistant vests that  
15          are basic, and a .9-millimeter weapon.

16                   What we need to do is have an  
17          anti-terrorism kit. Now, what the department  
18          has done is grown those different departments  
19          within our agency, but they're not the first  
20          ones to respond. We need to be able to  
21          respond and neutralize that attack  
22          immediately, the first police officer on the  
23          scene.

24                   For instance, if you looked in the

1 films of San Bernardino tragedy, when the  
2 attack happened, you had police officers  
3 respond. The local sector cars, police  
4 officers on patrol, responded. They had long  
5 guns, ballistic helmets, and ballistic vests.  
6 And then the specialized units -- what we  
7 call emergency service, many know as SWAT --  
8 they responded. But we were able to protect  
9 ourselves as we went in to stop that attack  
10 right from the get-go.

11 In New York City, the local police  
12 officer in your precinct, in your  
13 neighborhood, will respond and unfortunately  
14 most likely will be shot, because we're not  
15 equipped to be able to hold off that -- the  
16 specialized unit, they come later, they're --  
17 minutes, in an attack like this, are  
18 important. It takes time for them to get  
19 there. But the local police officer in your  
20 neighborhood that gets that radio run, as we  
21 call it, they'll be there within minutes and  
22 get shot.

23 SENATOR NOZZOLIO: You'd certainly  
24 expect units to be developed. It makes

1 sense. But it appears that the terrorist  
2 threat is a moving target, in the sense that  
3 it's -- they're changing tactics all the  
4 time. It is much more of almost a guerilla  
5 on-scene situation --

6 PRESIDENT LYNCH: That's correct.

7 SENATOR NOZZOLIO: -- as opposed to  
8 major events. I mean, who knows, but the  
9 fact is we need to be equipped for  
10 everything. And this appears that yes, the  
11 unit makes sense. However, we seem to be  
12 equipping the unit, but not those on the  
13 front lines -- in Times Square, or where  
14 people gather, or in one of the stadiums or  
15 wherever.

16 Is that the basic concern of our PD?

17 PRESIDENT LYNCH: Yes, absolutely.  
18 And we have to be concerned with multiple  
19 things happening at once, as we've seen in  
20 Paris, where you may have one of our  
21 boroughs, an incident happen, and  
22 simultaneously in Times Square or in one of  
23 our neighborhoods -- I live in Queens -- out  
24 in Queens, and one of our malls -- it all

1 goes on at the same time.

2 So then those specialized units will  
3 be stretched. But if our local police  
4 officers are equipped and trained in those  
5 techniques, we'll be able to respond and hold  
6 it off and save folks' lives. And that's  
7 something that --

8 SENATOR NOZZOLIO: And this is not a  
9 hypothetical situation.

10 PRESIDENT LYNCH: No.

11 SENATOR NOZZOLIO: Just look at what  
12 happened in Paris. In Paris, if that's a  
13 template.

14 So keep us informed, let us know what  
15 this group can do. Particularly our areas of  
16 public protection, the requests we need to  
17 make from Washington as well. You raise  
18 excellent points, and we'd be glad to be  
19 supportive.

20 PRESIDENT LYNCH: Senator, I  
21 appreciate that.

22 SENATOR KRUEGER: Assembly?

23 ASSEMBLYMAN McDONALD: Our next  
24 speaker is Assemblymember Malliotakis.

1 ASSEMBLYWOMAN MALLIOTAKIS: Thank you.

2 Thank you for being here.

3 PRESIDENT LYNCH: Thank you,

4 Assemblymember.

5 ASSEMBLYWOMAN MALLIOTAKIS: I want to  
6 say first off, well, thank you to the men and  
7 women of the NYPD, thank you for what you do  
8 each and every day. I want to say that I  
9 support the initiatives that you outlined  
10 here today --

11 PRESIDENT LYNCH: Thank you.

12 ASSEMBLYWOMAN MALLIOTAKIS: -- and  
13 especially when it comes to the parity issue  
14 and disability. Certainly they all take the  
15 same risk, and one shouldn't be treated  
16 differently than the other. And so I support  
17 you and I lend my voice to you to use as you  
18 continue to fight this fight.

19 I just had three relatively quick  
20 questions. In October, we had a terrible  
21 tragedy with the shooting of Police Officer  
22 Randolph Holder. I believe that there is a  
23 tremendous problem with the drug diversion  
24 laws that we have currently in the State of

1 New York.

2 I wanted to get just your opinion, if  
3 you could just talk a little bit about this.  
4 Someone who had four felony drug convictions,  
5 in my view, should never have been released  
6 from prison and put into a diversion program.  
7 And had he been kept in jail where he  
8 belonged, I believe that Police Officer  
9 Holder would be alive today. And so I'd like  
10 to just get your perspective on this. And  
11 what are your concerns about the drug  
12 diversion law, and should it be changed?

13 PRESIDENT LYNCH: I think that when  
14 you have someone with such a violent history  
15 that's there, when they go before the judge,  
16 he or she needs to have all the information  
17 in front of them to make that decision.  
18 Someone that goes into a diversion program  
19 should be someone that's nonviolent, that  
20 shows a proclivity to do better, to get  
21 better, and maybe they've made a mistake.

22 But what we've seen is that that's  
23 been bastardized, where you go in, it's just  
24 they clear the calendar, they clear the

1 docket to let's just put them in the  
2 diversionary program for drug treatment,  
3 alcohol treatment, and all those different  
4 types of things -- which are fine for certain  
5 folks.

6           When you have a violent repeat  
7 offender, I don't believe they should be  
8 allowed to go in that program. Because what  
9 will happen is we will face them while we're  
10 riding the subway and our members, the  
11 New York City police officers, will have to  
12 face them on the street. And we had that  
13 with Randolph Holder, that police officer who  
14 stopped a bicycle robbery and he spun around  
15 and shot that police officer and killed him,  
16 a police officer from a family of police  
17 officers. Why? Because that perp was  
18 allowed to go back on the street through a  
19 diversionary program which he never, ever  
20 should have been included in.

21           ASSEMBLYWOMAN MALLIOTAKIS: Has the  
22 City of New York or anyone else in the state  
23 asked you your opinion on this, or to work  
24 with them in changing the law?

1                   Senator Marty Golden and I are  
2                   actually working on legislation now. I was  
3                   wondering if anyone else has talked to you  
4                   about this. Or has the mayor had any  
5                   discussions with you?

6                   PRESIDENT LYNCH: No, just the public  
7                   discussion that happened after Officer  
8                   Holder's assassination that day. But no.

9                   But we look forward to working with  
10                  you and to get that accomplished to make all  
11                  of us, quite frankly, all of us safe. But if  
12                  the first-line police officers aren't safe,  
13                  there's not a chance for the rest of us.

14                  ASSEMBLYWOMAN MALLIOTAKIS: Sure.

15                  On that note, we are one of three  
16                  states that does not consider the danger  
17                  level of defendants when setting bail. I was  
18                  just curious if you would comment on that as  
19                  well and if you have any proposals to change  
20                  that.

21                  PRESIDENT LYNCH: Yes, traditionally  
22                  now it's -- bail is used, will that person  
23                  come back to court. So we have cases where  
24                  they don't and they still get bail. But

1 obviously you should look and say what  
2 condition are they in, what crimes that they  
3 have, and will they commit a violent crime.  
4 Even if they have the funds to be able to get  
5 out on bail and whether they'll come back or  
6 not, what will they do while they're out?

7 So I think it's very important that  
8 you look at the background of each defendant  
9 in that case and make an educated decision on  
10 the information. So I believe that if you  
11 have a violent background, you should not be  
12 out.

13 ASSEMBLYWOMAN MALLIOTAKIS: Okay. So  
14 you would support, obviously, changing that  
15 law, then.

16 PRESIDENT LYNCH: Yes.

17 ASSEMBLYWOMAN MALLIOTAKIS: Okay.

18 PRESIDENT LYNCH: Yes.

19 ASSEMBLYWOMAN MALLIOTAKIS: One last  
20 question. The 2014 sanctuary law prohibits  
21 NYPD from cooperating with Immigration and  
22 Customs Enforcement. In fact, there was a  
23 report that was issued by the criminal  
24 bureau, justice bureau of the NYPD that says

1           474 of the 504 immigration detainees received  
2           from the feds were not honored.

3                     I find this to be a little shocking.  
4           I mean, I think these sanctuary laws that  
5           were put in place by the City Council are  
6           really misguided. Do you have an opinion on  
7           this? I just want to know what -- what are  
8           your thoughts on this as well? Because --  
9           well, I'll let you speak first.

10                    PRESIDENT LYNCH: So we have -- we  
11           should be allowed to use every tool on the  
12           street as police officers to take someone  
13           that committed a crime. Look, police  
14           officers don't want to go out and go after  
15           undocumented folks, it's not what we're  
16           looking to do. We're out looking to keep  
17           everyone safe and do the job. But  
18           unfortunately, sometimes those same folks are  
19           committing crimes, just like a person that's  
20           legally here in this country may commit a  
21           crime.

22                    So in both of those cases, we should  
23           be allowed to look at and use every aspect.  
24           Sometimes that aspect may be deportation. So

1 we shouldn't be too quick to close doors on  
2 what we can use to make the streets safe.

3 ASSEMBLYWOMAN MALLIOTAKIS: There was  
4 an incident where someone who was  
5 undocumented on Staten Island was arrested  
6 for trespassing, was released back on the  
7 street, then later on was accused of rape.  
8 Then they were brought back in.

9 But the issue I find with some of  
10 these laws and the bail laws is that some of  
11 these individuals won't come back for their  
12 court dates.

13 PRESIDENT LYNCH: That's right.

14 ASSEMBLYWOMAN MALLIOTAKIS: So I think  
15 that's a major issue that we need to address  
16 as well. Do you have any suggestions on that  
17 front?

18 PRESIDENT LYNCH: I think, again, part  
19 of the tools -- and I'll begin to research it  
20 some more for you, and with you. But I think  
21 all those tools should be allowed. But if  
22 there's a violent history there or there's a  
23 chance they're not coming back, they  
24 shouldn't be allowed out on bail. It's as

1 simple as that.

2 We think it should be a fair system in  
3 court, we think it should be a system where  
4 they're before the judge. But in order to  
5 make sure that happens, we have to make sure  
6 they show up. So if there's a violent  
7 history or they're illegal, then they may not  
8 come back.

9 ASSEMBLYWOMAN MALLIOTAKIS: It seems  
10 some of these policies, they don't have  
11 common sense behind them.

12 But I thank you so much for sharing  
13 your opinions. Thank you so much for what  
14 you do.

15 PRESIDENT LYNCH: Thank you.

16 CHAIRWOMAN YOUNG: Thank you.

17 Senator Krueger.

18 SENATOR KRUEGER: Evening. Hi.

19 So my district is the 19th, 17th, and  
20 13th Precincts, and happily I think we  
21 sometimes have more arguments about bikes on  
22 the sidewalks, and the irritation of  
23 hovercraft bumping old people over, than  
24 organized crime.

1                   PRESIDENT LYNCH: We hope that's  
2 everyone's problem to deal with.

3                   SENATOR KRUEGER: Exactly. Just for  
4 the record, you don't support electric bikes  
5 or hovercrafts, do you?

6                   PRESIDENT LYNCH: No.

7                   SENATOR KRUEGER: Thank you very much.

8                   PRESIDENT LYNCH: I think I'd probably  
9 fall off it, but --

10                   (Laughter.)

11                   SENATOR KRUEGER: It's just -- it's  
12 creating too much chaos.

13                   But more seriously, although that is  
14 an issue in my district --

15                   PRESIDENT LYNCH: Of course, of  
16 course.

17                   SENATOR KRUEGER: -- my understanding  
18 is every NYPD officer is going to be given  
19 some kind of Apple phone that gives you  
20 direct access to records of anyone you're  
21 picking up. So partly as follow-up to that  
22 question, you will or now have more direct  
23 data about the people that you are stopping  
24 on our streets. Can you talk to me about

1           that program?

2                   PRESIDENT LYNCH: Yeah, sure. The new  
3           Apple phones that the department is providing  
4           for all out police officers on patrol is  
5           basically like a minicomputer in your hand  
6           where you can more quickly run the names of  
7           the folks to find out if they have warrants,  
8           what's their background, the location you're  
9           going to, has there been other incidents in  
10          that apartment or that building. So it's a  
11          safety factor for the member, as well as  
12          knowing what you're walking into as a police  
13          officer.

14                   And it's more extensive than that.  
15          It's a huge amount of information at your  
16          fingertips literally in that radio car where,  
17          when I came on the job in 1984, there was no  
18          computer in the car, you'd have to possibly  
19          take that person in, run the name at the  
20          stationhouse. Sometimes they popped a  
21          warrant, sometimes they didn't, but it was  
22          consuming of time.

23                   This is -- for a safety reason, it  
24          works. To make sure we're dealing with the

1 right folks and not the wrong folks, it  
2 works. So it's a good tool to get the job  
3 done.

4 And it's more extensive than that.  
5 You can even see what other 911 calls are  
6 going on in your area, a patrol in your  
7 sector, in your foot post, so it educates the  
8 police officer on exactly what she or he is  
9 dealing with on their post. So I think it's  
10 a good tool that helps us get the job done.

11 SENATOR KRUEGER: And is it rolled out  
12 completely now, or is it rolling out?

13 PRESIDENT LYNCH: It's not rolled out  
14 completely, but it's well on the way to doing  
15 that, to make sure every police officer on  
16 patrol -- so I would venture to say it's more  
17 a question of the department -- but I would  
18 definitely say by midyear, the end of the  
19 year, that every police officer will have  
20 them.

21 SENATOR KRUEGER: Great. And then  
22 just one more question, I know it's so late.

23 Following up, I think, on Senator  
24 Nozzolio's questions about your proposal for

1 an anti-terrorism package for each police  
2 officer, so would you actually propose that  
3 patrol officers who are walking a beat are  
4 carrying long guns?

5 PRESIDENT LYNCH: No, we would have  
6 the -- what we call the radio car in your  
7 neighborhood, the patrol -- that'd be  
8 equipped, it would be in their trunk,  
9 safeguarded, so when they're going to an  
10 incident like that they can equip themselves  
11 and take it out.

12 Now, if you're on a foot post,  
13 obviously it wouldn't be practical to be  
14 standing at a foot post with a rifle slung  
15 over your shoulder. But in an incident like  
16 that, that you'd be able to have each  
17 stationhouse equipped with that equipment,  
18 that when it's an all-hands-on-deck kind of  
19 call, that those police officers on foot can  
20 respond to the stationhouse, get prepared,  
21 and then respond out to the scene and help  
22 get that job done.

23 So we're not proposing that our police  
24 officers be walking around with a rifle on

1           their back. We're not suggesting that. But  
2           we should have access to them no matter what  
3           our assignment is, and the training to use  
4           them properly and the techniques in  
5           anti-terrorism, so, quite frankly, we don't  
6           have to use them. But our techniques will  
7           help stop it.

8                     SENATOR KRUEGER: Thank you very much.

9                     PRESIDENT LYNCH: Thank you, Senator.

10                    CHAIRWOMAN YOUNG: Thank you.

11                    Senator Hassell-Thompson.

12                    SENATOR HASSELL-THOMPSON: Thank you.

13                    Just very briefly, I just -- somewhere  
14           in there, my ears got pricked up because I  
15           just -- it almost sounded as though you did  
16           not feel that bail was a tool that should be  
17           used at all.

18                    PRESIDENT LYNCH: Say again, I'm  
19           sorry?

20                    SENATOR HASSELL-THOMPSON: My ears  
21           heard, I didn't say you said --

22                    PRESIDENT LYNCH: Fair enough. Well  
23           put.

24                    SENATOR HASSELL-THOMPSON: -- my ears

1 heard you expound on bail. Have you taken a  
2 look very closely at what the bail reform is  
3 that is being proposed?

4 PRESIDENT LYNCH: We're looking at it  
5 and will continue to look at it to better  
6 educate ourselves on those opinions. But  
7 what our concern --

8 SENATOR HASSELL-THOMPSON: Okay, wait,  
9 wait --

10 PRESIDENT LYNCH: Sure. Go ahead.

11 SENATOR HASSELL-THOMPSON: Don't go  
12 ahead of me.

13 PRESIDENT LYNCH: That's quite fine.

14 SENATOR HASSELL-THOMPSON: Thank you.  
15 Because this is your area of expertise, so  
16 you have to take it slow with me.

17 PRESIDENT LYNCH: Sure.

18 SENATOR HASSELL-THOMPSON: I asked --  
19 you know, I asked you that question very  
20 specifically because bail is, as I earlier  
21 stated to one of the other presenters, is  
22 supposed to be administered or recommended  
23 before the presumption of guilt has been  
24 established. So therefore when you start to

1 talk about who should and shouldn't get bail,  
2 that's where I want you to enter.

3 PRESIDENT LYNCH: What I'm saying, in  
4 a process that -- and the legislation, we'll  
5 continue to review and make our opinions as  
6 we get educated on it more -- right now, as I  
7 understand it, the process is will that  
8 person that's accused come back to court.

9 What we've found is many times that's  
10 not the case, those that may have been  
11 released on bail have a violent past and,  
12 while they're out on bail, continue to follow  
13 through on that violence as well.

14 So what I think should happen is you  
15 should have the judge have all the  
16 information in front of her or in front of  
17 him that can make an educated decision on  
18 what kind of threat is this person if we do  
19 release them on bail. It's just purely a  
20 safety issue for our members and for the  
21 public we serve.

22 SENATOR HASSELL-THOMPSON: Okay.  
23 Because I asked the question that way very  
24 deliberately, because again, when you look at

1           it, you know, one of the things that we have  
2           to determine -- and we're not clear that it's  
3           really the best way to go -- is that we  
4           should be legislating that for the judges.  
5           Because then we'll end up with nobody getting  
6           out.

7                         And so we want to be very -- but we  
8           want to be able to give, in any of our  
9           legislative initiatives, the greatest  
10          latitude of discretion with the greatest  
11          amount of information.

12                        PRESIDENT LYNCH: That's right.

13                        SENATOR HASSELL-THOMPSON: And so we  
14          kind of agree on that part.

15                        PRESIDENT LYNCH: We're kind of on the  
16          same page.

17                        SENATOR HASSELL-THOMPSON: Yes. So  
18          that the decision that's made is made in such  
19          a manner that fairness occurs.

20                        Our problem is, and as we have  
21          discussed sometimes -- most times it's  
22          budgetarily, sometimes it's case caps -- and  
23          if you listened, if you sat through all this  
24          today, so you understand why those of us who

1 continue to push for bail are cognizant of  
2 the fact that there are so many cases, and  
3 that you know when you come before the bench,  
4 neither the judge has had the opportunity to  
5 kind of read the disposition --

6 PRESIDENT LYNCH: That's right.

7 SENATOR HASSELL-THOMPSON: -- nor has  
8 the attorney that's representing the client  
9 had the proper amount of time to be able to  
10 understand this, to instruct their client in  
11 order for them to get the best chance for  
12 justice.

13 PRESIDENT LYNCH: And that should be  
14 all of our mission. That judge should have  
15 every bit of information. And quite frankly,  
16 at the end of the day you want fair justice.

17 SENATOR HASSELL-THOMPSON: But timing.  
18 But timing. Some of these cases -- we talked  
19 about backlog, we talked about all of those  
20 things today.

21 PRESIDENT LYNCH: Sure, sure. Yeah.

22 SENATOR HASSELL-THOMPSON: And I think  
23 that when we really push for justice -- I'm  
24 just interjecting this because I want people

1           who think I'm soft on crime to understand  
2           that I'm not at all soft on crime --

3                   PRESIDENT LYNCH: Look, justice should  
4           never be rushed.

5                   SENATOR HASSELL-THOMPSON: -- but  
6           rather, I do want to be sure that the process  
7           is as just as we can make it.

8                   PRESIDENT LYNCH: Sure. And --

9                   SENATOR HASSELL-THOMPSON: Because  
10          those are the cases we don't want to get  
11          thrown out.

12                   PRESIDENT LYNCH: That's right. No,  
13          we agree there should always be justice,  
14          that's what we work on as police officers.  
15          We want to be fair to everyone, and justice  
16          should never be rushed.

17                   So whatever -- and there may be others  
18          that can testify more cogently on this issue  
19          in the courts. What do we need to make sure  
20          is that it's not rushed but also, because  
21          we're not rushing, they're not behind bars  
22          longer they should be because there may be  
23          someone innocent that's there. We want to  
24          get to the right answer, the right result.

1                   So whatever we need to do to keep the  
2                   folks safe, that's what we should be looking  
3                   at, that's what we should be legislating in  
4                   all cases. You should be deliberate in your  
5                   deliberations, absolutely.

6                   SENATOR HASSELL-THOMPSON: Thank you.

7                   CHAIRWOMAN YOUNG: Thank you.

8                   PRESIDENT LYNCH: Thank you, Senator.

9                   SENATOR HASSELL-THOMPSON: Because my  
10                  time ran out. I had a great question --

11                  PRESIDENT LYNCH: I understand.

12                  SENATOR HASSELL-THOMPSON: -- but my  
13                  time ran out.

14                  CHAIRWOMAN YOUNG: Thank you.

15                  And we want to thank you, President  
16                  Lynch, and all your members for all that you  
17                  do on behalf of the people of New York City  
18                  and the people of New York State. We  
19                  appreciate you being here.

20                  PRESIDENT LYNCH: I thank all the  
21                  Senators, the Assemblymembers as well. And  
22                  any other information you need, we'll gladly  
23                  provide it to you.

24                  Good evening, everyone.

1                   CHAIRWOMAN YOUNG: Thank you very  
2 much.

3                   Next we have the New York State Public  
4 Employees Federation. And representing the  
5 New York State Department of Corrections and  
6 Community Supervision, we have Steve Drake  
7 and Paul Rigby. And also, from the New York  
8 State Office of Technology Services, Penny  
9 Howanski.

10                  I see you've got a book with you.

11                  Welcome. I was hoping that we could  
12 maybe summarize the highlights of your  
13 testimony. We do have this, we will read it,  
14 but just in the interests of it being  
15 7 o'clock -- what you have to say is very  
16 important, and we will take it to heart, but  
17 if we could maybe streamline this a bit, it  
18 would be helpful.

19                  So welcome.

20                  MS. BRATE: Absolutely. And thank you  
21 for the opportunity to speak before you  
22 today.

23                  My name is Nikki Brate. I am a PEF  
24 vice president. Penny Howanski is that local

1 council leader that you heard of earlier  
2 today. She has submitted her testimony, but  
3 I wanted to just speak about a couple of  
4 points that came up during the course of the  
5 day and just to clarify some concerns that we  
6 had.

7 Ms. Miller clearly does not understand  
8 the workforce, the current workforce. She  
9 did in fact reach out to PEF 24 hours prior  
10 to the budget being printed to ask PEF to  
11 accept her plan. She really wasn't willing  
12 to work with us, collaborate or communicate,  
13 or even allow us positions, it was a yes or  
14 no for that.

15 What we found most intriguing and  
16 incredible is that, you know, Ms. Miller says  
17 that we can't hire mid-level. We have  
18 promotional exams, correct? And we even went  
19 so far as to have in the 23s, which are some  
20 of the mid-levels, actually can come off of  
21 open competitive.

22 That said, when you're looking at  
23 wanting to outsource your help desk, your  
24 Layer 1 and 2, that's where that expertise

1 starts to be learned, right? So if you're  
2 going to outsource that, later on down the  
3 road you are not going to have that expertise  
4 that they're claiming that we don't have  
5 right now.

6 And that is a huge concern when you  
7 look at the stability of the workforce that  
8 you have in place today. If you have that  
9 aging workforce that's going out, you're not  
10 bringing in them at that beginning level so  
11 that the mid-level can down-train, that is an  
12 absolutely huge problem.

13 Ms. Miller talked about wanting to  
14 have a strong permanent workforce. But the  
15 hiring of contracting shows the opposite.  
16 Her words were much different than the  
17 actions that have been experienced, and the  
18 misinformation quite frankly is troublesome.

19 It appears that a lot of thought went  
20 into the planning for the RFP outsourcing.  
21 Not planning on investing in the existing  
22 employees, not allowing for the knowledge  
23 transfer, and not allowing the opportunities  
24 that Ms. Miller quite frankly gave lip

1 service on. The way that the OITS has been  
2 progressing, that is what has begun the  
3 creation of the silos.

4 Again, the succession plan for OITS  
5 simply is privatization. A little example:  
6 New York City did a lot of outsourcing and  
7 contracting at one point. What New York City  
8 did, and other jurisdictions, they determined  
9 that those jobs need to be insourced. Not  
10 only for cost savings, but for the security  
11 and protection of the data and the network  
12 and the infrastructure.

13 Ms. Miller's plan fails the workforce,  
14 it fails the State of New York. Ms. Miller's  
15 plan quite frankly is a recipe for disaster.

16 One other thing I wanted to say that's  
17 a little bit off of that was I heard a lot  
18 about the cybersecurity today. The  
19 cybersecurity that ITS really provides is  
20 fundamental security over our networks and  
21 our data. It requires a specific skill set.  
22 The other part of the security that you  
23 really need is security against cyberwarfare.  
24 This is a different skill set that is needed.

1                   So when we talk about yes, we're  
2                   throwing off some of the threats, those are  
3                   some of the tools that they have on that they  
4                   can do it, but cyberwarfare is certainly a  
5                   scare, and it's a whole different skill set  
6                   than you need for those that are providing  
7                   cybersecurity at the level in ITS.

8                   Thank you.

9                   CHAIRWOMAN YOUNG: Thank you.

10                  Next speaker?

11                  MR. DRAKE: Good evening,  
12                  distinguished committee members. My name is  
13                  Steve Drake. I'm a vocational instructor at  
14                  Mohawk Correctional Facility, and I've worked  
15                  for the department for over 23 years.

16                  The New York State Public Employees  
17                  Federation represents thousands of members  
18                  within the Department of Corrections and  
19                  Community Supervision. These include those  
20                  who work in the prison health system,  
21                  rehabilitative services, education,  
22                  vocational training, and drug treatments.  
23                  These are all areas critical to help DOCCS  
24                  maintain their mission, which is preparing

1 and ensuring an inmate's ability to become a  
2 productive member of our communities upon  
3 their release.

4 I'm going to consolidate some of this  
5 for you.

6 CHAIRWOMAN YOUNG: Thank you very  
7 much.

8 MR. DRAKE: I would like to bring an  
9 issue of urgency to your attention. Our  
10 members rely on personal alarms for their  
11 safety in the prisons, commonly called a  
12 personal alarm system, or PAS. These are  
13 small devices similar to a pager that our  
14 members activate during an inmate assault or  
15 potential danger. The current PAS system is,  
16 in some instances, 20 years old or older.  
17 Technology has advanced greatly during this  
18 time period, and there are now PAS systems  
19 that can pinpoint locations, which we would  
20 request, for quicker response times by  
21 security.

22 There was a plan in place to update  
23 the PAS system, but with budget cuts in  
24 recent years, this very important item has

1           been pushed to the back burner. As a  
2           priority, and for everyone's safety, I am  
3           requesting that you help us make this  
4           lifeline possible.

5                       Next, PEF represents numerous licensed  
6           medical professionals within DOCCS. These  
7           medical professionals provide vital health  
8           care 24 hours a day, every day, for all of  
9           the inmates in the facility and any staff who  
10          get hurt or have other medical emergencies at  
11          work.

12                      DOCCS, as many state agencies, suffers  
13          from recruitment and retention problem of  
14          licensed professionals, which PEF represents,  
15          such as nurses, doctors, pharmacists, and  
16          nurse practitioners within its facilities.  
17          The nurse vacancy rate has increased from  
18          10 percent in January 2015 to 15.85 percent  
19          in November 2015 -- an increase of nearly  
20          6 percent in less than one year -- and this  
21          situation is not improving.

22                      These vacancies are attributed to, in  
23          part, salary disparities between what is  
24          offered by New York State compared to similar

1 jobs in the community, resulting in the  
2 inability to attract and maintain a  
3 sufficient number of staff.

4 Salary disparities are further  
5 exacerbated by the workplace conditions for  
6 these professionals. Recruitment and  
7 retention problems result in frequent  
8 scheduling and assignment changes, as well as  
9 a high volume of voluntary and mandatory  
10 overtime. Medical professionals represented  
11 by PEF are unsung, undervalued, and  
12 needlessly overstretched.

13 Two points that I'd like to make to  
14 you, and our key point thing is DOCCS has the  
15 most "no mandatory overtime" violations of  
16 all state agencies. And with that, DOCCS has  
17 violated this law 2,729 times between July 1,  
18 2009, and November 2015, forcing nurses to  
19 work beyond their regular shift, repeatedly  
20 and unethically, in violation of the New York  
21 State Labor Law 167, Part 177.

22 I would like to say at this point that  
23 it is imperative that we begin to look at  
24 increasing the base pay of nurses from a

1           Grade 16 to a Grade 18 to help in the  
2           recruitment and retention of qualified  
3           nurses. With Tier 6 in place, and stagnant  
4           salaries, there is no incentive for qualified  
5           nurses to come to the state for employment or  
6           remain with the state for a career.

7           At this time, I'll let Paul speak.

8           CHAIRWOMAN YOUNG: Mr. Rigby?

9           MR. RIGBY: Good evening. Thank you  
10          for allowing me to come today --

11          CHAIRWOMAN YOUNG: Good evening.

12          MR. RIGBY: -- and testify on the  
13          Executive Budget for fiscal year 2016-2017  
14          and to provide testimony at the Public  
15          Protection hearing.

16          My name is Paul Rigby. I'm employed  
17          as a senior parole officer for the State of  
18          New York. I worked as a corrections officer,  
19          a parole officer, and a senior parole officer  
20          for the last 17 years. I am the council  
21          leader for all the parole officers and the  
22          senior parole officers for the entire state.

23          We've heard testimony today by Acting  
24          Commissioner Annucci, we've heard testimony

1 from the commissioner for DCJS, and I wanted  
2 to give some stats and clarify some of the  
3 positions that they didn't have earlier for  
4 you guys to consider.

5 Right now, let me give you some facts.  
6 You heard Acting Commissioner Annucci give  
7 you the prison population. There's 52,000  
8 inmates in the Department of Corrections  
9 right now. And there's about 24,000  
10 corrections officers that supervise them, and  
11 it's a tough job. I know, because I was one  
12 of those officers.

13 But there are 36,000 parolees in the  
14 State of New York, and right now 650 parole  
15 officers are responsible for supervising  
16 those 36,000 parolees. I've heard many of  
17 the Senators testify and ask Acting  
18 Commissioner Annucci questions about the  
19 rising crime. A lot of local municipalities  
20 have been asking what's going on with  
21 parolees in the community, why are they  
22 committing so many crimes nowadays.

23 Well, I can tell you, since I've been  
24 around through the transition, that, you

1 know, we also heard about the risk and needs  
2 tools. We heard about the COMPAS tools. I  
3 heard Assemblyman O'Donnell talk about the  
4 Parole Board was not used in this. What is  
5 that designed to do? It's designed to give  
6 an inmate a questionnaire and, based upon  
7 their responses, it determines the risks and  
8 needs that a person has on there.

9 And I would agree that some parolees  
10 come out with more risks, they come out with  
11 more needs. Some are undomiciled. We heard  
12 about the shelter system in New York City and  
13 how it's overcrowded. We hear about these  
14 young kids who are coming out, you know,  
15 without the skill sets. We heard so much  
16 from the commissioner when he testified about  
17 what they're doing inside the facilities to  
18 help these kids get along and come out  
19 better, these inmates.

20 But we did not hear the  
21 commissioner -- what's disturbing to me is  
22 that during his direct testimony he never  
23 testified about anything in Community  
24 Supervision. I would tell you there was

1 definitely a disconnect between what happens  
2 in the facilities and what happens out here.

3 Prior to our merger, and prior to the  
4 old parole supervision, a parole officer  
5 would supervise up to 40 parolees when he  
6 first came out for the first year. That was  
7 called intensive supervision. It allowed the  
8 parole officer to meet with these people two,  
9 three, four times a month inside the office,  
10 allowed them to meet with them two, three,  
11 four times a month in the community. You  
12 made sure they're doing well, because the  
13 parole officer has to wear two different  
14 hats. We wear the hat as law enforcement,  
15 but we also wear the hat as a counselor to  
16 help these guys out.

17 Nowadays the new COMPAS system allows,  
18 you know, four different levels, you know,  
19 where a parolee can be supervised on 25 to  
20 1 -- one parole office for 25 people -- 40 to  
21 1. Where it gets disturbing nowadays is that  
22 there's Levels 3s and 4s which they consider  
23 being low risk, where one parole officer is  
24 supervising 80 people and a Level 3 caseload,

1           and then the Level 4 caseload, one parole  
2           officer is supervising 160 people. And  
3           they're considered low risk.

4                   And how COMPAS determines -- you know,  
5           weighs it, a lot of it deals with age. A lot  
6           of these low-risk parolees for COMPAS,  
7           they're a guy who has a murder, he has double  
8           homicide, robbery first, just did 30 years  
9           inside the facility, and he's coming out as a  
10          low-risk parolee. Now, you can't imagine the  
11          face on these parolees. And they're low risk  
12          because the standard at a Level 4 is that you  
13          see them once every four months. For the  
14          first two months you see them, you know,  
15          pretty much weekly, but then after your first  
16          two months, you know, where you're telling  
17          them "I need you to go to treatment, this is  
18          a job, where you can find a job," you tell  
19          the parolee "I'll see you in four months,"  
20          and they look at you like you're crazy.  
21          Because they're like, What do you mean, four  
22          months? You don't want to see me for four  
23          months? No, that's how the science says we  
24          have to supervise you.

1           And I can tell you right now, we're  
2           failing these people dramatically. Because  
3           not seeing them in four months, not seeing  
4           them in three months, we're losing out. The  
5           reason why I supervise a sex offender  
6           caseload as a supervisor, the reason why the  
7           sex offenders recidivate at such a low rate,  
8           is that we see them all the time. We are on  
9           top of them. We know if they miss one  
10          treatment program. We know as soon as  
11          they're positive for drugs.

12           The new COMPAS system right now was a  
13          cost-effective tool to eliminate parole  
14          officers, and it's a rise to crimes,  
15          unfortunately. And I apologize for that.

16           I would also like to clarify a couple  
17          of things that they talked about. You heard  
18          about the two different warrant sweeps, the  
19          absconders. And you heard about -- I think  
20          Assemblyman Oaks talked about police officers  
21          doing our jobs. And I think it's wonderful  
22          to have the information come our way, but you  
23          also hear about the absconder -- excuse me --  
24          the absconder thing in which they did -- OSI

1 is the Office of Special Investigation. It's  
2 run by the Department of Corrections. It's  
3 the former Inspector General's office. They  
4 led two different warrant sweeps on  
5 absconders.

6 Senator Nozzolio told you that the  
7 department talks about one to 200, one parole  
8 officer for 200 absconders. OSI ran a  
9 warrant sweep in Rochester in December, the  
10 22nd through -- I think the 19th through the  
11 22nd. They brought 100 different correction  
12 officers, CERT officers, and a few different  
13 parole officers. They focused on 36 parole  
14 absconder warrants. During that time, they  
15 caught 13 people. It cost the state, to pay  
16 their overtime, their regular salary and  
17 lodging, approximately \$250,000 to run that  
18 one operation. That was a net rate of  
19 \$19,000 per one absconder.

20 The one in Brooklyn cost the state I  
21 believe it was around \$450,000. They caught  
22 50 absconders, I think 59, running the state  
23 \$8,000 per absconder.

24 I can tell you in Syracuse, during

1           that same three-day period they did the  
2           warrant attempt in Rochester, I had my  
3           regular parole officers who were still seeing  
4           their parolees for the office in their home,  
5           we did our own warrant sweep without paying  
6           any overtime. I caught nine, costing the  
7           state no money extra.

8                         We have problems also with OSI running  
9           the operations. Due to many different  
10          reasons right now -- Assemblyman O'Donnell  
11          heard from the Corrections Institute, and  
12          they talked about reform for OSI and the  
13          problems that have plagued OSI across the  
14          state. We heard Assistant Commissioner  
15          Annucci talk about reforms which they're  
16          trying to put forward with OSI. We have a  
17          lot of problems with that. I can tell you  
18          right now, the Rochester sweep -- we're  
19          effective public, you know, safety right now.  
20          We were always told, you know, your  
21          relationship with your parolee is what's  
22          going to save you as a parole officer. You  
23          need to build that relationship, you build  
24          that trust, you build their care, you build

1 the family's trust, and that's how you get  
2 by.

3 What they did when they ran these  
4 warrant sweeps, instead of talking your way  
5 in, they introduced CERT canine units, they  
6 had CERT officers there with assault rifles.  
7 They answered the door with a ballistic  
8 shield in their hand and someone pointing a  
9 gun behind there when grandma and grandpa and  
10 mom and dad and the loved ones answered the  
11 door.

12 So what they did there is that they  
13 trampled over our relationship, because we  
14 understand, we violate that guy's parole,  
15 he's coming back in 90 days. We've got to  
16 work with them. We got to make them succeed.  
17 We want him to succeed, we want him to be  
18 productive. And what they did, they trampled  
19 over that whole relationship.

20 And we question the motive on which  
21 they're doing that, because the day that they  
22 announced the warrant sweep and that OSI was  
23 going to take over our warrants was a day  
24 after the Corrections Association made their

1 I think 107-page testimony to Crime and  
2 Corrections. So we question the motive  
3 behind there.

4 We heard a lot of different things  
5 about vehicles. Mr. Annucci -- before I go  
6 back, let me revert back real quick. They  
7 said that these warrant sweeps are not going  
8 to stop. And that's problematic for us,  
9 because it was \$700,000 for two warrant  
10 sweeps. If they continue those warrant  
11 sweeps the rest of the year, it would cost  
12 \$4,350,000 for one year.

13 New York City has a high number of  
14 absconders down there, and the reason why the  
15 high number of absconders is down there is  
16 that prior to the merger we used to have  
17 seven different warrant teams down there,  
18 with a senior parole officer and six parole  
19 officers. Now it's down to only two teams,  
20 trying to find all those absconders.

21 So just to talk real quick about the  
22 vehicles, and I'll be done, I promise --

23 CHAIRWOMAN YOUNG: Okay, because we do  
24 have a lot of people waiting.

1 MR. RIGBY: All right. Yes.

2 The vehicles -- Commissioner Annucci  
3 talked about 37 new vehicles, and I've heard  
4 the State Police talk about their vehicle  
5 fleet. I can tell you, our vehicle fleet  
6 right now for Community Supervision, it's  
7 219. Out of those, only 186 are assigned to  
8 parole officers that supervise 36,000  
9 parolees. And we have right now 57 vehicles  
10 that have over 125,000 miles on them. A lot  
11 of them have over 200,000 miles on them.

12 We are asking for that to be changed  
13 and for more money to be put into the budget  
14 to add more vehicles for our fleet as a  
15 resource in which we need to do -- because if  
16 there's not a vehicle available for the state  
17 vehicle, we're forced to use our own personal  
18 vehicle in which we take our family members  
19 in, we have our kids traveling in, and it's a  
20 danger to my officers' safety.

21 Thank you.

22 CHAIRWOMAN YOUNG: Thank you. Thank  
23 you, Mr. Rigby.

24 Senator Nozzolio.

1                   SENATOR NOZZOLIO: Good evening.

2                   MR. RIGBY: Good evening, sir.

3                   SENATOR NOZZOLIO: This is important  
4 stuff. I'm in no hurry. We've been at this  
5 for 10 hours. And I think the fact of the  
6 matter is --

7                   (Applause from audience.)

8                   -- when your job -- when your job is  
9 not being done to the standards that you have  
10 just described, people die. It is life and  
11 death. So this -- many, many important  
12 issues.

13                   Let's start with, maybe, from my left  
14 to right, is it Howanski?

15                   MS. BRATE: My name is Nikki Brate.  
16 Penny gave the written testimony.

17                   CHAIRWOMAN YOUNG: Nikki, what's your  
18 last name again?

19                   MS. BRATE: It's Nikki Brate.  
20 B-R-A-T-E. And I'm a vice president with  
21 PEF.

22                   CHAIRWOMAN YOUNG: Great. Thank you.

23                   SENATOR NOZZOLIO: Thank you.

24                   I won't belabor the testimony. I

1 think it's important that we recognize that I  
2 do not subscribe to the director's testimony  
3 here and the rosy picture that was put  
4 forward.

5 I am very fearful that the data of New  
6 Yorkers is not being properly kept. That I  
7 don't think you're suggesting that we  
8 eliminate people with knowledge and  
9 appropriate expertise to come in and help,  
10 but you're just saying as a replacement for  
11 those workers, you're objecting to.

12 So I think -- is that -- do I have  
13 that message correct?

14 MS. BRATE: Can you repeat what you  
15 just said?

16 SENATOR NOZZOLIO: Yeah. What I  
17 gather from your message was that you  
18 objected to certain consultants taking over  
19 the workload of otherwise state employees  
20 that are entrusted with taking an oath of  
21 office and ensuring that they protected the  
22 data, the information, that's existing.

23 Is that not correct?

24 MS. BRATE: So what I was saying is

1           that we have various -- we have a very  
2           talented workforce, and absolutely sometimes  
3           you will need to augment some of that with a  
4           consultant. But outsourcing all of that is  
5           taking out a lot of that institutional  
6           knowledge that will provide that future  
7           protection and the institutional knowledge  
8           that we have and the members that built those  
9           systems, know those systems. And that is why  
10          we need to keep this workforce in play.

11                    SENATOR NOZZOLIO: And I'm not going  
12          to go overboard with that, because frankly  
13          the world is changing rapidly, and that the  
14          state has an obligation to come in to provide  
15          the best minds with the most experience in  
16          the quickest possible time.

17                    So my recommendation is you don't  
18          fight that, you work with it. And if it  
19          comes to the point where you have suggested,  
20          that the security is jeopardized because of  
21          privateers coming in and doing all the work  
22          or a substantial amount of the work or an  
23          amount of the work that is detrimental to the  
24          safety and security of the data, then we need

1 to know about it.

2 But don't fight those that are  
3 trying -- and I guess that's the sense that I  
4 have, is that the technology department  
5 suggests it uses a major consultant, but I'm  
6 not sure to what extent. And maybe you could  
7 give us an offline, off-this-testimony report  
8 on exactly what is being provided. Because I  
9 left that testimony shaking my head -- not  
10 your testimony, but the testimony of the IT  
11 director, shaking my head because I don't  
12 have a clear picture, I don't believe any  
13 member of the panel has a clear picture of  
14 what she is describing.

15 Going to --

16 MR. DRAKE: Steve Drake.

17 SENATOR NOZZOLIO: To -- Steve?

18 MR. DRAKE: Yes.

19 SENATOR NOZZOLIO: I've been around a  
20 long time. I worked with Dave Stallone many  
21 years ago -- do you remember, does that name  
22 sound familiar to you?

23 MR. DRAKE: Absolutely.

24 SENATOR NOZZOLIO: That we got those

1 antique pagers -- except they were high-tech,  
2 cutting edge at the time. Twenty years ago  
3 is a long time in the technical world. Those  
4 things are necessary to the teachers in our  
5 correctional system, absolutely. I'm shocked  
6 they haven't been upgraded in all this period  
7 of time.

8 Do you have specific proposals  
9 relative to upgrading and the protecting?

10 MR. DRAKE: We can provide you that  
11 information.

12 SENATOR NOZZOLIO: Would you do that?

13 MR. DRAKE: Yes.

14 SENATOR NOZZOLIO: And do it quickly?  
15 That's what Dave Stallone did 20 years ago.  
16 I hope you'll follow up in that path.

17 MR. DRAKE: Absolutely.

18 SENATOR NOZZOLIO: I don't know if you  
19 heard any of the comments I made during the  
20 questioning of Commissioner Annucci.

21 MR. DRAKE: I did, sir.

22 SENATOR NOZZOLIO: That the staffing  
23 ratios are the structural problem that is  
24 creating a dangerous situation. I think

1           that's the bottom line. That's your bottom  
2           line. Certainly there are people who are  
3           trying to do the best in changing protocols  
4           and providing additional infrastructure and  
5           equipment. But with these kind of ratios, I  
6           don't know how effective that will be.

7                     Please comment.

8                     MR. RIGBY: Yes, sir. The ratios  
9           nowadays are unacceptable, and I think that's  
10          where the system is failing nowadays. I  
11          mean, it's failing the community because  
12          community safety is being jeopardized, it's  
13          failing the parolee because the parolee's not  
14          getting the service which they used to  
15          receive.

16                    I mean, the relationship and the bond  
17          between the parole officer and the parolee  
18          cannot be undermined, and when you don't see  
19          a person for three, four months at a time and  
20          you don't get to meet mom -- you know, when I  
21          used to visit my parolees when I was a parole  
22          officer, I'd be out there two, three, four  
23          times a month. The parents knew me. The  
24          sisters knew me. The kids knew me. "Hey,

1 Mr. Rigby, how are you?" You built that  
2 bond, you built that relationship, because  
3 they tell you, "Hey, Johnny's doing right,  
4 Mr. Rigby."

5 And when you don't see these people,  
6 we've got a disconnect nowadays, and it's  
7 causing the problems. And if the parolee  
8 does relapse and he starts using drugs, we  
9 don't know about it sometimes three, four  
10 months down the road. And then we're losing  
11 them by that time, because it's going too far  
12 along.

13 If you dropped the numbers back down  
14 to something that was manageable and a parole  
15 officer could have an active contact with the  
16 parolee in the community, we'd be much safer  
17 and we'd be much more successful.

18 Commissioner Annucci only gave you the  
19 rate of recidivism for a person committing a  
20 felony. Right now, our rate of recidivism  
21 for a parole violator is about 49 percent.  
22 And we have many different alternative  
23 programs they have in there.

24 And another problem they have is they

1           have us doing a lot of duties which we never  
2           did before. I know, you know, I think --  
3           you know, everybody in here because -- about  
4           five years ago, one of our parole officers  
5           was shot and killed in -- shot and injured in  
6           Manhattan, at the office. We put metal  
7           detectors in there. And then the state  
8           developed an ISO item to guard our metal  
9           detectors.

10                     But what happens right now is that  
11           when that ISO officer is no longer able to  
12           man that metal detector, the department has  
13           parole officers, Grade 21s, doing Grade 9  
14           work. They will not run the academy until  
15           they have five empty items. We waste tens of  
16           thousands of hours, parole officers taken out  
17           of the community to work a Grade 9 metal  
18           detector because they refuse to run the  
19           academies. And it's not acceptable.

20                     Those parole officers need to be in  
21           the community. They need to be having  
22           contact with these parolees to help them  
23           succeed.

24                     SENATOR NOZZOLIO: I'm out of time,

1           so -- in terms of the clock, I know others  
2           want to speak. But thank you very much for  
3           the focus on this, and please continue to  
4           provide us the input we need to help change  
5           these policies.

6                     CHAIRWOMAN YOUNG: Thank you, Senator.

7                     ASSEMBLYMAN McDONALD: We'll now hear  
8           from Assemblymember O'Donnell.

9                     ASSEMBLYMAN O'DONNELL: Thank you very  
10          much, Mr. Rigby. You're not from New York  
11          City, but you speak as fast as Mr. Lynch.

12                    (Laughter.)

13                    ASSEMBLYMAN O'DONNELL: Which is quite  
14          an accomplishment. And the way you say  
15          Manhattan, I know you're not from New York  
16          City.

17                    So one of the problems is you have a  
18          huge amount of information with a lot of  
19          acronyms and letters that I've come to know  
20          what a lot of them are, but many people  
21          don't. Okay? So I want to start first with  
22          the definition section.

23                    In the day, 20 years ago, no one got  
24          out of prison until the Parole Board said

1 "You can go." So everyone had a sentence  
2 with two numbers -- it was two-to-six or  
3 one-to-three, whatever else it was -- and at  
4 some point they say, "Oh, you're a good guy  
5 to go home."

6 We changed that system, and now we  
7 have a system where we have a solid number,  
8 one number -- five -- and then five years of  
9 community supervision. So when someone says  
10 someone was, quote, paroled, in a lot of  
11 people's minds that means someone decided to  
12 let them go, which may not be the case. But  
13 they're under supervision.

14 So you're not even really parole  
15 officers anymore, you're technically  
16 community supervision officers. Is that  
17 right?

18 MR. RIGBY: That's the new term, sir.

19 ASSEMBLYMAN O'DONNELL: Okay, yeah.  
20 So I want to make sure that you understood my  
21 criticism earlier about the COMPAS system was  
22 not directed at you or anybody who does your  
23 job. It was entirely directed at the  
24 Parole Board, which, when getting that

1 instrument, is not following the law that we  
2 wrote about how to use it. It had nothing to  
3 do with the way that you hardworking men and  
4 women do your job. So I'll be very clear  
5 about that. Okay?

6 MR. RIGBY: Okay.

7 ASSEMBLYMAN O'DONNELL: Now, you seem  
8 to have new presidents on a regular basis at  
9 the PEF. I just want to share that with you,  
10 you seem to roll through them -- I don't  
11 criticize you for that, but I've met with the  
12 previous ones and now your new one has asked  
13 for a meeting with me with, I believe, people  
14 in the Parole Department. Are you on the  
15 list of --

16 MR. RIGBY: I will see you next week,  
17 sir.

18 ASSEMBLYMAN O'DONNELL: See? Now who  
19 knows my schedule better than me?

20 I'm very happy, because you clearly  
21 know quite a bit about the way that works.  
22 And I want to assure you that I have the  
23 utmost respect for the people who do your  
24 job, and I will do everything I can to help

1           you do your job better.

2                   MR. RIGBY: Thank you, sir. I  
3           appreciate it.

4                   (Applause from audience.)

5                   CHAIRWOMAN YOUNG: Thank you.  
6           Senator Gallivan.

7                   SENATOR GALLIVAN: Thank you.

8                   And thanks to all of you for your  
9           work, your members' work, and your testimony.

10                   Senator Nozzolio covered much of what  
11           I wanted to cover, so I'll spare two of you.  
12           But, Officer Rigby, if I can follow through  
13           on the discussion regarding the caseload  
14           ratios.

15                   So first, tell me -- so a parole  
16           officer. An individual is released from the  
17           prison and is assigned to your caseload.  
18           What is your responsibility?

19                   MR. RIGBY: Well, prior to the  
20           individual being released from the facility,  
21           he has that COMPAS risk-and-needs-assessment  
22           tool done to him.

23                   SENATOR GALLIVAN: No, let me ask -- I  
24           just want to know -- I'll get into COMPAS.

1 But I just want to know what is the  
2 responsibility -- what does it mean when  
3 you're supervising a parolee?

4 MR. RIGBY: Well, when they're first  
5 initially released, they come to your office,  
6 you go over the rules and regulations, you  
7 talk about their housing, you talk about  
8 their needs, you talk about their goals. You  
9 take a look at what they need to have happen.  
10 We want to refer them to DSS.

11 I know the department's been working  
12 tirelessly trying to get Medicaid on board,  
13 but each county's a little different in  
14 trying to have those services available.

15 So we take a look at, you know, their  
16 history. They might have a substance abuse  
17 history; we'll refer them to get substance  
18 abuse treatment. They might be a domestic  
19 violence guy, we refer them to treatment. So  
20 after we get our first initial referral set  
21 up, we'll say, "Hey, come back and see us  
22 next week, this is my report date."

23 We go -- we visit them in the  
24 community, we make sure they're staying where

1           they're supposed to be staying, we meet with  
2           the family to make sure they're transitioned  
3           and they head home where they're supposed to  
4           be. If they're homeless, we're working with  
5           them, "Hey, who do you know" -- because a lot  
6           of times they don't know someone, they might  
7           run into somebody on the street and say,  
8           "Hey, Johnny says you can take me in. He's  
9           my friend." Then we go take a look at that  
10          house.

11                         We refer them to a lot of different  
12          programs, the Department of Labor, so they  
13          get help finding work.

14                         So we're trying to prioritize with  
15          them and meet with them to address their  
16          needs and to help them to stabilize  
17          themselves, because those first eight weeks  
18          are crucial.

19                         So the initial first eight weeks  
20          depends on the COMPAS score. We meet them  
21          weekly. But then where the disconnect comes  
22          through, Senator, is after that. Because  
23          then COMPAS kicks in, and then that  
24          determines when we got to see them again.

1           The Level 1s and 2s are high risk,  
2           maybe not so much the high needs, I would  
3           argue sometimes, and we still see them on a  
4           monthly basis. But where we're losing the  
5           battles, and I cannot stress enough, are the  
6           3s and 4s who are being supervised by one  
7           parole officer to 80 parolees on the 3s, one  
8           parole officer to 160 -- because I can't tell  
9           you, the look on their face when we say "Come  
10          back and see me in three months, come back  
11          and see me in four months." We were their  
12          crutch, and now you just took that crutch  
13          away from them.

14                 And that's the difference between  
15          nowadays, with the COMPAS, and prior.  
16          Because they can rely on us for one full  
17          year, and after one full year, if they did  
18          well, they earned their way back down to  
19          lower-level supervision. Because we all want  
20          them to have a lower level of supervision, we  
21          all want then to succeed.

22                 SENATOR GALLIVAN: So now we get to  
23          the Level 4s that have the 160-to-1 ratio.  
24          Over the course of a four-month period,

1           you're seeing them once every four months?

2                   MR. RIGBY:  Twice.

3                   SENATOR GALLIVAN:  Twice?

4                   MR. RIGBY:  You see them once in the  
5           office, and once at home.

6                   SENATOR GALLIVAN:  And how much time  
7           does that involve?

8                   MR. RIGBY:  Well, I can tell you, the  
9           ones in the office visit might be five,  
10          10 minutes.  The ones at the home visit might  
11          take an officer five, six, seven days.

12                   And here's the problem.  Because when  
13          you have this disconnect -- and the parolee's  
14          not supposed to change his residence unless  
15          we know about it -- the parole officer might  
16          go to his house two months from now, knock on  
17          the door, the guy's not there.  He tries then  
18          two weeks later, goes there, he's not there.  
19          Goes up again next week, he's still not  
20          there.  We talk to mom, mom says:  "No, he  
21          moved last week.  He didn't tell you?"

22                   And so there's a lot of wasted time  
23          trying to catch back up with these guys.  And  
24          a lot of times they're trying to hide from us

1           because they know they relapsed on drugs,  
2           they know they did something wrong.

3                     And we're no longer proactively  
4           supervising these people. The parole  
5           officers are making their standards, but I  
6           can tell you they're not being supervised,  
7           based upon the new COMPAS system.

8                     SENATOR GALLIVAN: Let me, for the  
9           sake of time -- and I agree with Senator  
10          Nozzolio that I wish we had much more time  
11          today to talk about this, but of course  
12          there's other speakers, and we can follow up  
13          separately.

14                    What I want to get to is -- so you're  
15          five, 10 minutes once or twice a month with  
16          an individual that has committed what types  
17          of crime?

18                    MR. RIGBY: The COMPAS Level 4 --  
19          because COMPAS uses age as a primary factor  
20          in weighing out stuff. A lot of those guys  
21          are guys who committed murder, homicide,  
22          robbery first, because they're the guy that  
23          just did 25, 30 years in the facility.

24                    SENATOR GALLIVAN: Okay. Thanks.

1                   MR. RIGBY: They're a little bit  
2 older.

3                   SENATOR GALLIVAN: Now --

4                   MR. RIGBY: Here's the problem,  
5 though, is the guy --

6                   SENATOR GALLIVAN: No, no. Timewise,  
7 I'm sorry.

8                   MR. RIGBY: Sorry.

9                   SENATOR GALLIVAN: And then I will let  
10 you finish.

11                   Is the COMPAS instrument the only  
12 thing that determines those caseload ratios?

13                   MR. RIGBY: Yes. COMPAS is the  
14 primary driver for that.

15                   SENATOR GALLIVAN: All right. Thanks.

16                   And then, finally, you mentioned two  
17 different areas, which I believe is why  
18 everybody should care. And it doesn't matter  
19 where you start. You could start with the  
20 community that I care about and talk very  
21 briefly why this is wrong and we're failing  
22 the community in helping to ensure community  
23 safety, public safety. And we all also care,  
24 I believe, about rehabilitation and reducing

1           recidivism. And you mentioned that we're  
2           failing the inmate.

3                     Finish with commenting on both of  
4           them, please.

5                     MR. RIGBY: I will.

6                     It's kind of plain and obvious to see  
7           that communities' safety is jeopardized when  
8           we're not seeing these people on a regular  
9           basis. If we can catch them when they first  
10          relapse to drugs, when they first start  
11          violating their curfew -- I always believe in  
12          the mantra that I always sweated the small  
13          things and the small conditions because if we  
14          took care of all the small things, we never  
15          had big things. You know, so if I kept them,  
16          you know, for the first year doing the right  
17          things, they'd relapse, I'd talk to them, I'd  
18          get them to a little more treatment -- it  
19          kind of corrected itself, you know.

20                    So by keeping these people involved in  
21          programs, helping them find the jobs, helping  
22          them become productive, they're less likely  
23          to engage in new criminal behavior. You  
24          heard the commissioner talk about all these

1 educational programs? We try to also send  
2 them to educational programs, vocational  
3 programs in the community.

4 Now, on the flip side, that's about  
5 the parolee. The community supervision and  
6 safety part is hand in hand there. Parolees  
7 are committing crimes because they're not  
8 being supervised the same way they used to be  
9 supervised, Senator. We do not have an  
10 adequate amount of parole staff supervising  
11 these people. Our ratio is at an all-time  
12 high right now. And if that COMPAS risk and  
13 needs assessment was so perfect, why do I  
14 always have to override all the sex  
15 offenders? They come up as 3 or 4, as low  
16 risk. I've always got to override them. Why  
17 am I always overriding the domestic violence  
18 cases to make them a higher level? Because  
19 it does not ask the right questions and does  
20 not assign the right amount of supervision.  
21 And that's the problem we're having today,  
22 sir.

23 SENATOR GALLIVAN: Okay. It sounds  
24 like you have an impossible task, and that's

1 very troublesome. None of it falls on the  
2 shoulders of your officers, but we recognize  
3 the problems. Thank you.

4 MR. RIGBY: Thank you.

5 CHAIRWOMAN YOUNG: Thank you.

6 Assembly?

7 ASSEMBLYMAN McDONALD: So I have a  
8 couple of questions, and I'm going to start  
9 at the left and work through to the right.  
10 And I'll be as quick possible.

11 First of all, Nikki, you heard my  
12 comments earlier when the director was  
13 speaking. I do want to continue to follow up  
14 on that. I have a great challenge when we're  
15 spending hundreds of millions of dollars in  
16 overtime on consultants, because I don't know  
17 if the supervision is there. We all agree,  
18 and you admitted it yourself, there's going  
19 to be a time and place. But it shouldn't be  
20 the practice all the time, and I do agree  
21 that middle level is a great opportunity to  
22 grow committed employees in this department.

23 Steven, in regards to the salary  
24 disparity you're talking about with the

1 professionals -- the nurses, the pharmacists,  
2 whatever it may be -- what is the disparity  
3 percentage-wise between what the market is  
4 bearing and where they're being compensated  
5 at?

6 MR. DRAKE: I mean, it varies across  
7 the board, you know, across the state. But  
8 like in Central New York, where I work, you  
9 know, our biggest competitor is SUNY Upstate.  
10 And they offer thousands -- \$8,000 to \$10,000  
11 more than the salaries that we can pay in the  
12 local facilities.

13 ASSEMBLYMAN McDONALD: Right.

14 MR. DRAKE: And we compete against,  
15 you know, local hospitals as well, who  
16 offer -- they may offer different programs  
17 for them that we can't offer. And we start,  
18 you know -- nurses are way underpaid. We  
19 can't compete. We can't even -- honestly, we  
20 can't even get extra service or outside  
21 services to come into a lot of our facilities  
22 as well.

23 ASSEMBLYMAN McDONALD: All right,  
24 thank you.

1                   And Paul, as a gentleman who was  
2                   privileged to be mayor of a small city for  
3                   13 years and one who represents five cities  
4                   now, the coverage criteria that you were  
5                   telling me absolutely scares the life out of  
6                   me. I appreciate all the work that all of  
7                   you do. I would like to know at a  
8                   follow-up -- and Nikki knows how to get hold  
9                   of me, she sees me regularly -- a little more  
10                  detail on the coverage here, particularly  
11                  here in the Capital Region.

12                  You guys play a very interesting role.  
13                  Yes, you're enforcement, to a degree, but  
14                  you're guidance and you're support. And  
15                  let's face it, when individuals are released  
16                  from facilities, they're getting their feet  
17                  back on the ground and they need the support  
18                  as much as possible.

19                  And at the same token, I can tell you  
20                  that I have mayors calling me regularly  
21                  saying -- because the cities, naturally, will  
22                  attract many people being released. They  
23                  usually return to where they came from, and  
24                  that's where most of the crime tends to be,

1           unfortunately -- right, wrong, or  
2           indifferent. And there's a frustration at  
3           the local law enforcement level, which -- I  
4           know you guys work well together, but still  
5           it's a challenge.

6                        So I am very interested in greater  
7           detail, particularly with here in the  
8           Capital Region. Thanks for all the work that  
9           all of you do.

10                   MR. DRAKE: Thank you.

11                   MR. RIGBY: Thank you, sir.

12                   CHAIRWOMAN YOUNG: Thank you.

13                   Senator Savino.

14                   SENATOR SAVINO: Thank you,  
15           Senator Young. I will be brief.

16                   You know, last night your president  
17           was here. We were with him, the vice  
18           president, and you during the workforce  
19           hearing, and a lot of discussion was around  
20           the shortage of staff in all of these  
21           agencies and the difficulty that your members  
22           now face meeting the demands of these  
23           agencies, whether it's Parole or DOCCS or  
24           OCFS or OMH, OPWDD -- the list goes on and

1 on.

2 We heard earlier tonight from the  
3 DOCCS -- earlier today from the DOCCS  
4 commissioner that overtime is a little bit  
5 less than last year, and that everything  
6 seems to be okay. But I get the sense that's  
7 not necessarily the case. I understand that  
8 there's a real problem with attracting and  
9 recruiting and retaining medical  
10 professionals in DOCCS; is that correct?

11 MR. DRAKE: That's correct.

12 SENATOR SAVINO: I mean, I think --  
13 there used to be this poor nurse, I'm not  
14 going to name her name, but she would always  
15 list the highest overtime in the state at  
16 Bedford Correctional Facility. I think she  
17 finally retired, thank God. But, you know,  
18 seriously, thank God for her.

19 But I'm seriously concerned about the  
20 ability of your members to deliver medical  
21 care in our facilities, to be able to track  
22 parolees, to be able to deal with the  
23 developmentally disabled, to plan or to  
24 handle engineering, and this is -- so agency

1 by agency, we're seeing this. But this is a  
2 real problem. It's the number of staff and  
3 the number of -- and the ability to recruit  
4 and retain quality staff.

5 I mean, do you guys have -- can you  
6 give us any sense of how short-staffed you  
7 are in these three divisions?

8 MR. RIGBY: I'll start.

9 Right now, if you look at our BIFL,  
10 when you look at the warrant sweep they did  
11 in Brooklyn and they caught the 59 parole  
12 absconders -- they were short 37 parole  
13 officers prior to the last recruit class  
14 coming out. So when you wonder why, you  
15 know, they caught 59 out of 200, it's because  
16 no one was looking for them for a while  
17 because they were down 37 items.

18 SENATOR SAVINO: Mm-hmm.

19 MR. RIGBY: You know, the problem is  
20 right now, using the new parole math, when  
21 you say one officer can supervise 160  
22 people -- prior to COMPAS, that was four  
23 officers supervising those people. So if you  
24 use their new math, their math is going to

1 say that we might be down 10 percent, but if  
2 you use the old math, we're probably down  
3 about 45 percent.

4 SENATOR SAVINO: Mm-hmm.

5 MR. RIGBY: I mean, our ratio right  
6 now is one parole officer per 55 parolees,  
7 where before it was right around one per 38.  
8 You know?

9 SENATOR SAVINO: Mm-hmm.

10 MR. RIGBY: So our staffing levels are  
11 down dramatically, and the commissioner  
12 alluded to two academy classes this year. I  
13 did not see that in the budget. I'm not sure  
14 where he's getting that from, but I did not  
15 see the two academy classes for parole  
16 officers in the budget.

17 SENATOR SAVINO: Mm-hmm. I mean,  
18 conceivably there are some positions that can  
19 be contracted out. Some things can't. You  
20 cannot contract out parole supervision,  
21 right?

22 MR. RIGBY: Correct.

23 SENATOR SAVINO: Exactly. So there is  
24 a case to be made that this budget doesn't

1           really reflect the needs of the agency or the  
2           responsibilities that have to be delivered by  
3           these agencies and your members.

4           MR. DRAKE: From our standpoint in the  
5           facilities, I can't give you the actual  
6           number, but I know that there's 200-some-plus  
7           new full-time employees that they're adding,  
8           and a large portion of them are medical  
9           services.

10          But the ability to recruit and bring  
11          those people in to fill those is nearly  
12          impossible. I mean, our facility just  
13          underwent a \$30 million renovation, with the  
14          plan hopefully sometime in the next couple of  
15          months to open that new wing for inmate care.  
16          And we're going to be looking for -- well,  
17          right now we're short 12 nurses, and with the  
18          new increase, we'll be looking for almost  
19          21 nurses in our facility.

20          SENATOR SAVINO: Unbelievable.

21          Thanks. I just want to -- I  
22          constantly want to get it on the record that  
23          the agencies are drastically understaffed and  
24          that hiring has got to be a consideration,

1 not just for the administration of the  
2 mission of the agencies but for the safety of  
3 the staff as well. Thank you.

4 MR. DRAKE: Thank you.

5 CHAIRWOMAN YOUNG: Thank you.

6 I have a comment and a question. I  
7 share Senator Savino's concern about  
8 understaffing, and especially about the  
9 medical understaffing. And in the 2016  
10 budget, this year's budget, the Legislature  
11 felt so strongly about mental health services  
12 in the prison system because, as you know,  
13 we've seen real-life tragedies where people  
14 have been severely injured and killed by  
15 inmates who have left the system without the  
16 supports that they need within the system and  
17 outside.

18 And so apparently \$18 million of that  
19 funding has been expended to treat the  
20 psychiatric prisoners who have violent  
21 tendencies. Have you seen that happen?  
22 Because it's concerning to me to see that  
23 there was an MOU between OMH and DOCCS which  
24 expired in 1999 -- that's incredible to me --

1           that outlines the duties of the nurses  
2           between psychiatric nurses and regular  
3           nurses. Could you expound on that?

4                     And my question, also, if you've seen  
5           any changes over the past year regarding that  
6           issue and are there additional measures being  
7           taken or is there additional attention to the  
8           psychiatric prisoners, and how does it affect  
9           your members?

10                    MR. DRAKE: From my standpoint,  
11           there's definitely been an increase in  
12           training for all staff, I will say, from the  
13           initiative from the department to educate us  
14           on handling mental health inmates. Our  
15           facility earlier on, prior to when we first  
16           started taking mental health inmates in or  
17           dealing with them, there was basically -- you  
18           were a normal correctional facility one day  
19           and then you became a mental health facility  
20           the next day, with no real training to the  
21           staff.

22                    Over the last three years there's been  
23           an initiative with the department and  
24           ourselves from the union standpoint to train



1           that PEF continue to be in touch with the  
2           Senators and the Assemblymembers. We  
3           appreciate the work that you do. We're  
4           concerned about the issues you raised  
5           tonight; we would like to hear more about  
6           those issues so that they can be addressed.

7                        So again, thank you for being here  
8           tonight. We really appreciate it.

9                        (Applause from audience.)

10                      MR. DRAKE: Thank you.

11                      MS. BRATE: Thank you.

12                      CHAIRWOMAN YOUNG: Our next group is  
13           from the New York State Defenders  
14           Association. We have Executive Director  
15           Jonathan Gradess and Legal Director of  
16           Veterans Defense Programs Art Cody.

17                      Glad to have you here.

18                      MR. GRADESS: Thank you. And thank  
19           you for your patience.

20                      CHAIRWOMAN YOUNG: Thank you for your  
21           patience.

22                      MR. GRADESS: Well, mutual admiration.

23                      As you noted, I am joined by Captain  
24           Art Cody, U.S. Navy, retired. I want to

1 apologize for Gary Horton, the director of  
2 the Veterans Defense Program; he had to be  
3 back in Batavia in about 10 minutes, so he  
4 left here a bit ago, disappointed.

5 I want to talk about four things. Art  
6 will help me with VDP. But I want to talk to  
7 you about the Backup Center, a part of which  
8 is the Veterans Defense Program. I want to  
9 talk about the IPP program, the indigent  
10 legal services budget, and the Fahy bill --  
11 the Fahy-DeFrancisco bill, forgive me.

12 Before I do that, I'd like to sort of  
13 paint a little bit of a picture because I  
14 think, for the first time in many years --  
15 and I have been coming before you for many  
16 years -- we have a watershed moment in New  
17 York, and it is a watershed moment in which I  
18 think we may all be on the same page, which  
19 is a wonderful thing. And that page is  
20 mandate relief.

21 And everything I want to talk to you  
22 about actually can be viewed as mandate  
23 relief. And in recent years, I have talked  
24 to you about my efforts to create a global

1 settlement for the Hurrell-Harring lawsuit.  
2 They were uniquely unsuccessful. And then  
3 there came the settlement last year, and that  
4 has created a real opportunity for  
5 conversation in New York unlike anything I  
6 have seen since 1978 when I started with the  
7 Backup Center.

8 Sometimes I've come before you  
9 whining, sometimes thanking you, thanking you  
10 particularly last year for the Veterans  
11 Defense Program and always saving the Backup  
12 Center from what is this year a 58 percent  
13 cut by the Governor that I hope will be  
14 restored by you. But right now, we have 57  
15 counties in the State of New York who are up  
16 in arms about the nature of the settlement.

17 One of the reasons we urged a global  
18 settlement in Hurrell-Harring was because we  
19 thought that would empower the state to move  
20 incrementally and do what is right for all  
21 the counties. Recall, please, that when the  
22 New York Civil Liberties Union sued the State  
23 of New York, it sued the State of New York.  
24 It didn't sue the five counties that were

1 named in the suit eventually. Those were  
2 added by the judge. This was a lawsuit on  
3 behalf of counties against the State of  
4 New York to say the State of New York is  
5 responsible for funding public defense  
6 services -- not the responsibility of  
7 Onondaga and Schuyler and the other  
8 defendants, but also not the responsibility  
9 of Seneca or Albany or anywhere else.

10 And that reality, I think, has now  
11 come home to roost, because the settlement  
12 called on ILS to engage in quality  
13 development in each jurisdiction to develop  
14 Counsel at First Arraignment programs, to  
15 develop eligibility standards and caseload  
16 relief.

17 And so as Bill Leahy so eloquently  
18 said before, you have this situation of  
19 Suffolk County getting a present and  
20 Nassau County feeling coal in their stocking.  
21 You have two assigned-counsel programs that  
22 surround Onondaga, one to the north, one to  
23 the west. They're both in the same kind of  
24 problem. And it's true on the Southern Tier,

1           where Schuyler sits, that the surrounding  
2           counties all need the help, as I think you'll  
3           hear when Mark Williams testifies.

4                        So what I want to say is that all of  
5           what I am asking you to look at is part of  
6           that mosaic that puts us together for the  
7           first time in history to recognize that the  
8           state has an obligation to fund and care and  
9           take care of the constitutional right to  
10          counsel.

11                       So when Bill Leahy talks about the  
12          \$34 million of local assistance that is in  
13          the ILS budget, it shouldn't be passed over,  
14          because it begins to repair the kind of  
15          things in the other 57 counties that the  
16          settlement did for the five.

17                       I would hope that each of you -- I  
18          know Assemblyman McDonald is on the bill, I  
19          don't think anybody else is -- get on the  
20          DeFrancisco bill. He's on the Fahy bill, but  
21          there's now consensus in both houses that  
22          that bill that would call for the  
23          reimbursement of localities for the  
24          expenditure of public defense services. That

1 bill makes tremendously good sense, it allows  
2 for the incremental repair of the state, and  
3 it reverses what's happening with the five  
4 down, 57 to go, as we call it, that has  
5 resulted from the settlement.

6 The Backup Center, which you have  
7 helped for every year that I have been in  
8 Albany, is in need of your assistance once  
9 again. It is in need of your assistance  
10 because last year we came to you for  
11 \$3.5 million; this year is for \$4.25 million.  
12 The difference really is the incremental  
13 increase for the Veterans Defense Program  
14 that I'd like to speak about in a second.

15 But the Backup Center is really the  
16 poster child for the original mandate relief.  
17 When we were housed with NYSAC, it was  
18 recognized that if in one single place you  
19 could put the expertise that would help  
20 localities and public defenders, you could  
21 bring up the boats in the state. And we now  
22 have a case management system in 67 offices  
23 in 45 counties, we are doing 35 to 40  
24 training programs a year for defenders, we do

1 thousands of cases a year where lawyers can  
2 call us, there are 6,000 lawyers that we're  
3 under contract to serve in 120 defender  
4 plans. And they need us.

5 So all of these things create a  
6 mosaic. We need the Local Assistance budget,  
7 we need the Fahy bill, we need the Backup  
8 Center to be funded, we need the IPP  
9 program and -- I'm sorry Senator Gallivan  
10 isn't here -- we need that to be restored by  
11 the Senate.

12 And we very much need to increase the  
13 Veterans Defense Program. Last year you were  
14 kind enough to put \$500,000 into the budget.  
15 That program has exploded and is doing  
16 wonderful work across the state. You should  
17 each have a copy of this report, which is our  
18 activities report, which I think will show  
19 you that you ought to be proud of what you  
20 did. We asked the Governor to pick it up at  
21 \$1.1 million this year, because we thought it  
22 would be a natural. Apparently it was a  
23 little unnatural; he did not pick it up.

24 We're asking for \$1.1 million for VDP.

1           That's within the \$4.25 million total we're  
2           asking.

3                     I'd like to ask Captain Cody to talk  
4           about what he's been doing, because he's been  
5           working like a dog. And we're very proud of  
6           the work of the program, and I think he  
7           should be too.

8                     MR. CODY: Thank you, Jonathan.

9                     What I want to talk to you about  
10          tonight, quickly, is the scope and the  
11          urgency of the catastrophe that our veterans  
12          are suffering in New York State courts every  
13          day. Myself and Gary Horton, our director,  
14          are on the ground every day assisting these  
15          cases. We hear the horrific stories of what  
16          our veterans have been through. We see the  
17          resulting post-traumatic stress disorder and  
18          traumatic brain injury. We see the military  
19          combat trauma. Without our help, their  
20          stories are often never told to the judges,  
21          the prosecutors, and the juries that will  
22          pass judgement on them.

23                     We have assisted, in the past year,  
24          over 1,000 veterans and defense attorneys.

1 Our requests, however, have grown  
2 exponentially. We've assisted veterans  
3 literally from Montauk to Niagara, from  
4 Canton to New York City. Each attorney we  
5 train, each veteran we help generates new  
6 referrals with the success that we've had  
7 that are discussed in the report that you  
8 have. The VDP has a staff of three, only two  
9 of which are attorneys.

10 You can be assured we will never turn  
11 a veteran away who needs our help. But we  
12 desperately need help. We cannot cover as  
13 much as is the need. The requested increase  
14 in our appropriation will make possible  
15 additional staff members and permit us to  
16 carry on this much-needed work that our  
17 veterans need and deserve.

18 ASSEMBLYMAN McDONALD: Thank you.

19 SENATOR NOZZOLIO: Points well made.

20 Thank you very much for your input.

21 MR. CODY: Thank you.

22 ASSEMBLYMAN McDONALD: No comment?

23 Gentlemen, thank you very much. We  
24 have no other comment.

1 MR. GRADESS: Thank you very much.

2 CHAIRWOMAN YOUNG: Thank you. We  
3 appreciate you being here tonight.

4 MR. CODY: Thank you.

5 CHAIRWOMAN YOUNG: Thank you for all  
6 that you do for veterans.

7 Our next speaker is from the  
8 Chief Defenders Association of New York, Mark  
9 Williams, president-elect and public defender  
10 in Cattaraugus County, my home district.

11 Welcome, President-Elect Williams.

12 MR. WILLIAMS: Thank you, Senator  
13 Young. It's my pleasure to be here.

14 I was going to start off by letting  
15 you all know that I forgot to bring  
16 certificates for you, but you all qualify or  
17 are getting pretty close to qualifying as  
18 honorary public defenders because, from what  
19 I hear last night, you were here until  
20 10 p.m. Tonight you'll probably be here  
21 until 10 p.m.

22 CHAIRWOMAN YOUNG: At least.

23 MR. WILLIAMS: And that's the typical  
24 day of an upstate public defender. We start

1 at 8 o'clock or 8:30 in the morning, and we  
2 go until 10 o'clock at night. And usually  
3 without breaks for dinner or sometimes even  
4 lunch. So I just want to welcome you to my  
5 world.

6 I have my prepared comments; I'm not  
7 going to read those to you. But what I want  
8 to point out is that right now in New York  
9 State, as Jonathan Gradess has stated, it's a  
10 united world for indigent defense. We are  
11 all on the same side. Whether you're a  
12 public defender on Long Island or in the City  
13 or anywhere upstate, we all are of one mind,  
14 and that is that it's time for reform, it's  
15 time for change. It's time for the state to  
16 recognize its obligation to provide indigent  
17 defense. Not the counties.

18 And this point is being brought home  
19 to us now from the standpoint of the grants  
20 that ILS has sent out in the last couple  
21 of -- last three years, actually, the grant  
22 that 25 counties applied for and were  
23 accepted for Counsel at First Appearance.  
24 The grant for caseload reduction that, again,

1           it was 46 counties applied for and were  
2           awarded. Those grants are going to expire  
3           later this year.

4                       Cattaraugus County is the beneficiary  
5           of both of those grants, and what has  
6           happened is my office has added staff, we've  
7           added two attorneys, we've added an  
8           investigator, we've added clerical help. All  
9           of those people are working to allow us to  
10          have more time or try to find the time to do  
11          Counsel at First Appearance, and also for  
12          caseload reduction.

13                      You know, one thing I mentioned in my  
14          testimony that I submitted is that in my  
15          county last year we had a trial that ended  
16          with a not-guilty verdict on four felonies,  
17          three of which were violent felonies. My  
18          client was facing 20 years or longer in  
19          prison. She was found not guilty of those  
20          felonies, and it's directly attributable to  
21          the fact that we had the money from ILS to  
22          start on that case from the moment she was  
23          first arraigned in the local court. Now, we  
24          weren't successful in keeping her from going

1 to jail on bail that she could not afford.  
2 It was in the amount of about -- I think it  
3 was \$25,000 cash, \$50,000 bond. She was a  
4 single mother, 23 years old, she had no job,  
5 she was taking care of her child and another  
6 child. She had never been arrested for  
7 anything, not even a parking ticket.  
8 Nothing. She went to jail for a year for  
9 this case to work through the court system  
10 and have the trial, when she was acquitted  
11 and she was released.

12 Now, the reason why I bring that up is  
13 that the Counsel at First Appearance money,  
14 if that ends, Cattaraugus County will get rid  
15 of that attorney and that investigator that  
16 were so critical in helping us defend this  
17 young woman.

18 When I look to see the five counties  
19 in the Hurrell-Harring settlement, those  
20 counties are going to be able to continue  
21 their program, to have counsel at first  
22 appearance. We will not be able to do that  
23 if this grant money ends. And under the  
24 Executive Budget that has been presented to

1           you, that will happen.

2                       We're asking you to not let that  
3           happen. The ILS budget needs to be fully  
4           funded. The \$139.26 million or \$139.27  
5           million that ILS has requested is going to  
6           start to make a dent in the rest of upstate  
7           New York so that we can have caseload  
8           standards.

9                       My attorneys and myself, because I  
10          carry a full caseload, we are handling cases  
11          that it would take a staff of probably  
12          15 attorneys to handle. Caseload reduction,  
13          if we lose that grant, if we lose the Counsel  
14          of First Assignment, we're going to go down  
15          to five attorneys handling those cases. The  
16          number of cases are not going to go down. So  
17          what's going to happen? Less justice.

18                      You know, when I think about my client  
19          and her 3-year-old daughter, Avery -- who  
20          I've now seen two or three times, and every  
21          time I see her, she thanks me for freeing her  
22          mother -- when I think about that, I don't  
23          sleep at night at times. And it's because we  
24          have to prioritize, we are like triage nurses

1 in an emergency room. There's not enough  
2 people to treat everyone that comes through  
3 the doors. And so you've got to decide, do  
4 we take care of this person, do we take care  
5 of that person. And so for everybody like  
6 Avery's mom who we are able to successfully  
7 represent, there's probably five to 10 people  
8 that their cases aren't getting the attention  
9 that they deserve.

10 You know, one great myth that's out  
11 there is that -- well, it's actually people  
12 believe that when somebody gets arrested,  
13 they must have done something wrong. It's  
14 not always that way. A lot of people that  
15 get arrested are innocent, and they need to  
16 have that right to counsel and have an  
17 attorney that's there with a support staff  
18 fighting for them nonstop.

19 CHAIRWOMAN YOUNG: Thank you,  
20 Mr. Williams.

21 I know Senator Hassell-Thompson has a  
22 question for you.

23 MR. WILLIAMS: Yes. Senator?

24 SENATOR HASSELL-THOMPSON: Just one.

1 Thank you. Well, I had several, but I'll ask  
2 one.

3 What is your opinion regarding the  
4 Governor's bail reform proposal, which is to  
5 include in statute consideration of public  
6 safety as a factor determining bail?

7 MR. WILLIAMS: As a public defender  
8 representing indigent folks, it scares me.  
9 And it scares me because so far New York  
10 State hasn't lived up to what they should be  
11 doing when the determination of bail is set.  
12 And that is, number one, a whole lot of  
13 people are being arraigned still without  
14 having counsel even there when that decision  
15 is being made.

16 So if we're going to do that, if  
17 you're going to have any kind of reform,  
18 let's have counsel at every arraignment.

19 The second is that the public  
20 defenders -- and it's been an issue that  
21 NYSDA has talked about for several years  
22 now -- but we are not qualified agencies to  
23 get criminal histories of our clients when  
24 they're done through the eJustice system.

1           And what that means is that in the old  
2           days -- and I used to be a town judge back in  
3           the 1980s -- I would get the rap sheets and I  
4           would get two of them, one for me and one to  
5           give to the defense attorney. That no longer  
6           happens. The rap sheets are produced that  
7           way. So the statute that says that the  
8           defense attorney is entitled to that -- it  
9           doesn't happen. Because the judges are in  
10          the eJustice system, we are deemed not to be  
11          a qualified agency, so we don't get access to  
12          it.

13                       Now we've made arrangements with OCA  
14          that during the business day we can send them  
15          an email and they will send us the criminal  
16          history for our clients, maybe in six to  
17          eight hours. It doesn't work that way at  
18          arraignments. So we're not getting that  
19          information. Whether the judges run that  
20          eJustice report or not, I don't know.

21                       But that brings up the next point I  
22          want to make about it. And that is that if  
23          you are a prior felon with two felony  
24          convictions at any time in your prior

1 history, local judges cannot set bail. It  
2 has to be done by a county or supreme court.  
3 It's got to be done by a superior court. So  
4 a whole lot of those people that you've heard  
5 talk about that, well, they're a danger to  
6 society, you know, for public protection,  
7 public safety -- well, if those people have  
8 two prior felony convictions, bail isn't  
9 being set when they're arraigned in the local  
10 court anyways.

11 And in upstate New York, 85 to 90  
12 percent of the arraignments are done by local  
13 judges who are, most of the time, not  
14 lawyers. It scares me to think that we're  
15 going to say to those folks, well, you've got  
16 to take into -- a public safety  
17 consideration, a concern whether this person  
18 is going to go out and commit more crimes.

19 They're going to lock up everybody.  
20 They're already trying to lock up a whole lot  
21 of people. They will change that, and they  
22 will start locking up everybody if that  
23 reform is done without taking into  
24 consideration these other factors.

1                   So with that, I also want to add that  
2                   how are they going to make that  
3                   determination? They're going to use a  
4                   COMPAS-based, computer-based assessment,  
5                   right? I've sat through and watched as  
6                   probation officers ask my clients those  
7                   questions when it's somebody that might be  
8                   released under supervision. A computer is  
9                   making the ultimate decision. Is that what  
10                  we've come to? Are we going to turn over  
11                  these important issues to a computer program  
12                  that's going to say yes, this person has got  
13                  a propensity for violence?

14                  I sit at times and read to the court  
15                  those COMPAS assessments, because they make  
16                  no sense. And the judge sits and looks at me  
17                  and is like, "That says that? Where did you  
18                  get that term from? Where did you get that  
19                  information from?" It's scary to me to do  
20                  that.

21                  If we start working the system the way  
22                  that it should be, by having counsel at every  
23                  arraignment, by having criminal histories  
24                  given to the attorneys or letting us have

1 access to it through eJustice at that time,  
2 and maybe not having local judges who aren't  
3 attorneys making that decision, then after we  
4 do that, then let's talk about the rest of  
5 that reform.

6 SENATOR HASSELL-THOMPSON: Thank you  
7 very much.

8 MR. WILLIAMS: Thank you.

9 CHAIRWOMAN YOUNG: Assemblyman  
10 McDonald.

11 ASSEMBLYMAN McDONALD: We will hear  
12 from Assemblymember O'Donnell.

13 ASSEMBLYMAN O'DONNELL: I walked in in  
14 the middle, but I have a solution to one of  
15 your problems. I have a bill currently in  
16 bill drafting that would allow non-lawyer  
17 judges to arraign someone but deprive them of  
18 the ability to put them in.

19 MR. WILLIAMS: The ability to put them  
20 in jail?

21 ASSEMBLYMAN O'DONNELL: That's  
22 correct.

23 MR. WILLIAMS: Yes.

24 ASSEMBLYMAN O'DONNELL: So you can

1            apprise them of what they've been accused of,  
2            you can do all those other things -- serve  
3            their notices, if that's what you want to do.  
4            But if you're not a lawyer and you're the  
5            judge who's sitting in that town justice  
6            part, you don't have the authority to put  
7            them in jail.

8                       Maybe that'll change the way the town  
9            justice system works. I originally had a  
10           bill that I thought was going to just sail  
11           through here, because it came from Judge  
12           Kaye's report, that would have simply said  
13           that if a defendant in a town or village  
14           justice court system wanted to, they could  
15           request or require that they be only heard by  
16           a lawyer who's a judge. But the Magistrates  
17           Association, which apparently has immense  
18           amount of power in this building, said no,  
19           we're not going to have any of that.

20                      But that's a solution I've come up  
21           with to try to address some of what you're  
22           talking about here. And thank you.

23                      MR. WILLIAMS: As a member of the  
24           State Magistrates Association, they should be

1 supporting that bill.

2 ASSEMBLYMAN O'DONNELL: Yeah, well --

3 MR. WILLIAMS: They should be letting  
4 their -- you know, allowing that decision to  
5 be made because it's too critical of a  
6 decision that's happening.

7 A last thing that I want to just add,  
8 if I can quickly. The Backup Center, NYSDA,  
9 we need to have them fully funded. An office  
10 like mine, with seven attorneys and two  
11 investigators, two legal secretaries and  
12 three clerical positions, we don't have the  
13 time to do what we need to do without the  
14 Backup Center. I refer to them as my back  
15 office. They're so critical, again, to the  
16 upstate offices, where we don't have the  
17 resources available to us to present and to  
18 get the information that we need at times to  
19 defend our clients.

20 Whether it's finding experts for us,  
21 whether it's coming up with an argument, I  
22 call them during trials, they know I'm on  
23 trial, two minutes later I have an answer  
24 texted to me in court that may save the day

1 for a client. So we need them fully funded.

2 And the very last thing is the  
3 Veterans Defense Program. As a retired Navy  
4 commander, as a two-time county commander of  
5 the American Legion in Cattaraugus County and  
6 commander of my post, our veterans need your  
7 attention. And there's no reason -- when the  
8 largest veteran population in the state lives  
9 in New York City, we need to have that office  
10 in New York City. So we need to have that  
11 program fully funded at the \$1.1 million that  
12 they requested.

13 CHAIRWOMAN YOUNG: Thank you,  
14 Mr. Williams, for your valuable testimony.  
15 Glad to have you here tonight. We appreciate  
16 you coming all the way from Cattaraugus  
17 County.

18 MR. WILLIAMS: Thank you. My  
19 pleasure.

20 CHAIRWOMAN YOUNG: I'm sure we'll be  
21 talking soon. Thank you very much.

22 Our next speaker is President Patrick  
23 Cullen, New York State Supreme Court Officers  
24 Association.

1                   Hi, President Cullen.

2                   PRESIDENT CULLEN: Thank you, Madam  
3 Chair.

4                   CHAIRWOMAN YOUNG: Thank you. Look  
5 forward to your testimony.

6                   PRESIDENT CULLEN: Thank you.

7                   Good evening, members of the  
8 Legislative Budget Committee. I am once  
9 again thankful for the privilege to address  
10 you all, and it's an honor to appear in front  
11 of you on behalf of the men and women I  
12 represent. They are New Yorkers who put  
13 service first and bravely protect their  
14 fellow citizens. They are also New Yorkers  
15 who have consistently continued to do our  
16 best as the engine of the judicial branch,  
17 under adverse financial circumstances and  
18 extraordinarily lean personnel conditions.

19                   So today I thank you as we can --  
20 well, tonight I thank you as we can, with one  
21 voice, express our concerns about how the  
22 Unified Court System budget affects both the  
23 professional and personal aspects of our  
24 lives.

1           As Judge Marks outlines in this year's  
2 budget, the last five judiciary budgets have  
3 left the court system "unable to fill the  
4 positions left void by attrition." Perhaps  
5 the most glaring problem of that sentiment is  
6 the inability, through the oversight, to  
7 maintain the standards of safety and security  
8 that this system has proudly enjoyed for  
9 years.

10           The depth of our losses can not be  
11 simply stated in a sentence or two. Our  
12 court officers are, quite candidly, spread  
13 too thin. There are just not enough of us to  
14 get the job done in the tremendous fashion we  
15 have become known for. We are working with  
16 13.3 percent less security staffing than in  
17 2009 while absorbing more work, done by more  
18 judges, in shorter periods of time. It is  
19 unacceptable to put at risk the safety and  
20 well-being of all court employees, court  
21 users, and jurors.

22           Court parts formerly staffed by four  
23 or five officers are now staffed by two or  
24 three. Supervisors normally in charge of one

1 part are now in charge of managing three or  
2 four. All of this occurs while we see an  
3 annual increase in the amount of cases  
4 handled. The need for full staffing in our  
5 facilities prevents our officers from being  
6 sent for yearly training for equipment and  
7 CPR. Many officers cannot spend their  
8 accrued vacation time with their families  
9 because managers cannot afford to grant them  
10 the time.

11 The system is not recovering and our  
12 employees are suffering. In fact, the system  
13 itself is staying above water on the already  
14 overburdened backs of its employees. In a  
15 preventative health initiative introduced by  
16 our union, we found our membership to be  
17 19 percent higher than the national average  
18 for hypertension. The dearth of staffing and  
19 the administration's failure to restore our  
20 losses will have a profound effect and a  
21 long-lasting effect on these men and women --  
22 not only at work, but as husbands and wives  
23 and mothers and fathers.

24 Furthermore, these austerity budgets

1           have actualized deficiencies in our  
2           courthouse infrastructure. Early closures  
3           and the cessation of overtime have left our  
4           buildings empty at a much earlier hour than  
5           in the past. We have found homeless people  
6           living in the bowels of our courthouses and  
7           discover people in unauthorized areas on a  
8           very regular basis. These are avoidable  
9           security breaches that in the past, at full  
10          staffing, would be unheard of, a time when  
11          the emphasis was on people and not the bottom  
12          line.

13                        These landmarks of justice are  
14          targets, and we will see catastrophic events  
15          take place if we do not restore staffing and  
16          overtime to its proper levels, levels which  
17          protect New York.

18                        Our bargaining unit will be without a  
19          contract for five years come March 31st. Our  
20          members want a fair contract; they deserve  
21          one. What they cannot afford to do is accept  
22          a contract that sets them back and gives back  
23          provisions they have earned. Many  
24          non-security personnel in our system have

1 done that, and we are expected to follow  
2 suit. We cannot support or accept working  
3 under a restructured pay scale which  
4 negatively alters these employees' earnings.

5           Additionally, this budget calls for  
6 funds in excess of \$100 million to be spent  
7 on steering business into the judicial  
8 system. A budgetary item to ensure court  
9 engagement is improper when the very same  
10 budget begs so many shortcomings. The system  
11 must stand on its own two feet again before  
12 it can use its own funds to escort people  
13 into the system. Our members remain those  
14 who keep our system on its feet.

15           Judge Marks has also been on the  
16 record at the Commission on Judicial  
17 Compensation, as well as in the media,  
18 espousing the financial woes of the  
19 judiciary. What is interesting to note is  
20 that much of what he says applies to our  
21 members as well. He says that the state "has  
22 the ability to pay the increase advocated" in  
23 reference to a \$27,000 increase in salary for  
24 each of the state's judges. My members are

1           certainly not seeking such a wage hike, just  
2           a fair and equitable wage over the last five  
3           years.

4                     Judge Marks also states that New York  
5           is historically the most expensive state to  
6           live in. Well, 99 percent of our members  
7           live in this great state. He goes on to say  
8           that inflation has gone up 42 percent since  
9           1999. If so, it has gone up for all of us,  
10          including members of this committee and the  
11          workers I represent.

12                    Finally, Judge Marks advocates the  
13          introduction of an automatic cost-of-living  
14          adjustment into the judicial pay package. I  
15          too support this for our members, because it  
16          is the only way to keep up with the  
17          ever-rising costs associated with living and  
18          working in New York.

19                    I applaud Judge Marks for bringing to  
20          light important financial issues, but they  
21          must apply to everyone within the framework  
22          of the system. I fully understand the role  
23          of the judiciary. However, if these  
24          principles are not addressed to include all

1 under its banner, then the Unified Court  
2 System is widening an already existing double  
3 standard. The judiciary is the face of  
4 fairness and equity, and it must practice  
5 what it preaches.

6 I have continued to advocate for new,  
7 innovative and useful projects to enhance  
8 security at all court facilities. I renew  
9 the call for budgeted funds to create a K9  
10 program for which studies have already been  
11 done. This program was green-lighted, only  
12 to be derailed at the last minute because an  
13 administrator did not like dogs. All of  
14 New York will like dogs when they prevent an  
15 explosive device from being planted or deter  
16 the plans of a potential active shooter and  
17 the damage these types of events could  
18 inflict.

19 The fact is this is a program that  
20 this system should have implemented 20 years  
21 ago. Archaic thinking and an inability to  
22 install advanced training procedures have  
23 left us in the last century. A real and  
24 mandatory active-shooter protocol is sorely

1           needed. We must be prepared for its near  
2           inevitability, based on recent national  
3           events, including one in our very own  
4           Middletown City Court. We need practical,  
5           experienced training from the top experts in  
6           the field. This is not a program you want to  
7           have to install after a mass carnage event.

8                     A real endeavor must be made to  
9           upgrade our magnetometers, our x-ray  
10          machines, radios and cameras to the latest  
11          technologies used in federal facilities and  
12          by thousands of police departments  
13          nationwide. These programs and ideas will  
14          also help us not only do our jobs the way  
15          they should be done, but with an eye toward  
16          the future. Law enforcement has become a  
17          dynamic field, and we must embrace that with  
18          personnel, philosophy and financial support.

19                    This is a brief synopsis of some of  
20          the most conspicuous problems facing our  
21          workforce in the court system of New York.  
22          These things must be met with certitude that  
23          our system needs to be brought up to speed.  
24          Our court officers cannot be left behind

1           again. We are playing catch-up, and it is  
2           only a matter of time before calamitous  
3           circumstances result. We are a proud and  
4           patient group of the state workforce, but our  
5           patience is eroding and our pride is being  
6           destroyed by a continued neglect to the  
7           things we need to properly execute the duties  
8           we have nobly sworn.

9                        I ask this committee to pass the  
10           judicial budget as it is constituted and not  
11           to make further cuts. It is critical to the  
12           system's recovery and frankly to our survival  
13           within the workforce. The time has come to  
14           make a stand and aid in the restoration of  
15           the system and those of us who protect it and  
16           all it stands for.

17                      I want to thank everybody here and for  
18           your time and for your hard work.

19                      SENATOR KRUEGER: Thank you.

20                      Assembly?

21                      ASSEMBLYMAN McDONALD: No questions  
22           from the Assembly, but thank you for your  
23           testimony.

24                      PRESIDENT CULLEN: Thanks.

1                   SENATOR KRUEGER: We thank you very  
2 much for your testimony.

3                   Next up is --

4                   ASSEMBLYMAN McDONALD: Pamela Browne.

5                   SENATOR KRUEGER: -- Pamela Browne,  
6 thank you, Court Clerk Association.

7                   ASSEMBLYMAN McDONALD: And on deck is  
8 Billy Imandt, from the Court Officers  
9 Benevolent Association of Nassau County.

10                  PRESIDENT BROWNE: Good evening,  
11 esteemed Senators and Assemblypeople. My  
12 name is Pamela Browne, and I'm the president  
13 of the New York State Court Clerks  
14 Association.

15                  Thank you for the opportunity to  
16 discuss Governor Andrew Cuomo's Executive  
17 Budget. I represent about 1,550 court clerks  
18 in the City of New York. We support  
19 increased money to the courts as you  
20 legislators examine the courts and approve a  
21 budget.

22                  The budget crunch in 2010 left my  
23 union with 250 fewer court clerks to make the  
24 courts work. There was a freeze on hiring,

1 but there was no retirement freeze. The  
2 workload did not decrease, however, but it  
3 increased with each new program, initiative,  
4 task, and system. When anything new is  
5 introduced and when you pass any new laws, it  
6 falls upon the clerks to carry it out, which  
7 we do, as we are consummate professionals.

8 The staffing shortage continues, but  
9 the number of clerks and other court  
10 personnel is severely depleted. There are  
11 court clerks working off the clock because  
12 they are diligent and conscientious and do  
13 not want to see unfinished work the next day.  
14 They want to start off clean.

15 Working at a manic pace should not and  
16 cannot be sustained. Additionally, working  
17 off the clock is illegal. Not all courtrooms  
18 can be staffed. We have clerks covering  
19 multiple parts, and we have had judges  
20 sitting in chambers for lack of staff. All  
21 parts must be adequately staffed.

22 The courts are closing earlier, and  
23 special permission is mandated before  
24 overtime can be approved. A woman went to

1 family court seeking an order of protection,  
2 and she was told to go to criminal court as  
3 it was past the hour that family court was in  
4 operation. There was a strict closing time  
5 to not yield overtime, and the directive  
6 indicated that such cases were to be referred  
7 to criminal court.

8 Previously she would have been allowed  
9 to file in family court. Criminal court sent  
10 her back to family court, as they were  
11 probably unaware of family court's closing at  
12 that the hour. Dejected, she obviously gave  
13 up and left. She was subsequently killed by  
14 her husband.

15 If she were a DuPont or a Carnegie,  
16 this case would have received a lot of  
17 attention. But she was an ordinary  
18 New Yorker with no name recognition or fame.  
19 This was the ultimate. Someone lost their  
20 life so the courts would not incur overtime  
21 costs. What price is a life? Lack of  
22 funding has life and death consequences.

23 Not all insufficient funding has such  
24 immediate egregious outcomes. Most are

1 smaller, but harmful nonetheless, and affect  
2 people's well-being. The shortage of funds  
3 for court clerks has created tremendous  
4 backlogs in every court in many areas --  
5 i.e., warrants and housing court, small  
6 claims are backed up for months, and  
7 judgments that are yet to be entered, to name  
8 a few.

9 Not everyone is so middle class that  
10 they can easily miss work to come to court.  
11 There must be adequate staff, in particular  
12 court clerks, to minimize the time the public  
13 spends away from their jobs. People cannot  
14 and should not have to spend all day in  
15 court. Many people have such little vacation  
16 or sick time that a day in court is a day  
17 without pay.

18 The public is suffering and receiving  
19 short shrift. Justice delayed is justice  
20 denied. And family court, in the referee  
21 parts, there is the referee and the court  
22 clerk. The court clerk is a receptionist,  
23 security, court attorney, and court clerk all  
24 in one. These parts handle orders of

1 protection, custody, visitation, and foster  
2 care. Previously these cases were handled in  
3 a courtroom with a judge, a court clerk,  
4 security, and a law assistant.

5 The staffing in these referee parts  
6 was created legislatively, and it must be  
7 corrected legislatively. Each of these parts  
8 must be required to have two court clerks.  
9 You must make this right.

10 Over the years there has been the  
11 realignment of lines and titles, and  
12 negotiation and talks have failed to correct  
13 a classification system that is severely out  
14 of balance. We have been told that these  
15 issues would be addressed, but this has not  
16 come to fruition. Court officers have been  
17 reclassified for a third time, and the clerks  
18 have not been reclassified once in 38 years.  
19 The court officers deserve their  
20 reclassification. But as their supervisors,  
21 we also deserve this. This has upset the  
22 hierarchy. How can you not upgrade the  
23 supervisors? You cannot promote up only to  
24 lose ground. This is against the natural

1 order.

2 The courts are in the business of  
3 dispensing justice and equitable relief, and  
4 it is the court clerks who facilitate this.  
5 We are the backbone of the court system.  
6 During the years of the budget crunch, court  
7 clerks were number one on the wish list of  
8 chief clerks. Seasoned judges tell new  
9 judges, If you don't listen to the clerk,  
10 you're crazy.

11 (Laughter.)

12 PRESIDENT BROWNE: Clerks are retiring  
13 in unprecedented numbers for a non-buyout  
14 year. The hiring freeze and zeroes have  
15 erased the career path. The clerks are not  
16 receiving the credit, acknowledgement, or  
17 appreciation we have earned. We want, need,  
18 deserve, and have earned reclassification.

19 It is the clerks who move the  
20 paperwork and allow the courts to function.  
21 Whenever any new change is invoked, the task  
22 of the court clerk changes as well. Our jobs  
23 as court clerks have become convoluted,  
24 complex, and all-encompassing. Court clerks

1 supervise court officers, and they promote  
2 into our ranks. With their third  
3 reclassification, the salary gap between us  
4 has shortened. There are newly promoted  
5 court clerks who have chosen to go back to  
6 the ranks of officers. The job of a court  
7 clerk has become so challenging, and with  
8 such a small pay difference, that officers  
9 would prefer to roll around on the floor with  
10 defendants and litigants. This never  
11 happened before, and is due to a lack of  
12 reclassification for court clerks which has  
13 turned everything upside down.

14 To become a court clerk, you must pass  
15 a test which some attorneys could not pass.  
16 You give up months of your life and forgo  
17 numerous activities for the sake of studying.  
18 Some court officers sacrifice so much to  
19 become clerks, and despite their forfeiting  
20 so many endeavors, they're going back to  
21 uniform.

22 In order to stay competitive, we must  
23 be reclassified, which would reflect the  
24 changes in our function and value and allow

1 us to reestablish our rightful place. There  
2 must be sufficient funding for the courts,  
3 the judiciary, and court clerks. The budget  
4 must have sufficient funding which would  
5 allow us to be reclassified. Equilibrium  
6 must be restored, the rank structure must be  
7 preserved. The financial consequences of the  
8 underfunding of the court budget, and its  
9 effect on court clerks and consequently the  
10 courts, must be reversed.

11 The loss of 250 court clerks saved  
12 \$22.5 million annually for the last six  
13 years, a total of \$135 million. We have more  
14 than paid for our own reclassification. We  
15 who made the biggest effort and sacrifice in  
16 keeping the courts functioning smoothly must  
17 reap our just reward.

18 Are there any questions?

19 SENATOR KRUEGER: Any questions?

20 ASSEMBLYMAN McDONALD: No questions  
21 here.

22 ASSEMBLYMAN OAKS: Thank you.

23 SENATOR KRUEGER: We appreciate your  
24 coming and testifying tonight.

1 Thank you very much.

2 ASSEMBLYMAN OAKS: My wife is a clerk  
3 in a justice court, but she would agree  
4 you're crazy if you don't listen to the  
5 clerk.

6 (Laughter.)

7 PRESIDENT BROWNE: Thank you.

8 SENATOR KRUEGER: Thank you very much.

9 And our next testifier is Billy  
10 Imandt, president, Court Officers  
11 Bevenolent -- Court Officers Benevolent  
12 Association of Nassau County. I can't speak  
13 anymore.

14 ASSEMBLYMAN McDONALD: That's getting  
15 there.

16 ASSEMBLYMAN OAKS: That's easy enough  
17 for you to say. That's a mouthful.

18 ASSEMBLYMAN McDONALD: And up next is  
19 Bill Dobbins, from the Suffolk County Court  
20 Employees Association.

21 PRESIDENT IMANDT: As you've been here  
22 for about 11 hours, so have I. And my  
23 mouth -- of course, I had dry mouth, so --  
24 indulge me just a minute.

1                   SENATOR KRUEGER: So did I.

2                   PRESIDENT IMANDT: (Pausing to drink  
3 water.) Thank you.

4                   CHAIRWOMAN YOUNG: Thank you.  
5 Welcome.

6                   PRESIDENT IMANDT: Thank you very  
7 much, Madam Chairperson. My name is Billy  
8 Imandt, and I'm a 32-year court employee and  
9 I am the president of COBANC, the Court  
10 Officers Benevolent Association of Nassau  
11 County, representing not only court officers  
12 but approximately 65 different job titles  
13 including court clerks, court attorneys,  
14 reporters, interpreters, analysts, judge's  
15 secretaries, judge's law clerks, and what we  
16 call the back office workers, who really  
17 should be called the backbone-of-the-system  
18 office workers, just to name a few of the  
19 titles.

20                   I asked to speak to you today to give  
21 you a report from the trenches and let you  
22 know how well my members are equipped and  
23 supported to handle the business of serving  
24 the public in their vital role as the support

1 staff in the administration of justice to the  
2 citizens of Nassau County and, of course,  
3 New York State.

4 My message to you is we're just barely  
5 holding on. For over seven years, with  
6 layoffs and an attrition-based budget -- that  
7 being when someone retires, no one is hired  
8 to replace them, and the responsibilities of  
9 their job are spread out to the remaining  
10 workforce -- we have been getting the job  
11 done, as I said, for years now. In my  
12 bargaining unit, COBANC, we have 20 percent  
13 less workers than seven years ago, and we're  
14 still getting the job done.

15 We have been spread thin, working  
16 harder than ever, without a decent  
17 compensation package offer to any of the  
18 court unions. In fact, we have been offered  
19 the worst compensation package of any  
20 municipality in New York State that I know  
21 of, and that's after taking 20 percent  
22 layoffs. Over the past five years, inflation  
23 has increased by almost exactly 10 percent.  
24 Our -- and all court union workers --

1 compensation package has been zero, zero,  
2 zero, 2 percent and 2 percent, or 4 percent  
3 over those same five years. And again, with  
4 20 percent less workers. And the job is  
5 still getting done.

6 In 2011 when our contract expired, the  
7 state was just beginning to come out of the  
8 worst period of the worldwide recession. And  
9 when it came time to discuss a new contract,  
10 we knew that it would probably be less than  
11 we deserved, and we understood it. Working  
12 with no contract and the prospects of zero  
13 compensation, we forged on, still getting the  
14 job done. Even as desk after desk became  
15 vacant and more and more work was put on our  
16 desks, again we understood. We are extremely  
17 professional and prideful, and our work ethic  
18 wouldn't allow us to have work backlog or to  
19 slide the window closed at exactly 5 o'clock,  
20 leaving members of the public to go home and  
21 try again tomorrow because the members  
22 weren't getting compensated past that time.

23 Many of my members, unsanctioned by  
24 their union, are actually coming in earlier,

1 working through all or part of their lunch  
2 hour, and leaving well after 5 o'clock. Off  
3 the clock. This was, and is, virtually --  
4 I'm sorry, there was and is virtually no  
5 overtime, and my members -- and I say God  
6 love them -- refused to let that demoralizing  
7 condition affect their work product. They  
8 were, and are, doing this to make it work.  
9 To make it work until the cavalry comes to  
10 the rescue.

11 Well, it's been five years since we  
12 had a contract, and it's time. We cannot  
13 hold our breath underwater for too much  
14 longer. Sick leave usage is up, disciplines  
15 are up, grievances are up, and morale is way  
16 down. Senator Savino said at Justice  
17 DiFiore's confirmation hearings not to be  
18 afraid to ask for more money for the budget,  
19 and said "We want to help." Committee  
20 members, we need your help.

21 I'm hoping you can help now, because  
22 COBANC is at the impasse stage of  
23 negotiations with the Office of Court  
24 Administration and, unless something changes

1           dramatically, we will be back to you in  
2           Albany to settle our contract. We don't have  
3           binding arbitration, as do many of our police  
4           and sister and brother peace officer  
5           organizations, and our remedy to resolving  
6           our contract, when all else fails, is you  
7           here in Albany.

8                     It doesn't have to come to that.  
9           Being that the court system had three flat  
10          budgets, or zero percent increases, while the  
11          Governor was calling for a 2 percent cap, we  
12          feel that this vital segment of society, the  
13          court system, is owed more than the  
14          2.4 percent increase it is now asking for.

15                    As you know, the courts are not a  
16          discretionary agency. We are included in the  
17          U.S. and New York State Constitution as an  
18          absolute right that society is entitled to,  
19          an important part of life, liberty and the  
20          pursuit of happiness. How would we function  
21          if the criminal courts didn't have funding to  
22          complete their task? There would be a real  
23          potential for anarchy. Wouldn't society soon  
24          be crippled if, due to lack of funding, there

1           were not enough court workers and judges on  
2           staff to interpret and enforce contracts?  
3           They wouldn't be worth the paper they are  
4           written on. What about the havoc that would  
5           rain down if our matrimonial courts are not  
6           funded to the point where there could be  
7           swift resolution to one of the more volatile  
8           divisions of what the court system handles?

9                       Over the past half a decade, our  
10           courts have been funded at an average of  
11           approximately 1.4 percent when the Governor  
12           has capped everybody else at 2 percent. And  
13           by the way, that's again with 20 percent  
14           layoffs and still getting the job done. It's  
15           time to put the proper amount needed back in  
16           the system. I not only ask you to grant the  
17           requested 2.4 percent increase, but to  
18           determine how much funding the court actually  
19           needs to get back on its feet, be it an  
20           increase of 3 percent, 4 percent, or whatever  
21           is needed to properly serve the citizens of  
22           New York State.

23                       During contract negotiations we were  
24           told that the Office of Court Administration

1 had no money at all to increase the  
2 compensation for a respectable, somewhat  
3 close to cost-of-living offer, so we started  
4 digging to see how the budget was spent. And  
5 you don't have to dig too far to see that  
6 there's a whopping \$85 million budgeted for  
7 fiscal 2016-2017 for a program that is known  
8 as Civil Legal Services. And as you know,  
9 this is a program to help the public that  
10 cannot afford counsel for important civil  
11 legal matters -- foreclosures, family court  
12 matters, and landlord-tenant matters, just to  
13 name a few.

14 A noble and worthy program, no doubt.  
15 However, we feel it has no business being  
16 funded through the court budget. The Office  
17 of Court Administration budget is 90 percent  
18 paychecks to people. We don't have tractors  
19 and trucks like the DOT. Ninety percent of  
20 that budget money goes to workers' paychecks,  
21 which then of course gets circulated back  
22 into the communities and into paying taxes.  
23 We can't afford to fund a program of this  
24 magnitude through the court budget. It even

1           has a sense of impropriety that the court  
2           budget money is going to attorneys that  
3           appear before the same organization that  
4           funded them to represent people of need.

5                         We have been reading that the state is  
6           so flush with money now that we feel this  
7           should be a program that is financed through  
8           the executive branch and not the Office of  
9           Court Administration. We can't afford it.  
10          Our buildings are in horrendous condition,  
11          our staffing needs to be reinforced, and our  
12          workers, who are the foundation of the court  
13          system, need to be treated with the respect  
14          they have earned by being compensated fairly  
15          and equitably.

16                        We are the middle class. We fuel the  
17          economy. If we do well, history has shown  
18          that society does well. You can't fund  
19          programs from money intended to make the  
20          courts work, on all levels, on the backs of  
21          middle-class workers in that system. In  
22          fact, ironically, the Civil Legal Services  
23          program was formally created and expanded at  
24          the same time we were being laid off and

1           offered zero compensation.

2                     If the Civil Legal Service program was  
3           picked up by the executive branch, we could  
4           fund the judges' raises and fair and  
5           equitable compensation for my members and  
6           members of the other court unions. And with  
7           all the surplus money that New York State  
8           has, I think they should expand the Civil  
9           Legal Services program -- under the executive  
10          branch, though.

11                    That would most probably instantly  
12          resolve the contracts of the remaining  
13          one-third of the unions without a contract.  
14          Three of the four without a contract are  
15          speaking today. It would not burden future  
16          budgets with recurring monies, and it would  
17          show appreciation and recognition for how  
18          hard and long all state court employees have  
19          been working and sacrificing.

20                    I believe that Justice DiFiore --  
21          Chief Justice DiFiore, excuse me -- could  
22          also require that the approximately 60,000  
23          non-municipal New York State Bar Association  
24          attorneys donate 14 hours pro bono a year, or

1 half a day per quarter, to keep this program  
2 operating as it has been. Or she can caucus  
3 with the legislature, her OCA experts, bar  
4 association representatives, and union  
5 leaders to figure out how to take this  
6 program out of the court budget.

7 Honorable members of this committee,  
8 please don't kick the can down the street.  
9 Because as I said, if we don't resolve this  
10 situation now, very soon we will be back in a  
11 number of months asking you to impose what  
12 would be a fair contract on us and the Office  
13 of Court Administration. We don't want to  
14 give you more work, but we may have no  
15 choice. We are willing to roll the dice as  
16 to what you think is fair, because we don't  
17 think anyone would fathom, with a 20 percent  
18 reduction in workforce and the job still  
19 getting done every day in every courthouse in  
20 every county, that reasonable people such as  
21 you would think that the fair number is zero.

22 Due to low-paying salaries, I've been  
23 told by human resources that the courts are  
24 having a retention problem. Now couple that

1 with the fact that the state has the ability  
2 to pay. With the inadequate budgets that  
3 they've been given, OCA keeps cutting and  
4 cutting to the point now where we have  
5 retention problems, staffing problems,  
6 contract problems, people working out of  
7 title, and very serious morale problems and  
8 extreme security issues.

9           Although OCA's own security staffing  
10 guidelines say that there should be a minimum  
11 of three court officers in a court -- in a  
12 criminal court -- and two officers on  
13 perimeter patrol, they're actually down to  
14 one now. We didn't squawk when it was two,  
15 although we didn't think it was safe -- but  
16 again, we tried to make it work.

17           CHAIRWOMAN YOUNG: Thank you for that  
18 testimony, and we appreciate it,  
19 President Imandt. And we would like for you  
20 to keep in touch with us and let us know how  
21 things are going.

22           You heard a lot of concern today from  
23 legislative members about the court system  
24 and making sure that they're adequately

1           staffed and up to speed, so I think you have  
2           a lot of people here who are concerned about  
3           the courts. And we appreciate the jobs that  
4           you do, especially in difficult  
5           circumstances -- that's what it sounds like.

6                     Do we have any members who have any  
7           questions? Okay.

8                     So thank you very much. Did you have  
9           anything else that you wanted to add?

10                    PRESIDENT IMANDT: Well, I just did  
11           have to say that --

12                    CHAIRWOMAN YOUNG: Because we do have  
13           your testimony in writing, so --

14                    PRESIDENT IMANDT: Right.

15                    CHAIRWOMAN YOUNG: Your --

16                    PRESIDENT IMANDT: Well, I just want  
17           to say that I'm the president of COBANC, once  
18           again, and we're the proud members of the  
19           court system.

20                    Thank you very much for your time. I  
21           appreciate it.

22                    CHAIRWOMAN YOUNG: We appreciate it so  
23           much. And we appreciate you being here.

24           Thank you.

1                   I would remind our speakers that  
2                   there's five minutes on the clock.

3                   And our next speaker is President Bill  
4                   Dobbins, Suffolk County Court Employees  
5                   Association.

6                   Welcome, President Dobbins.

7                   PRESIDENT DOBBINS: Good evening,  
8                   Madam Chairperson. Thank you all for having  
9                   me come here to speak today -- tonight.

10                  I just want to express to you -- the  
11                  reason I'm here is to express a major concern  
12                  that we have. I want to convey to you  
13                  problems that our courts in Suffolk County  
14                  are facing. And the best way to say it is  
15                  the state of our courts are extremely poor.  
16                  Morale is suffering, people are doing more  
17                  work with less help, and it's been happening  
18                  for a period of over six years. And it seems  
19                  like there's no end in sight.

20                  The budget cuts from several years ago  
21                  have really disabled our court system. The  
22                  hardworking members of our union, the very  
23                  heart and soul of the court system, are  
24                  working with lack of appreciation, lack of

1 help, and any sense of hope. Staffing levels  
2 have been so diminished that our courts are  
3 no longer operated in the manner that they  
4 should be. Public safety is deteriorating as  
5 a result. We are in crisis, and it seems as  
6 though we are spinning out of control.

7 One of the major concerns in our  
8 courts is security. As a previous speaker  
9 spoke of, the court officer staffing in  
10 courtrooms -- in district court, we currently  
11 are using one court officer in a courtroom.  
12 It's unconscionable that that is happening.  
13 In a criminal court courtroom, one court  
14 officer. And what surprises me is that, God  
15 forbid, something happens. In the sense of  
16 saving money, in the sense of not spending a  
17 little bit more, we're waiting for something  
18 to happen. Are we waiting for the next  
19 headline? Are we waiting for the next mass  
20 shooting because we didn't have enough money  
21 to put more court officers in a courtroom?

22 There's more sophistication out there  
23 today. Weapons can be secreted into our  
24 buildings despite the magnetometers, despite

1 the line of defense at the front doors of the  
2 courthouse. We have titanium knives that are  
3 undetected by metal detectors. We have guns  
4 made out of plastic that can come into our  
5 courthouse and be used. There were speakers  
6 earlier today that spoke of the criminal  
7 activity in prisons. Well, there's no doubt  
8 that there's criminal activity happening in  
9 our courts every single day, and it seems  
10 like the administration just wants to ignore  
11 the problem.

12 It's time that we wake up. We don't  
13 need another situation like San Bernardino.  
14 We don't need another situation like what  
15 happened in Paris. Unfortunately, the sense  
16 is it's not going happen to here, it's not  
17 going to happen here. But what if it does?  
18 What are we going to do?

19 We need more money to hire more staff.  
20 We need more money to hire more court  
21 officers. That would solve so many of the  
22 problems.

23 Judge Marks spoke earlier about the  
24 shortage and he said -- he spoke to us, and

1 he said there's a class coming in February  
2 29th, 150 brand new court officers, that will  
3 help with the staffing problems. Well, you  
4 know what, they're coming out in June and  
5 Suffolk County has been promised to get maybe  
6 15 out of those 150. The problem is that by  
7 June, we're going to lose 15 officers. So  
8 that 15-officer gain will not even help us.

9 The hiring is not moving fast enough,  
10 the retirements are going quicker and  
11 quicker. We are losing staff. The courts  
12 are definitely not safe. And unfortunately,  
13 the judges in our courts are under the  
14 misconception that they are safe with just  
15 one court officer, because they're being  
16 misinformed by superior officers.  
17 Misinformed. God forbid something happens,  
18 and I hope it never does.

19 In the meantime, the courts throughout  
20 New York and especially in Suffolk County are  
21 foundering. Our back-office staff is working  
22 exhaustively without any help. We have boxes  
23 and boxes of files in our records room on the  
24 floors, on the tables, just waiting to be

1           filed or waiting to be worked on. Our  
2           foreclosure courts in Riverhead -- I was out  
3           there two weeks ago, there are motions for  
4           summary judgements on those foreclosures  
5           dating back to 2011 and 2012 not even  
6           touched. They're sitting on windowsills in  
7           the courthouse on Griffing Avenue in  
8           Riverhead.

9                         We're supposed to be public servants,  
10           and it seems that we're more and more public  
11           disservice. We're not doing anything to help  
12           the public anymore. It's about just getting  
13           by, what can we do to save money, what can we  
14           do to get to a calendar. If we want to bring  
15           a prisoner up from the cell block to come to  
16           a courtroom, we have to wait until other  
17           courtrooms close before we can properly staff  
18           a team to bring prisoners up to a courtroom.

19                         Sometimes attorneys -- Assemblyman Al  
20           Graf spoke earlier, he said he waited three,  
21           four, five hours, sometimes, for a  
22           prisoner -- ultimately they get frustrated  
23           because they have cases in other parts or  
24           cases in other jurisdictions that they have

1 to handle. Inevitably, they waive their  
2 client's appearance. So now this poor  
3 defendant, transported 33 miles from  
4 Riverhead Jail, sits in a holding cell in  
5 Central Islip hoping, waiting for his case to  
6 come up so that he can be brought to the  
7 courtroom. And it doesn't happen. It  
8 doesn't happen.

9 Talk about a waste of resources. What  
10 did it cost to bring that defendant from  
11 Riverhead Jail to the Central Islip  
12 Courthouse? What did it cost? We're talking  
13 about saving money, and we're wasting money  
14 left and right. We're wasting it. But  
15 nobody looks at that. The Judiciary Budget  
16 talks about Civil Legal Services, which is a  
17 great thing, we don't think it's bad -- but  
18 we don't think it should come from our  
19 budget. We think it should come from the  
20 executive branch budget. It just doesn't  
21 seem right that the judiciary is paying for  
22 attorneys that have to argue before them. It  
23 just gives that sense of impropriety -- it  
24 doesn't mean that there is, but it just gives

1           that sense that there is something amiss. It  
2           doesn't seem right. And again, we advocate  
3           for it. We think these people need help when  
4           they're dealing with their civil issues.  
5           They're poor people. But we think it should  
6           be paid by somebody else.

7                        I urge you to pass the budget that was  
8           submitted by the Office of Court  
9           Administration. I urge you to pass it  
10          because we need the funding so that we can  
11          hire people, so that we can staff our courts,  
12          so that we can make sure that our courts are  
13          safe. We had a gang fight outside the court  
14          building. We have court officers, trained  
15          peace officers with the ability to arrest,  
16          they carry firearms. They couldn't even go  
17          outside to attend to the problem. They had  
18          to call local police. A problem that could  
19          have taken care of right then and there, it  
20          took ten minutes for police to arrive. What  
21          did that delay have to cause? Did anybody  
22          get hurt? Who knows. Could anybody have  
23          gotten hurt? Who knows. The money has to be  
24          spent properly. I implore you to pass the

1 budget, pass more so that everything can be  
2 paid for. Everything could be paid for.  
3 Because we've been neglected far too long.

4 Thank you.

5 CHAIRWOMAN YOUNG: Thank you. Thank  
6 you very much, President Dobbins, for that  
7 testimony.

8 And as I said previously, we're very  
9 concerned about the condition in our courts  
10 right now, and it's very helpful for you and  
11 all the people from the court system who have  
12 been here tonight to hear firsthand your  
13 testimony and real-life cases and how that  
14 affects the people of New York State.

15 So we appreciate what all the people  
16 who work in the courts do every single day.  
17 It sounds like a very difficult job, and we  
18 truly appreciate you staying so late tonight.

19 PRESIDENT DOBBINS: Thank you,  
20 Senator.

21 CHAIRWOMAN YOUNG: Thank you.

22 Our next speaker is Colonel Jack Ozer,  
23 New York Wing of the Civil Air Patrol.

24 And again, speakers are allotted five

1 minutes of time. And if you could summarize,  
2 if you have a lengthy testimony especially,  
3 if you could just please summarize the  
4 highlights and the high points, because we  
5 still have other people waiting. Thank you.

6 Good to see you, Colonel.

7 COLONEL OZER: Good evening.

8 CHAIRWOMAN YOUNG: Good evening.

9 COLONEL OZER: And thank you very  
10 much. I noticed we have one member, Senator  
11 Young, who's a member of our legislative  
12 squadron.

13 CHAIRWOMAN YOUNG: That's correct.

14 COLONEL OZER: And Senator  
15 Hassell-Thompson, who is a Civil Air Patrol  
16 cadet. That's great.

17 I will make it very brief. For those  
18 of you don't know, the Civil Air Patrol is  
19 the auxiliary of the United States Air Force.  
20 It has been called upon for numerous things  
21 in New York State, which I'll get on to in a  
22 minute. It has three functions: emergency  
23 service, cadet programs, and aerospace  
24 education.

1           Our emergency service includes  
2           homeland security, it includes disaster  
3           relief, it includes counterdrug operations,  
4           missing person searches, et cetera. Our  
5           cadet program is a unique program that  
6           teaches cadets things like self-discipline,  
7           honor, integrity, and respect. And our  
8           aerospace education program teaches people  
9           about science, math, engineering, and  
10          technology in how the future will be.

11           We are very unique in one respect.  
12          Although we come to you for money, we have  
13          saved the State of New York 10 times the  
14          money they've given us. In the last several  
15          years, we've saved New York State in excess  
16          of \$2 million for our people through  
17          Hurricane Sandy, Hurricane Irene, programs of  
18          fire watchers, Department of Transportation  
19          overflights, missing person searches,  
20          sheltering of people during disasters. And  
21          this has worked out very well.

22           Two years ago we came and asked for  
23          funding, \$200,000, and that was because we  
24          realized after Hurricane Sandy we were not --

1           although we did the job, we had problems too.  
2           We didn't have electricity in a lot of our  
3           bases. We didn't have enough cameras, we  
4           didn't have enough support. That money went  
5           to put in -- for example, Long Island, our  
6           mission base, received a new heating system,  
7           a permanent generator system. Our base in  
8           Rome received a permanent generator system.  
9           We've purchased more cameras. We've  
10          purchased more equipment, more training  
11          funds, and that's gone a long way.

12                     One of the things we did with our  
13          cadet program, which was great, is we  
14          started a "Depressed Area Initiative," we  
15          called it, for areas of the state where the  
16          cadet programs are really needed for our  
17          youth but they can't afford it because the  
18          funding is not there. The parents can't  
19          afford the registration, they can't afford  
20          uniforms, so part of this money went to, in  
21          fact, buy uniforms, fund people that couldn't  
22          afford the program to get into our program.  
23          The program is so important to them, and to  
24          help them in the future, that money should

1 not be the object. That's what we've done.

2 We continue to do it.

3 With the added money we are asking, we  
4 will continue to build our infrastructure,  
5 put more money into the cadet program, more  
6 science kits for our cadets, more cameras,  
7 computers -- so that every time the State of  
8 New York calls us or any of the  
9 municipalities within the State of New York  
10 calls us up, we're ready and willing to help.

11 As you can see, the paperwork that was  
12 given out -- I don't want to go and lengthen  
13 this with questions -- we are a very  
14 professional organization that actually is  
15 the cheapest game in town, and the amount of  
16 money we save is tremendous. So we're asking  
17 the state to just give us our budget this  
18 year so we can continue our work.

19 CHAIRWOMAN YOUNG: Thank you very  
20 much, and it's an excellent program. I've  
21 seen the results firsthand with the cadets,  
22 and I appreciate all that you do. So thank  
23 you for being with us tonight.

24 COLONEL OZER: Thank you.

1                   CHAIRWOMAN YOUNG: You want -- okay,  
2 all set. Thank you. Thank you so much.

3                   COLONEL OZER: Thank you.

4                   SENATOR KRUEGER: Thank you.

5                   CHAIRWOMAN YOUNG: Our next speaker is  
6 Executive Director Charlotte Carter, from the  
7 New York State Dispute Resolution  
8 Association, and she is joined by Julie  
9 Loesch, director of the Center for Resolution  
10 and Justice at Child & Family Services.

11                   Welcome. I know it's been an  
12 extremely long day, and we appreciate your  
13 tenacity.

14                   MS. CARTER: Thank you, Madam  
15 Chairwoman, and thank you all for this  
16 opportunity to speak.

17                   We're here on behalf of a statewide  
18 network called CDRCs, the Community Dispute  
19 Resolution Centers. And thank you for that  
20 introduction.

21                   The New York State Dispute Resolution  
22 Association is a bit of a hybrid. We're a  
23 statewide contract program administrator, and  
24 we also are a professional association. The

1 CDRCs are among our members. Together we  
2 provide access to justice and tools like  
3 mediation to help people to address conflict  
4 productively and quickly, and those services  
5 are provided in every county in New York.

6 We're here to request \$3 million as a  
7 legislative add to stabilize our network and  
8 to allow us to respond to emerging community  
9 needs.

10 In 1981, the New York Legislature was  
11 the first in the country to pass legislation  
12 to create the CDRC network, and the funding  
13 and oversight was provided by OCA. The  
14 budget grew from an initial \$529,000 for  
15 17 counties to a little over \$9 million in  
16 2010. In 2011, that funding was slashed by  
17 nearly 50 percent, and it has not increased  
18 significantly since then.

19 Despite the dramatically reduced  
20 funding, the CDRCs have continued to provide  
21 free or low-cost mediation and conflict  
22 resolution services to your constituents.  
23 They help ensure that people do not lose  
24 their homes, their jobs, or basic human

1 services. Mediation solves disputes between  
2 neighbors, family members, business owners  
3 and customers, and they're resolved often  
4 before those disputes escalate to require  
5 intervention by police or the court system.

6 In addition to this low-cost,  
7 high-yield conflict management process,  
8 there's a very high compliance rate. Also,  
9 92 percent of the participants are very  
10 satisfied with their mediation. Everyone  
11 benefits from the restoration of important  
12 personal and business relationships.

13 Last year the network served over  
14 70,000 individuals and handled over 28,000  
15 cases. Mediation saves the state and the  
16 court system money and resources. From start  
17 to finish, the average mediation costs \$336,  
18 which is far less than court costs for even  
19 minor criminal or civil matters.

20 CDRCs match state funding dollar for  
21 dollar. They use professionally trained  
22 community volunteers to mediate cases, with  
23 donated time valued at over \$2.3 million  
24 annually. Over 75 percent of mediations

1 conclude with a written agreement, usually  
2 within a few weeks of the initial intake.

3 The CDRC offers access to efficient  
4 and effective justice for all New Yorkers,  
5 especially for our most vulnerable  
6 populations.

7 MS. LOESCH: The demand for the work  
8 mentioned by Charlotte continues to grow,  
9 but so do the costs of providing services.

10 My CDRC covers Allegany, Cattaraugus,  
11 Chautauqua, Erie, Genesee, Niagara, Orleans,  
12 and Wyoming counties, and yet we have only  
13 six staff providing services across this vast  
14 eight-county region in which one of my  
15 offices can be nearly two hours from the  
16 other.

17 We have slowed our expansion of elder  
18 and veterans mediation, and all but stopped  
19 our conflict education and peer mediation  
20 programs in local schools, despite increasing  
21 requests for these services.

22 My story is not unique. Each of you  
23 here today has a CDRC in your community with  
24 a similar story of unfortunate realities and

1           difficult choices about who to serve and who  
2           must wait for mediation and other services.  
3           Given the many ways in which CDRC services  
4           benefit communities beyond the court system,  
5           we come to ask you to help diversify and  
6           stabilize our base funding. We have been  
7           meeting with legislators in districts and  
8           here in Albany, and we're pleased that we've  
9           had a great response on the ground.

10                    The \$3 million legislative add will  
11           make it possible for the CDRC network to  
12           continue to provide responsive, effective,  
13           and acceptable dispute resolution services to  
14           all of your constituents.

15                    Thank you.

16                    CHAIRWOMAN YOUNG: Thank you very  
17           much. And thank you for covering such a wide  
18           territory. We appreciate it.

19                    But we appreciate you being here  
20           tonight and staying so long, and your  
21           testimony was very helpful, so thank you.

22                    MS. LOESCH: Thank you.

23                    MS. CARTER: Thank you.

24                    CHAIRWOMAN YOUNG: Thank you.

1                   Our next speaker is Connie Neal,  
2                   executive director of the New York State  
3                   Coalition Against Domestic Violence.

4                   Thank you for being here.

5                   MS. NEAL: Well, good evening,  
6                   everyone. I really appreciate this  
7                   opportunity to speak with you tonight.

8                   I'm Connie Neal, executive director of  
9                   the New York State Coalition Against Domestic  
10                  Violence. We are a statewide membership  
11                  organization of local domestic violence  
12                  programs located throughout the State of  
13                  New York. Currently there are 249  
14                  residential and non-residential programs with  
15                  a shared commitment to create and support  
16                  social change necessary to prevent and end  
17                  domestic violence.

18                  Each year, the National Network to End  
19                  Domestic Violence coordinates a National  
20                  Census of Domestic Violence Services. This  
21                  census recently took place on September 16,  
22                  2015, and provides a one-day, unduplicated  
23                  count of adults and children seeking services  
24                  from domestic violence programs in all states

1 and U.S. territories. Later this month, the  
2 National Network to End Domestic Violence  
3 will provide a briefing to Congress on the  
4 results of the 2015 survey. The information  
5 in that briefing will include some staggering  
6 information about New York State.

7 According to the census, New York has  
8 the highest demand for domestic violence  
9 services in the country. From this census  
10 this past fall, on one day in New York nearly  
11 7,000 victims of domestic violence received  
12 services. Also on that same day, almost  
13 1,000 requests for domestic violence services  
14 went unmet because programs did not have  
15 funding or the staff to respond to those  
16 requests for service.

17 We also know that domestic violence  
18 programs reduced 148 individual domestic  
19 violence service options for survivors and/or  
20 eliminated them during 2015. And finally,  
21 domestic violence programs reported that 115  
22 staff positions -- mostly direct service  
23 advocates -- were reduced or eliminated  
24 during the same time frame.

1                   We have an incredible demand for  
2                   domestic violence services here in New York,  
3                   as you can see, and I believe this is a call  
4                   to action for the State of New York. We have  
5                   the opportunity in front of us now to create  
6                   the strongest network of domestic violence  
7                   services in the country and, equally  
8                   important, to provide a clear message that a  
9                   meaningful investment in domestic violence  
10                  services and primary prevention is a top  
11                  priority for public protection in our state.

12                  Currently the New York State Executive  
13                  Budget contains little state-originating  
14                  dollars to support domestic violence services  
15                  and relies heavily on federal funding  
16                  sources. Clearly that federal funding is not  
17                  enough.

18                  Lessons from an August 2014 report on  
19                  domestic violence programs and practices in  
20                  other states indicates it is important to  
21                  insure that services are stable and available  
22                  for victims throughout a state. Victims,  
23                  their communities, and states are best served  
24                  by the presence of a network of local

1 programs whose sole purpose is to ensure that  
2 services and support for victims and their  
3 children exist, and that gaps and needs are  
4 identified and met. Frequently that includes  
5 the need for victims to flee their homes and  
6 communities in order to remain safe.

7 It is difficult to achieve these goals  
8 when programs are competing with one another  
9 for limited funds, are constantly facing the  
10 threat of losing funding, and grant  
11 administrators view local programs as vendors  
12 instead of as experts that offer  
13 comprehensive solutions to a serious social  
14 problems.

15 So today, we're asking that you ensure  
16 the following items are prioritized in the  
17 final budget. First, address some  
18 long-standing gaps in funding for local  
19 domestic violence programs across the state  
20 that have resulted due to several years of  
21 flat or reduced investments. And that  
22 includes \$6 million in TANF funding for  
23 non-residential domestic violence programs,  
24 providing at least a 3 percent increase in

1 the domestic violence shelter per diem rate  
2 as well.

3 Secondly, stabilize and increase civil  
4 legal services for domestic violence victims  
5 statewide. I ask that you review the funding  
6 levels in last year's budget, restore and  
7 increase it in order to meet the demands for  
8 services that are just so critical for  
9 domestic violence survivors.

10 Third, provide \$4.5 million in funding  
11 for local domestic violence programs to  
12 collaborate with colleges and universities in  
13 implementing the recent "Enough Is Enough"  
14 campus policy mandates that also include  
15 dating violence, domestic violence, and  
16 stalking services. This support for domestic  
17 violence programs is intended to complement  
18 the 4.5 million that's already provided in  
19 support for rape crisis programs and their  
20 work to prevent sexual assault.

21 We know that this was incredibly  
22 groundbreaking legislation that was passed  
23 during the last legislative session, and I  
24 encourage you to provide the funding for

1 domestic violence programs so that they can  
2 adequately support this legislation by  
3 addressing dating violence, domestic  
4 violence, and stalking in conjunction with  
5 colleges and universities across the state.

6 And then, fourth, create a primary  
7 prevention funding stream for domestic  
8 violence programs in New York by establishing  
9 a \$17.25 million fund in the public  
10 protection budget that will be dispersed  
11 through coordinated support to the coalition  
12 and local programs statewide. We know that  
13 the consequences of homicides are  
14 significant, not only for those immediate  
15 individuals involved but also communities and  
16 neighborhoods and our larger society. The  
17 average cost per homicide can exceed  
18 \$17.25 million when considering medical  
19 costs, lost future earnings, public program  
20 costs, property damage and losses, and  
21 quality of life losses.

22 We know that innovations are critical  
23 in the work to end domestic violence, and a  
24 lot of those innovations have come from

1 states with reliable, noncompetitive funding  
2 practices and strong state coalitions.

3 Also, just a couple of notes about  
4 primary prevention. This is a relatively new  
5 concept for many working to end domestic  
6 violence, whose main focus has been  
7 responding to victims. However, it is clear  
8 that a shift is at hand here for us and to  
9 include looking at programs and services that  
10 promote social change through activities,  
11 programs, and policies that change the  
12 attitudes, behaviors, and social norms that  
13 allow domestic violence to thrive.

14 Again, because the cost of a single  
15 homicide can be well over \$17.25 million, we  
16 are requesting funds at this level to  
17 demonstrate New York State's commitment to  
18 preventing domestic violence before it  
19 occurs. That's the crux and the basis of  
20 primary prevention services, to shift it to  
21 the front end.

22 So New York has a long history of  
23 being a leader across the nation, and we  
24 certainly should not want to be the

1           number-one state in the country regarding  
2           demand for domestic violence services. The  
3           time is now for us to move forward. It's a  
4           time for us to confirm our collective  
5           commitment to ending domestic violence by  
6           increasing these investments in vital  
7           programs, and it's a time for us to look at  
8           ways that we can really shift the process,  
9           shift the focus, shift the services so that  
10          we can prevent domestic violence from  
11          occurring in the first place.

12                        I look forward to working with you and  
13          your colleagues with the goal in mind of  
14          creating the strongest statewide domestic  
15          violence coalition, network of domestic  
16          violence services, and primary prevention  
17          initiatives in the country. And I want to  
18          thank you again for this opportunity to speak  
19          with you tonight.

20                        CHAIRWOMAN YOUNG: Thank you very  
21          much.

22                        Senator Nozzolio.

23                        SENATOR NOZZOLIO: Thank you, Madam  
24          Chair.

1           I certainly agree with the points you  
2           raised, particularly the issue of preventing  
3           domestic violence before it occurs. That  
4           you're asking for a sea change in our  
5           society; that's a good thing to ask for.

6           I think one of the first steps could  
7           be the establishment of Brittany's Law, which  
8           the Senate has passed a number of years,  
9           which you and I have talked about and you've  
10          failed to really support.

11          You're talking about prevention, you  
12          highlight prevention. Well, Brittany's law,  
13          otherwise known as the Domestic Violence  
14          Prevention Act, is a step in that direction.  
15          And it's been a step in that direction for a  
16          number of years now.

17          There were two homicides that resulted  
18          in the development of this statute, a double  
19          homicide of a daughter and a granddaughter.  
20          I wish you would relook at that, or at least  
21          look at it again -- I'm not sure if you've  
22          ever looked at it. But it's one thing to  
23          talk about prevention, it's another thing to  
24          ask for money for prevention, it's another

1           thing to work to positive steps to establish  
2           a way that citizens could be forewarned about  
3           violent behavior from the people that they  
4           associate with.

5                     I believe you know what I'm talking  
6           about. I would hope that you would put your  
7           action where your comments are and in fact  
8           support this measure.

9                     Thank you.

10                    MS. NEAL: Thank you very much.

11                    CHAIRWOMAN YOUNG: Thank you. Anyone  
12           else?

13                    Thank you for being here tonight.  
14           Appreciate it.

15                    Our next speaker is Executive Director  
16           Soffiya Elijah, Correctional Association of  
17           New York.

18                    Following Executive Director Elijah,  
19           we will have people from Prisoners' Legal  
20           Services. So if you want to move closer to  
21           the front, that might be helpful.

22                    Good evening.

23                    MS. ELIJAH: Hi. Good evening. I'm  
24           glad I'm not saying good morning.

1                   CHAIRWOMAN YOUNG: Yeah, I know --  
2 well, that may happen.

3                   Okay. This is quite an extensive  
4 amount of testimony. Would you be able to  
5 streamline that and hit the highlights,  
6 please?

7                   MS. ELIJAH: I have definitely  
8 summarized it. Do you have the --

9                   CHAIRWOMAN YOUNG: You're the best.  
10 Thank you.

11                   MS. ELIJAH: I'm going to hit some  
12 highlights, and you can ask questions, of  
13 course, if you want.

14                   I'm going to focus first on Raise the  
15 Age. Some specific things, of course: We  
16 are asking that the Legislature this year  
17 raise the age of criminal responsibility and  
18 get all of our children out of adult jails  
19 and prisons.

20                   As we know, raising the age is good  
21 for public safety. When Connecticut moved  
22 the majority of the cases for  
23 16-and-17-year-olds out of adult court, their  
24 arrests plummeted, including those for

1 violent crime. We believe that New York can  
2 experience the same.

3 Children prosecuted as adults can  
4 carry permanent criminal records, forever  
5 impacting their ability to obtain stable  
6 housing, employment, and education, each of  
7 which are key to successful community  
8 reentry. And all of these harms are  
9 disproportionately experienced by black and  
10 Latino children.

11 So we ask that you support seven key  
12 elements. First, raise the age overall for  
13 all offenses for juveniles to age 18.

14 Raise the lower age of juvenile  
15 delinquency from age 7 to 12.

16 Ensure that no youth are held in adult  
17 jails or prisons, but are instead placed in  
18 youth facilities, and create youth facilities  
19 that utilize evidence-based therapeutic youth  
20 development models in small residential  
21 settings that have been proven to be most  
22 effective.

23 Originate as many cases of  
24 16-and-17-year-olds in Family Court as

1 possible, and create Youth Court parts in the  
2 adult court system for the remaining cases.

3 Ensure parental notification upon the  
4 arrest of any 16- or 17-year-old, and ensure  
5 that all youth under 18 are interviewed using  
6 best practices.

7 Expand opportunities for diversion  
8 from the system, reducing the unnecessary and  
9 ineffective confinement of low-risk youth  
10 while increasing access to community-based  
11 interventions, which is good for children and  
12 good for the public.

13 And last, allow for the sealing of  
14 records for crimes committed by those under  
15 age 21, to provide relief from collateral  
16 consequences of an adult conviction.

17 Now I want to focus just briefly on  
18 another very central issue for the  
19 Correctional Association, and that is the  
20 issue of violence and abuse in our prisons.  
21 And specifically we're talking about the  
22 violence and abuse that is experienced by the  
23 people who are incarcerated at the hands of  
24 people who are public employees, paid with

1           our tax dollars -- to wit, correctional  
2           officers.

3                       As most of you know, there's been  
4           quite a bit in the media over the past  
5           12 months about violence and abuse and the  
6           beating to death of people who are  
7           incarcerated by corrections officers. That  
8           information was brought to light through the  
9           media by the work of the Correctional  
10          Association.

11                      Mr. Harrell was killed in April of  
12          last year, as was Mr. Taylor, both at the  
13          hands of corrections officers. Mr. George  
14          Williams was beaten within an inch of his  
15          life at Attica back in 2011 and still, the  
16          guards who did that, although they pled  
17          guilty, were allowed to keep their pensions  
18          and are still resisting civil penalties. At  
19          Clinton, Mr. Strickland was beaten to death,  
20          and unfortunately we saw the beating on video  
21          camera, and still no one was held  
22          accountable. And the atrocities that  
23          happened at Attica continue throughout the  
24          system on a regular basis, and no one is held

1           accountable.

2                       We must address the underlying culture  
3           and environment of abuse and violence. This  
4           is not a case of a few bad apples.  
5           Unfortunately, it is a system that is fueled  
6           by racism, dehumanization, and an overly  
7           punitive approach.

8                       We could start this process by closing  
9           Attica Prison and bringing an end to the  
10          abusive culture that exists within our prison  
11          system. Related to that, we must expand  
12          public oversight. We must provide for media  
13          access and public reporting, support for the  
14          Department of Justice to investigate and  
15          expand the oversight abilities of the  
16          Correctional Association.

17                      We must also closely examine the  
18          abusive use of solitary confinement. We feel  
19          that the settlement brought about by the  
20          NYCLU suit is an important first step, but  
21          there are still hundreds of people  
22          languishing in solitary confinement in our  
23          prisons.

24                      I will stop there. The bulk of my

1 testimony, as you have it, is in writing. If  
2 you have any questions, I'm happy to address  
3 them. Thank you.

4 CHAIRWOMAN YOUNG: Thank you very  
5 much.

6 Senator Hassell-Thompson would like to  
7 speak.

8 MS. ELIJAH: Good evening.

9 SENATOR HASSELL-THOMPSON: Good  
10 evening. Thank you.

11 I obviously have not had a chance to  
12 read your testimony, but what I looked for  
13 was to see if you had included in here any of  
14 the discussion -- I know that you've been a  
15 part of a coalition of prison reform groups  
16 who have looked at aging out in the  
17 correctional facilities, and those -- as you  
18 heard earlier, because I know you've been  
19 here for several hours, and so I know you  
20 heard the conversation that I had with  
21 Commissioner Annucci talking about release  
22 for those who are medically indigent.

23 Can you just elaborate for a minute,  
24 because of the amount of money that is stated

1 in that report that's really involved -- and  
2 I just want to go on the record again as  
3 talking about, just very quickly, about the  
4 fact that the numbers of people who are very,  
5 very ill and whose conditions are exacerbated  
6 by being in prison, just by virtue of the  
7 facilities themselves and the lack of the  
8 ability to get the kind of timely care that's  
9 necessary.

10 MS. ELIJAH: Yes, thank you. We did  
11 focus on that issue in our written testimony.  
12 Just in the interests of time, I didn't go  
13 into it in my summary. But we have, and I  
14 did address this last year, a growing and  
15 increasing number of people over 50 years old  
16 who are requiring more and more medical care.

17 It costs approximately \$60,000 a year  
18 to maintain someone under 40 in the DOCCS  
19 system, but as they get older that cost,  
20 because of medical expense, goes up as high  
21 as \$240,000 to \$260,000 a year. We have not  
22 enough medical beds available for those  
23 people who are in need of significant  
24 cognitive medical care. And we know that

1           those people by and large do not present any  
2           concern for public safety, and therefore the  
3           more humane and economically intelligent  
4           thing to do would be to move them out of the  
5           DOCCS system. They could be paroled and  
6           maintained in the community.

7                         We have approximately 9,000 people in  
8           the current system who are over 50 years of  
9           age, and that number is growing faster than  
10          any other segment of our prison population.

11                        SENATOR HASSELL-THOMPSON: Somewhere  
12          in the report, that I think I read that it's  
13          over 78 percent of the people incarcerated  
14          are over the age of 50. That's a tremendous  
15          number.

16                        MS. ELIJAH: It is.

17                        SENATOR HASSELL-THOMPSON: And the  
18          other quick thing that I wanted, before my  
19          time runs out, is to talk about the fact that  
20          the evaluation, when they come up for parole,  
21          they're denied release, time and again, due  
22          to the immutable fact of the nature of  
23          offense for which the person has been  
24          convicted.

1 MS. ELIJAH: Yes.

2 SENATOR HASSELL-THOMPSON: Help me  
3 with that one as well.

4 MS. ELIJAH: Many of the people who we  
5 find in our system who are 50 years of age  
6 and older are serving long sentences. And  
7 when they become parole-eligible, and having  
8 completed all the programming that's been  
9 required of them, they're being denied parole  
10 even though they have a low risk assessment  
11 score, over and over again, because of the  
12 nature of their crime. It's one thing that  
13 they can't change, any more than any of us  
14 can change our date of birth.

15 And so you find people who've been  
16 denied seven, eight, nine, and 10 times from  
17 being released on parole, despite the fact  
18 that they've had no disciplinary problems for  
19 many, many years and their risk assessment  
20 score is very low.

21 SENATOR HASSELL-THOMPSON: I just want  
22 to take my couple of seconds to thank you,  
23 number one, for your diligence and the work  
24 that you've done on behalf of our corrections

1 system.

2 And, you know, there's always this  
3 sense that we care more about the prisoners  
4 than we do the people who work there, but  
5 it's absolutely not true. I think it's as  
6 important for us to distinguish at this  
7 budgetary time the importance of both and how  
8 the care of -- if we want to be considered a  
9 humane society, that our prisons is the place  
10 to begin.

11 MS. ELIJAH: I couldn't agree with you  
12 more.

13 SENATOR HASSELL-THOMPSON: And I thank  
14 you again.

15 MS. ELIJAH: Thank you.

16 SENATOR HASSELL-THOMPSON: Thank you,  
17 Madam Chair.

18 CHAIRWOMAN YOUNG: Thank you very  
19 much.

20 MS. ELIJAH: Okay. Thank you.

21 CHAIRWOMAN YOUNG: Our next speakers  
22 are from Prisoners' Legal Services. And we  
23 have Karen Murtagh, executive director;  
24 Thomas Curran, member of the board of

1 directors; and John Dunne, also a member of  
2 the board of directors. Except we're missing  
3 one.

4 MR. CURRAN: John escaped.

5 CHAIRWOMAN YOUNG: Okay. He escaped.

6 (Laughter.)

7 CHAIRWOMAN YOUNG: Well, thank you for  
8 sticking it out, and welcome tonight. We  
9 look forward to your testimony.

10 MS. MURTAGH: Thank you. I think --

11 CHAIRWOMAN YOUNG: Again, it is quite  
12 thick, so if you could summarize, that would  
13 be helpful.

14 MS. MURTAGH: Oh, no problem at all.  
15 That's our plan.

16 John did apologize for not being able  
17 to be here this evening. He was here until  
18 about 5:30.

19 MR. CURRAN: His wife summoned him  
20 home.

21 CHAIRWOMAN YOUNG: We saw -- we did  
22 see that.

23 MR. CURRAN: Mine has summoned me  
24 home, but yet I remain.

1                   MS. MURTAGH: He told me he was under  
2 house arrest.

3                   MR. CURRAN: I'm hoping she's asleep  
4 by the time --

5                   CHAIRWOMAN YOUNG: Yes. Well, he was  
6 sighted in the building. And we did see  
7 John Dunne, so thank you very much.

8                   MS. MURTAGH: So my board member,  
9 Tom Curran, is going to begin.

10                  MR. CURRAN: The basic mission of  
11 Prisoners' Legal Services is to assure, or to  
12 try to assure, that New York's prisons are as  
13 humane as they can and should be. There's  
14 not a frivolous thing about it. This is not  
15 a starry-eyed lot. The Prisoners' Legal  
16 Services board, PLS's board, consists of  
17 former prosecutors, judges, defense lawyers,  
18 general practitioners, mental health  
19 professionals, and former legislators.

20                  PLS is dedicated and extremely  
21 hardworking. I've seen this staff and its  
22 board. The board votes with its wallet. We  
23 actually actively support this organization.  
24 We don't believe in the abolition of prisons,

1 but we believe in making them better.

2 And the fundamental belief is that it  
3 is incongruous for the criminal justice  
4 system to take away a person's liberty for  
5 violating perceived and acceptable norms of  
6 conduct, only to incarcerate them in settings  
7 that themselves don't fully uphold basic  
8 social norms and standards of justice.

9 Among other ills, we believe that such  
10 a systemic failure contributes to the scourge  
11 of recidivism and represents an ongoing  
12 threat to the safety of our communities.

13 Also PLS works, we believe, with DOCCS  
14 in order to make our prisons better and make  
15 them better places for the DOCCS personnel to  
16 work, and I think that Karen's going to  
17 educate you on that too.

18 And I'm out.

19 CHAIRWOMAN YOUNG: Thank you.

20 MS. MURTAGH: Thank you. Thank you,  
21 Madam Chairman.

22 As all of you know, the five of you  
23 that are left, PLS was created in 1976 as the  
24 number-one post-Attica reform. Fast-forward

1 to today, we have four offices across the  
2 state when we used to have seven. We have  
3 15 attorneys when we used to have 50. Our  
4 attorneys have to provide civil legal  
5 services to over 52,000 prisoners in  
6 54 prisons located across the state.

7 Tom mentioned that we are a partner  
8 with the Department of Corrections. We are a  
9 critical partner with not only DOCCS but with  
10 the Executive, the Judiciary, and the  
11 Legislature. With DOCCS, over the past  
12 several years we've created the Albion  
13 telephone program, so women prisoners can  
14 call PLS for assistance. We have worked with  
15 them to create a reentry video, which is  
16 shown at reception to all incoming prisoners.  
17 We have worked with the Executive and DOB on  
18 both encouraging prisoners to apply for  
19 Medicaid and on the Executive's clemency  
20 efforts.

21 We also work with the Judiciary. The  
22 Court of Appeals reaches out to us, time and  
23 time again, to take cases that it has granted  
24 leave to appeal in. Last year we accepted at

1           least three cases.

2                   And we work closely with the  
3           Legislature. A number of you send us letters  
4           that you've received from your constituents  
5           concerned about loved ones in prison, and we  
6           follow up on those letters and help to  
7           resolve those issues.

8                   But the most telling about PLS' role,  
9           partnership role, is what happened this past  
10          summer with the Clinton escape. After the  
11          escape happened, family members contacted  
12          PLS, frantic because they could not find what  
13          happened to their loved ones at Clinton.  
14          They called Clinton, they tried to visit,  
15          there was a lockdown, nobody could get in.  
16          Nobody was giving them any information.

17                   I contacted both the Executive and  
18          Tony Annucci. We worked together for PLS to  
19          put together a notice that we put on our  
20          Facebook page and our webpage, telling all  
21          the family members what was going on -- when  
22          the lockdown was going to be lifted, what  
23          meals were being served, letting them know  
24          that medical care was being given. So many

1 things that they were worried about that we  
2 were able to calm their fears about, which in  
3 turn results in calming the tension of the  
4 prison.

5 And if you look back at what happened  
6 at Attica, and you look back at what we were  
7 able to do this summer to calm those  
8 tensions, it is like night and day. That is  
9 why PLS is so important.

10 We also were asked to go to Clinton  
11 with Assemblyman O'Donnell and Assemblywoman  
12 Duprey and meet with the inmate liaison  
13 committee to discuss their complaints about  
14 what was going at Clinton. We met with them,  
15 and then we met with the superintendent, and  
16 we shared those complaints and we worked  
17 through many of those issues.

18 In the interests of time I just want  
19 to say I'm here today to ask the Legislature  
20 to add money to the appropriation in the  
21 Executive Budget. Governor Cuomo put us in  
22 the budget for \$2.2 million. I'm asking the  
23 Legislature to add \$1.3 million. Last year,  
24 you added \$1.2 million.

1 I'm asking for that add because we  
2 have been grossly underfunded for the past  
3 16 years, and even though we do a fabulous  
4 job, we cannot do the job the state has  
5 tasked us to do without additional funding.

6 Thank you very much.

7 MR. CURRAN: You won't regret funding  
8 this organization.

9 CHAIRWOMAN YOUNG: Thank you very  
10 much. We really appreciate you staying so  
11 late, and thank you for your valuable  
12 testimony.

13 MR. CURRAN: Thanks for the  
14 opportunity.

15 CHAIRWOMAN YOUNG: Thank you.

16 MS. MURTAGH: Thank you.

17 MR. CURRAN: Thank you.

18 CHAIRWOMAN YOUNG: Next, Executive  
19 Director Paige Pierce, Families Together in  
20 New York State, Inc.

21 And following Executive Director  
22 Pierce there's Terry O'Neill, director of the  
23 Constantine Institute. So if you could get  
24 ready.

1 MS. PIERCE: Hi. Thank you so much  
2 for staying. I know it's been a long day for  
3 you. I appreciate it.

4 CHAIRWOMAN YOUNG: It's been a long  
5 day for you. So we appreciate you too.

6 MS. PIERCE: As CEO of Families  
7 Together in New York State, a nonprofit,  
8 parent-run organization serving families of  
9 youth with social, emotional, and behavioral  
10 challenges, I have dedicated my career to  
11 serving our state's most vulnerable citizens,  
12 connecting them with community-based  
13 supports, and advancing sound social welfare  
14 policies in response to family identified  
15 needs.

16 As such, we have been advocating for  
17 juvenile justice reforms, specifically  
18 legislation to raise the age of criminal  
19 responsibility from 16 to 18.

20 As you are well aware, New York State  
21 continues to be only one of two states that  
22 automatically prosecutes and incarcerates  
23 16- and 17-year-olds as adults. Upon arrest,  
24 they are interrogated without so much as a

1 call to their parents, charged and  
2 incarcerated with the adult population in the  
3 local jail while awaiting trial.

4           Should they be found guilty, they are  
5 incarcerated with the adult prison population  
6 where they are five times more likely to be  
7 sexually assaulted, two times more likely to  
8 be injured by prison staff, and five times  
9 more likely to complete suicide than if they  
10 were in a juvenile facility. They are also  
11 more likely to recidivate upon release, do so  
12 at a higher level, and perpetuate public  
13 safety concerns.

14           While the Governor recently issued an  
15 interim-measure executive order that will no  
16 longer allow for incarceration of youth in  
17 adult facilities, the measure does not reach  
18 out to county jails.

19           For the last two years, I've shared  
20 stories of our children whose lives have been  
21 destroyed or even ended. I have them in my  
22 written testimony, and I won't read them all  
23 now, but I would really encourage you to read  
24 them.

1                   They're stories like Ben Van Zandt and  
2                   Kalief Browder, who are no longer with us.  
3                   They were both teenagers and arrested and  
4                   imprisoned with the adult population, and  
5                   both took their own lives.

6                   Throughout the time span of these  
7                   horror stories, I along with other advocates  
8                   have been here in Albany attempting to  
9                   advance systemic reforms. Given the fact  
10                  that I am here before you yet again this  
11                  year, it leads one to beg the question, how  
12                  many more children will be irrevocably harmed  
13                  or lost before we implement reforms?

14                  As you are aware, the Governor again  
15                  included in his Executive Budget proposal a  
16                  comprehensive Smart on Crime initiative that  
17                  allows us to keep intact a strong response to  
18                  violent offenses and cost-effective  
19                  evidence-based diversion reforms that will  
20                  result in a higher level of public  
21                  protection.

22                  Over the course of the past several  
23                  weeks, we have met with several legislators,  
24                  and similar to last year, the response has

1           been positive regarding Raise the Age -- with  
2           some concerns raised as well, related mostly  
3           to the violent offenses and a misguided  
4           notion that we are suggesting youth convicted  
5           of crimes such as murder or rape will be  
6           slapped on the wrist and forgiven. That is  
7           not now, nor has it ever been, the position  
8           of the Raise the Age advocates. Nor has it  
9           ever been reflected in the many bills  
10          drafted.

11                     Under the current proposed language,  
12           these youth would still be processed through  
13           the adult court system with stiff sentencing.  
14           The difference is that they would not be  
15           remanded to an adult facility until they are  
16           indeed an adult. And they would be given the  
17           appropriate services while incarcerated.

18                     It is, however, important to remember  
19           that such heinous crimes are an  
20           infinitesimally small percentage of the  
21           crimes committed by youth. The majority of  
22           initial crimes committed by youth are much  
23           less serious -- but despite evidence to the  
24           contrary, we continue to prosecute and in

1 many instances incarcerate them as adults.

2 In one study, the MacArthur Foundation  
3 Research Network on Adolescent Development  
4 and Juvenile Justice examined the  
5 effectiveness of prosecuting teens as adults  
6 by comparing New York teens with teens in  
7 New Jersey. In New York, juveniles as young  
8 as 13 can be charged in an adult court, while  
9 in New Jersey most juvenile offenders under  
10 the age of 18 are processed in juvenile  
11 court.

12 When comparing youth arrested for the  
13 same felony offenses in New York City and  
14 New Jersey, data showed that adolescents  
15 processed in New York adult courts were more  
16 likely to be rearrested, they were rearrested  
17 more often and more quickly and for more  
18 serious offenses, and they were  
19 reincarcerated at higher rates than those in  
20 the New Jersey juvenile courts. This is not  
21 a smart on crime approach, nor is it one that  
22 takes public safety into consideration.

23 We heard earlier stories of violent  
24 crime committed by recent parolees. We are

1 producing these adult criminals by sending  
2 our children to adult prisons.

3 We've also heard concerns about costs.  
4 While there is a modest up-front capital cost  
5 associated with imprisonment, the overall  
6 results are expected to decrease costs. As  
7 Soffiya Elijah stated earlier, Connecticut  
8 was a recent state to implement Raise the  
9 Age, and they've seen costs go down  
10 significantly. And I talk about that more in  
11 my written testimony.

12 So again, we contend that the fears  
13 are unlikely to be realized. The evidence  
14 overwhelmingly demonstrates our current model  
15 in New York State is archaic in its design,  
16 ineffective as a deterrent model, and  
17 exorbitantly costly. Renowned  
18 neuroscientists, respected researchers, and  
19 even our nation's Supreme Court have all  
20 registered concerns and recommended that we  
21 utilize the wide breadth of evidence to build  
22 a better system. It's time we heeded this  
23 advice.

24 I urge you to lead New York down a

1 path of reform in 2016. Last year I left you  
2 with a quote from Maya Angelou that says  
3 "When we know better, we do better." As I  
4 noted then, we know better and as a result,  
5 we need to do better.

6 This year I will suggest we ponder the  
7 words of Mahatma Gandhi: "There is a higher  
8 court than courts of justice, and that is the  
9 court of conscience. It supersedes all other  
10 courts." We cannot in good conscience leave  
11 this issue unattended again this session.

12 Thanks for your time.

13 CHAIRWOMAN YOUNG: Thank you.

14 Our next speaker is Director Terry  
15 O'Neill, from the Constantine Institute, Inc.

16 And then our final speaker will be  
17 Anne Erickson, CEO of the Empire Justice  
18 Center.

19 Welcome.

20 MR. O'NEILL: Thank you for your kind  
21 welcome, and thank you for your patience and  
22 forbearance this evening. I've been  
23 attending these meetings for over 30 years,  
24 so I know what you're going through. And

1 obviously the prepared statement that I gave  
2 you is not something I'm going to attempt,  
3 even though I'd like to dazzle Mr. O'Donnell  
4 with some real speed reading.

5           So what I'm going to do, I'm just  
6 going over about three items that are in our  
7 program. The one that is most timely and  
8 important is -- you know, we're all aware,  
9 across the nation, and notwithstanding, as  
10 Mr. Green said today, that crime continues to  
11 go down in New York and, as Commissioner  
12 Annucci told us, our prison population has  
13 been steadily shrinking -- but out in the  
14 streets and neighborhoods in this state and  
15 all over the nation, there's been an eruption  
16 of public dissatisfaction with the kind of  
17 policing services that people are getting.

18           And we all know the stories that have  
19 been in the news in the last couple of years.  
20 So our prescription for dealing with this is  
21 the concept of community policing, which has  
22 been around for over 25 years, and which was  
23 derailed here in New York in 1994 when Bill  
24 Bratton took over the New York City Police

1 Department and started American policing down  
2 the road of data-driven policing. So now,  
3 all across the nation, police chiefs and  
4 mayors are pointing to their downward-  
5 trending statistics as evidence that  
6 everything is just fine when we're hearing  
7 from people who have to live under these  
8 policing tactics that they don't like being  
9 treated like dots on one of Bill Bratton's  
10 crime maps.

11 So I'm not saying that we shouldn't  
12 have this kind of management tool, but it has  
13 to be balanced by some investment in  
14 restarting the community policing movement  
15 that's been -- we've lost total momentum on  
16 that. And I think that Mr. McDonald here and  
17 Pat Fahy can tell you that here in Albany,  
18 our police department over the past six years  
19 or so has gone down the road of recovering  
20 that community policing spirit many miles.  
21 And all you have to do is introduce yourself  
22 to how police is being provided in our  
23 neighborhoods, with neighborhood engagement  
24 units and a citizen organization that

1           interacts with the police on these issues on  
2           a continuing basis.

3                        So you may have heard last week that  
4           our mayor got shouted down by people from the  
5           Black Lives Matter movement, and they've  
6           called for our police chief to be fired.  
7           They're mistaken. Things are going better  
8           here in Albany than anywhere else, although  
9           last year we had an incident that upset many  
10          people.

11                      Now, I was reading the other day the  
12          report that the Assembly minority put out on  
13          a heroin-addiction tour of hearings. And one  
14          thing that jumped out at me, and Mr. Giglio  
15          tells me he heard this at every venue they  
16          went to in their seven-hearing tour, is that  
17          there is a big hole in our prevention  
18          program. We do not have a program that  
19          credibly reaches an audience of high school-  
20          aged kids. The whole philosophy behind the  
21          DARE program is just inappropriate for their  
22          way of thinking and accepting things.

23                      So what experts are telling us is that  
24          what will work is a peer-to-peer approach

1           where you enlist kids in school bodies to  
2           take on the responsibility of carrying the  
3           message to their schoolmates. And I have  
4           found a program that is doing exactly that.  
5           It's called Mentor International. It was  
6           founded by the Queen of Sweden in 1994, and  
7           six years ago Mentor opened an office in  
8           Washington, D.C., and started networking  
9           schools in the D.C. metropolitan area.

10                         And I've been determined to introduce  
11           this program to New York, and I was very  
12           happy in November when a foundation  
13           headquartered in Columbia County came up with  
14           the money to offer this program in three  
15           public schools in Columbia County. I  
16           attended two of them, and I can tell you that  
17           it went over very, very well with the kids.  
18           And what happens is they come in and do  
19           workshops and identify kids that have been  
20           pre-selected by teachers who would be likely  
21           to participate well in this program. They  
22           develop a program that's offered at a  
23           school-wide rally the next day, and after the  
24           rally on the third day, the mentor starts

1 sitting down with these kids and giving them  
2 training so that they can replicate this  
3 program on their own in their schools and in  
4 their community, because it also involves a  
5 linkage with the business community to create  
6 mentoring opportunities for kids in the  
7 community.

8 So there was one other thing that's in  
9 there in my written testimony. There's  
10 appended a draft of a bill that I've been  
11 promoting for quite a number of years. The  
12 bill would create a new program at the State  
13 University focusing on transnational  
14 organized crime. It doesn't interfere or  
15 conflict with anything else that the  
16 University is doing on homeland security or  
17 management or emergency disaster  
18 preparedness. It's something quite  
19 different, and it comes uniquely out of the  
20 history of the State Police and its  
21 pioneering exposure of the existence of the  
22 Mafia back in 1957.

23 They had quite a record of  
24 achievement, and their late superintendent

1 Tom Constantine is credited with having  
2 brought down -- from the time he was a field  
3 commander in 1985 through his years at the  
4 DEA -- the Cali cartel, the largest drug  
5 conspiracy in history. And then he went on  
6 to Northern Ireland and helped end three  
7 decades of terrorist violence there.

8 So this is a whole story that comes  
9 out of the very personality and character of  
10 our State Police. And as their anniversary  
11 is next year, I'd like to bring this proposal  
12 out into the open and make it a gift to the  
13 men and women of the State Police.

14 So with that being said, thank you  
15 again for your time and attention.

16 CHAIRWOMAN YOUNG: Thank you, Director  
17 O'Neill. Thank you for your perseverance.

18 And our final speaker of the night,  
19 last but not least, is Anne Erickson, CEO of  
20 the Empire Justice Center.

21 Thank you for joining us.

22 MS. ERICKSON: Thank you so much. And  
23 as usual, I admire the stamina. I'm not sure  
24 if I was quite last last year, but close to

1           it.

2                       So thank you very much. My name is  
3           Anne Erickson; I'm president and CEO of the  
4           Empire Justice Center. We are a statewide  
5           organization that provides training, support,  
6           and technical assistance for basically the  
7           back up center for the civil legal services  
8           side. We engage in legislative and  
9           administrative advocacy, and we provide  
10          direct representation in one of our four  
11          offices around the state in Rochester,  
12          Albany, Westchester, and out on Long Island.

13                      So again, thank you. You've heard a  
14          lot today about the judicial investment in  
15          civil legal services, and I just wanted to  
16          provide a little bit of context. You have my  
17          testimony; I'm not going to go through that.

18                      But when the task force to expand  
19          access to legal services, which is now the  
20          Judicial Commission on Access to Justice,  
21          first started operating in 2009, one of the  
22          things they did was take a look at where are  
23          we in New York State in terms of access to  
24          justice on the civil side.

1                   And what we found was that for those  
2 households on incomes at or below 200 percent  
3 of poverty, nearly half of them, 3 million  
4 people, experienced at least one civil legal  
5 need each year, and 1.2 million of them had  
6 three or more incidents where they needed  
7 civil legal assistance.

8                   And what are these kinds of needs?  
9 We're talking about housing, we're talking  
10 about evictions, we're talking about  
11 foreclosures, we're talking about income  
12 supports, we're talking about healthcare,  
13 disability -- we're looking at families, at  
14 the elderly, at the disabled, at veterans, at  
15 low-income homeowners. All of our  
16 constituents across the state, low- and  
17 moderate-income households who come up  
18 against the civil legal services system in  
19 ways that many of us do not. You know, they  
20 just confront issues that are driven by their  
21 poverty and by their economic fragility.

22                   At that point we were meeting about  
23 20 percent of the legal need of the poor and  
24 low-income households. The investment by the

1           Judiciary in civil legal service has made a  
2           tremendous difference. We are now meeting,  
3           as we heard earlier today from Judge Marks,  
4           about 30 percent of the civil legal needs of  
5           low- and moderate-income households in this  
6           state.

7                     We've made progress, but 70 percent of  
8           the civil legal needs of our constituents are  
9           still not being met. We have a long way to  
10          go. So this is really -- we are making  
11          inroads, but we are nowhere near where we  
12          need to be.

13                    I also wanted to touch on the impact  
14          on the courts. We heard very powerful  
15          testimony earlier today and this evening from  
16          the court clerks and from the court officers  
17          about the impact, from their perspective, on  
18          the courts, and I am with them.

19                    But when we first looked at what was  
20          happening on the civil side of the court  
21          system, 2.3 million litigants were coming  
22          into civil court unrepresented on an annual  
23          basis. Two-point-three million people  
24          walking into civil court without the benefit

1 of counsel, about to lose their homes, having  
2 lost their health care, having been denied  
3 unemployment, having had any array of issues  
4 that come at them.

5 We again have made some inroads:  
6 1.8 million people are now in front of our  
7 civil courts unrepresented, down from  
8 2.3 million. Still a long way to go.

9 So as you deliberate this budget --  
10 and I know there's a lot of pressure from a  
11 lot of different areas -- this is an  
12 investment we need to make, and we need to  
13 continue and hold strong to that commitment.  
14 It's the first time that New York State has  
15 really looked at this civil legal needs side  
16 of the equation in any systemic way since  
17 I've been around, and I've been doing this, I  
18 hate to say, for 26 years.

19 So we can't stand still, we can't walk  
20 backwards. We're finally where we need -- on  
21 the path that we should be on.

22 I also just wanted to mention the  
23 distribution of the funding. I have to  
24 really give the court, the OCA, a lot of

1 credit, because what they did is they  
2 distributed the funding based on judicial  
3 department, based on the number of households  
4 under 200 percent of the poverty. Very  
5 equitable distribution across the state. I  
6 represent programs outside of New York City;  
7 I'm always afraid, you know, it's all going  
8 to go to the City. That has not happened.  
9 It has really gone where the need is.

10 And then I would also just say on the  
11 economic impact in my testimony, you have  
12 information drawn from the most recent  
13 commission report, and they're estimating  
14 that every dollar invested in civil legal  
15 services draws back in about \$10 into the  
16 New York State economy.

17 So it's a good investment, it's a just  
18 investment. I would urge you to keep working  
19 with us, as we're finally on the path we need  
20 to be on in New York State.

21 And with that, I thank you very much.

22 CHAIRWOMAN YOUNG: Any questions?

23 Thank you.

24 SENATOR NOZZOLIO: We've gone full

1 circle. We started with this subject today,  
2 now we're finishing with it. Thank you very  
3 much.

4 MS. ERICKSON: See? Clean-up hitter.  
5 Thank you guys very much.

6 SENATOR KRUEGER: Thank you, Anne.

7 CHAIRWOMAN YOUNG: So thank you, Anne.

8 That concludes our public hearing,  
9 joint public hearing on Public Protection and  
10 the New York State budget proposal, and I  
11 want to thank all of my diehard colleagues  
12 for staying so late yet again tonight.

13 And I'd also like to thank all of the  
14 participants for hanging in there with us,  
15 so -- and the staff, too. So thank you very  
16 much.

17 - - -

18 (Whereupon, the budget hearing  
19 concluded at 9:42 p.m.)

20 - - -

21

22

23

24

