

U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING MEETING **FINAL**

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FRIDAY, MARCH 17, 2017

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The Commission convened in Suite 1150 at
1331 Pennsylvania Avenue, Northwest, Washington, D.C.
at 9:30 a.m., Catherine Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

PATRICIA TIMMONS-GOODSON, Vice Chair

DEBO P. ADEGBILE, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner*

MAUREEN RUDOLPH, General Counsel

MAURO MORALES, Staff Director

* *Present via telephone*

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STAFF PRESENT:

TERESA ADAMS

ROBERT AMARTNEY

LASHONDA BRENSON

MARLIK XAVIER-BRIER

ROI AINE CASTRO

PAMELA DUNSTON, Chief, ASCD

LATRICE FOSHEE

ANA FORTES

ALFREDA GREENE

JONAS MEKSEM

DAVID MUSSATT, DIR., RPCU

GRACE OBERG

WARREN ORR

SARALE SEWELL

JUANDA SMITH

BRIAN WALCH

MICHELE RAMEY

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

ALEC DUELL*

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC

** Present via telephone*

PANELISTS PRESENT:

CHIRAAG BAINS, J.D., Visiting Senior Fellow; Criminal Justice Policy Program at Harvard Law School

DEREK M. COHEN, PhD., Deputy Director, Center for Effective Justice; Texas Public Policy Foundation; Right on Crime

CYNTHIA DELOSTRINOS, J.D., Administrative Manager; Washington State Administrative Office of the Courts
KARL DEMARCE, J.D., Associate Circuit Judge; Circuit Court of Scotland County, Missouri

THOMAS HARVEY, J.D., Co-Founder & Executive Director; Arch City Defenders

MARC LEVIN, Esq., Director, Center for Effective Justice; Texas Public Policy Foundation; Right on Crime

MITALI NAGRECHA, J.D., Director, National Criminal Justice Debt Initiative; Criminal Justice Policy Program at Harvard Law School

GROVER NORQUIST, M.B.A., Americans for Tax Reform

SHERRI PASCHAL, Court Business Services Director; Missouri Office of State Courts Administrator

SARAH SHANNON, PhD., Assistant Professor; University of Georgia

DAVID SLAYTON, M.P.A., Administrative Director; Texas Office of Court Administration

NEIL SOBOL, J.D., Associate Professor of Law; Texas A&M University

MARTHA WRIGHT, M.P.A., Criminal Justice Services; Operations Division, Judicial Council of California

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V. Panel Three: Data, Research, and
Policy Recommendations on Municipal Fees and Fines.

Professors and experts discuss the data regarding how the practice of generating revenue through the municipal court system has impacted low-income communities of color and provide policy recommendations for reforming municipal court systems

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P R O C E E D I N G S

9:33 a.m.

CHAIR LHAMON: All right, thank you.

And I call this meeting to order.

This briefing of the U.S. Commission on Civil Rights comes to order at now 9:33 on March 17th, 2017. Happy St. Patrick's Day.

This briefing takes place at the Commission's Headquarters which is located at 1331 Pennsylvania Avenue, Northwest, Washington, D.C.

I'm Chair Catherine Lhamon. Commissioners present at this briefing include Vice Chair Timmons-Goodson, Commission Heriot, Commissioner Kirsanow, Commissioner Narasaki, Commissioner Adegbile and Commissioner Kladney.

Commissioner Yaki, I have heard you on the phone, will you confirm that you are present?

COMMISSIONER YAKI: Yes, except that your audio is cutting in and out on the phone line.

CHAIR LHAMON: Thanks for telling me. I'll try to speak right into the microphone.

A quorum of the Commissioners is present. Is the Court Reporter present? She is.

Is the Staff Director present?

STAFF DIRECTOR MORALES: Yes.

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1 CHAIR LHAMON: Thank you.

2 So, I welcome everyone to our Briefing on
3 Targeted Fines and Fees Against Low-Income People of
4 Color: Civil Rights and Constitutional Implications.

5 Last year, we conducted a briefing in light
6 of the 2015 Department of Justice Patterns and Practice
7 Investigation into policing and municipal court
8 practices in Ferguson, Missouri.

9 This year, we continue to explore
10 developments in municipal court reforms and,
11 particularly focus on the Department of Justice efforts
12 in this area.

13 I invite Vice Chair Timmons-Goodson to
14 introduce this topic as the impetus to discuss this
15 important issue came from you.

16 VICE CHAIR TIMMONS-GOODSON: Thank you
17 very much, Madam Chair.

18 Good morning all. I want to begin by
19 thanking the people behind the scenes who brought all
20 of us together for what I believe will be an informative
21 and engaging briefing.

22 I want to say an extra word of thanks to
23 LaShonda Brenson, Maureen Rudolph, Pamela Dunston,
24 Latrice Foshee and Sheryl Cozart for all of their hard
25 work in putting this briefing together.

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1 Also, of course, I want to thank my fellow
2 Commissioners in supporting this briefing topic as the
3 Fiscal Year 2017 Statutory Enforcement Report.

4 With this briefing, Targeted Fines and
5 Fees Against Low-Income Minorities: Civil Rights and
6 Constitutional Implications, the Commission seeks to
7 expound on the work that we began last year.

8 As you may recall, in the wake of civil
9 unrest following the shooting death of Michael Brown,
10 the U.S. Department of Justice investigated the
11 Ferguson Police Department and municipal courts and
12 they published an extensive report.

13 The report concluded, among other things,
14 that the Ferguson Municipal Courts operated not as
15 neutral arbiters of the law or a check on unlawful
16 police conduct, but rather, to compel the payment of
17 fines and fees that advanced the city's financial
18 interest.

19 For instance, a minor violation -- for a
20 minor violation, parking, large sums of money were
21 required to satisfy the fines and fees.

22 One Ferguson woman, as set out in the
23 report, had a parking ticket for a single violation
24 totaling \$151 in fees. She paid on that ticket over
25 seven years, yet, she still owed \$541 after paying \$550

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1 in fines and fees, having multiple arrest warrants
2 issued against her, being arrested and jailed on
3 several occasions. Keep in mind, this was for a
4 parking ticket.

5 Many civil rights advocates with
6 assistance from media reports and investigative
7 journalists also focused the nation's attention on the
8 targeting of citizens by police and courts in order to
9 generate revenue and the illegal enforcement of fines
10 and fees in certain jurisdictions.

11 In part, this attention was the result of
12 the Ferguson report.

13 In light of the Justice Department's
14 response to municipal targeted fines and fees, both in
15 Ferguson and elsewhere across the country, the main
16 purpose of this briefing is to investigate DOJ's
17 enforcement efforts regarding municipal court reforms
18 and whether any other efforts are being undertaken.

19 Our three panels today consist of State
20 Court Administrators, community advocates, professors
21 and criminal justice experts.

22 It is our sincerest hope that the
23 panelists' insight will inform the public about what
24 DOJ has accomplished and what is left to do.

25 I thank you, Madam Chair, for affording me

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1 a few moments for these remarks.

2 CHAIR LHAMON: Thank you, Vice Chair.

3 Commissioner Heriot, I also understand
4 you'd like to speak?

5 COMMISSIONER HERIOT: Actually, I'm going
6 to defer to Commissioner Kirsanow.

7 CHAIR LHAMON: Okay.

8 COMMISSIONER KIRSANOW: Thank you.

9 And, I would just add a couple statements.
10 First of all, I appreciate all the panelists coming
11 here. I think this is an important briefing.

12 As someone who lives in inner city
13 Cleveland has got my share of fines because I tend to
14 maybe go a little too fast from time to time, although,
15 I can probably afford it more readily than some of my
16 neighbors can.

17 I'm looking forward to hearing what
18 evidence -- can you hear me?

19 Commissioner Yaki, by the way, I'm glad
20 we're not together again. Otherwise, I think the
21 universe would implode.

22 COMMISSIONER YAKI: Well, Armageddon is
23 once again avoided, Commissioner Kirsanow. But,
24 unfortunately, for us on the listening line, we are
25 catching about three out of every five words that you

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1 are saying and the volume is extremely low.

2 COMMISSIONER KIRSANOW: Okay. I'm not
3 sure what I can do about that. I'm technologically
4 inept.

5 But, one of the things I'm interested in
6 is this something that's peculiar to minority
7 communities.

8 I know that, in my own travels throughout
9 the Greater Cleveland area, that these steps of fines
10 and fees are not necessarily reserved for minority
11 areas.

12 And, there is a question of jurisdiction
13 here. I'm prepared to accept that because of some of
14 the evidence that was introduce before, but I'd like
15 to hear more evidence in that regard.

16 In addition to that, what I'm truly
17 interested in is, what are the alternatives? Because
18 of someone who is concerned about these issues, I know
19 that if there aren't alternatives to this, there are
20 certain negative implications to what happens if you
21 can't assess fees, if you can't -- don't have any other
22 kind of deterrents to it, do we simply just let people
23 do these things and come with other alternatives that
24 can achieve the same objectives.

25 So, I look forward to the briefing.

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1 Thanks for the witnesses and thank you, Madam Chair.

2 CHAIR LHAMON: Thank you both.

3 I want to now turn us to the important
4 topic, the widespread effect of the topic we will
5 discuss today cannot be understated. As one panelist
6 put it last year, there is, quote, a devastating impact
7 on families, communities and public safety when courts
8 turn to revenue generation rather than the fair and
9 equal administration of justice.

10 And, that access to justice issue is
11 squarely within our jurisdiction and core for us in what
12 we investigate today.

13 I look forward to hearing from today's
14 panelists about reforms occurring in states to guard
15 against those injustices and about the efficacy of the
16 Federal Department of Justice efforts to promote and
17 secure those reforms.

18 Before beginning the briefing, I thank
19 Sandra Vujnovich, the Judicial Administrator of the
20 Supreme Court of the State of Louisiana and Ronald
21 Lampard, the Director of the Criminal Justice Reform
22 Task Force at the American Legislative Exchange
23 Council. They both submitted written testimony for
24 the record, but were unable to participate in today's
25 briefing. We are grateful for their materials.

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1 For any other member of the public who
2 would like to submit materials for our review, we
3 welcome it and our public record will remain open for
4 30 days following today's briefing. Materials can be
5 submitted by mail to the U.S. Commission on Civil
6 Rights, Office of General Counsel at 1331 Pennsylvania
7 Avenue, Northwest, Suite 1150, Washington, D.C. 20425
8 or by email to [municipalfees@usccr.gov](mailto:municipalfees/usccr.gov).

9 I also join the Vice Chair in thanking our
10 staff who have put such hard work in today's briefing,
11 particularly LaShonda Brenson, Maureen Rudolph,
12 Latrice Foshee, Pam Dunston and Juanda Smith.

13 I also thank three interns who provided
14 research assistance for today's briefing, Rolaine
15 Castro, a student at Fresno Pacific University is
16 interning with us through a program at the Council for
17 Christian Colleges and Universities and through our
18 annual spring break hosting from Carbondale High School
19 in Illinois, Grace Oberg and Jonas Mekesm. Thank you
20 very much to all.

21 Today's briefing features 12
22 distinguished speakers who will provide us with an
23 array of viewpoints.

24 The first panel who are seated of State
25 Court Administrator will focus on the U.S. Department

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1 of Justice "Dear Colleague" letter and grant money
2 issued by the DOJ for municipal court reforms.

3 Panel Two will speak to DOJ's Pattern and
4 Practice Enforcement in this area.

5 And, Panel Three will discuss data
6 collection and policy recommendations.

7 During the briefing, each of the panel
8 members will have seven minutes to speak, all except
9 Thomas Harvey, who just submitted his materials should
10 assume that we have read your materials before this day.
11 And, so, you can please use your time to highlight the
12 points you especially want us to know.

13 After each panel presentation, my fellow
14 Commissioners and I will have the opportunity to ask
15 questions within the allotted period of time and I will
16 recognize the Commissioners who wish to speak.

17 In order to maximize the opportunity for
18 discussion, I ask each of our panelists to stick within
19 your seven minutes for your speaking time. And, you
20 should know that I will strictly enforce those seven
21 minutes for each panelist.

22 You'll notice a system of warning lights
23 that we have set up. When the light turns from green
24 to yellow, that means that two minutes remain and when
25 the light turns to red, you should stop speaking.

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1 My fellow Commissioners and I also are
2 committed to keeping our remarks concise so that we can
3 stay within our time.

4 So, I will first introduce our first panel
5 in the order in which they will speak.

6 Our first panelist this morning is David
7 Slayton. He is the Administrative Director within the
8 Texas Office of Court Administration.

9 Our second panelist is Martha Wright.
10 She's the Supervising Analyst of Criminal Justice
11 Services at the Judicial Council of California.

12 Our third panelist is Cynthia Delostrinos,
13 the Administrative Manager of the Washington State
14 Administrative Office of the Courts.

15 And, our fourth panelist is Sherri Paschal
16 of the Missouri Office of State Courts Administrator.

17 Mr. Slayton, please begin.

18 **II. PANEL ONE:**

19 **DEPARTMENT OF JUSTICE'S "DEAR COLLEAGUE" LETTER**

20 **AND OTHER VOLUNTARY COURT REFORM EFFORTS**

21 **SPEAKERS' REMARKS**

22 MR. SLAYTON: Thank you very much, Madam
23 Chair and Commissioners. Thank you for the
24 opportunity to appear before you today to discuss
25 efforts underway in Texas to address the impact of fines

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1 and fees on low-income individuals.

2 My name is David Slayton, as mentioned, I'm
3 the Administrative Director of the Office of Court
4 Administration in Texas and also serve in the role as
5 Executive Director of the Texas Judicial Council, the
6 policy making body for the Texas Judicial Branch.

7 Much has been done in Texas and much is
8 being done in Texas in response to our efforts. But,
9 before I get to the specific efforts and actions, I'd
10 like to give you a little background on the Texas court
11 system and the overall picture with regard to fines and
12 fees which I think will help illustrate the work we're
13 doing.

14 Texas's court system has been described by
15 the State Supreme -- in State Supreme Court opinions
16 as unimaginably abstruse, as juris-imprudent and
17 Byzantine. But, today, I'll try to briefly describe
18 it to you.

19 Texas has 2,735 separately created courts
20 with over 3,300 Judges in those courts. The largest
21 number of Judges of any State Court system.

22 The courts have varying levels of
23 jurisdiction and authority over assessing fines and
24 fees. But, the vast majority of the cases and
25 assessments occur at the 806 justice courts and 933

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1 municipal courts in the state.

2 In addition to some civil jurisdiction,
3 these courts have jurisdiction in fine only misdemeanor
4 cases. I will stress that again, fine only misdemeanor
5 cases.

6 Rising to a peak of over 11 million cases
7 in 2007, these courts handled over 7 million cases last
8 year in fiscal year 2016. Almost 80 percent of those
9 cases were for violations of State traffic laws.

10 Assessments of fines and fees in these
11 courts exceed \$1 billion per year. Last year, \$1
12 billion per year.

13 Texas's court structure may only be
14 surpassed in complexity by its system of court costs
15 and fees.

16 A 2014 study by the Texas Office of Court
17 Administration found there are 143 distinct criminal
18 court costs separated into 17 categories. Court costs
19 that were created by the Texas legislature.

20 To determine the appropriate amount of
21 court costs and fees applicable to a particular case,
22 one must perform an exercise best visualized by a
23 popular game, Twister.

24 A typical fine only offense will incur
25 court costs of \$87 with about 55 percent of those costs

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1 flowing to the State and the remainder being kept
2 locally.

3 A fine of up to \$500 may also be assessed
4 in these cases.

5 The vast majority of defendants and the
6 over 4 million convictions in these cases, pay the fines
7 and fees either immediately or through a payment plan.

8 However, in at least 18 percent of those
9 cases, the assessments were satisfied by some other
10 method authorized by law.

11 In fact, 15 percent of all convictions for
12 fine only offenses where jail is not an option as
13 punishment for the offense, were satisfied through
14 jail, while only 3 percent were satisfied through
15 community service options and less than 1 percent we
16 waived due to indigence.

17 With all of this as backdrop, I now turn
18 to the efforts that Texas has been -- has made so far
19 and where we're headed in the future.

20 After the United States Department of
21 Justice report from Ferguson, Missouri, Texas Supreme
22 Court Chief Justice Nathan Hecht directed the Office
23 of Court Administration to review practices in Texas
24 and make suggestions for improvement.

25 I'll point out to you that the report in

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1 Ferguson, about 20 percent of it, focused on municipal
2 court practices. And, after reviewing those
3 recommendations, we looked at them in light of what
4 Texas was doing.

5 Immediately, OCA, our office, recommended
6 problems with the Judicial Council's Collection
7 Improvement Program Rules. These rules, meant to
8 provide guidance to local courts and best practices for
9 ensuring the convicted defendant satisfied their legal
10 financial obligations, places inflexible time
11 requirements in the collection of payments and did not
12 provide local courts with flexibility to ensure that
13 collections efforts did not result in an undue hardship
14 on defendants and their dependents.

15 To address this situation, the Judicial
16 Council embarked on an eight month effort to review the
17 rules and include input from various stakeholders.

18 While the effort was not without
19 resistance by some stakeholders, the Council approved
20 revised rules in August 2016 effective January 1st,
21 2017.

22 The revised rules provided mechanisms to
23 address individuals who have inability to pay, ensure
24 that local courts have flexibility in working with
25 defendants to ensure the compliance with obligations

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1 and encourages local courts to offer appropriate
2 alternatives to payment when appropriate.

3 Initial reports from local courts
4 operating under the new rules are very positive.

5 During the rules revision process, three
6 major impediments in local courts were revealed.

7 First, courts expressed concern in their
8 lack of ability to determine an individual's ability
9 to successfully pay the fines and fees.

10 Second, courts expressed concern in their
11 ability to find and manage appropriate alternatives to
12 payment.

13 And, third, courts expressed a desire to
14 be better educated about the status of the law on fine
15 and fee assessment and collection as well as best
16 practices in those areas.

17 In response to these impediments, the
18 Office of Court Administration applied for and received
19 from the United States Department of Justice a Price
20 of Justice grant.

21 This half a million dollar grant will allow
22 OCA to do three things.

23 First OCA's in the process of building an
24 automated tool that will use data available and
25 government sources to allow Judges to assess a

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1 defendant's ability to pay.

2 Second OCA's in the process of building an
3 automated tool that will link community service and
4 other alternative options with defendants seeking
5 those opportunities.

6 Think of this similar to the applications
7 you might use when you're seeking transportation
8 network services, someone is offering their services
9 and you're seeking them. Without an intermediary
10 application, it's sometimes difficult to connect
11 those.

12 This application will seek to do just that
13 with community service and other alternatives.

14 Lastly, OCA is working with judicial
15 education providers in Texas to develop and deliver
16 curriculum to Judges across the State regarding current
17 law and best practices with regard to fines and fees.

18 We're grateful to DOJ for the grant and
19 hope that our efforts will not only improve practices
20 in Texas, but also have application in other States
21 across the country.

22 In addition to these technology areas, the
23 Texas Judicial Council has recommended 18 specific
24 reforms for legislative action in the current
25 legislative session.

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1 These reforms include items such as
2 requiring standard language on citations and other
3 notifications from the court about alternatives to
4 payment and of consequences of failing to appear in
5 court, providing 30-day language -- notice with
6 language on regaining compliance prior to the issuance
7 of a warrant for failure to pay or appear, clarifying
8 that Judges are required to assess a defendant's
9 ability to pay prior to assessment of fines and fees,
10 providing Judges the express authority to waive fines
11 and fees, expanding alternative options for satisfying
12 these obligations and limiting additional fees
13 assessed simply because defendants cannot immediately
14 pay fines and fees.

15 Several bills to enact these provisions
16 have been filed in the current session and we're hopeful
17 for their passage.

18 Thank you very much.

19 CHAIR LHAMON: Thank you, Mr. Slayton.

20 Ms. Wright?

21 MS. WRIGHT: Thank you for inviting me
22 here today. My name is Martha Wright. I'm an analyst
23 with the Judicial Council of California. I work within
24 an office that we think is unique among State court
25 administrative agencies.

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1 We have a Criminal Justice Services Office
2 and we are a team of -- a lean team -- but a team of
3 attorneys, researchers and program staff working on a
4 variety of criminal justice reforms.

5 So, I'll tell you a little bit about our
6 Price of Justice project and what we're focusing on and
7 why.

8 About a year ago, we applied for a grant
9 under this initiative. We were very pleased to be
10 awarded.

11 Our project started in October. As with
12 the others, we have a three-year time frame.

13 For our effort, we're looking specifically
14 at traffic and infraction focus. And, really, in terms
15 of making an impact, we're looking at developing and
16 further enhancing our Ability to Pay process to help
17 people who are facing fines and fees.

18 There's basically five components to the
19 project. We have a work group that we have
20 established. We are conducting a jail study. We're
21 working with a trainer and technical assistance
22 provider through DOJ's Center for Court Innovation.

23 We're developing the Ability to Pay tool
24 and working on evaluating how that tool is working for
25 the courts that we pilot it in and what the impact might

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1 be statewide.

2 I should mention that, while we applied for
3 this grant, as we were working on it, our Traffic
4 Advisory Committee to the Judicial Council did have new
5 Rules of Court approved, which we were very glad to see.

6 Several new Rules of Court went in to
7 effect in January and they will be implemented by May
8 and they apply to all infraction cases.

9 And they do a variety of things.
10 Essentially, they require reminder notices, advisal of
11 rights to request an Ability to Pay determination,
12 allows defendants to request that determination at any
13 time when -- after a fine is levied.

14 And, it authorized the use of online
15 interfaces, again, encouraging more ways to make this
16 process more transparent and more applicable to more
17 people.

18 In terms of the parts of the project, we
19 did establish our work group and it's a
20 multidisciplinary group. We had our first meeting
21 February 28th. We had a panel of advocates come from
22 a variety of different advocacy organizations and legal
23 aid offices to speak to our work group. And, we will
24 have our next meeting in June or July.

25 This work group really serves as advisors

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1 to the project and sort of a touchstone as we proceed
2 and as we try to make sure the Ability to Pay tool that
3 we use in California courts is truly workable and
4 applicable and will make the process more efficient.

5 Part of the project is conducting a jail
6 study. This is something that U.S. Department of
7 Justice.

8 COMMISSIONER YAKI: We can't understand a
9 single thing going on.

10 CHAIR LHAMON: Ms. Wright, why don't we
11 just take a pause. I think we have a bad line and we
12 can try to get this correct for him.

13 MS. WRIGHT: Sure.

14 CHAIR LHAMON: So, Michael, hang on one
15 moment, we're just going to try to get it corrected.
16 Thank you. Sorry.

17 COMMISSIONER YAKI: All I can hear is
18 static on our line.

19 CHAIR LHAMON: We're going to get it
20 corrected. Thank you.

21 And, this does not count against your time.

22 MS. WRIGHT: Sure.

23 CHAIR LHAMON: But, I can't do anything
24 about that.

25 MS. DUNSTON: Testing one, two, three.

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1 Good morning to U.S. Commission on Civil Rights.
2 Testing one, two, three. Still talk? Good morning,
3 this is the U.S. Commission on Civil Rights. Testing
4 one, two, three.

5 COMMISSIONER YAKI: Still bad.

6 MS. DUNSTON: Yes, we're still trying to
7 fix some of the cords and see.

8 Give me a few minutes, we have to change
9 a cable perhaps.

10 (Whereupon, the above-entitled matter
11 went off the record at 9:56 a.m. and resumed at 10:04
12 a.m.)

13 CHAIR LHAMON: So, I'm going to start us
14 again. I'm sorry that we can't get this totally
15 functional, but we do have a transcript. Happily, the
16 Court Reporter's here and I want to make sure that we
17 can use our day without losing too much of our
18 lunchtime.

19 So, Ms. Wright, if you will continue.

20 MS. WRIGHT: So, I was mentioning, as a
21 grantee, one of the things that we need to do is report
22 our performance measures.

23 A key point of interest for the Department
24 of Justice and for us is our corrections costs saved
25 and minimizing confinement, issues around that.

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1 So, the question in California really is
2 how many might be in jail as a result of the failure
3 to appear or failure to pay.

4 In California, we are a unified court
5 system. We do not have municipal courts.

6 In California, infractions left unpaid
7 don't result in an arrest warrant, they can result,
8 though, in a civil assessment of an additional \$300.
9 They can result in license suspension.

10 Driving without a license, if that
11 happens, is a misdemeanor and, in that instance,
12 somebody can end up in jail. So, you can see sort of
13 the ripple effect of the initial unpaid fine or fee.

14 So, in a preliminary analysis we did of ten
15 counties where we did have jail data, bookings data,
16 access to data's always a challenge, but in running some
17 initial numbers, it looked as though about 700 people
18 a month in California in these ten counties were booked
19 and detained an average of about three days in the last
20 fiscal year, '15, '16.

21 So, what we're going to be looking at is
22 with our pilot counties that are going to be working
23 on this Ability to Pay tool with us, we're going to look
24 at their data specifically and try and understand
25 what's happening with folks ending up in jail. And,

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1 hopefully see a decrease over time as we implement the
2 Ability to Pay and more people avoid the fines and fees.

3 And, as I mentioned, another piece of this
4 is working with the training and technical assistance
5 provider, Center for Court Innovation, so we know that
6 they will be very helpful in the evaluation that we're
7 doing of the tool in pilot sites.

8 I should mention that just in the three
9 pilot sites that we're considering, and they're
10 relatively small California counties, there are about
11 300,000 in a year traffic infraction filings.

12 So, we will look at sort of chipping away
13 on that issue in these three pilot counties and seeing
14 what we can do with the Ability to Pay determination
15 there.

16 The other part of the project is the tool
17 itself. So, the tool itself, from an initial meeting
18 we've had with Judges and with the various
19 representatives on the work group, it definitely seems
20 that automation is going to be a key here. Again, just
21 because of volume just with traffic infractions that
22 we're dealing with in California.

23 So, we're really looking to find the best
24 tool possible to improve access to make the process more
25 efficient so that Judges are getting the right

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1 information and so that defendants aren't burdened with
2 providing too much information. And, so, that the fine
3 or fee that's assessed is appropriate and is payable,
4 potentially a payment plan.

5 And, also, in consideration and always has
6 been in California, but we would like to strengthen it
7 a bit, our community service options, too.

8 And, then we will evaluate the Ability to
9 Pay tool and what we're hoping to see is a high number
10 of interactions with an online process with whatever
11 we use to determine ability to pay.

12 We hope case completion time will go down.
13 We hope it may take less court and judge time. We hope
14 to do an end user survey to make sure that the tool is
15 usable, is accessible, and is understandable for
16 everybody using it.

17 And, potentially even that revenues --
18 court revenues are not affected.

19 And, that's what we will be looking at with
20 our project.

21 CHAIR LHAMON: Thanks very much, Ms.
22 Wright.

23 Ms. Delostrinos?

24 MS. DELOSTRINOS: Is this on? Hello?

25 It's on?

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1 CHAIR LHAMON: Yes, I can see the light.

2 MS. DELOSTRINOS: Okay.

3 CHAIR LHAMON: I can't hear you very well,
4 but I can see the light.

5 MS. DELOSTRINOS: Okay.

6 Madam Chair and Commission --

7 CHAIR LHAMON: Maybe Ms. Wright will pass
8 hers down.

9 MS. DELOSTRINOS: Thank you, Madam Chair,
10 Members of the Commission, my name is Cynthia
11 Delostrinos. I'm the Administrative -- I'm an
12 Administrative Manager for the Supreme Court
13 Commissions which is housed at the Administrative
14 Office of the Courts in Washington State.

15 I'm here representing the Washington State
16 Supreme Court's Minority and Justice Commission who
17 received the Department of Justice grant on behalf of
18 our State.

19 The Minority and Justice Commission
20 provides a voice for racial and ethnic minorities in
21 the State's highest court. And, it works to promote
22 equity and fairness for the most vulnerable and
23 historically marginalized groups in Washington's
24 courts.

25 Part of the work that the Commission does

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1 is to investigate racial disproportionalities in the
2 court system in Washington.

3 One of those issues that we've looked into,
4 in 2008, we commissioned a report looking at legal
5 financial obligations which is, you know, also includes
6 court fines and fees.

7 This study was done by Dr. Alexes Harris
8 and Katherine Beckett of the University of Washington.

9 And, one of the findings among many
10 findings was that Hispanic defendants in Washington
11 were assessed significantly higher LFOs than white
12 defendants, even after controlling for relevant legal
13 factors.

14 And, I want to say that, at the time, the
15 data on race was very limited. So, we've also done
16 studies looking at just racial disproportionalities in
17 the criminal justice system and we found that there were
18 disparities. So, we know or we can infer that these
19 issues are happening to more than just Hispanic
20 defendants.

21 Other problems in Washington which have
22 been revealed in the 2008 report and also in subsequent
23 reports done by the ACLU of Washington and some of our
24 legal aid organizations, the Columbia Legal Services
25 as well as pointed out through legal challenges to the

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1 courts, one of the things is Washington has one of the
2 highest interest rate on court fines and fees at 12
3 percent interest.

4 For felonies, the mandatory minimum fine
5 that is given to every defendant is \$800. That fine
6 cannot be reduced or waived by Judges in any way. It's
7 non-discretionary. So, it can't be reduced. That's
8 \$800 just starting out for all felonies.

9 In addition to that \$800, courts have
10 discretion to add additional fines and fees which are
11 outlined by statute. These fees include public
12 defense recoupment, filing fees, costs for serving a
13 warrant, costs for requesting a jury trial.

14 If you request a jury of six, that's \$125;
15 if you request a jury of 12, that's \$250.

16 Most of our courts have limited
17 jurisdiction which include our municipal courts which
18 handle most all of the traffic fines and fees. They
19 contract with collection agencies for legal financial
20 obligations which adds additional fees for use of their
21 service.

22 Courts in Washington have been found to
23 jail indigent defendants who fail to pay. One county
24 in Washington, there was approximately 20 percent of
25 people in the jail were there for failure to pay, mostly

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1 indigent who lack the ability to pay.

2 Our State law requires Judges to conduct
3 an individualized inquiry into a defendant's ability
4 to pay before ordering LFOs. And, if the defendant is
5 found indigent, the Judge can waive LFOs.

6 That duty was further clarified in 2015
7 with a Supreme Court ruling that Judges must consider
8 the impact of LFOs for each individual, both for their
9 current and future ability to pay.

10 But, what we found is that Judges are still
11 not making those assessments and more work needs to be
12 done around that area.

13 When we heard about the Department of
14 Justice grant, the Minority and Justice Commission knew
15 that it was an opportunity for us to really tackle these
16 issues in Washington State.

17 Under our leadership, prior to the grant,
18 the Minority and Justice Commission had produced bench
19 cards for Judges, just a one page sheet that they could
20 have on the bench for them to see what the laws are
21 around LFOs and what their obligations were.

22 Because, one of the problems was that our
23 statutes were just everywhere. And, it was hard for
24 Judges to really see where we were.

25 I see I'm getting low on time, so I really

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1 -- I'll get into what our plan is in terms of what we're
2 going to do with the grant.

3 We seek to do three things, first, like the
4 other States, we're establishing a consortium made up
5 of multidisciplinary stakeholders, Judges of all court
6 levels, court administrators, court clerks, defense
7 prosecutors, Department of Corrections and community
8 organizations, people who represent people with LFOs
9 as well as victims' rights groups.

10 This consortium will serve as our advisory
11 group as we move forward with the project.

12 We seek to do a study on LFOs, recognizing
13 that a lot of -- that there are so many issues involved
14 with LFOs and everybody just needs to get on the same
15 page and understanding the gravity of the problem.

16 What are the actual issues and kind of come
17 together because everybody's kind of on different pages
18 in terms of where they stand on LFOs.

19 I want to point out a website that was
20 created by one of our consortium members, it's called
21 livingwithconviction.org and this website highlights
22 a lot -- highlights people who are living with LFOs and
23 what that impact of LFOs is on them and their families.
24 And, I encourage you all to check that out.

25 And, lastly, similar to California, we're

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1 going to be creating an LFO Calculator that helps Judges
2 determine ability to pay. We're modeling off of a
3 calculator that was created by a Judge in Washington
4 State and we've actually partnered with Microsoft who
5 is going to be joining us in the project to help develop
6 this calculator tool.

7 And we hope that the other States could --
8 it could be something that the other States could also
9 use in the future.

10 Just one last point, I want just everyone
11 -- one of the things I do is I remind myself how
12 important it is to be connected to why we're even doing
13 this.

14 These are real people, families and lives
15 who are burdened by LFOs. And, there has to be a better
16 way, there has to be solutions. And, so, I'm
17 encouraged for hearing all these States working on
18 this, but I know that there's a way for us to make real
19 changes.

20 Thank you.

21 CHAIR LHAMON: Thanks very much, Ms.
22 Delostrinos.

23 Ms. Paschal?

24 MS. PASCHAL: Good morning. I am from the
25 Missouri Office of State Courts Administrator.

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1 And, as a result of the Department of
2 Justice report on Ferguson as well as --

3 CHAIR LHAMON: We're going to move the
4 microphone closer to you.

5 MS. PASCHAL: -- as well as the Commission
6 -- Ferguson Commission the Governor appointed and they
7 developed a report.

8 The Supreme Court appointed the Municipal
9 Division Work Group, which also developed a report on
10 our municipal divisions in Missouri and the National
11 Center for State Courts was invited in and they did a
12 study.

13 All of that information on those reports
14 was used and Missouri has taken, I would say, very
15 significant strides in working with our municipal
16 divisions which Judge DeMarce and will talk more about
17 on the next panel.

18 But, what I was invited for this piece was
19 what we are doing with the Price of Justice grant.

20 Again, as a result of all the reports, we
21 applied for grants to seek ways that we could improve
22 our municipal divisions and come up with alternatives
23 to paying fines and fees.

24 So, what we are doing is implementing a web
25 based self-represented litigant portal and it's for

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1 those cases that are considered minor violations that
2 would not require a court appearance.

3 But, the goals basically are to expedite
4 the ability for a Judge to determine indigency,
5 eliminate or reduce jail time for failing to appear,
6 to give individuals the ability to pay online, make
7 community service accessible and hopefully, in most
8 instances, eliminate the need for a court appearance
9 for those individuals that can't take off work, have
10 issues with transportation.

11 Through the grant, as with the other
12 States, we will have a multidisciplinary oversight
13 group that will work with us.

14 The first phase of the project, we will be
15 working with this group to identify all of the specific
16 cases that would qualify to be handled through this
17 portal as well as determining community service hours
18 in lieu of the payment of fines and fees, how many hours
19 would equal how much in a fine, all of those things still
20 have to be identified.

21 And, we will then begin the development of
22 the tool. The State Court Administrator's Office is
23 currently building our own case management system for
24 the State Courts of Missouri.

25 And, we have some functionality that we're

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1 currently working on that we can also use for this
2 portal. One of them is Track This Case. Individuals
3 can go out and track their case and receive email
4 notices as well as soon to be text messages.

5 And, there's a portal for the prosecutors
6 to go in and look at tickets and determine whether or
7 not they want to file on the case.

8 So, some functionality has been started
9 but we still need to continue building the product.
10 So, basically, how it would work, if an individual gets
11 a violation that qualifies to go through this portal,
12 they can go out and plead guilty or not guilty.

13 If they plead guilty, they can complete and
14 indigency form so then the Judge can determine whether
15 or not the individual has the means to pay fines and
16 fees. Or they can determine if they want to send them
17 through community service.

18 It allows government entities and
19 nonprofit organizations to sign up through the portal
20 to provide the community service hours.

21 Or an individual can choose to plead guilty
22 or not guilty, sorry, and the case would be forwarded
23 on to the court.

24 But, an individual could -- if they are
25 assessed fines and fees can pay online through e-checks

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1 or credit cards. They can post their community service
2 hours if they are working community service hours in
3 lieu of a fine.

4 A Judge can also choose, if the person is
5 indigent and there's other circumstances that a Judge
6 can choose to waive the fines or fees all together.

7 And, again, all of this would be done
8 online and would not require an individual to come in
9 for a court appearance.

10 Again, three years to develop the tool and
11 there is still a lot to be done, but that's what we are
12 using the Price of Justice funds for. And, again, very
13 grateful to get the funds.

14 And welcome the opportunity to be here and
15 answer any questions that you might have.

16 CHAIR LHAMON: Thank you very much, Ms.
17 Paschal.

18 Thank you to all the panelists and I will
19 allow for questions from my fellow Commissioners.

20 Mr. Kladney:

21 COMMISSIONER KLADNEY: Thank you.

22 I have lots of questions I can speak of.

23 CHAIR LHAMON: I should also mention, I'm
24 sorry --

25 COMMISSIONER KLADNEY: Can you hear me.

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1 CHAIR LHAMON: -- Mr. Yaki can now hear,
2 so I apologize for the technical difficulties.

3 COMMISSIONER KLADNEY: I was wondering,
4 in all your studies, have you ever figured out what the
5 profit margin is in courts of limited jurisdiction?

6 MR. SLAYTON: This is David Slayton, I'll
7 take a shot at that.

8 We've not -- I don't know that we would say
9 profit margin. So --

10 COMMISSIONER KLADNEY: Well, they do
11 collect in excess of what they need to run.

12 MR. SLAYTON: So, in our State, as I
13 mentioned in my testimony, and I want to be clear, all
14 the court costs and fines are set by legislature in our
15 State, so they're not set by the courts.

16 And, as was mentioned by several of the
17 other panelists, a lot of those are mandatory
18 assessments.

19 And, one of the things that we're trying
20 to do is give the Judges some discretion to waive some
21 of those.

22 And, in our State, a significant amount of
23 those go to the State. About half of them are going
24 to the State. In fact, last week, our highest criminal
25 court in the State ruled two of them unconstitutional,

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1 saying they were unconstitutional taxes because they
2 weren't being used for any criminal justice purpose,
3 they were being used for other functions.

4 COMMISSIONER KLADNEY: So, you say
5 there's no way of knowing?

6 MR. SLAYTON: As of right now, you know,
7 in our -- many of our jurisdictions, those collections
8 do exceed the amount appropriated.

9 So, for instance, in the State of Texas,
10 the amount of revenue generated from court costs and
11 fines exceeds -- that's sent to the State, exceeds the
12 entire budget for the judicial branch.

13 COMMISSIONER KLADNEY: In all your
14 presentations that I've read, I didn't see any
15 reference to where prior to jailing someone, that they
16 had entitlement to a lawyer to argue their indigency.
17 I saw operations for tools that Judges could use.

18 Do you believe that it's constitutionally
19 correct that prior to jailing someone, they should have
20 a lawyer to argue their case?

21 MR. SLAYTON: I'll take a shot at that
22 question.

23 It is -- that is a very difficult question
24 -- if any of my colleagues want to jump in, please do
25 so.

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1 (LAUGHTER)

2 MR. SLAYTON: You know, one of the -- in
3 our State, individuals who -- for whom the offense is
4 jailable, which would be, in our State, our Class A and
5 B misdemeanors, our felonies, they are entitled to
6 counsel.

7 In our Class C fine only misdemeanor
8 offenses, the law does not specifically entitle them
9 to counsel because the offense for which they are
10 charged is not jailable.

11 COMMISSIONER KLADNEY: But, it becomes
12 that.

13 MR. SLAYTON: It can become that. And,
14 so, that's certainly something that we've been looking
15 very closely at. And, I know the -- I didn't get a
16 chance to mention it, but I know it's in my testimony,
17 written testimony, that National Task Force on Fines,
18 Fees and Bail Reform, that the Conference of Chief
19 Justices and Conference of Stakeholder Administrators
20 are looking at is that issue of whether or not people
21 are entitled to counsel.

22 It's certainly something that, in Texas,
23 we're looking really closely at because, you know, and
24 the question becomes when does that right attach?
25 Because is it when they can't pay their fines and fees

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1 then they get a right to counsel because of that issue?

2 Or, are they, in fact, entitled to it all
3 along the process because of the fact that they might
4 be jailable somewhere down the road?

5 So, it's a very difficult issue, but I know
6 it's something we're looking at in our State
7 particularly.

8 COMMISSIONER KLADNEY: Anyone else can
9 answer, however, I do want to ask one more question.
10 I have a penchant for asking too many questions,
11 according to my fellow Commissioners.

12 So, my last question is --

13 CHAIR LHAMON: His microphone doesn't
14 work.

15 COMMISSIONER KLADNEY: It's on.

16 CHAIR LHAMON: His microphone's not
17 working.

18 COMMISSIONER KLADNEY: It's not working.

19 My last question is, the City of Biloxi
20 case, have y'all read that?

21 (NO AUDIBLE RESPONSE)

22 COMMISSIONER KLADNEY: The -- oh, there we
23 go -- sorry, now this works.

24 The City of Biloxi case, prior in time when
25 they would serve FTAs, they would serve on Friday

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1 nights, Saturday night, whenever they would stop
2 somebody and take them to jail or Monday night or
3 Tuesday night.

4 And, as a result, people would stay in jail
5 up to 48 hours without getting bail and then trying to
6 make bail. Indigent folks would lose their jobs.

7 And, in the City of Biloxi case, they, and
8 I didn't hear anybody talk about this either, they were
9 limited to serving FTAs only during the times courts
10 were open and Judges were available and the defendant
11 was brought directly to the Judge and not booked into
12 jail.

13 But, what do y'all think of that?

14 David?

15 MR. SLAYTON: I hate to hog the time here,
16 but I'll answer.

17 This is a particular challenge that we're
18 working on. In our statutory recommendations to the
19 legislature, we've tried to clarify this in law.

20 So, our law in the State of Texas says that
21 when someone is arrested on what you refer to as a capias
22 pro fine, this is a warrant.

23 And, particularly, when someone doesn't
24 pay their court costs and fine. I'll talk about that
25 one first, if it's okay.

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1 They are to be, if they are arrested on
2 that, they are to be brought immediately before a
3 magistrate, before the Judge who issued that or some
4 other Judge of competent jurisdiction.

5 What we are finding in our State is that
6 many times or most times, that's not happening.
7 Instead, they're being taken directly to jail as they
8 would be on other warrants. Law enforcement takes them
9 to jail.

10 And, by the time a magistrate or Judge were
11 to find that they are in jail, they've set out the time
12 that they would have needed to do pay off the court costs
13 and fines.

14 And, so, we've got the Judicial Council has
15 specifically recommended a couple of changes in law to
16 where basically, before you issue the *capias pro fine*,
17 they have to have a show-cause hearing where they're
18 actually brought before the Judge to say, why didn't
19 you pay that court cost and fine? That way, it's not
20 just an automatic warrant where they go to jail.

21 Because, there needs to be a determination
22 under federal case law, the U.S. Supreme Court case law
23 and *Bearden*, to make sure that the failure to pay was
24 a willful noncompliance not just an inability to pay.

25 So, it is a challenge. It's an issue

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1 where, and as you heard in my testimony, the statistics
2 are somewhat alarming the percent of people that are
3 ultimately laying these court costs and fines out in
4 jail is pretty significant. It's a much higher
5 percentage than the people who are working them off
6 through community service or other alternatives.

7 And, so, we believe that's a problem in our
8 State and we're looking to try to address it.

9 COMMISSIONER KLADNEY: And, how are the
10 rest of your States handling it?

11 MS. PASCHAL: If I could back up and answer
12 a couple of your other questions.

13 COMMISSIONER KLADNEY: Sure.

14 MS. PASCHAL: Missouri does not have the
15 ability to determine how much fines and fees are being
16 collected through our municipal divisions, except for
17 those I had mentioned, we are working on a statewide
18 case management system that all of our state courts are
19 currently using.

20 Our municipal divisions are funded through
21 local municipalities even though they are considered
22 under the judicial branch of government. They are not
23 required to use that automated tool.

24 We do have some that have voluntarily gone
25 on the automated system.

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1 So, there's no way for us to extract that
2 data other than asking the 440 municipal divisions to
3 provide us with that information. I should say there's
4 no easy way to determine that information.

5 And, like in Texas, our legislator
6 determines the amount. All the fines and fees and
7 surcharges are set by legislation. And, as a result
8 of Ferguson, the legislators passed -- put a cap on the
9 amount, lowered the cap on the amount that can be
10 charged on municipal violations. I think it is \$225,
11 I have to look.

12 So, and, with regard to your last question,
13 one of the recent things that the Supreme Court, and
14 I -- recent as in the last week, are looking at pretrial
15 service programs and looking at the pretrial aspect and
16 jail and individuals that are held too long.

17 MS. WRIGHT: And, I can just mention that
18 in California, as a court administrator, I can't help
19 but sort of see the distinction between, or at least
20 in terms of how we're organizing our efforts, between
21 the infractions issues and ability to pay and what can
22 happen as a result of an infraction that goes unpaid
23 and then, you know, snowballs into a problematic issue.

24 And, then, that sort of misdemeanor or
25 felony other part of the criminal justice world here

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1 and issues of bail and inability to pay bail.

2 We do have sort of two sister projects. We
3 have our Ability to Pay project supported by Department
4 of Justice and the looking at the fines and fees.

5 And, then, our Chief Justice has also
6 established a work group looking at the bail issue.
7 And, she has made very clear that we need to look at
8 whether or not bail is serving its purpose in terms of
9 the pretrial arena.

10 And, by the end of this calendar year,
11 there will be a work group that makes recommendations
12 directly to her around bail reform and those issues.

13 MS. DELOSTRINOS: So, for Washington,
14 that issue of court funding is one that we are going
15 to tackle head on. I think that's one of the huge
16 barriers that we've faced in terms of the data that's
17 lacking on this issue. So, hopefully, when our report
18 comes out, it'll help to answer your question about
19 profit margins. But, that's the big elephant in the
20 room in terms of what I think the legislatures and what
21 people want to know.

22 In terms of the second issue, like the
23 other States, we're also looking at pretrial. I can't
24 tell you exactly what the practices are in Washington,
25 but hopefully we'll do some of that investigation

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1 through the grant money that we were given.

2 COMMISSIONER KLADNEY: So, how much of
3 your judicial system is funded by fines and fees?

4 MS. PASCHAL: In Missouri our -- the fines
5 and fees go to the school system at the State level which
6 is different at the municipal level. They actually go
7 back to the municipality.

8 MS. WRIGHT: I don't know exactly how
9 much, but I -- as with what was mentioned for Texas and
10 California, the fines and fees go to a wide variety of
11 projects and programs at the State and county level.
12 A list of the programs and projects and it's grown over
13 time that's in the two pages range, I believe.

14 MR. SLAYTON: Yes, basically the same
15 thing. I mean, the data I have -- so, when these fines
16 and fees are collected, the courts don't retain them.
17 So, they are submitted to either the local government
18 or the State government.

19 And then, of course, the courts get funding
20 provided to them in some form or fashion.

21 And, so, as I mentioned, at the State
22 level, the collections exceeds the appropriation to the
23 entire branch. At the local level, that just depends,
24 depending on the cities and the counties.

25 I would point out, I think it's important

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1 and I can't remember if I submitted this in my
2 materials, but I certainly would be happy to supplement
3 afterwards, the Conference of State Court
4 Administrators has addressed this issue head on, that's
5 my colleagues in all the 50 States. And several policy
6 papers starting with the one that said that courts are
7 not revenue centers.

8 The Conference has taken a pretty strong
9 position that courts should not be looked to be revenue
10 generators for the State court system, but, in fact,
11 in many places, that is a challenge for the courts.

12 And, as that paper points out and
13 subsequent paper policy papers have pointed out, a real
14 challenge, especially for our municipal courts, in
15 Texas, they are not -- most of our Judges in Texas are
16 elected, but our municipal court Judges are appointed
17 may times by City Councils who, obviously, are looking
18 at that issue.

19 I know that was a particular issue raised
20 by DOJ in its Ferguson paper with regard to what is the
21 true independence of the court when perhaps the revenue
22 collection issue is such a big one.

23 And, in our State in several places, the
24 Judge actually reported -- a municipal court Judge
25 who's appointed reports to the City Finance Director.

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1 And, you know, we're looking at that issue as a -- and,
2 I know the National Task Force is looking at it, too,
3 as a particular challenge because what is that -- what
4 message is that sending to the Judges?

5 And, our justice courts which are county
6 level courts some of these not only many times the
7 Judges are told, if you don't generate enough revenue
8 to pay for your staff, then we're going to have to cut
9 your staff.

10 So, you know, those are definite pressures
11 that are placed upon Judges with regard to fines and
12 fees.

13 CHAIR LHAMON: Thanks.

14 I want to see if my fellow Commissioners
15 -- other fellow Commissioners have questions.

16 Commissioner Adegbile?

17 COMMISSIONER ADEGBILE: Yes, I think Ms.
18 Delostrinos spoke about racial disparity. I'm
19 wondering if any of the rest of you have taken a lense
20 to this issue that consider the race disparities of
21 these practices in your respective States, both as to
22 amount of fees assessed and also with respect to jail
23 or incarceration?

24 CHAIR LHAMON: And, as an amendment to
25 that question, Ms. Delostrinos, if you actually could

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1 share with us the 2008 study that you mentioned in your
2 testimony, we would appreciate it.

3 MS. WRIGHT: I can mention that in
4 California, there was a group of advocacy organizations
5 that did a report, it's called Back on the Road, I
6 believe. And, they did look by Zip Code at traffic fine
7 and fee assessment and traffic citations by ZIP Code,
8 found a disproportionate impact there.

9 I will say that, at the court level, what
10 we're trying to do is just make sure that anyone and
11 everyone who comes to court however they got there,
12 whatever the traffic infraction is, is given the
13 opportunity to present information so that their fine
14 or fee is appropriate to their income.

15 COMMISSIONER ADEGBILE: Sorry, just one
16 follow up.

17 So, I take the point that it's important
18 to certainly have that lense with respect to everybody
19 that comes before the court, but I'm wondering if there
20 is a sense that, to the extent that the courts are
21 involved in a system of fines or fees that may
22 contribute to racially disparate results. Is that a
23 consideration that courts should have their eyes on as
24 well?

25 MS. WRIGHT: I will say that it's part of

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1 what we're looking at with the grant. It's definitely
2 imbedded in the performance objectives and in some of
3 the technical assistance we are working on with Center
4 for Court Innovation as part of the project.

5 It will be an element of our jail study to
6 see what we can learn about race. And, we will keep
7 that data point, if you will, and that factor as a part
8 of the project.

9 And, again, we look to our advocacy
10 organizations as partners and informing that, too.

11 MS. PASCHAL: One of the other things that
12 the Supreme Court did, they appointed a Commission on
13 racial and ethnic fairness. And, the group is divided
14 into six subcommittees.

15 I think they're looking at the judicial
16 system as a whole. The civil justice, criminal
17 justice, juvenile, municipal and then within the
18 practice of law, each of those six groups are tasked
19 with studying in those areas.

20 COMMISSIONER ADEGBILE: Is there any time
21 frame when we expect the output of those studies?

22 MS. PASCHAL: I think some have been
23 submitted, but I am not sure if they all have been
24 submitted. I can double check for you and get back.

25 COMMISSIONER ADEGBILE: If they're

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1 available, we'd welcome them.

2 MS. PASCHAL: Okay.

3 COMMISSIONER ADEGBILE: Mr. Slayton,
4 anything on this?

5 MR. SLAYTON: So, our efforts have been
6 looking at this from the broad issue of seeing the
7 problems statewide and making sure that courts are
8 doing a true determination.

9 You know, obviously, we've had studies in
10 the past with regard to particular case top practices
11 where we've -- where our studies have shown racial
12 disparities and have taken actions to address some of
13 those.

14 We're seeing this as, quite frankly, just
15 a broad across the board. Obviously, people in poverty
16 are clearly being impacted more disparately than
17 others. So, to the degree that those issues overlie,
18 that's certainly a huge issue for us.

19 We've taken a look at it specifically with
20 regard to bail and we've just released a study in the
21 last week, and actually, the legislature has before it
22 pending now a bill to revise completely the pretrial
23 bail practices in the State of Texas.

24 And, that's one where we've seen -- we
25 looked at that by ZIP Code in a couple of jurisdictions

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1 in our study and that study was just released last week.
2 I'm happy to provide that, too.

3 And, it looked at basically showing that
4 clearly your ability to pay, your resources that are
5 available to you directly correlate to your ability to
6 get out of jail. So, that's a bit of a problem for us.

7 COMMISSIONER ADEGBILE: One quick follow
8 up.

9 One of your statistics was that 15 percent
10 of individuals that receive fines and fees in context
11 in which jail is not an option end up serving jail time?

12 MR. SLAYTON: That's correct.

13 COMMISSIONER ADEGBILE: Can you explain
14 to us what appears to be a misnomer that jail isn't an
15 option if people ultimately serve jail time, how the
16 law operates to allow that pathway?

17 MR. SLAYTON: Sure.

18 COMMISSIONER ADEGBILE: And, then, can
19 you also explain to us what you understand the driver
20 of this to be. I mean, is this just an indication of
21 the indigency of the people that come before the court
22 and receive these fines such that they have no option
23 but to offer themselves for incarceration for crimes
24 that, by statute, are not jail eligible?

25 MR. SLAYTON: Right. So, Commission

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1 staff actually reached out to me after I submitted my
2 testimony and said, is this right in your testimony?
3 Because, obviously, there's a bit of a disconnect
4 there.

5 So, in our State, fine only offenses are
6 strictly that, fine and court costs only. But, for
7 someone who does not pay the court costs and fines
8 assessed, they can be arrested and basically lay that
9 out in jail.

10 The -- so, that's where the 15 percent
11 comes from.

12 So, individuals -- so there was a billion
13 dollars assessed and 15 percent of all satisfactions
14 was done through jail credit, meaning the individuals
15 who presumably either couldn't pay or willfully did not
16 pay went to jail and satisfied them that way.

17 We expect that a significant number of
18 those were people who had an inability to pay.

19 You know, the way the judicial council has
20 looked at this issue and the resolution that I think
21 was included in my materials that the judicial council
22 passed, said that individuals who are willfully
23 noncompliant, that jail should perhaps be an option for
24 them.

25 But, if it's simply because they have an

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1 inability to pay, they should not be going to jail and
2 we should be looking to have those satisfactions by
3 other alternatives other than jail.

4 COMMISSIONER ADEGBILE: Are some of the
5 pending legislative initiatives that you spoke of on
6 this point trying to clarify that the only people who
7 should be eligible for incarceration are those who
8 willfully have failed to satisfy as opposed to those
9 who exist in a condition of poverty?

10 MR. SLAYTON: Absolutely. So, I
11 mentioned in my testimony that I think there's two
12 answers.

13 The direct answer is yes, the legislation
14 will address that directly.

15 The other thing the judicial council has
16 a rulemaking authority over counties over 50,000 and
17 cities over 100,000 with regard to collections.

18 And, last year, as I mentioned in my
19 testimony, we amended those rules and they went into
20 effect on January 1st, and basically, those rules
21 require before a Judge -- since we can do that through
22 rule, require that a Judge basically hold -- look into
23 the ability to pay prior to their issuance of a warrant
24 and jailing for those inability to pay.

25 So, some of those things are already

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1 moving. I was telling my colleagues earlier, as I
2 mentioned in my testimony, the rule changes were not
3 without controversy and push back from some of the
4 stakeholder groups in the State.

5 And, a lot of the discussion was, well,
6 this is going to dramatically decrease revenue. And,
7 what we've seen just, I mean, we're now three months
8 in approximately to these rules and what the reports
9 from the courts have been back is, one, increased
10 compliance by defendants who now can truly comply with
11 the requirements. Either they're able to set up
12 appropriate payment plans to pay these off or they're
13 able to do other satisfaction through other means.

14 And, in fact, increased collections
15 because defendants, what we're seeing in these courts
16 is, defendants do want to comply with what their
17 obligations are as long as we work with them in a way
18 that they can actually successfully do that.

19 And, then, when they don't have an ability
20 to pay, work with them in satisfying their obligations
21 through some other means if they're able to do that
22 without some undue hardship.

23 And, then, ultimately, obviously, a waiver
24 where that's appropriate where they can't pay it and
25 it's an undue hardship to do, if there's some

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1 alternative.

2 And, so far, reports are very positive from
3 those efforts.

4 CHAIR LHAMON: Thank you.

5 I want to make sure that Commissioner
6 Kirsanow has a chance to ask his questions.

7 COMMISSIONER KIRSANOW: Thanks, Madam
8 Chair and thanks to the panel members and to the staff
9 for putting together this panel. Very helpful.

10 Presumably, and if not the defensible
11 purpose for fines and fees is to enforce some type of
12 compliance or deterrence from engaging in the type of
13 activity that's been fined.

14 Do you know of any studies, any data that
15 show whether the various alternatives to fines deter
16 recidivism at the same rate as fines? Such as, let's
17 say that someone has a broken taillight and they're
18 fined \$15. Will they come back with a similar problem
19 in the future if they are, instead of being fined, sent
20 to community service or jail or some other kind of
21 sanctions imposed upon them?

22 MS. WRIGHT: I can tell you that, in
23 California, this issue of acknowledging the violation,
24 of looking at the deterrent factor was foremost in the
25 mind of the Judges and Commissioners and court

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1 executives that we worked with.

2 We are looking at those studies. And,
3 actually, there's an interesting one that is soon to
4 come out of a professor's work at UCLA.

5 And, there was a practice back in the day
6 many years ago and a practice in Europe called Day Fines
7 and it's sort of -- it's something that considers both
8 the violation and ability to pay in terms of somebody's
9 income calculated down to the day.

10 And, you could take a day's worth of income
11 at a multiplier acknowledging the fine or fee and come
12 up with sort of a hybrid method of assessing a fine or
13 fee that does also acknowledge that violation.

14 It was a long, long time ago that those
15 sorts of practices were used and I don't know that
16 they've been used recently. So, we'll be interested
17 to learn more about the study.

18 COMMISSIONER KIRSANOW: One other
19 question. I think we've heard that California is
20 approximately 700 people -- approximately 700
21 individuals per month who are incarcerated for failure
22 to pay.

23 And, then, I think you said in Washington
24 about 20 percent of the inmates are in jail as a result
25 of failure to pay.

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1 Is there any data for Missouri or Texas
2 related to how many individuals are incarcerated as a
3 result of failure to pay or failure to abide by whatever
4 sanction has been imposed?

5 MS. PASCHAL: Again, I could get that
6 information on the State side in terms of traffic and
7 misdemeanor. On the municipal side, we don't have that
8 information available without doing a survey.

9 MS. WRIGHT: And, just to clarify real
10 quickly, in California, I can say that it was just for
11 only ten counties that we were able to get that data
12 for, that 700 number.

13 And then, it is the number of individuals
14 who were arrested because they were driving with a
15 suspended license. So, it's that issue of an unpaid
16 fine or fee ultimately ending in an incarceration
17 situation.

18 MR. SLAYTON: So, in Texas, the jail data
19 that's submitted to the State does not include the
20 specific number of defendants who are serving jail time
21 for failure to pay or failure to appear.

22 What we do have is the statistics I've been
23 referring to. We have from every court in the State
24 reported monthly to us the number of defendants who are
25 satisfying their assessments through jail credit. So,

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1 we have the number of cases where that happens.

2 So, you know, to the degree those align one
3 for one with people, we would know. But, presumably,
4 some of those individuals have more than one case.
5 But, as I mentioned, it's a pretty -- in our State, a
6 pretty significant number of people who are satisfying
7 it one way or another through jail credit.

8 COMMISSIONER KIRSANOW: Is there any --
9 and maybe you've already discussed this and I guess --
10 you could probably extrapolate from this, but have
11 there been any studies that show how effective certain
12 levels of fines are for deterring certain types of
13 offenses?

14 You know, when I go through codes
15 haphazardly, I don't do this. But, you know, sometimes
16 I just happen to see, you know, municipal codes and
17 statutes that have nothing to do with my area of
18 discipline, but it'll say, for example, for a broken
19 taillight, X number of dollars is the fine.

20 Before that's assessed, is there any kind
21 of a study that is performed to determine whether or
22 not this actually has some type of salutary effect on
23 the number of broken taillights in the State? Or you
24 just kind of come up with a figure?

25 MR. SLAYTON: I'm not aware of a study

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1 that's been done along those lines. You know what?
2 Interestingly enough, sort of, we, at our office, we've
3 done a study sort of to the opposite side, which is if
4 the purpose really is to increase public safety from
5 the issuance of these tickets, is it doing that?

6 And, because of several policy decisions
7 made in our State, we've seen a pretty significant
8 decrease in the number of traffic citations that have
9 been written and in particular areas of the State.

10 And, what we're seeing is an increase in
11 public safety issues in those areas.

12 And, so, that's what we have. I don't know
13 if there's a study that's been done with regard to the
14 true effectiveness of whether or not these actually do
15 cause deterrents for the offenses.

16 COMMISSIONER KIRSANOW: Thank you.

17 CHAIR LHAMON: Vice Chair, do you have
18 some questions?

19 VICE CHAIR TIMMONS-GOODSON: Yes, just a
20 couple.

21 Mr. Slayton, anecdotally, we know that not
22 all of the recipients of the Dear Colleague letters to
23 the Chief Justices and the heads of the Administrative
24 Office of the Courts necessarily passed those materials
25 on.

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1 But, I noted that you indicated that upon
2 receipt of the Dear Colleague letter that your office
3 disseminated it to the courts with jurisdiction over
4 ticket and ordinance violations.

5 I wanted to know specifically what you
6 meant by to the courts? Did they go to the individual
7 Judges?

8 MR. SLAYTON: So, I was telling my
9 colleagues during the break, Texas is, as I referred
10 to earlier, what was it juris imprudent system. Every
11 Judge is a court in our State. So, sometimes I refer
12 to it as a court and what I really mean is every Judge.

13 So, what we did was we distributed it to
14 every -- not just Judges with jurisdiction over fine
15 only, but every single Judge in the State received the
16 letter.

17 VICE CHAIR TIMMONS-GOODSON: Wonderful.

18 Now, what made you decide to do that?
19 Because, as I've said, everybody has not chosen to take
20 that route.

21 MR. SLAYTON: You know, a couple of
22 things.

23 First of all, we were already embarking
24 upon work in this area and there was a lot of question
25 from stakeholders, Judges, others saying, you know,

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1 what exactly are we doing? Why are we doing this? You
2 know?

3 And, so, when we received the letter, the
4 Chief Justice, Chief Justice Hecht and I had a
5 discussion about we felt like more information to the
6 Judges was better on this issue and DOJ specifically
7 asked us to send it to all the Judges in the State and
8 so, we felt like it was incumbent upon us to make sure
9 they all received it.

10 VICE CHAIR TIMMONS-GOODSON: And, that's
11 an excellent point. DOJ did ask but that was not done.

12 And, just finally, what type of feedback
13 have you received from the Judges upon them receiving
14 the letter?

15 MR. SLAYTON: So, when we sent out the
16 letter, we received very positive feedback from the
17 Judges. You know, the letter addressed, I believe,
18 five or six specific areas and I think the Judges felt
19 like the information was helpful.

20 Honestly, the Dear Colleague letter, I
21 believe it was in March 2016 when it came out, as I
22 mentioned, we began our process of revising our rules
23 in our State in February. That was when it sort of
24 became public. We had done some work before that, but
25 February 2016 was the first sort of public look at that.

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1 And, it was, honestly, it was very helpful
2 to us to be able to use that letter as part of this.
3 You know, these are the -- this is the way the federal
4 government thinks about these issues and DOJ thinks
5 about these issues, so we used it to our advantage and
6 I think it was very helpful and very well received by
7 the Judges across the State.

8 VICE CHAIR TIMMONS-GOODSON: Ms.
9 Delostrinos, I noted that y'all did flash cards or some
10 kind of cards for the benefit of your Judges. Would
11 you care to comment?

12 MR. DELOSTRINOS: So, we put those
13 together even before the Dear Colleague letter came out
14 because we, based on the 2008 report, we knew that this
15 was an issue.

16 Based on those cards, we did a lot of
17 judicial training at each level of the court. This
18 leadership came from the Supreme Court.

19 And, you asked about feedback, it was
20 interesting because we found out that a lot of the
21 Judges were divided in how they viewed this effort in
22 terms of us trying to tell them.

23 We're a non-unified court system and our
24 Judges, we kind of look at them the same way as that
25 they'll do their own thing.

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1 But, it was on both sides. There's the
2 problem of the -- of, you know, courts being revenue
3 generators and these fines and fees generate money for
4 the courts. And, so, the, you know, asking courts to
5 do these individualized inquiries and follow these
6 rules, I think, is difficult because, when they go into
7 their local settings, there's a lot of pressures on in
8 terms of funding their court.

9 But, a lot of them found that it was really
10 helpful to have this tool that lays out all the laws.

11 But, the leadership did come from the
12 Supreme Court.

13 VICE CHAIR TIMMONS-GOODSON: So, did your
14 Supreme Court Chief send out a copy of the letter or
15 see that a copy of the Dear Colleague letter go to each
16 Judge?

17 MS. DELOSTRINOS: No, we didn't.

18 VICE CHAIR TIMMONS-GOODSON: You did not?

19 MS. DELOSTRINOS: Yes.

20 VICE CHAIR TIMMONS-GOODSON: Any other
21 from California or Missouri, did a copy of the Dear
22 Colleague letter go to each Judge? Each court?

23 MS. PASCHAL: I am not sure if it did or
24 not.

25 VICE CHAIR TIMMONS-GOODSON: Ms. Wright?

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1 MS. WRIGHT: Yes, as far as I know in
2 California, it went to every county and there were
3 public statements.

4 It became a part of our Chief Justice's
5 State of the Judiciary Address last year. So, it was
6 made well known in California.

7 VICE CHAIR TIMMONS-GOODSON: Thank you.

8 CHAIR LHAMON: Ms. Paschal, I saw in your
9 testimony that you have a new requirement and it's Rule
10 37.04 that each of the -- that the presiding Judge has
11 to report to the clerk of the court twice a year that
12 the municipal divisions within their circuit are in
13 compliance with the minimum operating standards. Does
14 that have the same effect as having the information from
15 the Dear Colleague letter or is that different and how
16 effective is that?

17 MS. PASCHAL: There's ten, I think,
18 minimum operating standards that were basically
19 identified through one of the Commission's developed
20 by the Supreme Court. Judge DeMarce mentioned that he
21 did get a Dear Colleague letter.

22 CHAIR LHAMON: Good. Okay, thank you.

23 Commissioner Narasaki, I think you'll have
24 our last questions. We'll go a little bit over because
25 we had the break.

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1 COMMISSIONER NARASAKI: Thank you. I'll
2 try to keep this short.

3 This is one of our special hearings because
4 we're really focused on the Agency and how well they're
5 enforcing their charge.

6 And, so, I'm interested in knowing, we have
7 a new administration, right, so, how important do you
8 feel is it for the Department of Justice to sustain the
9 work that they are doing in this area?

10 And, is there anything that they should be
11 doing that they're not yet doing that would be helpful
12 to support your efforts?

13 MR. SLAYTON: So, I'll take a shot at that
14 first.

15 One of the things I know the National Task
16 Force on Fines, Fees and Bail Reform set up by the
17 Conference of Chief Justices and the Conference of
18 State Court Administrators has a very close involvement
19 from the Department of Justice.

20 And, I can tell you it's been very helpful.
21 There have been issues in the past where DOJ has taken
22 more of an adversarial role in certain issues. And,
23 I think sometimes State courts might not respond the
24 same way.

25 DOJ, I think, has, in this instance, been

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1 seen as a very close partner in helping us work through
2 these issues. I think the State, you'll find across
3 the State and in the two conferences, the Conference
4 of Chief Justice and the State Court Administrators,
5 a very keen interest in addressing these issues and
6 correcting them.

7 And, DOJ, I think, has really become a very
8 close partner to each of the States in making those
9 efforts. And, we're, you know, we're grateful for the
10 funding they've put out there. We're grateful for
11 their continued involvement in the National Task Force.

12 And, from my perspective, I think, you
13 know, their continued involvement and assistance in
14 this area would only continue to help us. And, you
15 know, help us if they see issues that come up in certain,
16 you know, cases they're working on across the State to
17 ensure that the State courts are aware of those.

18 You know, quite frankly, the Ferguson
19 report was -- shed a light on something that maybe at
20 least at the highest levels of the States courts, we
21 weren't aware were going on in some of the
22 jurisdictions.

23 And, so, I think those -- their continued
24 involvement is something that's beneficial to the State
25 courts.

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1 MS. WRIGHT: Yes, I would say that for
2 California's part, having the federal level support on
3 this is extremely important.

4 It allows us go further than we could as
5 a State alone. It allows another voice. It gives us
6 more support for what we want to do and it gives us more
7 resources. It gives us resources that we couldn't
8 apply on our own.

9 Having the training and technical
10 assistance providers is extremely valuable.

11 So, it magnifies what we're able to do in
12 a very important way.

13 MS. DELOSTRINOS: And, I echo what my
14 colleagues have said. It's very helpful in each of the
15 ways that they have mentioned.

16 MS. PASCHAL: I think if they continue to
17 provide information on what other States are doing is
18 very helpful.

19 Someone may think of something that we
20 didn't and continue to share that information.

21 I think it also helps politically. If
22 there's a national push to urge the States to continue
23 to improve the system and process.

24 COMMISSIONER NARASAKI: Thank you.

25 I just have one more question and it's to

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1 Ms. Paschal.

2 So, I'm getting the sense, given the court
3 structure, that it's been difficult to impact the
4 municipal courts. And, it seems like that's where a
5 lot of the issues have been.

6 So, I'm wondering what you feel is
7 effective and does -- is there anything that DOJ can
8 do given that it's municipal courts rather than State
9 courts who may be receiving federal funds, is there a
10 role that DOJ could be playing to help push the lower
11 courts?

12 MS. PASCHAL: Again, I think sharing of
13 information and certainly the funding received has been
14 beneficial because it's very difficult, at this point,
15 to get any funding through the State.

16 And, because the municipal divisions are
17 funded by the municipalities, our General Assembly
18 generally views that it's not the State's
19 responsibility to use GR money, General Revenue money,
20 to assist.

21 However, again, our Supreme Court has
22 taken very significant strides in providing tools,
23 information, rules, and standards to assist municipal
24 divisions.

25 It's taken about two and half years but I

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1 think the latest standards that were minimum operating
2 standards and putting the presiding Judges in the role
3 or, I guess they always had the authority, the
4 administrative authority over the courts, but
5 reinforcing that so that the presiding Judges at the
6 State level are accepting more responsibility and
7 oversight for the municipal divisions in their
8 counties.

9 That's been helpful.

10 COMMISSIONER NARASAKI: I do have a quick
11 follow up on that.

12 So, it seems unlikely that the State courts
13 or State Judges would be willing to necessarily hold
14 the municipal courts accountable.

15 So, does that mean that the Department of
16 Justice may be the only enforcement agency situation
17 to try to, if carrots are not working, push the issue?

18 MS. PASCHAL: Actually, the Supreme
19 Court, if the presiding Judge reports that there's
20 issues at the municipal level, you know, steps were
21 taken to try to alleviate and it didn't work.

22 The Supreme Court does have authority to
23 use a hammer versus a carrot.

24 (Whereupon, the above-entitled matter
25 went off the record at 11:03 a.m.)

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1 CHAIR LHAMON: Thank you, which from your
2 testimony it appears slow to you, so far at least.

3 I understand that Commissioner Yaki has a
4 few questions. Commissioner Yaki, if we could keep it
5 to the next few minutes we will not be too far off time.

6 COMMISSIONER YAKI: Well thank you very
7 much, Madam Chair but since I'm remote, I usually try
8 and flag this earlier. I just --

9 CHAIR LHAMON: Thanks.

10 COMMISSIONER YAKI: -- at this point.

11 My question has to go with, is a little
12 different than Commissioner Narasaki's. Mine goes to
13 the issue of how the money actually gets sent around.

14 So my question is -- and actually I would
15 say if you can answer this in writing to us -- if you
16 can't do it today, that would be fine. Since the DOJ
17 "Dear Colleague" Letter and since the advent of these
18 programs, I would like to know whether or not there has
19 been any change in the number or types of infractions
20 that have been coming to your courts and whether or not
21 these are being analyzed. As I think the previous
22 commissioner asked for racial disparity, I'm looking
23 at this has occurred has there been any difference in
24 the inputs into the system from the -- at the arrest
25 level or infraction or citation level.

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1 And then secondly, I'm really curious to
2 know whether or not there has been any diminution in
3 actual revenues going to the different pots that these
4 programs were currently going to prior to the "Dear
5 Colleague" Letter and prior to the advent of these
6 programs.

7 And the reason I'm asking this is this.
8 I'm curious to know whether or not there's been any
9 impact on the actual discretion of law enforcement in
10 what I believe is the over-citation, what could be the
11 over-citation of racial minorities for these kind of
12 low-level traffic citations that have been,
13 unfortunately, have means of funding various programs
14 within a municipality or a state.

15 And then secondly, as you have tried to
16 implement these changes in these programs, I'm curious
17 to know whether or not there has actually been any real
18 diminution in the revenue or if, in fact, people are
19 just becoming more creative in how many inputs are
20 coming into the system and whether or not it's actually
21 having any real impact or not because to me, all of this
22 can sound fine and look fine but if the actual result
23 is that we're just putting more people into the system
24 or figuring out different ways to hit them up to make
25 sure that communities meet their budgetary levels or

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1 budgetary needs, I would like to know that.

2 If it's not, if there are actual
3 diminutions, if there is an impact on charging because
4 people know that this isn't going to happen like it did
5 before, I'd like to know that as well because to me,
6 this is a part of an overall system in terms of criminal
7 justice that I am concerned about.

8 I'm concerned about officers, cops who may
9 believe that this is a way to help fund their town. I'm
10 worried about courts who think this is a great way to
11 help fund their town. I'm worried about -- mostly I'm
12 worried about the people who are the victims of this,
13 who are being the unwitting bearers of the financial
14 burden that is being inflicted upon them by the
15 budgetary needs of states and localities.

16 So, I don't know if you can answer this
17 today. It may be too big. But if you can tell me,
18 generally now or in writing later the difference in
19 the -- has there been any difference in the amount of
20 and types of infractions that have been coming up to
21 you. Has it had any impact on budgets or not? I would
22 be very curious to know that.

23 MS. PASCHAL: Commissioner, this is
24 Sherri Paschal with Missouri. I had provided some data
25 on the number of filings and dispositions from fiscal

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1 year 2012 through 2016 and there has been a significant
2 decrease in the number of cases that have been filed.
3 The peak during this time frame was in 2014 and they
4 have -- the number of filings has reduced I think about
5 30 percent since then, as well as the number of warrants
6 issued is almost half as many. And I think Judge
7 DeMarce's materials he actually had some of the
8 monetary figures, as far as how much has been collected
9 on a spread sheet.

10 MR. SLAYTON: One thing -- this is David
11 from Texas.

12 I think what is being represented by
13 Missouri is a national trend. The State Court
14 Administrators have been looking at this.

15 I guess the question becomes how much of
16 this is related to efforts in this area versus other
17 factors. For instance, reduction in federal money for
18 overtime for officers for traffic enforcement is down.
19 Demographically, less people are driving, especially
20 in the demographics that are most likely to receive
21 these offenses.

22 So we are seeing this across the board
23 drop, a significant drop in the number of infractions.
24 So the question becomes is that related to this or is
25 that related to other things.

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1 With regard to the budget, obviously, when
2 you see that drop, the budgets will drop pretty
3 dramatically. In our state right now, we're seeing
4 impacts in all the areas that receive funding from this
5 from that. The drop is also significant in relation
6 to the number of drop in the number of offenses.

7 So I think, from our perspective, in Texas
8 I mean I'm happy to -- we'll go get the data. I will
9 provide it to you specifically.

10 I'm worried it may be too early yet to be
11 able to see the full impact since the "Dear Colleague"
12 Letter came out in March of '16. In Texas, our efforts,
13 the rules were changed January first of '17. Any
14 statutory changes would go into effect presumably
15 sometime either this summer or in September. So, I
16 think it is something we need to continue to watch to
17 see. We've certainly seen the drop. I just I think
18 we need to wait to see how much of it is really to these
19 efforts.

20 MS. PASCHAL: Anecdotally, I would also
21 mention -- this is Sherri from Missouri, like Texas,
22 at the state level our fines go to the school system.
23 The court fees go to general revenue. There is also
24 surcharges that are assessed at the state and municipal
25 levels. Again, those are set by statute but our

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1 offices have been contacted by some of the recipients
2 of the surcharge, like the Head Injury Fund, and the
3 Crime Victims Fund, expressing concern with the fact
4 that they are seeing a significant decrease in the
5 amount of funds that they are getting through the
6 surcharges.

7 CHAIR LHAMON: I want to give Ms. Wright
8 a chance to answer quickly. We need to move to the next
9 panel.

10 MS. WRIGHT: Yes, I would just say that in
11 California reports are showing that traffic filings are
12 down. Filings are down in general court-wide, case
13 type-wide.

14 I can also say just anecdotally, we are
15 seeing counties like San Francisco not issuing bench
16 warrants any longer for citations related to
17 homelessness, for example. So some of those things we
18 know.

19 I would agree also, though, that it's too
20 early to make any final determinations. Data
21 connectivity I would say from system point to system
22 point, from law enforcement to jail to court is not what
23 we would like it to be. And we're hoping to really make
24 those connections as best we can, especially in our
25 pilot sites.

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1 MS. DELOSTRINOS: And we don't have any
2 data right now but I think you raised some really good
3 questions that all of us can kind of incorporate into
4 our future work and recording that we'll be doing.

5 CHAIR LHAMON: Thanks very much and thanks
6 to each member of this panel. And I'm looking forward
7 to ongoing conversation with you and also to our next
8 panel.

9 So I'll call up the members of our next
10 panel so we can move quickly to.

11 **III. PANEL TWO:**

12 **FERGUSON AND BEYOND: PATTERNS AND PRACTICES**

13 CHAIR LHAMON: And as you are coming, I
14 will talk about who each of the panelists is in the order
15 in which they will speak.

16 Chiraag Bains, with the Criminal Justice
17 Policy Program at Harvard Law School will be our first
18 panelist. Our second panelist is Judge Karl DeMarce
19 with the Circuit Court of Scotland County, Missouri,
20 and he will be accompanied, again, on this panel, by
21 Sherri Paschal, from whom we just heard. And our third
22 panelist is Thomas Harvey, Executive Director of Arch
23 City Defenders, whom I will note testified before our
24 Nevada State Advisory Committee on this topic this week
25 as well.

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1 So, thank you. Mr. Bains, when you are
2 seated, please go ahead and begin.

3 MR. BAINS: Good morning. Thank you for
4 having me. I'm excited that the Commission has
5 continued to make this issue a priority and I'm glad
6 to be here with you today.

7 As you mentioned, Madam Chair, I'm at the
8 Harvard Criminal Justice Policy Program now but I was,
9 until January, at the Civil Rights Division at the
10 Justice Department and working on the Ferguson case and
11 also helping to lead our efforts on fines and fees
12 issues that this commission is looking at now.

13 I will also say that everything in my
14 remarks today and everything in my written testimony
15 is based on publicly available information, nothing
16 that is privileged or confidential.

17 I'm going to rewind and cover some of the
18 ground that I think the Commission is familiar with
19 because I think it's important to understand DOJ's role
20 and equities and responsibilities.

21 Ferguson has been a household name now for
22 two and a half years. The nation's attention and,
23 importantly, DOJ's was drawn to the city -- the small
24 city of 21,000 people due to the police shooting, the
25 fatal police shooting of Michael Brown on August 9th

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1 of 2014.

2 The outpouring that we saw there stemmed
3 from much more than that single incident. There were
4 deep roots to the anger and the distrust that we
5 observed, that we all observed in the community there,
6 and particularly the black community, and that they
7 felt toward the police department. The municipal
8 court in Ferguson played a role in that story.

9 So on September 4th of 2014, the Civil
10 Rights Division opened a pattern and practice
11 investigation into the Ferguson police department.
12 Six months later, we issued our report. We found a
13 pattern of constitutional violations, unlawful stops,
14 arrests, excessive force, discrimination against
15 African Americans, violation of First Amendment
16 rights, and violation of equal protection and due
17 process rights in the operation of the municipal court.
18 The harm was acute. We felt it when we were out there
19 in the city. We found a community that was -- where
20 many people felt under siege by those who had been sworn
21 to protect them.

22 The root of the distrust -- at the root of
23 the distrust, rather, was a policy decision -- this is
24 important to understand -- a policy decision by
25 Ferguson's civilian leaders and that is the choice to

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1 use the municipal court as a revenue-generation center
2 and its police department, by extension, as a ticketing
3 and collections agency. And we uncovered hard proof
4 of this that I think folks are aware of: emails between
5 the city manager and the finance director and the police
6 chief.

7 On the previous panel, it was mentioned
8 that sometimes these courts report to the finance
9 director and that, ultimately became the case here in
10 Ferguson as well, the finance director asking for the
11 police chief to ramp up ticket-writing to make up for
12 a "substantial shortfall in sales tax," and other
13 emails about "filling the revenue pipeline."

14 The message filtered down the chain of
15 command to line officers. They got the message and
16 they wrote more citations because their performance
17 evaluations depended on it; two, three, four, eight,
18 in one case 14 citations on a single stop as officers
19 competed to see who could get the most citations on a
20 stop.

21 The revenue generated for the city
22 exploded and the consequences for policing were dire.
23 And this is an important point I think the Commission
24 should count as within your jurisdiction here. Here
25 in Ferguson we found that the focus on revenue

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1 generation led policing in Ferguson to become unduly
2 aggressive, unmoored from community relationships, and
3 likely to cross the line, the constitutional line in
4 everyday encounters with civilians.

5 The municipal court, meanwhile, was no
6 longer an arbiter of law, a neutral arbiter of law,
7 rather, and a protector of individual rights. It was
8 part of this system of generating revenue and you can
9 see that from the email communications with the
10 officials as well. In my written testimony, I have
11 cited examples of that. I'm happy to cover them
12 further if that would be helpful.

13 We also found massive racial disparities
14 both on the police side and on the court side. On the
15 police side, 85 percent of vehicle stops, 90 percent
16 of citations, 93 percent of arrests were of African
17 Americans who made up two-thirds of the city. Use of
18 force was more significant; 90 percent of use of force
19 was against blacks; every single canine bite was
20 against a black person in each instance.

21 On the court side, black defendants were
22 68 percent less likely to have their cases dismissed.
23 Their cases took longer. They were 50 percent more
24 likely to have their cases go to warrant. 92 percent
25 of cases in which warrants were issued involved African

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1 Americans; 96 percent of those arrested actually on
2 warrants were African Americans.

3 We are now far down the road. We ended up
4 negotiating with Ferguson and filing suit against
5 Ferguson, and then getting back together and resolving
6 the case and there is a consent decree that is now being
7 implemented.

8 The consent decree calls for the complete
9 reorientation of policing and court services in
10 Ferguson toward public safety, rather than revenue
11 generation.

12 After Ferguson, the Department [of
13 Justice] became attuned to these issues, of fines and
14 fees. It was a real awakening for the Department.
15 Advocates, including Thomas Harvey, who is here on the
16 panel and others that the Commission I think has heard
17 from had been working this issue for some years but for
18 us, it was relatively new.

19 And we used our jurisdiction in this case.
20 And then we thought there must be other ways in which
21 we can help contribute to the conversation here,
22 including enforcement because Ferguson is not the only
23 place in the United States that had this set of
24 problems. So there are some examples I cited in my
25 testimony of other actions we took with regard to filing

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1 of briefs or integrating reforms into related -- in to
2 cases that had related problems, such as jail
3 conditions.

4 We also put out the "Dear Colleague"
5 Letter, which has been discussed extensively here, put
6 out the grant, put out a resource guide to assist
7 jurisdictions, and support of a national task force.
8 So the goal here is to use all of DOJ's tools.

9 During the time I was at the Civil Rights
10 Division, we used the enforcement tool, the
11 grant-making tool, the guidance, and really tried to
12 make this a partnership but also fulfill our
13 congressional mandate to protect people's
14 constitutional rights.

15 A couple of points before I close here.
16 One, I think this has had a significant impact. Other
17 people are probably better situated to explain the
18 impact of DOJ's work in this area but I will say at least
19 the direct impact is visible. In Ferguson, over the
20 last two years, cases are down 85 percent. These are
21 extremely low-level minor cases that, in many cases,
22 probably shouldn't even be crimes, like failure to mow
23 your lawn. And collections are down as well.

24 Second, I think this set of issues is not
25 a particularly partisan or political set of issues and

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1 that's actually evident from the agenda you have before
2 you. These practices often violate our most basic
3 American values, the liberty fairness and equality.

4 And the last thing I'll say ---

5 CHAIR LHAMON: You said your last thing.
6 Thank you.

7 MR. BAINS: Oh, okay. I'll say that last
8 thing later, if you're interested.

9 CHAIR LHAMON: Judge DeMarce.

10 JUDGE DEMARCE: Good morning, Madam Chair
11 and honored commissioners. I will not try to restate
12 everything that was in the written testimony submitted,
13 in the interest of time, but just a few notes.

14 First of all, I serve as an Associate
15 Circuit Judge, which is a general state-level trial
16 court jurisdiction judge in Scotland County, which is
17 200 miles to the north and east of the Saint Louis area
18 on the Iowa border. And I'm here because the Supreme
19 Court of Missouri has found it in their interest to make
20 me chair on their new Committee on Practice and
21 Procedure of Municipal Courts that they convened last
22 May.

23 The fines and fees issues, obviously and
24 some of the commissioners have alluded to it, do not
25 pertain solely to the activities of the judicial

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1 branch. They involve executive and legislative branch
2 decisions but here, I can speak primarily to reforms
3 that have been put in place by the judicial branch since
4 2014 and more substantially since last summer.

5 Ms. Paschal alluded to it in her remarks
6 but if you want to take an analogy from the world of
7 information technology, the municipal court system, if
8 you could even call it a system in Missouri, was the
9 ultimate legacy system. It was a mishmash of all sorts
10 of different kinds of forms of administration.
11 Roughly, a fifth of the cities has taken advantage of
12 the option our state constitution provides to simply
13 refer all of their cases to the state courts to be heard
14 by state judges. That's how I interact. I hear the
15 cases for my city because the city chose not to have
16 its own municipal court but just to send their cases
17 to us. All cities of under 400,000 can do that.

18 However, they also have the option to run
19 a free-standing municipal court. And now we are
20 exploring options where cities can consolidate
21 municipal courts and have a free-standing municipal
22 court run by several cities.

23 Within those systems, there are variations
24 as to how they are organized. Most municipal judges
25 are appointed by the mayor and the council and subject

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1 to periodic reappointment but in some cities, municipal
2 judges are elected. And in some cities, they have
3 managed to persuade the state court judge to come down
4 to the city and hear their cases in the municipal court.
5 So you have all sorts of variations and they have all
6 sorts of case management systems and some have no case
7 management systems. Somewhere exceedingly well run,
8 very professionally run. Some were very poorly run.
9 And the cities, themselves, vary in size from Kansas
10 City at over 400,000 to many small rural cities of less
11 than 100 people that have taken advantage of the
12 statutory option to organize themselves as cities, pass
13 their ordinances, and try to enforce them.

14 Skipping forward to the changes since the
15 events of Ferguson, after a period of study and review
16 of the reports that Mr. Bains and his colleagues
17 prepared, that others prepared, the Municipal Division
18 Work Group that the Supreme Court itself commissioned,
19 its Racial and Ethnic Fairness Commission reports that
20 are in various stages of draft progress, the Supreme
21 Court then decided last year that they had enough
22 information in front of them. They convened their new
23 Committee on Practice and Procedure in Municipal
24 Courts. And rather than simply attempting to focus on
25 Ferguson and a few other problem areas, they decided

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1 to take a statewide approach.

2 The result of that has been the
3 promulgation of the Minimum Operating Standards. Many
4 of those were drafted to be directly responsive to
5 concerns raised in the "Dear Colleague" Letter that was
6 issued by the Department of Justice but they go well
7 beyond that into other matters of court administration,
8 court facilities, independence of the judiciary and so
9 on. I'll be happy to go through those into more detail
10 if any commissioners desire.

11 They also promulgated a code of conduct for
12 municipal division court personnel, including the
13 clerical staff. They formalized the authority which
14 has always existed for the presiding circuit judges in
15 each of Missouri's 46 judicial circuits to exercise
16 their administrative authority over these divisions to
17 supervise them more closely, to require the divisions
18 to certify their compliance with the standards twice
19 a year and, in the case of Saint Louis County, where
20 the most pressing problems have been identified, they
21 have already hired one and are in the process of hiring
22 a second individual to assist the presiding judge in
23 carrying out these supervisory responsibilities,
24 visiting the courts, and helping the courts to improve
25 their performance.

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1 There have also been statutory reforms
2 that were fairly significant in nature that addressed
3 matters of confirming ability to pay, that limited the
4 fines that could be assessed, that did away with the
5 practice of allowing people to be charged money in
6 association with performing community service, and
7 placed some fairly significant restrictions on the
8 cities, in terms of how much of their total budget could
9 come from fines and court costs and threatened the
10 cities with real consequences, including a mandatory
11 vote on dissolution, should they exceed.

12 The cities, of course, are fighting back
13 in court and that litigation is ongoing and that is
14 referred to in my remarks.

15 To close, ultimately what I believe we have
16 is a problem of public corruption, which is made
17 possible by the fact that the cities can retain money
18 that is generated by law enforcement activities and
19 processed through the courts. This is compounded by
20 the fact that the judicial selection process in the
21 municipal courts allows the executive branch complete
22 control with periodic appointment control over who was
23 doing the judging. This created a great temptation.
24 And to the credit of the lawyers and judges of our state,
25 only a minority of the courts fell into it.

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1 In certain municipalities and probably
2 most notably in Northern Saint Louis County, places
3 like Ferguson, this public corruption issue was
4 compounded by issues of actual racism. And that has
5 been discussed by Mr. Bains. It was discussed at some
6 length in the DOJ report on Ferguson.

7 Ferguson is not representative of the
8 state as a whole. But the problems that were
9 identified there have led to statewide reforms. The
10 problems that Commissioner Kirsanow alluded to -- what
11 are our real options as we make these reforms and what
12 are the collateral impacts? Those are issues our Work
13 Group wrestled with. And these are tough but we have
14 seen 31 percent decrease in municipal division filings
15 statewide since 2014; 51 percent decrease in arrest
16 warrants issued out of municipal divisions since 2014.
17 So, I think there are real changes on the ground.

18 I will be happy to respond to the
19 commissioners' questions to the best of my ability.

20 CHAIR LHAMON: Thank you, Judge DeMarce.
21 Mr. Harvey.

22 MR. HARVEY: Thank you for the opportunity
23 to comment on the ongoing need for transformative
24 change in the municipal courts not only in Saint Louis
25 but across the country.

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1 My name is Thomas Harvey. I'm the
2 cofounder of Arch City Defenders. We're a nonprofit
3 civil rights law firm that provides legal advocacy to
4 the poor and homeless in Saint Louis.

5 I recently testified in Las Vegas, Nevada
6 on Wednesday and I heard a presentation there about the
7 amount of fines that were collected in Nevada -- in Las
8 Vegas, that put the reduction in revenue from Saint
9 Louis County's municipal courts into a different
10 perspective for me.

11 In Saint Louis County, revenue is down from
12 \$53 million in 2015 to \$29 million in 2016. The
13 committee on Wednesday in Las Vegas was stunned to learn
14 that its municipal courts collected \$67 million over
15 a five-year period. If we took the new and improved
16 massively reduced amount of revenue collected in Saint
17 Louis County as ostensibly the result of the reforms
18 that we're talking about here and we projected it over
19 five years, it would be \$145 million or twice as much
20 of the amount that stunned the people in Las Vegas.

21 This changed what I intended to share
22 today. It struck me that we're using the wrong words
23 to describe the changes since 2014. Most of what we're
24 calling reforms are simply promises to follow already
25 existing law. Why would we declare victory when all

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1 we have is promises to do the following: allow the
2 public to enter the courthouse; ask people if they too
3 poor to pay fines; don't charge illegal fines and fees;
4 stop making destitute people pay court costs; offer
5 community service when people are poor; take people who
6 are arrested and jailed before a judge within 48 hours;
7 don't use the police or jail to raise revenue;
8 adequately staff the courts; require strict compliance
9 with due process before locking a human being in a cage
10 because she owes your city some money.

11 What we're calling reform represents
12 promises to either follow already well-established
13 law, or simply accept that poor people exist in your
14 jurisdiction. Should we laud this as progress? To
15 quote Malcolm X, if you stick a knife in my back nine
16 inches and pull it out six inches, there's no progress.
17 If you pull it all the way out, that's not progress.
18 Progress is the healing of the wound the blow made. And
19 they haven't even pulled the knife out, much less healed
20 the wound. They won't even admit the knife is there.

21 These promises seem equally especially
22 unimpressive when you consider what had to happen to
23 get the court to make them. Darren Wilson shot Mike
24 Brown, setting off protests that lasted more than a
25 year. People would not go out on the streets. If the

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1 QuikTrip had not been set on fire, we wouldn't even be
2 having this conversation today. When people took to
3 the streets, they were not just protesting police
4 violence against unarmed black men. They were
5 protesting a system representing a largely
6 uninterrupted collaboration between police, courts,
7 and local governments, not only to oppress black people
8 and poor people but to also profit from that
9 collaboration, starting with legalized slavery that
10 built the United States of America, and continuing on
11 to reconstruction of area block codes, followed by the
12 debt peonage that replaced it, and further
13 criminalization of black life and poverty.

14 Whether it's the creation and selective
15 enforcement of trespassing, vagrancy, and panhandling
16 laws, whether disparities in traffic stops and
17 mandatory sentencing for drug cases, the legal system
18 has always reflected the most pernicious stains of
19 racism in America.

20 In Saint Louis, we call these municipal
21 courts. What they are is poverty-producing examples
22 of systemic racism.

23 On the day Mike Brown was murdered, there
24 were 600,000 active warrants for arrest in a region of
25 1.2 million people, most of them stemming from poverty

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1 violations in municipal courts. Poor people and black
2 people were literally killing themselves because they
3 couldn't get out of the jails. People protested police
4 killings but they also protested 91 cities with 81
5 courts and 67 police departments. They protested
6 32,000 warrants for only 21,000 people. They
7 protested raising \$2.6 million in fines and fees on the
8 backs of the poor. They also protested long lines to
9 pay fines from racial profiling. They protested being
10 locked in a cage because they were too poor to make a
11 payment. They protested Saint Ann collecting \$3
12 million from its court, Florissant collecting \$2
13 million from its court and pretending this was about
14 public safety instead of race and class.

15 They protested being jailed without access
16 to medication, getting locked in a cage without
17 blankets, not being given a shower, being forced to
18 share a toilet, and being forced to strip naked to use
19 it.

20 Black women with children protested being
21 stolen from their kids because they didn't have \$350
22 in cash.

23 While the protests went on, we published
24 studies and filed law suits to end illegal practices
25 in municipal courts. The DOJ published its findings

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1 and entered into a consent decree with Ferguson. Even
2 though the Ferguson Commission included calls to action
3 concerning the municipal courts, the Missouri Supreme
4 Court appointed a work group to study municipal courts.
5 Even though the people called for police reforms, the
6 Missouri Senate passed Senate Bill 5 capping revenue
7 and ordering them to end unlawful practices.
8 Throughout it all, people like Keilee Fant and Samantha
9 Jenkins denounced the systemic abuses. Organizers
10 like Kayla Reed, Kennard Williams, and Julia Ho
11 testified at hearings about the racist predatory police
12 and core practices.

13 Elite universities and law schools across
14 the country dedicated countless conferences to the
15 horrors of municipal courts, cash bail, illegal fines
16 and fees, and police misconduct.

17 Given the incredible amount of damage
18 these low-level superfluous pieces of the criminal
19 legal system has subjected people to, why are we still
20 listening to their promises? How much more data? How
21 many more stories? How much more testimony do we need
22 before we have the courage to call for the wholesale
23 elimination of courts that prosecute status violations
24 in low-income communities of color that typically stem
25 from poverty, as if they were actual crimes?

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1 We cannot put our hope into promises from
2 the same people who have been running these courts for
3 decades. If we want to end the systemic abuses in these
4 courts, we have to accept that you cannot punish the
5 poor into compliance when the law stems from their
6 poverty -- when the violation of the law stems from
7 their poverty. If you're too poor to get your car
8 registered, it does not matter how many times you are
9 being punished by being stopped, ticketed, jailed,
10 fined, or given community service. Until your poverty
11 goes away, you cannot comply with the law.

12 Thank you.

13 CHAIR LHAMON: Thank you, Mr. Harvey.

14 Thanks to each member of the panel. I
15 appreciate it. I want to give my fellow commissioners
16 a chance to ask questions.

17 Commissioner Yaki, shall we start with
18 you, since we ended with you on the last panel? No
19 questions for the moment?

20 Commissioner Kirsanow?

21 COMMISSIONER YAKI: Sorry, I was on mute
22 and I was talking.

23 CHAIR LHAMON: Oh, sorry. Well, go
24 ahead. Then, Commissioner Kirsanow will follow. We
25 couldn't hear you.

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1 COMMISSIONER YAKI: It's one of those
2 things where you ask a question, I start to answer it
3 and then I realize no one is listening, which occurs
4 more often than I care to say.

5 Anyway, so one, thank you very much, all
6 of you, for your testimony. Some have addressed some
7 of my questions that I had with the first panel.

8 But I really wanted to sort of get at, for
9 all of you, and I think it is going to ride a lot upon
10 Mr. Harvey's statement as well, is that is this
11 enforcement strategy from DOJ enough in getting at the
12 issue of targeted fines and fees or is there a deeper
13 need to go deeper into the criminal justice system as
14 a whole, as Mr. Harvey had suggested, to start wholesale
15 restructuring of these types of offenses such that we
16 don't have these debates and discussions in the first
17 place. I guess I would start with Professor Bains.

18 MR. BAINS: I think the law professors at
19 Harvard would be horrified to hear I got that title but
20 I'll take it for the moment.

21 DOJ's enforcement on these issues is
22 definitely not enough if that is the question. I mean
23 DOJ was not doing any enforcement on these issues until
24 the Ferguson case. And as I mentioned, that was sort
25 of an awakening and then we have now incorporated fines

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1 and fees reforms into other consent degrees,
2 specifically the Hinds County case, which was an
3 investigation under CRIPA, a prison conditions case,
4 where jail violence, one of the root causes was
5 population. Just unnecessary population in the jail,
6 overcrowding. And so as a result of scrutiny and
7 taking best practices from other places and what we
8 learned from Ferguson, we incorporated a change there
9 that required that the jail not accept anyone for
10 incarceration without documentary evidence that the
11 judge considered their ability to pay and found that
12 nonpayment was willful, where their incarceration was
13 for nonpayment of fines and fees.

14 So, that is another example of enforcement
15 but you can see that this is a pretty limited tool set
16 that we're working with here. If DOJ were to have more
17 tools, we could do more enforcement. But even then,
18 we're not going to sue our way out of the problem here,
19 even between us, DOJ and the private plaintiffs. It's
20 going to have to be sort of a local level change from
21 the grassroots up, working, I think, hand in hand with
22 local officials who are seeing the need for change and
23 restructuring these systems, questioning whether these
24 courts should exist in the way that they exist, whether
25 they can be mainstreamed, whether they can -- we should

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1 extend right to counsel and a number of other
2 protections and decriminalize a lot of these offenses.

3 So I think there is a whole strategy that
4 goes much beyond what DOJ can do.

5 COMMISSIONER YAKI: But I mean it may
6 begin with what DOJ is doing but is there a way that
7 DOJ can, as they did through the initial grant program,
8 to structure some kind of a best practices
9 collaborative that could look at it from a more holistic
10 way?

11 MR. BAINS: Yes, I think there are two
12 things that come to mind immediately. One is through
13 the National Task Force on Fines, Fees and Bail. The
14 DOJ has supported that. And so the question is what
15 will the work coming out of the task force look like.
16 It's just beginning. They have a Bench Card. A Bench
17 Card is productive but it is also one of the easier
18 things to accomplish. It is giving judges a tool that
19 they can use when they are trying to assess ability to
20 pay and make sure they stay within the constitutional
21 lines.

22 So I think there is much more that that
23 commission can do, that task force. And the question
24 will be will DOJ continue to support that work, the work
25 of local judges or state judges, rather, and court

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1 administrators who are working with advocates.

2 On the grants, I think that is also an
3 important question. That grant program seems very
4 promising from the first panel. So the question is
5 will that grant program, will it be extended or will
6 there be other resources? The Center for Court
7 Innovation will have a lot of lessons learned as the
8 technical service provider there. And I would hope for
9 more programs along those lines.

10 Although I would say I would also hope for
11 more enforcement, so DOJ using the enforcement tools
12 that it has.

13 COMMISSIONER YAKI: Great, thank you.

14 JUDGE DEMARCE: Commissioner, this is
15 Judge DeMarce.

16 Obviously, these are difficult issues for
17 a serving trial judge to discuss within the context of
18 the code of conduct. However, since my chief sent me
19 here, I assume that she wants me to answer your
20 questions.

21 It's a two-edged sword. If the question
22 boils down to how much does the DOJ wish to substitute
23 its judgment for the judgment of
24 democratically-elected legislatures and cities
25 councils, that is a policy question that the DOJ itself

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1 must answer. But how the DOJ approaches these problems
2 has to be informed by that analysis. I don't think
3 there's a way around it.

4 Courts are, for the most part, reactive
5 entities. We don't decide what cases we are going to
6 get. We process the ones that are brought to us by law
7 enforcement out of the executive branch and they have
8 the laws at their disposal that are passed by the
9 legislature.

10 It has troubled me as long as I have been
11 a judge that the burdens of many laws fall most heavily
12 on the poor. Certainly, this is true with regard to
13 driver's licensing laws, with regard to mandatory
14 insurance laws, with regard to vehicle registration
15 laws and so on. However, I think most people when
16 they're out driving around are hoping that they are
17 surrounded by drivers who were capable of passing a
18 driver's test and have not had 50 violations, and who
19 might be insured.

20 So these are public policy questions and
21 then where we get to them here is a question of
22 enforcement. Where we have seen the worst problems,
23 in our own state, and from what I have read, perhaps
24 in some others, is where law enforcement and local
25 government can directly profit from enforcement of the

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1 laws because this creates the possibility for an
2 inappropriate motive for enforcement.

3 Law enforcement and court operations
4 should, ideally, be general revenue functions. The
5 governing bodies should appropriate the amount of money
6 that is necessary to achieve the necessary level of
7 public peace and safety. However, where the funding
8 stream comes from the law enforcement activities
9 themselves, the incentives are warped. And in some
10 jurisdictions, and particularly many of those in
11 northern Saint Louis County, which were hit very hard
12 by what we referred to as the Great Recession of the
13 last decade and saw their other revenues plummet, some
14 fell victim to the temptation to give their law
15 enforcement agencies and their courts, which they
16 controlled, revenue targets.

17 And so, ultimately, I believe that the best
18 policy response is to separate the funding of law
19 enforcement and courts from law enforcement
20 activities. And as I note in my materials in Missouri,
21 state court fines go to the school funds of the state;
22 law enforcement doesn't benefit from them. But they
23 did something different with municipal cases and this
24 creates a perverse incentive. And when times get
25 tough, people do wrong things.

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1 I don't know what the best possible role
2 for DOJ in addressing that problem is. When our
3 Municipal Division Work Group met, I think that was the
4 single most important recommendation that we gave to
5 the legislature, that they should end the practice of
6 municipalities being able to profit from law
7 enforcement activity which would, hopefully, restore
8 law enforcement activity to its proper incentives of
9 maintaining public peace and safety at a level of
10 expenditure that people thought was worth paying taxes
11 for, rather than getting the taxes through the back door
12 and in a way that creates many rather nasty collateral
13 consequences for people.

14 But again, DOJ, when it comes in, it's
15 substituting its judgment for the judgment of the
16 voters and their elected officials. And I can't answer
17 that question for you as a sitting state trial court
18 judge.

19 COMMISSIONER YAKI: I appreciate that,
20 Judge. And I just wanted to note for you and for the
21 other Missouri speaker that I have actually spent a fair
22 amount of time in your beautiful state over the past
23 two years and I have begun to deeply appreciate the
24 intricacies of how things work in your state.

25 So thank you very much for your candor. I

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1 appreciate it.

2 CHAIR LHAMON: Mr. Harvey, do you want to
3 respond?

4 MR. HARVEY: Sure. Just really quickly,
5 I would echo what Judge DeMarce and Chiraag said about
6 these issues.

7 The DOJ has an important role to play but,
8 obviously, I would slightly differ and say I don't think
9 they are substituting their judgment for the people
10 because if they are doing what they did in Ferguson and
11 what they have done in other jurisdictions, they are
12 finding violations of federal law and trying to enforce
13 those laws. And that gets at my underlying theme in
14 my remarks is these laws already existed. They were
15 already on the books and they were well-known. And the
16 people in charge of these courts, and prosecutors, and
17 judges, and defense attorneys, they just were ignoring
18 them wholesale.

19 So to answer your question about deeper
20 problems within the criminal legal system, of course,
21 yes, we have massive problems at state level and federal
22 level as well.

23 What's I think attractive about focusing
24 time and energy on these courts is, they are the lowest
25 possible level form of our courts. They prosecute the

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1 low-level interactions with the legal system. They
2 could be eliminated. We are spending a lot of time and
3 money trying to buttress a failed legal system. What,
4 even under some international human rights law would
5 garner sanctions from the United States of America if
6 this happened in a foreign country, we're saying why
7 don't we give you some money to fix that, as opposed
8 to saying here's this extra thing that doesn't have to
9 exist. As Judge DeMarce said, these could be handled
10 through the associate circuit court where you have
11 fulltime professional courts, with fulltime judges,
12 prosecutors, clerks, defense attorneys and that will
13 be a better option.

14 So, thank you.

15 CHAIR LHAMON: Thank you.

16 Commissioner Kirsanow?

17 COMMISSIONER KIRSANOW: Thank you, Madam
18 Chair, and thanks to the witnesses. This has been
19 helpful.

20 In addition to reducing or eliminating the
21 types of abuses that many of you have testified to,
22 either at Ferguson or other places, and as somebody who
23 has had my share of fines assessed against me,
24 deservedly so.

25 One of the other questions, an ancillary

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1 question, something I alluded to before, and that is
2 what, if any, deterrent effect can we discern from the
3 fines and fees or other sanctions that were levied
4 against individuals prior to any reforms that were
5 instituted versus what has transpired since then.

6 In other words, has there been a beneficial
7 effect to forms that were instituted that can be
8 demonstrated by a decline in the kind of offenses that
9 give rise to these fines and fees? Does anybody have
10 any data along those lines?

11 I mean for example, the data I see doesn't
12 necessarily go to those types of misdemeanor penalties
13 but there has been, in the last year, or the last two
14 years, significant increases. In Ferguson, for
15 example, there is a 58 percent increase in robberies,
16 60 percent increase in murders, a 68 percent increase
17 in aggravated assault. So there has been tremendous
18 spikes in violent crimes.

19 I'm wondering if there's been a deterrent
20 effect on misdemeanors by result of implementation of
21 these reforms.

22 JUDGE DEMARCE: If I might try,
23 Commissioner, and I don't know that there's hard data
24 and I don't know how you would create it.

25 With regard to the more serious offenses

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1 like robberies and the violent assaults, they are
2 really a different class of offenses than those that
3 are usually dealt with in most of Missouri's municipal
4 courts, except for Kansas City that processes more
5 serious offenses.

6 I think it's hard to get a true read because
7 the levels of citations in parts of Saint Louis County
8 were so high prior to Ferguson, we don't know what the
9 real rates really were. They were citing their
10 population and hapless passersby at a much higher rate
11 than most municipalities in other parts of the state,
12 including the state's other major urban areas, Kansas
13 City and Springfield.

14 So again, the revenue incentive had skewed
15 things and we weren't getting a true read.

16 What's the deterrent effect? Well, we
17 only have two authorized punishments in the law -- jail
18 and fines. And for many municipal violations, jail
19 isn't on the table so fine is it. And then the only
20 alternative is probation with various conditions,
21 which can be things like community service and other,
22 sometimes programs that people are sent to help make
23 them more ready for jobs and various things like that,
24 substance abuse. But you come back to the same
25 punishment if they don't do their probation or if they

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1 commit new violations while they're on probation and
2 that's where it's hard to close the circle.

3 If fines are all that's on the table and
4 we don't want to fine people because they've told us
5 they can't pay them, in a way, we have given people who
6 understand the weakness of the system a way to avoid
7 its sanction, while, at the same time, continuing to
8 punish the most honest, the most meek, and the most
9 courteous. We have, to a degree, created a system that
10 defeats its own purpose.

11 If any of you have the answer to that, you
12 are much smarter than I am. That is what our Work Group
13 really wrestled with. But anecdotally, as a sitting
14 judge, I know that where people are aware of a targeted
15 enforcement effort, fines can have a deterrent value
16 but people have to be made aware of it and I think it's
17 limited in time.

18 In my own community we had, at least
19 communicated to me by school officials and law
20 enforcement at one point, they said people are not
21 stopping for the stopped school buses. And the
22 municipal prosecutor and the police chief said, Judge,
23 is there anything you think we could do? I said well,
24 everyone who comes to me is presumed innocent but here's
25 what I think I can do. Within my discretion, within

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1 the authorized range of punishment, I'm going to double
2 the standard fine for passing the stopped school bus
3 and I'm just going to do one of our rather boring looking
4 court orders that says we did it and you can take that
5 to the newspaper and get them to write an article. And
6 they did. And the passing of the stopped school buses
7 went away for a while. But very local and had to create
8 an awareness.

9 Just the fact that people can get fined for
10 stuff, I don't know whether that has a great deterrent
11 effect but you know if you've ever looked at things like
12 the seven classical punishments of antiquity, most of
13 them have been justly abolished because they were
14 extraordinarily cruel and all we have left is fines and
15 incarceration. If we don't use those, we don't have
16 any at all and I don't have a better answer if we can't
17 even enforce those.

18 So again, these issues are extraordinarily
19 difficult. On the one side, we're looking at the
20 rights of people who've been hauled into court and the
21 other side, we're looking at the quality of life in the
22 community among the many people who haven't been hauled
23 into court. And we're trying to balance it all and make
24 it work.

25 CHAIR LHAMON: Are you not a believer in

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1 community service, among other options?

2 JUDGE DEMARCE: Oh, absolutely, I am.
3 And we have used it extensively in my court for years
4 before any of this became a national issue of interest.
5 We use it a lot on traffic and we use it a lot with
6 youthful offenders if people want it. Here's the
7 problem: what if they don't do the community service?
8 What if you say, and particularly standard in my court,
9 a minor traffic violation, you have ten hours of
10 community service and you have to get it done in 60 days.
11 You can do it for any public agency or not-for-profit
12 organization, as long as we can verify it. That's our
13 standard.

14 Ninety-five percent of the people who get
15 that deal do it. What do you do with the ones who don't?
16 That's the hard question.

17 But yes, absolutely, I believe in
18 community service. And our Work Group has encouraged
19 its use. We encouraged the elimination of associated
20 fees. The cities really hate that, by the way, and
21 they're trying to get that repealed. But the
22 legislature did that and right now in municipal
23 divisions they can't be charged fees for community
24 service work.

25 MR. BAINS: I'll just add to that,

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1 briefly. I agree with most of what the judge said. I
2 think, when you step back, it's worth recognizing that,
3 in the case of Ferguson and many other municipalities
4 in that area, the Municipal Code was not the result of
5 sort of a considered process in recent history about
6 what the community decided should be criminal and what
7 should not be. The Municipal Code makes every single
8 violation, every ordinance violation punishable by 90
9 days in jail, \$1,000 fine, or both. And in Ferguson,
10 they actually enforce that and in many other places as
11 well for housing code violations.

12 So we know we're starting in the wrong
13 place. I think you get to these harder questions, once
14 you get past that but there are some options, as Madam
15 Chairwoman, you mentioned, community service is one.
16 Starting with more reasonable fines and fees in the
17 first place or assessing someone's ability to pay
18 before you impose the fine so that you increase the
19 likelihood of compliance, and I was interested to hear
20 that that seems to be happening in Texas that is another
21 option. And then other forms of achieving public
22 safety, Commissioner Kirsanow, for example,
23 fix-it-tickets is something that we built into the
24 Ferguson consent decree. If someone is being pulled
25 over and ticketed for a broken tail light, it may make

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1 more sense to ask if they would pay the \$200 to fix the
2 tail light than pay the court \$200 or more. And if they
3 come back and do it within a reasonable amount of time,
4 then the case can go away. And that, of course, has
5 a beneficial effect on public safety.

6 And so I think, just along those lines, the
7 last thought is that the police department also has to
8 operate differently. There are -- I think we have to
9 get out of the mentality of just enforcement. There
10 are more things that we can do to increase public safety
11 than arrest and cite people and looking for underlying
12 causes of public safety problems, sort of like disorder
13 problems that could be with targeted resources
14 addressed, abandoned buildings, for example,
15 particular things that seem to be the causes of crime
16 in neighborhoods. So, neighborhood-specific
17 information, not really at large but you have some
18 intelligence here, I think could go a long way.

19 Now that's quite outside of the realm of
20 what a court can do but I think it's relevant to the
21 conversation.

22 CHAIR LHAMON: Thank you. Do you want to
23 speak to that Mr. Harvey?

24 MR. HARVEY: Yes, really quickly I just
25 want to emphasize that many of these that kind of

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1 Chiraag alluded to are not -- many of the violations
2 that were charged in Ferguson and in our region are not
3 about public safety and they weren't -- the charges
4 weren't issued within the cities sort of downtown
5 neighborhood. A lot of these places were contiguous
6 with the highway.

7 So they were pulling people over on the
8 highway, as opposed to allowing that to be done by State
9 Highway Patrol. And that's where you get these driving
10 while suspended, no proof of insurance, failure to
11 register to a vehicle. If you imagine that the initial
12 incident was a speeding, then you could say well there's
13 some question of public safety.

14 But after you've been in the system for so
15 long where you've got 600,000 warrants for arrest,
16 officers are just scanning license plates for warrants
17 for unpaid traffic tickets, pulling people over,
18 whether or not there's an additional moving violation
19 that occurred, and then issuing driving while
20 suspended, no proof of insurance, and failure to
21 register a vehicle, which are the most common poverty
22 violations for people who are truly indigent.

23 And I think that that's something that's
24 missed. There's a lot of time in the Supreme Court's
25 Working Group report spent on how do we address the

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1 indigent scofflaw, which I was here last year where
2 Professor Alexis Harris talked about this. And her
3 research shows that this is a statistically
4 insignificant number of people. They exist but this
5 isn't worth centering your policy around.

6 There are many more people who are
7 experiencing deep poverty, levels that I don't think
8 many of our judges and prosecutors even comprehend and
9 so they are faced with it is factually true. You
10 don't -- your license is suspended. You don't have
11 proof of insurance and your vehicle isn't registered.

12 If we want it to be about public safety,
13 we're going to help them achieve those goals, not fine
14 them more or jail them.

15 CHAIR LHAMON: Thank you.

16 Commissioner Kladney?

17 COMMISSIONER KLADNEY: Thank you, Madam
18 Chair.

19 Your Honor, I think you said 31 percent
20 citations are down and 51 percent FTAs. Is that
21 correct?

22 JUDGE DEMARCE: Commissioner, that is
23 statewide in all the municipal divisions of the state,
24 the change between 2014 and 2016 numbers.

25 COMMISSIONER KLADNEY: And the FTAs,

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1 they've really lost a lot of money on that, right?

2 JUDGE DEMARCE: Oh, the city -- it varies.
3 Again, it varies. The cities that were making a lot
4 of money from citation revenue, a number of them have
5 lost a lot of revenue. Although I don't have numbers
6 in front of me to quantify that but the most recent
7 numbers I have seen from our state court
8 administrator's office suggest that in that same
9 two-year period, total disbursements from municipal
10 divisions are probably down between a quarter and a
11 third. So that would be -- again, in cities that never
12 generated much money from their municipal court like
13 the one I served in because they don't write that many
14 and the more serious ones they send to the state court,
15 it doesn't make a difference. But in a city like
16 Ferguson and some of the other cities in North County,
17 it has made a very substantial difference and the
18 Missouri Municipal League is reacting. They are
19 pushing legislators to try to roll back some reforms.
20 So there's a give and take in politics and it never ends.

21 But to me, the better answer and probably
22 not one that can be accomplished in our state's current
23 political climate is that, as I've said before, they
24 should divorce law enforcement activity from revenue
25 production. But to make that work, they also have to

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1 give the cities the authority to go to their voters and
2 ask for money that can be used for law enforcement at
3 a level that that is really deemed necessary, and that's
4 where you'd find out what people really thought was
5 necessary. What would they be willing to tax
6 themselves to pay for, as opposed to sitting on the
7 highway picking off someone else's residents as they
8 drive through.

9 COMMISSIONER KLADNEY: Well, Judge,
10 Commissioner Kirsanow is, I think if I understand his
11 questions correctly, he's interested in deterrents.
12 And since these statistics have dropped 31 percent in
13 citations, 51 percent in FTAs, have accidents and
14 injury accidents gone up at all in your state, do you
15 know?

16 JUDGE DEMARCE: I don't have that
17 information, Commissioner. I don't know.

18 COMMISSIONER KLADNEY: Who would?

19 JUDGE DEMARCE: The Missouri State
20 Highway Patrol would have overall accident and incident
21 reports. We could attempt to get that information for
22 the Commission and get the most information but I do
23 not have it.

24 COMMISSIONER KLADNEY: And one last
25 question. Only three this time.

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1 You mentioned that since you sounded like
2 your jurisdiction is fairly enlightened when it comes
3 to community service, you mentioned that out of every
4 hundred that you give community service to, 95 percent
5 of them complete it without a problem -- around, more
6 or less.

7 JUDGE DEMARCE: I am estimating roughly
8 because we don't keep the statistics but I know I don't
9 get many probation violations back for failure to
10 complete the community service.

11 And a lot of the ones who get it, even if
12 they don't get it done by the first date, if they come
13 in and tell me why, then we give them another month and
14 usually they do get it done.

15 COMMISSIONER KLADNEY: So really, it's
16 working very well is what you're saying.

17 JUDGE DEMARCE: In Scotland County.
18 We're a very small rural county to the north.

19 COMMISSIONER KLADNEY: More compliant
20 folk?

21 JUDGE DEMARCE: Well, I don't know if
22 they're temperamentally more compliant but it's easier
23 for us to find them if they're not. That's just the
24 reality. We're small and rural. There's not many
25 places to hide.

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1 COMMISSIONER KLADNEY: Do you know any
2 other jurisdictions that are larger, anybody on the
3 panel that may know how it works in other, larger
4 municipalities?

5 JUDGE DEMARCE: Well it varies widely.
6 Let me give you the example -- and this is one reason
7 there were fines and fees.

8 In Springfield, they had a very organized
9 program that if a judge referred people to community
10 service, they would send them to them. There was an
11 associated fee and then this was an oversight entity
12 that collected all the groups that wanted community
13 service workers. This is in a larger urban area. And
14 it's varied.

15 Some cities and counties have never
16 assessed that fee and have just done it like we do it.
17 Our sheriff's office has always been willing to
18 undertake the effort to verify with the organizations
19 that provide community service opportunities and never
20 ask for money. But in the places -- once the practice
21 starts, then people's salaries start to depend on it
22 and things like that, it's much harder to break that
23 cycle.

24 I don't know if the other panelists have
25 their own insights into it but I can't speak very well

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1 outside my own part of the state.

2 COMMISSIONER KLADNEY: Thank you, Your
3 Honor.

4 MR. HARVEY: So prior to 2014, I would say
5 that I had no idea how community service was handled
6 because they wouldn't offer community service to anyone
7 who wanted to use that as an alternative to paying the
8 fines.

9 Since then, it's been easier. There is no
10 fee associated with it, to my knowledge, with the
11 exception of maybe one or two municipalities.
12 Typically, what you're asked to do is just go to a
13 nonprofit, get a letter saying that you completed X
14 number of community service hours and submit that to
15 the court. And that will stand as your fine.

16 I would still say that the flaw I find with
17 the community service is it assumes that while you were
18 there it was a crime. It starts with an assessment of
19 a dollar amount in fines that isn't related to your
20 ability to pay. So they often use the \$10 an hour rate
21 to convert fines to community service.

22 So, if you were going to do this in a more
23 fair way, I think you would assess the person's ability
24 to pay -- determine that in a dollar amount and then
25 convert it to community service.

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1 So if there's a \$10 an hour equivalent, \$50
2 may be a fine for a poor person, which would be five
3 hours of community service, as opposed to what ends up
4 being often 40 to 60 hours.

5 COMMISSIONER KLADNEY: I understand that
6 to be process but how is community service working,
7 regardless of the process, in those larger communities?

8 MR. HARVEY: I think for people who are
9 capable of completing community service, it works just
10 fine right and there a lot of people who want to do that.

11 People we represent are not the total
12 population of people who go before these courts. They
13 are homeless folks who have mental health problems and
14 substance abuse problems. Community service does not
15 work for them. If you're in a shelter and you're a mom
16 with kids in a shelter and now you've got to go get child
17 care so you can go do community service while you're
18 also working, it doesn't work. And we've just ask the
19 courts to waive completely the fines and fees
20 associated because it's not possible at that stage in
21 this person's life to complete community service, even
22 though that's better than fines or incarceration.

23 COMMISSIONER KLADNEY: And what do you do
24 with the recidivist, per Commissioner Kirsanow?

25 MR. HARVEY: You mean the person who fails

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1 to --

2 COMMISSIONER KLADNEY: Who say, continues
3 to wind up in court. Because I know there's no mental
4 health services in the community. So if someone has
5 a mental health issue, they may continue to do
6 dysfunction according to the law and wind up in court.

7 MR. HARVEY: I mean so part of the work we
8 do is to connect people to those services. During our
9 legal representation, we're connecting our clients
10 with social workers and mental health care workers.
11 And the intent is to address that while the legal case
12 is continuing.

13 So, we've had great success, where we've
14 been able to get our clients some deferred prosecution
15 or additional time to pay or come up with, or complete
16 community service, or, frankly, just get rid of the
17 case.

18 But if the case is about your poverty, it's
19 never going away. It's just not going to go away and
20 we're going to have to accept that there's going to be
21 some small percentage of people for whom we're not going
22 to be able to force them to get their license reinstated
23 to get insurance that they can't afford and to register
24 their car. It's an economically insurmountable
25 obstacle for them.

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1 CHAIR LHAMON: Commissioner Narasaki?

2 COMMISSIONER NARASAKI: Yes, I would say
3 if you have mental health issues, another fine is not
4 going to deter you from whatever it is that got you there
5 in the first place and that charging more fines makes
6 it actually harder to pay for the registration and
7 everything else.

8 I know this is a little off-topic but I've
9 been concerned because as we've started to look at this,
10 we have discovered the issue of surcharges. So, taxes
11 or additions for your share of alcohol dependence
12 issues, or domestic violence, or improving courts, or
13 paying for juries that I would think should be coming
14 out of the general fund and not being paid by people
15 who are coming before the court, particularly if that
16 isn't even related to what they are in the court for.

17 I'm wondering, Mr. Bains, whether the
18 Department of Justice has looked at that issue, whether
19 there are some concerns, legal concerns about the fact
20 that that's happening so widely.

21 California has one of the highest fees and,
22 when you look at the breakdown, a lot of it is because
23 they are charging for programs we all like but they're
24 charging poor people for them, as opposed to the whole
25 citizenry of California.

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1 MR. BAINS: I share your concerns about
2 surcharges and they seem to be in conflict with the idea
3 that the courts and the justice system is in the
4 business of producing a public good, not just a service
5 for the person who is going through the justice system.

6 But in terms of the Department's activity
7 in this area, I don't have a lot to point to. The Access
8 to Justice Commission -- or I'm sorry, the Office for
9 Access to Justice is an office that would have some
10 emphasis on this, I think. So, working with
11 stakeholders and looking at this issue. That's not an
12 enforcement office but as I tried to make clear in my
13 remarks, enforcement is important but there are other
14 things that the Department does that can be helpful,
15 in terms of partnering with stakeholders and local
16 governments and advocates. And so that is one office
17 I think that could potentially look at that issue more
18 and, of course, on the grant-making side, that's
19 something both in terms of the research and
20 experimentation through the Office of Justice Program.

21 One other thought on surcharges -- if it
22 comes back to me I'll let you know.

23 JUDGE DEMARCE: Very briefly, surcharges I
24 would think of as charges that the legislative body has
25 attached to every case that really don't have anything

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1 to do with that case itself or, necessarily even, with
2 the administration of justice, although they vary.

3 And as the legislatures in many states have
4 fallen -- have had less and less appetite for raising
5 general revenue and have replaced it with these kinds
6 of things because there's no one to stick up for these
7 people, we have had at least one sort of firewall in
8 Missouri.

9 There's a 30-year-old case from our
10 Supreme Court called Harrison against Monroe County.
11 And what it held was that court costs actually must be
12 related to the administration of justice. And that
13 sort of put a limit on some of the things that could
14 be done. Our base municipal court costs in the City
15 of Memphis, which is mine, is \$37.50. I believe that
16 is probably less than in many states. And so that would
17 be on a traffic ticket or another minor ordinance
18 violation, that would be the costs that would be
19 attached.

20 Now, we are seeing an increasing tendency
21 in our legislature to want to use special costs to do
22 things that used to be done by bond issues like building
23 courthouses. That is justice-related. And the
24 reason legislators give for wanting to do it is because
25 the people won't appropriate a tax. So the question

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1 is, do you want a courthouse with a leaky roof that's
2 not secure or -- and the voters won't approve one.

3 Again, these are difficult things in the
4 current climate.

5 COMMISSIONER NARASAKI: Does it change
6 your view, because one of the things I have heard, right
7 is that some courts are charging people who come before
8 them if they want a jury, which --

9 JUDGE DEMARCE: In Missouri --

10 COMMISSIONER NARASAKI: -- seems to me a
11 huge concern.

12 JUDGE DEMARCE: Well, in Missouri, you are
13 assessed the costs of a jury if you are found guilty.
14 You are not assessed up front and you are not assessed
15 if you are acquitted.

16 But, yes. I think that some of the
17 commissioners may not like that answer but I am simply
18 telling you that that is --

19 COMMISSIONER NARASAKI: Can you tell?

20 JUDGE DEMARCE: -- what the law of the
21 state is, that it is a cost that can be attached if you
22 are found guilty.

23 And again, we don't -- the judges don't
24 establish the costs.

25 COMMISSIONER NARASAKI: Oh, I'm not

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1 blaming the judges. I'm just saying the practice --

2 JUDGE DEMARCE: Well no, you're not.
3 Now, there is case law that says you cannot be asked
4 to put down a deposit for a jury. Apparently, some
5 clever person tried that once but you can't be asked
6 to do that.

7 And now, since the Supreme Court's minimum
8 operating standards, they have clarified that you
9 cannot be forced to pay \$30 simply for the privilege
10 of asking for one. That is still in state law but the
11 Supreme Court simply preemptively decided, no, you're
12 not going to do that.

13 So now, there are costs that can be
14 attached based on things that go on in an individual
15 case, depending on the outcome. Missouri law
16 prohibits the assessment of costs if the case is
17 dismissed or if you are acquitted. That was a
18 violation that was going on in a number of the municipal
19 courts and particularly in the Saint Louis area prior
20 to 2014 and that has been something that the Supreme
21 Court has tried to clarify and now trying to more
22 vigorously enforce you are not supposed to do that.

23 MR. BAINS: I just wanted to --

24 CHAIR LHAMON: I think the vice chair has
25 some questions.

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1 MR. BAINS: Oh, I just wanted to add to
2 that for certain types of surcharges because
3 Commissioner Narasaki's additional information I think
4 changes my answer a little bit. The Department has
5 jurisdiction to investigate where there is a pattern
6 of practice of due process violations, as well. And
7 the 14141 statute explicitly includes juvenile
8 justice. So there is very clear jurisdiction there.

9 So depending on the type of surcharge and
10 how it operates, if it's impinging on people's due
11 process rights, I think there is grounds for an
12 investigation.

13 The other part of it is if there is a
14 disparate impact and it can't be justified by
15 nondiscriminatory reasons. And that would be both the
16 Civil Rights Division or the Office of Civil Rights at
17 the Office of Justice Programs.

18 MR. HARVEY: So I don't think it is a -- it
19 hasn't been a huge problem for our clients in Missouri.
20 I do think that there's especially in the state courts
21 there aren't as many surcharges as you're describing
22 that are assessed upon a plea of guilty or a trial.

23 I will say that when I was in Nevada, you
24 should look at that report, there was an amazing number
25 of charges, including the judge's retirement that came

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1 out of every fee that was charged in municipal court.
2 And previously, apparently, they paid a constable who
3 could issue tickets on the road was entitled to \$100
4 payment at the time of the issuance of the ticket and
5 the constable got to keep the \$66 out of \$100. So, I
6 think there's a ton of work to be done in that area.

7 CHAIR LHAMON: Thank you. We'll let the
8 Commissioner from Nevada speak to that in a moment.

9 But first, the vice chair.

10 VICE CHAIR TIMMONS-GOODSON: In a moment,
11 Commissioner.

12 Judge DeMarce, I, like you -- well, I'm a
13 former judge in North Carolina. And you indicated
14 early on that the problem that we saw in Ferguson was
15 largely one of public corruption and that it was
16 compounded by actual racism.

17 As we continue to look at reforms, even
18 though Mr. Harvey doesn't like that term, as we continue
19 to look at reforms, I was wondering whether there's been
20 any effort there in your state at any kind of training
21 to help deal with implicit bias and if so, if you'll
22 discuss that for a moment or two.

23 JUDGE DEMARCE: Yes, there has, Your
24 Honor, and it is ongoing right now. In 2016 -- first
25 of all, in our state-level courts, the State of Missouri

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1 offers two times a year what we call the Trial College,
2 which is a general continuing legal education for all
3 the state trials judges, 400 or so of us. Half of us
4 go in August, half in October.

5 There was a lengthy implicit bias session
6 in this year's Trial Colleges for all the state trial
7 judges.

8 At the municipal court level, the
9 Municipal Judge Education Committee, which is chaired
10 by my colleague, Roy Richter of the Court of Appeals,
11 is now adding implicit bias training for municipal
12 judges. They are in the Municipal Clerk Education
13 Committee that has been convened since all of these
14 events. And Judge Thornhill from Springfield, who was
15 on both the Work Group and the Racial and Ethnic
16 Fairness Commission, he's been very involved in that
17 and they are working on implicit bias training for the
18 clerks of the court, who are the front line employees
19 who deal with people the most often.

20 So in the judiciary, the answer is yes.

21 In law enforcement, where the need may be
22 perhaps greater, I don't know the answer to that
23 question and it would, I suppose, depend on the law
24 enforcement training standards that are by and large
25 overseen by the highway patrol but not all of the

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1 training is conducted by them.

2 VICE CHAIR TIMMONS-GOODSON: But do you
3 see that as a reasonable reform effort worthy of our
4 investment?

5 JUDGE DEMARCE: Well, Your Honor, I see it
6 as something that is beneficial to those who are
7 amenable to improvement. I think it has the danger
8 that many things carry that it becomes an industry in
9 itself that wants funding forever. So, I know that's
10 out there and we've seen that with other kinds of
11 things. And in a sense, then it puts it back on the
12 criminal justice budget. And who does that end up
13 falling on? The people we've just been talking about
14 we want to protect. So, there's a risk.

15 If governments could change hearts and
16 minds by fiat, we would have eliminated racism decades
17 ago but we have seen that this was not so easily done.

18 I think it helps to a degree. To the
19 extent it gets people to think about assumptions that
20 may have been in their minds that they never
21 contemplated, it may have a beneficial impact. I have
22 real doubts that doing it over and over and over again
23 in a repetitive fashion is going -- I think there's a
24 point of diminishing returns probably and I think that
25 the possibility of it becoming an ongoing cost to the

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1 system creates the risk that it will become ultimately
2 a burden upon the people Mr. Harvey's trying to protect.

3 So, I don't like that answer Your Honor,
4 but in the world of limited resources in which we exist,
5 I would be remiss if I didn't raise it.

6 I do think it's important to do it. I
7 think it's very important to do it with new employees.
8 I would like to see it become institutionalized for new
9 judges, new clerical employees, and would hope that the
10 executive branch would certainly work on it in the
11 initial law enforcement training. And it may be
12 beneficial periodically but to do it repetitively may
13 actually be counterproductive in my sense.

14 VICE CHAIR TIMMONS-GOODSON: One last
15 one, Madam Chair, if I could.

16 Mr. Harvey, I believe the last time that
17 you were with us there was no doubt that you put a
18 tremendous amount of responsibility on the judges for
19 this situation. And I think you even advocated that
20 they face criminal charges. You know you know what the
21 law is or you should know what the law is and you are
22 violating it as you impose these various fines and fees.

23 Do you still hold that position? Do you
24 see that as a possible, quote unquote reform?

25 MR. HARVEY: Yes, absolutely. I don't

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1 think there can ever be trust in this legal system if
2 we don't have accountability. And we have now three
3 years, at least, of judges not only in Saint Louis and
4 Missouri but across the country admitting that they
5 impose fines on people and jail people who they knew
6 they couldn't pay. And the result of that was they got
7 more training and a Bench Card. They got a cheat sheet
8 on what the Constitution was.

9 And let's be frank. Our clients, when
10 they violate the law, don't get a cheat sheet. They
11 get to go to jail and forever owe money to that city.

12 So I think it's a good illustration of the
13 way we punish or don't punish people in power and the
14 way we punish people who are extremely vulnerable.

15 And I think if there were a single federal
16 prosecution of a judge or a prosecutor for knowingly
17 violating the law, I think one, these courts would be
18 gone because no one would take these jobs because they
19 wouldn't want to take that risk. There would be very
20 few of them left and it would send a real message that
21 we take this seriously. The DOJ would have an army of
22 lawyers going around the country looking for bad judges
23 and they wouldn't be hard to find.

24 CHAIR LHAMON: So it's fair to say that you
25 differ from Mr. Slayton's view on the last panel that

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1 the DOJ's effective role would be collaborative rather
2 than enforcive?

3 MR. HARVEY: Yes, that's fair to say.

4 CHAIR LHAMON: All right, Commissioner
5 Kladney, you stand between lunch and the next
6 panel -- so, you and your questions.

7 COMMISSIONER KLADNEY: Well, I would just
8 like to thank Mr. Harvey for bringing the condition of
9 the State of Nevada to this body, not that I didn't know.

10 No, quite honestly, I was thinking when you
11 were talking about add-ons, I mean this was years ago,
12 I haven't practiced criminal law in a long time,
13 somebody would be convicted in the District Court and
14 they would add a fee on for public defender fees, things
15 like that and I don't think that's uncommon in the
16 United States.

17 But I was wondering if any of you know if
18 there's a compendium that exists regarding fines and
19 fees in all 50 states. I know we have collateral
20 consequences, the ABA has one and I think another body
21 has one. And so I was just wondering, one, if one
22 exists; and two, how comprehensive it is.

23 MR. HARVEY: I think your next panelists
24 will be able to answer that question.

25 COMMISSIONER KLADNEY: Okay. And I would

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1 just say, Mr. Harvey, that I know you think the whole
2 system needs to be changed and it probably does, but
3 it takes small steps at first. And I think that in the
4 last couple of years, the light that has been shown on
5 this subject has really awakened a lot of people in the
6 judicial system and hopefully, we have a lot of good
7 people in there that want to see change.

8 So, thank you all very much.

9 CHAIR LHAMON: So I also thank the
10 panelists and invite you to come back after lunch and
11 we'll say to all present that we will begin again on
12 time at 1:15 and look forward to the rest of the day.
13 Thanks very much.

14 (Whereupon, the above-entitled matter
15 went off the record at 12:19 p.m. and resumed at 1:16
16 p.m.)

17 CHAIR LHAMON: Thanks all for your
18 continued attention to this topic and thank you to our
19 next panelists for joining us now.

20 **V. PANEL THREE:**

21 **DATA, RESEARCH, AND POLICY RECOMMENDATIONS**

22 **ON MUNICIPAL FEES AND FINES**

23 CHAIR LHAMON: We're going to proceed with
24 the third panel and I'm going to introduce in the order
25 of their speaking who each of them is.

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1 First, Dr. Sarah Shannon, Assistant
2 Professor of Sociology at the University of Georgia.
3 Next, we'll hear from Derek Cohen, Deputy Director of
4 the Center for Effective Justice at the Texas Public
5 Policy Foundation and Right on Crime. Our third
6 panelist is Mitali Nagrecha, with the Criminal Justice
7 Policy Program at Harvard Law School. Our fourth
8 panelist is Grover Norquist, President of Americans for
9 Tax Reform. Our fifth panelist is Marc Levin, the
10 Director of the Center for Effective Justice with the
11 Texas Public Policy Foundation and Right on Crime's
12 Policy Director. And our sixth panelist is Neil Sobol,
13 Associate Professor of Law at Texas A&M University
14 School of Law.

15 Dr. Shannon, please begin.

16 DR. SHANNON: Well, thank you so much,
17 Madam Chair and commissioners for inviting me here to
18 participate in this briefing today. I am very glad to
19 be here.

20 Since 2015, I've been researching monetary
21 sanctions as part of a multi-state grant-funded project
22 led by Dr. Alexis Harris at the University of
23 Washington. This is funded by the Laura and John
24 Arnold Foundation. The focus of my part of the project
25 has been on the State of Georgia but what I'm sharing

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1 today is the product of a multi-state collaborative
2 effort to understand legal financial obligations
3 across eight states. A full report of our findings
4 from our first year's efforts will be published soon
5 by the Laura and John Arnold Foundation.

6 So just briefly -- I don't know if
7 someone's here to switch slides but I have slides -- I
8 will just tell you a little bit about the eight states
9 that are in our study. So those states are California,
10 Georgia, Illinois, Minnesota, Missouri, New York,
11 Texas, and Washington. And the first slide, I won't
12 go into great depth for the sake of time, but it just
13 demonstrates that our states vary substantially, not
14 only in terms of demographics and politics, but also
15 in terms of the socio-legally, in terms of the criminal
16 justice system. So our states range a great deal in
17 terms of rates of criminal justice supervision that you
18 can see there in that Table 1.

19 And just as these states vary a great deal
20 in terms of things such as community supervision rates
21 and incarceration rates, we found in our review of state
22 legal statutes regarding legal financial obligations
23 that there is a great deal of variation in state systems
24 of monetary sanctions.

25 So, if we could flip to the next slide,

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1 Table 2 shows how fines, fees, and surcharges are
2 stipulated in state legal codes for a first conviction
3 for driving with a license suspended for unpaid
4 tickets, which is a relatively common offense.

5 In particular, Table 2 shows how states
6 varied with respect to the centrality of these
7 different types of legal financial obligations. So
8 fines appear to be fairly central for California,
9 Georgia, Missouri, and New York but fees are highly
10 salient in Illinois, Missouri, North Carolina, and
11 Texas. And surcharges are more prominent in
12 California, Georgia, Illinois, and Washington.

13 So while each of these types of legal
14 financial obligations is present in every of these
15 states' legal codes, there is variation in the
16 frequency they are imposed and how much they contribute
17 to the total amount of legal financial obligations.

18 So we show this Table 2 for one particular
19 offense but we find that these same things are very
20 systematically within states.

21 So in terms of revenue generation, which
22 has been a topic of conversation today so far, Table
23 3, if we could switch slides, displays the total
24 criminal justice revenues from fines and forfeits,
25 which is defined as receipts from penalties imposed for

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1 violations of law in civil penalties in 2013, which is
2 the most recent year available and this is aggregated
3 at the state level.

4 What you can see is that collections from
5 fines and forfeits ranged anywhere from \$110 million
6 in Minnesota to over \$2 billion in California and New
7 York. And when we standardize this for total state
8 population, we see again that Minnesota has the lowest
9 rate per capita of revenue from fines and forfeits at
10 about \$20 per capita and New York had the highest at
11 about \$110 per capita.

12 So these criminal justice revenues are a
13 relatively small portion of state's own source
14 revenues. They constitute over one percent of general
15 revenue only in Georgia, New York, and in Texas. But
16 it should be noted that these federally-collected data
17 do not include revenues generated by fees, costs, or
18 surcharges. And so Table 3, very likely,
19 significantly underestimates the total revenues
20 associated with legal financial obligations.

21 And of course these rates vary a great deal
22 within states. So for example, in 2013, Georgia
23 counties reported anywhere from zero to 31 percent of
24 their own source revenues coming from fines, fees, and
25 forfeitures according to data from the Georgia

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1 Department of Community Affairs. Municipalities
2 within Georgia range from zero to 86 percent on this
3 same measure. There are nine municipalities in Georgia
4 that generate over half of their own source revenues
5 from fines, fees, and forfeitures and 17 municipalities
6 in Georgia that generate over one-third of their own
7 source revenues from these sources.

8 So of course we know that formal statutes
9 and rules governing legal financial obligations may not
10 adequately represent how they're imposed or how they're
11 enforced. Local practices do not always follow the law
12 as it is written.

13 So much more attention needs to be directed
14 toward understanding how the law is practiced and how
15 legal financial obligations are interpreted by those
16 who impose and enforce them. And that's where we're
17 headed with our eight-state study in the next four
18 years.

19 A substantial challenge that we're finding
20 here is that there are no nationally-representative
21 data that cover the full scope of monetary sanctions.
22 As a result, existing research at the individual level
23 and aggregate level have focused mainly on individual
24 states and localities within them. In our current
25 research, some of us are having great difficulty

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1 obtaining numerical data, even from local
2 jurisdictions, much less statewide.

3 For example, Minnesota has a uniform
4 statewide data collection system for their courts but
5 Georgia has no such thing.

6 Even extracting data from individual
7 courts has been stymied by the lack of electronic data
8 systems to record and track these vital data. And
9 because we lack these quantitative data nationwide, we
10 currently don't know the full extent of the impacts of
11 monetary sanctions on inequality writ large, which is
12 one of the subjects of today's briefing.

13 So we know, though, that from these state
14 level studies that have been done, from qualitative
15 evidence, that criminal justice debt has become a
16 significant force in amplifying the economic,
17 political, and social marginalization of poor people
18 and people of color. And we know that the criminal
19 justice system itself, especially at the felony level,
20 we have much evidence to suggest that there are racial
21 and class disparities in terms of people who are most
22 likely to come in contact with the criminal justice
23 system.

24 And we know that the repercussions of
25 criminal justice debt ultimately touch many aspects of

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1 life. One of the most detrimental consequences of
2 unpaid monetary sanctions is driver's license
3 suspension. Our review of statutes in these states
4 reveals that all of them allow for driver's licenses
5 to be suspended for unpaid monetary sanctions, in at
6 least some cases, whether for total unpaid debt or
7 limited to traffic offenses. This practice is
8 widespread and also directly undermines the goal of
9 people successfully separating from the criminal
10 justice system in that it can restrict access to
11 employment and childcare. In my own observations thus
12 far in the Atlanta courts, as well as interviews with
13 people who have experienced this consequence, having
14 your license reinstated as quickly as possible, even
15 though it incurs a non-negligible subsequent financial
16 cost, is often the first thing on people's minds when
17 it comes to managing their debt.

18 So in the next phases of our research,
19 we're turning our attention to how the law is practiced
20 on the ground and with what effects. We're already
21 underway conducting courtroom observations and
22 interviewing individuals, both people who owe debt and
23 also court actors, judges, prosecutors, et cetera,
24 involved in the administration of justice. And our
25 goal is to rigorously examine these different aspects

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1 of the imposition and enforcement in order to show us,
2 and hopefully all of you, how legal financial
3 obligations affect the efficient, effective, and fair
4 administration of justice, as well as the poverty and
5 inequality of citizens and their communities.

6 Thank you very much.

7 CHAIR LHAMON: Thanks, Dr. Shannon.

8 Dr. Cohen.

9 DR. COHEN: Thank you. Well, the Texas
10 Public Policy Foundation applauds the Department of
11 Justice for considering its role in the execution of
12 criminal justice. However, it is important to recall
13 one of the bedrock principles of the United States and
14 that is of federalism. The originating sovereigns of
15 the federal government, the states retain most of the
16 police powers.

17 This is not to discount the federal
18 government's role in ensuring that the citizens'
19 unalienable rights are not sacrificed for expediency
20 or budgetary necessity. Recent administrations have
21 been quick to place police departments and municipal
22 governments under consent decrees or memoranda of
23 understanding, which, while oftentimes seen as the
24 proximate remedy for correcting abuses, are incredibly
25 costly, fail to outperform similar remedies, and are

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1 antagonistic to the principles of federalism.

2 The assessment of fines and fees by
3 municipal governments, in nearly all cases, would fall
4 outside of the authority of federal oversight absent
5 directly biased enforcement or where
6 disenfranchisement exists. Municipal ordinances and
7 state laws enshrining fines and fees are enacted by the
8 respective legislative bodies and enforced by agents
9 ultimately accountable to elected officials.

10 Budgeting in anticipation of fines and
11 fees revenue is bad public policy. Necessities must
12 be funded by a stable revenue sources, not subject to
13 fluctuations of law, or offending patterns, but it is
14 not unlawful if uniformly enforced.

15 However, there is the matter of
16 transparency and disclosure, as the doctor spoke to.
17 Presently, the only uniform metric on the local
18 assessment of fines and fees is the United States Census
19 Bureau's Survey of Local and State Finances under the
20 "Fines, Fees, and Forfeitures" variable. This single
21 variable fails to convey, however, how much of the
22 reported value is assessed through each mechanism,
23 leaving researchers to speculate on how public policy
24 affects the aggregate amount. More granularity is
25 needed to be actionable at any level of government.

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1 Now, there is one area where the federal
2 government can directly provide more just policy
3 outcomes by abiding by the principles of federalism and
4 that is in the area of civil asset forfeiture.
5 Forfeiture is a mechanism through which the government
6 obtains ownership and control of an individual's
7 property, usually via legal convention following an
8 alleged crime. The property is often held by the
9 government while the case is still pending. This is
10 wholly distinct from seizure, where the state takes
11 possession of the property of evidentiary value or
12 contraband to be used later in criminal proceedings.

13 The most well-known form of asset
14 forfeiture used in law enforcement is criminal
15 forfeiture. That is when the actual property is taken
16 for use evidentially or pursuant to a criminal charge.

17 However, the practice of civil asset
18 forfeiture operates in a more ambiguous area of law.
19 Unlike legal action taken against a person, the
20 allegation of criminal conduct is usually against the
21 property itself and not the owner. This occurs
22 regardless of whether any charge is actually brought
23 against the person. These actions, known as in rem
24 proceedings, accusations against property. This
25 legal fiction is basically that holds that property

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1 ascension and can be held to account for criminal
2 activity. That's why we see such cases as the United
3 States vs. One Pearl Necklace and .39 Acres of Land vs.
4 the State of Texas, et cetera.

5 Perhaps even more costly to liberty and why
6 this bears direct importance here to this panel is
7 through equitable sharing. Equitable sharing is where
8 the federal government provides a parallel venue, even
9 if the actual state that is engaging partially in the
10 seizing, has raised the burden of proof in order to
11 actually make the forfeiture. It provides an end
12 around that gets around any sort of state procedural
13 protections that might have been enacted.

14 Now, granularity in the reporting of fines
15 and fees is necessary and currently not provided
16 through the United States Census Bureau. However, the
17 Department of Justice has no analogous, routine survey
18 administered to localities outside of the Uniform Crime
19 Reports. In such cases, law enforcement personnel who
20 aggregate crime statistics likely will not have the
21 ability to access the information assessed on fines and
22 fees. The Department of Justice should work with the
23 Census Bureau to expand the extant question on the
24 Survey of Local and State Finances to provide more
25 information.

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1 Now more directly, the Department of
2 Justice should stop providing that parallel venue for
3 forfeitures and reform equitable sharing. The
4 procedural standards established by the states should
5 be respected in agreements concerning forfeitures that
6 arise from those states. This has been done
7 administratively by the Department of Justice's
8 prohibition on adoptive forfeitures under the previous
9 administration and should be codified.

10 Finally, the Department of Justice Asset
11 Forfeiture Program's reporting protocol should also
12 delineate between forfeitures that were processed
13 through federal jurisdiction in which there has been
14 an actual party and a conviction as well.

15 With that, I'll take any questions.

16 CHAIR LHAMON: Thank you.

17 MS. NAGRECHA: Good afternoon and thank
18 you for having me.

19 When I last spoke to the Commission, I
20 discussed the family and community impact of fees and
21 fines. Returning here today, one year after the "Dear
22 Colleague" Letter, I have been reflecting on how much
23 has progressed over the last year.

24 Over the last few years, in fact, there has
25 been additional research, writing, litigation, and

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1 advocacy on this topic. And in my opinion, awareness
2 has exponentially increased after the "Dear Colleague"
3 Letter. As CJPP sees it, we are now at the point of
4 beginning to answer the question what's next.

5 When I started this initiative about six
6 months ago, my team and I set out to understand what
7 it is that the recipients of the "Dear Colleague" Letter
8 had done in response. We wanted to learn what reforms
9 were taking place around the country and we surveyed
10 about 30 states to learn that information. That
11 research will be released in a paper in the fall called
12 Recommendations from the Field: Judiciary-Led
13 Criminal Justice Debt Reform and I will preview some
14 of our recommendations today.

15 In the paper we provide policy suggestions
16 based on the hard work happening across the country
17 since the "Dear Colleague" Letter and, in some
18 instances, before.

19 I should also note that our research and
20 our policy suggestions take the position that reform
21 of municipal courts can, in fact, start at the state
22 level, the state level law reform and change, if
23 necessary, because state law can set the basic
24 framework authorizing and constraining practices,
25 create transparency mechanisms and bring reforms to

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1 scale.

2 In a report that CJPP released in September
3 of last year, we also set forward a framework for
4 thinking about reform in this area. We believe that
5 reform has to happen in four categories. The first is
6 conflicts of interest. And so we know that throughout
7 the country court and government actors face pressure
8 to bring in revenue and we must think about how to
9 fundamentally restructure the system. Otherwise, we
10 will breed distrust and harm the public's faith in our
11 system.

12 The second is around ability to pay
13 reforms. Much interest has gone into thinking about
14 this question and that is because of the constitutional
15 mandate that we not jail people before we look into
16 their ability to pay.

17 The third category is poverty penalties
18 and poverty traps. We know that as the fees has
19 increased in the system, so too have the harshness by
20 which we collect these fees.

21 Poverty penalties penalize people really
22 because they are unable to pay. An example is that in
23 Arizona there is a \$20 mandatory assessment to enter
24 into a payment plan. No waiver is available and this
25 payment is prioritized right after restitution.

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1 Poverty traps further entrench
2 individuals into the difficult situations that made
3 them unable to pay in the first instance. Driver's
4 license revocation is one such poverty trap. I will
5 note one example here. In Arizona, nonpayment of a
6 civil penalty, such as a traffic fine, results in an
7 automatic mandatory driver's license suspension and
8 driving on a suspended license is a misdemeanor.

9 Finally, we think that reform in this area
10 requires reform of transparency laws or we need it so
11 that the public can access and request information
12 about how these systems are operating at a broader level
13 and I think these mechanisms will be critical to
14 understanding and assuring against racial disparity.
15 It will also bring transparency to the individuals,
16 themselves, who are often facing fees and fines from
17 across the system in many different places.

18 I will focus, in my remaining time, on sort
19 of mentioning some of the recommendations that we have
20 derived from our research.

21 In the area of ability to pay, we have
22 learned that ability to pay brings out more questions
23 than it answers and we take the position that to truly
24 effectuate Bearden and to reform in this area, courts
25 must inquire into ability to pay up front. And we see

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1 across the country jurisdictions moving towards this
2 principle. The panel before mentioned the minimum
3 operating standards in Missouri and one of the
4 standards includes this practice.

5 Similarly, people's financial situations
6 change quite regularly. As the interviews in the paper
7 that I had written on community impact bring out, poor
8 people are often -- it was often actually quite
9 surprising that people were able to make payments at
10 all. Financial situations and poverty are quite
11 unstable and, therefore, the court should have
12 mechanisms to look, again, at someone's ability to pay,
13 should they represent that they no longer have that
14 ability.

15 Judges must be empowered to waive fees and
16 fines. And interestingly, the National Task Force, in
17 their recently released Bench Card, discusses the
18 ability to pay inquiry at the point of enforcement and
19 suggests that even mandatory fees and fines should be
20 waivable.

21 Jurisdictions need to define ability to
22 pay. And here, there are many different models but I
23 think it is important to note that some presumptions
24 of an inability to pay are important and then very
25 specific guidelines so that individuals are able to put

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1 forth additional evidence.

2 Colorado's recent statutory changes, I
3 believe, point to interesting language that focuses on
4 not that individual's ability to pay but really to also
5 support their family.

6 There are issues of implementation and we
7 have heard from across the country an interest in
8 thinking about to shift judicial culture on this and
9 to get people to do things differently than they have
10 been.

11 On poverty penalties, I would note that we
12 learned in our research that you know we brought forward
13 a serious concern that payment plans are just a way to
14 extend the payment into a very long period of time,
15 where really a poor person is still accountable for the
16 same very large sum. I am somewhat suspicious of sort
17 of budget-neutral payment plan solutions. I have also
18 seen a lot of reforms to address the use of warrants
19 in knee jerk ways. So I think here it is very critical
20 to figure out how courts can feel that they have the
21 tools to address the cases before them, while also
22 avoiding frequent use of orders to show cause and
23 warrants.

24 Finally, I mentioned the importance of
25 keeping data on rates -- and I'm out of time. So, I'll

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1 wait.

2 CHAIR LHAMON: Thank you, Ms. Nagrecha.
3 Mr. Norquist.

4 MR. NORQUIST: Thank you, Chairman and
5 commissioners.

6 I run a taxpayer group and when one uses
7 fees and fines as a method of tax collection, it is
8 abused in all the ways you'd expect it to be and that
9 you see it in other opportunities. Who do you tax?
10 You tax people who are politically vulnerable. Well,
11 someone who's broken the law because they are supposed
12 to pay this ticket and they haven't, fees and taxes get
13 added on to those. And so even though the underlying
14 ticket doesn't sound like, you know \$100, they add on
15 fees for courthouse upkeep and other things. Whenever
16 you're trying to raise money, it's not a bad place to
17 stick a little bit more, if you're an elected official
18 because what are you taxing? You're taxing bad people
19 who have tickets and it tends to just pile up on and
20 on.

21 It specifically targets the vulnerable,
22 people who are politically difficult to talk to, and
23 because a lot of these are traffic tickets, you're kind
24 of taxing people who might be driving through town,
25 which means they might not be able to vote against you

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1 in the next election. So you have taxation without
2 representation, which is why they place a lot of, when
3 they go to give tickets, in certain areas where people
4 are passing through any given town or city because those
5 are the exact people who, when you annoy them, don't
6 vote against you. They don't know who to vote against
7 because you decided to tax the other, the traveler, the
8 stranger, the person who doesn't live under your
9 jurisdiction.

10 And then it gets to worse because you have
11 hidden taxes or secondary effects to the taxes when
12 somebody can't pay the tax -- pay the fee or fine or
13 tax on time. You take away their driver's license,
14 which is actually then, in many cases, taking away their
15 job. I was looking at one study that 40 percent of the
16 people who lost their licenses in New Jersey lost their
17 jobs.

18 Now, I don't think that the guy who gives
19 the ticket says to himself you parked here too long,
20 I think you should lose your job. I don't think they
21 understand the damage they're doing to the person when
22 they hit the -- it was just a ticket. And then on the
23 ticket come taxes. And on the ticket comes losing a
24 license. And on the ticket comes perhaps losing your
25 job, 40 percent in the case of the New Jersey case.

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1 Four million Californians are driving with suspended
2 licenses. I've heard actually even higher numbers in
3 California but that does suggest that people are
4 risking even greater penalties, never mind going to the
5 question of whether you put people in prison for not
6 paying the ticket, and the fees, and the accumulated
7 interest.

8 So it seems to me if you are going to tax
9 people, you should sort of note they should have
10 taxation with representation. You should be clear
11 what the tax is. This is a cascading tax. It ends with
12 losing your job or putting you in prison for a ticket
13 that was supposed to just be a certain amount for a minor
14 facility.

15 This all came to national attention,
16 anyway, with Ferguson, Missouri and you had a situation
17 where 20 percent of that city's budget came directly
18 from fines and fees. This is not the only city in the
19 area that did it. The eight surrounding towns got 30
20 percent of their revenue from the same mechanism. And
21 it not only damages the individuals that they are
22 targeting but what it does to relations between police
23 and citizens when the policeman you see is going
24 to -- how cheerful are you to meet IRS agents? Did your
25 parents ever tell children, you know the IRS agent is

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1 your friend; if you have a problem, go up and ask the
2 IRS agent for directions? When you turn policemen into
3 tax collectors, the Romans found when Turkey revolted
4 that they killed all the tax collectors. They're not
5 popular structures and it's unfair to police to put them
6 in that position.

7 Worse, in Ferguson, in 2010, the finance
8 director is sending emails to the police chief. The
9 finance director is sending to police chief explaining
10 that there are tax shortfalls and we really need to
11 reorient the police resources towards fee
12 collection -- not go out in this area; there's bad
13 traffic; a kid got hit; the cars are not stopping at
14 that stop sign; we need to watch for that; there is
15 speeding going on.

16 This is there's more money to be made
17 there. Unless ticket-writing -- this is the finance
18 director instructing Chief Jackson how to organize the
19 police: unless ticket-writing ramps up significantly
20 before the end of the year, it will be hard to
21 significantly raise collections next year. What are
22 your thoughts? Given that we are looking at a
23 substantial sales tax shortfall, it's not an
24 insignificant issue.

25 Jackson stressed that additional police officers

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1 would allow him to hit a \$1.5 million target. So, we
2 want more police to protect citizens, to make the world
3 safer, to keep the traffic -- no, no. Because if you
4 give me more cops, I'll get you \$1.5 million more in
5 ticket dollars and we're looking at different shift
6 schedules which will place more officers on the
7 street -- that sounds good -- comma, which in turn will
8 increase traffic enforcement per shift.

9 So the police are being misdirected to
10 become not what we think police are supposed to be but
11 tax collectors.

12 It is interesting that when Missouri
13 looked at this with all the data that the Justice
14 Department made available, they had two fixes. It's
15 not what a lot of people thought the lessons of Ferguson
16 were going to be. Step one is they limited how much
17 any city or municipality can get in fines and fees.
18 They saw the centrality of what this did to the entire
19 city's relationship with each other and they put the
20 cap was lowered from 30 percent to 20 for most of the
21 state but to 12.5 percent for Saint Louis County. And
22 they went in and started to reduce the actual fines that
23 you could put in for a first time offense.

24 I think they were focused on a key issue
25 there and there is some -- I would add to that the other

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1 reason that I skipped over, there were more outstanding
2 traffic citations in Ferguson prior to the shooting
3 than there are citizens in Ferguson. This was not
4 a -- this was a massive, significant, deep problem,
5 continuing problem. Hundreds of people would show up.
6 There are only two days that you could come in and do
7 this during the course of a month and pay your fees.
8 There would be hundreds of people in line. If you
9 didn't get to the line in time, you had to come back
10 and then, if you didn't make it or you had to work, or
11 you couldn't make it on time, then all of a sudden the
12 fees for being late started piling up as well.

13 So, they made it difficult, not easy, to
14 pay even the fines and taxes that they were collecting,
15 all of which suggests this is a lousy way to raise
16 revenue and it's distortive in all sorts of ways and
17 particularly damaging to a city and the citizens in a
18 city like Ferguson, which, unfortunately, became a
19 classic case of what not to do.

20 CHAIR LHAMON: Thanks very much, Mr.
21 Norquist.

22 Mr. Levin.

23 MR. LEVIN: Sure. Well thank you, so
24 much.

25 Marc Levin with Texas Public Policy

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1 Foundation and Right on Crime.

2 There are some 10 million Americans who owe
3 more than \$50 billion in criminal justice debt. And
4 like Grover, we're a conservative organization but we
5 feel that this is an area where people can work across
6 the spectrum to build a better system.

7 I actually drafted a resolution that was
8 adopted by the American Legislative Exchange Council,
9 which is the leading group of conservative state
10 lawmakers that you may be familiar with. And the
11 following framework, which I am going to outline is
12 based on that resolution that was unanimously adopted.
13 And first and foremost, fines and fees must be
14 reasonable, transparent, and proportionate, and not in
15 conflict with the goals of improving public safety,
16 reducing recidivism, ensuring victims get restitution,
17 which is very important because oftentimes the first
18 money goes to the government, not the victim in cases
19 involving property offenses and so forth.

20 Many fines, of course, are not reasonable.
21 In Texas, our penalty, it is a state felony for less
22 than a gram of drug possession. The maximum fine is
23 \$10,000. That's a lot of money.

24 Now, one of the other issues is that this
25 can often prevent people from getting into a diversion

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1 program because of the cost of actually the fees for
2 going into some alternatives to prison, such as
3 treatment programs, which we would want. And also
4 people who are poor often cannot afford lawyers who have
5 the right connections with the prosecutor who could put
6 their time in to get that diversion sentence.

7 Now, this contributes to unnecessary
8 incarceration. Basically, incarceration for
9 inability to pay is found to have caused about 20
10 percent of the people -- 20 percent of the people in
11 local jails are there due to an inability to pay.

12 There was a November 16th report that I
13 would refer you to by the Massachusetts State Senate
14 Committee on post-audit and oversight. They found in
15 just three counties more than 100 people in jail simply
16 because they didn't have money. There was a man who
17 owned more than \$1,000 in fees from an old drug case
18 and was jailed for 36 days, even though he was homeless
19 and slept in a shelter the night before his court
20 appearance. These are the kinds of examples.

21 Now, this also distorts law enforcement.
22 It causes decisions to be made on grounds other than
23 public safety, as we have heard in earlier testimony.

24 So, let's look at some of these solutions.
25 We ought to have a sliding scale in terms of the statutes

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1 that deal with fines and fees. In Europe, they use day
2 fines, which is proportionate to what the person would
3 earn in a day is how much they would have to pay.

4 Also the first funds collection should go
5 to restitution, in cases of property crimes, rather
6 than to government entities.

7 The offender's ability to pay should be
8 taken into account, including arranging realistic
9 payment plans, as well as community service in lieu of
10 fines in some instances.

11 One of the other issues is people paying
12 fines and fees who are on probation, as well as parole.
13 And one of the ways to address this is to have early
14 discharge of people whose conduct has been exemplary.
15 Many jurisdictions have moved in that direction, which
16 also frees up supervision officers to focus on the
17 people that actually may be a problem.

18 We also need full transparency about where
19 the money's going that's collected and at what
20 percentage that is, of various budgets and
21 jurisdictions.

22 Also, failure to pay should not be grounds
23 for revoking somebody's probation or parole. Clearly,
24 incarceration should only be used as a very last resort,
25 once the person is -- we're talking about fine-only

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1 offenses, if they fail to respond to repeated attempts
2 to contact them and refuse to make arrangements for a
3 payment plan or other means to discharge the debt.

4 One of the things is also, looking at some
5 of these misdemeanors, in Ferguson there was someone
6 who couldn't pay a fine for an overgrown lawn. That
7 was a misdemeanor. That shouldn't even be a crime to
8 begin with. It ought to be a civil matter, which takes
9 us out of the whole notion of someone going to jail
10 because they can't pay.

11 Also, family members. There is research
12 showing family members pay about two-thirds of -- these
13 are financial obligations owed by people who are
14 incarcerated. But I think it's unfair to assume that,
15 for example, a parent should be obligated to pay a fine
16 levied against a juvenile, that each person ought to
17 be responsible for their own conduct.

18 I think one of the things I'll also point
19 to, and this is in my written testimony, but we went
20 through each city. You heard some of the state
21 information before but this goes by city and per capita
22 fines, fees, and forfeiture revenue collected adjusted
23 by cost of living. And Washington, D.C. was number
24 one, \$227 per person collected in fines, fees and
25 forfeitures.

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1 Now some of the lowest cities, like
2 Raleigh, and Charlotte, and Greensboro in North
3 Carolina. And why is that? Well, it turns out North
4 Carolina has a state law that local jurisdictions can't
5 keep the fines, fees, and forfeitures they collect.
6 They have to send them to the state. Well, low and
7 behold, zero. It's actually zero in Greensboro and
8 Raleigh collected at 21 cents in Charlotte per capita
9 versus \$227 in Washington, D.C. So, that tells you
10 something.

11 Now let me also say that I think that we
12 have to look at how this affects policing and community
13 relations. When so many people have warrants in
14 Ferguson, they average three warrants per household,
15 and obviously that's been cleaned up somewhat with the
16 state law, but all these people have warrants and
17 they're mostly for traffic, overgrown lawns, these
18 kinds of things, they're not going to report serious
19 crimes to police. And that makes us a lot less safe.

20 There was an interesting study that just
21 came out of Milwaukee, a slightly different issue, but
22 this found after TV reports of police shootings, and
23 these dealt with African American men typically, there
24 was in these communities, these high-crime
25 communities, there was a lower percentage of crimes

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1 reported. And that demonstrated that distrust of the
2 police, whether it's right or not, can reduce the rate
3 at which people report crimes.

4 Similarly, if someone has a warrant for
5 them for traffic fines, unpaid fines and things,
6 they're going to be a lot less likely to report crime
7 and because they distrust the police, as Grover said,
8 because they see them as money collectors.

9 Now, let me just conclude by focusing a bit
10 on this issue of driver's license suspensions. Now,
11 we're a very short distance from Virginia, which I think
12 is the worst in the whole country. They have 647,000
13 drivers suspended solely for failure to pay. One of
14 those is Kimberly Hopkins, a U.S. Army veteran, lost
15 her driver's license for unpaid court costs and fees
16 relating to speeding tickets, bald tires. And the
17 court said no, you can't have a payment plan. And one
18 of the worst things in Virginia is it's
19 administratively done, these suspensions. So there's
20 no discretion on the part of the judge.

21 And so this is automatically done if a
22 person misses a single payment, regardless of whether
23 they have any money.

24 In Texas, we have a huge problem with the
25 driver responsibility program, which we're trying to

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1 repeal. If you have three moving violations within a
2 year, or an arbitrary 12-month period, your license is
3 suspended; you have to pay thousands of dollars to get
4 it back.

5 Now the real-world consequences of this
6 are significant. There was a study in New Jersey, 42
7 percent of the people who had their driver's license
8 suspended lost their job. And so they're actually
9 becoming more of a risk, more unstable than if we had
10 done this.

11 So, I will just conclude by telling you
12 that we believe in free markets. It's great that
13 really wealthy people can buy nicer things but justice
14 and liberty shouldn't be for sale. We shouldn't put
15 a price on it. Whether somebody's in jail or not
16 shouldn't depend on how much money they have and that's
17 a big problem when we say that you're going to jail but
18 you can't afford to pay a fine or a fee.

19 So thank you very much.

20 CHAIR LHAMON: Thank you, Mr. Levin.

21 Professor Sobol.

22 PROFESSOR SOBOL: Thank you. My name is
23 Neil Sobol and I'm an associate professor at Texas A&M
24 University of School of Law. The viewpoints I express
25 today are my own. I recommend that policymakers borrow

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1 the framework created to address abusive practices in
2 the collection of consumer debt to confront abuses in
3 the collection of criminal justice debt.
4 Specifically, I recommend that policymakers adopt
5 remedies in three broad categories that are used in the
6 consumer debt context, namely, setting out prohibited
7 practices, establishing mandatory best practices, and
8 encouraging the Department of Justice to coordinate
9 enforcement, education, and outreach efforts.

10 Building on my practice experience in
11 consumer protection and bankruptcy law, my scholarship
12 focuses on addressing collection abuses in both the
13 civil and criminal justice arenas. By applying
14 consumer law concepts, I provide another perspective
15 to addressing criminal justice debt. My hope is that
16 my efforts will be useful not only to my academic
17 colleagues but also to attorneys, judges, legislators,
18 regulators, law enforcement, judicial personnel, and
19 defendants. As a result, I am delighted to share my
20 thoughts with the Commission today.

21 My testimony will focus on issues that I've
22 discussed in a forthcoming article *Fighting Fines &*
23 *Fees: Borrowing from Consumer Law to Combat Criminal*
24 *Justice Debt Abuses*. That's forthcoming in the
25 *Colorado Law Review*.

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1 I assert that the rationale that led to the
2 enactment of the federal Fair Debt Collection Practices
3 Act, the FDCPA and the creation of the Consumer
4 Financial Protection Bureau, the CFPB, to combat
5 consumer collection abuses parallels the reasons why
6 a federal statute should be adopted to help the DOJ
7 coordinate attack against abuses related to criminal
8 justice debt.

9 Alternatively, if a federal statute is not
10 adopted, the DOJ should adopt guidelines and coordinate
11 enforcement, education and outreach with state and
12 local authorities. A separate division within the DOJ
13 could be tasked with these functions.

14 The FDCPA became effective in 1978 and was
15 enacted in part due to the dramatic growth in debt
16 collection abuses that accompanied the growth of
17 consumer debt. Just as in the last 30 years, the
18 criminal justice system has witnessed a dramatic
19 increase in criminal justice debt, consumer debt had
20 also increased at an exponential rate. Moreover, just
21 as mass supervision has created an explosion in the
22 prison, jail, probation, and parole industries, growth
23 in consumer debt has been associated with an expansive
24 growth in collectors, including the creation of a
25 debt-buying industry that now annually purchases over

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1 \$100 billion in consumer debt.

2 In enacting the FDCPA, Congress issued
3 findings about the use of abusive, deceptive, and
4 unfair debt collection practices. Congress found that
5 those practices contributed to personal bankruptcies,
6 marital instability, loss of jobs, and invasion of
7 privacy. These same concerns are shared by
8 individuals with criminal justice debt. But not only
9 do they have these concerns, but they also face the
10 creation of a criminal record, denial of welfare
11 benefits, suspension of driver's license, arrest, and
12 even incarceration.

13 As further support for the Consumer Act,
14 Congress acknowledged that existing laws and
15 procedures were inadequate to protect consumers.
16 Collection abuses were widespread, national problems,
17 and states had failed to provide adequate legislation,
18 regulation, or enforcement. Additionally, common-law
19 remedies were not effective, as they were limited to
20 a case-by-case method and focused on compensation,
21 rather than prevention.

22 Similarly, the current approach to
23 criminal justice debt that fails to adequately attack
24 a widespread national problem. By focusing on specific
25 actions against individual municipalities, typically

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1 by asserting constitutional violations, the current
2 system also tends to rely on a piecemeal compensatory
3 approach, rather than a more comprehensive preventive
4 approach.

5 Additionally, the CFPB is used to
6 administer the Consumer Act, promulgate regulations,
7 and helps coordinate enforcement, education, and
8 outreach efforts.

9 Together, the FDCPA and the CFPB provide
10 a model for addressing abusive debt collection. The
11 remedies they provide fall into three general
12 categories, prohibited practices, required actions,
13 and enforcement, outreach and education.

14 First, the FDCPA sets forth general
15 restrictions on the actions of collectors of consumer
16 debt. For example, the Act prohibits harassment,
17 abuse, false, or misleading representations, as well
18 as unfair, unconscionable methods of collecting debt.
19 Similarly, public and private actors involved in the
20 collection of criminal justice debt that should be
21 prohibited from discriminatory assessment and
22 collection, harassing or abusive behavior, and false
23 or misleading representations.

24 Moreover, the Consumer Act provides
25 specific examples that violate these general

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1 prohibitions, including threatening violence,
2 repeatedly or continuously calling individuals,
3 falsely asserting that communications are from legal
4 counsel, threatening arrest or imprisonment, and
5 collecting unauthorized amounts.

6 Further, the Act establishes specific time
7 and place restrictions on communications with alleged
8 debtors, as well as restrictions on communications with
9 third parties.

10 Just as the FDCPA enumerates specific
11 violations, legislation should also prohibit specific
12 activities by collectors of criminal justice debt.
13 Some examples we heard today are restricting actual or
14 threatened use of incarceration for failure to pay
15 fees; providing that actual or threatened use of
16 incarceration for failure to pay fines should only be
17 done if there is a meaningful ability to pay hearing.
18 Additionally, using systems that allow for poverty
19 penalties, ticket quotas, and cash bail without taking
20 into account the ability to pay.

21 Secondly, not only does the FDCPA prohibit
22 abusive actions, but also it establishes mandatory
23 practices for collectors of consumer debt. For
24 example, the Act establishes a system for validation
25 and verification of debts to provide notice and

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1 information to help prevent collection from the wrong
2 people or for the wrong amount. Interestingly, the
3 validation notices are often referred to as
4 Mini-Miranda warnings.

5 Areas, where required, or best practices
6 should be established in the context of criminal
7 justice debt include the following: providing
8 defendants notice of charges, procedures, and their
9 rights; conducting meaningful ability to pay hearings;
10 complying with standards and procedures for assessing,
11 determining, and applying criminal justice debt; and
12 conditioning employment of private companies upon
13 compliance with established standards, reporting
14 requirements, and approved fee schedules.

15 Finally, the CFPB has established an
16 online system for collecting and responding to
17 complaints and works with federal, state, and local
18 authorities to investigate and enforce violations and
19 provide outreach and education programs. The DOJ
20 should do similar functions. In fact, a lot of things
21 they're doing right now are similar.

22 Examples of things to do include
23 establishing an online complaint database;
24 establishing fact-gathering procedures and requiring
25 reporting and collection of data; offering incentives

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1 and grant programs to states and municipalities;
2 coordinating enforcement, education, and outreach
3 activities with state and local authorities, including
4 nonprofit and public interest groups; and working with
5 state and local authorities to establish standards and
6 procedures for the following: meaningful ability to pay
7 hearings; assessing and determining dollar amounts for
8 bails, fines, and fees, including reviewing existing
9 and new charges; creating revenue caps; and employing
10 and supervising private companies involved in the
11 assessment and collection of criminal justice debt.

12 The problems of abusive assessment and
13 collection of fines and fees in the criminal justice
14 arena are real problems with severe consequences, often
15 more severe than the problems associated with consumer
16 debt. To combat these abuses regarding criminal
17 justice debt, we should learn from and, where
18 appropriate, borrow from what we've done with consumer
19 debt abuses.

20 Thank you.

21 CHAIR LHAMON: Thanks very much,
22 Professor Sobol.

23 I'll open the time now to my fellow
24 commissioners for questions.

25 Commissioner Kladney.

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1 COMMISSIONER KLADNEY: Thank you. I
2 think I have two questions I'd like to address to the
3 entire panel.

4 One is Mr. Levin, I was quite surprised.
5 You said 647,000 bench warrants -- suspended licenses
6 and I would assume bench warrants in the State of
7 Virginia. And there would be many more because there
8 is other misdemeanor offenses. And I'm speaking about
9 misdemeanors here, not felony warrants or things like
10 that.

11 If there was reform in terms of what you
12 all have been talking about, should there be a review
13 of these warrants or a warrant holiday like there are
14 tax holidays for corporations and things like that?

15 MR. LEVIN: Yes, no that's a great point.
16 Some jurisdictions -- actually there is a federal
17 fugitive program for people to come forward, which has
18 had really good results. Obviously, it doesn't cover
19 everything and it shouldn't but some jurisdictions do
20 now do kind of like the library, if you had a book
21 overdue for years, that you can go and return it.

22 I think that's an excellent practice to let
23 people know that you can come in and work this out,
24 you're not going to jail. And actually jurisdictions
25 end up collecting more from it.

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1 I mean one of the things we haven't talked
2 about is -- and we're actually doing some research with
3 the Brennan Center on this is the cost of collecting
4 all this money. I mean it looks like this huge windfall
5 on the surface for law enforcement and local
6 governments, but once we actually find out, many of them
7 have contracts with private entities to do collections,
8 others employ people in their own agencies. So when
9 you add up those costs, it turns out that it may not
10 be such a financial benefit and there is, basically,
11 at the end it's kind of a draw but some people who do
12 the collections end up coming out pretty well.

13 COMMISSIONER KLADNEY: Anybody else?
14 Everybody agrees?

15 Okay and my second question is when it
16 comes to reform, we heard from our first panel today
17 all the different jurisdictions, all the different
18 requirements in the jurisdictions, all the different
19 approaches that they have. Would it be of assistance
20 if there was a like a uniform act in terms of collecting
21 or assessing fines and fees that states and
22 jurisdictions could look at and adopt those parts that
23 they like and not adopt those parts that they don't like
24 so that these jurisdictions would have at least
25 something, some background to go by?

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1 Yes, sir.

2 PROFESSOR SOBOL: I'll start. I know
3 there's going to be disagreement over that. But that's
4 essentially what I am proposing is that something like
5 a federal act, at least with minimum standards, be
6 established.

7 The Fair Debt Collection Practices Act
8 does that in the consumer context. And after that was
9 passed, in fact, what happened was that many states
10 adopted similar provisions. Other states adopted even
11 stronger provisions. So I think it sets an example
12 there and sets a floor for that to occur.

13 I know there's going to be a lot of push
14 back on federalism issues on whether that can be done
15 or not, or whether it should be done or not, but I think
16 establishing at least some minimum guidelines is a good
17 start.

18 COMMISSIONER KLADNEY: Well, let me make
19 it clear. When I was talking about a uniform act, I
20 was just talking about the uniform acts that are adopted
21 by not governments but by jurisdictions.

22 MR. LEVIN: Sure. Yes, of course we
23 already have this resolution through ALEC and we could
24 take the next step and have an actual act model
25 legislation. And certainly there's National

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1 Conference of State Legislatures, other groups that I
2 think it would be very helpful and then states could,
3 obviously customize for their own purposes. But part
4 of it is this is such an overwhelming issue because
5 there's so many statutes, both local and state that are
6 responsible for this that perhaps it can seem
7 overwhelming to an individual legislator to take it up
8 without having that kind of framework.

9 MR. NORQUIST: One of the advantages of
10 federalism is that you've got 50 local governments and
11 many more alternatives. And so while it's nice to have
12 a model example, I'd rather take an example that's
13 working somewhere.

14 Take a look at some of the reforms in
15 Missouri and say -- and share those with other states
16 and say these are pieces to the puzzle. The problem
17 is if anyone -- I have all the answers in my one bill
18 and you must eat this entirely. One, it's probably not
19 true. But there are pieces that work. There are some
20 states, and cities, and towns that are doing something
21 that works very well and other things that aren't
22 working well. And I think it is probably best just to
23 have them compare with each other and bump into each
24 other and have arguments about how they compare.

25 Truly stupid ideas can only be done at the

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1 national level. But because if you do something
2 particularly dumb in Vermont, it's hard to sell it to
3 New Hampshire and Massachusetts. But in Washington,
4 you can impose it top-down and nobody knows what
5 happened. It could be anything. It could be the
6 weather that went wrong, not your bill.

7 So the more you go sideways, I think the
8 better off you are but we could hold up those measures.
9 And if somebody had a good amnesty legislation, I'd go
10 further than that. I'd do an amnesty on some of those
11 questions about licensees because it's just gotten
12 ridiculous and rethink whether you take away somebody's
13 license because you're mad at them.

14 Do you really mean that not paying the
15 ticket, the punishment should be your job, your
16 mobility? That seems to be awfully harsh. I'm not
17 sure that any legislator would have voted for well, if
18 you park too long here, you lose your job but that's
19 what they're doing when they start that ball rolling
20 down the hill.

21 COMMISSIONER KLADNEY: I understand what
22 you're saying. I mean there's 18,000 police
23 departments in the country. So, there's lots of
24 municipalities.

25 Anybody else?

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1 DR. SHANNON: Yes, I could add a few things
2 from my research across the eight states. And this is
3 maybe just augmenting what others have said but I can
4 see three challenges to this kind of an effort at reform
5 or really any efforts at reform.

6 First is that we found across these eight
7 states that the statutes and rules governing LFOs are
8 very complex, multi-layered, and contained in some
9 states across the entire legal code, not just the
10 criminal code. So, in Georgia it's in the criminal
11 code. In California, it's across the entire legal
12 code. You can find legal financial obligations
13 embedded in things you wouldn't think are related at
14 all to criminal legal financial obligations.

15 So, that's very complicated, speaking of
16 federalism.

17 Second, the rationale. Someone asked
18 earlier on a panel what are these things for; why are
19 we doing them? And you know when you think about fines,
20 we think about the more perhaps a deterrent effect or
21 a punishment, that's what the fine is for.

22 Restitution, though, really has
23 historically -- and that's not something we've talked
24 much about today, but has more of a restorative element
25 of trying to restore the harm to the person that was

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1 harmed in the crime.

2 These other things like costs, fees,
3 surcharges, what is motivating those? Is it revenue
4 generation? Is it recouping the cost of system
5 functioning?

6 So I think some fundamental philosophical
7 questions would have to be answered about what are each
8 of these elements for and what are we trying to do with
9 them.

10 And then third, there's a diverse group of
11 stakeholders.

12 So many different stakeholders are
13 involved in these policies and processes, not to
14 mention some of these funds that are being collected
15 and surcharges and others are going to things that are
16 not related to the criminal justice system. And we
17 heard on the earlier panel that some groups are starting
18 to freak out a little bit in certain states. If less
19 money is being collected, they are not being funded
20 anymore for things that certainly we value as a society
21 but should that funding be coming from this source?

22 So these are some very complicated
23 questions that would be involved in that type of a
24 reform effort.

25 MS. NAGRECHA: If I may just add -- so I

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1 think I don't see the harm in sort of setting forth bare
2 minimum standards, which it seems that we are in many
3 places probably quite far from, given that people are
4 routinely jailed on nonpayment issues. However, I
5 worry a little bit about a uniform act, or code, or
6 something of that sort at this point.

7 One, I worry a little bit about losing
8 sight of the kind of structural questions here. And
9 so for example you know to the extent that we have dozens
10 of fees and surcharges on the books in any given state,
11 that upward pressure is going to exist and you know I
12 worry that in sort of getting into the minutia of the
13 definition of ability to pay we may sort of take away
14 attention from kind of those structural questions and
15 maybe sort of embed them into the system even more. And
16 so I think we have to have some attention to that.

17 I also have some concern because you know
18 in some areas, I don't think that the policies that are
19 being considered currently really may be pushed far
20 enough, so that we have the model that would really
21 probably be the things that are most effective. And
22 I return here to the example of warrants and the use
23 of warrants on nonpayment.

24 And so I think there are jurisdictions
25 that, for example, have decided that warrants cannot

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1 be issued on a nonpayment but that you'd first issue
2 a summons for an order to show cause and then a warrant
3 can only issue upon a failure to appear. I don't think
4 we know yet that that really fully addresses that
5 problem of a churn of people coming into the system on
6 warrants really related to their poverty.

7 And I think we're going to really have to
8 be creative to figure out exactly how to reduce that
9 churn into the courts that that harms people's lives.
10 And I don't know that we have those models yet.

11 I will also briefly mention, and Thomas
12 sort of queued this in the last panel, we have a 50-state
13 web resource that will be available in beta form March
14 31st and then sort of getting perfected in the months
15 after that, where we've collected what we hope is all
16 of the statutory law at the state level that governs
17 fees and fines.

18 And that includes authorization for the
19 actual financial penalties but also the enforcement
20 mechanisms, the laws that set forth the structures of
21 the court, including funding and sort of supervision
22 issues, the collections infrastructure, the extent to
23 which private entities are involved in that, and then
24 the transparency laws of the state.

25 CHAIR LHAMON: Thank you.

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1 Mr. Norquist, you look like you had
2 something you want to say.

3 MR. NORQUIST: Yes. One the question of
4 some of these fees and legal financial obligations
5 being hidden in different parts of the law, Texas has
6 a good, maybe a rule that the legislature has enforced
7 on itself, if you're going to stick a tax in a bill,
8 you know it could be 20 pages, 50 pages, if there is
9 any tax in it anywhere, you have to put it in bold in
10 the first sentence before you get to the rest of the
11 bill.

12 It would seem to me that beginning to ask
13 to get legal financial obligations, also that sort of
14 status in a state would at least end the process of
15 hiding -- sticking additional ones in that people are
16 voting and not necessarily aware that that's what
17 they're voting for.

18 Because the idea that you have to put it
19 there in a lot of cases, we'll just take it out, or
20 there's a very good reason for this and everybody should
21 know. We're very proud we're doing this. We want
22 everyone to see it, so it's right here.

23 It at least begins to get transparency on
24 how much is going on.

25 CHAIR LHAMON: Thank you.

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1 Commissioner Yaki, it sounded like you may
2 have a question. And if you do, you're on mute.

3 COMMISSIONER YAKI: I am on mute. I am
4 formulating a question. I will have one in a second,
5 if someone else wants to go first.

6 CHAIR LHAMON: Okay.

7 Commissioner Narasaki?

8 COMMISSIONER NARASAKI: Thank you, Madam
9 Chair. I have a couple of questions.

10 So we've talked a lot this morning about
11 the states that are moving forward to address these
12 challenges. I'm wondering what are the states that
13 aren't doing anything yet and what can the Department
14 of Justice do, if anything, to try to change that? Or
15 is everybody, are all 50 states plus the District of
16 Columbia addressing the issue?

17 MS. NAGRECHA: If I could jump in.

18 So, as I mentioned about six months ago I
19 started at the Criminal Justice Policy Program and we
20 really needed to understand that question to figure
21 what it is that we were going to do. And so we sort
22 of did a survey I think and hit about 30 states and I
23 would say the vast majority weren't really doing
24 anything. And so you sort of heard the same examples
25 from the same handful of states that were moving

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1 already. But I do think that even in the last -- over
2 the last six months that that has shifted.

3 So for example, when I started I had
4 identified Arkansas as a state that wasn't doing that
5 much yet and there had been a lawsuit there and so,
6 obviously, there was some attention on the issue. And
7 they then, since then have created a judicial council
8 to look at this issue. And if I could actually just
9 read a quote from the judge who's heading that council,
10 she said the DOJ letter had a profound impact on every
11 judge that read it. For those judges that proceed to
12 these issues prior to the letter but were unable to
13 generate enthusiasm for change, the letter provided a
14 perfect platform for review and modification of
15 policies and procedures. The letter directly impacted
16 the decision of the Arkansas Judicial Council to form
17 our joint committee and the members of the committee
18 have expressed appreciation that the DOJ use the "Dear
19 Colleague" Letter to raise awareness throughout the
20 judiciary of these issues, rather than waiting until
21 complaints and lawsuits were filed.

22 COMMISSIONER NARASAKI: So how many
23 states, guesstimate --

24 MS. NAGRECHA: Yes.

25 COMMISSIONER NARASAKI: -- are not doing

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1 anything yet? Or you can answer it the other way, are
2 doing something.

3 MS. NAGRECHA: Yes, maybe I'll submit my
4 materials with an answer to that.

5 COMMISSIONER NARASAKI: Okay. And
6 thoughts about what the Department of Justice could be
7 doing to try to change that.

8 The second question I have is for Mr.
9 Norquist. It's good to see you. Usually, I don't hear
10 you saying anything nice about federal government and
11 you were very appreciative of what the Department of
12 Justice had done in this area.

13 So I'm interested in what you would tell
14 the new administration about what are the programs that
15 Department of Justice and actions that the Department
16 of Justice has been taking in this area, what should
17 be sustained and are there things that they should be
18 doing that they're not yet doing.

19 MR. NORQUIST: Well, I thought the study
20 in the specific case of Ferguson was extremely well done
21 and there were a whole bunch of various lessons to be
22 drawn out of that. I mean they had a lot of data and
23 they put it together as to what was driving this
24 problem. And there were a whole bunch of theories that
25 people went into this with. So I thought they did an

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1 extremely good job of that. I'm sure there are other
2 parts of the Department of Justice that are useful but
3 that's not my area of expertise.

4 MR. LEVIN: I mean I think the key is to
5 when it comes to the issue of federalism is making sure
6 we're clear about what the kind of linkage is why the
7 federal government is intervening. And I do think
8 there are issues here involving both equal protection
9 and due process that are in the U.S. Constitution that
10 do provide some means for the federal government to be
11 involved.

12 I think, though, that's it important to
13 make sure that we're not saying that every state and
14 local policy that's just bad on policy grounds,
15 necessarily, calls for the Department of Justice to
16 intervene. So there has to be articulable reason why
17 it presents a problem under the U.S. Constitution.

18 And I think in some cases, as in Ferguson,
19 it certainly there was strong evidence of that.

20 MR. NORQUIST: It could be a good example
21 to the states, many of which have been misbehaving on
22 civil asset forfeiture and stealing people's cars and
23 money when there's been no conviction and where, in some
24 cases, there have been no charges. So, if the federal
25 government would stop doing that themselves, it might

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1 shame the states into knocking it off.

2 COMMISSIONER NARASAKI: And I had a
3 question about forfeitures, even though this isn't
4 about. But I'm wondering has there been --

5 MR. NORQUIST: It's actually very
6 similar. Forfeiture --

7 COMMISSIONER NARASAKI: Right. Right.
8 No, I agree with you. It's a very close cousin.

9 MR. NORQUIST: Taxing people who are
10 vulnerable, who are driving through town --

11 COMMISSIONER NARASAKI: Yes, and I join
12 you as being opposed to it.

13 But my question is on the forfeiture, have
14 you been looking at that in terms of whether there is
15 any kind of racial disparities or is it just like bad
16 across the board?

17 MR. NORQUIST: It's bad for the government
18 to steal people's stuff and I wouldn't be surprised if
19 there are racial disparities but it's bad.

20 COMMISSIONER NARASAKI: I was just
21 wondering if there was data that --

22 MR. LEVIN: Well, there's a case in Texas,
23 a town several years ago, where everyone who was black
24 driving through got their stuff taken, all the money,
25 everything they had when they got a speeding ticket,

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1 pulled over for any reason. It was covered across the
2 country.

3 But one of the interesting things is the
4 commonalities is the inability of people without
5 resources to fight back. And in fact when your stuff's
6 wrongfully taken or your license is wrongfully
7 suspended, or you are wrongfully convicted, if you
8 can't afford to hire a lawyer, and of course, with asset
9 forfeiture, you're not -- there's no right to counsel.

10 But in a lot of places to challenge even
11 these municipal fines, you have to post bail. You have
12 post an amount to appeal. And if you don't have the
13 money to appeal, you can't appeal. And so I think
14 that's a real due process issue.

15 CHAIR LHAMON: I think Mr. Cohen wanted to
16 respond as well.

17 DR. COHEN: Yes, and I would just add to
18 what Mr. Norquist and what Mr. Levin had said is that
19 when it comes to the issue of forfeiture in and of
20 itself, the very questions that you asked, ma'am,
21 simply cannot be answered because we don't have enough
22 transparency into the process.

23 I can speak for Texas that all we have or
24 all the local governing agencies have to do there is
25 just report in aggregate to the Attorney General and

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1 the Attorney General then has to post online that
2 aggregate.

3 There has been some research on it. Mr.
4 Slayton's organization, the Office of Court
5 Administration, took a look at policy and some of the
6 dubious incentives. I believe that was towards the end
7 of 2015.

8 But under federal government, even where
9 we see the equitable sharing payments that were made
10 to the states, we have no idea about the granularity
11 of the supposed offender, the supposed situation that
12 led to that particular seizure and then ultimate
13 forfeiture. We just simply don't have that
14 information. I think that that, to Mr. Norquist's
15 point would be a great way of actually shining some
16 sunlight on that issue itself.

17 COMMISSIONER NARASAKI: If I could just
18 get back to the original question before I diverted us.

19 So do you think like the Department of
20 Justice's technical assistance is important? Is the
21 grant program that they initiated, is that something
22 that should be continued expanded? I'm just
23 interested in hearing your thoughts.

24 DR. COHEN: Well, I'd say from a
25 federalism standpoint, there is a lot of grant programs

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1 in the Department of Justice say through the Byrne
2 Grants or even another form of Justice Assistance
3 Grants that it is not uncommon for there to be certain
4 standards on it. And if that case were something as
5 minimal as data reporting standards, or even compliance
6 centers in terms of legal procedure to enact these
7 fines, fees, or forfeitures, either way, I think there
8 is a broad spectrum. I think in that spectrum there's
9 room for disagreement but I think that might be one way
10 that without new appropriation, there would be a way
11 to actually start getting at the roots of these issues.

12 CHAIR LHAMON: Vice Chair, do you have a
13 question?

14 VICE CHAIR TIMMONS-GOODSON: Yes, with
15 the mention of federalism and talking about state
16 versus federal action and even with the argument that
17 we're calling upon folks to fight this injustice, folks
18 that don't have resources, I was wondering if any of
19 you have any concern about the fact that these folks
20 are having to pay to access a branch of government to
21 exercise their constitutional right. Our courts are
22 designed in order to resolve disputes and so here with
23 many of these costs, I think there is an argument that
24 can be made that they're being required to pay for the
25 use of the judicial branch of government to which

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1 they're entitled to come in and to call upon for
2 redress. I'm wondering if you have any thoughts or
3 concerns in that connection.

4 MR. LEVIN: Well you know I think maybe
5 there is a distinction to be made. I mean certainly
6 the idea that you have to pay to appeal and if you don't
7 have the money you can't appeal your conviction, I think
8 that's totally wrong.

9 Then you take on the other hand something
10 like probation fees. I mean in Texas and other states
11 are similar, over half the money for probation comes
12 from probation fees and it creates a lot of problems,
13 including the incentive to keep people on probation
14 longer than necessary because you have got to get the
15 fees from the people that are exemplary to offset the
16 cost of supervising the people who can't pay who need
17 more supervision. And we've had probation directors
18 admit this in testimony. It's not a secret.

19 Now philosophically, I don't know that
20 there's anything wrong with those who can pay
21 contributing because of their conduct that their on
22 probation and otherwise, the taxpayers would have to
23 pay all of it. And restitution for victims, I mean that
24 ought to be the number one thing we're focused on.

25 VICE CHAIR TIMMONS-GOODSON: But what

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1 about the fact that perhaps a portion of the costs are
2 going to constructing the courthouse or are taking care
3 of other criminal or civil justice matters? That's
4 more of what I'm getting at.

5 MR. LEVIN: No, you're right. Some of the
6 money is diverted to totally unrelated things. For
7 example, in Texas there was a fee on all bail bonds that
8 goes to prosecutor longevity pay. And again I mean
9 these are things that we ought to be funding out of
10 general revenue. And you're making it more expensive
11 for people to bail out of jail so more people are in
12 jail.

13 So, I think that the -- now, in civil cases,
14 there's fees, too, that cover the courthouse and things
15 like that. So people, you kind of have to say you have
16 like toll roads, which is a user fee and that's what
17 this is analogous to. And on the other hand, you are
18 funding things through general revenues.

19 So I think that the key is to make sure that
20 certainly any fines and fees are not onerous and they're
21 not kind of diverted to unrelated purposes. And of
22 course, that there's exceptions based on ability to
23 pay.

24 But I think it's going to be kind of hard
25 to move a system with no user fees whatsoever.

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1 VICE CHAIR TIMMONS-GOODSON: Anybody
2 else? Thank you.

3 CHAIR LHAMON: Commissioner Kladney, did
4 you have a question?

5 COMMISSIONER KLADNEY: Actually I guess
6 more of a statement to see if you all agree. When you
7 were talking about civil forfeiture, you were talking
8 about the motivation to forfeit, I think the police
9 departments keep all that money for equipment and
10 things like that in most jurisdictions. And I was
11 wondering if that was akin to the courts keeping money
12 here.

13 MR. NORQUIST: In New Mexico, one of the
14 reforms that they did, because I think you have to be
15 convicted now, but when you are convicted and you can
16 take the stuff, the stuff goes into general revenue.
17 And that reduces the incentive to take things from
18 people that maybe you shouldn't be taking their stuff.

19 Unfortunately, the federal government
20 allows you to do an end run around that, which would
21 need to be fixed. But I think New Mexico was moving
22 in the right direction when they took the incentive out
23 that if somebody's a bad guy and it was stolen money
24 and a stolen car and they shouldn't have it, and it
25 should be forfeit, that that should go to general

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1 revenue. The guy making the decision on whether to
2 take the car should not be the guy who will be driving
3 it next week.

4 DR. COHEN: And I can only speak for the
5 Texas experience where in our Chapter 59 Code of
6 Criminal Procedure, which actually dictates how these
7 forfeitures progress, we'd simply divvy up the funds
8 based on agreement between the law enforcement agency
9 and the prosecutorial agency. And depending on what
10 year it is, it shifts radically for who gets what you
11 know everywhere from 6535 one way to 6535 the other.

12 But what you generally see though, is that,
13 to Mr. Norquist's point, you don't see that separation
14 of the incentive to enforce or to prosecute, especially
15 with the dubious circumstances that attend that.

16 CHAIR LHAMON: Commissioner Kirsanow.

17 COMMISSIONER KIRSANOW: Thank you, Madam
18 Chair, and thank you to the panels also.

19 As an anarchist, I'm easily persuaded that
20 any kind of fee, or tax, or a levy of any kind should
21 be thrown into the ashbin of history. However, I think
22 it was Churchill who said that democracy is the worst
23 form of government, except for all the others. If we
24 don't have fines, I'm curious -- I posed this question
25 to the previous panel -- does anyone have any data or

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1 any studies that show what form of deterrent would be
2 best to prevent the type of activity sought to be
3 prevented by these fines? Would it be community
4 service? Would it be a certain level of fine that is
5 graduated of some sort? Would it be forfeiture?
6 Because we're talking about the fact that what's
7 currently the model is bad but is there somewhere where
8 we should be going that actually deters the behavior?

9 I'm presuming we don't want this behavior
10 to continue. Speeding is something we don't want to
11 happen. If you speed down my street, you may hit a
12 little kid. How do we deter that and what's the best
13 way of deterring it?

14 MS. NAGRECHA: If I may. I will probably
15 answer in a similar way to the folks on the last panel
16 in that I don't have a direct study to share. But you
17 know I do think that -- you know I'm skeptical that the
18 way it is now actually creates a deterrent effect. I
19 think that given that the penalties are so out of reach
20 for most people, it is quite a natural reaction to not
21 be deterred because you simply aren't really thinking
22 about it as a reasonable thing that you're going to
23 accomplish. And so I think you lose your deterrent
24 effect in sort of structuring it the way that we do.
25 And so at the very least, I imagine, if we got fines

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1 down from some nearly \$1,000 for a first DUI in Arizona,
2 I think it's actually maybe more, that that might
3 actually -- you might see some of this more reasonable
4 effect from that.

5 COMMISSIONER KIRSANOW: Also, a cousin of
6 deterrents is recidivism. I wonder if there is any
7 data that would show that certain types of penalties
8 or sanctions may reduce the incidence of recidivism
9 among the offenders. Does anybody have any data along
10 this line?

11 DR. SHANNON: So, I will say that those
12 types of studies are extremely scarce and it goes back
13 to the availability of the appropriate data. To
14 measure recidivism, you really need data on individuals
15 over time and you need to understand what's happening
16 in what order.

17 COMMISSIONER KIRSANOW: Can't you get a
18 grant from your university to fund one?

19 DR. SHANNON: Gosh, wouldn't that be nice?

20 COMMISSIONER KIRSANOW: I'll write a
21 letter.

22 DR. SHANNON: Let's talk later. That
23 sounds good.

24 But I think the other side -- so there are
25 very few studies. You know there's one that kind of

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1 indicated that perhaps restitution, which, again, has
2 that more restorative element, can lead to lower
3 recidivism rates. So it's something that's aimed more
4 at a restorative approach, something that's trying to
5 help address harm, as opposed to a form of punishment
6 can actually perhaps lead to lower recidivism. But
7 there was also a very recent study done on the juvenile
8 system, finding that kids who owed restitution and
9 other court costs at higher rates were significantly
10 more likely to recidivate, net of a whole bunch of other
11 important factors. And I think given the extent
12 of the other collateral consequences that come with
13 monetary sanctions that we've already discussed,
14 common sense and anecdotal, as well as some of this
15 empirical evidence, there's a good -- a substantial
16 reason to expect that assessing these kinds of fines
17 and fees would actually be criminogenic, that it will
18 increase the extent to which people are committing more
19 crime. Just you know if you can't pay your bills, you
20 might be a bit more tempted to obtain that money in
21 illegitimate ways.

22 And so I think that the jury is out. We
23 need more data. We need more evidence but some of the
24 existing research would point us in the direction of
25 it perhaps being much more detrimental than beneficial.

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1 MR. LEVIN: If I could. Now, we're
2 talking about like things that are property crimes,
3 people that are stealing. We've done a lot of research
4 on victim-offender mediation, where there's a binding
5 agreement. It is used particularly in juvenile
6 systems to make restitution and, of course, an apology,
7 an in-person meeting between the victim and the
8 offender. And the victim, research shows a lot of
9 victim satisfaction increased a much higher rate of
10 actually collecting restitution. When it's done
11 through that, of course, there's not the government
12 fines and fees. There's not this carnal letter of a
13 conviction.

14 Now as far as like traffic offenses, I mean
15 I think speeding tickets, for me, they do deter me from
16 speeding. I think some of these other things we're
17 talking about are things where people aren't making
18 necessarily a rational calculation. So deterrence is
19 less of a factor.

20 But as far as alternatives, I mean
21 certainly community service I think is good and,
22 obviously adjusting it based on ability to pay, you know
23 the whole day fine concept. You know deterrence -- a
24 speeding ticket is not going to deter a billionaire from
25 speeding, right, because you know. And so I think

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1 having it be based, tied to like the day fine practice
2 to a person's income.

3 But I also think you know I mean what if
4 someone signed up for reminders that you have got to
5 get -- okay, you can't afford your speeding ticket well
6 but for the next whatever several months, every other
7 day, you're going to be getting a text message reminding
8 you not to speed or something, something that's
9 annoying but reminding that you did something wrong.

10 So, those are kind of we could think
11 creatively about ways to remind people of their need
12 to comply with the law. Because there is some
13 research. It's kind of the nudging research. That
14 nudging does actually work, nudging people into
15 compliance.

16 COMMISSIONER KLADNEY: Is there any
17 deterrence now?

18 MR. NORQUIST: People speed less because
19 you might get a ticket? They speed less in places that
20 cops are expected to be. They slow down at all those
21 nice photo --

22 COMMISSIONER KLADNEY: But I mean the
23 fines. The fines and jail times. Is that deterring
24 anybody -- 647,000 drivers in Virginia driving on a
25 suspended license because they can't pay the fines.

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1 MR. NORQUIST: Not everybody.

2 MR. LEVIN: Yes, well that's because the
3 consequences of not driving, in terms of your job, your
4 family are so great that that -- you're willing to risk
5 going to jail for the evening because the consequences
6 are so great of not driving.

7 You know and as far as speeding tickets,
8 to me it's also the experience of being pulled over
9 that's such a deterrent, as much as the \$200. It's,
10 I mean really unpleasant and it delays you.

11 DR. COHEN: I think the important thing
12 here is tying together the professor and Marc's
13 testimony here is that when it comes to large scale
14 studies on criminogenic risk factors, can we say that
15 we are getting at what we know causes recidivism or even
16 first-time offending? That's a very difficult,
17 tenuous connection to make. It exists even when it
18 comes to the more measurable in there as well, the
19 higher crimes.

20 But the bigger thing, and what I think he's
21 talking about collateral consequences is if you were
22 to take the surcharge program that we have in Texas
23 under the Driver's Responsibility Program, deterrence
24 is a bit of an afterthought because these are fines and
25 fees that people, or that people that come under this

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1 program, don't even realize that they're subject to.
2 And then when they go try to renew their license, then
3 they're notified by the Department of Public Safety
4 that their license is no longer valid. And then the
5 cascading issue of your insurance being canceled and
6 everything like that then kicks in.

7 And so even if that weren't to be a
8 deterrent, let's look at the actual externality of
9 that. Now, we have people driving, hopefully much more
10 safely now, but we have people driving that aren't
11 insured as well. And this actually starts that
12 snowball rolling down the hill as well.

13 COMMISSIONER KLADNEY: Thank you.

14 MR. NORQUIST: I am familiar with a small
15 study on deterrents because I asked my daughter why we
16 look both ways when we cross the street and she said
17 to check for cops.

18 CHAIR LHAMON: Now we have devolved but
19 thank you.

20 Commissioner Kirsanow, have you completed
21 your questioning?

22 MR. NORQUIST: A small study.

23 CHAIR LHAMON: Thank you. Commissioner
24 Adegbile.

25 COMMISSIONER ADEGBILE: So I think

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1 embedded in Mr. Levin's testimony I heard one story of
2 deterrence and that was the reference to the way in
3 which North Carolina handles where the money goes, the
4 idea being that the money does not go to the local
5 officials. It goes to the state fisc. And based on
6 the numbers that you're telling us, it serves as some
7 deterrent, apparently, to the local officials to engage
8 in these practices. Is that a fair construction of
9 what you shared with us?

10 MR. LEVIN: Yes, absolutely. I mean it's
11 stunning because you have the bottom of the list in
12 terms of fines, fees, and forfeitures per capita,
13 Raleigh and Greensboro at zero and then you have
14 Charlotte at 21 cents. Those were the three cities in
15 North Carolina that were on this list of the top 50
16 cities. So, it makes a huge impact not having an eat
17 what you kill type of system.

18 COMMISSIONER ADEGBILE: So in light of
19 this, I want to ask the panelists if folks have ideas
20 about what the most important federal contribution
21 could be in this area, the things, the tools that DOJ
22 has at its disposal. Is there something that you think
23 is greatest bang for the buck? And then same idea from
24 the states because we all recognize that this is an
25 issue that operates at both levels.

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1 Mr. Levin pointed out that there are
2 important federal considerations with respect to due
3 process and equal protection. I take it those things
4 are both important on the state level and the federal
5 level but there certainly is a federal role in regard
6 to those things.

7 So one thing that I'm thinking about, as
8 I sit here, is that in order to understand what's going
9 on there, you need data in order to be able to exercise
10 dominion in that area.

11 But I'm wondering if the panelists have
12 ideas about you know if you could do it, if you were
13 king for a day in the American tradition, what would
14 your biggest bang for the buck be at the federal level
15 and then so too at the state level.

16 DR. COHEN: I would go a step further. I
17 would not just say data but I would say granularity in
18 data, having a case by case by case representation on
19 where these fines and fees are assessed and not only
20 that, what is their collection rate, and any sort of
21 relevant factors in there.

22 Now the problem is, again, this is king for
23 a day, there is no such architecture for collecting that
24 information right now. And I'm sure the doctor can
25 even point out that even where the best examples of data

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1 collection and data dissemination are present, it's not
2 getting every single variable that would inform how
3 these fines and fees work where the rubber hits the
4 road.

5 But to the federal standpoint, there could
6 be -- again, they could show granularity whether it's
7 on the census' data with their state and local fiscal
8 survey or if it's in the Department of Justice when this
9 is relayed up through the Uniform Crime Report. I
10 think that's actually probably the most promising,
11 looking at where in the Uniform Crime Reports and in
12 the current reporting structure, where could these
13 variables, where could the useful variables be added.

14 MR. LEVIN: Well and there's also a lot of
15 grant programs to police departments from the federal
16 government that certainly could be a vehicle for saying
17 look, if you want to receive this grant, you have to
18 comply with certain best practices.

19 MS. NAGRECHA: You know one thing that I
20 hear a lot in talking to people across the country in
21 the states is we're not Ferguson or we're not as bad
22 as Ferguson. And so I think it would be helpful if the
23 Department of Justice had a similar report about
24 another place, another thing to kind of hang our hats
25 on as advocates to say you know you might not have been

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1 Ferguson but this has definitely been identified across
2 the country and to have one other similarly very well
3 done report to sort of point to I think would be very
4 valuable.

5 At the state level, you know I think we've
6 seen a lot of momentum in starting to think about the
7 questions that we've all mentioned today. What does
8 ability to pay mean, you know revoking driver's
9 licenses less.

10 I do think that a lot of these problems will
11 sort of remain until state legislatures, in most
12 instances, really start to push on this kind of
13 structural funding question. And I'm not convinced
14 that the reliance on the money is real but certainly
15 perceived. And so that becomes all the more
16 complicated when there are many recipients of the
17 surcharges.

18 And so to really, for seeds to really start
19 planting the seeds of that I think longer, a more
20 difficult conversation about sort of funding questions
21 and sort of moving away from costs and surcharges, in
22 particular, and high fines.

23 DR. COHEN: I think one thing that needed
24 to be added to this discussion, although I wouldn't
25 necessarily put it under the prerogative of the

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1 Department of Justice is a lot of -- I think distally
2 that a lot of researchers in this area can point to the
3 practices of municipal finance that actually create a
4 demand for such practices. And this includes almost
5 anything when it comes to lack of transparency in
6 bonding, when it comes to how municipal debt is handled.
7 And that's going to be a state by state -- there's going
8 to be a state by state issue to be sure.

9 But, again, if there's not the pressure to
10 have these collections, at the very least, distally,
11 again, I think that we can say that municipalities will,
12 at the very least, be more innovative in how they tackle
13 the problem.

14 MR. NORQUIST: I was in a conversation
15 earlier today with somebody who said well, we can't on
16 civil asset forfeiture ask the police not to take
17 people's stuff until we pay them more money. Well, at
18 what point, if you allow people to take stuff on top
19 of whatever the legislature or the city approves for
20 their pay, pension, and benefits, at what point would
21 they say you know we're not going to take stuff?

22 I mean it seems to me you have to say on
23 some of these fees and civil asset forfeiture you're
24 not allowed to do this because it's abusive. It's not
25 an add-on to plus up your budget or the sheriff's new

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1 car, or however you want to do it. If you don't say
2 no, there will always be an answer well of course we
3 want more resources, and I'd want more pay, or we want
4 more stuff in the office, or another car would be nice.
5 So I'm not sure that it's an argument to say we don't
6 say to the bank robbers first we get you a job and then
7 you will agree to quit robbing banks. The answer is
8 no robbing banks, with or without a job.

9 PROFESSOR SOBOL: I think one way, too, it
10 might not be a difficult thing the Department of Justice
11 could do is follow what the CFPB has done in
12 establishing a complaint database for people to
13 complain. Over the last five years that they've had
14 it, they've had over a million complaints done and
15 they've looked at that. They send the information to
16 the party that has complained about and the party has
17 the right to respond to it and there's a process for
18 that.

19 Again, it's limited based on what you get
20 but at the very least, it would help us identify maybe
21 that state we want to go and do a new study on or that
22 municipality that we want to do a new study on, and at
23 least get that background information on what's out
24 there.

25 So I think that might be something that

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1 wouldn't be a very difficult thing necessarily to set
2 up and advertise and have people submit complaints, and
3 have states have the ability to respond to them. At
4 the very least, it may even create a shaming thing for
5 those states to get into the process and realize that
6 they don't want to be the number one state or
7 municipality that has that concern. So, they want to
8 be able to respond to that and we can figure out what's
9 going on there.

10 On the state level, if I was the king for
11 the day, I would love to have the states justify the
12 amounts that they have for fines and fees, have them
13 independently review each of those fines and fees that
14 are done. Because a lot these have been created many,
15 many years ago and we don't know the basis for it.

16 So there are other professors that have
17 suggested setting up independent commissions where you
18 have citizens involved in looking at each one of those
19 charges, both the existing charges, as well as any
20 additional charges that are added down the road. And
21 again, that's a more extensive item than the idea of
22 what I would want the Department of Justice to do with
23 an online complaint system.

24 CHAIR LHAMON: Thank you.

25 Any other commissioners? Any other

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1 questions?

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VI. ADJOURN BRIEFING

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5

CHAIR LHAMON: Well with that, I will
thank our panel. Thank you very much for coming and
that will conclude our briefing today.

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(Whereupon, the above-entitled matter
went off the record at 2:39 p.m.)

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