

1. Hearing On Criminal Justice Reform

Documents:

[FEBRUARY 13TH.PDF](#)

2. Legislative Session 2-13-20

Documents:

[LEGISLATIVE SESSION - HEARING BAIL REFORM, 02-13-20.PDF](#)

Theodore Roosevelt Executive and Legislative Building
1550 Franklin Avenue, Mineola, New York 11501

NASSAU COUNTY LEGISLATURE

**Hearing on
Criminal Justice Reform**



AGENDA

**February 13, 2020
11:00 AM**

1.	Patrick Ryder Commissioner Nassau County Police Department
2.	Jed Painter Counsel to the District Attorney Nassau County Office of the District Attorney
3.	PUBLIC COMMENT

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NASSAU COUNTY LEGISLATURE

RICHARD NICOLELLO
PRESIDING OFFICER

LEGISLATIVE SESSION

County Executive and Legislative
Building
1550 Franklin Avenue
Mineola, New York

Thursday, February 13, 2020
11:10 A.M.

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2 A P P E A R A N C E S:

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4 LEGISLATOR RICHARD J. NICOLELLO

5 Presiding Officer

6 9th Legislative District

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8 LEGISLATOR HOWARD KOPEL

9 Deputy Presiding Officer

10 7th Legislative District

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12 LEGISLATOR DENISE FORD

13 Alternate Presiding Officer

14 4th Legislative District

15

16 LEGISLATOR KEVAN ABRAHAMS

17 Minority Leader

18 1st Legislative District

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20 LEGISLATOR SIELA BYNOE

21 2nd Legislative District

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23 LEGISLATOR CARRIE SOLAGES

24 3rd Legislative District

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2 LEGISLATOR DEBRA MULE

3 5th Legislative District

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5 LEGISLATOR C. WILLIAM GAYLOR III

6 6th Legislative District

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8 LEGISLATOR VINCENT T. MUSCARELLA

9 8th Legislative District

10

11 LEGISLATOR ELLEN BIRNBAUM

12 10th Legislative District

13

14 LEGISLATOR DELIA DERIGGI-WHITTON

15 11th Legislative District

16

17 LEGISLATOR JAMES KENNEDY

18 12th Legislative District

19

20 LEGISLATOR THOMAS MCKEVITT

21 13th Legislative District

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23 LEGISLATOR LAURA SCHAEFER

24 14th Legislative District

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2 LEGISLATOR JOHN FERRETTI, JR.

3 15th Legislative District

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5 LEGISLATOR ANDREW DRUCKER

6 16th Legislative District

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8 LEGISLATOR ROSE WALKER

9 17th Legislative District

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11 LEGISLATOR JOSHUA LAFAZAN

12 18th Legislative District

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14 LEGISLATOR STEVEN RHOADS

15 19th Legislative District

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17 MICHAEL PULITZER

18 Clerk of the Legislature

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2 LEGISLATOR NICOLELLO:

3 Ladies and gentlemen, I would like to
4 get started. I'm going to ask
5 Legislator Bill Gaylor to lead us in
6 the Pledge of Allegiance.

7 (Whereupon the Pledge of
8 Allegiance was recited.)

9 LEGISLATOR NICOLELLO: Thank you
10 very much for attending today's hearing
11 on the criminal justice reform and its
12 effects on Nassau County and our
13 residents. We would like to get to our
14 speakers as quickly as possible so I
15 will offer just a few brief remarks.
16 It has been apparent for months that
17 criminal justice reform would have
18 significant effects on our county, on
19 our law enforcement, on our residents.
20 Most of us did not realize that the
21 effects and impacts would be as
22 immediate and as severe. Everyone
23 agrees that low level offenders who
24 pose no risk to the community and who
25 do not have the means to pay bail

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2 should not languish in jail. That is
3 simple justice. Everyone supports that
4 reform. However, the criminal justice
5 reform goes much farther than simple
6 reform. This drastically changed law
7 enforcement in the county and it's
8 taken away the discretion of judges to
9 assign bail to the vast majority of
10 crimes.

11 Over the last month or so, we
12 have seen drug dealers caught with
13 massive amounts of fentanyl and other
14 illegal substances being immediately
15 released. We have seen bank robbers
16 who are repeat offenders being
17 released. Home invaders being released
18 and the list goes on. Cashless bail.
19 Repeat DWI offenders being immediately
20 released and the list goes on.

21 Cashless bail and the new
22 discovery rules place enormous burdens
23 on our county, on our law enforcement
24 professionals, on our district
25 attorney. We need to know more about

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2 what they are doing, how they are
3 handling and how they are planning to
4 handle the effects of this criminal
5 justice reform.

6 We also need to hear from our
7 representatives of our law enforcement,
8 the actual men and women who keep this
9 county safe and we need to hear from
10 the public.

11 Now, we know from the newspapers
12 that there are discussions and
13 proposals in Albany to revise the
14 criminal justice reform, to change it,
15 to do away with some of the more
16 negative impacts. And one of the
17 purposes of this hearing is to keep the
18 focus on this issue to give momentum to
19 those in Albany who seek to change the
20 criminal justice reform.

21 Having said that, I would like to
22 offer to Minority Leader Abrahams the
23 opportunity to say a few words.

24 LEGISLATOR ABRAHAMS: Thank you
25 Presiding Officer. First and foremost,

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I think everyone on this dais agrees that there needs to be some level of reforms. I think when the announcement of the provisions in the bail reform came out our caucus reached out to those in the state that were actually a part of the enactment of this law and expressed our concerns. However, today's hearing is built on what we believe is a farce. By no doubt, and no stretch of the imagination, we believe that there needs to be reforms. But on December 16th the Republican majority decided to call on the county executive as if she had some debate, discussion, some enactment, some responsibility with the bail reforms that were passed in the state. And I quote, "They called on the county executive to oppose the crime reform law." The county executive, all she did was implement the law but suddenly she has been thrown into the thrust and the fire by the majority by insinuating

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2 that she had something to do with more
3 than following the law.

4 Furthermore, let's be clear. By
5 passing the bill reforms that occurred
6 in the state, the Republicans are
7 politicking and fear mongering more
8 than anything else. Let's stay in our
9 lane. The bottom line is we should be
10 expressing our concerns and I would
11 have taken a little less exception if
12 they expressed their concerns to their
13 state representatives. However, they
14 have taken the tack to try to loop in
15 the county officials that are a part of
16 this. Now, we should hear from our
17 police commissioner on how he's going
18 to deal with the law and we should hear
19 from our district attorney just the
20 same. But when I saw the story that
21 appeared December 16th that called on
22 the county executive to denounce, why
23 aren't we calling on denouncing the
24 SALT tax that was passed by the federal
25 government. Why haven't we called

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hearings in regards to NUMC. We have no business at all, other than fact gathering at this hearing, than anything else.

The bottom line is very simple. We have a responsibility to our public to ensure that we give them fair and balanced information. That's where this begins and that's where this should end. The bottom line is very simple for us. The county did not pass, did not have debates or discussion. They had nothing to do with enactment of this law. No Democrat, no Republican in this legislature had anything to do with this law but today we find ourselves holding a hearing basically which starts with the premise of calling on the county executive to denounce the law, which to me is just trying to link her to something that you believe -- that you gain some type of political advantage on and to me is wrong. That

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2 to me ties into everything that is more
3 fear mongering than anything else.

4 And as I said before, let's be
5 clear, we believe that there needs to
6 be changes to this law and we believe
7 that we have seen some of those changes
8 that were announced the yesterday by
9 the senate majority leader in New York
10 State. However, I just want to say it
11 again and emphatically that the bottom
12 line for us is very simple. That this
13 legislature by some of its members'
14 actions have taken irresponsible
15 reckless actions by trying to deceive
16 the public that the county executive or
17 Democrats as a whole are in favor or in
18 are in support of any of the measures
19 of the Criminal Justice Reform Bill.

20 We believe, yes, as presiding
21 officer said and one thing I will
22 agree, low level crimes that folks that
23 are nonviolent should not be
24 languishing in jail for periods of time
25 when they should be able to have some

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type of fairness and balance and justice that should be applied to them. But today and violent criminals should have the discretion of judicial review before they proceed or get out of jail. But let's be clear today. Today is all about the Republicans trying to use this issue to further their politics. That's it. If it was more built on fact gathering, if it wasn't built on accusations and insinuations, then they would have restored some more credibility. But the fact remains that that news story that goes back to December 16th was very clear. It called on the county executive who, again, had no debate, no discussion to our knowledge. Had no enactment, did not vote on any bills and all she did was try to comply with the bill. But somehow she got tied and linked into it. Thank you.

LEGISLATOR NICOLELLO: I'm more than a little bit surprised that there

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would be any sort of controversy of the fact that we're having this hearing. I would assume that all the legislators would be speaking with one voice on this issue. In fact, urging all legislators in Albany to change the bill. County Executive was called upon in mid-December to implement a plan to deal with the criminal justice reform and she did several days after the press conference. More importantly, the county executive since that time has been consistently calling on the state to remake this law. So she is not the subject of this hearing.

I disagree with the Minority Leader however that with the premise that we have nothing to do with respect to criminal justice reform since it was adopted by Albany. It is our police, it is our police officers, men and women, it is our district attorney who have to enforce this, the laws in this county. Who have to deal with this.

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2 It's our judges in Nassau County who
3 are being restrained from keeping
4 dangerous suspects off the street. And
5 it's our residents, ultimately, who are
6 in danger if there is a threat to
7 public safety as we believe there is.
8 So to argue that there is some reason
9 we should not have this hearing is
10 wrong. As I said, one of the reasons
11 we're doing this is to keep the
12 pressure on Albany. They are feeling
13 the pressure. There are proposals now
14 to change this law. But things have a
15 way of getting shelved so we want to
16 make sure that our representatives in
17 Albany continue that momentum, get this
18 changed, reform this law. Having said
19 that -- yes, go ahead.

20 LEGISLATOR ABRAHAMS: So I
21 disagree with a couple of things the
22 Presiding Officer just said. One,
23 first and foremost, we agree that there
24 should be a hearing but not built on
25 the premise of denouncing the county

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2 executive.

3 LEGISLATOR NICOLELLO: Where did
4 you see us --

5 LEGISLATOR ABRAHAMS: I did not
6 cut you off when you spoke.

7 LEGISLATOR NICOLELLO: Sure. Go
8 ahead.

9 LEGISLATOR ABRAHAMS: Your
10 actions that were presented in the
11 December 16th story, and I could quote
12 you and quote Mr. Ferretti just the
13 same but I didn't want to go down that
14 road. Your story talked about
15 denouncing, asking the county executive
16 to denounce as well as the six
17 democrats in the state senate that
18 represent Long Island, you were calling
19 on them to denounce the bail reform
20 bill. That's almost like me saying to
21 you that we should call on our members
22 of Congress that happen to be
23 republicans to denounce the SALT tax.
24 That is -- and then furthermore to hold
25 hearings on it.

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2 So from that standpoint, I am in
3 support. We have indicated we are in
4 support of the police department
5 providing data to this body to ensure
6 that we are making the public safe.
7 But your premise from day one on this
8 bill has been politics and you may have
9 some good points in regards to serving
10 the public, that part we don't disagree
11 with and that's why we're here today.
12 However, it's been clouded by politics
13 and fearmongering more than anything
14 else.

15 Furthermore, I will say this, the
16 bottom line is if we're going to start
17 holding hearings on items that do not
18 originate from this body, that's all
19 well and good, I would like to hold a
20 hearing on the SALT tax as well because
21 I see my residents being hurt by
22 thousands of dollars by something that
23 was implemented by a republican
24 president. So if we want to start
25 doing that kind of stuff, let's go

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2 right ahead. Let's call a hearing on
3 the Nassau University Medical Center.
4 I've been asking for a hearing on that.
5 That actually impacts Nassau County
6 residents, just as this does, and has a
7 financial impact on them as well. I've
8 been calling for hearings on that since
9 April of last year. Let's do it. So
10 from that standpoint, I don't see why.
11 I'm not saying you shouldn't have a
12 hearing. I'm saying your premise for
13 building the hearing up until where we
14 are today started with denouncing
15 someone that had no debate, no
16 discussion, no vote, no ability to
17 impact change other than calling on it
18 from a bully pulpit for this particular
19 item that's in front of us today.
20 That's what I'm asking for. Is that
21 your premise in that story to me
22 resonated of more politics than good
23 government and the best interests of
24 the people of Nassau County.

25 LEGISLATOR NICOLELLO: It's

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2 apparent that the minority somehow
3 feels pressure on this issue but I can
4 say this: Who cares what happened in a
5 press conference two months ago? The
6 county executive has done the right
7 thing since then, she has repeatedly
8 called on the state legislature to
9 amend this bill. So she has nothing to
10 do with this hearing. This is about
11 exploring what this law is doing to our
12 communities and so the fact that there
13 was a press conference two months ago
14 is completely irrelevant. Let's
15 finally hear from the people.

16 LEGISLATOR ABRAHAMS: The point
17 of the press conference --

18 LEGISLATOR NICOLELLO: Let's move
19 on with the debate. Let's talk to the
20 people.

21 LEGISLATOR ABRAHAMS: The point
22 of the press conference is it was so --
23 it was so --

24 LEGISLATOR NICOLELLO: I'm going
25 to call the witness which is Mr. Victor

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2 Maldonado.

3 LEGISLATOR ABRAHAMS: So as I
4 said before --

5 LEGISLATOR NICOLELLO: Mr. Victor
6 Maldonado, would you please come
7 forward.

8 LEGISLATOR ABRAHAMS: So you're
9 going to cut off the debate? Look, we
10 want to be able to --

11 LEGISLATOR NICOLELLO: Stop.
12 Stop.

13 LEGISLATOR ABRAHAMS: We want to
14 get to the --

15 LEGISLATOR NICOLELLO: No. We
16 want to hear from the people.

17 LEGISLATOR ABRAHAMS: We would
18 like to hear from the people as well
19 but the people should also understand
20 that you have --

21 LEGISLATOR NICOLELLO: Would you
22 please let Mr. Maldonado proceed.

23 LEGISLATOR ABRAHAMS:
24 Mr. Presiding Officer, you have created
25 this premise and now you want to take

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2 it back. You want to hit the reset
3 button after you called on somebody
4 that had no jurisdiction in the actual
5 bill.

6 LEGISLATOR NICOLELLO: Would you
7 please let Mr. Maldonado speak.

8 LEGISLATOR ABRAHAMS: That's what
9 you decided to --

10 LEGISLATOR NICOLELLO: Let's let
11 Mr. Maldonado speak.

12 LEGISLATOR ABRAHAMS: So as I
13 said before let's start to call
14 hearings --

15 LEGISLATOR NICOLELLO: You'd
16 rather speak to Mr. Maldonado, is that
17 right?

18 LEGISLATOR ABRAHAMS: No. No.
19 That's not what I'm saying.

20 LEGISLATOR NICOLELLO: Then stop
21 speaking. Would you let the gentleman
22 speak.

23 LEGISLATOR ABRAHAMS:
24 Mr. Presiding Officer.

25 LEGISLATOR NICOLELLO: You're out

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2 of order.

3 LEGISLATOR ABRAHAMS: You said --
4 no, I'm not out of order.

5 LEGISLATOR NICOLELLO: You're
6 completely out of order.

7 LEGISLATOR ABRAHAMS: You made a
8 remark in regards to my statement and
9 now I'm responding to your remark. I
10 never cut you off and now you're trying
11 to cut me off, which I don't understand
12 the logic of that unless you are -- you
13 understand that you made a mistake a
14 month ago --

15 LEGISLATOR NICOLELLO: What are
16 you talking about?

17 LEGISLATOR ABRAHAMS: -- when you
18 actually --

19 LEGISLATOR NICOLELLO: It's about
20 bail reform hearing. Who cares what
21 press conference existed two months
22 ago.

23 LEGISLATOR ABRAHAMS: Well, the
24 public should care because this is --
25 you're using this vehicle after

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2 galvanizing politics --

3 LEGISLATOR NICOLELLO: Why are
4 you concerned about listening to the --
5 understanding this issue?

6 LEGISLATOR ABRAHAMS: No, no, no.

7 LEGISLATOR NICOLELLO: You think
8 it's a bad issue for you. Let's join
9 together and get this changed. That's
10 all we want to do.

11 LEGISLATOR ABRAHAMS: Well, if we
12 were really sincerely trying to join
13 together, you and I would have written
14 a joint letter not just to the county
15 executive's.

16 LEGISLATOR NICOLELLO: Okay.
17 Let's write a joint letter.

18 LEGISLATOR ABRAHAMS: The county
19 executive would have joined with us.
20 We should have written a joint letter
21 to the state.

22 LEGISLATOR NICOLELLO: I agree
23 with you. Let's do it.

24 LEGISLATOR ABRAHAMS: You're
25 saying that now two months after the

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2 fact after you attacked the county
3 executive.

4 LEGISLATOR NICOLELLO: Who cares?
5 Who cares? It was two months ago.
6 She's done the right thing since then.

7 LEGISLATOR ABRAHAMS: I know. I
8 know. I know.

9 LEGISLATOR NICOLELLO: How many
10 times do I have to say it. She's done
11 the right thing since then.

12 LEGISLATOR ABRAHAMS: I get that.
13 I get that.

14 LEGISLATOR NICOLELLO: All right.

15 LEGISLATOR ABRAHAMS: But you've
16 decided -- but your hearing is based
17 off of a false premise.

18 MR. MALDONADO: Guys, I think you
19 made your point. Thank you.

20 LEGISLATOR NICOLELLO: Let's go.
21 Mr. Maldonado.

22 MR. MALDONADO: Thank you for
23 having me here to speak on bail reform.
24 I wrote a speech I'm going to follow it
25 verbatim. I'm here to lend a voice to

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the many of us who innocently and unwittingly have become victims of bail reform and cannot be here today. I am here to speak out about an egregious law passed in our great state of New York that does not take into consideration the consequences affecting the public safety of its constituents. It is with a broken heart, a broken heavy heart that I stand before to show the reality of what Albany has created.

Our reality. Our own personal reality is as horrible as they come. Our reality is not based on sensationalism. It is not based on media hype. It is not based on exaggeration. It is based on fact. The most relevant one is that my son Jonathan Flores-Maldonado has lost his life as a direct result of the enactment of this law. Sadly I am here today because Lillian and I have lost our son. Rebecca has lost her

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2 soulmate. Victor, Matthew, Jack,
3 Ashley and Justin lost a beloved
4 brother. And the community lost a good
5 caring law abiding young man at the
6 beginning of his promising life with a
7 bright future in front of him.

8 Who was Jonathan Maldonado.
9 Jonathan Flores-Maldonado was an
10 intelligent caring young man who in the
11 early hours of Sunday morning of
12 January 12, 2020 while driving for Uber
13 and getting people home safely was
14 killed in a tragic car accident by the
15 accused. He had been working extra
16 shifts on the weekends so he could do
17 something special for Valentine's Day
18 for Rebecca. We believe he was saving
19 some money to buy her an engagement
20 ring and propose. It was something he
21 had been talking about for quite some
22 time. Valentine's Day is tomorrow.
23 And because of the law, we will be
24 grieving the loss of an incredible
25 young man when we should be celebrating

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the engagement of one of the most wonderful partnerships I've ever seen.

Last May we got to see Jonathan graduate with a degree in biology from Buffalo State University. Instead of heading back to Long Island, he decided to stay in Buffalo with his beloved Rebecca and support her while she was finishing her school.

Jonathan started driving Uber to make ends meet while also saving for his life together with Rebecca. Together they had plans to move to New York close to me in the Bronx, he always gravitated towards family. Jonathan and Rebecca had plans to get married and have three children. They even planned a cruise for Rebecca's parents who are going to be celebrating their 30-year anniversary. We were so excited to officially Rebecca into our family and vice versa and while we will always be family, things will never be the same without Jonathan. Jonathan

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was the son that drove eight hours to go check on his grandparents then drove another two hours to check on his mom and on his way back to Buffalo he will come by to see me. Sometimes we'll play 18 holes of golf at Van Cortland or 9 at Mosholu. We would talk about life, current events and how to get better at golf. Jonathan would drive his little sister Ashley to Baltimore whenever we had a family event. He would drive his sister to Baltimore before he went to Buffalo. He always cared for everyone. He knew, he always saw the good in people.

Jonathan signed up to be an organ donor, he was also a blood donor and he donated often with the New York blood center. They were always asking for Jonathan to come to donate because he had a very high platelet count. Sometimes that's quite rare in a person. He has precious blood and he donated it to save other people's

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2 lives.

3 And then there's the flip side.

4 The man responsible for taking my son's
5 life. The accused is no stranger to
6 the criminal justice system. The
7 accused has been arrested multiple
8 times for DWI's and tampering with an
9 ignition interlock device. He has
10 multiple DWI convictions and multiple
11 felony convictions. He didn't care
12 that he drove intoxicated. He didn't
13 care that he did it often with
14 absolutely no regard for the safety of
15 himself or others and Jonathan paid the
16 ultimate price. The accused on January
17 1, 2020 was arrested and released under
18 the new bail reform law for interfering
19 with his ignition interlock device.
20 This device was ordered to prevent this
21 man from drunk driving as he has done
22 before many times. On January 10th,
23 the accused appeared in court for this
24 charge and was released without bail.
25 Why? I heard it was because he had not

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2 been fingerprinted. Really? Multiple
3 felonies, DWI convictions and you still
4 need his fingerprints? Not even two
5 whole days later the accused got behind
6 the wheel of a car while drunk three
7 times over the legal limit, rear ended
8 my son at 135 miles-per-hour killing
9 him.

10 The police arrived soon enough to
11 see him trying to escape as he fought
12 off the officers. He told them that it
13 didn't even matter because the law
14 changed on January 1st and I will be
15 out tomorrow. Does anybody see
16 anything wrong here? Anybody?

17 Political parties fighting each
18 other while they should be working
19 together to bring justice to my son.
20 The bottom line nothing has changed.
21 The fact of the matter is all of this
22 could have been prevented. A young
23 life, a good soul, a man that had
24 aspirations to help others by studying
25 biology and pursuing a career in

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2 medicine has been lost. Bail reform
3 has to happen. Bail reform allowed
4 this to happen. Excuse me. It is an
5 egregious law period. No thoughts have
6 gone into this law. Public safety was
7 not considered. A judge's discretion,
8 professional discretion was left out
9 and the history of the accused could
10 not be used to make an informed
11 decision. There are many things wrong
12 with this law that need to be amended
13 before more lives are lost and more
14 families are shattered.

15 And so I have a lot of questions.
16 The law emboldens career criminals that
17 will take advantage of us all. How
18 many times can a person commit a crime
19 be arraigned and released? Who has
20 decided what is and what is not a
21 violent crime? What of the law
22 enforcement's moral who knows that an
23 arrest will only lead to a release of a
24 person accused of a vicious crime. Why
25 even bother arresting a criminal if the

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2 judges can't hold them. Jonathan's
3 death is on the hand of the legislative
4 body who passed the bill into law that
5 gives the judge no discretion.
6 Fingerprinted offenses should apply to
7 any crime where public safety is
8 concerned, including drunk driving or
9 tampering with the ignition interlock
10 device regarding of what county you
11 live in. Those are violent offenses.
12 They resulted in the loss of my
13 beautiful son. Any time a drunk person
14 gets behind the wheel of a car they run
15 the risk of killing someone. It needs
16 to be changed and it needs to be
17 changed now. The family of victims
18 don't want flowers. Don't want
19 condolences. Don't want to hear I am
20 so sorry for your loss and they sure as
21 hell don't want their information given
22 out to the defendants. We want justice
23 and we want to heal. Here are just a
24 few of the crimes where the accused can
25 walk right out of jail and maybe just

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2 pay you a visit. Third degree assault,
3 reckless assault of a child, stalking
4 as a hate crime, vehicular
5 manslaughter, aggravated vehicular
6 manslaughter, promoting a suicide
7 attempt, aggravated vehicle
8 manslaughter, third, fourth and fifth
9 degree arson. Bail jumping, escape,
10 endangering the welfare of a child,
11 promoting a sexual performance by a
12 child. Criminal possession of a
13 firearm. Criminal possession of a
14 weapon on school grounds. Obstruction
15 government services with a bomb.

16 If you're a victim or a witness
17 to any of these crimes I just
18 mentioned, guess what? The accused
19 will have your information. Let's look
20 at the criminal and what it's like on
21 the inside of the criminal justice
22 system. Career criminals don't stop
23 once they're on the inside. When
24 they're released where do they think
25 they will look for their next victims

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2 and where their victims will be living?
3 To the same communities that they live
4 or are released to, that's where.
5 Albany, you are not doing anyone any
6 favours by treating this very
7 complicated situation with a sledge
8 hammer. This law has to be changed so
9 that it applies to the right people.
10 People who have for the first time have
11 made a mistake, have shown remorse in
12 an effort to rehabilitate. People who
13 have a loving family and need to work
14 to support others and give love.
15 People make mistakes but career
16 criminals don't make mistakes. And
17 they are going to take this law and
18 turn it into their advantage by
19 committing more crimes with the
20 knowledge that they will be released.

21 These people or career criminals
22 are being given event tickets and gift
23 cards as incentives for showing up to
24 their court hearings. We are rewarding
25 the criminals that just robbed your

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2 grandmother, burglarized your home,
3 sold your child into prostitution,
4 kidnapped your daughter or sold drugs
5 to your child that resulted in their
6 death. This law should not apply to
7 these criminals. Repeat offenders and
8 career criminals who have no regard for
9 humanity or human decency. Any judge
10 would have seen that but that doesn't
11 matter with this new law.

12 So much has gone wrong and all of
13 it could have been prevented by taking
14 into consideration five things. Public
15 safety, history or pattern of the
16 accused, alternative solutions such as
17 rehabs, halfway houses for people in
18 need of rehabilitation and/or housing.
19 Recommendation of law enforcement and
20 criminal correction personnel who have
21 firsthand knowledge of the person being
22 released. And most importantly the
23 judges discretion.

24 In closing, our family
25 appreciates that all of you have done

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2 are advocating. We are very grateful.
3 I would like to thank all of the
4 legislators, law enforcement and
5 judicial personnel who are fighting to
6 get this law amended. I also want to
7 thank the media and the investigative
8 reporters who have covered this tragic
9 event and other tragic events related
10 to this egregious law. We have a lot
11 of work to do and we must not give up.
12 We must bring justice to Jonathan.
13 Jonathan, I believe that you are in the
14 loving grace of Almighty God. We miss
15 you so very much all. Our hearts are
16 broken but I will take comfort in
17 knowing that your death will not go in
18 vain. Our lives were changed forever
19 because of the person you were and what
20 you meant to all of us. I will fight
21 to get this law amended so that the
22 people who deserve it and want a second
23 chance will have one and so that career
24 criminals and repeat offenders do not.
25 I just want to say to you that your

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2 family and friends love you. We miss
3 you so very much and you will never
4 ever be forgotten. See you in heaven.
5 Save me a tee time. We love you.
6 Thank you everyone and may God bless us
7 all.

8 LEGISLATOR NICOLELLO:
9 Mr. Maldonado, all of us up here are
10 parents. All of us up here feel -- our
11 hearts go out to you and your family in
12 this time and I cannot image how much
13 courage it took to do that. As you
14 said, we all will be advocating that
15 this law will be changed to prevent a
16 tragedy like this from happening going
17 forward. Does anyone else want to say
18 anything?

19 LEGISLATOR ABRAHAMS:
20 Mr. Maldonado, I don't know if he had
21 left or is sitting down. I can't see
22 him behind the camera. I'm sorry.
23 Again, we just would just reiterate
24 what the presiding officer indicated.
25 I know it doesn't -- there's no words

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2 that I can express on behalf of this
3 caucus or myself that would give your
4 family the comfort that it needs at
5 this time. We pray that with God's
6 help you'll be able to find your way
7 through this very difficult situation.
8 And as you said before, we will find
9 justice for your son, as well as all of
10 those that have been hurt over the last
11 several weeks in regards to getting
12 changes to the bail, reform bill.

13 LEGISLATOR NICOLELLO: Would
14 anyone else like to add anything?
15 Legislator Ford.

16 LEGISLATOR FORD: Mr. Maldonado,
17 also my condolences. Nothing is worse
18 than the loss of a child and to lose
19 your son in such a way just is so
20 heartbreaking and I applaud your
21 courage to be able to come here and
22 speak about this and, you know, to
23 fight for what needs to be done and to
24 restore justice back into our system.
25 Please extend our condolences to your

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2 family, to all of you. I just -- I
3 don't know what to say but God bless
4 you.

5 LEGISLATOR NICOLELLO: Legislator
6 Rhoads.

7 LEGISLATOR RHOADS: Thank you,
8 Mr. Presiding Officer. Mr. Maldonado,
9 I just want to say thank you. I want
10 to say thank you for your courage in
11 coming forward and doing honor to your
12 son. This situation that your family
13 is involved in and what happened to
14 Jonathan is an absolute tragedy and the
15 fact that you're coming forward
16 provides an opportunity for all of us
17 to turn the tragedy of your son's story
18 into a cause for good, into an
19 opportunity to be able to correct an
20 injustice that was done through
21 criminal justice reform and
22 particularly through cashless bail. I
23 just -- I can't applaud your courage
24 enough for taking an unimaginable
25 tragedy and turning it into an

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2 opportunity, hopefully, to do good for
3 others by pushing for repeal and for
4 sensible amendments to this bill. So I
5 just want to say thank you for taking
6 the time for coming down and for
7 sharing your story with all of us.

8 LEGISLATOR NICOLELLO: So we have
9 two speakers who would like to make a
10 presentation at this time. Our
11 commissioner of police, Patrick Ryder,
12 and Assistant District Attorney Jed
13 Painter. Gentlemen.

14 COMMISSIONER RYDER: Kind of loss
15 of words right now after hearing
16 Mr. Maldonado speak, and our prayers
17 are with him and his family. And the
18 earlier exchange here on the floor
19 shows the passion of everybody
20 involved. Everybody involved wants to
21 see change. There are two victims
22 here. There are victims that are
23 victimized again because of the change
24 how extreme that it has been. And then
25 there are the victims of the kids that

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2 are sitting in jail because they can't
3 afford bail and because they don't have
4 an income to get them out and get a
5 better attorney. So I have been called
6 that I am politicizing the issue. I'm
7 not politicizing the issue. I don't
8 have an agenda, except for this. I
9 speak for the victims that can't speak
10 for themselves. I fight for the
11 victims that can't fight for
12 themselves. We take an oath in law
13 enforcement to protect and serve the
14 people, all the people no matter what
15 race, no matter what religion or no
16 matter what side of the law they're on.
17 We always treat them with respect and
18 we treat them with professionalism and
19 that's what our police department wants
20 to continue to do.

21 I will speak with the data. I
22 will give you the truth. I will give
23 you the facts then you make your own
24 interpretation. I said that last week
25 and it came around against me. But we

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2 live in the safest county for its size
3 in the country, the crime has never
4 been so low. We're down 30 percent in
5 crime. Our overdoses are trending in
6 the right direction. Our homicides
7 have been record lows. Our robberies
8 and burglaries have extremely dropped
9 over the last several years.

10 Now I'll give you some crime
11 numbers but I want to make a point to
12 that. It's too small of a data set to
13 really jump one way or the other. It's
14 only been 40 something days and to the
15 credit of Jack Maple, the creator of
16 COMPS that will tell you that crime is
17 affected in the short term by weather.
18 We've had a very mild winter so I can't
19 make a direct link to anything at this
20 point regarding crime, except for that
21 I did say early and I'll say it again
22 that quality of life crimes do increase
23 when there is no -- and I don't want to
24 use the word penalty but some kind of
25 answer to someone that breaks the law

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and how we can help them. Whether it's put them in the right court, putting them into recovery or putting them into jail. All of that process and the points of which we'll bring up today. But if you look at our crime numbers, all of our violent crime is actually down. Our robbery commercials are down, 13 from 20 last year. Our street robberies are down 24 from 30. But our assaults, they went up a 52 over 34. Our residential burglaries went up 48 over 33 and our commercial burglaries went up 42 over 36.

Major crime is up six and a half percent, but again, I will emphasize the data set is too small to make that comparison yet. But our total crime number, which includes those small level crimes, has gone up five percent.

We were asked to form a committee to look at the -- how justice reform will affect us here in Nassau County. The report was completed today, they

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2 will be sent to all of you here in the
3 legislature, both the majority and the
4 minority and it will be also sent to
5 the committee members that sent me all
6 of their ideas and presentations. But
7 as I read through it, I will tell you
8 many of them are addressed today in
9 Newsday. And again, that's how it's
10 being proposed, how it comes out I
11 don't know. But Albany has been
12 listening. Albany has been looking to
13 make those changes.

14 The issues presented the new
15 legislation limits the cases of
16 qualified offenses for which a judge
17 has the option to set cash bail. Our
18 recommendation is that you do not limit
19 the ability to set cash bail based on
20 the crime charged. Again, I believe
21 that's being addressed according to the
22 Newsday article.

23 Issues presented: The new
24 legislation has limited the factors of
25 which the court can consider

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2 determining the defendant's custody
3 status pending trial. We've seen cases
4 where they've walked out. We've seen
5 our recent robbery subject which was
6 arrested for a bank robbery was given
7 the ankle bracelet. We gave the
8 controls, he cut the ankle bracelet
9 off, he committed two more bank
10 robberies, he has now been remanded as
11 he was arrested the other night.

12 Ramifications for violating
13 nonmonetary bail conditions such as
14 electronic monitoring are not
15 significant enough to deter a defendant
16 from violating these terms. Many
17 people will fit into electronic
18 monitoring but not all will fit into
19 electronic monitoring. Many should be
20 released without bail but not all
21 should be released without bail.

22 Issue presented: Pursuant to the
23 new legislation the court cannot
24 immediately issue a bench warrant.
25 We've taken the control out of the --

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2 our judges hands to determine,
3 depending on that background of that
4 individual, that history of that
5 individual, if he should immediately
6 issue that bench warrant so that we can
7 go out as law enforcement and execute
8 that warrant. The new legislature
9 limits judicial discretion when
10 considering applications before the
11 court. Again, a judge should have, and
12 always has, the opportunity to see that
13 person's past history. There are many
14 kids that sit in jail first time
15 offenders for a low level drug charge
16 that should be there because they
17 couldn't afford bail, they didn't have
18 the right attorney. I agree with that
19 and I agree with that part of justice
20 reform but there are many people that
21 are arrested again for small or even
22 larger drug cases that are now going to
23 get out because of justice reform. We
24 need to look at that. We need to look
25 at the history and the circumstances

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behind it what put us there. What put that child there. What put that kid there or that man or woman there that we can then make the right decision. Again, that's why we have a justice system in place.

Issue presented: Pursuant to the new legislation the district attorney cannot enter into a plea bargain until discovery has been produced. I'm going to let district attorney Jed Painter speak on that.

Issue presented: The discovery reform also includes provisions that witnesses must provide their names and addresses. This is the one that is close and dear to me. Our victims that did get brutally beaten and killed by MS13 in the New Cassel area, I went to the wake, I spoke to his sister, I met the family. It's a horrible horrible crime that no one should go through. And the people in Westbury deserve better, that witness deserved better.

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I never said there was a direct link. Never said there was a direct link to justice reform, I just gave the facts and I left the interpretation up to the people. And again, I'll say, I don't believe, I don't know that there is a direct link. Our homicide guys have been working day and night to make that arrest and make sure that they answer because he was a hero, this man. He stood up against MS13. He's willing to testify against MS13 and he died at the hands of MS13. And I said and I'll say it again, we -- and we is all of us -- need to do more for our victims. All of our victims. That 16-year-old that sits in jail for marijuana that shouldn't be there. And the victims that have been brutalized and beaten and threatened by MS13 or any other person in this county.

So as the police department, we've been asked to start to tally the data which we have most of this data

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2 and will continue to collect that data.
3 Some of that data in the new proposed
4 law is given to us -- we'll have to get
5 from the courts and we'll work with the
6 district attorneys to provide it. The
7 data will speak for itself and
8 hopefully it speaks for our victims.
9 Thank you.

10 LEGISLATOR NICOLELLO: Legislator
11 Ford. I guess we'll have some
12 questions for commissioner and then
13 we'll go to your presentation. Okay?

14 LEGISLATOR FORD: Good morning,
15 sir. I think it's a sad state that you
16 have to sit here after you testify in
17 regard to this bail reform legislation
18 to explain yourself after the murder of
19 somebody who was in -- that witnessed
20 something and was going to be a witness
21 toward the MS13 to explain your
22 remarks, you know, that may have been
23 said in the spirit of being hurt by
24 this murder, this senseless murder of
25 an innocent person that you have to,

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2 like, defend, you know, perhaps, the
3 way that people maybe interpreted it.
4 I think you are an excellent police
5 commissioner, you're a great leader and
6 I think you have every right to say
7 what you have to say without any fear
8 of retribution or anybody coming out
9 against you and I applaud you for your
10 courage. Because I think all too
11 often, you know, and I'm tired. I'm
12 tired of political rhetoric with all of
13 this. When we look at this and we all
14 say well, they're politicizing this
15 whole thing because it's maybe the
16 republicans. I heard it early in
17 December when all of a sudden this
18 started, you know, coming out as to
19 what was going to happen to our
20 communities here in-- and our
21 neighborhoods here in New York state.
22 You know what may happen to people that
23 are witnesses, people that can be
24 victimized. And more so, more
25 importantly to me as well, we always

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2 forget about our police officers, our
3 officers that their morale is being
4 challenged. That when they turn around
5 and they go to arrest somebody and they
6 realize they're only going to go inside
7 and wash their hands and the person's
8 like already out walking the street
9 creating another -- committing another
10 crime. When we see that people have no
11 fear of attacking police officers, even
12 go into a precinct to shoot them up. I
13 think this is a disgrace but I urge you
14 to keep it up, to make sure that you
15 speak what you have to say because you
16 are our law and order here in Nassau
17 County and I appreciate the hard work
18 that you do for all of us.

19 But I would like to know
20 something, because I know that we say
21 well, why don't we all get together and
22 maybe write letters and reach out to
23 the democrats in the senate in New York
24 State. Before they took that vote last
25 year, did they reach out to you? Did

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2 they reach out to all the police
3 commissioners throughout New York State
4 and ask them what impact this
5 legislation will have on your ability
6 to do your job to make sure to keep out
7 communities safe and to make sure that
8 our police officers are protected as
9 well?

10 COMMISSIONER RYDER: I can't
11 speak for everybody in the state but I
12 can speak for myself, I was not
13 conferred at all on this issue.

14 LEGISLATOR FORD: So they made
15 this change, this progressive change,
16 you know, and we all understand and I
17 think that you are right, Kevan, when
18 we talk about having open discussions.
19 Let's talk about things more often.
20 But when we look at this, you know, we
21 all know that the justice system needed
22 reform. We all know that our legal aid
23 lawyers who are the ones that represent
24 the people that are indigent, that
25 can't afford high priced attorneys,

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that need to make, that can't afford to have any bail, that these legal aid lawyers are underpaid and they're overworked. They have too many cases, they can't probably always maybe defend these low level crimes, so a lot of times, probably, they may end up having them to turn around and maybe plead out, maybe do two or three days in jail when these people should not be in jail.

Prior to this vote, they should have brought all of us in to talk about this and say to everybody, what do we need to do because it is unfair. It breaks my heart when I have parents that called me up because their children were in Nassau County jail and they were worried about their medication, were they getting fed. And the kids weren't really bad criminals, you know. But this is what happens. This is -- the discussion should have taken place last year. Now we have

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2 poor Mr. Maldonado who had to bury his
3 son too soon. We have families that
4 are living in fear that because there
5 are criminals walking out amongst us,
6 because of this disastrous and ill
7 conceived legislation on the part of
8 the senators and the assembly people in
9 the New York State government. I think
10 this is in itself is a crime against
11 the good people here in Nassau County
12 and New York State. I think that we
13 all have to stand up and it doesn't
14 mean just because it's not just
15 Republicans that are fighting against
16 this. I happen to be a Democrat and
17 I'm proud to be in this party but I am
18 damn tired of what is going on. When I
19 look at this and I have to worry, when
20 you can make -- turn around and dismiss
21 it that because you feel bad that these
22 -- some of these Republicans came out
23 and spoke at -- maybe asking Laura
24 Curran to join them. But I find that
25 Laura Curran to be a capable and good

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2 leader here in Nassau County. I
3 respect her as our county executive and
4 I think that she's a strong
5 independent, strong-willed woman that
6 can stand up to any criticism and to be
7 able to speak her mind on the issues
8 that she feels is important to her
9 without any fear or retribution from
10 anybody else, whether or not it's in
11 New York State or the government. But
12 I think all of us, we should be allowed
13 to say what we have to say. And to me
14 I'm very emotional. I'm sorry about
15 this but I happen to be -- when I have
16 family that are in the New York City
17 Police Department, when I look our
18 officers patrolling each and every
19 single day, and we have to worry about
20 this, when we allow people, this gang
21 to go through the subways, to break up
22 equipment, to be able to call upon to
23 go against the police, you know, I
24 think this is terrible. And I think
25 this anarchy has to stop and think that

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2 all of us must join together to bring
3 common sense legislation back into
4 New York state and let's start taking
5 this state back so all of us will want
6 to stay, want to live here and be able
7 to live here. Thank you and I'm sorry.

8 LEGISLATOR NICOLELLO: Thank you,
9 Denise. Commissioner, I want to echo
10 something that Denise just said. You
11 do speak your mind and it's refreshing
12 and it's what you should do as the
13 chief law enforcement officer in this
14 county and we've had individuals who
15 are closer to politicians in the past.
16 I would much rather have somebody who
17 speaks his mind, as you do. We may
18 like what you say this week and next
19 week we're not going to like it but it
20 doesn't really matter. You're just
21 speaking what it is that's important to
22 public safety and to the men and women
23 that you represent.

24 Just in terms of what changes are
25 you making to the police department as

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2 a result of the criminal justice
3 reform?

4 COMMISSIONER RYDER: So the
5 biggest lift for us, you know,
6 obviously going back and
7 reinvestigating cases that somebody's
8 been arrested for makes it harder, more
9 time consuming and you'll hear from ADA
10 Painter is the discovery. The amount
11 of people that I have now doing
12 discovery -- and what people have to
13 realize, it's retroactive. There's
14 cases that are ongoing from '19 and '18
15 that we still got to turn over blotters
16 and finding memo books of cops that are
17 retired and that we can't go forward
18 until that information is there. So I
19 have all of my analytical people that
20 normally do analysis so I can get ahead
21 into the patterns and do predictive
22 analysis on crime fighting, are now
23 doing discovery. They're all pulling
24 data, pulling videos, pulling GPS data,
25 911 calls, CB transmissions back and

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2 forth. It's a lot of work. A lot of
3 work that we didn't even realize would
4 ever have to be turned over and now it
5 is. So the resources that we're
6 expending from both -- and our court
7 overtime has increased, our overtime
8 for processing has increased, but it's
9 work that we'll do, that's what we're
10 paid to do. We'll be professional. It
11 will increase my budget at the end of
12 the year and we'll get it done as best
13 as we can. We do sometimes -- and
14 there's going to be a failure going
15 forward because it's almost impossible
16 to keep up with discovery on a 15 to
17 30-day period.

18 LEGISLATOR NICOLELLO: You
19 mentioned you've got to shift resources
20 from the area of predictive analysis
21 into complying with discovery
22 responses; is that accurate?

23 COMMISSIONER RYDER: That is
24 correct.

25 LEGISLATOR NICOLELLO: And our

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2 police, our DA, our law enforcement
3 have had tremendous success here in
4 Nassau County in reducing the crime
5 rate. Is that in part because you had
6 resources to put into the predictive
7 analysis to anticipate where the crimes
8 are going to be?

9 COMMISSIONER RYDER: Our success
10 since 2010 has been the fact that we
11 built our intel center and we do things
12 like predictive analysis, intelligence
13 led policing. And again, I'm not going
14 to throw it all at the wall right now
15 because, yes, crime has gone up, but we
16 had a mild winter. We had a mild
17 winter last year also. So again, I'm
18 factoring all that in. The data said
19 it's too short to make that
20 determination. I think the quarterly
21 report will tell you more. We are now
22 starting to catch up on some the older
23 cases and that will now start to move
24 some resources back to doing our intel
25 led policing model and predictive

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2 analysis.

3 LEGISLATOR NICOLELLO: Okay.

4 That is a concern to the extent that
5 you're taking resources away from
6 something that's had such success in
7 order to make sure that -- I think the
8 onerous discovery requirements are met.

9 Anyone else have any questions
10 for the commissioner? Legislator
11 Ferretti.

12 LEGISLATOR FERRETTI: Good
13 afternoon, Commissioner.

14 COMMISSIONER RYDER: Good
15 afternoon.

16 LEGISLATOR FERRETTI: Thank you
17 for your testimony and thank you for
18 your continued leadership on this
19 issue. I want to speak a little bit
20 about the DMV database. Is it true
21 that New York State required the county
22 to agree in writing not to share
23 information from the DMV database with
24 the federal police or federal agencies?

25 COMMISSIONER RYDER: That was

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2 part of an agreement that we had -- we
3 had signed recently so that we can
4 continue to access data through the DMV
5 system.

6 LEGISLATOR FERRETTI: So it true
7 then that if we didn't sign that
8 agreement we would not be able to
9 access that data?

10 COMMISSIONER RYDER: That was the
11 way the agreement was written; that is
12 correct.

13 LEGISLATOR FERRETTI: Now, if we
14 didn't agree to that -- and maybe this
15 is a question for Jed or somebody else
16 -- but is it legal for New York State
17 to lock us out of that database, that
18 information?

19 COMMISSIONER RYDER: I can't
20 answer that. I'm not an attorney.

21 LEGISLATOR FERRETTI: Did we at
22 any point, we being the county,
23 consider a lawsuit to compel access if
24 we were not to sign that?

25 COMMISSIONER RYDER: That would

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2 be a conversation for the
3 administration.

4 LEGISLATOR FERRETTI: How is this
5 type of information contained in the
6 database?

7 COMMISSIONER RYDER: The
8 information for normal DMV is entered
9 into a database and if we need to run a
10 -- on a car stop an individual or his
11 license plate, it would go through that
12 database.

13 LEGISLATOR FERRETTI: We did sign
14 the agreement, right?

15 COMMISSIONER RYDER: That is
16 correct.

17 LEGISLATOR FERRETTI: And so what
18 federal agencies are we prohibited from
19 sharing the information with?

20 COMMISSIONER RYDER: They
21 directly referred to HSI if I remember
22 correctly.

23 LEGISLATOR FERRETTI: What
24 reasons would a federal agency need to
25 access a database?

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2 COMMISSIONER RYDER: I'm sure --
3 the concern was that we are not turning
4 over data to HSI to go after those that
5 are undocumented.

6 LEGISLATOR FERRETTI: Does the
7 Nassau County Police Department work
8 with these agencies regularly?

9 COMMISSIONER RYDER: We work with
10 all our federal partners.

11 LEGISLATOR FERRETTI: In what
12 capacity?

13 COMMISSIONER RYDER: Most of them
14 in money laundering cases, most in
15 human trafficking, prostitution, white
16 collar crimes.

17 LEGISLATOR FERRETTI: And the ban
18 on sharing this information, are there
19 any exceptions to that ban or is it
20 carte blanche ban?

21 COMMISSIONER RYDER: I don't have
22 that bill in front of me and I'm not
23 as --

24 LEGISLATOR FERRETTI: Any that
25 you're aware of?

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2 COMMISSIONER RYDER: None that
3 I'm aware of. I did believe it was
4 just at the HS.

5 LEGISLATOR FERRETTI: Now my
6 understanding is that federal law
7 enforcement officials have indicated
8 that this ban puts public and federal
9 law enforcement officials at risk. Do
10 you agree with that?

11 COMMISSIONER RYDER: The data
12 that's coming from the system,
13 providing the information of the person
14 that has in front of me, I have. The
15 data not being shared with HSI I can't
16 say it puts them at risk. Their
17 process of those going after those that
18 are undocumented is an HSI issue that
19 we don't work with them on. We just
20 focus on the other crimes that we do
21 work with them on.

22 LEGISLATOR FERRETTI: Well, in
23 the past, has information that we're
24 now not providing led to investigations
25 into terrorism, sex trafficking, any

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2 drug smuggling?

3 COMMISSIONER RYDER: Well, if I
4 may, I believe -- my guys that still
5 work in the task force have the access
6 to that data but are prohibited to
7 share it if they're going to be used
8 for immigration purposes. We still do
9 share and use it when we are looking at
10 money laundering, counter terrorism
11 type investigations.

12 LEGISLATOR FERRETTI: So we still
13 share that type of information.

14 COMMISSIONER RYDER: When we have
15 a money laundering and specific
16 investigation like that, yes, but as a
17 blanket sharing and running names for
18 immigration, we do not do.

19 LEGISLATOR FERRETTI: What if
20 that type of investigation involves
21 someone who's here illegally, do you
22 share that information?

23 COMMISSIONER RYDER: You know
24 what, I honestly can't answer that
25 question. I don't have that document

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2 in front of me exactly what was
3 restricted from it or not.

4 LEGISLATOR FERRETTI: Well, in
5 the past -- in the past would we share
6 that kind of information?

7 COMMISSIONER RYDER: Yes. Yes,
8 we would.

9 LEGISLATOR FERRETTI: And today
10 you can't say that we still do.

11 COMMISSIONER RYDER: If it was
12 for a counterterrorism investigation
13 and the person happens to be
14 undocumented, of course we would share
15 that.

16 LEGISLATOR FERRETTI: In the
17 past.

18 COMMISSIONER RYDER: In the past.

19 LEGISLATOR FERRETTI: But in
20 terms of today --

21 COMMISSIONER RYDER: We would
22 still share that and do that
23 investigation with our federal
24 partners. It doesn't matter what the
25 status is if the criminal activity is

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2 there, we would still work with them
3 and willingly so.

4 LEGISLATOR FERRETTI: Thank you.

5 LEGISLATOR NICOLELLO: Anyone
6 else have questions? Legislator
7 Gaylor.

8 LEGISLATOR GAYLOR: Sure, couple
9 questions. Thank you, Commissioner for
10 your presentation, your honesty in the
11 work that you do to make the county a
12 better and safer place to live, work
13 and play. And special thanks to all of
14 the officers in law enforcement for
15 what they do as well.

16 I sit on the village, town, city
17 committee as well and there hasn't been
18 much discussion on the additional work
19 load maybe that the county police
20 department is experiencing having to
21 work with the villages. Many times,
22 although the villages may have their
23 own police departments, the County
24 takes the lead on many of the more
25 significant crimes. Crimes involving

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2 guns and drugs and threatens the
3 society as a whole come under the
4 county's purview. So my question --
5 the next few questions are directed at
6 the interaction between the village,
7 the city police departments and the
8 county. So what level of coordination
9 does the department have with the
10 village and city police departments to
11 ensure that we are complying with these
12 new criminal justice reforms?

13 COMMISSIONER RYDER: Any
14 assistance that the village uses, if
15 they use our P1 system, that's our case
16 management system. If they use that
17 system to process their arrest, that is
18 all generated and sent to the district
19 attorney's office through ECAP. If it
20 has to do with bail -- or I should say
21 not bail -- but if it has to do with
22 evidence and so forth, we will assist
23 them on it. So we have always worked
24 with our 18 villages and two cities.
25 They're all struggling with the

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2 discovery issue, not so much the
3 processing part but the fact of what
4 has to be turned over. But villages
5 for the most part outside of the larger
6 ones of Freeport, Hempstead, you know,
7 Glen Cove, Rockville Centre, their
8 arrest is not as high level. We
9 average 50 arrests a day here in Nassau
10 county. That's 50 people that we have
11 to turn over that data and a lot of our
12 -- some of our bigger villages do have
13 that many. But some of them are more
14 up to date with their technology and
15 it's been able -- it's because they're
16 a small village and able to process
17 that quicker.

18 LEGISLATOR GAYLOR: My
19 understanding is the district attorney
20 and Mr. Painter might have to jump in
21 on this one, even though he hasn't
22 presented yet, but there are certain
23 guidelines within 24 hours there has to
24 be initial turn over of records and
25 what not to the District Attorney's

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2 Office, to their early case assessment
3 bureau. Then within, what, five days,
4 and then again at ten days and then
5 again every 24 hours thereafter, if a
6 new record is created. So is the
7 Nassau County Police Department charged
8 with ensuring the villages meet those
9 time lines or are they on a direct, you
10 know, a coordination link with the
11 district attorney directly?

12 MR. PAINTER: I can speak to
13 that. I'm sitting next to a great
14 police commissioner but I've had to
15 deal with a lot of different police
16 leadership. We have 25 local law
17 enforcement agencies, we got the NYPD.
18 We have Suffolk we've dealt with. We
19 have the New York State troopers we've
20 dealt with. So we are building
21 relationships with each and every
22 single one and working on discovery
23 exchange protocols with each and every
24 single one. I'll cover some of that in
25 my presentation.

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2 LEGISLATOR GAYLOR: Then we'll
3 hold off and wait for that. You
4 mentioned that you share a platform, a
5 computer platform with the villages or
6 is that something that we provide them
7 or is it -- it's a standard piece of
8 equipment every police department
9 purchases in to provide this kind of
10 information to the District Attorney's
11 Office?

12 COMMISSIONER RYDER: That is the
13 record management system used by the
14 police department in Nassau County.
15 Many of the villages do opt in to take
16 a license from us. We pay for that
17 license through the headquarters tax.

18 LEGISLATOR GAYLOR: All right.
19 Do you see any issues that are
20 developing because of these new reform
21 laws between the villages, the towns
22 and cities and our police department?

23 COMMISSIONER RYDER: The biggest
24 issues is that the coordination effort,
25 that you know, we've always worked

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2 together when a crime scene occurs and
3 we jump in, everybody does their part.
4 But when it comes to gathering data
5 because we all have different data sets
6 and different ways that we collect
7 data, that's a problem. We ventured
8 into a software company that has been
9 approved by the legislature moving
10 forward called NICE and we're hoping
11 that NICE can alleviate some of these
12 problems and coordinates sitting like a
13 spider with many different legs
14 reaching out and pulling that data up
15 to where it needs to be.

16 LEGISLATOR GAYLOR: Very good.
17 You mentioned the quarterly report
18 that -- that was the one where the
19 legislature asked for some information
20 on a quarterly basis. Will we be
21 tracking crimes committed by people who
22 are released with no bail and then
23 recommit crimes? Is that part of the
24 data you'll be collecting?

25 COMMISSIONER RYDER: That is one

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2 of the data sets we will have to
3 collect, correct.

4 LEGISLATOR GAYLOR: I have no
5 further questions. Thank you Presiding
6 Officer.

7 LEGISLATOR NICOLELLO: I think
8 the Minority Leader had questions.

9 LEGISLATOR ABRAHAMS: Actually
10 just to piggyback on Legislator
11 Gaylor's question, that's where my
12 questions are tied to and then I wanted
13 to talk a little bit about the contract
14 the legislature passed in regards to
15 helping with the discovery and the
16 software, you can talk a little bit --
17 elaborate a little bit more on how
18 you're finding that working or has it
19 been implemented or implemented fully.

20 Commissioner, I really just
21 wanted to dive into the merits of the
22 bill and your ability to comply with
23 the bill that has been proposed by the
24 legislature. Obviously, it's asking
25 for quarterly data statistics, which we

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2 agree any time we can provide
3 information to the public it's
4 imperative. I've never found your
5 office not to provide me information.
6 You just provided me some ticket
7 information upon request, which I was
8 able to provide at a public meeting, so
9 I appreciate that as well. But if we
10 want to codify it with the law, I guess
11 that's the prerogative, obviously, of
12 the legislature. But in regards to the
13 piggyback on what Legislator Gaylor
14 said, the police department is tracking
15 some level of data and statistics as
16 pertains to the current bail reform
17 bill of individuals who have committed
18 previous crimes and be able to compile
19 that data and provide it to the
20 legislature on whether or not they've
21 recommitted those -- recommitted other
22 crimes or any other crime?

23 COMMISSIONER RYDER: So we kind
24 of knew that was going to be coming as
25 one of the, you know, looking at data,

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2 our analysts do that. That's what they
3 project problems and issues. Part of
4 the think tank, so we have been
5 collecting it. It's not an easy data
6 set to collect and the reason why
7 it's -- and it's not going to be 100
8 percent accurate because I don't know
9 the village arrests. I don't know
10 sometimes if the state took that
11 arrest. I don't know what the -- that
12 agency that took it what's the outcome.
13 So it's going to be work to search it
14 and get it but every data can be gotten
15 once we put the effort into it.

16 LEGISLATOR ABRAHAMS: So like say
17 for example if someone was arrested in
18 the village of Hempstead or city of
19 Glen Cove, you don't have that
20 information accessible to be able to
21 determine or compile their criminal
22 history to provide it to the
23 legislature to determine whether or not
24 you've captured all of their activity
25 or -- if I'm understanding you

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2 correctly.

3 COMMISSIONER RYDER: No, if we're
4 talking about criminal history that's
5 one thing. We can access criminal
6 history on anybody when we have the
7 right reasons to access that data.

8 LEGISLATOR ABRAHAMS: Okay.

9 COMMISSIONER RYDER: But if we're
10 talking about those that have been
11 arrested and then released because of
12 the new bail reform, that data, to
13 track that, is work, there's a lot of
14 work involved because the -- like I
15 said, we do 50 arrests a day for the
16 police department itself. Then I have
17 my villages and my cities and as you
18 just heard, the state police are also
19 in here. And we also have federal
20 agencies that come in. But if they
21 process them on a federal level, it's
22 not my issue. But if they do it on a
23 state level, the I got to track it.

24 LEGISLATOR ABRAHAMS: I guess
25 what I'm driving at is, is there a way

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2 for us to look at the data whether
3 they're released after January 1 or
4 before. Is there a way for you to
5 provide data with us that -- we agree
6 that when many of the reforms came in
7 place, you want to give it to people
8 that obviously, as described,
9 nonviolent or people who as you
10 admitted, many that are sitting in jail
11 that don't deserve to be there because
12 they can't pay the bail. But I think
13 what we're trying to also take a look
14 at, in the situation of Mr. Maldonado's
15 son, this -- allegedly this gentleman
16 committed several crimes leading up to
17 this crime, which devastatingly took
18 his son's life. Do you have the
19 ability to provide to this legislature
20 statistics, not by name of course, but
21 statistics that would give us some
22 level of idea the activity of the
23 individual that is being released or
24 multiple times released until there's
25 revisions to this bill?

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2 COMMISSIONER RYDER: Yes, sir, we
3 can.

4 LEGISLATOR ABRAHAMS: I'm asking
5 this question I guess to the majority,
6 is that encompassed in your bill in
7 terms of some of the data gathering?

8 LEGISLATOR NICOLELLO: We'll look
9 at it. We're trying to gather as much
10 data as possible.

11 COMMISSIONER RYDER: It is.
12 Section C of the bill, the number of
13 crimes charged against the defendants
14 while such defendants have been
15 released without bail on previous
16 criminal charges are charged including
17 the charges against said defendants and
18 a brief narrative description of crimes
19 allegedly committed while released
20 without bail. So yes, it will be part
21 of our tracking.

22 LEGISLATOR NICOLELLO: If there's
23 an area that's not covered, we'd be
24 happy to consider amending the bill to
25 cover that.

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2 LEGISLATOR ABRAHAMS: Okay. I'm
3 glad you're able to compile that data,
4 Commissioner, and at the same time,
5 glad it's actually covered in the bill.

6 The next area I wanted to dive
7 into -- I mean, you alluded to it a
8 little bit but I know the legislature
9 passed a contract which would help the
10 police department as well as the
11 district attorney in being able to
12 manage and be able -- with the
13 discovery process, is that software up
14 and running totally or is it still in
15 the process of being up and running?

16 COMMISSIONER RYDER: It's still a
17 couple of months away from being up
18 fully running and the reason being, the
19 procurement process takes time to get
20 them online. They are part of
21 Motorola, so they came in, they do know
22 some of the programs already, they've
23 expedited a lot of the things that we
24 need to do for us to make it more
25 electronically. And we still have a

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2 lot more to go forward with them and
3 are still working with us as we speak.

4 LEGISLATOR ABRAHAMS: So when do
5 you envision being able -- I mean, I
6 know procurement is difficult but --

7 COMMISSIONER RYDER: The
8 procurement process is all done.
9 They're in so --

10 LEGISLATOR ABRAHAMS: I guess
11 when you implement the system will be
12 up and running, that's what you're
13 saying?

14 COMMISSIONER RYDER: I think
15 we're a three to six month window is
16 what we're looking at right now.

17 LEGISLATOR ABRAHAMS: Okay. Once
18 the system is in, do you believe that
19 will address some of the lack of
20 personnel needs to be able to address
21 the reforms to bail?

22 COMMISSIONER RYDER: Any time you
23 add technology into something it's
24 going to make my game faster,
25 absolutely. It will alleviate a lot of

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2 people sitting behind machines manually
3 pulling data that we never thought we
4 would have to pull. And we've done our
5 own changes in the system to make our
6 blotters, trying to make them
7 electronic, trying to make our police
8 officers memo book electronic. So in
9 one aspect it's changed the way we do
10 policing, that's for sure, some good
11 some bad.

12 LEGISLATOR ABRAHAMS: Thank you,
13 Commissioner.

14 COMMISSIONER RYDER: You're
15 welcome.

16 LEGISLATOR NICOLELLO: I have a
17 couple of follow-up questions and I
18 think Legislator Rhoads has some
19 questions. Has the new law changed the
20 way your officers gather information or
21 prepare the information in light of the
22 fact that it has to be turned over
23 within 15 days in the first instance?
24 Any change in the procedures of your
25 cops on the street or detectives for

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2 that matter?

3 COMMISSIONER RYDER: And we
4 changed the memo book. To the memo
5 book is what the cop is, their bible,
6 if you will, it's how they gather their
7 data, they put it into this memo book
8 where they go when they take their
9 breaks, when they stop somebody, the
10 plate data. We've taken that out from
11 a written form and we've made it
12 electronically, so a little learning
13 curve for that. And then also, will
14 there be reluctance to put in as much
15 data. Yeah, I assume so. But again,
16 the memo book was always subject to be
17 brought into court when asked for, so
18 again, it's one of these catch 22 type
19 things. It -- yes, it's changed the
20 way we do it. Yes, eventually that
21 memo book may have been called in by
22 the time of trial.

23 LEGISLATOR NICOLELLO: But it has
24 to be done in a more expedited basis at
25 this time?

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2 COMMISSIONER RYDER: Absolutely.
3 Everything completes -- we try to
4 complete by the end of tour, which
5 extends our time of working.

6 LEGISLATOR NICOLELLO: Next
7 question is more of an anecdotal
8 nature. Are your officers finding that
9 suspects are aware of the new law?

10 COMMISSIONER RYDER: I really
11 can't answer that. I don't -- look,
12 you heard from Mr. Maldonado a minute
13 ago that's what that subject said. I
14 have not specifically asked that
15 question or heard anybody say it to me.
16 But they do quickly learn about the
17 laws pretty quick out there.

18 LEGISLATOR NICOLELLO: I know
19 it's still early, are your officers
20 indicating whether there's any change
21 in the willingness of victims and/or
22 witnesses to cooperate?

23 COMMISSIONER RYDER: We are
24 seeing that attorneys are jumping in
25 much earlier, and we are seeing that

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2 our cooperation -- it depends, you
3 know, on the case and the charges. If
4 they know they're going to be walking
5 out on a minor drug charge, they're not
6 going to cooperate against their drug
7 dealer. That's -- we look at our
8 victims again and that's what we speak
9 for. When you look at an overdose
10 victim and you're trying to deal with a
11 very upset family and that information
12 of hey, who's your dealer, let us work
13 to go after the dealer. Keeping them
14 out of it and trying to work on the
15 data phone records and so forth, that
16 reluctance -- we're concerned that they
17 may rise. Have I seen a concern? It's
18 too short of a data set to tell.

19 LEGISLATOR NICOLELLO: It's too
20 soon. I think more I was focussing on
21 a victim of a crime or somebody who's
22 witnessed a crime who may be concerned
23 to have their information disclosed
24 immediately. But as you said, it's too
25 soon to really tell.

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2 COMMISSIONER RYDER: Way too soon
3 to tell.

4 LEGISLATOR NICOLELLO: Legislator
5 Rhoads.

6 LEGISLATOR RHOADS: Thank you,
7 Mr. Presiding Officer. Just a couple
8 of follow-up questions. There was an
9 indication, you had made an indication
10 there was an uptick in crime by about
11 five percent, not at the hearing today
12 but a previous statement that you had
13 made. Do we know over what period of
14 time that is? Is that just from
15 January 1st?

16 COMMISSIONER RYDER: So the
17 numbers still -- the total crime has
18 been -- is up 5.5 percent, it's from
19 January 1st to as of this morning, so
20 it's the most up-to-date data compared
21 to that same period last year.

22 LEGISLATOR RHOADS: Is there a
23 breakdown between violent crimes,
24 property crimes, are we able to break
25 that down any further?

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2 COMMISSIONER RYDER: Yeah, so
3 actually our violent crime has seen a
4 decrease, not an increase. But our
5 property crimes and quality of life
6 type crimes have seen an increase.

7 LEGISLATOR RHOADS: Do we have
8 any idea what the reason for that might
9 be?

10 COMMISSIONER RYDER: Most of the
11 individuals that we do arrest, if you
12 look at the quantity of numbers. To
13 give you an example, our grand
14 larcenies are at 432 for the year but
15 if you look at our robbery it's only at
16 13 for the year, so it's a different
17 type of the crime, we get more people
18 that commit grand larcenies, petty
19 larcenies, stealing property,
20 shoplifting, so that number has started
21 to climb.

22 LEGISLATOR RHOADS: Those are the
23 crimes for which obviously there would
24 be no bail.

25 COMMISSIONER RYDER: That's

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2 correct.

3 LEGISLATOR RHOADS: Prior to
4 January 1st of 2020, would there have
5 been bail for those crimes previously?

6 COMMISSIONER RYDER: I'm going to
7 say probably not. Most of our
8 shoplifters they may not -- they have
9 gotten bail, \$100, \$200 at the station
10 house. But the problem is it's not the
11 one crime. So the person we concern
12 ourselves -- and look, here's the
13 difference of what we're talking about,
14 that discretion that needs to be put
15 back in there. I break into a car and
16 I steal somebody's money out of the car
17 and I commit it one petty larceny. I
18 break into a car and then I do 20 cars
19 tonight. That person should not be
20 going home on bail. That person should
21 be staying in to see the judge the next
22 morning to make sure that maybe, just
23 maybe, we can get him -- he's got a
24 drug problem and we can get him in
25 front of diversion court or he's got a

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health issue and we can get him into some kind of substance abuse program. The system was built on us learning from our mistakes that we know how to work and treat our subjects and our victims better. So again, it's that discretion. It's not a blanket answer one way or the other. First time shoplifter in Roosevelt Field almost always going to get an appearance ticket. Some that has multiple and has a history of shoplifting and we know that person is a career shoplifter probably not going to get bail and going to be remanded. Then when it goes down to court, then it's up to the court what the court's decision was.

LEGISLATOR RHOADS: Obviously larceny, grand larceny, vehicular manslaughter, these are things that typically would have received some type of bail in the past.

COMMISSIONER RYDER: Grand larceny we would have always taken bail

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2 and we would have probably mostly sent
3 it to court.

4 LEGISLATOR RHOADS: In terms of
5 -- well, actually if I can ask: What
6 crimes do you keep track of
7 statistically as of today? What levels
8 of crimes?

9 COMMISSIONER RYDER: We keep
10 track of all crimes. Any crime that is
11 committed in Nassau County we have a
12 number for. But what we report and
13 we're required to report to the state
14 are our major crimes and the major
15 crimes go from murder, rape, criminal
16 sex acts, sexual abuse, robbery,
17 commercial robbery, street level
18 assault felonies, burglary residents,
19 burglary commercial, stolen vehicles
20 and grand larceny. They're our major
21 crimes. And then when I give a number
22 of our total major crimes, I give you
23 that number and then I give you total
24 crime report. That includes all
25 others. So to give you an example, so

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far this year there's 677 major crimes committed in Nassau County. All other crimes, which are the smaller crimes, there's been 2,216, so you see the volume of what we're talking about. They're the ones that go out and if we don't put them into some path, if you will, they go out and commit more crimes and that number will grow. That number is up as we -- up almost two percent.

LEGISLATOR RHOADS: And to the point that you made, for example, if someone is arrested on a drug crime and they may themselves be a user, in the past you'd be able to get them into some drug interdiction program, obviously you can't do that, you're releasing them right back into the same environment that they came from so it actually, in theory, does harm to that prospective criminal defendant.

COMMISSIONER RYDER: We like to think that the system has been working

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2 to take care of those and get them in
3 the right path. I know we've worked
4 very closely with Judge Sullivan over
5 in diversion court and the DA's office
6 on our opiate issue and getting those
7 kids into diversion court is very
8 important.

9 LEGISLATOR RHOADS: Can you tell
10 me in advance of January 1st, how many
11 people were released from jail in
12 anticipation of the criminal justice
13 reforms? I know because there's been
14 some dispute about that number.
15 Initial projections were somewhere in
16 the neighborhood of around 300 but then
17 some that -- some were not receiving
18 bail before January 1 in anticipation
19 of the reforms. Do we know what the
20 total number -- and apparently they
21 were also released over a period of
22 time not just on December 31st. Do we
23 know how many were actually released
24 from the jail?

25 MR. PAINTER: I'll just jump in

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2 on that. It's a complicated situation
3 but I'll give you the answer. So there
4 was three or four spot checks by the
5 sheriff's office throughout the year
6 since the enactment of the law to gauge
7 how much of the inmate population would
8 be mandatory released as of January 1.
9 So it always hovered around 300 to 400
10 and September was a good reading of
11 what would have been the differential
12 of overall jail population. My office
13 realizing inevitability started
14 changing bail requests, also in line
15 with judges, realizing inevitability,
16 stopped granting bail requests.
17 Because eventually we get to the
18 impossibility or the ludicrousness of a
19 situation where if you ask for bail on
20 December 30 for them to get out January
21 1, you've just caused a bunch of pieces
22 of paper, possible liability for the
23 county, unnecessary prison transport
24 things like that.

25 So you would see, of course,

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2 because of the preparations, the
3 tapering from September to January
4 gradually, not suddenly. That's why
5 there's no big release on December 31,
6 because that would have been
7 irresponsible. The jail always has
8 people coming and going. It is a
9 temporary detention facility. It's for
10 only misdemeanor sentences or definite
11 sentences of one year or less. It's
12 not a prison. So there's a natural
13 release pattern to that jail of people
14 who have completed sentences, whatever
15 they might be. That's what you would
16 you see released and as less people
17 were coming in, and the same number of
18 people were coming out, that's what led
19 to a gradual decline from 300 to, I
20 think on the night of, there was
21 around, you know, a few dozen. It was
22 as a result of preparation.

23 LEGISLATOR RHOADS: I'm assuming
24 that the inmate population is made --
25 the numbers of the average inmate

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2 population are maintained on a, I would
3 assume, a monthly basis, right?

4 MR. PAINTER: You would get the
5 most accurate information from the
6 sheriff how often they audit their jail
7 population.

8 LEGISLATOR RHOADS: Do we know
9 what the average inmate population was
10 before the release and what it is
11 today?

12 MR. PAINTER: My recollection was
13 that it was over -- in the low
14 thousands. My estimation would be
15 about 1,100, 1,200 at a given time.

16 LEGISLATOR RHOADS: Do we know
17 what it is today?

18 MR. PAINTER: I do not.

19 LEGISLATOR RHOADS: Incidentally,
20 for the numbers of individuals that
21 either were not retained on bail in
22 anticipation of the criminal justice
23 reforms taking effect on January 1st
24 and those who were actually released in
25 anticipation of January 1st from the

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2 jail, are we keeping statistics on
3 those individuals and whether there
4 have been any incidents of recidivism?

5 MR. PAINTER: The sheriff --

6 COMMISSIONER RYDER: We'll be
7 looking at all that data. Again, the
8 sheriff's office would know more and
9 should comment on that but we do track
10 a lot of the recidivism. We do track,
11 you know, what comes back around at us.
12 Again, we're working out percentages
13 and stuff, that's not what we normally
14 do, that number usually comes from a
15 state level but again...

16 LEGISLATOR RHOADS: I would
17 imagine, you know, we know the
18 individuals that were actually released
19 in advance of criminal justice reform,
20 right?

21 MR. PAINTER: Again, so much of
22 it wasn't about release. So I guess
23 maybe I wasn't clear before. It wasn't
24 as if there was a bunch of applications
25 between September and the end of the

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2 year and people consented to release.
3 What actually happened is, the bail
4 applications at the outset of a
5 criminal case and the determinations at
6 the outset of new cases for September
7 to December, were impacted. So rather
8 than people getting released, they just
9 didn't go in at the same rate. And
10 then the natural attrition of the jail
11 from September to December you saw
12 drive it down. Judges were also
13 instructed in the final months that any
14 time a case came up before them to give
15 a hard look at that person, maybe do a
16 bail app before, some were bail apps on
17 the spot, some were signing bail
18 commitment release postdating them to
19 December 31. So there were some people
20 that the courts were not willing to
21 release early. But your release
22 population was a small factor of the
23 reduction. It was actually entry that
24 decreased. Does that make sense?

25 LEGISLATOR RHOADS: No it

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2 absolutely does.

3 MR. PAINTER: It's impossible to
4 track the people that we never put in,
5 so to speak.

6 LEGISLATOR RHOADS: Right.
7 Completely understood. However, there
8 is a subset of that population that
9 actually was released.

10 MR. PAINTER: That is correct.

11 LEGISLATOR RHOADS: For the ones
12 that were released, and I guess we
13 don't know the exact number, for the
14 ones that were released, have we
15 already begun to track whether those
16 individuals were picked up on other
17 crimes while awaiting their trial?

18 MR. PAINTER: I'm aware of a few
19 examples but I don't have the full
20 statistic. I'm of course aware of a
21 few examples where we've gone after
22 people who released, absconded and we
23 had to pick them up again.

24 LEGISLATOR RHOADS: Now in
25 anticipating, I don't if it's -- I

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2 guess it would be ADA Painter. In
3 anticipation I think you indicated that
4 there was a policy decision between the
5 judges and between the district
6 attorney's office that we would not be
7 seeking bail on certain crimes because,
8 again, what's the point of putting
9 somebody in jail on December 30 only to
10 turn around and release them on January
11 1st. Was there coordination of those
12 policies between the -- were there
13 conversations between the DA's office
14 and the judiciary? How did that work,
15 exactly?

16 MR. PAINTER: I would say that's
17 one of those things that occurred
18 organically. You had a lot of honest
19 and good and rationale argument from
20 the defense bar to the judges saying
21 judge, this is not even a qualifying
22 offense in three months or two months
23 or one week so why. And you had a lot
24 of judicial reception to that. Again,
25 which would be rational. So then when

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2 you have those factors organically, the
3 ADA at the beginning of a calendar will
4 know what to ask on, what not to ask
5 on, what the judicial proclivity of the
6 day would be. So you'll see that just
7 happened organically. As far as a top
8 down policy, it wasn't really even --
9 wasn't even really necessary. There
10 was a few lower level cases, we're
11 talking very, like, B misdemeanors and
12 violations where we pretty much said,
13 okay, we should not be asking for bail
14 on this anymore because there's no
15 point, they're getting out. But again,
16 a tiny fraction of what I would
17 consider was more organic construct.

18 LEGISLATOR RHOADS: I know
19 Presiding Officer Nicoletto had asked
20 Commissioner about the affects of the
21 new reforms on witnesses being willing
22 or victims being willing to cooperate.
23 I believe you indicated it might be too
24 early to tell?

25 COMMISSIONER RYDER: It's a hard

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2 stat to collect because if they don't
3 come forward I don't know who they are.
4 I guess, you know, look at all -- if we
5 have willing witnesses that come
6 forward, they help us solve crimes and
7 they help us reduce our numbers. So I
8 guess we'll be looking at the number --
9 the only number that I can confidently
10 give you is our crime numbers, that's
11 what we collect. We watch and gauge
12 how they work. But again, and I do add
13 that Jack Maple statement that crime is
14 affected on the short term by weather,
15 we've had a very mild winter, which bad
16 guys do not like the cold, so crime
17 goes down in January and February.
18 This time it's gone up but look out,
19 it's another warm day here in the
20 Nassau County.

21 LEGISLATOR RHOADS: Sure. Sure.
22 I guess what I'm trying to get to is,
23 you know, in the example that ADA
24 Painter gave to us during our budget
25 hearings where you had a victim

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unfortunately of a rape and under the disclosure requirements the prosecutors would be required to turn over the victim's name, the victim's contact information, and could, if the victim did not make the -- did not answer the phone when there was an attempt to contact them by the defense, potentially they would be able to receive their home address.

MR. PAINTER: I'm covering this in my presentation.

LEGISLATOR RHOADS: Okay. Not a problem. I guess the question -- the question that I had was: Do we see a reluctance on the part of -- in these particular instances over the course of the last month, do we see a reluctance on the part of someone who has reported a crime then finds out what has to be disclosed and then says hey, you know what, I want no part of this. Have you seen that yet?

MR. PAINTER: I'll leave it to

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2 the discretion of the Presiding Officer
3 if he wants me to answer that now or go
4 into my presentation because that's --
5 I'll cover --

6 LEGISLATOR RHOADS: If you're
7 going to cover it anyway then don't
8 even worry about it.

9 LEGISLATOR NICOLELLO: I know the
10 Commissioner has to leave by 1:00,
11 correct?

12 COMMISSIONER RYDER: I'm good as
13 long as James is there, so yes, I'm
14 okay. I'm good until he speaks.

15 LEGISLATOR RHOADS: Last couple
16 of questions for Pat, then I'm going to
17 break it off and we'll -- unless no one
18 else has questions and we'll -- you'll
19 be off the hook, so to speak.

20 Has the police department
21 considered any strategies to give
22 witnesses some level of comfort as to
23 their security and protection while the
24 criminal defendants or prospective
25 criminal defendants are awaiting trial?

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2 COMMISSIONER RYDER: So always
3 working with our district attorney,
4 we've always taken great lengths to
5 protect our witnesses. Whether we're
6 going to put them up in hotels or move
7 them out of the area or relocate them,
8 that's always taken into consideration.
9 And again, many times the victim says
10 no, I want to stay, this is my home,
11 I'm not leaving. And we understand
12 that and then we try to intensify our
13 patrols and stuff. You can't watch a
14 victim all the time, unfortunately,
15 unless you've got them in a controlled
16 environment. We do our best to do it.
17 We coordinate with the district
18 attorney's office and that has
19 continued to be our plan going forward.

20 LEGISLATOR RHOADS: I'm hoping
21 that we'll receive some sort of update.
22 As you know, the legislature passed in
23 advance of criminal justice reform here
24 in Nassau, it passed a bill calling for
25 the creation of the Office of Crime

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2 Victim Advocate, which is actually
3 going to serve as an advocate on behalf
4 of crime victims that can actually go
5 into court and either oppose
6 applications or at least be heard on
7 applications where information
8 concerning victims and access to
9 victims is going to be requested by the
10 defense. Do you know if there's any
11 update with respect to that and has the
12 police department been asked to
13 coordinate with the office of crime
14 victim advocate?

15 COMMISSIONER RYDER: I'm going to
16 leave the administration answer that
17 because I am not in that process.
18 Maybe some of my members are working on
19 it, but I don't have firsthand
20 knowledge.

21 LEGISLATOR RHOADS: I appreciate
22 that. And I know you indicated that
23 you hadn't been contacted, I guess, by
24 anybody at the state level in advance
25 of criminal justice reform being voted

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2 on and presumably being implemented.
3 Have you been contacted since while
4 we've been talking about reforms to
5 criminal justice?

6 COMMISSIONER RYDER: So I've had
7 numerous conversations with many of our
8 state senators and all constructive
9 trying to understand the ramifications
10 of this. And I also understand their
11 argument on their side of what they're
12 looking for. So yes, we have and I
13 think that many of those items that you
14 see in Newsday today are similar to
15 what we've been talking about as our
16 committee.

17 LEGISLATOR RHOADS: If I can ask,
18 what recommendation would you make to
19 the existing criminal justice reform
20 and cashless bail reform?

21 COMMISSIONER RYDER: So we would
22 ask to present that, put together a
23 committee, present our issues both from
24 many different groups, that document
25 will be sent to all of you today. I

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2 read it off before earlier.

3 LEGISLATOR RHOADS: I appreciate
4 that. Thank you very much,
5 Commissioner. One final question, I
6 apologize. We see down the pike
7 potentially Cannabis legislation coming
8 down from the state. Sort of similar
9 to the discussion we were having with
10 regards to legalized marijuana for
11 nonmedicinal uses. Has anybody from
12 the state contacted you for input with
13 respect to that potential legislation
14 coming down the pike this year?

15 COMMISSIONER RYDER: Yes, there
16 have been conversations regarding and
17 discussions about it. I can't go into
18 those conversations as of yet but I
19 will tell you that there are concerns
20 on both sides and I think I'd just
21 rather leave it alone today, if you
22 didn't mind.

23 LEGISLATOR RHOADS: Understood.
24 Thank you, Commissioner.

25 LEGISLATOR NICOLELLO: Legislator

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2 Drucker.

3 LEGISLATOR DRUCKER: Thank you,
4 Presiding Officer, Minority Leader, and
5 as often happens when I follow
6 Legislator Rhoads, my questions were
7 already asked, and for the most part
8 answered, but I do have a couple follow
9 ups. Thank you, Commissioner. You
10 have no greater fan than me in terms of
11 what you do in Nassau County in terms
12 of protecting us and keeping us safe.

13 I just wanted to piggyback on
14 Legislator Rhoads, and also just to
15 comment. I agree with Presiding
16 Officer Minority Leader Legislator
17 Ford, we all agree that there has to be
18 changes to this law. But in the mean
19 time, though, we have to deal with what
20 we have. I just had a question to
21 follow up on Legislator Rhoads with
22 regard to the increase of five percent
23 you said regarding petty offenses. So,
24 you said that there are about 50
25 arrests per day. What percentage of

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2 those 50 arrests are for petty
3 offenses, would you say?

4 COMMISSIONER RYDER: The
5 majority, I'd say 70 to 75 percent.

6 LEGISLATOR DRUCKER: 70, 75
7 percent. And would you agree, because
8 it's been my experience, that prior to
9 January 1st a suspect arrested on a
10 petty offense, property damage, et
11 cetera, would ordinarily be given a
12 desk appearance ticket anyway?

13 COMMISSIONER RYDER: Again, it
14 would go into that discretion and that
15 volume looking back, you know, how many
16 did he do tonight, did he do seven or
17 eight of them, he's a persistent
18 offender for us, he's causing us that
19 problem that continues in the community
20 so we would hold him down to court.
21 Down at court he'd probably be offered
22 bail and if not bail, he would be
23 remanded.

24 LEGISLATOR DRUCKER: Right. But
25 I'm referring more or less to the

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2 person who's maybe done it once.

3 COMMISSIONER RYDER: First time
4 offenders almost always, on a low
5 level, like, larceny from a vehicle,
6 would probably get an appearance
7 ticket.

8 LEGISLATOR DRUCKER: Right. So
9 the new law really had no affect or has
10 no affect on those types of
11 circumstances?

12 COMMISSIONER RYDER: No.

13 LEGISLATOR DRUCKER: The rest of
14 my questions were asked and answered.
15 Thank you, Commissioner.

16 COMMISSIONER RYDER: Thank you.

17 LEGISLATOR NICOLELLO: I think
18 we're set. Thank you, Commissioner.

19 Mr. Painter, go ahead with your
20 presentation.

21 MR. PAINTER: Thank you very
22 much. Again, I'm Jed Painter, I'm the
23 NCDA general counsel. Since April it's
24 been my main responsibility to ensure
25 legal and policy compliance with the

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2 criminal justice reforms. I wanted to
3 use this time -- when we received the
4 invitation I was trying to think how to
5 use the time productively and then
6 understanding the body I was in front
7 of, what the body was capable of. I
8 want to actually open by saying that
9 you all been very good to the Nassau
10 County DA's office and we really
11 appreciate that. You have always asked
12 for our input, you have always acted on
13 that input. We've come here many
14 times, you know, with different
15 budgetary requests, not just now but in
16 the past and no matter what
17 disagreements there might be, you've
18 always made rational decisions, so we
19 really do appreciate that and
20 appreciate your support and also
21 appreciate you listening today.

22 I did want to start by mentioning
23 some positive effects of the criminal
24 justice reforms. One thing that was
25 negotiated on the way in to these

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because we knew we had to offload a lot of cases early on is we negotiated with the administrative judge earlier court dates. More frequent court dates, misdemeanors are now heard at seventh day and the 14th day. Felonies are the third and fifth day and then adjournments to follow. But that up front action on a case, that will pay dividends as far as total cases in the system down to the road. It's an ancillary effect but a good one that I would have wanted with or without these reforms and we're happy we're seeing that and hopefully by December you see a lot less cases just held up month after month adjournments.

Second thing that probably would not have happened, but I count it as an ancillary effect, is we built and deployed an electronic discovery system and it did not crash on day two. It has now over 4,000 successful downloads from it. It's had over 300 registered

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2 users. So that was also a thing. We
3 were very concerned about adopting by
4 the judiciary, by the defense bar, but
5 now opting out has become harder and
6 harder, and again, this was something
7 that the DA's office made, the court
8 system didn't make this. We made it.
9 It cost money but we made it. Very
10 happy that now we do have an electronic
11 system of fast exchange. We've
12 acquired data management software that
13 would not have otherwise been urgent
14 enough ever to be done. But we have
15 many modes of transferring data between
16 the various police departments that I
17 mentioned. Like I said, I sat next to
18 Commissioner Ryder, the NYPD is
19 responsible for 79 percent of our
20 reactive volume at the DA's office, but
21 we work with 25 other law enforcement
22 agencies; NYPD, federal partners, so we
23 do have a myriad of sources that we
24 have to work with and we have to have
25 data platforms for each and every

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2 single one of them.

3 And the final thing is, I believe
4 throughout this process, because it has
5 been arduous, we have had a shared
6 experience and I do see police and
7 prosecutors actually understanding one
8 another's work better, understanding
9 our procedures better, which I think
10 organically makes a better criminal
11 justice system. So I just want to
12 mention those for things that were
13 positive.

14 That having been said, we have
15 major practical issues with the
16 deployment and implementation of these
17 reforms. I'm going to cover a few of
18 them and try to give them a little bit
19 of a face. We will be trying our best
20 and we have been trying our best and --
21 with the resources we have.

22 The first thing I wanted to point
23 out in any discussion in the ether we
24 see a lot of suggested amendments and
25 whatnot. I want to draw a sharp line

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at the beginning between content versus timing of discovery. The process by which these reforms came about I have found could have benefitted from a lot of substantive input because it's very very hard. The criminal justice system has a lot of workings and saying terms like discovery and bail and securing orders. They're easy. But I think that were I to design a car I would know that it needs wheels and a hood and an engine and seats and seat belts and things. I could probably design something but it would not know at all how to start, it would not work very well. So that's the kind of, you know, without input that's the kind of result you're going to have.

And now I fear there's been a lot of easier solutions, like, well, we'll just make 15 days turn to 30 or to turn to 45 or turn to 20. That's actually not the main issue. The main issue is the content of discovery. I will show

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2 some examples of the types of data that
3 we need to acquire. They are not
4 stacks of paper. They are
5 technological sources. They are body
6 worn cameras and GPS records, thousands
7 upon thousands of memo books,
8 surveillance video systems, it goes on.
9 It has proven extremely difficult to
10 file certificates of compliance with
11 our discovery requirements on major
12 cases. Having personally interviewed
13 most of litigation staff and discovery
14 compliance staff I can tell you this:
15 Major offense bureau; homicides,
16 pattern criminals, in the six weeks
17 it's been one of those ADA's has been
18 able, with her case load of 30, has
19 been able to certify one.

20 From whom we need to secure
21 documentation. Videos, detective
22 reports. On pattern cases you have
23 that problem exponentially. The harder
24 the case, the more important the case,
25 much harder it is to certify and, like

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2 I said, it's not necessarily the DA's
3 fault ultimately. They're the end user
4 of a huge -- that are a huge funnel for
5 information.

6 Ancillary documentation is
7 holding up our certificates of
8 compliance and I'm talking about the
9 eighth, ninth and tenth officers who
10 showed up to a scene, just probably for
11 traffic control. Right now the
12 judicial trend that we're trying to
13 reverse is we have to secure their memo
14 book entries to say certain hours they
15 went and secured a traffic scene.
16 Blotters of where evidence was moved or
17 when a detective signed in or out.
18 Very ancillary. We'd probably never
19 inform a plea, would never really -- a
20 plea decision or really come up at
21 trial but because the way the law was
22 written is all items and information
23 that relate to the subject matter of
24 the case and then has a list of
25 illustrative factors, and we're

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2 responsible for police records. The
3 actualization of that constructive
4 possession is almost impossible. And
5 what's holding up things is very
6 immaterial and that can be very
7 frustrating to the ADAs who have about
8 200 cases.

9 Another thing is the lack of
10 governing case law. It's too early.
11 We see a bunch of lower level decisions
12 and they're all disagreeing with each
13 other right now. It'll be about six
14 months to a year before we see
15 appellate guidance on what terms like
16 relates to the subject matters cases
17 and where the limitation of victim
18 visitation go and all these other
19 issues that don't give us too much
20 comfort in what we're as a practice is
21 right. We can try to do our best in
22 good faith, we'll see where that leads
23 us. But because it's a new law and
24 there's no court interpretations of
25 that law, the default is grab or the

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2 default on the judiciary is don't let
3 them certify until they have
4 everything. So content versus time of
5 discovery is amazing.

6 The biggest issue with the police
7 departments, every single one, not just
8 Nassau County or the villages but
9 across the state are these radio
10 transmissions and electronic records.
11 I would go so far as to say -- and I
12 absolutely will say -- body cameras
13 strongly discouraged now. Again, not
14 by anybody in particular but because
15 the data, the storage, the transmission
16 and the technology, as far as the
17 acquisition is too vast. There was a
18 decision in the city where the metadata
19 behind the actually cameras also had to
20 be provided. I don't know. I wouldn't
21 expect to see -- I thought that was a
22 good direction to go in for
23 accountability purposes, body cameras.
24 Only one department has them; Freeport.
25 I wouldn't see any immediate expansion

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2 of that until things cool down.
3 Radio transmissions we've had to
4 do in a completely different way.
5 Police communications used to have a
6 steady stream and to identify what
7 relates to the subject matter the
8 particular case would have to listen
9 and edit and cut and put together the
10 transmissions that relate to that case.
11 That very first abandoned. Now we'll
12 just give the whole one hour unredacted
13 from beginning to end. And because
14 that can't even be done on the
15 transitional case load of 7 to 8,000,
16 plus the incoming, they have a staff of
17 four or five. I've met with all of
18 them. They can't do it. So we had to
19 file an affidavit with the courts that
20 we still do to this day, signed by Jane
21 Gaddis, the communication supervisor,
22 that outlines the impossibility to
23 comply. But the alternative is if you
24 come in you can listen to it. So we
25 established a listening station at

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2 police headquarters for that to happen.
3 And even that is a heavy lift and even
4 that may not be judicially accepted but
5 it's all we can do to preserve our
6 cases from being dismissed for 3030
7 grounds -- or speedy trial grounds. I
8 apologize.

9 GPS data. We've had lot of
10 arguments about that. Every patrol
11 car, another good thing, is tracked, so
12 we know for officer safety where they
13 are and if something's gone wrong.
14 Stationhouse video is another thing for
15 security, very important. But to
16 accumulate that data on every single
17 case, like a traffic stop where
18 somebody's brought in and processed,
19 you know, for aggregated unlicensed to
20 get the stationhouse video, I mean,
21 it's something that we never would have
22 even considered. And we're of course
23 going to be making legal arguments that
24 shouldn't be considered but, again,
25 until there's a lack of the study of

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2 case law, we are compiling a lot of
3 information or attempting to.

4 Memo book entries is a huge
5 issue. Officers don't carry one memo
6 book, they carry sometimes multiple a
7 month. And because the discovery is
8 retroactive to all cases that were
9 pending, identifying those memo book
10 entries and pulling them in for those
11 transitional cases, we sent a list of
12 the -- it was a computer compiled list
13 of the memo books that we knew about,
14 as far as the officers assigned to
15 cases, that list was 26,000 entries
16 that cannot be pulled by the police.
17 Absolutely not. They will do their
18 best but we will be eating sanctions on
19 those and taking different tacks on
20 those legally, making legal arguments
21 where we can. That's just retroactive.

22 Blotter entries are the same.
23 There are six different blotters that
24 possibly could exist for any given
25 case. Scientific and technological

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2 data, of course, is a major issue. As
3 far as you don't ever want to be put in
4 a position where you're ignoring
5 science its discovery is voluminous.
6 I wanted to show one example. It
7 is very difficult to explain to a non
8 practitioner what I mean when I say our
9 ADAs are really struggling. So I'm
10 flashing this in but I will zoom it a
11 little faster in a second. But this is
12 one portion of a defense request on a
13 case. One portion. This is the
14 portion of their defense request that
15 pertains to forensic science. Okay.
16 Controlled proficiency results for each
17 analyst and technician responsible for
18 preparation analysis, including raw
19 data reported results, target values,
20 acceptance ranges, copies of
21 traceability, documentation during
22 analysis, copies of tactile procedures
23 in effect at the time the test was
24 performed, including sample
25 preparation -- I'm sorry, it's on the

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2 slide. I don't want to read it so slow
3 that everybody falls asleep -- but
4 sample preparation records, including
5 dates and conditions of preparation,
6 procedural reference, purity, extract
7 volume, bench notes, log books,
8 measurements regarding testing,
9 instrumentation run logs, run sequence,
10 origins, times of analysis, records of
11 instrument operating conditions and
12 criteria for variable. Gas
13 chromatograph column, instrument file
14 identification, tuning criteria.
15 Instrument performance checks. Records
16 of instrumentation maintenance at
17 status and activities. We also have
18 raw data. Down here you see the
19 description of the library and
20 reference spectra. Then you have copy
21 of records documenting computation of
22 laboratories theoretical production
23 yield, operation of calibration checks,
24 results of calibration checks and mass
25 traceability. Boom boom boom. I'm not

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2 going to read all of this. It ends
3 with and the procedures manual and the
4 training manual.

5 I just want to highlight if that
6 was at all boring for any of you, our
7 ADAs still have to read it. Okay?
8 They still have to read it. They
9 forward it to me, I still check with
10 the director to see what can we get
11 because we have a presumption of
12 openness, we have a due diligence and
13 good faith requirement. I highlight,
14 highlight, highlight. This is one
15 nugget of discovery that relates to the
16 forensic. Doesn't relate to the body
17 cams yet, or the stationhouse video or
18 the GPS or the police reports or the
19 witness statements or anything else.
20 It is one nugget of a much bigger case
21 of collection. That's part of one case
22 of which that ADA -- this will take
23 long to load -- has 90.

24 I want to say at this point it's
25 been six weeks. Every ADA who is in

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the front line of this reform right now who is in court as I'm talking here, who has worked to modernize their caseload, they're an absolute hero. They did not deliver babies. I know there is legislative recommendation for such things where -- none of them delivered a baby in the backseat of car or stopped a robber or ran into a burning building. But, every single ADA who works at the Nassau County DA's office who gutted it out under extreme adversity and still continues to do so, absolute hero.

As far as public safety issues. Our witness protection expenses, we have received more requests for witness protection this month. It's been double this month than all of last year. So that will be adjusting our budget accordingly.

Protective orders. The thing that would stand between the rapist knowing the victim because you still,

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2 who is in court as I'm talking here,
3 who has worked to modernize their
4 caseload, they're an absolute hero.
5 They did not deliver babies. I know
6 there is legislative recommendation for
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16 Our witness protection expenses, we
17 have received more requests for witness
18 protection this month. It's been
19 double this month than all of last
20 year. So that will be adjusting our
21 budget accordingly.

22 Protective orders. The thing
23 that would stand between the rapist
24 knowing the victim because you still
25 have to file it. It's not

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2 presumptively protected, you still have
3 to have that conversation with the rape
4 victim about I can try. I can't
5 promise you anonymity. I can try. Try
6 through a protective order. I remember
7 last year I saw the debates in the
8 state level. If you read the
9 transcripts, the state was under the
10 impression that prosecutors tried to
11 project that protective orders were
12 easy to get. And to credit, I've seen
13 the transcripts where they meant for
14 this to be a low bar. You can see that
15 in the transcript. A very low bar to
16 get a protective order. We said I
17 don't care what you write, it's not --
18 no. It's going to be that easy. It's
19 that easy.

20 We had two -- I'm trying to give
21 small examples for time -- but I want
22 to mention two protective orders should
23 have been no brainers. One was a
24 homicide, very violent homicide. The
25 other -- sorry attempted murder. The

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other one was an MS13 beheading, okay, as a violent murder. Protective orders sought, granted at the lower court level, expedited review goes to the presiding justice of the second department, vacated them both and sent them back for the defense to have input in those protective order hearings.

Protective orders are not easy to get. And when talking on those -- that line of questioning before about, you know, how's it going communicating to witnesses, it is a change in communicating. Our prosecutors guide them through the process and tell them come to grand jury and come to the hearings and come to the trial. It is a different conversation in 2020 than it was in 2019. In 2019 you said we will protect your identity until you testify. No witness list. You know, if it was that type of case. If it was the type of case where we had fears, the prosecutors could use their

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discretion. It wasn't trial by ambush, it was discretion and there could be a protective order if something came up. 2020 the conversation is much different. It's like we'll try. We'll try our best. I don't know, we have cases coming back on very violent things. Those conversations get shakier and shakier but they are, again, had by the ADAs every day.

Forensic unavailability. These discovery issues are not what people are talking about right now. I see a little bit of chatter on it, most of it's about bail because you can see some more immediate affects of securing order reform. Forensic unavailability is a huge issue. We are about to lose all ballistic testings. All ballistic testing. Gun crimes, we're about to lose them. The state is down to I think their last analyst and we've knocked on every door.

Drug chemistry, again, our

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2 turnaround times are becoming abysmal.
3 Again, I want to combat a situation.
4 We're in the 21st century. I want to
5 combat a situation where forensics are
6 nuances. It would be very easy to go
7 to trial on a burglary with a
8 confession and three witnesses and, you
9 know what, because of the discovery
10 burden, I'm not going to test the
11 latent print on the window. Okay. Or
12 maybe a DNA sample at scene because
13 I've got -- my case is going to get
14 dismissed if I wait for that evidence.
15 So I'm going to go to trial,
16 possibly have a wrongful conviction
17 because I didn't wait. That's a
18 horrible thing. And believe me, we're
19 counseling our ADAs no, you're going to
20 wait. But I'm just pointing that out
21 that you don't want a situation where
22 science is the enemy. Okay.
23 Otherwise, you know, 20 years from now
24 there'll be another person in this
25 chair from the DA's office talking

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2 about a \$40 million settlement. I'm
3 sorry. Okay.

4 There's been a lot of talk about
5 some solutions. These are limited
6 solutions because, again, content
7 versus timing is two different things,
8 as I hope I've illustrated. NICE
9 investigate is a -- meeting benchmarks.
10 February, this month, they'll be
11 starting to take some of the NCPD data
12 into the cloud. By April, we'll start
13 seeing mechanisms of exchange but they
14 have meetings with us every week as far
15 as implementation and I would agree
16 with the Commissioner, three to six
17 months is a reasonable go live date.

18 We've uploaded all calibration
19 records to a website, so that way
20 instead of disclosing volumes of
21 information, we can direct defense
22 counsel simply just saying hey listen,
23 this is okay to be public, just go to
24 this website. We had that inspection
25 station for the radio transmissions and

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2 we've developed technologically
3 cancellation platforms. The
4 cancellation platforms are that every
5 single time our case management system
6 -- again, something a credit to our IT
7 department -- every time a case is now
8 entered as disposed of, at the end of
9 the day, the computer will do a run and
10 transmit that to the police so they
11 stop producing discovery because they
12 are so on fire that getting
13 cancellations would help them. Same
14 thing with the lab. Actually, that
15 hasn't been finalized yet but we're
16 hoping to get the tech to finalize
17 that. Any bit helps.

18 We have ordered 60 scanners. One
19 bright side I will say is that our
20 copying is down and our ink is down 65
21 percent because of electronic
22 discovery. I'd like to get that number
23 even lower. Digital storage costs are
24 going to go up. We have terabytes of
25 data now.

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2 There's a contract. Boy, I wish
3 -- I think it's been signed, it's just
4 about moving it forward. Well, maybe
5 it hasn't been signed. It's the P1
6 JustWare integration where data won't
7 have to be reentered as soon as the
8 PremierONE system. The police one
9 inputted. Our system will
10 automatically -- the names and the
11 DOBs, it'll save us a lot on data
12 entry. We're waiting for that. And
13 we're trying to hire more discovery
14 expeditors. Our core, we lost one so
15 we're down to nine. We have nine
16 discovery expeditors, a senior ADA in
17 discovery compliance and a bureau
18 chief. That's something we didn't have
19 last year. We are trying to -- because
20 case files are going to be a thing of
21 the past. We are putting so much into
22 the digital files now, that a case file
23 is almost why do we even need it. The
24 only reason why we need it is because
25 we don't have WiFi in the courtrooms or

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2 tablets but I would absolutely see --
3 because when you're sending an ADA into
4 the courtroom now with a case file,
5 you're sending them with nothing.
6 Their case file is back on the
7 computer, so we have to update that.

8 And data entry enhancements.
9 Support staff hiring. Those
10 cancellation lists that I talked about,
11 only get produced timely is if we have
12 no backlog, zero backlog in data entry
13 of dispositions. Because if we're not
14 up to date, if it takes us a month to
15 enter the dispo's from last month, the
16 cancellations don't work, the discovery
17 gets overloaded and people are wasting
18 their time.

19 We've also been forced, because
20 of the volume of all those exchange
21 systems, to come up with a system of
22 priority requests with the PD. That's
23 your memo books and blotters and
24 ancillary documents, we're actually
25 taking on water. We have to wait until

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2 50 percent of speedy trial has gone.
3 So we are jeopardizing the cases in
4 order to achieve an ultimately positive
5 resolution because it's one of those
6 where the good of the many outweigh the
7 good of the few.

8 Other solutions, of course, is
9 doing the right legal arguments about
10 impossibility. We've advanced many
11 legislative solutions. I tell my staff
12 that we shouldn't hold out hope to
13 anything. We should try to adapt to
14 things as they are now. More
15 immediately is policy based solution
16 such as plea offers, and yes, that
17 might force us to go lighter faster.

18 It was mentioned before about
19 marijuana. Marijuana is actually a
20 nonissue. I don't know if people know
21 this, the Public Health Law was
22 amended. Public Health Law was amended
23 to include hemp. Hemp has a quantity
24 of THC that has to differentiate from
25 marijuana. As of March 8th, the lab

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will not be able to test marijuana because they have no ability to quant marijuana, so it doesn't matter if it's a felony, a misdemeanor, drunk driving or drug driving, it doesn't -- practically, they don't have the tools and will not get the tools back until September if they order them, the re-agents necessary to test marijuana. So whether or not the legislature acts on anything further with marijuana because of the hemp amendment, the Public Health Law that already has happened as of March 8 marijuana cannot be tested.

Other issues. Phoenix alternative sentencing. We had a robust alternative sentencing platform, you know, it's good to get people appropriate treatment for mental health issues or drug treatment issues. The future of that is a little shaky as well as things like communications, investigative -- we're spending all of

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2 our labor force on reactive, the
3 proactive might be forced into the back
4 seat just as the NCPD explained, their
5 resource issue we might eventually
6 encompass support staff, line
7 assistant, other resource issues.

8 I wanted to flag this as just an
9 odd thing; opioid litigation. The
10 county is part of many counties suing
11 opioid manufacturers. I don't know,
12 I'm not privy to how many millions
13 we're suing for or what our settlement
14 prospects look like or anything, but
15 what I do know is, the DA's office is
16 required to comply with their discovery
17 in civil land. And the standing order
18 right now is production of all heroin
19 files from 1995 to present on an order
20 that I've gone personally to court to
21 say to the judge there's absolutely no
22 way, with present case loads, present
23 discovery obligations in the criminal
24 context I can. I don't know what that
25 does to the county attorneys suit but

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2 if pressed between a situation where
3 I'm doing production for a judge in
4 civil court that's off our main
5 constitutional missions and fulfilling
6 our constitutional mission to prosecute
7 crime and to do discovery, that's going
8 to go. Constitutional obligation comes
9 first. I credit our county's outside
10 counsel for working with me on that and
11 understanding and trying to fight as
12 hard as they can. It's not their fault
13 that this was sort of the wrong year to
14 do that but I raise it because that's
15 another ancillary issue of discovery
16 production.

17 The biggest thing that I wanted
18 to spend the most time on is
19 recruitment and retention. Staff
20 morale is absolutely walloped if you're
21 an ADA. Just absolutely -- what a case
22 was to do before is ten times that
23 amount. If you had a case load of 50,
24 you might as well have a case load of
25 500 or 1,000 now. Every case prep --

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2 because you can't plea anything,
3 universal discovery, the grabbing is
4 just way too much. We have ADAs
5 completely burning out. In Brooklyn,
6 if you notice the article, they lost
7 over 40 in one month, the previous
8 record was 17. Okay. We know people
9 are looking. These are talented,
10 talented attorneys. I want to point
11 out that they're not easily replaceable
12 either. This is the recruitment
13 statistics for the district attorney's
14 office for the past seven years. There
15 has been, as you can see, an 80 percent
16 decline in applicants. 80 percent. If
17 I lose them, I can't get them back.
18 Just because 100 apply, by the way,
19 doesn't mean I get 100 people. Those
20 same 100 are applying to the Bronx,
21 Brooklyn, Manhattan, Westchester,
22 Suffolk. Okay.

23 So say 20 percent of that number,
24 then we have to like that 20 percent of
25 the number and say they're competent.

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2 The DA actually has to exercise
3 discretion and say I trust you to
4 represent my name in court. Okay. We
5 are in a recruitment crisis. And it's
6 -- while we've dropped 80 percent, I
7 know other offices, because it's part
8 of my job to survey, they've gone down
9 but in the City it's more like 30
10 percent loss of interest. We are
11 specifically hit. Okay.

12 I want to point out this unlike
13 -- when the last time we hit a big
14 collapse, that was during 2010 to 2014
15 where it was a bad economy. Okay.
16 People were leaving because of the pay
17 freezes and whatnot. This is a good
18 economy. We have lost two ADAs who
19 were poached for double their salary.
20 We cannot stop that. We can stop
21 people from looking if they enjoy their
22 work, if they love their work, if they
23 find nobility in their work. This
24 moral crisis is very real and it's
25 caused directly by the workload and the

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2 abuse, quite honestly. There's a lot
3 of negative perceptions right now with
4 the profession that I resent.

5 As far as the ABA standards,
6 we're mindful that we're not supposed
7 to assign our ADAs a workload that by
8 reason of its size or complexity
9 interferes with providing quality
10 representation or endangers the
11 interest of justice. It's dangerous
12 for wrongful conviction. It's
13 dangerous from a financial standpoint,
14 as far as liability when things get
15 reversed. It's danger for the lawyer's
16 individual ethics that can be
17 individually sanctioned. They can have
18 grievances taken about them, and every
19 single one of them is aware of that.
20 And when we took a caseload of 90 to
21 200 cases and made the work associated
22 with that caseload multiply
23 tremendously with the discovery burden,
24 we have to reassess what a caseload
25 looks like. Now, ideally, I would come

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before this body and say, so we need to hire a lot more prosecutors to bring down caseloads. But as you can see, that's actually not why I'm here because our recruitment we couldn't hire if we wanted to. Even if you gave us the money, we couldn't hire. We have a recruitment crisis. We have to focus more on retention.

This is what I'm doing right now. The chief prosecutor on behalf of the chief prosecutor for our jurisdiction, inform governmental officials of the workload and request funding and personnel that are adequate to maintain the criminal caseload. The bottom sentence is a scary one. If we can't recruit, then we have to notify the jurisdiction and seek judicial relief and I don't even know what that would look like. I don't know if it's ever happened.

So I have surveyed many offices for what we're doing different. I've

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2 surveyed our own offices. I conduct
3 the exit program and I have for the
4 last three or four years. One of the
5 major problems that we have in Nassau
6 County, which we should be morally
7 ashamed of anyway, is we have no paid
8 childcare leave. New York City has
9 minimum six weeks and they go up to 12
10 weeks. When given the choice between
11 those two jurisdictions, you're one of
12 those hundred applicants, you're going
13 there. But even more importantly,
14 because we rely so much on lateral
15 hiring or you might cut your teeth in
16 the Bronx or Queens, we're seeking to
17 recruit you here, this the practical
18 situation of what happens. You're 24
19 years old when you get out of law
20 school, you work for three or four
21 years in the Bronx, you're now 27, 28,
22 29, whatever, you start looking to have
23 a family, maybe move out to the
24 suburbs, join the Nassau DA's office.
25 You're told that you're leaving 12

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2 weeks paid leave for nothing. We have
3 absolute anecdotal evidence that that
4 is a complete bar to our lateral
5 recruitment. We cannot replenish if we
6 do not have that competitive edge.

7 I'd also highlight that in --
8 under our rules for the ADAs it would
9 take three years of working here to
10 accrue 12 weeks of vacation and
11 personal time and that's without taking
12 anything over the course of those three
13 years. So if you wanted to move, have
14 a baby, raise a family in Nassau County
15 and join our team, you have to postpone
16 those plans for a minimum of three
17 years. You're not allowed to take any
18 time for Jewish holidays or anything
19 else that you might have to take along
20 the way, you have to work straight.

21 The NCPD houses approximately 45
22 percent of all ordinance employees and
23 our current gender spread is 65 percent
24 female to 35 percent male. And the
25 female cohort 57 percent are between 24

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2 and 35 years old. So now you're
3 starting to see what's happening.
4 Right now they're using accrued
5 vacation and personal time to
6 accommodate childcare leave.

7 Before I make my next point I
8 just want to point out, take a moment
9 for myself here. I supervise an ADA.
10 I've supervised her since she was my
11 intern in corruption bureau. She lost
12 her mother in her third trimester. She
13 was worried she could not take off time
14 to grieve her mother because she barely
15 had enough stored vacation and
16 personal, barely actually didn't,
17 doesn't still, to take maternity leave.
18 She'd have to go unpaid. She's now out
19 on leave. I couldn't even donate her
20 time because the rules of donating time
21 in this county require her to exhaust
22 everything before she could accept that
23 time. And then if anything happens for
24 the rest of this year; flu, sickness,
25 has to take any other day off to take

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2 care of a sick child, which is not
3 impossible to consider, she just has
4 nothing left because you're forced to
5 give up your personal and vacation.
6 Horrible situation. If I ever wanted
7 to put my head on my desk and, you
8 know, lament I didn't bring this up
9 sooner, that was the time.

10 Moving on. This actually doesn't
11 cost anything. It doesn't. As of
12 March 1, 2019, because of some
13 termination pay issues, this body,
14 with, I believe, our input and support,
15 capped termination pay for exempts at
16 30 days. Fair and reasonable.
17 Absolutely. Anybody hired after that
18 time can't leave with more than 30 days
19 banked. Paid leave, paid childcare
20 leave costs you nothing during a
21 budgetary year. We always budget for
22 the entire salary point to point.
23 Okay. What paid leave does is instead
24 of going to your bank, you use some
25 time that's awarded to you. Meaning

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that at the end of your career, when you seek termination, you might have that exact 12 weeks still sitting there, hypothetically, because you didn't have to use it during one given budgetary year. But because this legislature has already capped the termination pay at 30 days, you do not have that fear of having the banked time at the end. They can't accrue more than 30 days.

So I would ask that as one mechanism to improve recruitment because, again, I was struggling to figure what I would be -- I should never come here without a proposed solution, if I'm mentioning a problem with recruitment, I think besides the moral, the moral benefits and the morale benefits, I think it's just long time to be competitive with New York City. Okay.

As an alternative, like I said, the accrual of time is very slow. So

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if you want to move here or accept a lateral appointment, it'll take you three years before you come to anything close to 12 weeks. And again, six weeks is the minimum in New York City anyway, without taking anything. Perhaps up front accommodations could be made or at least in the discretion of the executive of a department.

Other things that we have to consider when we're talking about morale and retention is retention bonuses or re-signing commitments. You know, when they hit their three-year commitment, maybe throwing something at them. We haven't decided anything. These are just, you know, ideas. Retention focused salary modeling. Westchester is very good at this. They just decided we're going to be a retention focused office. We don't want classes progressing. Let's hold what we have, pay higher. When we lose a body, we get a body because we pay

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2 higher.

3 And ECAP stipends. There's going
4 to be a bill coming through this
5 legislature soon. I hope it's
6 noncontroversial. We have an early
7 case assessment bureau. I testified
8 here a while back talking about how one
9 of the biggest impacted fields was
10 going to be our intake operations that
11 was going to have to take on discovery
12 compliance operations and you did take
13 action on that. You awarded us some
14 money to enhance our intake operations.
15 This is a way that we want to deploy
16 it. Our ECAP stipends have not been
17 adjusted since 2017. They didn't allow
18 for a supervisor differential, so it's
19 a bill that we can afford because you
20 have given us the money that we just
21 need to deploy now. Again, early case
22 assessment bureau being in discovery
23 compliance, that's the main
24 functionality that we need to improve
25 in the short time. And also as a plug

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2 for the bill, it's cheaper than hiring
3 people because when you give out
4 stipends you're flat feeing it.
5 Whereas if you hire a body, you're
6 paying them pension and health costs.

7 That having been said, I'll take
8 any questions.

9 LEGISLATOR NICOLELLO: First off,
10 that was an excellent presentation.
11 Thank you very much for the
12 presentation.

13 Also please extend our thanks to
14 all of the ADAs that you are referring
15 to today for the work that they're
16 doing to protect our residents of our
17 county and thank the DA. She's running
18 an office that is a model in terms of
19 being proactive to deal with these
20 issues. I know in particular that the
21 DA was able to get grants for the --
22 for crime victim advocates in the
23 office. So that truly will be helpful.

24 I'm kind of shocked with your
25 description of what our ADAs are going

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2 through and what their workload looks
3 like and I'm sure we're all deeply
4 concerned about that. That in and of
5 itself would be enough for a full
6 hearing. We will explore the paid
7 childcare leave, there's a way that we
8 can do that. But I did want to get
9 into the lab results, that is a deeply
10 concerning area also. In this age,
11 obviously the forensics, as you said,
12 often times determine whether or not
13 you can prove a case or not. What can
14 we do to improve that situation? It's
15 an immediate issue, as far as I know.
16 But what can we do to improve that
17 situation?

18 MR. PAINTER: We are fortunate to
19 have our own crime lab, north of New
20 York City they're all using the state
21 troopers. They're all using the state
22 troopers and that is calamity waiting
23 to happen. You'll see those articles
24 in another month or two when cases
25 start getting tossed. For a while I

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believe they're only testing A felony weight, nothing else.

We have our own force with the new facility. We have outside contractors with NMS that we've tried to pull back on -- go back to NMS to help. We've tried to on a policy level limit what we send. This fact that the marijuana is becoming practically impossible to test regardless of -- I take no position -- but regardless of what the legislature does later, they've already forecast that there's no point in sending marijuana after March 8th.

Other decisions like vaping, THC, things to hold back, things that might be more minor, they might be entitled to a very favorable disposition, very up front with those earlier court dates. We can do policy based solutions but ultimately the laboratory needs staffing up, significant staffing up. You would have to get that

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2 testimony as to specifics from the lab.
3 I can only relate anecdotally that we
4 are trying to give them a break with,
5 again, adhering to a 50 percent speedy
6 trial goal. Something that we might
7 have to shove up to the 60 percent or
8 70 percent but we are trying to control
9 when we submit.

10 When I say 50 percent speedy
11 trial, I guess I should explain that.
12 On a felony case, you have six months
13 before the case is tossed. So we are
14 willing to take on three months of
15 water, so to speak, before we even
16 request. For a misdemeanor, it's 90
17 days. So 45 days. We have the benefit
18 of a desk appearance ticket for most
19 drug cases. Now actually that kicks up
20 to 55 days. So you have 110 if you
21 could have the 20 days of DAT time with
22 the 90 days. So 55 days, that's the
23 turn around we're looking for. I do
24 not believe they are fully able to meet
25 those targets and things will only get

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worse. And when it comes to case validating, we need it because the district attorney will not -- the district attorney will accept a plea on a criminal possession of controlled substance case but before the sentence we will verify that it was a controlled substance. That's, I think, a fundamental policy against wrongful conviction that we want to know that you actually had crack not sheetrock. So there's not much we can do there. So every single controlled substance case where the state can take a controlled substance plea, we will be seeking testing on.

LEGISLATOR NICOLELLO: Legislator Ford, has already taken the initiative with respect to the crime lab and it's something that we will be following up on, whether staffing or whatever requires, it would have been a crisis situation in any event, but with the new disclosure laws it just make it

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2 more acute than ever. Legislator Ford.

3 LEGISLATOR FORD: Thank you very
4 much for your presentation.

5 Is it possible to get a copy of
6 it?

7 MR. PAINTER: Of course.

8 LEGISLATOR NICOLELLO: I
9 appreciate it. I think all of us would
10 like it because you had a lot of --

11 MR. PAINTER: This is not my
12 laptop, I'll just leave it on the
13 laptop, whoever --

14 LEGISLATOR FORD: Okay. Because
15 it was a lot of information. I think
16 there's stuff that we would like to
17 look at more closely.

18 Just a quick thing, when you
19 talked about discovery. With the
20 proposed changes that they're
21 considering now with the bail reform up
22 in the state, will they -- I'm going to
23 say this wrong. Will they keep with
24 the practical issues -- will they help
25 with the practical issues that you

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2 outlined regarding discovery?

3 MR. PAINTER: I don't know. I
4 would hope so. I don't know their
5 frame of mind on it.

6 LEGISLATOR FORD: Oh, okay. When
7 you talked about body cameras with, you
8 know, I guess, whatever data they get,
9 like, you know, from the actual films
10 and stuff like that that are recorded,
11 like, the actions that are record by a
12 body camera, I got a little confused.
13 You talked about metadata. I don't --
14 what is that?

15 MR. PAINTER: Well, think of your
16 phone. When your phone takes a photo,
17 the photo not only is -- you can see
18 the photo but sometimes geographic
19 location of where the photo was taken,
20 the time it was taken. Okay. And even
21 further behind that there's plenty of
22 stuff that -- you know, comparative
23 data so that sometimes your phone might
24 accumulate albums based on face.

25 LEGISLATOR FORD: Right.

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2 MR. PAINTER: Or time. So there
3 are various software solutions where
4 the metadata is important. It jives
5 body cameras together so you can
6 actually view on a split screen one
7 single incident. The point I'm trying
8 to make is, it's sometimes not just the
9 image, it's a lot of associated data.

10 We have a similar issue with
11 wires. The amount of data is not just
12 what you hear on the phone call. It's
13 a lot of stuff behind it. A lot of GPS
14 and other things. It can go fairly
15 infinitely if you let it. I mean, you
16 can get to a situation where you're
17 looking for the calibration records of
18 the satellites in space.

19 LEGISLATOR FORD: That was
20 something that was brought up in the
21 hearing with the labs and they were
22 talking about like this calibration,
23 I'm not an attorney so I may say the
24 wrong terminology. But like when they
25 were discussing about the calibration

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and there's like, I guess, you have to -- when you're prosecuting somebody, the defense will ask to make sure that the -- whatever the measurements are actually accurate and based on previous testing and as well as the person who actually did the calibration, they need to have information. So it seems that now they have to add more information because they have to go back farther in regard to providing some information in regards to the people, as well as the instruments.

Are they now -- are you as a DA or ADA compelled to then also even add more background information in regard when you are prosecuting or going to charge somebody?

MR. PAINTER: As far as our preparations on that, the lab also was technically brilliant and was able to produce a portal called the Beast Portal, which we use. The Beast Portal has preloaded everybody's curriculum

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vitae's, because we need that. It's preloaded proficiency test results of those individuals dating back to the time period required by statute or as far as the records go back. We have accreditation standard on there. They are basically pre-populated with the generic data and the calibration records and that was not a heavy lift but they did it.

That having been said, the document that I showed on screen and then broke down.

LEGISLATOR FORD: Yes.

MR. PAINTER: Doesn't cover any of that. I still have to e-mail the lab and see what's feasible with that and get various responses like we could possibly produce this, we could possibly produce this, no we can't produce that. And some of the answers to the questions we can produce that but you would need proprietary software to read it and they do not have the

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2 proprietary software. They'd have to
3 buy a license for it to even just view
4 the DNA profile.

5 LEGISLATOR FORD: Would that be
6 the county would have to buy that
7 software?

8 MR. PAINTER: No. Some of this
9 -- I don't know how much of this is
10 testing the system, how much of this is
11 genuinely interested. I don't know.
12 But if it came push to shove where a
13 judge said no I find the defense
14 attorney can hire an expert to review
15 the raw data behind the blah blah blah,
16 then you can arrange -- you can have a
17 court order to go to a viewing station
18 at the lab that has the proprietary
19 software, taking, of course, chemists
20 off the floor to sit with you while you
21 do it, you know, and view the program.

22 LEGISLATOR FORD: I appreciate
23 your testimony and bring to light the
24 challenges, you know, faced by your
25 department, as well as the ADAs. Yes,

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2 they are -- they are heroes to be
3 able -- and the fact is that you all
4 have basically worked with this and put
5 like a bit of a positive spin, to a
6 certain degree, on something that seems
7 to be so enormous, you know, for all of
8 us to comprehend. I really appreciate
9 even some of the steps that you've
10 already taken, and please let our DA,
11 Madeline Singas, know of our gratitude,
12 you know, for her foresight, you know,
13 in doing this.

14 So is there anybody else?
15 Legislator Gaylor.

16 LEGISLATOR GAYLOR: Thank you,
17 Mr. Painter, for your testimony today
18 and I appreciate your honesty and
19 forthrightness in sharing with us.

20 I know Commissioner Ryder
21 mentioned diversion programs. I think
22 you touched upon it. I just want to
23 ask a couple of questions in that
24 regard initially here. So my
25 understanding is before the bail laws

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2 were implemented, individuals charged
3 with drug possession were eligible for
4 bail, would that be a correct
5 statement?

6 MR. PAINTER: Yes.

7 LEGISLATOR GAYLOR: Often in lieu
8 of bail these folks were offered an
9 opportunity to a drug treatment
10 diversion program. Would that be a
11 correct statement?

12 MR. PAINTER: Yeah, there's a lot
13 of different vehicles to get somebody
14 some additional treatment. Could be
15 done on an outpatient basis. A judge
16 could make a condition of release of
17 conditionally release to the probation
18 department who would recommend
19 outpatient treatment and then the
20 person would have to abide by those
21 terms of release. And if not, the
22 hammer over the head was bail. So it's
23 either go to treatment or -- basically
24 a short form of go to treatment or I'm
25 going to have to put you in to control

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2 your habit.

3 LEGISLATOR GAYLOR: All right.

4 And in many cases those drug treatment
5 programs were successful and in some
6 cases they weren't as successful for
7 that offender. But now we're in a
8 situation where judges are given a
9 choice of diversion program or -- and I
10 should say the defendant or the
11 principal or whatever the correct term
12 nowadays would be or I'm not sure we
13 can call them defendants anymore, from
14 your previous testimony. But whatever
15 they're called, they're given a choice
16 now of a drug diversion program or it's
17 no bail so you're out anyway.

18 MR. PAINTER: The only other way
19 we can remedy that gap is doing what's
20 called a contract plea. The contract
21 plea would be where you plea up front
22 but the case is adjourned and if you
23 comply with various things in your
24 contract, it could be treatment
25 focused, whether it's mental health or

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2 --

3 LEGISLATOR GAYLOR: But that
4 comes down the road, right?

5 MR. PAINTER: It comes down the
6 road and then you can vacate it.

7 LEGISLATOR GAYLOR: Initially,
8 you get arrested and, you know, you get
9 to that first resolution part, I guess,
10 after arraignment. And you can go to
11 diversion or you can go to diversion or
12 you can be released and come back
13 whenever. Are you seeing or are we
14 starting to see is where I'm going,
15 with the number of cases going to
16 diversion program plummeting because
17 people are just saying I don't want to
18 do that, I'll just come back -- maybe
19 come back the next court date or
20 whatnot. How are the numbers looking
21 on diversion programs?

22 MR. PAINTER: I'm going to say
23 it's too soon to tell. But that having
24 been said, you are right that there is
25 a gap in immediate treatment because

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the application of DA focused diversion cannot happen as quickly. We are in a post contract world, mean post plea, which also means post discovery. So there will be a delay between possibly a person's need and the criminal justice system being able to do something about it. That having been said, they can always -- you know, maybe the arrest itself can -- I don't want to speculate, all I can tell you is what we can control and what we can't control. There is no ability pre plea now to have a consequence for noncompliance with treatment alternatives.

LEGISLATOR GAYLOR: I know

recently the county executive in one of her press conferences mentioned that the number of folks going in the diversion program are plummeting, I think that was her word, and that there was -- she was seeing or the county was seeing an increase in the number of

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2 drug overdoses. Do you have a comment
3 towards that?

4 MR. PAINTER: I believe that was
5 the commissioner's fear last year, that
6 drug overdoses would go up. My only
7 comment is it is harder for the
8 criminal justice system to mandate
9 treatment now than it was. I'll leave
10 it at that.

11 LEGISLATOR GAYLOR: Okay. So you
12 know, I think in today's paper I read
13 that the Manhattan district attorney,
14 Mr. Vance, indicated 40 ADAs have
15 resigned since January 1 because of the
16 increased workloads associated with
17 these discovery reforms. Do we have a
18 specific county ADAs that have resigned
19 since January 1st because they're just
20 overwhelmed by the work and said screw
21 this? I'm not coming back tomorrow?

22 MR. PAINTER: As a -- you see me
23 smiling -- it's sort of a badge of
24 honor that Brooklyn lost over 40,
25 Manhattan lost whatever number, that

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the heros we have in the Nassau County DA (end of Tape 2, Side 1) pales in comparison. So I really -- they have my full respect for gutting this out. Two of them were facing much higher salary offers. That is not to say more will come but I'm hopeful that we continue to give our ADAs the support, the morale boost, the legal arguments, the policies and the resources that will keep them encouraged and doing jobs that they love. And as somebody who does the exit interviews for the office, nobody ever seems to want to go. They're usually enticed to go for something else. All I'm going to say is that we have a really good crew and I want to keep that really good crew together.

LEGISLATOR GAYLOR: So are we working on a plan, is the district attorney or maybe you working on a plan where we foresee in the very near future we're going to defer or decline

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2 prosecution because of these increases
3 and can't meet the 14 pages you showed
4 us of having to provide all that
5 technical data? So are we starting to
6 think about declining prosecution in
7 certain types of cases?

8 MR. PAINTER: I am aware of
9 you're talking about in other
10 jurisdictions where they are deferring,
11 which can be -- which can be sometimes
12 an only option. We have not had any
13 policy discussions to go that route.
14 We are only focused, you know, where
15 those shorter court dates, which we
16 advocated for, that's what we wanted.
17 We knew something was going to have to
18 get cut but we wanted the court system
19 to be involved and so the pressure is
20 on our supervisors to make faster
21 decisions to remove volume. Add
22 arraignments, if possible, at the 7-day
23 mark if possible, at the 14-day mark if
24 possible, that's where the volume is in
25 district court.

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2 And so our strategy has not so
3 much been deferring, our strategy has
4 been more very fast decision making to
5 date.

6 LEGISLATOR GAYLOR: Again, thank
7 you and I thank all the members of the
8 district attorney's office for the work
9 they do.

10 LEGISLATOR FORD: Legislator
11 Ferretti.

12 LEGISLATOR FERRETTI: Good
13 afternoon, Mr. Painter, and thank you
14 for your testimony. Just like in
15 October, it was very informative, fact
16 based and very impressive, so thank you
17 very much for that. I really want to
18 just focus on kind of two lines, two
19 issues here. The first is electronic
20 monitoring. How often is electronic
21 monitoring used now and how often was
22 it used prior to the new criminal
23 justice reforms taking effect?

24 MR. PAINTER: So electronic
25 monitoring. There has been a

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2 tremendous increase. Probation has
3 requested a lot more devices at \$800
4 each, they leased them from a company.
5 We received a memo from OCA that
6 permitted our modeling of monitoring to
7 work where we can outsource the actual
8 technology but have to in-source
9 decision making about the monitoring.
10 So we were able to move forward
11 thankfully with use of it. I do see
12 requests for that going up because
13 sometimes it's the only alternative on
14 felonies that are nonqualifying.

15 LEGISLATOR FERRETTI: Do we have
16 the infrastructure in place as a county
17 to track those who are issued these
18 monitors?

19 MR. PAINTER: I would have to
20 direct you to the probation department
21 to see exactly what kind of staff they
22 have looking at the screens. We have
23 the hardware. We have made the request
24 where we felt it was an appropriate
25 alternative. And we've seen one or two

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2 noncompliances, we had that example of
3 the guy who cut off the strap. So it
4 is a tool or a safeguard but we try to
5 use it only where appropriate.

6 LEGISLATOR FERRETTI: Let's talk
7 about the person who cut off the strap
8 and, you know, what -- do you know how
9 the police department is alerted if
10 somebody cuts of a strap?

11 MR. PAINTER: Yeah, you get
12 what's called a strap alert. It's not
13 the police department's that's
14 notified, it's the probation department
15 that's notified of the strap alert and
16 that specific case, because I
17 participated in that one of the early
18 ones that I wanted to be personally
19 involved with as one of the first flash
20 points of electronic monitoring meeting
21 reality. In that specific case, the
22 defendant was charged with
23 nonqualifying offense bank robberies.
24 He had to be released. He was not.
25 The judge in district court set bail

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2 regardless. It was very early days.
3 Legal aid took a 5-3030 appeal to the
4 supreme court judge. I appeared for
5 that 5-3030 hearing myself. I did
6 consent to the application because it
7 was illegal and the judge granted the
8 application because it was illegal to
9 have him on electronic -- on bail. I
10 requested in the alternative, because
11 the only legal option was electronic
12 monitoring. He was fitted with
13 electronic monitoring, released from
14 the jail. His court date was set for a
15 few days from then, he missed the court
16 date. At the same time of that -- him
17 missing the court date, probation
18 notified me that they had received a
19 strap alert. I went down to court. I
20 informed Judge Berkowitz that there was
21 a strap alert. Regrettably, it was too
22 late. The case had been called and the
23 warrant could not be issued. It was
24 postponed for 48 hours, because that's
25 the law. I went back on the Friday,

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2 the two days later and then requested
3 the warrant for his return.

4 LEGISLATOR FERRETTI: Are you
5 saying that the strap alert came in and
6 you couldn't even request a warrant for
7 his arrest for 48 hours?

8 MR. PAINTER: It came in after
9 the case had been called, so it came --
10 we'd probably have to tighten up our
11 procedure of where probation sends the
12 strap alerts when they occur.

13 LEGISLATOR FERRETTI: What's the
14 punishment for someone cutting off one
15 of these devices?

16 MR. PAINTER: What we would --
17 there's two possible penalties under
18 the law. One is you can be charged
19 with criminal mischief. In the case of
20 the valuation of that property, it
21 would be appear an E felony, so
22 ironically a mandatory desk appearance
23 ticket. But concurrently with that
24 consequence you would have a
25 possibility of being held in contempt

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2 of court, which you might have seen
3 from My Cousin Vinny. The court could
4 hold you in contempt and jail you for
5 up to 90 days for a violation like
6 that, because they've ordered you on
7 electronic monitoring so -- and I did
8 do a hearing like that on a related
9 case myself with a person who kept on
10 committing crimes and we went for a
11 contempt because she failed to report
12 for electronic monitoring and she was
13 held for ten days just on that
14 violation, so that is available too.

15 LEGISLATOR FERRETTI: All right.
16 But that's -- so if you're charged with
17 that E felony, that's not a bail
18 eligible offense, correct?

19 MR. PAINTER: On its own, no.
20 What you would have to do is -- okay,
21 so besides the immediate consequence of
22 a criminal charge or possible contempt,
23 and I say possible because it's only
24 been used to my knowledge once --

25 LEGISLATOR FERRETTI: It can be

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2 used on anything, can't it?

3 MR. PAINTER: -- I've only seen
4 judicial contempt used once in a
5 decade.

6 LEGISLATOR FERRETTI: But that
7 could be used on any?

8 MR. PAINTER: Could be used but I
9 just never -- it's a very rare thing.

10 LEGISLATOR FERRETTI: Right.

11 MR. PAINTER: The other option
12 under the law is because you've
13 committed an additional felony by
14 cutting off the bracelet, you could go
15 back to the judge on the underlying
16 case, the underlying bank robbery and
17 say under 5362(b) of the criminal
18 procedure law, look, they've committed
19 an additional felony and you have to do
20 a hearing before the old judge
21 demonstrating by clear and convincing
22 evidence the commission of the new
23 felony. You have to -- it's got to be
24 a non hearsay thing so you have to have
25 like a mini trial on it. So I'd have

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2 to produce the probation department,
3 the GPS records, et cetera, before the
4 old judge. If I satisfy before the old
5 judge at that hearing that they have
6 committed a new felony while out on
7 liberty on the existing felony, I then
8 have the right to ask for bail.

9 LEGISLATOR FERRETTI: This is a
10 good segue to my next series of
11 questions because it sounds like you're
12 doing what a responsible ADA would do
13 in looking for somebody like this who
14 keeps cutting off their device to be
15 held, that's common sense. So it
16 brings me to my next line of
17 questioning which is the new Senate
18 Bill 7723, Criminal Circumvention of
19 Bail Reform. Are you familiar with
20 that bill?

21 MR. PAINTER: I believe it was
22 pulled.

23 LEGISLATOR FERRETTI: Are you
24 familiar with the bill when it was
25 filed? Have you had a chance to review

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2 it?

3 MR. PAINTER: Yes, I did.

4 LEGISLATOR FERRETTI: This bill
5 applies to police officers, judges
6 detectives and prosecutors, correct?

7 MR. PAINTER: It would have, if
8 it weren't pulled.

9 LEGISLATOR FERRETTI: Right. My
10 understanding of the bill was that if
11 charges are inflated against an
12 individual that the person, any of the
13 ones we just listed, the police
14 officer, ADA could be charged with a
15 criminal offense; is that your
16 interpretation?

17 MR. PAINTER: The bill, as I
18 understood it, would make it a Class A
19 misdemeanor for a prosecutor or a
20 police officer to inflate charges, or
21 possibly deflate charges -- I think if
22 it was only inflate charges, to
23 circumvent bail reform.

24 LEGISLATOR FERRETTI: And now
25 bail reform --

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2 MR. PAINTER: Basically up charge
3 somebody.

4 LEGISLATOR FERRETTI: But when we
5 talk about bail reform, correct me if
6 I'm wrong, written within bail reform
7 is that judges must take all proper
8 measures to err on the side of no bail,
9 correct?

10 MR. PAINTER: That's correct.

11 LEGISLATOR FERRETTI: All right.
12 So to your knowledge, has anyone in
13 your department ever intentionally
14 overcharged an individual so that bail
15 could be imposed on them?

16 MR. PAINTER: Never.

17 LEGISLATOR FERRETTI: Would you
18 have supported this legislation, this
19 bill?

20 MR. PAINTER: That's a
21 hypothetical question but I'd rather
22 just not answer. The bill's been
23 pulled so there's no reason to comment
24 on it.

25 LEGISLATOR FERRETTI: Okay. I

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2 mean, you know, just the idea that a
3 bill like this could be proposed,
4 knowing the limitations that you've
5 outlined so eloquently today,
6 everything that's going on, it's really
7 disturbing that a bill like this could
8 even be drafted in the first place and
9 submitted. So I am happy that it has
10 been removed but thank you for your
11 answers. I appreciate it, Mr. Painter.

12 MR. PAINTER: Thank you.

13 LEGISLATOR FORD: I know that you
14 have a time constraint, how much more
15 time do we have?

16 MR. PAINTER: I could stay for
17 another 20 minutes.

18 LEGISLATOR FORD: Thank you very
19 much. Legislator Rhoads and then
20 Legislator Drucker.

21 LEGISLATOR RHOADS: Then I will
22 try and limit mine to about six minutes
23 out of that 20.

24 First off, I want to say thank
25 you. The fact that you -- and separate

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and apart from the DA's office -- that you personally have been so upfront and forthright and sort of taking the lead in informing us as to the practical implications of a criminal justice reform, even before it went into place. I know that you have taken heat from a number of different sources throughout the state for being one of the first ones to actually articulate the practical effects and impacts of what would happen. We should never be afraid to tell the truth. I appreciate the fact that you have and that I think it speaks volumes about those who would criticize you for telling the truth about their motivation. So I just wanted to start off by saying thank you. And that ate up 90 seconds of my six minutes.

Public safety committee heard testimony from the medical examiner on Monday when she was speaking about delays of 60 days, 80 days, the backlog

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that continues to grow as they have additional evidence that's to be submitted for testing and production. I know you spoke about felonies having 180 days speedy trial and misdemeanor speedy trial has to be within 90. But there are other sanctions according to that bill for the failure to provide the disclosure within the 15 days that were set forth in the law.

Has the county had to pay any sanctions yet or do you even know what those sanctions might be?

MR. PAINTER: It would not be financial sanctions, we would never pay them, but the 45th day is coming up soon so we'll be having that conversation very shortly. I remember the January 1 effective date -- you're looking at my math -- you're looking at tomorrow to start beginning, you know, looking at what we don't have. It would still be premature to even assess sanctions at that point. We would say

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2 to the judges because what would
3 happen, on a practical sense, is we
4 would get something on say, March 2,
5 some memo book or blotter or something,
6 turn it over at that time. At that
7 point in time, a defense attorney would
8 have to say, oh my goodness, if I only
9 had this memo book 14 days ago I could
10 have done something --

11 LEGISLATOR RHOADS: Hired an
12 expert.

13 MR. PAINTER: -- and I'm
14 prejudiced. Yes, something like that.
15 And that's the time to discuss
16 sanctions. It's actually upon the late
17 disclosure that the dialog can start to
18 ensure. We're not there yet.

19 LEGISLATOR RHOADS: Is there a
20 prejudice component to it --

21 MR. PAINTER: There is absolutely
22 a prejudice component and we'll be
23 arguing that the sanction has to be
24 proportionate to the level of
25 violation. Not turning over a witness

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2 statement of the accuser would be
3 punished much more highly, of course,
4 than the traffic control cop's memo
5 book.

6 LEGISLATOR RHOADS: Right. For
7 example, you could be, in theory,
8 precluded from using the memo book or
9 precluded from offering that officer's
10 testimony, just in theory.

11 MR. PAINTER: Yeah, I mean, we
12 would be arguing for the most minimal
13 sanction.

14 LEGISLATOR RHOADS: Right. Well,
15 of course. When you're talking about
16 the 90-day misdemeanor. 180 day felony
17 speedy trial restrictions though. If
18 you blow that -- if you blow the 90
19 days or blow the 180 days based on the
20 felonies, you're talking about somebody
21 walking.

22 MR. PAINTER: Yes. So that's why
23 while securing order reform is taking
24 up a lot of the chatter right now, I
25 can absolutely assure people -- I can

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2 prognosticate that in April or May
3 there'll be a different round of
4 stories about -- I'm not talking about
5 Nassau County, necessarily, I'm talking
6 about around the state where things are
7 starting to be dropped.

8 LEGISLATOR RHOADS: Understood.
9 Now we are fortunate in having our own
10 medical examiner's office and having
11 our own crime lab and we have systems
12 in place but it seemed as though, based
13 on the testimony on Monday, that even
14 they were short staffed for the volume
15 of work that they actually have and it
16 sounded as though the plans were to add
17 a couple of people here, a couple of
18 people there but it didn't sound
19 proportionate to the backlog that they
20 had. Do you have any opinions or
21 insights to offer as to what we need to
22 be doing with respect to the crime lab
23 and the ME's office to help them get up
24 to speed?

25 MR. PAINTER: Again, those

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questions are best directed to the ME's office. I can only answer that I know -- I have heard, I don't have firsthand knowledge that not only the number of staff but the recruitment for them is also an issue for a different reason. I believe their recruitment is issues of the pay of forensic scientist is disproportionately low when compared to other job titles.

So I've heard in the past, and seen in the past, that you'll have somebody come into Nassau to sort of go to the academy here, so to speak, and then they get a very high paying job at a lab somewhere else.

LEGISLATOR RHOADS: No, I appreciate that. And the reason for the question -- obviously, we did hear from the ME's office and from the crime lab on Monday. I wanted the perspective of somebody that has a close working relationship with them but is not inside their office as to

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2 other things we might be able to do to
3 assist in proving. But I appreciate
4 that response, we can certainly follow
5 up. I know we're limited on time.

6 MR. PAINTER: I -- from the DA's
7 perspective, we never want to be afraid
8 of burdening the lab. That should not
9 be a fear. We want the accurate, fair
10 just results. We want as much forensic
11 science as possible. We want to
12 marshal it as quickly as possible and
13 the danger of even some institutional
14 hesitation of overburdening the lab, is
15 a problem.

16 LEGISLATOR RHOADS: I appreciate
17 that. Is it still too soon to tell
18 whether we have incidents of
19 individuals not appearing for their
20 appearance tickets? One of the big
21 concerns that was raised, and, in fact,
22 the appearance tickets sort of adopted
23 the unofficial moniker of disappearance
24 tickets in some cases. Have we seen
25 large numbers of people not appearing

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2 for their court appearances at this
3 point or is it still too soon?

4 MR. PAINTER: It's too soon to
5 tell for a couple reasons but the main
6 one because the desk appearance ticket
7 mandates came in on January 1, there
8 was a whole gap where those cases
9 weren't even called until January 20.
10 So you're not talking about six weeks
11 of data, you're talking from January 20
12 to present, which is only about 15 --
13 you know, it's not a lot of data.

14 LEGISLATOR RHOADS: With respect
15 to the crime victim advocate bill that
16 the legislature passed. Do we know
17 where we are in terms of we've heard
18 that the county executive is
19 interviewing candidates, I guess, to
20 sort of head the department. Have
21 there been any discussions with the
22 district attorney's office as to how
23 that's actually going to be implemented
24 and how the relationship between the
25 DA's office and the crime victim

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2 advocate's office is going to develop?

3 MR. PAINTER: None that I've
4 attended.

5 LEGISLATOR RHOADS: Okay. Is
6 that some -- I mean, assuming that you
7 have a crime victim advocate in the
8 very near future to sort of start that
9 department, because we have victims
10 every day that are being subject to
11 these disclosure requirements, without
12 a mechanism to be able to address them
13 necessarily because obviously the DA's
14 office, even though you are very much
15 concerned about the rights of the
16 victim, you're there to represent the
17 people of the state of New York not
18 necessarily the victim, right?

19 MR. PAINTER: We'll be seeking
20 justice for all parties, absolutely.

21 LEGISLATOR RHOADS: Of course.
22 Of course. Are there any plans to
23 start those discussions or there hasn't
24 been any conversation whatsoever?

25 MR. PAINTER: I'm not privy to

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2 them in a sufficient place to even have
3 those discussions yet. Once we have an
4 idea of what the architecture of that
5 department will look like we'll have
6 those discussions. So the pressing
7 issues for us, of course, that we're
8 handling through our own CVA staff
9 right now is, like I said, the witness
10 protection requests, without divulging
11 too much about what those entail, are
12 double in one month what they were last
13 year. There's a lot of -- so
14 relocation and things like that,
15 temporary housing, very big things to
16 coordinate. But also, as I said last
17 time, right now the DA is doing one of
18 three parts of crime victim advocacy.
19 The DA touches solved adult crime. The
20 gap in service would be unsolved adult
21 crime because it wouldn't be forwarded
22 to us for prosecution. That's like,
23 you know, somebody's who's had their
24 house vandalized or somebody murdered
25 but not solved yet. So that requires

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2 different servicing that the DA
3 wouldn't necessary see. And the other
4 aspect is solved or unsolved juvenile
5 crime which would be in the purview of
6 the family court system, which the DA
7 wouldn't have coverage over.

8 LEGISLATOR RHOADS: And one of my
9 last questions is, and it's a topic
10 that was actually raised with
11 Commissioner Ryder, but it has some
12 implications, obviously with the
13 district attorney's office as well,
14 green Light Law. For example, has the
15 restriction that we're not able or that
16 the federal government or federal law
17 enforcement authorities are not able to
18 access -- I'll flip that. That
19 Department of Motor Vehicles, for
20 example, is not able to share
21 information with federal authorities as
22 a result of the green light law. We
23 have a similar restriction in place
24 precluding us, by agreement, precluding
25 us from sharing information with

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2 federal authorities, at least it's my
3 understanding, that's garnered through
4 the Department of Motor Vehicles if we
5 want to be able to access that
6 information.

7 Has that -- what is the
8 relationship between the district
9 attorney's office and federal
10 authorities like ICE?

11 MR. PAINTER: That I'm not
12 sufficiently prepared to answer right
13 now. I didn't prep on that and I'm way
14 too unfamiliar with the subject
15 material to give you any sort of
16 education comment.

17 LEGISLATOR RHOADS: I appreciate
18 that. Thank you for your testimony.

19 LEGISLATOR FORD: Legislator
20 Drucker and then Legislator Birnbaum.

21 LEGISLATOR DRUCKER: Thank you,
22 Legislator Ford. Jed, Mr. Painter, do
23 you know -- with respect to the
24 protective orders, at arraignment is it
25 possible for the DA's office to hand up

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2 -- when you hand up all your statutory
3 notices at arraignment, can you at that
4 point hand up an immediate motion for a
5 protective order just to start the ball
6 rolling at the outset?

7 MR. PAINTER: Almost impossible.

8 LEGISLATOR DRUCKER: Why is that?

9 MR. PAINTER: Under the case law
10 that's come up, we need to be as
11 particular to that case as possible.
12 Most of the cases you're talking about,
13 which are violent crimes, they were
14 arrested and held overnight. We don't
15 have the benefit of say, 20 days lead
16 time of a DAT, which means that, you
17 know, because if a violent crime
18 happens at 11:30, somebody's robbed or
19 their home is broken into, they're
20 locked up at 11:35 and then by 7
21 o'clock they're on the bus. For the
22 ADA at the arraignment at 10:00 in the
23 morning to have a fully prepared
24 customized memo -- or I'm sorry --
25 motion to apply to the court, and if

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2 you get that wrong, it just gets
3 bounced back on expedited review, which
4 we've seen happen. It's not good
5 practice of law. It's not practically
6 feasible. It's going to be legally
7 sustainable.

8 LEGISLATOR DRUCKER: I understand
9 that. Thank you. I'm just trying to
10 conceive of ways that your office could
11 expedite preparing and filing these
12 motions for protective orders for the
13 reasons that we're all concerned about
14 today.

15 MR. PAINTER: I completely agree.
16 And I think as I emphasized during my
17 presentation, if there was one thing
18 the prosecutors were clamoring about
19 last year, it was that protective
20 orders were not as easy to get as you
21 think they are. And we were told just
22 get a protective order. Just get a
23 protective order. We were right.
24 They're not easy to get. And so while
25 I would love a form application, that's

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2 not the way the law works. We need
3 particularity.

4 LEGISLATOR DRUCKER: Okay, great.
5 Thank you. One last question. I just
6 wanted to clarify: Is it fair to say
7 that your objection to the body cameras
8 is the difficult task of gathering all
9 of the data, the ancillary data
10 associated with it and preserving it
11 for evidentiary purposes?

12 MR. PAINTER: I don't have any
13 objection to body cameras. I think
14 body cameras are a great --

15 LEGISLATOR DRUCKER: I'm saying
16 the difficulty of having that for the
17 evidentiary purposes under the new
18 statute.

19 MR. PAINTER: I would say, from
20 the conversations I've had with many
21 police officials across the state, the
22 common -- a common refrain is like,
23 well we were -- why would we get body
24 cameras now. It's not for my judgement
25 to say. I could just only report to

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2 you that it seems to be a -- not a
3 laughable notion but it's just as far
4 as the undertaking of getting body
5 cameras right now with what's going on
6 with discovery being unsettled, I don't
7 see much growth in that enterprise for
8 a while.

9 LEGISLATOR DRUCKER: It's just
10 surprising because I don't think the
11 public knows that. I think the public
12 now feels that giving law enforcement
13 body cameras is a great idea. It
14 provides for accountability and
15 accuracy and things like that but --

16 MR. PAINTER: Protects everybody.

17 LEGISLATOR DRUCKER: Now if it's
18 becoming burdensome, I guess, is what
19 you're saying, it becomes burdensome to
20 have. It becomes burdensome to gather
21 it, to maintain it. It's kind of an
22 unwitting problem from the statute,
23 too.

24 MR. PAINTER: It is. We would --
25 the burden was not in essence on the

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DA. We would love body cameras. We love the Freeport department's use of them and we download them all or upload them all and we use them. It's, again, a great investigative tool for lots of reasons. I mean, in a world where everybody can take out an iPhone and record your activity, the officer can't have his one hand tied down by recording right back, the body camera allows the officer to have their hands free for a lot of reasons. But the DA would never have an objection to it. It's a matter of whether or not a department wants to take on that individual -- if they find it to be a burden. So you'd have to -- I'm sure if I called in 25 different police commanders right now they might give you 25 different answers. But all I can tell you, with everything going on in the culture moment, I don't think it's going to be a growth enterprise.

LEGISLATOR DRUCKER: Thank you

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2 very much for your presentation today.

3 LEGISLATOR BIRNBAUM: Thank you
4 so much for sharing with us the wealth
5 of information that you have about the
6 workings of the district attorney's
7 office. I know it's been enlightening
8 to most of us, if not all of us, and
9 everybody here.

10 A few things I would just like
11 some clarification on. When you were
12 talking about the backlog in discovery.
13 I want to know how does the early case
14 assessment bureau play a role in that?

15 MR. PAINTER: So early case
16 assessment has now two physical
17 locations. We've put our intake
18 operations -- early cases and
19 arraignments are linked, so you're
20 going to have some data entry at the
21 police headquarters hub and you're
22 going to finish off at 99 Main because
23 we're going to keep on working on the
24 intake and discovery compliance
25 processes all the way through the point

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2 of arraignment and even sometimes after
3 the arraignment. There's where all the
4 initial witness contacts are, you know,
5 you caught on the phone. That's where
6 24 hours a day when the police make an
7 arrest and they ship the paperwork to
8 the DA's office. We will receive it
9 electronically. We will put their case
10 management records into our case
11 management system.

12 If it's big file sizes, besides
13 the direct share capabilities, we have
14 lateral what you would call dropboxes
15 for larger files. And we've worked out
16 these protocols with now every single
17 police agency that does business in
18 Nassau County. So basically, if they
19 get an arrest, they will call, they
20 will notify ECAP of the arrest, ECAP
21 will say great, send us everything,
22 because nowadays it's send everything.
23 If they have any trouble or have any
24 questions, ask the officer right then
25 and there. They will ask the officer

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right then and there, they'll take down what statements did they make, what kind of property was recovered, is there surveillance from Target, can you get that surveillance from Target or do we have to go out and send somebody out later. So we stage the case right then and there so have the best possible package within 24 hours of arrest.

That having been said, not everything on the discovery end is capable of being recovered within 24 hours of arrest. There will be lots of things that go down like radio transmissions, GPS data, memo books of associated officers. Because remember, you're talking to one officer, not the whole eight person crew who was at the scene. So -- and they're not going to hold all eight to talk to ECAP and exchange discovery with ECAP that night. So there might be you get something from one but you still have to hunt down seven more. That's

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2 generally what happens. That
3 communication will happen, we'll find
4 out witnesses names, victims names,
5 reach out to them, see how they're
6 doing. You know, how you been, you've
7 been through a traumatic experience.
8 We'll get information from them. Maybe
9 they have a home surveillance system.
10 So we get to work on that as well.

11 The function of ECAP used to be
12 one of assessing things for legal
13 sufficiency. We want to make sure the
14 charges were good for filing. Now I
15 got to tell you, that's an ancillary
16 function. Now the main thing is
17 acquisition. It's about acquisition
18 and induction into our case management
19 system so they can be prepared for
20 electronic discovery as soon as
21 possible. We at the DA's office would
22 like to send, ideally, an initial
23 package -- and we have been -- to the
24 defendants within 15 days. Whatever we
25 have. It could be complete, it could

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2 not be complete. But whatever we have
3 we're going to send to them in 15 days
4 and then we'll try to work within the
5 extension period if we need it. And a
6 lot of that comes from ECAP.

7 LEGISLATOR BIRNBAUM: Thank you.
8 You also mentioned that there's a
9 problem with ballistics and forensics.
10 You said ballistics, it's very hard to
11 --

12 MR. PAINTER: We don't have any
13 forensic examiners. There's a dearth
14 of forensic examiners. And we had
15 been outsourcing some of those
16 responsibilities and those who we
17 outsource to are now also experiencing
18 the same dearth. So gun crimes and
19 anything that requires ballistic
20 evidence, is in serious jeopardy, not
21 through any fault of what the DA is
22 doing, that's system shock. It was in
23 trouble before this. It's now in
24 severe trouble.

25 LEGISLATOR BIRNBAUM: And lastly,

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2 it's very upsetting to hear about the
3 lack of morale and what's happening
4 with the ADAs and in particular you
5 talked about the paid family leave
6 policy.

7 MR. PAINTER: Yes.

8 LEGISLATOR BIRNBAUM: Now, is it
9 the same policy that all Nassau County
10 employees have?

11 MR. PAINTER: No, I'm not aware.
12 I'm saying Nassau County has not taken
13 a step forward in this regard and I
14 would encourage, because this is where
15 I am, I would encourage that you look
16 hard to, you know, it is the 21st
17 Century and New York City is a major
18 recruitment competitor for at least my
19 department and there is no reason for
20 my department not to do it because my
21 department is 45 percent of the
22 exempts. The exempts, I'm aware, have
23 that termination pay cap of 30 days.
24 We -- just like every other department
25 -- gets salary end to end. So no

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2 matter what is happening during the
3 course of the year; sickness or
4 whatever, we always have budgeted for
5 somebody's full year salary as if they
6 took every single day. Where the
7 budgetary impact of any sort of paid
8 leave comes into play is twofold;
9 managerial, can I afford to lose
10 somebody for 12 weeks? Of course. And
11 the second one is are you inflating,
12 perhaps, their termination package
13 because if they don't take the 12 weeks
14 in a year, then hypothetically four
15 years down the road, if they decide to
16 leave the DA's office, they'll have 12
17 weeks of time waiting for them because
18 they didn't have to take vacation
19 personal. They wouldn't have drawn
20 down from their bank of time.

21 But because, specific to exempts,
22 this legislative body capped us at 30
23 days after 2019, there's no possibility
24 of them banking the 12 weeks. There's
25 no possibility of doing it. So you run

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2 almost no financial risk from just
3 saying okay, for the DA office you can
4 have paid child leave. It is a major
5 major recruitment issue. Again,
6 New York City's minimum is six weeks,
7 and many of the offices of Manhattan,
8 Brooklyn, they're 12 weeks.

9 LEGISLATOR BIRNBAUM: I just
10 thought last year that the state made,
11 I thought, more liberal paid family
12 leave possible for the counties and I
13 thought there was a change. There's no
14 change?

15 MR. PAINTER: We do not have it
16 and we really could use it because I
17 think you saw the statistics I flashed
18 on the screen about our percentage of
19 staff, mostly female, majority of
20 female, and majority of those that
21 female cohort, are between the ages of
22 24 and 35.

23 LEGISLATOR BIRNBAUM: Thank you.

24 MR. PAINTER: Okay.

25 LEGISLATOR FORD: We just have

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2 two more legislators. Legislator
3 McKevitt and then Legislator Bynoe.

4 LEGISLATOR MCKEVITT: Could you
5 just explain the significance of March
6 8 as far as the marijuana testing is
7 concerned.

8 MR. PAINTER: Yes. One second.
9 I can be very specific.

10 LEGISLATOR MCKEVITT: I'm just
11 curious as to why that date is -- you
12 already have it marked out.

13 MR. PAINTER: That's the
14 effective date of the legislation.
15 Just give me one second, if you don't
16 mind. I'll just -- okay.

17 There were changes to Public
18 Health Law 3302, the definition of
19 marijuana in 3302 underwent a
20 significant change, it included a
21 definition for hemp. Cannabinoid hemp
22 and hemp extract. As of March 8th,
23 marijuana shall not include hemp. I'll
24 spare you. Shall basically not include
25 hemp. And essentially, in order to

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differentiate marijuana from hemp, the sample must now have a THC content greater than .3 percent. Current laboratory procedure is qualitative and can thus only identify the presence of Cannabis, sativa, in addition to the presence of THC. It cannot -- quantitative to determine whether or not the THC content present is greater than .3 percent. So as of March 8th, not our lab, all labs, will not be able to differentiate between marijuana and hemp and cannot conclusively identify one over the other.

There are DEA validated technologies available but they will not be able to be deployed in Nassau County until September 2020. So what I said was, there will be a gap in practical enforcement of any marijuana at least between March and September.

LEGISLATOR MCKEVITT: Thank you.

LEGISLATOR BYNOE: Thank you, Madam Chair. Hi, ADA Painter, how are

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2 you?

3 MR. PAINTER: I'm well, thank
4 you.

5 LEGISLATOR BYNOE: Good. I wrote
6 down two questions at the very start of
7 your presentation. I'll start with the
8 body cams because I know you've been
9 speaking about those with Legislator
10 Drucker. Could you explain the
11 metadata because I understand that to
12 be the encumbrance of -- that's what
13 you're concerned about that would be
14 delaying?

15 MR. PAINTER: Again, I have no
16 concerns.

17 LEGISLATOR BYNOE: You listed it
18 as a --

19 MR. PAINTER: Yeah, I'm saying
20 with the -- in New York State, I
21 believe it was out of Manhattan, there
22 was a lower case law discovery decision
23 that said in addition to turning over
24 the body cams of the NYPD, they also
25 had to turn over the metadata, which

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was one example of some things the ADAs are going through over in that neck of the woods. It's not binding on us yet but if those trends continue that it's not just -- you know -- sending a video from, like, one iPhone to the next, think of it that way is easy. If you have to then, like, all of a sudden download the whole phone to hand it to the next, it's a little bit different. We would be texting a lot less often if that were the case for every single transmission of video or photo.

Even before that though, the storage cost of body cams and the preservation, it's a phenomenal expense. I think some people get confused when they think about -- we even had a presentation on resolutions. There is a chart that will show that if you're recording something in, say, 4 ADP --

LEGISLATOR BYNOE: I'm sorry.
But I'm trying to understand the link

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2 between the discussion about body cams
3 in your presentation to bail reform.

4 MR. PAINTER: It's not bail
5 reform, the body -- yeah.

6 LEGISLATOR BYNOE: I mean,
7 discovery. Sorry. Certifying
8 discovery.

9 MR. PAINTER: Yeah.

10 LEGISLATOR BYNOE: You indicated
11 that it was actually the metadata when
12 you have to provide the metadata that
13 it then kind of slowed down the process
14 for being able to meet the time frames.

15 MR. PAINTER: Absolutely.

16 LEGISLATOR BYNOE: If you could
17 explain --

18 MR. PAINTER: If NYPD --

19 LEGISLATOR BYNOE: -- what
20 metadata is for me, because I really
21 don't know what that is.

22 MR. PAINTER: Sure. Again, when
23 you take a photo with a phone -- I'm
24 just trying to put it into -- if you
25 take a photo with a phone, the photo is

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what everybody sees but your phone knows when it was taken, where it was taken, you usually have geographical data. It might have other data in there that can link that photo with other faces in your photo album. That's why your iPhone can curate and put all the faces together. So it's that background encoding on the image that travels with the image that -- so that's one photo. So the body cam's not going to have the same --

LEGISLATOR BYNOE: That data does travel with the image or it doesn't so you have to do a separate download?

LEGISLATOR BYNOE: Not necessarily. So yeah, there could be a separate download. So if the body camera, you know, disclosure was just a video, that's one thing, which has its own things. If all of a sudden now you have to go the corporation to get the metadata as well to travel with the video, and now you not only increase

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2 the burden of collection, but you've
3 also increased the amount of storage.
4 All these files are gigabytes upon
5 gigabytes.

6 LEGISLATOR BYNOE: And it's a
7 very complicated process to download
8 the metadata? It slows it down that
9 much?

10 MR. PAINTER: I'd be speculating.
11 Corporation to corporation, I'd be
12 speculating because there's various
13 different vendors of --

14 LEGISLATOR BYNOE: So on the case
15 that you were referencing that you just
16 stated just earlier during our
17 discussion, and you referenced in
18 New York City, how long -- do you have
19 any understanding of how long it
20 delayed the process?

21 MR. PAINTER: No, I'll have to
22 reach out to my colleagues in Manhattan
23 for that. We don't have the same issue
24 because we only have Freeport here who
25 had body cameras. We have not

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2 experienced that issue.

3 LEGISLATOR BYNOE: Okay. All
4 right. And then so we also talked
5 about the crime labs and a whole bunch
6 of other stuff during your presentation
7 and we had a presentation here at the
8 legislature just this past Monday about
9 the significant time that is required
10 to give the results of certain testing.
11 And so -- and then there're a whole
12 bunch of other discovery items that
13 have to be compiled and then submitted
14 and certified, right? And so we're
15 saying 15 days, the initial 15 days is
16 not reasonable. And then we're stating
17 that you can get -- it's my
18 understanding you can get a 15-day
19 extension.

20 MR. PAINTER: 30-day.

21 LEGISLATOR BYNOE: So -- it's a
22 30-day extension. So now we're at?

23 MR. PAINTER: 15 to 45.

24 LEGISLATOR BYNOE: To 45. And if
25 that's still not enough, then in your

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2 opinion, could you tell me what we
3 should be, you know, lobbying for,
4 advocating for in terms of an
5 appropriate time frame to be able to
6 extend that period to be able to really
7 be able to certify discovery and be
8 within compliance?

9 MR. PAINTER: Yes. So again, I
10 don't want to reach the simplest
11 solutions because as I put on my
12 slides, timing versus content. I'm
13 much more troubled by content. When I
14 say I'm much more troubled, I think the
15 office is much more burdened by content
16 versus the timing. So extending --
17 like you're extending from 15 to 45
18 days is standard. Okay. But that does
19 not help with the -- acquisition issues
20 of still these various courts. The 15
21 to 45 has some diverse opinions in
22 Nassau County Court so far. Sometimes
23 it's automatically granted. Other
24 times judges have said, no, you have to
25 apply for it, it's not automatically

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granted. So we even have different distinctions of how you actually get that -- we have some people invoking it, some people applying for it.

But after the 45 days has run, you could theoretically file a motion for greater extension of time. That might even have some different legal interpretations, we'll see what happens, as far as the validity of a motion to extend time, or you just eat the sanctions. Why extension of time on its own is not necessarily a solution is because they did not coequally amend speedy trial. So I'll say it in a different way. 45 days, let's pretend that's the standard on a misdemeanor case that I need 45 days to get something together. By the time I have certify -- I have to certify before I can be ready for trial. So if I certify by day 45 and state ready for trial, I've burned half of my speedy trial clock anyway, and the biggest

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2 sanction is the case being thrown out.
3 So if you said, oh, we'll give you an
4 extension to 90 days, I'd say well,
5 thank you but really, I'm going to
6 certify and the case is going to get
7 tossed.

8 So until speedy trial is
9 coequally extended or discovery
10 excluded from speedy trial
11 calculations, the extensions don't
12 really make prosecutions more at ease.
13 The big stress is the case getting
14 thrown out.

15 LEGISLATOR BYNOE: So speedy
16 trial would need to be amended.

17 MR. PAINTER: Coequally amended
18 in some way.

19 LEGISLATOR BYNOE: I know that
20 our DA is in conversations or with
21 state senate or there was some
22 committee that was put together that
23 was going to talk about some of these
24 reforms, so I hope that that is part of
25 the discussion.

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2 MR. PAINTER: I don't want to
3 overstate any of my office's role --

4 LEGISLATOR BYNOE: I'm not asking
5 you to.

6 MR. PAINTER: -- no --

7 LEGISLATOR BYNOE: This is a
8 statement more than a question.

9 MR. PAINTER: But as far as a
10 committee, my boss is not on any
11 committee --

12 LEGISLATOR BYNOE: She's not?

13 MR. PAINTER: -- and has not --

14 LEGISLATOR BYNOE: -- I understood
15 that there was -- is it a regional --
16 no, so let me change that. It may not
17 be with the senate --

18 MR. PAINTER: So that's why I'm
19 --

20 LEGISLATOR BYNOE: -- it's
21 regional here between Nassau and
22 Suffolk?

23 MR. PAINTER: I am not aware of
24 any committee that my boss is on right
25 now. Nor am I aware of any legislative

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2 draft that my boss has reviewed.

3 LEGISLATOR BYNOE: I thought
4 there was a task force set up -- I
5 thought it was for bail reform. Maybe
6 I'm mis -- I'm sorry, I thought it was
7 for the bail reform.

8 MR. PAINTER: So I just want to
9 make sure that my boss is not on any
10 committee, that I'm aware, nor has she
11 seen any legislative drafts.

12 LEGISLATOR BYNOE: So there's no
13 committee that's set up at all to start
14 talking about this locally regionally
15 between our local police departments
16 and our --

17 MR. PAINTER: I am aware --

18 LEGISLATOR BYNOE: -- I would
19 even extend it to say the DA's office
20 and we should have something I suspect
21 then started.

22 MR. PAINTER: I am aware of
23 people calling my boss --

24 LEGISLATOR BYNOE: As well as
25 legal aid.

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2 MR. PAINTER: -- calling my boss
3 for input. My boss, to my knowledge --

4 LEGISLATOR BYNOE: Okay, I've
5 heard you and I understand that.

6 MR. PAINTER: -- is not part of
7 any committee or --

8 LEGISLATOR BYNOE: I heard you
9 and I understand that.

10 MR. PAINTER: Okay.

11 LEGISLATOR BYNOE: I'm just --

12 MR. PAINTER: I just want to make
13 sure the record was clear.

14 LEGISLATOR BYNOE: There's so
15 many task forces being created across
16 this region but this would definitely
17 be one of those times where I think we
18 get the right people in the room and
19 start talking if we're going to be
20 advocating for some level of change
21 that we have. Legal aid should be in
22 there. We should have our prosecutors
23 and our police departments and some
24 other advocates that are looking to
25 make sure that we're not unnecessarily

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2 holding the wrong -- you know, holding
3 folks that ideally should be released
4 and that we're holding folks that
5 should be held.

6 MR. PAINTER: Perhaps the
7 confusion -- if I may?

8 LEGISLATOR BYNOE: Uh-huh-huh.

9 MR. PAINTER: My boss, DA Singas
10 does sit on the Justice Task Force, the
11 New York State justice task force and
12 that is a consortium of academics and
13 defense attorneys and prosecutors and
14 police officials and victims advocates
15 and they meet and discuss issues -- in
16 fact, a meeting was this morning but
17 they issued a report --

18 LEGISLATOR BYNOE: No.

19 MR. PAINTER: -- on bail and --
20 bail. They issued the report on bail
21 on February 2019.

22 LEGISLATOR BYNOE: So I have to
23 give a shout out to my staffer Andrew.
24 He must be listening somewhere. He
25 actually just sent me something from

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2 January 21st, it says Nassau and
3 Suffolk counties team up for common
4 sense bail reforms. All right. So I'm
5 going to read through this and I don't
6 want to do it while I'm on -- taking up
7 time. I believe the public has an
8 opportunity to speak after me but I'll
9 look through this. Thank you.

10 MR. PAINTER: Thank you.

11 LEGISLATOR FORD: Thank you very
12 much. I really appreciate your
13 patience and your answering all these
14 questions. And actually, even starting
15 this out with a positive spin. I think
16 it was really good and we want to
17 partner with you to make sure that we
18 heed the concerns that you have,
19 especially with maternity and whatever.
20 So you're doing a yeoman's job and we
21 appreciate it so we want to make sure
22 that we show appropriate respect.

23 MR. PAINTER: I'll end with a
24 positive spin. We're going to get
25 through this and think everybody is

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going to be a lot happier. In three years hopefully we can look back and say look at all the preparation we did and all the improvements we made, you know. There will be some bumps along the way, but my biggest concern right now, and my boss' biggest concern right now is the morale of our staff because we want to make sure that we have the right people in the room working through these issues.

LEGISLATOR FORD: I think they're very thoughtful that they have you. And DA Madeline Singas, I have to say too.

MR. PAINTER: Thank you very much.

LEGISLATOR FORD: Okay. Thank you. Mayor Kennedy, if he's still here.

MAYOR KENNEDY: Good afternoon. How are you. Thank you for having me here today.

If I could just start by saying

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my name is Robert Kennedy. I'm the president of the US conference -- the New York State Conference of Mayors, consisting of about 700 cities and villages throughout New York. I'm also the mayor of the Village of Freeport. NYCOM is here to discuss specifically the discovery aspect of this legislation only. In fact, we haven't taken a stand on the bail reform at all but do recognize some changes are required.

I am not an attorney but I have had in-length conversations with our village attorneys and state attorneys with regards to discovery package. I would just like to say a little background. The Village of Freeport has approximately 1,100 arrests a year. And of those 1,100 arrests a year we would be required to provide about 50 sets of discovery because the DA would probably plea bargain most of the cases down and come back to us and ask us for

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2 50 cases.

3 Now with the terminology used in
4 the legislation, which says accusatory
5 instrument, the Village of Freeport
6 would then now be required to provide
7 discovery on 6,500 building department
8 violations, including the electric
9 violations, plumbing violations, water,
10 structural, even a dog violation, if it
11 was issued a violation, we would have
12 to provide discovery, in addition to
13 20,000 vehicle and traffic regulations
14 and 35,000 parking tickets. That's the
15 addition now of about 52,000
16 discoveries that we're required to
17 provide because it is an accusatory
18 instrument involved here. This has
19 been discussed through NYCOM. It's
20 also been discussed with Mayor de
21 Blasio who didn't understand it at
22 first, who agrees with me now that
23 these -- the way the law was written,
24 these issues are a problem.

25 The Village of Freeport does

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2 discovery. Now, you know that the
3 Village is the first one in New York
4 state to mandate the use of body
5 cameras. Every police officer in the
6 Village of Freeport, who is out in the
7 field, wears a body camera. So picture
8 you have nine police officers on an
9 emergency crime scene, and then they're
10 taken from that crime scene and
11 possibly going to a family dispute or
12 maybe an automobile accident and then
13 they come back and then they're sent
14 out. (End of Tape 2, Side 2) that was
15 uploaded into the cloud, which costs
16 monumental amounts compared to what it
17 did four years ago. We have to pay
18 somebody to sit there -- and it has to
19 be a police officer -- to go back
20 through that cloud and deduct every
21 portion of those police officers' time
22 attributed to that crime, which is a
23 significant amount of time considering
24 a crime that maybe they're there for an
25 hour or two, and you have ten different

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2 officers. So by having these body
3 cameras, it really increases the time
4 for discovery to be provided.

5 We also have memo books on every
6 police officer. Radio communications
7 from every police officer to police
8 officer from the desk to the police
9 officer. We have 911 requirements for
10 discovery. We don't get 911 calls, 911
11 goes to the county and then the county
12 will call the village. So we don't
13 have a record of the 911 but we have to
14 secure that from the county.

15 We also have LPR program, which
16 many of you are familiar with where we
17 surrounded the village with license
18 plate readers so every one of those LPR
19 cameras are going to have to be
20 downloaded out of the computer relating
21 to this crime and then stored again
22 with the discovery package.

23 Then we're working with different
24 agencies, Nassau County or the state.
25 We have a lot of state police and, you

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2 know, bringing all of those together
3 for discovery does not take five
4 minutes to do one discovery, and if
5 we're increasing the load from 50 to
6 almost 40 to 50,000, it's a significant
7 more amount of time required.

8 You know, our budget is due in
9 February. Last year this law was
10 enacted in May. So when we adopted our
11 budget, we had no idea that this
12 legislation in New York State would
13 affect our budget. So last year I have
14 built in a \$1 million hole in our
15 budget because the state adopted this
16 after we adopted our budget. This year
17 we have the time to look into and
18 estimate what our costs are going to be
19 and realistically I to look at worse
20 case scenarios. Worse case scenario
21 for me, we estimated \$2.7 million. I
22 just want to go back got give you a
23 little background on Freeport.

24 You know, we're rebuilding from
25 Super Storm Sandy, 3,500 homes under

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2 six feet of salt water. We lost the
3 entire industrial park, \$10 million to
4 the Department of Public Works, the
5 entire nautical mile. We've rebuilt
6 probably 96 percent of Freeport since
7 Super Storm Sandy. But we had a
8 reserve at that time of 1.2 million.
9 We now have a reserve of 21 million.
10 We had a debt of \$160 million, we now
11 have a debt of \$92 million. We got
12 upgraded by Moody's twice over the past
13 six years. We put on 25 additional
14 police officers and reduced crime by 56
15 percent in the village of Freeport.
16 We've done 86 roads. We absorbed
17 every increase in workman's comp,
18 liability, disability, medical,
19 retirement, PBA, labor increases and
20 CSEA labor increases and we haven't had
21 a tax increase for six years. There's
22 not much money left in the Village of
23 Freeport to absorb a \$2.7 million
24 unfunded mandate, which we just
25 incurred. We've increased taxes by 5.7

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2 percent this year in its budget
3 already. First time we've pierced the
4 cap and increased the budget by 2.7
5 million for the residents of Freeport.
6 It's directly to the costs of the
7 discovery.

8 This legislation was put into a
9 budget without having been properly
10 analyzed or reviewed by the various
11 police department or district attorneys
12 throughout the state. And now what
13 we've done, we're steering the horse by
14 the tail trying to find out what we can
15 do to correct this legislation that was
16 done. Ultimately, we have to eliminate
17 the inclusion of vehicle and traffic
18 laws, building department violations
19 and parking violations. There's no
20 reason for that and I don't think that
21 was the initial intent of this law. I
22 think if you were to provide 60 days,
23 we'd probably go down as low as 30 days
24 for discovery since the individual is
25 not incarcerated anyway, that's why

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2 we're doing these desk appearance
3 tickets. If they're not incarcerated,
4 give me 30 to 60 days on discovery. We
5 can save the Village of Freeport
6 residents \$2.7 million.

7 We've been told that the Village
8 will save money because we're not
9 incarcerating the individuals. We'll
10 save on the costs. We don't
11 incarcerate individuals. We take our
12 prisoners to Nassau County. We're not
13 saving anything. If Nassau County
14 releases them, it doesn't give me any
15 benefit. I don't get released. My
16 taxes aren't lowered by Nassau County,
17 there's no benefit to the Village of
18 Freeport.

19 We haven't had an increase in AIM
20 funding, CHIPS funding, snow removal or
21 sales tax in 11 years. Please don't
22 even remind me about sales tax because
23 we don't get it to start with, I'm in
24 litigation about that. All I can say
25 is this is an unreasonable, unfunded

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2 mandate to the residents of the Village
3 of Freeport and the rest the residents
4 in New York State and that's on behalf
5 of the New York State Conference of
6 Mayors. I'll be glad to answer any
7 questions.

8 LEGISLATOR FORD: Legislator
9 Mule.

10 LEGISLATOR MULE: Yes, thank you.
11 Mayor, you are my mayor and I was also
12 on the board of trustees prior to
13 taking this position and so I know that
14 everything you're saying is absolutely
15 true. And I think it's important that
16 we do understand the implications of
17 the state law on not just the county
18 but also the villages and the cities
19 because, again, this is a state law and
20 it's important for the representatives
21 of the state to have a full
22 understanding of this and this is, I
23 guess, one more avenue for that to
24 happen.

25 When we first heard about the

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law, when we were doing the budgetary and we will, of course, had concerns about it. You know, one of the first things I did was go to my state legislators and I think it certainly behooves all of us to speak out and you bring up some important points that perhaps we wouldn't have considered prior to that, so I thank you for your advocacy on behalf of the other jurisdictions.

MAYOR KENNEDY: Thank you. We miss you in Freeport, come on back.

LEGISLATOR FORD: Legislator Rhoads.

LEGISLATOR RHOADS: Thank you, Legislator Ford. Mayor, first off thank you for coming today. I appreciate your presentation very much and as Legislator Mule indicated, the reality is that this just does not have to do with Nassau County and the Nassau County Police Department. Every village, every township that actually

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2 processes building department
3 violations has to deal with the same
4 issues with respect to discovery, and I
5 appreciate you raising that important
6 topic.

7 Just to give us an idea, and I
8 know you mentioned -- you mentioned
9 body cameras and the Village of
10 Freeport is the first to implement body
11 cameras with its police officers. Can
12 you describe for us -- you heard the
13 testimony of the police commissioner,
14 Pat Ryder, and of Jed Painter as well
15 from the district attorney's office,
16 speaking about metadata. Can you go
17 into what's actually involved in the
18 actual maintaining of the data that
19 comes from the body cameras, preserving
20 that. What are the challenges with
21 that, what are the costs associated
22 with that to a municipality like the
23 incorporated Village of Freeport.

24 MAYOR KENNEDY: First, I'd like
25 to thank Nassau County, and especially

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2 the DA's office who provided financing
3 for the first order of body cams that
4 we utilize in the village. But this is
5 going back three and four years and
6 there's been upgraded models since.
7 There's battery damages, there's
8 equipment damages, so we've really
9 upgraded our equipment two or three
10 times at the cost of the Village of
11 Freeport taxpayers. As I said, the
12 original purchase was great but now to
13 maintain it. When you store all of
14 this equipment, I mean we can't even
15 store all of this on-site so we have to
16 store some on-site and we have to back
17 it up offsite and we have to have
18 enough data availability. This digital
19 is astronomical when you look at the
20 location, the detailed cameras,
21 lighting and such like that. It's
22 tremendous the financial burden we have
23 for storage onsite, offsite and then to
24 have to, again, transpose all of this
25 into a criminal case for discovery.

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2 LEGISLATOR RHOADS: So we can
3 comprehend what would have to be turned
4 over out of that body camera footage.
5 I know you gave the example of a police
6 officer responding to the scene of a
7 crime but then getting diverted to
8 different calls, having to leave the
9 scene, come back. What would actually
10 have to be turned over?

11 MAYOR KENNEDY: Well, we have to
12 have a supervisor go through every one
13 of those police officers body cams that
14 were in attendance there and then take
15 any applicable video applied to that
16 case and remove anything else. If you
17 went to a call for a family dispute or
18 another arrest or if there's a car
19 accident or bodily injury all of those,
20 because they'd be using body camera
21 doing all of that, that would all have
22 to be deducted out and limit the
23 individual videos to, pertaining to
24 that case itself.

25 LEGISLATOR RHOADS: And so if you

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2 had ten officers responding to the
3 scene of a multi vehicle accident,
4 let's say, where there was a DWI, you
5 would wind up having to preserve and
6 then turn over the body camera footage
7 for every one of the ten responding
8 officers, right?

9 MAYOR KENNEDY: Yes, and it could
10 take approximately between four and
11 five to six hours to take it all apart
12 and provide the proper discovery
13 package. And remember, it's not just
14 the body cameras. You have cameras in
15 every police car. So everyone of those
16 police car cameras, it's uploaded to
17 the cloud and has to be taken out. So
18 it's quite time consuming and a
19 financial burden to the village to do
20 that many in that short a period of
21 time.

22 LEGISLATOR RHOADS: Now have you
23 had to increase staff as a result?

24 MAYOR KENNEDY: Yes, we have and,
25 you know, unfortunately the staff

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becomes another issue because I can't hire civilians and I have to hire through civil service and then by the time you can hire through civil service and review them and they have a preference for village employees and then send them back to civil for approval, then through an academy and come back to move people up the ladder. It's time consuming. It's very, very expensive.

LEGISLATOR RHOADS: I can only imagine. I know you indicated that the short term budget costs made through the conclusion of your fiscal year were somewhere in the area of \$1 million that came as a sudden and unexpected hit on your budget which created a gap.

MAYOR KENNEDY: Yes, we probably would have had a million dollar surplus this year. Now we have a flat budget for last year.

LEGISLATOR RHOADS: And it's now resulted in a 5.7 percent tax increase

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2 just for the 2.7 million that you now
3 have to raise that's approximated it
4 will cost the village to comply with
5 criminal justice reform.

6 MAYOR KENNEDY: I would like to
7 clarify. You know, the village can
8 have an increased budget every year but
9 it doesn't mean the tax levy has gone
10 up. Because if we bring in more
11 revenue that's not a levy that can
12 compensate for a larger budget. In
13 fact, this year, because of the
14 additional economic development we had,
15 we probably would have had a one
16 percent reduction in the levy in the
17 village. But based on the mandated
18 increase here, we're up at 5.7 percent
19 increase.

20 LEGISLATOR RHOADS: So in
21 reality, it's a 6.7 percent increase
22 when you factor in that it probably
23 would have been a one percent tax cut.
24 Now, obviously, this was presented as a
25 sudden and unexpected challenge. Now

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2 you're trying to anticipate your needs
3 for the next year now that you have had
4 a chance to see what some of the
5 results are. But that 2.7 million is
6 just an approximate.

7 MAYOR KENNEDY: Well, you know, I
8 have to say that we consider the worst
9 case scenario. We hope we're correct.
10 But a village is not allowed -- it's
11 against the law for a village to run a
12 deficit. Many cities, counties and the
13 state can run a deficit. It's against
14 the law for a village to run a deficit.
15 Therefore, I have to be extra sure that
16 we have enough prosecutors, we have
17 enough backup in the buildings
18 department, have enough backup in the
19 parking portion of the village staff.
20 Judges, we've applied for -- we're only
21 allowed to have two judges, one full
22 time, one as appointed, so now we need
23 a third judge, a part time judge. So I
24 went to New York State to request
25 approval for a third part time judge.

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2 We're the second most active courtroom
3 in New York State. So I really can't
4 -- you know, elasticity of demand, you
5 can't stretch it any further or -- we
6 had a court the other day, it went for
7 seven hours. It was the largest
8 continuous night for court cases that
9 we've had so far.

10 LEGISLATOR RHOADS: And I was
11 going to ask, have you seen any
12 increase in the volume of work that
13 your judges and your courts have to --

14 MAYOR KENNEDY: Yes, this was
15 retroactive. As of January of this
16 year, any outstanding cases from before
17 required the discovery to be prepared.
18 So there's a lot of work that wasn't
19 estimated that's now included in this
20 year's budget that we had to work on
21 prior to January 1 this year.

22 LEGISLATOR RHOADS: And I did not
23 know, and I appreciate you for raising
24 it, I did not know that that included
25 building department violations and that

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2 included traffic infractions as well,
3 I'm shocked by that.

4 MAYOR KENNEDY: 6,000. Minimum
5 6,000 building department, 20,000
6 vehicle and traffic and parking
7 tickets. So if you plead not guilty on
8 a parking ticket, I have to provide
9 discovery.

10 LEGISLATOR RHOADS: I think I
11 know the answer because I've asked this
12 question a few different times to
13 different witnesses and the answers
14 seem to be the same. I'm assuming that
15 the incorporated Village of Freeport,
16 certainly yourself as head of the New
17 York Conference of Mayors, were not
18 consulted at any point in time during
19 the pendency of this cashless bail
20 reform and criminal justice reform
21 before it was passed in Albany,
22 correct?

23 MAYOR KENNEDY: That's correct.
24 In fact, I've subsequently after
25 learning it, I called together all the

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2 chiefs of the police departments in
3 Nassau County, many of the mayors. I
4 called NYCOM to sit and review this
5 with them. And Mr. Painter, I sat with
6 just to review all of the reality of
7 this, the impact of this legislation to
8 come in and we did discuss parking
9 tickets, we did discuss vehicle, we did
10 discuss, you know, accusatory
11 instruments because we had to make sure
12 that what we were anticipating in doing
13 our budget. And again, my budget, I
14 have to adopt a budget in January of
15 this year for next year. So I don't
16 have the liberty of waiting until after
17 the state adopts their budget and
18 possibly makes a change.

19 LEGISLATOR RHOADS: And of
20 course, I'm assuming this mandate from
21 the state is unfunded to the village,
22 correct?

23 MAYOR KENNEDY: That's correct.

24 LEGISLATOR RHOADS: So even
25 though you have -- you're going to

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spend \$2.7 million this year, you expect to comply with this. Has there been any indication from any of our state legislators, and I believe we're covered in the village of Freeport by Senator Kaminsky, Senator Brooks, any indication of any assistance coming from the state to help local municipalities who can't run a deficit as you've indicated, to provide any assistance?

MAYOR KENNEDY: I'm cautiously optimistic. I've been up in Albany for four days. I've been with at least six or seven senators, many representatives in the assembly and I think after discussing all of the facts, I'm cautiously optimistic that some changes will come to fruition and I would hope that it's in the next budget so that's not an item that can be debated, put it in the budget, let's get it over with and make these corrections now. I'm also concerned with, you know,

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Cannibis. I mean, if we follow the same path that we did with the discovery without seeing the rippling and the affects of this and you put the Cannibis into a budget and approve it, are we going to be back here next year discussing all of the problems that we have that we didn't anticipate with the legalization of Cannibis. And I think, again, we need to spend more time before we legislate or adopt these legislations.

LEGISLATOR RHOADS: Has anyone reached out to you from the state with regard to that to discuss the topic?

MAYOR KENNEDY: I mean, yes, I've been up in -- I've been discussing it with all our representatives, the senate, the governor's office, one of his representatives, the budget director and some of our assembly people up there.

LEGISLATOR RHOADS: Has there been any indication that it's going to

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2 be considered a standalone legislation,
3 as opposed to what happened with
4 criminal justice reform where we're
5 sort of wedged into the budget and
6 there really was no opportunity for
7 debate or discussion?

8 MAYOR KENNEDY: I can't really
9 answer that question. That's the
10 assembly and the senate and the
11 governor's office.

12 LEGISLATOR RHOADS: Of course, of
13 course. Just if you can educate me,
14 with respect to Nassau County medical
15 examiners and the Nassau County crime
16 lab, how does the Village of Freeport
17 and the Village of Freeport police
18 department rely on our ME and our crime
19 lab? What activities are performed by
20 the village and what do they rely on
21 our crime lab to do?

22 MAYOR KENNEDY: Our law
23 enforcement and Nassau County's law
24 enforcement work very close together.
25 The felonies are generally taken by

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2 Nassau County so they would be
3 responsible for the crime lab or
4 analysis of scientific evidence.

5 LEGISLATOR RHOADS: Have you seen
6 any increase in the ways that you
7 attribute to increase volume from
8 criminal justice reform in terms of
9 processing items for the village
10 through our crime lab?

11 MAYOR KENNEDY: That I can't
12 answer.

13 LEGISLATOR RHOADS: Too soon to
14 tell?

15 MAYOR KENNEDY: Yes.

16 LEGISLATOR RHOADS: And just in
17 terms of -- because obviously you're --
18 you have many hats, one of which is
19 president of the New York Conference of
20 Mayors, have you heard feedback from
21 other mayors throughout the state?

22 MAYOR KENNEDY: Oh, yes.

23 LEGISLATOR RHOADS: Are they
24 facing similar challenges to you?

25 MAYOR KENNEDY: Absolutely. We

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2 have probably several million residents
3 and representatives petitions out there
4 opposing the discovery portion of this
5 legislation.

6 LEGISLATOR RHOADS: Can you speak
7 to the crime rate in the incorporated
8 village? I know there had been a
9 steady decline, over 50 percent I
10 believe you had indicated over the last
11 several years. Since January 1st has
12 there been any change in that rate?

13 MAYOR KENNEDY: That I don't have
14 the results in yet, normally we get a
15 -- every month I'll get a preliminary
16 report but it is confirmed that we've
17 had a 56 percent reduction in crime
18 over the past six years and we believe
19 it's attributed to the LPR program, to
20 the additional police that are out
21 there.

22 LEGISLATOR RHOADS: And that's
23 the license plate readers, right?

24 MAYOR KENNEDY: Yes.

25 LEGISLATOR RHOADS: Just for

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2 those that are listening that don't
3 know what LPR is.

4 MAYOR KENNEDY: Yes.

5 LEGISLATOR RHOADS: Mr. Mayor, I
6 appreciate your time and your
7 testimony. Thank so much for your
8 insight.

9 MAYOR KENNEDY: Thank you for
10 having me here.

11 LEGISLATOR FORD: Thank you very
12 much for your testimony. You really
13 gave us a lot of information. A lot of
14 things that we didn't even consider.

15 MAYOR KENNEDY: Right.

16 LEGISLATOR FORD: My last
17 question to you, sir, will be this:
18 Would you ever consider coming to run
19 the City of Long Beach?

20 MAYOR KENNEDY: That's a great
21 city, I love it.

22 LEGISLATOR FORD: So do I. So?
23 But thank you very much. I appreciate
24 it.

25 MAYOR KENNEDY: Thank you so

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2 much, everybody, for having me here
3 today. I greatly appreciate it. Have
4 a great day. Thank you.

5 LEGISLATOR FORD: Frank, do you
6 need a break at all?

7 (A recess was taken.)

8 LEGISLATOR FORD: We're going to
9 resume our hearings. And I don't know
10 if Brian Sullivan, president of COBA is
11 here or not?

12 MR. SULLIVAN: Good afternoon,
13 ladies and gentlemen. Brian Sullivan,
14 Nassau County Corrections Office
15 Benevolent Association. It was a much
16 more fuller room before.

17 Legislator Rhoads asked the
18 question earlier about the head count
19 in the Nassau County jail. Just to
20 clarify, I got some information as of
21 November 1, 2019, the inmate head count
22 in the jail was at an all time low of
23 1,115. That was the lowest in my
24 31-year career. 1,115. Normally it
25 would be around 1,600, the bulk of my

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career when it was I hear when I first started in 1988 was when crack and AIDS was big. I've said that before here several times that the head count in a much smaller jail was over 2,000. It's been around 1,600 to 1,800. But over the last several years, because of all things I've talked about here before with the precursors to bail reform, our head count has been dropping precipitously and November 1st it was 1,115. As of today our total inmate head count is 759. That's a reduction of 356 inmates, the rolling tally in the jail since November 1st. That is a startling number of people that have left our facility, that have left the system.

Like I said, I've been here countless times before over the last few years warning of what's been going on in New York State, both here and in Albany, talking about what's been going on, particularly at arraignment courts.

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2 I'm sure everybody remembers that I've
3 been talking about how we've been
4 letting people go on heavy duty drug
5 charges, assault charges, you know,
6 robbery charges and burglary charges.
7 This stuff has all been going on for
8 several years that brought our head
9 count down to, like I said, 1,115.
10 This was prior to what went on here in
11 the last year with bail reform. People
12 have -- that can get out have gotten
13 out. Now we've just gone precipitately
14 over the edge.

15 Myself and countless other law
16 enforcement organizations have been
17 pounding the floors in Albany and here,
18 obviously, since we realized last year
19 what's been done under the cover of
20 last year's budget. One or two of the
21 legislators said earlier that, you
22 know, a lot wasn't done here and a lot
23 of people didn't really know what was
24 going on and that's true because even
25 some of our local law enforcement

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unions, the police department and the DA's office and things like that, didn't realize what was going on. We noticed from our end of the criminal justice system in corrections, and in the courts and the judges and things like that. We saw the writing on the wall of what's been happening here. That they just don't want people in jail anymore.

Just had a couple of different notes here that I wanted to make sure. Going back to the hearings of last year, there were no public hearings. Again, the stakeholders were not involved in this. Police organizations, sheriffs, police chiefs organizations, unions, nobody was involved in this. This was all done behind closed doors, nobody saw what was going on until there was a product put out. We saw what was happening and I have certainly annoyed, PO'd a lot of our local state legislators because

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2 I've been exposing the hypocrisy of
3 what's been going on here. Since this
4 debacle was put in place, I've been a
5 very vocal opponent of this. Like I
6 said, our local New York state
7 senators, particular on the democrat
8 side, are not very happy with me
9 because I've been exposing the
10 hypocrisy, particularly that this has
11 created a public safety crisis problem,
12 not just in general, the general
13 public, but more so in high crime and
14 low income neighborhoods, communities.
15 The very communities that these
16 advocates for these bail reforms are
17 claiming to be advocates of. And
18 Monica Martinez who is a senator out in
19 Suffolk County, I've had numerous
20 conversations with here where she has
21 actually spoken about how these bail
22 reforms and discovery reforms are going
23 to affect her neighborhoods and her
24 communities the worst. Of course, you
25 know, she was one of the ones that

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2 signed on and voted for this because
3 the way everything goes on in Albany
4 is, if you want your school district
5 money and you want things for whatever,
6 you're going to vote yes for the
7 budget. So everybody kind of had a gun
8 put to their heads. Meanwhile, I'll
9 give her some credit now, she has been
10 a vocal critic of bail reform and
11 discovery reform and has been behind
12 the scenes trying to get things
13 changed, as far as I think she's
14 annoying the master's voice up in
15 Albany also because there's a lot of
16 infighting going on there.

17 The only community that these
18 bail reforms and discovery reforms are
19 advocating for is the criminal
20 community. Jed Painter spoke before
21 about drugs. Drugs and what do you
22 call it? The court, the diversion
23 courts, things like that. That's 100
24 percent correct. They're not even
25 being diverted to diversion courts and

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2 in the Nassau County jail. Where we
3 have detox programs and drug programs,
4 they're not being able to avail
5 themselves of this. So what goes on is
6 you have people that are arrested for
7 crimes that are either high on drugs or
8 they're selling drugs. They're
9 addicts. They're not being put into
10 programs. They're not being put into
11 diversion programs. They're not being
12 held in our jail, they're not being
13 detoxed. They're not being put into
14 drug rehabilitation programs to help
15 them that are coming from a lot of
16 these low income and crime ridden
17 communities, they're kicked back out
18 into the street again. And what are
19 they going to do when the first thing
20 they get back out in the street again?
21 They're still addicted, they're going
22 to be looking for the next high,
23 they're going to be committing another
24 crime. I've said that numerous times.
25 In conjunction with several of

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2 you here and other organizations,
3 including the down state correction
4 coalition, we've on an information tour
5 educating our residents on exactly what
6 has gone on in New York State
7 completely under the radar until it was
8 implemented last year.

9 Going back to 2013 one of the
10 things that I key on is a lot of people
11 aren't familiar with the Littman
12 Commission. Jonathan Littman, who used
13 to be the head judge in New York State.
14 The New York City counsel put together
15 the Littman Commission to study
16 criminal justice reforms in New York
17 State and with the laughable premise at
18 that time of how do we close Rikers
19 Island. Rikers Island had 15,000
20 inmates on it at the time. The idea
21 was how do we close Rikers Island.
22 Where exactly were all of those
23 prisoners going to be going? I also
24 have spoken numerous times about the
25 myth of mass incarceration. I know a

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lot of people have been talking about this. The United States has so many people incarcerated. Over the last ten years, the incarceration rate in the Unites States has dropped precipitately. There is no mass incarceration anymore in this country. Just talking -- and especially in the state. Just talking about the numbers that I've had before. Our inmate head count just in Nassau County, our own local community here, should be between 1,600, 1,800 inmates. It's down to less than 1,200, 1,150. It was 1,050 before bail reform and then we ended up losing another 350.

Also the fact that prior to bail reform, over 70 percent of all people that were arrested in New York State prior to these reforms, were either released on their own recognizance or bailed out. 70 percent. That left 30 percent of all people that were arrested for crimes in New York State

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2 under the discretion of a judge who
3 even at that point there was no
4 judicial discretion about public safety
5 but there was a lot of other avenues
6 the judges could have.

7 One thing that I could say
8 without a doubt, from my perspective,
9 and I know a lot of other people
10 probably won't bring it up, is that
11 there's a lot of agendas at play here;
12 money, real estate. They had on the
13 Littman Commission, there was 27
14 different people on it, I believe it's
15 14 that were on that are in law firms
16 that their specialty is real estate.
17 These are the people that were on the
18 Criminal Justice Reform Commission in
19 New York City about what to do with
20 Rikers Island and more than half of
21 them were real estate law firms. If
22 that's not eye opening to a lot of
23 people, I don't know what is.

24 The other part of it is not
25 wanting to pay the cost of

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2 incarceration by municipalities. And
3 now, if you speak up against these
4 reforms, and against the fact that
5 these things were shoved down
6 everybody's throats, you're a racist.
7 You're a fear monger because they just
8 cannot accept the fact that there is a
9 true public safety crisis going on in
10 New York State, so you're a fear
11 monger, you're a racist thinking
12 they're going to shut people up.
13 You're not shutting people up when
14 every single day, even on this --
15 pardon my language -- this liberal rag,
16 the Daily News, is talking about a
17 menace to society who should be in
18 jail. If this is on the front page of
19 the Daily News, imagine what's really
20 going on. That's probably about as
21 left as you get.

22 Just a couple more quick things.
23 I've been here before and the heart
24 wrenching thing that we got this
25 morning from Mr. Maldonado, he went

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2 through the list of crimes and all of
3 that. I'm not going to go through it
4 again, you've all seen this. Four
5 pages of all the crimes that are
6 absurdly not under bail reform. The
7 heart wrenching story. I mean that
8 speaks for itself. I don't know what
9 else you could possibly add to that.

10 Today and every day at
11 arraignment court people are released.
12 Criminals are released for every manner
13 of crime. I follow the statistics, I
14 have it in my office. People are being
15 released for strangulation charges, for
16 heavy duty A and B and C felony drug
17 charges. All kinds of assaults,
18 weapons charges. The whole nine yards.
19 Jed Painter talked about the Brooklyn
20 DA's office that they had 40 people
21 quitting because they were just
22 completely overburdened and they can't
23 get anything done. Cy Vance in the
24 city, the DA in the city is talking
25 about how they're just not going to

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2 prosecute crimes because they can't
3 keep up with it. That's insanity. How
4 does anybody not -- even advocates of
5 this see that that's not -- that that's
6 a problem. Again, we talked about it
7 several times before, no funding was
8 included in any of this from the state,
9 these are all unfunded mandates. No
10 training, no guidance on monitoring.
11 The people that do get ankle bracelets,
12 there's no restrictions on their
13 locations, they're not restricted to
14 their homes. They could travel all
15 around the world and cut the bracelet
16 off and nobody cares.

17 Drug felonies I talked about.
18 They can't issue bench warrants for 48
19 hours, no judicial discretion. Where
20 is the -- I've talked about this
21 several times, where is the
22 constitutionality. One judge up in
23 Cohoes, I believe, brought it up about
24 the constitutionality of the separate
25 of powers in the state; judicial,

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2 legislative and executive. How does
3 the legislature take away the powers of
4 one of the other branches of
5 government? It's insane to me.

6 Dave McAndrews is a district
7 court judge in Nassau County, in
8 Hempstead. He spoke out and said that
9 one of his -- the people in front of
10 his bench was a menace to society. I'm
11 not letting that guy out, similar to
12 this. I'm not letting him out. This
13 is insane what's going on. It was on
14 the front page of -- story in the Post,
15 I know it was in Daily News and
16 Newsday. They ended up going above his
17 head to the next judge above him and,
18 of course, the inmate was -- the police
19 prisoner was released. What happened
20 to Dave McAndrews the next day? Nobody
21 ever ran a story about this. Dave
22 McAndrews was taken off the bench in
23 district court and given small claims
24 court. He was punished for speaking
25 his mind. That's insane to me. I

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don't know where the judges, why the judges aren't jumping up and down about this, whether they're muted or muffled or their master's voices are doing whatever. I hear talks about ethics. This is in not an ethical problem for judges to stand up and say that the legislature took my job away from me. How does a judge get disciplined for speaking his mind and saying that this is wrong and they kick him out of district court that he was elected to serve in and put him in small claims court. That's a punishment. That needs to be looked into.

Lastly, just on my end in the jail, our sheriff retired. We have a new sheriff coming in. From what I understand, a guy from outside, I've heard very good things about him and I'm hopeful that we can change the mindset here of what's gone on. He's got a big correctional experience, he's got a lot of credentials, he's supposed

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2 to be the real thing, I'm hoping that
3 we can do something here but I know a
4 lot of things are going to wait now
5 until next month when he's brought in.

6 But speaking of discovery, I've
7 had some conversations with the county
8 and the DA's office about this that
9 inside the correctional facility,
10 crimes happen in the jail. You have
11 all the criminals -- well, you sued to
12 have all the criminals in the jail,
13 they're still committing crimes in the
14 jails; assaults, weapons charges,
15 stabbings, drugs, all kinds of things.
16 Assaulting our correction officers. I
17 have just a handful of officers working
18 in our criminal investigation unit. We
19 are also subject to all these discovery
20 restrictions. So I fought like hell to
21 get a fingerprint machine brought into
22 the Nassau County jail. We got it,
23 it's together, it's hooked up. They
24 haven't trained anybody in it yet,
25 surprise, surprise. So when an inmate

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2 assaults an officer, we don't lose the
3 case. In the past, I've talked about
4 it here where the inmate's in jail, we
5 don't have to run and get it too fast.
6 You know, we'll get them a week, a
7 month or two down the road and they end
8 up losing track of it and the guy walks
9 out the door. A guy that was on my
10 board, one of my delegates actually
11 went out on three quarters, he blew out
12 two disks in his neck fighting with an
13 inmate and because of speedy trial
14 restrictions, it took so long to charge
15 this inmate, and I've been here before
16 banging on the podium, they had to drop
17 the charges. The guy's out on a
18 disability and the inmate walked away
19 with assaulting a correction officer.
20 So now we have this other burdensome
21 thing put on us about discovery. We
22 don't have the wherewithal in the jail.
23 We don't have enough people doing these
24 cases, going inside -- I mean, the DA's
25 office is overburdened, the police

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2 department doesn't do our internal
3 investigations, aside from when there's
4 an assault and these things are done,
5 they send it over to the Third. Then
6 they take it over. But attention has
7 to be paid inside the jail, too,
8 because there are crimes committed all
9 the time in the Nassau County jail.

10 Like I said, assaults, drugs,
11 weapons. We need funding, we need
12 staffing. Funding has to go into this.
13 We just had our budget hearing and they
14 cut the budget for the sheriff's
15 department. I'm still fighting for
16 everything else that goes on. Now we
17 have all of these other discovery
18 programs and stuff that has to be taken
19 care of and we have less staff.

20 The state legislative proposals
21 that are up there, I'm hopeful that
22 we'll see something productive come out
23 of it. I've spoken to several people
24 obviously over the last year in state
25 government. Some, unfortunately, were

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2 disingenuous to me and my colleagues as
3 we were speaking to them that this was
4 never going to go through, even if it
5 was in the budget last year unless
6 there was judicial discretion. And
7 judicial discretion was specifically
8 carved out of it. So you know, I have
9 a lot of people that are annoyed with
10 me that I'm speaking about the truth
11 about this stuff. But hopefully we can
12 start turning this stuff around. If
13 it's just cherry picked and we'll just
14 put a couple more crimes under bail and
15 we'll let the judges have some
16 discretion over these other things.
17 That doesn't help. The judges need to
18 have full discretion over what goes in
19 front of them. And if you want to get
20 rid of bail, you know, I don't have any
21 say in that. I think it's absurd that
22 you have to have some sort of a bail
23 system. There has to be some way to
24 assure the people are going to come
25 back to court. We can't just say we're

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2 throwing everything out and the
3 system's going to work wonderfully.
4 It's just absurd. There has to be --
5 to me, this whole system should be
6 repealed. Repeal it and start all over
7 again. In New Jersey, they keep
8 talking about how wonderfully it's
9 working in New Jersey. It took them
10 three years to phase it in in New
11 Jersey. They have judicial discretion
12 in New Jersey. Now we're talking about
13 going with the federal system. That's
14 it for me. I appreciate the time. If
15 you have any questions, I'll definitely
16 take them.

17 LEGISLATOR FORD: Thank you very
18 much and you have always been alerting
19 us about this. One quick question
20 though, I know that you're working with
21 Assemblywoman Martinez or is it
22 senator?

23 MR. SULLIVAN: Senator.

24 LEGISLATOR FORD: Have you
25 discussed with her the possibility of

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2 the discovery, you know, maybe changing
3 that so that like even Mayor Kennedy
4 said, that if we can have it increase
5 from like say 15 days to 30 days or
6 even 60 days, this will help, you know,
7 all of us.

8 MR. SULLIVAN: I have been more
9 on the bail end of it than the
10 discovery because a lot of the
11 discovery has to do with the police
12 department and the DA's office but I
13 have been involved in it and I have
14 spoken my mind about the discovery that
15 has to go on inside my department
16 because we can have -- we've had
17 inmates stabbed, drugs, the whole nine
18 yards, officers assaulted, that all
19 pertains to us here and I have had that
20 conversation with them.

21 Up until recently, the main
22 focus, from what I understand, of the
23 people that are trying to rework these
24 laws, is that they were just going to
25 focus on bail first and then look at

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2 discovery later until we had that MS13
3 murder and then all of a sudden
4 everybody was going, uh-huh oh, we got
5 to do something with discovery. So now
6 they went back to work and allegedly --
7 I mean, not allegedly, there is some
8 sort of a package that's supposed to be
9 coming out. It's under wraps because
10 I'm sure they're expecting that the
11 left is going to go out of their minds.
12 They don't want anything done with
13 this, it's great to have everybody
14 running free. But cooler heads have to
15 prevail here and somebody with a brain
16 has to take over and figure out that
17 this is not working. This is broken
18 and people are getting hurt. Mr.
19 Maldonado was up here, people have
20 gotten killed over this. How anybody
21 can stand up and say it's fear
22 mongering and racism is absurd.

23 LEGISLATOR FORD: I know Newsday
24 wrote that that we shouldn't be fear
25 mongering, whatever. So but, remember

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2 don't let them silence you because we
3 need people with courage to speak about
4 this.

5 MR. SULLIVAN: The only way
6 they're going to do that is if they hit
7 me over the head with a bat and I'm
8 expecting that to happen one of these
9 days.

10 LEGISLATOR FORD: I'll protect
11 you but I have Legislator Ferretti who
12 has a couple of questions.

13 MR. SULLIVAN: Thank you very
14 much.

15 LEGISLATOR FERRETTI: Brian,
16 don't leave yet. I want to thank you
17 for your testimony and thank you for
18 diving so deep into this. We've hosted
19 community meetings on bail reform in
20 Levittown -- well, actually at
21 Hicksville at Levittown town hall but
22 the community is very appreciative for
23 your involvement in this and I'm very
24 appreciative for everything that you're
25 doing.

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2 I do have two very specific and
3 short questions for you and it goes
4 back to kind of how we opened this
5 meeting with the Minority Leader
6 referring to a December 16, 2019 press
7 conference, which we jointly held.

8 MR. SULLIVAN: Right.

9 LEGISLATOR FERRETTI: Prior to
10 December 16, 2019, had the
11 administration reached out to you about
12 any type of implementation of this bail
13 reform?

14 MR. SULLIVAN: No.

15 LEGISLATOR FERRETTI: After
16 December 16, 2019, did the
17 administration come forward with a plan
18 and if so, when?

19 MR. SULLIVAN: There was no plan
20 that I know of. All they did was
21 release inmates because of these bail
22 hearings and whatever else. And
23 whatever was left, I think we discussed
24 it a little bit, people that got out,
25 whatever was left on New Year's, they

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2 were let out and I was there and took
3 note of all the people that were
4 leaving, but there was no plan.

5 LEGISLATOR FERRETTI: What I'm
6 referring to is the NICE bus.

7 MR. SULLIVAN: Oh, yes. Yeah.

8 LEGISLATOR FERRETTI: Do you
9 remember an announcement that came
10 after the December 16, 2019 --

11 MR. SULLIVAN: I thought you
12 meant the sheriff's department itself.

13 LEGISLATOR FERRETTI: No, no, I'm
14 talking about the administration. Did
15 they come out with a plan after the
16 December 16, 2019 press conference?

17 MR. SULLIVAN: There was a plan,
18 yeah.

19 LEGISLATOR FERRETTI: Thank you.

20 MR. SULLIVAN: Thank you.

21 LEGISLATOR FORD: Thank you very
22 much. And now Kevin Black, please.
23 And everyone, thank you all for your
24 patience.

25 MR. BLACK: The temptation at

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2 this point is to say it's all been said
3 but I waited this long so I'm going to
4 say it. The biggest thing about this
5 whole reform package, in my opinion, is
6 judicial discretion. We elect judges,
7 judges who have been sitting in the
8 courts for years and suddenly they
9 can't make a decision.

10 Thank you very much for moving
11 over. It's makes it much easier now.
12 You're all in like central view, I
13 appreciate that.

14 The fact -- look, nobody here
15 wants people who are arrested as first
16 time offenders or for low level crimes
17 or marijuana crimes be stuck in jail
18 because they can't come up with the
19 bail. That's not what this is about.
20 This is about serious criminals who are
21 being released because a judge can't
22 take into effect their criminal
23 history, their flight risk, their
24 danger to the victim, witnesses or the
25 general public at large. This is

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2 absurd. How can you not take somebody
3 who's been arrested 15 times for doing
4 street robberies. The judge should be
5 able to look at that and say you know
6 what, as Judge McAndrews said, this guy
7 is a menace. He needs to go to jail
8 and wait for trial. To have these
9 people just consistently released
10 because according to somebody's
11 definition, it's not a violent crime.
12 It makes no sense at all. And that's
13 probably the biggest thing about this
14 whole reform. There's no common sense
15 in it. Nobody sat back and said if we
16 do this, what's going to happen?

17 Discovery, the 15 days. You've
18 heard from Jed Painter, you heard from
19 the commissioner, you heard it from
20 Brian, with all the electronic advances
21 we have to be able to collect this
22 information and put it into a package
23 and have it ready to go in 15 days when
24 speedy trial requires 90 days for a
25 misdemeanor and 180 days for a felony,

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what are we talking about? Why does it have to be there in 15 days? Why are we releasing witness and victim information to a defendant's attorney 15 days later. Now, nobody can draw a direct line between what happened to the gentleman in New Cassel would was prepared to testify, but really, would it take a lot of imagination when this was being set up that somewhere down the road something like this might happen. That a witness would be assaulted much less murdered. I mean, and oh my, how could this happen? You give the information. It's happened.

Lastly -- well, I just did that. The question came up earlier about what -- did anybody reach out and speak to the commissioner or this or that, and nobody did from the state. But last year, as members of the police conference in New York and the New York State Association of PBA's and the sheriff's conference, we were all up in

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Albany when this started to get out and we were all lobbying against this and we were all ignored. You know, I understand that you as a county legislature don't get to vote on these things. But you know, you just as well as I can call Albany and speak to my state rep, you can do the same and we should all be doing it. That's all I have to say.

LEGISLATOR FORD: Thank you very much. You know, to be quite honest with you, and I guess maybe it could be our fault, but we weren't truly aware of the full impact of what was going to happen until we had our budget hearings in public safety and Jed Painter was the first one to get up and talk about this. We had inklings but we never really -- I for one, I'm speaking for myself -- I for one never really truly realized the full impact. Nothing was ever sent out by the state what the changes were going to be until he

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2 brought it up and it's been a nightmare
3 ever since.

4 MR. BLACK: I think that even the
5 people who expected problems from this,
6 didn't expect the level of problems
7 that have become. It's a revolving
8 door. I mean, the commissioner spoke
9 earlier about a guy that robs a bank,
10 walks in, gets printed, walks out.
11 Three days later robs the same bank. I
12 mean, if you work in the bank you got
13 to be sitting there going how long is
14 it before this guy comes in with a gun
15 or does something to one of the
16 employees when they're leaving.

17 LEGISLATOR FORD: Right. I have
18 a woman who contacted me because she
19 doesn't know what to do. She's living
20 in fear. She has this neighbor, you
21 know, that is just very -- he's like
22 being very threatening and so forth and
23 so forth and she refuses to call the
24 police because she said he's going to
25 have my information. He's going to

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know I'm the person that called him and I'm afraid he's going to come after me. So this is what's happening. It's like people are afraid now to even report any type of crime and they're going to have to let themselves either put up with it or move away. I don't know what the solution will be. So let's hope that there will be changes and hopefully -- I agree with Brian, I think the whole thing should be scrapped and finally bring everybody in, you know, that understands the need for reform and how to best achieve it.

MR. BLACK: This has gone from reform to turning the system upside down favoring the criminal offender.

LEGISLATOR FORD: And put our police at disadvantage. But no, first Rose and then you.

LEGISLATOR WALKER: Thank you, Denise. And thank you Kevin and Brian, and certainly everybody who's spoken and the other union leaders that are

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2 going to speak. But when we were over
3 at Levittown hall there happened to be
4 a-- and I'm going to say a gentleman
5 because he really did turn his life
6 around. All right. There was -- well,
7 to me a young man, but a lot of people
8 are much younger than I am -- but he
9 spoke and he said, you know, he goes, I
10 was bad. I was bad. He was drug
11 involved and he goes I did a lot of bad
12 things. I did a lot of bad things.
13 And you know, I was arrested and I was
14 in jail and all I thought about was
15 getting out of jail and whoever made me
16 get into jail I was out to go get them
17 and whatever. And then he said I ended
18 up doing something really bad -- he
19 didn't tell us how it happened -- but
20 he goes, you know, I killed somebody.
21 He spent time in jail and -- but while
22 he was there seven years in jail, he
23 did get his life together and now he
24 does counseling and really tries to
25 help people get on the right track.

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But as he said, you know, the real --
I'm going to say bad guys, okay -- you
know, they're in jail. All they're
thinking about is getting out. And he
goes, and I want to tell you something,
he goes if those discovery laws were
like that when I was in jail, he goes
there's not one doubt in my mind that I
would have gotten out and killed
whoever got me in here in the first
place. He was very emphatic about it.
I mean, he -- I mean, it broke your
heart to think that he wasted so much
of his life but where he turned his
life around, but it made everybody in
that room (End of Tape 3, Side 1) for
so many people and it worries me. It
worries me that people, you know, women
that are attacked, maybe they're not
even going to report their attacks
because they're afraid. They're afraid
to give out their information. They're
afraid that now somebody's going to
come back. You know, you have somebody

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2 in your home who's been attacked, who's
3 been raped and now that person could
4 possibly be brought back to the home to
5 the scene of the crime. You know, what
6 if now her husband gets a gun out and
7 kills that guy? That guy -- now the
8 husband's in trouble for something that
9 shouldn't even be happening. It's just
10 -- it's just a sad state of affairs
11 that we're even -- that we even have to
12 discuss this. It just doesn't even
13 seem real. When we had our first press
14 conference, I said, you know, if this
15 was a movie script, we would think this
16 is not believable but yet, this is how
17 we're living life today. And it's very
18 very scary. And we wouldn't know as
19 much, except from the meetings that
20 we've had, our community, our residents
21 wouldn't know as much if we didn't have
22 those public meetings and get that word
23 out and -- you know, it isn't to spread
24 fear, it's so people know. People have
25 to know what's going on. You know, and

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2 we do. We do reach out to our state
3 officials and say what the heck, what
4 are you thinking. You know, they have
5 families. Where are their heads. What
6 if this is your family that's involved.
7 It's just not good.

8 MR. BLACK: It's a sad state of
9 affairs.

10 LEGISLATOR WALKER: It's just a
11 very sad state of affairs. So I'm just
12 going to leave it at that. I don't
13 know -- I know other people have
14 something to say but I just want to
15 thank you for being here today and
16 thank you for continuing to do
17 everything you can possibly do to keep
18 our residents as safe as they are.

19 MR. BLACK: Thank you.

20 LEGISLATOR DERIGGI-WHITTON: I
21 want to say that I think I'm not being
22 part of this process obviously, but I
23 think that what you started out with
24 was probably the intention of this bail
25 reform which is, you know, if someone

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has a small amount of -- I don't know,
if someone makes a mistake, you know.

MR. BLACK: A low level offense.

LEGISLATOR DERIGGI-WHITTON: A
low level offense, and you know, it can
happen. We were all young once, the
brain doesn't develop which I really
believe now after having kids of my
own, until you're 25. But anyway
they're all good kids. But anyway, I
have to think that was the intention
and I do believe that there's no reason
that someone should be sitting in jail
for so long. And even -- I don't know
how the other side, but even hearing
about how long some of the discovery
takes, you know, there has to be
adjustments to a few things. But I
really think, unfortunately, this was
possibly rushed and done quite
dramatically where maybe it should have
been implemented slower and we should
have had more input before it went.
And I have told our state

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2 representatives exactly what I'm saying
3 now. I'm the former wife of a chief of
4 police and a daughter of a criminal
5 judge, you know, they know that I had
6 no ruling on it, but I hear -- I've
7 lived the criminal, you know, justice
8 life. I've heard so much about it for
9 years and I think taking away a judge's
10 discretion is something that, you know,
11 honestly, I really have a problem with
12 as well not just because I'm a daughter
13 of one but --

14 MR. BLACK: I was going to say,
15 that must lead to some interesting
16 dinner conversations.

17 LEGISLATOR DERIGGI-WHITTON:
18 There's a lot of political -- I should
19 say republican judge. So you know,
20 that's what I'm trying to take from
21 this. You know, maybe there is some
22 good and some positive that can come
23 from this but it has to be really
24 examined, in my opinion, scaled back
25 and I -- the people I'm speaking to in

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2 our area, I think see that now and
3 that's good. But, you know, it's going
4 to be a question of how quickly they
5 can fix it to the point where we can
6 maybe benefit from some of these
7 aspects, you know. So it's happened in
8 a couple of times since I've been an
9 elected official that I've seen, like,
10 a good intention maybe go wrong. You
11 know, we've seen a couple of other
12 instances of that around here, also.
13 Something that should be well
14 intentioned and it would be a good goal
15 to have but there are other
16 ramifications that happen that we might
17 not have planned for or anything else.
18 So, you know, that's how I personally
19 believe. I agree with much of what I
20 heard today and I don't think it's
21 going on deaf ears, it's just,
22 unfortunately, the way the state works.
23 From what I understand, there's a lot
24 of influences in areas other than Long
25 Island even that might be curtailing

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2 this a bit. But I don't think that
3 you're discussion or Sully's or anyone
4 else's went in vain. I think that the
5 message is getting across to our local
6 electeds and I just hope they can do
7 something to correct it. So I just
8 wanted to let you know about that.

9 MR. BLACK: Thank you.

10 LEGISLATOR FERRETTI: Thank you,
11 Kevin. Just real quick. Just we're
12 talking about a lot of judges
13 discretion and rightfully so. That's a
14 key missing part of this law. But just
15 going to something Legislator
16 DeRiggi-Whitton was just saying. I'm
17 not going to speculate as to the intent
18 of the legislators who passed this but
19 their intent aside, in black and white,
20 they passed what they passed and part
21 of that, aside from the judges
22 discretion being taken away, is how
23 they've somehow redefined what a
24 violent crime is. So if their intent
25 was to make this low level crimes, they

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2 failed miserably to do so, I mean
3 miserably because this is anything
4 about that. So their intent aside, if
5 somehow they missed the mark of what
6 their intent is, we know that the
7 senate, New York State Senate has
8 recently proposed a change to this.
9 They should have absolutely no problem
10 passing that. But from what I've read,
11 there's going to be a problem passing
12 that. So I don't know what the heck
13 their intent was, if their intent was
14 to make this only about low level
15 crimes, then they really need to get
16 their reading comprehension checked
17 because that's not what the bill said.
18 And if their intent was something other
19 than that, well, then we have a bigger
20 problem than their reading
21 comprehension.

22 So again, I want to thank you for
23 all the efforts you've done so far and
24 what we're all going to continue to do
25 to work as one voice to get this

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2 insanity changed. Thank you.

3 MR. BLACK: I would leave you
4 with an old comment. The road to hell
5 is paved with good intentions.

6 LEGISLATOR FORD: Thank you.
7 James McDermott, please.

8 MR. MCDERMOTT: I'm joined at the
9 podium with Kenny Cortez, he's the PBA
10 chairman of Board of Trustees and who
11 else we got. I got my whole crowd
12 here. I got Frank Archariot [phonetic]
13 and Brian Quade, delegates.

14 I had good morning written down,
15 it's almost good evening, right? Good
16 afternoon. I'd like to thank you for
17 allowing me to speak today on such an
18 important issue and I'm sorry if I'm
19 going to be repetitive but I just got
20 to get on record. I'm going to speak
21 to you today not only as the PBA's
22 president and a police officer, but
23 also as a Nassau County resident, a
24 lifetime New York resident, a father, a
25 son, a brother, a neighbor, an uncle

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2 and a friend. All of these jobs I take
3 very serious.
4 I'm just going to give you a
5 little history on bail reform from what
6 I know. Criminal justice reform was
7 enacted into law in New York State in
8 the 2019/2020 budget. The reform
9 started January 1, 2020 it includes no
10 cash bail and no remand for
11 misdemeanors and nonviolent felonies in
12 most cases. Violent felonies, cash
13 bail and remand can be applied but the
14 judge must use the least restrictive
15 means. The release on appearance
16 tickets and on certain crimes are now
17 mandatory, not officer's discretion.
18 In crimes such as resisting arrest, the
19 subject has to be released on an
20 appearance ticket. My members will be
21 required to issue appearance tickets
22 for all petty offenses, misdemeanors
23 and most class E felonies unless the
24 following circumstances exists. The
25 arrestee has one or more warrants or he

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2 has failed to appear in court in the
3 last two years. Or he is unable to --
4 or unwilling to verify his identity or
5 in certain domestic cases. Or the
6 victim is seeking an order of
7 protection against the subject. Or if
8 the crime that involved possibly having
9 the defendant's license suspended or
10 revoked. Or if the subject poses a
11 danger to himself mentally or
12 medically.

13 And this is very important, I
14 know we've spoke about this over and
15 over again but pretrial discovery
16 evidence. This new law places an
17 unreasonable burden to turn over all
18 evidence to the defendant within 15
19 days, including names and contact
20 information of victims and witnesses.

21 From what I understand, the
22 reform was enacted because the
23 legislature felt that there was
24 systemic inequity of who are held for
25 trial. They felt that people with

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2 money were freed and the poorer
3 subjects who committed the same crimes
4 were remanded because they didn't have
5 the means. Discovery changes were made
6 because they felt the defendant was not
7 given all the information in order to
8 defend himself or take a proper plea.

9 Issues we feel we need to address
10 in the ball reform are judges
11 discretion to remand. Defendants
12 getting released and committing the
13 same crimes over and over again.
14 Subjects being released that may pose a
15 danger to others. All subjects being
16 treated similar. People are different
17 and releasing them into general
18 population should not be a cookie
19 cutter approach. Some defendants, not
20 all, are just a flat out danger to
21 society. We need to add more crimes to
22 this list. And finally, give judges
23 discretion in all cases.

24 Issues that we need to address in
25 the discovery laws. Currently, all

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2 evidence must be handed over to the
3 defendant, like I said, in 15 days
4 after arraignment. That has to change,
5 it's just not enough time. This
6 includes victims and witnesses
7 identities and contact information.
8 Prior to this, defendants only got that
9 info prior it trial. The new system is
10 causing witnesses to hesitate to get
11 involved and possibly put the witnesses
12 and the victims in further fear of
13 their safety. This system is placing
14 criminal cases in jeopardy and the
15 prosecutors cannot turn over the
16 evidence on time.

17 What we see what some of the
18 solutions are: Give the evidence to
19 the defendant as soon as reasonably
20 possible and on a staggered basis.
21 Evidence immediately in the district
22 attorney's hands given over, test
23 results such as blood evidence, DNA, et
24 cetera, should have a reasonable time
25 frame so that the test results are done

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2 properly, not hurriedly in order to
3 have a proper case against the
4 defendant, as well as protect his or
5 her rights for a fair trial.

6 However, victims and witnesses
7 identity should not be released unless
8 absolutely necessary and the burden
9 should be on the defendant to prove why
10 he needs this information before a
11 trial or plea bargain. Cases should
12 not be put in jeopardy just because of
13 time restraints.

14 I ask all of you, both sides --
15 both sides of the aisle, to have your
16 voices heard in Albany. You're our
17 voice. I got to know all of you,
18 you're all good people on both sides,
19 you know this is wrong, you know this
20 has to be reformed and it has to be
21 reformed now. Remember, it's never too
22 late to do the right thing. Thank you.

23 LEGISLATOR FORD: Thank you very
24 much. I know that we -- you know, Jed
25 talked about the morale with the ADA's

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in regard to this. Do you feel that this is having an impact on the morale of your officers?

MR. MCDERMOTT: Oh, of course. You know, it's turnstile justice. New York City takes a little bit longer to book somebody and, you know, I was a New York City cop in Brooklyn 32 and a half years ago, but just the sheer numbers alone in there. The guy's out on the street before you're finishing the paperwork. You know that's, you know, what am I doing? What are we doing here? You know, it definitely has a negative effect. Our guys are professional, and girls, and they're doing whatever they have to do, so we're doing what we have to do. This is our plea to have Albany listen to you. I heard Kevan say that let's put a letter together, let's put a letter together. Whatever you guys have to do together, do together and let's get this thing done and done right. Thank

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2 you. Anybody else?

3 LEGISLATOR FORD: I think that's
4 it. Thank you so much.

5 MR. McDERMOTT: Thank you so
6 much.

7 LEGISLATOR FORD: Keep it up, the
8 advocacy. Joel Berse, please.

9 MR. BERSE: My blood sugar seems
10 to be dropping and being here this long
11 since it started is --

12 LEGISLATOR FORD: No need to
13 apologize. You have a lot of patience
14 and thank you for waiting so long.

15 MR. BERSE: Well, from what I
16 originally wrote here it said morning,
17 so now good afternoon, Legislators.
18 I'm used to being an extemporaneous
19 speaker in this type of an element but
20 because of the gravity of this and the
21 people that I've spoken to or that I
22 made a prepared statement that may
23 repeat some of what's been said but it
24 also should help people maybe realize
25 that it's not just the ones who are

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2 working in a police department or the
3 sheriff's department or the DA's
4 office. Also the people out in the
5 streets, in the neighborhoods, the ones
6 who live in Nassau County know what
7 we're talking about. Let me get on
8 with my statement instead of babbling
9 now.

10 My name is Joel Berse. I am the
11 immediate past president of the
12 Northwest Civic Association in
13 Hicksville. Also immediate past
14 president of the Hicksville Community
15 Counsel. During my career I have been
16 a member of the chambers of commerce in
17 Hicksville, Levittown, Wantagh,
18 Farmingdale, East Meadow, Lindenhurst
19 and the Long Island Association. I
20 currently serve as an appointed member
21 of both the Nassau County bus transit
22 committee and the police commissioner's
23 community counsel. I hold memberships
24 in the Nassau County Police Reserves
25 Association and in New York State

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2 Fraternal Order of Police. In my youth
3 I served as an auxiliary police officer
4 in the Jericho unit.

5 I made this introduction to
6 demonstrate that I believe myself to
7 have an accurate feel for the pulse of
8 my fellow county residents with regards
9 to many matters, especially the bail
10 reform laws implemented by our state
11 officials this year. There are also
12 concerns regarding our police being
13 able to remain as effective as they
14 always have been.

15 Last September, Senator Anna
16 Kaplan came to introduce herself to
17 Hicksville at our Northwest Association
18 meeting. At that meeting, she spoke of
19 all the wonderful items she voted for
20 during her first few months in office.
21 However, she omitted these new bail
22 reform laws from her accomplishments.

23 In October, our POP officers from
24 the second precinct came to the next
25 meeting we held to inform the community

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2 about the upcoming changes to our
3 criminal justice system in 2020. It
4 was really a show of horror and shock
5 that people didn't know what was
6 coming. The very next morning I
7 appeared before the Oyster Bay Town
8 Board and implored them to communicate
9 with state officials that their
10 constituents were seriously concerned
11 about quality of life issues with these
12 changes.

13 Assemblyman Mike Montesano spoke
14 at our November meeting and brought
15 with him the list of offenses that no
16 longer would require posting bail. One
17 that sticks out in my mind was for
18 carrying a gun on school grounds. He
19 also spoke of the new discovery portion
20 the law that effectively gives more
21 rights to the suspect than the victims.
22 Main points being disclosure of
23 personal information and visiting the
24 scene of the crime even if it's inside
25 of the victim's home. It is public

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knowledge that immediately after being arrested and released several individuals committed additional crimes. Often suspects are released before their arrest paperwork is completed. A cop off the street for making an arrest is terrific but the cop still off the street performing the associated duties to the arrest while the alleged perpetrator is back on the street committing offenses is horrific. Therefore, it is incumbent on all elected officials at any level within New York State to insist that these laws be revisited, revoked or revised for the safety of the residents in their constituency.

I now challenge all of you in our legislature to act accordingly for the quality of life in Nassau County. A lot of you have a pipeline to these people that created the situation and I hope you do speak to them loudly and clearly because it does sound like the

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2 legislature is in tune and is on our
3 side to try to cure this situation.

4 LEGISLATOR FORD: Thank you very
5 much for your comments, sir. It really
6 is important to hear, especially with
7 your background, you know, so -- and
8 you're spurring us on to make sure that
9 we get to that state and make these
10 changes.

11 MR. BERSE: Have a good day.

12 LEGISLATOR FORD: Okay. Jeffrey
13 Gross, Detective's Union. And I'm
14 sorry, I didn't -- my eyesight isn't --
15 even with glasses it's not that good,
16 so I apologize.

17 MR. GROSS: No apology necessary.
18 It's Jeffrey Gross, I represent the
19 detectives of Nassau County. I want to
20 thank you guys for having the hearing
21 today and I want to thank all the prior
22 speakers. I wrote about 11 pages of
23 notes. I don't like to reiterate
24 what's already been said so I've been
25 crossing it out here and there.

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2 I am one of the representatives
3 who goes into Albany almost every day
4 that they're in session. I'm up there
5 with Ed Perkins from the PBA and Pete
6 Patterson from the -- I'm sorry, the
7 PBA and Eddy Perkins from the SOA. But
8 we deal with this bail reform and we've
9 been talking about it for since March
10 or April of last year when we knew it
11 was coming down the pike, as has been
12 explained to you already. I don't
13 think any of us knew how bad it was
14 going to be. But I do have to say when
15 you tuck it into the budget and you
16 don't allow people to vote on it as a
17 stand-alone and you don't allow it to
18 mature on its own, that's when we have
19 these problems. I think that was done
20 on a -- even though we don't want to
21 keep political or say it's political,
22 it's political just by them doing that.
23 It wasn't a natural progression of the
24 law or the changes. The laws change
25 every year. Every year new bills come

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2 in, they're addressed, they're appealed
3 and that's how it goes. You don't
4 change the entire landscape of the
5 criminal justice system in one sweep
6 where you hold people really as Brian
7 said earlier, with a gun to their head.
8 New legislators up in Albany didn't
9 know that they could vote no on the
10 budget. They felt that they had to do
11 that for their constituents to keep it
12 going. I spoke to many of them up in
13 Albany and that's how something like
14 this was able to exist. It's also
15 something that you're likely to see,
16 and I don't have any firsthand
17 knowledge, but that's how they're going
18 to roll out the marijuana bill.
19 They're going to put it in the bill --
20 I mean, in the budget, and they're
21 going to roll it out. And those
22 ramifications, we're going to spend a
23 long time figuring it out.

24 But as much as you may be able to
25 fix bail reform by judicial discretion

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and review, those seemed to easy fixes. I think the bigger problem we have is discussed by the ADA before is the discovery reform. Discovery reform, it's not as much as we let the guy go and now the detectives have to go out and find the guy because he's got a warrant, and that's a big issue for us. But with the discovery, you're talking about dismissing a case where there was a victim and it could be a serious case or whatever, and you're going to dismiss the case. It's not that we have to go get the guy, it's going to be dismissed and he's going to leave.

And what I want to point out is you have this 15-day discovery that they mandated but yet when we send out subpoenas as being a detective for phone records or bank records or whatever, we allow those entities 30 days to comply with the subpoena. So if I'm sending phone record out and I'm allowing AT&T or Verizon to give me 30

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2 days to get it back, how am I supposed
3 to keep up with the speediness of
4 trial, which is already 15 days. It's
5 already -- it already is set up to fail
6 right from the beginning. They didn't
7 change any of that.

8 So anyway, it's a huge issue, I
9 don't want to reiterate and waste your
10 time but I will say that how can they
11 say that they can't trust the judge on
12 the amount of bail or the seriousness
13 of the crime or the history of the
14 defendant when we trust him later on to
15 make the sentencing. It's the same
16 judges. You don't trust him on bail
17 but in the end you're going to trust
18 the same man. It doesn't make sense
19 and a lot of it is just trusting in our
20 system the way it's always been. Any
21 time you have sweeping reforms, but now
22 we're going to take us years to fix is
23 not a good thing. But thank you for
24 your time.

25 LEGISLATOR FORD: Thank you very

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2 much for your patience. Let's hope
3 that the state legislature has learned
4 their lesson. And we will send a
5 letter and also to remind them, don't
6 make the same mistake twice, you know
7 with the marijuana legislation. Take
8 it out and vote on it independently.
9 But really bothers me most about all of
10 this is that they were aware of some of
11 the impact, the negative impact this
12 was going to have in law and order here
13 in New York State. Even when you
14 listen to that interview with Senator
15 Kaminsky and Power and Politics, News
16 12 or whatever, and he admitted that he
17 met with people in law enforcement and
18 DAs prior to his voting on this and he
19 still voted for it even though they
20 told him, please don't. So I think
21 that all of them, they may, you know,
22 they may say, well, we shouldn't have
23 but I really wish that some of them who
24 are more seasoned should have shown
25 some restraint and to put the halt on

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2 this so that we wouldn't be going
3 through this at this point. But I
4 thank you very much. Because I know it
5 undermines our detectives as well. I
6 mean, and we're trying to give you
7 support.

8 MR. GROSS: I agree and it's very
9 frustrating for our detectives, our
10 police officers who work on these
11 cases, they're important to us and then
12 they're not even going to be able to
13 get into court, they're likely to get
14 dismissed beforehand.

15 LEGISLATOR FORD: Right.

16 MR. GROSS: And you know, I have
17 to say for our own district attorney,
18 you know, Madeline Singas ran up to
19 Albany from the beginning and she
20 recognized this and she brought it to
21 the governor's attention and he told
22 her in sum and substance, whatever, not
23 to quote it, but he said that I don't
24 think you fully understand what the
25 legislation is and she said no, I do

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2 and she was right. She knew it was
3 going to be a problem, she addressed
4 it, she went up to Albany, she's
5 continued to go up in Albany as an
6 advocate for -- you know, we're not
7 against change, but we don't want
8 change just to have change, it's got to
9 be common sense. It's got to go the
10 normal evolution of the legislative
11 process. You can't just roll something
12 out where it changes everything, where
13 it costs, you know, these small
14 municipalities millions of dollars and
15 we haven't seen the problem. As ADA
16 Painter said before, if you wait until
17 July or August that's when all the
18 bottom is going to fall out on a lot of
19 these cases when they're going to be
20 held to task and they're going to have
21 to let these cases go. You know, I
22 heard this story, if you don't mind,
23 for two seconds. New York City woman,
24 elderly woman, she had 30 something
25 thousand dollars stolen from her from

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2 her home care aid. She went to the
3 police, she called the police, they
4 made the arrest. The DA refuses to
5 prosecute the case because they have to
6 get the bank records, which they know
7 is going to take over 30 days, they
8 can't do the 15 days. And the problem
9 with that is, the woman's not able to
10 get the order of protection so she's
11 not able to prevent the home care aid
12 to come to her house and beg her not to
13 press charges that she'll pay back --
14 and harass the woman because it's not
15 an active case so they won't give the
16 order of protection. So now the DA
17 there is waiting for this bank records
18 to come back so they can start the
19 clock. I don't think that's the intent
20 the law where we're always going to be
21 doing this stuff and we can't protect
22 our citizens. We say it's for public
23 safety but you can't give this elderly
24 woman in her 80s an order of protection
25 until the bank records comes back. And

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2 the banks aren't held to the 15-day
3 discovery rule. You know, they're held
4 -- when they get the subpoena from the
5 Nassau County judge, it says you have
6 30 days to comply, that's the minimum.
7 So how can we possibly go in 15.

8 LEGISLATOR FORD: Exactly. And I
9 think to myself now with, like, with DA
10 Singas being on that justice panel, you
11 know, if all of those people were first
12 brought into the room to say to come up
13 with a model of changing the justice
14 reform system to make it more -- make
15 it fair for some of the people who
16 really shouldn't be in jail, what a
17 different story we'd be telling today,
18 you know, rather than trying to --

19 MR. GROSS: I agree. We don't
20 want one single person in jail more
21 than they have to be.

22 LEGISLATOR FORD: Right.

23 MR. GROSS: Or an innocent person
24 -- we don't want that even one time but
25 we're paying for it by having tens of

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thousands of cases that are going to
thrown out because we wanted to protect
that one person from being in jail.
And I get it, it's got to work itself
out. This way is not going to work.
And you know what, it's only -- the
problem is when the bottom falls out in
July and August, the legislators are
not going object to be up in Albany,
they're going to be on break and
there's no way they're going to address
it. They don't come back until January
the following year.

LEGISLATOR FORD: They'll be
campaigning.

MR. GROSS: Correct, they'll be
campaigning, so it'll be a very
interesting fall.

LEGISLATOR FORD: Interesting,
yeah. But try to be safe, please.

MR. GROSS: Thank you very much
for your time.

LEGISLATOR FORD: Thank you.

Pete Gaffney. He left? Okay. Susan

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2 Gotchera. She might have left. Yeah.
3 You don't see Susan? Michelle
4 Esquenazi. Ron Rochester. Good
5 afternoon, sir. Thanks for your
6 patience.

7 MR. ROCHESTER: You're welcome.
8 My name is Ron Rochester. I am a
9 retired federal agent. I was criminal
10 investigator for over 25 years. In
11 addition to that, I was -- I had
12 clerical duties as an undercover agent,
13 a tech agent, which was body cameras
14 and GPS's and such like that and I was
15 the field office two-way radio
16 communications officer. And I came
17 here to -- you know, I've been
18 discussing this with my community and
19 people out in the community for some
20 time regarding the bail reform and I
21 won't go over a lot of the other things
22 that people have gone over with, but
23 the discovery that is really an
24 important and a very -- I want to call
25 it -- I find it to be very -- there's a

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2 word for it -- anyway. I find a
3 problem with that issue.

4 One of the things that we haven't
5 been discussing, I think people are
6 missing the issue is, we have a lot of
7 undercover agents, we have confidential
8 informants. I mean, you talk about
9 witnesses but that information is going
10 to be disclosed to defendants and
11 defendants' attorneys. You're going to
12 put the lives of undercover agents at
13 risk. I spent many years in undercover
14 agent and for my information to get out
15 there and for someone to now have my
16 home information, my family's at risk,
17 something like that, it's really
18 troubling. The fact of the matter what
19 hasn't been discussed is that there is
20 a tremendous amount of task forces that
21 have federal, state, local agencies
22 working together. Now you have to have
23 -- their information has to be
24 discovered. You're going to have to go
25 to these federal agencies -- nobody's

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2 discussed that -- and get information
3 from that that has to be disclosed to
4 defendants, so in cases that might be
5 put on a state level.

6 You're going to have -- you have
7 undercovers who their information may
8 be disclosed and they might be working
9 on a federal case and now what? What
10 happens? Now you got a problem with a
11 big federal case that's out there
12 because they're working on that case
13 with federal agents. This has got wide
14 ranging ramifications that people
15 haven't even discussed yet. And how
16 does that work? When you go -- like
17 the radio system you have the county
18 has radio system, well that's recorded.
19 Or many federal agencies do not record
20 the radio information. Defense is
21 going to ask for that in discovery.
22 You know what, if they can't provide
23 it, that case will probably get thrown
24 out.

25 These are all things that should

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2 have been discussed and thought about
3 well before this ever came and put into
4 effect. It's wide ranging and this is
5 really really important. Now we're
6 going to try to backtrack and try to
7 fix this and I have a real problem with
8 that. I think we really need to talk
9 to our legislators, people in Albany to
10 say hey, you need to look at this in
11 complete detail. You can't, you know,
12 give a whitewash to this thing. It
13 goes well beyond what a lot of people
14 are talking about right now and we need
15 to make sure that we put something in
16 place that is not going to come back
17 and shoot us in the foot. And you
18 know, it's really important that we
19 take a look at all. We need to bring
20 in some of the federal AUSA's involved
21 in this and say, how is that going to
22 affect our joint task force and our
23 joint investigations with this law.
24 Nobody's looked at that. That's the
25 reason I'm here. I thought it was

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2 important for me to stay and discuss
3 that and make everybody aware that this
4 is something that we need to look at.

5 LEGISLATOR FORD: Thank you for
6 your patience. And you actually
7 brought up some issues that we never
8 even thought about, like, you know,
9 whether or not -- what impact it does
10 have with CI's and undercover --

11 MR. ROCHESTER: I've been on the
12 other side of this as a federal agent
13 so I know what we're talking about.
14 I've had many state undercovers, I've
15 worked on, you know, city and state
16 investigations myself, and I've had
17 guys work with me on federal
18 investigations and they do cross.

19 LEGISLATOR FORD: It's
20 frightening.

21 MR. ROCHESTER: It's very
22 frightening.

23 LEGISLATOR FORD: We're hoping
24 that the state will finally listen to
25 the residents and say, you know, we

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2 need to back pedal on this and make
3 some changes to protect all of us.

4 MR. ROCHESTER: Thank you.

5 LEGISLATOR FORD: And thank you
6 very much. I really appreciate your
7 comments. Manmohan Kaur, K-A-U-R.

8 That was our final slip and I
9 thank everybody. Steve will close up
10 our meeting. Thank you.

11 LEGISLATOR RHOADS: I just wanted
12 to thank everyone that took the time to
13 appear today. Everyone that may have
14 been watching at home. And I want to
15 thank everybody for their comments. I
16 think there was a lot of information
17 that was provided today. There was a
18 lot of insight that people provided,
19 particularly in our law enforcement
20 community, our community members who
21 spoke about the practical impacts of
22 cashless bail of criminal justice
23 reform. I've got to say though,
24 government has no more important
25 responsibility than to protect the

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safety of the public. From where I sit at least, I think that this has been a complete failure of New York State government to do that. And I know a lot of people got up today to kindly offer a pass to the state legislature as to why these reforms came in place. The simple fact of the matter is we heard from many of our police unions that were up in Albany prior to this bill being passed alerting state legislators to the fact that there would be consequences and that there would be problems if criminal justice reform and cashless bill was passed. The problem isn't that they didn't hear -- it's not that they did not hear what would take place. The problem is that it seems as though they did not care and they simply passed it anyway.

You know, I had a conversation with my own state senator at a public meeting who explained well, you know, it was passed at the last minute as

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2 part of the budget, and I didn't even
3 know that it was there. Honestly, not
4 an excuse. If you're complaining about
5 the process, you control the process.
6 Marijuana legislation that they're
7 talking about being passed as part of
8 the budget this year. It was supposed
9 to be passed as part of the budget last
10 year but it wasn't. Why wasn't it
11 passed as part of the budget last year?
12 It wasn't passed as part of the budget
13 last year because legislators in Albany
14 got together and removed it from the
15 state budget. So the notion and the
16 concept that maybe freshman legislators
17 didn't understand, maybe the folks that
18 are supposed to be representing us in
19 the state senate from Nassau County up
20 in Albany didn't know that they didn't
21 have to vote for the budget. That is
22 absolute nonsense. And the thing that
23 frustrates me most about this is that,
24 yes, this may have started off with
25 great intentions trying to make sure

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that a low level criminal, a first offender, wasn't going to sit in jail because they couldn't afford to pay bail. You look at the list of crimes; burglary of residence, using a child to commit a controlled substance crime, injecting another person with a controlled substance, manslaughter, possessing a weapon on school grounds, solicitation of a minor for prostitution, assault as a hate crime. These are not low level criminal offenses and they're in black and white. Everyone had the opportunity to see them and it was ignored.

Mr. Maldonado who testified earlier today and was our first witness, he's the one that's paying the brunt. He's the someone that's suffering the consequence and his family and his son who will never come back because our state legislators didn't take the opportunity to listen to what was being said. And what has

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2 to happen here, and I hope we do send
3 that letter up to Albany, I know I've
4 reached out to my local legislator on
5 multiple occasions to share my
6 thoughts, I hope we do send that letter
7 but what needs to happen here is not
8 tinkering around the edges. What needs
9 to happen here is a complete repeal of
10 this legislation and then we can sit
11 down and have a bipartisan conversation
12 with law enforcement, with the ACLU to
13 talk about sensible criminal justice
14 reform that actually accomplishes what
15 we think the good intentions of this
16 legislation started out to be. That is
17 is not what's happening today. Every
18 day that we delay it is another day
19 when there's the chance that there may
20 be another family just like Victor
21 Maldonado and Jonathan Maldonado, his
22 son, that there will be another family
23 like that victim of MS13 in New Cassel
24 or any of countless examples that are
25 in our papers every single day.

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2 They're the ones that are being put at
3 risk and they continue to be put at
4 risk every day that we delay this. And
5 my fear is, that even though the
6 legislators that we have here in Nassau
7 County are now saying we want to walk
8 this back, there are elements up in
9 Albany, including the leadership, I
10 think, in the state assembly
11 specifically --

12 LEGISLATOR FORD: And the New
13 York City people --

14 LEGISLATOR RHOADS: -- that does
15 not want to walk it back. You know,
16 and that's the problem with doing
17 something and thinking that you're
18 going to be able to fix it later is
19 because you have to get the votes to be
20 able to fix it and you might not. So
21 the only way that that's going to
22 happen is through hearings such as
23 this, through conversations that we're
24 having in our own districts and from
25 each and every person that's listening

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to this today reaching out to their state legislators and letting them know that the failure to act is going to bring pain. Whether that turns out to be at the ballot box, whether it turns out to be in public meetings, whatever that turns out to be, action's not going to happen until they realize that there are consequences.

I appreciate everybody being here today and sharing their thoughts but the message to take away from this today is that there are a lot of issues that are created by cashless bail and criminal justice reform and that we need to stand up and we need to speak out together to make sure that the right action is taken up in Albany to protect public safety.

LEGISLATOR FORD: Thank you very much. Very eloquent. Have a good evening. Stay safe.

(Hearing concluded at 4:10 p.m.)

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CERTIFICATION

I, FRANK GRAY, a Notary Public in
and for the State of New York, do hereby
certify:

THAT the foregoing is a true and
accurate transcript of my stenographic
notes.

IN WITNESS WHEREOF, I have
hereunto set my hand the 6th day of March
2020.

FRANK GRAY