
PATHWAYS TO JUSTICE:

A Continuing Conversation Among
Federal, State and Tribal Justice Officials

New York Federal-State-Tribal Courts Forum
and Planning Group Meeting

October 3, 2019

United States Courthouse
Northern District of New York
Syracuse, New York

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1 (Meeting convenes at 10:23 a.m.)

2 HON. MARK MONTOUR: Good morning, everyone.

3 We have some sound problems, as you can probably
4 see with all the personnel with ladders and equipment and
5 ceiling tiles being taken out and adjusted. It's still being
6 worked on, but we're already at about a 25-minute delay
7 getting started, so I was hoping we would be able to get
8 things moving.

9 And I think by standing here, Central Islip, you
10 can hear me, is that right?

11 SHARI BROWN: We can hear you.

12 HON. MARK MONTOUR: Excellent. I think the only
13 way is if I stand here and talk from here.

14 What I want to do first is there is a sign-up sheet
15 here, pass it around. Everyone just go through and make sure
16 that your information is correct if it's on the assignment
17 sheet; if not, make the adjustments. If it's not on the
18 assignment sheet, just fill out the information accordingly.

19 I want to start the meeting, and generally we try
20 and do that but first and foremost, I want to recognize that
21 we're meeting on the territory of the Onondaga Nation today,
22 the People of the Hills. And I want to just recognize the
23 Onondaga Nation this morning as well.

24 What I liked to do in the past, and we tried to do
25 this many times before, is have the Ohen:ton Karihwaterhkwen,

1 the Thanksgiving Address, someone do that before the meeting
2 starts, which we traditionally do before and at the
3 conclusion of the meeting. And I've enlisted myself to try
4 and do that today. I'm going to labor through it. I've
5 taken a Mohawk language class in the spring. My instructor
6 is from Six Nations, so the dialect may be different and also
7 my pronunciation may be even worse. So if I do mispronounce
8 a lot, please accept my apology. It's something that I try
9 and say every morning and every evening as well. I memorized
10 a portion of it, but I think I'm going to read it all just so
11 I don't make a lot of mistakes. So if you would just bear
12 with me today, I would appreciate it.

13 And again this is something we do, like to do
14 before any meeting, any gathering such as this.

15 (Thanksgiving Address recited in Native language.)

16 HON. MARK MONTOUR: And I'll try better at the
17 conclusion of the meeting as well.

18 The next item on the agenda is a new members
19 introduction. I think we have a few new members and I think
20 Marcy was going to introduce one.

21 HON. MARCY KAHN: Do I need to come to you?

22 HON. MARK MONTOUR: If you want Central Islip
23 people to hear you, yes.

24 HON. MARCY KAHN: Thank you, state co-facilitator,
25 Mr. Montour, for the traditional welcome. I can say formerly

1 from the state side I'm very proud of you to be able to do
2 that and we appreciate that.

3 I am delighted today to introduce two new members
4 to you whom Chief Judge Janet DiFiore of the state courts put
5 on the New York State-Tribal Courts committee, Alex Lesyk,
6 whom you know I think from the last meeting is the principal
7 law clerk to Tribal Courts co-chair Justice Robert Main. He
8 has been here before and we're delighted that he is on the
9 committee. He distinguished himself even before he was on
10 the committee by undertaking to do legal research for us to
11 try to protect the Native Bail Reform Initiative from the New
12 York State Bail Reform Legislation. You will hear more about
13 that later. But you'll see a lot of Alex and we're delighted
14 he is here.

15 Our other new member is David Collins, who is a
16 principal law clerk to Justice Frank Nervo of the Manhattan
17 Supreme Court. He formerly was a junior law clerk in the
18 Appellate Division First Department, which is where I met
19 David. He has studied federal Indian law when he was in the
20 course of being admitted to the New Mexico State bar and has
21 a long-standing interest in the area. He and I have had many
22 conversations about Indian law and Native issues, and we're
23 delighted that he is here too.

24 I should have dealt with Alex and David second and
25 this topic first, because it's sad, but I didn't do that. So

1 we're very sorry to have lost Judge James Tormey, who had
2 been for many years the administrative judge of this judicial
3 district of the state courts, the Fifth Judicial District.

4 Although we meet at the federal courthouse and are
5 thrilled that Chief Judge Suddaby and Chief Judge Katzmann of
6 the Second Circuit are hosting us here, Judge Tormey has also
7 been a friend to the Forum. He passed away unfortunately
8 untimely this summer. But he has provided us with court
9 reporters when Eileen McDonough and her colleagues are not
10 able to serve, and he has written letters to the state powers
11 that be in support of our initiatives like the Comity Court
12 Rule. So we miss him very much.

13 His successor is Judge James Murphy, who has done a
14 long-time service here in Syracuse on the state courts, and
15 we have been in touch with him and we're delighted to
16 establish a new and excellent working relationship with him.

17 Our Forum and Tribal Courts committee member Judge
18 Martha Walsh Hood from the Family Court here in Syracuse and
19 has known Judge Murphy for many years, and I suggest that any
20 time we need help from Judge Murphy, we ask Judge Hood to be
21 of assistance and facilitate that, which she has already
22 volunteered to do. And thank you for that, Judge Hood.

23 Finally, you got my message about Karen Milton
24 leaving her post as the circuit executive for the Second
25 Circuit federal courts, after many years of service and help

1 to us. We just want to extend a welcome to Michael Jordan
2 who is the new Second Circuit executive, and we have been in
3 touch with him I believe and look forward to working with
4 him. And I thank you, Judge Montour.

5 HON. MARK MONTOUR: At this point in time we just
6 do the go-arounds, so we just basically introduce everyone.
7 If anyone here is new, please give a little bit of background
8 for yourself.

9 Matt, why don't we start with you and go around.

10 MATT CHIVERS: Matt Chivers for the Fourth Judicial
11 District. I work for the town and village courts.

12 VALORIE PEREZ: Hi. I'm Valorie Perez. I'm from
13 the Ninth Judicial District, and I'm a part of the New York
14 Courts committee, Tribal Courts committee.

15 LUANA JIMERSON: I'm Luana Jimerson. I'm from the
16 Seneca Nation of Indians. I'm a surrogate court judge on
17 Cattaraugus territory.

18 JOHANNE SULLIVAN: Johanne Sullivan. I work in the
19 General Counsel Office for the St. Regis Mohawk Tribe.

20 DANIELLE MAYBERRY: I'm Danielle Mayberry. I work
21 as the law clerk at the St. Regis Mohawk Tribal Court.

22 NANCY SUNUKJIAN: Nancy Sunukjian. I'm the
23 director of Office of Justice Courts.

24 DAVID COLLINS: David Collins. I'm a law clerk to
25 Judge Nervo in Manhattan in Supreme. Thank you very much for

1 the intro, Judge Kahn.

2 TROY ANDERSON: Troy Anderson. I'm an Assistant
3 United States Attorney with the U.S. Attorney's Office here
4 in the Northern District of New York.

5 EMILY REID: My name's Emily Reid. I'm with
6 Senator Tim Kennedy out in Buffalo, New York State Senator.
7 He is the chairman of the subcommittee of State Native
8 American Relations.

9 AIMEE NERI: Aimee Neri, New York State Child
10 Welfare Court Improvement Project.

11 HANNAH HOLDEN: Hannah Holden. I'm an intern with
12 Aimee.

13 HON. MARCY KAHN: Marcy Kahn. I'm retired from the
14 New York State Court system, and it feels great, and I am
15 delighted to be here anyway. And I am now the convener
16 emeriti of the Forum, which means I don't do any work, I just
17 admire Judge Montour and Judge Main's work and Judge Garrow's
18 work, and they're doing a great job.

19 HON. CARRIE GARROW: Thank you for being here.
20 Carrie Garrow. I'm the chief judge of the St. Regis Mohawk
21 Tribal Court, and I'm also the Native co-facilitator for the
22 Forum.

23 HON. MARK MONTOUR: Mark Montour. I'm the state
24 facilitator and the co-chair and a New York State Supreme
25 Court Justice, Erie County.

1 JOY BEANE: Joy Beane, counsel to the New York
2 Tribal Courts Committee and an attorney referee.

3 HON. ROBERT G. MAIN, JR.: I'M Bob Main, the judge
4 of many benches, and I'm happy to be the co-chair of this
5 committee.

6 ALEX LESYK: I'm Alex Lesyk. I am Judge Main's
7 court attorney. And I thank you also, Judge Kahn, for your
8 nice introduction.

9 SACHEM SAM GEORGE: Sachem Sam George.

10 CHIEF HARRY WALLACE: Harry Wallace, Chief,
11 Unkechaug Nation.

12 HON. LIZBETH GONZALEZ: Lizabeth Gonzales, Bronx
13 Supreme Court and the Appellate Term, First Department.

14 HON. JOAN MADDEN: Joan Madden, New York County
15 Supreme Court Justice.

16 LOUISA IRVING: Hi. I'm Louisa Irving. I'm from
17 the New York Attorney General's Office. I'm an assistant
18 attorney general in the Civil Rights Bureau. And I'm
19 replacing my former colleague, Mayur Saxena, who previously
20 attended these meetings. This is my first meeting, and thank
21 you for having me.

22 HON. LIZBETH GONZALEZ: Welcome.

23 FRANCINE PATTERSON: Francene Patterson, White Bear
24 clan mother, Tuscarora Nation.

25 NEIL PATTERSON: Neil Patterson, Senior, Tuscarora

1 Nation.

2 SUSAN SCHANDREAU: Susan Schandreau, Tuscarora clan
3 mother.

4 HON. ROBERT HURLBUTT: I'm Bob Hurlbutt, Chief
5 Judge of the Oneida Nation Court.

6 HON. JOHN BRUNETTI: John Brunetti, Judge, Oneida
7 Nation.

8 KELLY BRADLEY: Kelly Bradley, Oneida Indian Nation
9 court clerk.

10 PAM STARSIA: Pam Starsia. Counsel in the legal
11 department at the Oneida Indian Nation.

12 NEUSA SENECA: Neusa Seneca. I'm an in-house
13 attorney at the Seneca Nation.

14 KARLA GENERAL: Karla General, attorney at Seneca
15 Nation, but I'm part of the infamous Mohawks.

16 COURTENY JOHN-JEMISON: Courteny John-Jemison,
17 court administrator for Seneca Nation Tribal Court.

18 JESSICA DAVOS: Jessica Davos, from
19 Bolton-St. Johns.

20 IRIS WHITE: Iris White.

21 JOHN MAAS: John Maas. I'm the Central New York
22 regional representative for the attorney general.

23 HEATHER LAFORME: Heather LaForme. Director of
24 Native American Services for OCSF.

25 JENNA MACAULAY: Jenna Macaulay from Berkeley

1 Williams, legal counsel for Tuscarora Nation, Tonawanda
2 Seneca Nation and Cayuga Nation.

3 HON. MARTHA WALSH HOOD: Good morning. Martha
4 Walsh Hood, supervising judge, Family Courts.

5 HON. MARK MONTOUR: Looks like everybody.

6 HON. CARRIE GARROW: Except for Central Islip.

7 ROBERTA HUNTER: Good morning. Roberta Hunter,
8 attorney and member of the Shinnecock Nation here on the east
9 end of Long Island.

10 CHARLIE ROSE: Charlie Rose, Assistant United
11 States Attorney for the Eastern District of New York and the
12 Tribal liaison.

13 SHARI BROWN: Good morning. This is Shari Brown
14 with the U.S. Department of Health & Human Services.

15 KESHA RODRIGUEZ: And this is Kesha Rodriguez, with
16 the Office of Child Support Enforcement, also working with
17 Shari.

18 HON. CARRIE GARROW: Can the last person that
19 spoke, can you repeat that?

20 KESHA RODRIGUEZ: It's Kesha Rodriguez, Office of
21 Child Support Enforcement.

22 HON. CARRIE GARROW: Welcome to everyone who is on
23 the phone and also in Central Islip.

24 We're going to start on the new projects. We're
25 going to start with Tribal Orders of Exclusion of

1 Non-members. And I'm going to introduce Johanne Sullivan.
2 As she introduced herself, she's in our General Counsel's
3 Office and wanted to share some things with the Forum. So go
4 ahead, Johanne.

5 JOHANNE SULLIVAN: Hi.

6 HON. LIZBETH GONZALEZ: The Central Islip people
7 can't hear.

8 JOHANNE SULLIVAN: So I have to go up there?

9 HON. MARK MONTOUR: Right.

10 JOHANNE SULLIVAN: Okay. I was not expecting this,
11 but okay.

12 So we just wanted -- at the St. Regis Mohawk Tribe,
13 we have an exclusion policy. And I know the issue has been
14 brought up before at the Forum, but we just wanted to gauge
15 other Nations if they have any similar problems that we may
16 have in enforcing these orders. So we just wanted to take
17 the temperature of other Tribes and whether or not they've
18 had trouble enforcing their orders. I can share some of our
19 experience.

20 We have -- we issue exclusion orders, I wouldn't
21 say it's all that often, I would say it's used sparingly.
22 But when it is used, most people respect the order and do
23 leave, but we do have some people that don't leave or they
24 have -- it typically happens when they have a relationship
25 with one of the Tribal members and they have, you know,

1 children maybe with a Tribal member, and so Tribal police
2 will issue tickets, trespass tickets, and it's after that
3 point we're having problems in moving the issue forward.

4 I've been working with the assistant district
5 attorney for our area and so I'm just trying to see if there
6 needs to be a legislative fix or education of the local DAs.
7 So I just wanted to maybe if other people can share some of
8 their experiences in getting their orders enforced, that
9 would be great.

10 HON. MARK MONTOUR: I guess orders enforced or not
11 enforced?

12 JOHANNE SULLIVAN: Right.

13 HON. MARK MONTOUR: It seems like there is a lot of
14 sentiment that orders are not being enforced. The Senecas
15 have expressed that as part of the problem. Tuscaroras I
16 know have had issues in the past with exclusion of
17 individuals deemed to be intruders.

18 Do you have a good relationship with your district
19 attorney then?

20 JOHANNE SULLIVAN: Tribal police has a good one.
21 It's just I have been in touch with the ADA who is handling
22 it specifically and I shared with him the specific portion of
23 the law, you know, for him to look at. I've shared cases
24 with him. He said when it first started I had shared with
25 him -- anyways, I told him. But I think where the disconnect

1 has come is instead of him reaching out to our office, he
2 reached out to DCJS for help, which was unhelpful to him, and
3 he also I think reached out to the district attorney's
4 association.

5 And so what's been happening is everything's being
6 handled at the local village court level and basically it's
7 come to the point where this one particular person, this one
8 particular defendant, every time he gets one of these
9 tickets, he basically rips it up and laughs, because nothing
10 has been happening. So now I've been in touch with the ADA
11 and he has drafted a complaint to be filed in county court,
12 and I asked him for an update before coming here and I did
13 not receive an update so I don't know if it's been filed yet
14 or not.

15 HON. ROBERT G. MAIN, JR.: I have an update.

16 HON. MARCY KAHN: The County Court is here.

17 HON. ROBERT HURLBUTT: I believe that the
18 individual that she's speaking of has a child by a member of
19 the Tribe, and they were involved in a domestic incident and
20 there was also a family court proceeding between the two of
21 them. Because one of my benches is the integrated domestic
22 violence part, I removed all of those cases to Supreme Court,
23 including the trespass that the District Attorney's Office
24 with the Tribal police had prosecuted. And I've resolved
25 that issue, at least for the time being, and the individual

1 is now sentenced to a year in jail, also on probation. There
2 were a variety -- there were four criminal charges, and he
3 received a year in the county jail on one of them and he
4 received three years of probation on the other. And one of
5 the terms and conditions of his probation is that he not be
6 on the territory of the Nation.

7 So at least one district attorney, assistant
8 district attorney, was on the ball and working to a certain
9 extent with the Tribe. And I'll be happy to give you some
10 more details off the record about that. But I think that at
11 least in Franklin County there is some sensitivity to the
12 validity of the exclusion orders that are served on the
13 individual. And I believe that as an overall community
14 basis, I believe the names of all of those individuals that
15 the Tribe wanted to exclude and issued orders to were
16 published in the local newspaper, so it's out there.

17 JOHANNE SULLIVAN: Yeah, it was published,
18 absolutely. I don't remember if it's quarterly now, but a
19 lot of times, too, the names will be listed by the Tribal
20 clerk's office of excluded people, so if people are out and
21 about in their regular course of business, if they see an
22 individual, they know that they're excluded.

23 So I just wanted to see if the existing legislation
24 is sufficient or if there needs to be more education, and
25 that's why I just wanted to take a temperature of the room.

1 HON. JOHN BRUNETTI: I have a question. The action
2 by the DA, is that being brought purportedly under Section 11
3 of the Indian Law of the State of New York, or what provision
4 of law is authorizing to do that? Just the penal law?

5 HON. ROBERT G. MAIN, JR.: It was prosecuted as a
6 trespass under the penal law. Now the basis may have been
7 that exclusion but it was prosecuted as a misdemeanor.

8 HON. MARK MONTOUR: Normally does the Nation's
9 Council, do they issue an order of intrusion or exclusion and
10 then that should be taken to the District Attorney's Office
11 and they get from there and take to the county court, is that
12 what happens?

13 JOHANNE SULLIVAN: Our process is the Tribal chief
14 signs the exclusion order, the Tribal police serves the
15 exclusion order, and a copy is always submitted to the DA's
16 office.

17 HON. MARK MONTOUR: So if they're not removed and
18 the person stays, is that then delivered to the district
19 attorney?

20 JOHANNE SULLIVAN: No. After that Tribal police
21 will issue a ticket, as Judge Main indicated, a trespass.
22 But I think the other part would be for them to file in
23 county court a petition under Section 11 of the New York
24 State Indian Law. That would be I believe the proper course
25 of action for a DA to take.

1 And I think that might be the disconnect of local
2 district attorneys when they're not familiar with that
3 section is the only thing I can see maybe because, like I
4 said, this certain ADA reached out for help and he just
5 didn't contact our office, he contacted other state agencies,
6 and I think -- and I don't know if other people are
7 encountering the same issue.

8 HON. LIZBETH GONZALEZ: So, I have a disconnect.
9 If there is an exclusion order from a territory, why is that
10 person not being excluded as opposed to being given a
11 trespass ticket?

12 JOHANNE SULLIVAN: That's just the way it's been
13 handled in the past. That's how Tribal police have handled
14 it.

15 HON. ROBERT G. MAIN, JR.: There have been
16 occasions in the past when in Franklin County the district
17 attorney did go to court and get an order and I believe the
18 sheriff enforced it.

19 JOHANNE SULLIVAN: Yes.

20 HON. ROBERT G. MAIN, JR.: And removed the
21 individual.

22 JOHANNE SULLIVAN: That's what Section 11
23 envisions, that the DA files in county court to then have the
24 sheriff remove the person.

25 HON. JOAN MADDEN: When a ticket is issued, where

1 is that ticket heard? Who has jurisdiction over that ticket?

2 JOHANNE SULLIVAN: For us it's Bombay Town Court.

3 HON. ROBERT G. MAIN, JR.: It only was removed by
4 myself to myself because of the simultaneous pendency of the
5 domestic violence issues.

6 HON. JOAN MADDEN: You removed it from the town
7 court?

8 HON. ROBERT G. MAIN, JR.: I removed it from the
9 town court to Supreme Court, and I removed the family court
10 issue from family court to Supreme Court. That's how they
11 integrated domestic violence.

12 NANCY SUNUKJIAN: Had it nothing else, it would
13 just have stayed in Bombay Town Court?

14 JOHANNE SULLIVAN: Unless the DA filed a petition
15 under county court, and I think that's been the disconnect.

16 HON. MARK MONTOUR: The town court doesn't have
17 jurisdiction to do it; it has to go through county court.

18 HON. JOHN BRUNETTI: What difference is there if
19 the person to be excluded is a member of another Nation
20 versus a member of no Nation?

21 JOHANNE SULLIVAN: Doesn't matter.

22 HON. JOHN BRUNETTI: Under which law? Under either
23 law?

24 JOHANNE SULLIVAN: Yeah. If you're not a member,
25 you have no rights. We have excluded people that are Native

1 but non-members, that's happened in the past.

2 HON. JOHN BRUNETTI: Let's assume that happens and
3 they get charged with trespass and they're a member of
4 another Nation but not the St. Regis Mohawk Nation, where do
5 they go for court?

6 JOHANNE SULLIVAN: Town court.

7 HON. ROBERT G. MAIN, JR.: Town of Bombay.

8 JOHANNE SULLIVAN: Same thing.

9 HON. MARCY KAHN: The Bombay Town Court, because of
10 Section 232 of the United States Code giving jurisdiction to
11 the state courts in New York, the state can enforce its penal
12 law or its Indian law I think on the reservation just as the
13 Tribal Court can enforce its own laws on the reservation.

14 And I think from what I've learned, the St. Regis
15 Mohawk Tribal police are really unique in the state, I think,
16 although maybe the Senecas will correct me, in that they are
17 cross-deputized as state troopers by the New York State
18 Police. And so when they see someone breaking the law like
19 trespassing or violating one of the Council's exclusion
20 orders, they have a discretionary choice to either give them
21 a state violative ticket and send them to Bombay Town Court
22 or have them -- well, they wouldn't be prosecuted for
23 trespassing by the Tribal Court, but in other instances like
24 reckless driving they have a choice of where they can send
25 the wrongdoer because they are duly authorized.

1 HON. JOHN BRUNETTI: We take jurisdiction of crimes
2 committed by Native Americans even if they are not members of
3 the Oneida Nation. So that's what we do. But you're saying
4 that at St. Regis you don't do that.

5 HON. CARRIE GARROW: We don't exercise criminal
6 jurisdiction right now.

7 HON. JOHN BRUNETTI: At all?

8 HON. CARRIE GARROW: At all.

9 HON. MARK MONTOUR: Oneida you exercise criminal?

10 HON. JOHN BRUNETTI: Yeah.

11 HON. MARK MONTOUR: I think you're the only one
12 that really has that.

13 HON. JOHN BRUNETTI: So if we have someone who is
14 ordered out of the premises, the Nation, we have a variety of
15 locations, then they would be arrested under our trespass
16 penal code and brought to our court.

17 HON. MARCY KAHN: You could do that or you could
18 call -- if your police are not authorized to act for the
19 state police, you could call a state trooper to take them to
20 town court.

21 HON. JOHN BRUNETTI: Yes.

22 JOHANNE SULLIVAN: But you only take criminal
23 jurisdiction against Native Americans?

24 HON. JOHN BRUNETTI: Correct.

25 JOHANNE SULLIVAN: So anyone else want to share

1 some of their experience with exclusion orders?

2 NEUSA SENECA: I was wondering if --

3 HON. LIZBETH GONZALEZ: Would you stand up and talk
4 loud, please?

5 NEUSA SENECA: If we're using New York Indian law,
6 I guess I have several questions. What form should it be in?
7 Should it be a Tribal Court order? Because we also have
8 exclusions done by the president. All of our exclusions I
9 don't think they're against Natives, they're all non-Natives,
10 and it's mostly due to drugs.

11 HON. JOHN BRUNETTI: Could I make a comment about
12 the New York State Indian law? Many of its provisions, as
13 you know, are not valid or enforceable, and they impose an
14 obligation on state officials, they impose no obligation on
15 sovereign nations. So what kicks in is it's the District
16 Attorney's responsibility if a request is made.

17 NEUSA SENECA: Under the law we thought it's really
18 his discretion if he wants to follow through, so we haven't
19 really utilized the provisions because we don't have the best
20 relationship with the DA's.

21 But that's my second follow-up question. I guess
22 my first question is should it only be Tribal Court orders,
23 or do also executive orders apply, and how we should work on
24 our relationships with the DA if we're going to try to use
25 this provision.

1 JOHANNE SULLIVAN: So for us we don't use Tribal
2 Court orders of exclusion, it's simply Tribal Council, that's
3 our exclusion policy. And then, again, we the DA's put on
4 notice and then their request is made thereby. And I would,
5 you know, I would hope that maybe you could make inroads with
6 the DA's office. I don't know that so much -- I mean, once
7 you've requested I guess it is discretionary. I would hope
8 that you could have a good enough relationship that they
9 would move forward and take it seriously to remove this
10 person that the Nation has decided to exclude.

11 HON. CARRIE GARROW: If you go back and look
12 historically, it's always -- at least the records I've looked
13 through, it's always been historically done by Council
14 because that was the governing body there. But I think it's
15 up to each Nation. Regardless of what governing body issues
16 it from the Nation, it should be respected, whether it comes
17 from your court or whether it comes from Council. And so I
18 think it's a relationship building exercise.

19 JOHANNE SULLIVAN: I think the last reported
20 decision on the issue, I think it's rather recent, it's
21 definitely in the 2000s, and it was a removal of a person who
22 had lived on the reservation. I don't remember the name of
23 the reservation, I don't remember. But she had been a
24 long-standing member and her spouse had passed away and I
25 believe her children were members, but she was excluded. And

1 the judge in that case said, you know, even though I might
2 sympathize with this person, she needs to be removed, I need
3 to enforce this request. And she was ultimately removed from
4 the territory.

5 So there is recent case law. I have shared that
6 with the DA and I would share it with anyone here, but there
7 is a recently reported decision in McKinney's that you can
8 find. So I don't know if it's the fact that it's
9 discretionary is maybe a barrier and if that could maybe be a
10 fix or if it's just education with DAs and building those
11 relationships with the DA's office that would help the
12 situation.

13 HON. LIZBETH GONZALEZ: When you say education with
14 the DAs or for DAs, are you asking whether the Forum would be
15 willing to conduct that type of session with, for example,
16 the DAs in a particular region or the association?

17 JOHANNE SULLIVAN: I would think just share the
18 information with the DA's association.

19 HON. LIZBETH GONZALEZ: What do you define as
20 share?

21 JOHANNE SULLIVAN: Just point them to the section
22 of the law I think would be the start, because there seems to
23 be a lack of understanding, maybe, I don't know what the
24 barrier is. Because, like I said, my experience I share with
25 the DA, but instead of him reaching out to me, instead he

1 reached out, like I said, to the DA's Association and DCJS
2 which they were very unfamiliar with. So maybe if you just
3 share with the association and it could filter down, or if
4 people here could share it with their local DAs, that would
5 be great too. I don't know.

6 HON. LIZBETH GONZALEZ: So I have a question in
7 this regard because we know the judges cannot conduct legal
8 training for one side versus the other when it's a criminal
9 matter. So we can't do something, for example, for district
10 attorneys, it has to be opened to both district attorneys and
11 public defenders.

12 On the other hand, if we had some type of bench
13 card that could be given to district attorneys and public
14 defenders where it came to questions of criminal matters and
15 enforcement where sovereignty is concerned, maybe that would
16 be a neutral.

17 HON. ROBERT G. MAIN, JR.: If we deemed it to be a
18 significant enough issue, we could ask the District
19 Attorney's Association in their annual education program for
20 DAs and ADAs to in some fashion make note of it.

21 JOHANNE SULLIVAN: I think that would be
22 sufficient, just so at least it's in their -- at least when
23 the issue came up, they would be like, oh, yeah, I had
24 training on it, I know where to go. I would assume that
25 would be enough, Judge. I would tend to agree that that

1 should be enough.

2 HON. LIZBETH GONZALEZ: How would we do what you're
3 talking about?

4 HON. ROBERT G. MAIN, JR.: I think we would write
5 to the president of the District Attorney's Association or
6 find out who does their education and write to that
7 individual. I think David Soares of Albany, he may just have
8 finished his term, I think there is a new association
9 president, but we can easily find out who that is and make
10 some inquiries. I would be happy to speak with our district
11 attorney who is at least conversant with this and find out
12 for sure who the chair or the president is and who does their
13 education and see if we could make a contact that way.

14 HON. MARCY KAHN: I would just say apropos of what
15 Judge Gonzalez said, which I think is something that the
16 judicial members have to be cognizant of here, that we should
17 also reach out to the New York State Defender's Association,
18 they have an association too, and treat them the same way so
19 that when they're defending someone in the IDV court in
20 Malone, they know what the process is just like the assistant
21 district attorney will know.

22 HON. ROBERT G. MAIN, JR.: We could address our
23 ultimate communication to both associations.

24 HON. MARCY KAHN: I think it's a good idea.

25 HON. ROBERT G. MAIN, JR.: And ask them to address

1 it at their annual trainings.

2 VALORIE PEREZ: I would like to say that perhaps
3 all that could then be part of the resources we can put on
4 our website, including any case law, so that we can really
5 start to build that and the information can be on our
6 website.

7 HON. LIZBETH GONZALEZ: I'm thinking of something
8 along the lines of the bench aid, the desk aid that was
9 created by OCFS and modified by us, which is a better product
10 as a result, but an aid that could be put in plastic that
11 people could get or reproduce in some way and have it readily
12 available. Because our problem is on the one hand the
13 ignorance with respect to the laws that pertain to
14 sovereignty, and on the other hand, the fact that there is
15 turnover, there is always turnover, so you could teach one
16 set of people and three years are gone and you're back at the
17 beginning all over again.

18 We also have had very significant problems with
19 town and village courts again and again and again where the
20 training of the town and village justices has been increased
21 because out of those courts come the greatest number of
22 complaints against judges, and those judges do not have to be
23 lawyers, so they do things like go to people's houses to
24 interview witnesses. It's like, really?

25 So thinking of it from that point of view, perhaps

1 we need to institutionalize or memorialize what we're talking
2 about in some way so that if someone goes to a meeting with a
3 district attorney, they can say this is how you're supposed
4 to do it, these are the laws that attach, and you don't have
5 to do the research A to B to Z each time. So maybe that
6 could be our goal as the ultimate result, but you're
7 proposing a great beginning.

8 HON. ROBERT G. MAIN, JR.: Nancy, could you target
9 the town and village courts that would be involved? It's not
10 going to hit every town and village court in the state, it's
11 going to hit those associated with the Native Reservation.

12 NANCY SUNUKJIAN: We've been talking about this for
13 a long time now, and Matt and I were going to comment about
14 we made some inroads with the State Magistrate's Association
15 with regard to getting some programs at their annual
16 conference next year, but that -- which is great, which is
17 great, but that's going to affect those courts that aren't
18 able to make that conference or in the areas where this is
19 affected by.

20 So I've thought that creating some sort of, as
21 Judge Gonzalez just said, an aid, a bench card of relevant
22 laws or information for those courts affected. My Court in
23 Upstate, where I am, I don't have any of these issues, none
24 of these issues. When I hear about this, it's all new to me.
25 But I know the courts out in the areas, certainly Bombay

1 Court and out in the west part of the state have these issues
2 and may not know.

3 I would have to say that I don't think judges are
4 going to anybody's house anymore; I do have to defend my
5 judges.

6 MATT CHIVERS: Thank you.

7 NANCY SUNUKJIAN: Not any more, but years ago
8 maybe. We are trying to think of ways and I think if we can
9 come up with a program or bench card, we can put things on
10 our site, we can target, if this group can target to us those
11 courts, those areas, yes, we can, I can pinpoint them, send
12 something to those judges and say here's some information
13 that would be of use for you.

14 HON. MARCY KAHN: Yes, I have -- I happen to have
15 with me, and I've circulated it to the bail reform people,
16 DCJS's data on which courts in New York are processing cases
17 against Native Americans, and I can make copies of those for
18 you today. It's like a fifty-page document; I can either
19 e-mail you the whole document or I can photocopy today the
20 four or five pages of those particular courts.

21 NANCY SUNUKJIAN: Whichever is easiest for you,
22 Judge. And then we can pinpoint those courts and get that
23 information to them, because some of the stuff you all talk
24 about I don't know about so I'm not surprised some of my
25 courts don't know about. But if I can get the information

1 into my office and we can encourage those courts, one, to
2 have the information and call us when they have those
3 questions, we'll have it.

4 HON. MARTHA WALSH HOOD: The town and village
5 courts --

6 HON. LIZBETH GONZALEZ: Can you stand up and speak
7 up?

8 HON. MARTHA WALSH HOOD: I'm never asked to speak
9 up. I have to say that my experience with raise the age, I
10 was on the statewide committee, and we have the town and
11 village court judges as accessible magistrates. And in
12 preparation for that we did a number of trainings and we had
13 probably over 90, almost 93 percent who signed up, and some
14 of us are on 24 hour call and our 17-year-olds just came on
15 board, you know, at 12:01 a.m. a couple days ago, and they
16 have been terrific. They show up at the trainings, they're
17 interested in learning, and because in the Fifth JD with our
18 six counties every single one is unique. And so we have not
19 bench cards but we have individual training packets with
20 individual numbers, including statewide numbers, so that
21 accessible magistrates or T&V judges can call for
22 information.

23 My experience is if they want answers, if someone
24 is available they give them answers, they're very receptive
25 to training and to know what they should know in terms of

1 bail reform or what to do with a pre-petition detention
2 application. There were only seven since the advent of raise
3 the age. So, you know, they want to know what to do and what
4 not to do.

5 And so we can do district trainings. If we can
6 pinpoint the courts that that's going to affect and some of
7 us are willing to go out and do the training, they will be
8 receptive; they have dinners, they have get-togethers. If
9 they have the proper training or the instruction, they will
10 listen, they will look it over, they will read.

11 I had a lot of Sunday, Saturday breakfasts and
12 Thursday night dinners. You know, we were up at Lewis County
13 until 10:00 one night. God, it was a long way away, but
14 that's what we did in preparation for raise the age. If
15 you're willing to go, they will come.

16 And we just updated the booklets. They kept the
17 statewide bench cards but, believe me, Lewis County and
18 Herkimer are vastly different from Brooklyn and the Bronx,
19 and Onondaga County was ahead of the Bronx with the advent of
20 raise the age in terms of adolescent offender numbers and JO
21 numbers. And Onondaga County is vastly different than Lewis
22 County. So if we isolate those courts, we can do the
23 training and then we go in person to do the training, they
24 will listen, they will learn. And, you know, they are even
25 if they're not judges --

1 NANCY SUNUKJIAN: They're judges, they're not
2 attorneys.

3 HON. MARTHA WALSH HOOD: They are interested in
4 learning and I think that they will be open to learning by
5 and large.

6 HON. LIZBETH GONZALEZ: So is there a real role for
7 us to play as the Forum with respect to the training of town
8 and village justices? Do we need to look that far? Is it
9 still a problem? I know your question had to do with
10 district attorneys and so we kind of segued from training not
11 only district attorneys but also public defenders. But now
12 the issue of the town and village justices is equally
13 important because, for example, I don't know, Judge Main, if
14 it's preferable that a case like this should be referred to
15 Supreme as a rule.

16 HON. ROBERT G. MAIN, JR.: I don't think it can be
17 referred to Supreme as a rule. And we're talking about a
18 very limited number of town and village courts. It's vastly
19 less than the number of judges that would have been involved
20 as accessible magistrates, so I think that we need to keep
21 that in perspective.

22 I wouldn't roll out a statewide training program
23 for something like this because it's going to be overkill,
24 but I think if it could be tailored, that would be where it
25 would be appropriate. It's not going to involve every

1 district attorney, it's only going to involve a few district
2 attorneys.

3 JOY BEANE: Do you ever in doing the training
4 for --

5 HON. LIZBETH GONZALEZ: Talk louder.

6 JOY BEANE: For the training of the T&V judges,
7 because I think as Judge Main said, this is very targeted, do
8 you ever include, for example, training with judges or having
9 a program for the judges as well as the public defenders and
10 the prosecutors? Do you ever do --

11 NANCY SUNUKJIAN: We often don't. We often do not
12 do that. We most often will present our programs directly to
13 the judges without -- and certainly, if a district attorney
14 has a program that they want to talk about, then the public
15 defender or the representative of the defense counsel is
16 going to be there as well. So generally our programs are
17 geared directly at the judges so that there is an environment
18 where they can ask questions, they're free to ask questions.

19 We have 1,800 town and village judges in 1,200
20 courts. But as Judge Main was saying, these are very
21 targeted areas and it's even more than just the district,
22 it's really focusing more on counties, which county. But our
23 judges are very welcoming of these. They meet monthly. You
24 know, I've gone to many of those bowling alleys, I've eaten a
25 lot of diner food throughout the years.

1 And they are just very welcoming of anybody who
2 wants to come and speak to them on any topic whatsoever
3 relevant to what they're doing. And this is such a topic
4 that is so focused in these areas that I'm sure that the
5 courts, you know, I know Matt knows, that the courts that
6 need to know this information would love to get this
7 information from any, really any one of us here could present
8 that program.

9 My office also we do our statewide training, we
10 create that for them and present it. Also the clerks, let's
11 not forget the clerks, it's not just the judge. Because we
12 all know that any good court, the clerk is very crucial to
13 that. So the clerks also have meetings and go with the
14 judges, so to get the judges and clerks together, my office
15 grants them elective credits because they have to get a
16 certain number of credits a year, so that's easy, no-brainer.
17 I give them a credit and they show up. Anybody in the area
18 who wants to focus and say, hey, is there a magistrate
19 meeting, when are the next magistrate meetings, we can make
20 ourselves available and come and talk about. It's very
21 casual, it can be as casual or formal as you want. Sometimes
22 it's hard to put a PowerPoint up on the diner's pie circular.

23 HON. ROBERT G. MAIN, JR.: Does the resource center
24 have an online presentation database?

25 NANCY SUNUKJIAN: We have an online portal that

1 we've had for the last many years both for the judges and the
2 clerks. We put our training up there for judges and clerks
3 who can't make it to the major conferences. We can put up on
4 that anything we want.

5 HON. ROBERT G. MAIN, JR.: Could we facilitate
6 putting up on that a one-hour training program and then get
7 the word out to the town and village justices who would be
8 interested?

9 NANCY SUNUKJIAN: Absolutely, 100 percent.

10 HON. MARCY KAHN: Would they get credit for that?

11 NANCY SUNUKJIAN: Yes, 100 percent. That's what I
12 thought of, you know, if we could create an hour program, a
13 fifty minute program. And Matt and I are talking, we had a
14 little committee that was created, I don't remember, I think
15 Lisa Garabedian, I don't know if she's here today.

16 HON. MARCY KAHN: No.

17 NANCY SUNUKJIAN: And Judge Maxwell and Matt and
18 myself when we talked about somehow creating, and I know
19 somebody did something at Houghton College recently, I don't
20 know if she's here, Judge Snow.

21 HON. MARCY KAHN: She didn't come today.

22 NANCY SUNUKJIAN: She created something. So with
23 this group we could come up with, even if we're sitting at a
24 panel, may not be the most exciting, we can record that, we
25 have a video camera back at our shop and pop it up on the

1 website.

2 HON. ROBERT G. MAIN, JR.: Could you give access to
3 that to assistant DAs who might be interested?

4 NANCY SUNUKJIAN: I'm going to say no. A no to
5 that. I don't think that we would be comfortable doing that.

6 VALORIE PEREZ: But we could do a program that
7 invited both defenders and the ADAs and so we could record
8 that.

9 NANCY SUNUKJIAN: Big changes in the law recently,
10 so some districts had programs where the judges came,
11 landlord's attorney, respondent's attorneys, they all came
12 together, and that was a day's program of just a great
13 conversation about the law and what the judges could expect
14 coming in their door.

15 So if somebody other than -- you know, so if there
16 was a program where it had everybody and everybody was
17 invited, that could be recorded as well.

18 HON. ROBERT G. MAIN, JR.: And you could make it
19 available to the judges through your link?

20 NANCY SUNUKJIAN: Yes.

21 HON. ROBERT G. MAIN, JR.: We could make that same
22 program available to the DA's Association and the Defender's
23 Association.

24 HON. MARTHA WALSH HOOD: I think what you're
25 talking about is ethically it has to be like a stakeholder's

1 group where everybody has to be invited, not everybody has to
2 show up, but for judges to participate, all, everybody has to
3 be invited, you have to invite all parties, in which case
4 then we can enter into a conversation about issues of mutual
5 consent.

6 HON. ROBERT G. MAIN, JR.: Get over the ethics
7 concerns.

8 JOY BEANE: And just practically speaking, beyond
9 ethics it makes sense that everybody is sort of on the same
10 page as far as understanding the law and what's involved.

11 VALORIE PEREZ: It literally can be done in one
12 county, one DA, one defender and one judge, and it can be
13 recorded and then it would be -- it would qualify for that
14 standard.

15 NANCY SUNUKJIAN: You could have it in one location
16 where you would invite the local judges of that area, the
17 ADAs of that area, the defense counsel of that area, have it
18 recorded and present whatever you wanted to present, record
19 that, get it to me, we work magic, pop it up. And then we
20 can then start identifying those other courts statewide that
21 we think -- and I can send something to those courts saying,
22 hey, this was just done, we think you would find some great
23 value of this.

24 I don't want to go so far to say that it would be
25 mandatory. Right now we're involved in the criminal justice

1 reform where the justices are required to take an additional
2 three hours this year, because they have to, but we generally
3 don't add on and make it mandatory. You might have your
4 administrative judges recommend to these particular courts we
5 really think you should view this and we can track who views
6 what. It's pretty remarkable.

7 MATT CHIVERS: The only thing I'll jump on with
8 Nancy is she's not taking credit for but last month she
9 secured permission for an hour from the president of State
10 Magistrate's Association. So that class last year we kind of
11 sheepishly reported to you that we didn't get an hour. This
12 year we got in front of Judge Caruso, the Deputy Chief
13 Administrative Judge, they're going to do it, they're going
14 to let us teach that next year. So that would be a good
15 Forum, the Magistrate Association annual meeting, and we can
16 make those materials available.

17 NANCY SUNUKJIAN: It might not be the best place to
18 record it. So anybody?

19 NEIL PATTERSON: If you look at case law, this kind
20 of stuff actually happened at Tuscarora during a power
21 project. There are thousands and thousands of construction
22 workers. Some of them stayed on the reservation and
23 individuals let them set up on their land, trailers and such.
24 Ten years later there are still some people left there,
25 non-Indians. So the chief decided we got to get rid of them.

1 So they took them to court and got them excluded off the
2 reservation.

3 So maybe you want to look at that, you know,
4 Niagara County Court and how they went about doing it. I'm
5 not going to say -- you can't say everything that went on,
6 you can't say everything, but it's just the district attorney
7 was D'Onofrio, and he took up the case just like a raging
8 bull and he actually went on and won the case. Maybe you
9 want to look at Niagara County District Court, I think it was
10 1970.

11 HON. JOHN BRUNETTI: I was looking on Westlaw here,
12 because the county judges under Section 8 of the Indian law,
13 which was recently treated by the Court of Appeals in 2008,
14 they have an obligation to exclude intruders and they must
15 accept the determination of the Nation that the person is an
16 intruder and they can't go beyond that. So maybe the county
17 judges in areas where they might get such an application, you
18 know, should be included in whatever the seminar is or
19 separate handout.

20 NANCY SUNUKJIAN: That would be something at the
21 summer sessions. During maybe the summer sessions. And I
22 thought there maybe was something. Maybe I'm dreaming it,
23 was there not something at the summer sessions that they did?

24 HON. ROBERT G. MAIN, JR.: Judge Kahn and I and
25 some of the other people who are here did presentation on the

1 bail project.

2 NANCY SUNUKJIAN: That's what I'm thinking of.

3 HON. ROBERT G. MAIN, JR.: But my fear is that you
4 wouldn't attracts a lot of county judges to a topic like this
5 because there are so few of them that would be interested and
6 the sessions are divided over three presentations.

7 NANCY SUNUKJIAN: It would have to be for those
8 judges that would be affected by it, so again it's
9 pinpointing.

10 HON. ROBERT G. MAIN, JR.: If a good presentation
11 was done, we could identify those counties that would be
12 affected and get that presentation to the county judges in
13 those counties.

14 HON. MARCY KAHN: I'm going to identify them over
15 the lunch break to Nancy.

16 NANCY SUNUKJIAN: And our jurisdiction is
17 different, as you know, my town and village court is much
18 different than the county court and the authority of what we
19 have to do is much different than the county court. I don't
20 know if it was a matter of ejectment that they are doing, my
21 judges can't do that. We have similar proceedings which are
22 something different, we do restore possession but we don't
23 eject.

24 HON. MARK MONTOUR: The *Poospatuck Jackson* case
25 dealt with a Nation.

1 HON. JOHN BRUNETTI: *Poospatuck*.

2 HON. MARK MONTOUR: The Council determining that
3 they were intruders. They defined them as intruders.
4 Apparently the local court --

5 HON. JOHN BRUNETTI: County court.

6 HON. MARK MONTOUR: Tried to interpret intruders
7 and did it differently, and the Court of Appeals said no, no,
8 no, once the Nation has indicated them as being intruders,
9 you shall now enforce that; that's not within your discretion
10 to determine that they're intruders. So that was addressed
11 by the Court of Appeals in 2008 I think it was.

12 Before we go on, is there anyone else back here who
13 wants to speak about intruders at all? Karla questioned
14 orders of protection. And how many people are having
15 difficulties having their orders of protection enforced by
16 outside agencies? I'm sure you can all raise your hand. But
17 I think that's something we can probably address at some
18 other time as well.

19 John Maas, did you want to add anything with
20 respect from the Attorney General's Office?

21 JOHN MAAS: We met with a good number of folks last
22 week in Albany and this topic came up, and it was new to us
23 so we're kind of continuing listening. This is helpful, take
24 this back and see if there is a way that we can be helpful as
25 well.

1 HON. MARK MONTOUR: Emily, anything at all from the
2 perspective of your --

3 EMILY REID: Senator Kennedy and I visited the
4 St. Regis Mohawk Nation in July, so we had discussions with
5 them as well about this, so this is all really helpful to
6 hear everybody else's perspective on this topic.

7 HON. MARK MONTOUR: So if we need to, we can enlist
8 the aid of Senator Kennedy and the AG?

9 EMILY REID: Absolutely.

10 JOHN MAAS: For sure.

11 JOHANNE SULLIVAN: I would like to add that
12 whenever you do this training, if you can invite the Tribes
13 that are affected, that would be great.

14 NANCY SUNUKJIAN: I agree, that's critical.

15 HON. CARRIE GARROW: My follow-up point, would you
16 find it helpful if the Forum had a subcommittee to work on
17 this?

18 JOHANNE SULLIVAN: Yeah, I think if we had a
19 working group, that would be great.

20 HON. CARRIE GARROW: So we need volunteers. I've
21 got three.

22 HON. LIZBETH GONZALEZ: I'll help you with the
23 format if you need to create it.

24 HON. MARK MONTOUR: I can help you.

25 HON. CARRIE GARROW: Judge Brunetti, any interest?

1 HON. JOHN BRUNETTI: Put me down. I can't say no
2 to an opportunity to pontificate.

3 HON. MARCY KAHN: John, I gave you up. Judge
4 Brunetti is the master at bench cards and cheat sheets and
5 things like that for criminal jurisdiction judges in the
6 state system.

7 HON. ROBERT G. MAIN, JR.: And teaching.

8 HON. MARCY KAHN: And teaching. So I gave him up
9 and now I've given him up to all of you.

10 HON. CARRIE GARROW: Anyone else? Okay.

11 HON. MARK MONTOUR: Next item.

12 HON. CARRIE GARROW: I just want to take a few
13 minutes to thank and recognize. But first to thank Judge
14 Kahn, Judge Main, Judge Montour, they nominated Micaelee Horn
15 who was our Healing to Wellness coordinator, for an award
16 with NAICJA, which is the National American Indian Court
17 Judges Association. They nominated her for the court service
18 award.

19 She wasn't selected. And she was going to be here
20 today but she came down with strep throat so we thought
21 perhaps she should not be here. So we just wanted to take a
22 few minutes to acknowledge all the hard work that Micaelee
23 has done, even though she's not here with us. Judge Kahn,
24 did you want to say something?

25 HON. MARCY KAHN: I certainly do. I'll tell you

1 some of the things I told NAICJA. I don't know why they
2 didn't accept my view, I can't believe they didn't accept my
3 view. But Micaelee since the inception of the Healing to
4 Wellness Court in the St. Regis Mohawk Tribal Court, she
5 helped to create that court, she forged relationships with
6 the state judges and with the court personnel in the state
7 system. Because she was so and is still so diligent, she
8 earned their confidence. Judge Main can speak to this since
9 I think he is one of the people who was won over. She is
10 extraordinarily compassionate, as all of you who know her
11 know.

12 When I was visiting Akwesasne she had to step away
13 from our meetings because she had to drive a participant in
14 the Healing to Wellness Court to the hospital in some other
15 city for some surgical appointment and stay with her while
16 she went through this terrible surgical thing and bring her
17 back. She, of course, enforces the jail sanctions and is
18 reliable from the point of view of the state courts. She
19 works with the litigants and their families, with law
20 enforcement people, with the Tribal Council, with the
21 Assistant U.S. Attorneys, with the clinical team.

22 She has assisted greatly the Bail Reform Project
23 and helps Donna in that connection too. She served as a
24 model not only for us but she presented to the national
25 audience at the National Tribal Law and Policy Institute with

1 me in 2014, because she had done such a fabulous job
2 everybody all over the country wanted to hear about it.
3 She's been the public face of the Court in many arenas since
4 its inception in 2010, and participants in the program as
5 well as their families say that she has changed their lives.

6 I'm going to stop talking, but you get the idea of
7 why I thought she should get this award.

8 HON. CARRIE GARROW: Judge Main or Judge Montour,
9 do you want to add anything?

10 HON. ROBERT G. MAIN, JR.: I think Judge Kahn
11 addressed it as well as it can be addressed. It's just
12 unfortunate. There must have been some very fine people
13 nominated if Micaelee didn't receive the award.

14 HON. MARK MONTOUR: I agree totally.

15 HON. CARRIE GARROW: So thank you for that
16 nomination. And Micaelee is disappointed she couldn't be
17 here today, she was very touched at the nomination when I
18 shared that with her, and so thank you for that. All right.

19 So we'll go on to the next item, which is?

20 HON. MARCY KAHN: We covered Judge Murphy but not
21 Judge Catena.

22 HON. CARRIE GARROW: Go on to C, the appointment of
23 the Fourth and Fifth Judicial District Administrative Judges.

24 HON. ROBERT G. MAIN, JR.: As many of you know, our
25 former District Administrative Judge Vito Caruso was

1 appointed to succeed Michael Coccoma as the Deputy Chief
2 Administrative Judge of the courts outside the City of
3 New York, and he has had that responsibility since mid
4 summer, creating a vacancy in the Fourth Judicial District,
5 which was filled by the appointment of Feliz Catena, the
6 Montgomery County County Judge, and he has been in that
7 position for the past couple of months I believe it would be.

8 So I wanted everybody to be aware that we do have a
9 new Fourth District judge and he has been appropriately
10 congratulated by the committee. And we in due course perhaps
11 would invite him, if his calendar permitted, to come to a
12 session to see how the Forum and the committee operate. But
13 he is on the ground and running hard.

14 HON. JOHN BRUNETTI: Marcy, I can offer to be the
15 Judge Walsh Hood connection to Felix.

16 HON. MARCY KAHN: Wonderful.

17 HON. MARK MONTOUR: Excellent.

18 HON. CARRIE GARROW: Fabulous.

19 HON. MARK MONTOUR: We did send letters to them
20 recognizing their new positions and also inviting them to any
21 of our Forum meetings, including this meeting today. So it's
22 an open door invitation to both of them to try and attend.

23 When I was doing a little research as far as
24 sending out these letters, I did notice -- and I want to get
25 some recognition to Judge Beverly Cook from St. Regis Nation,

1 I did send her a letter. She's at the National Congress of
2 American Indians Climate Action Task Force, and one of the
3 few members that were selected nationwide to be on that
4 panel. And so on behalf of the Forum I did send her a
5 congratulatory letter back in September recognizing her
6 efforts and indicating to her she has our support.

7 HON. CARRIE GARROW: All right. Do you want to --

8 HON. MARK MONTOUR: It's the Historical Society of
9 the New York Courts: Judicial Notice, and it's Judge Kahn and
10 yourself.

11 HON. CARRIE GARROW: Judge Kahn?

12 HON. MARCY KAHN: We have a thanks to Joy. We sent
13 this journal to you electronically over the summer when it
14 came out but we also wanted to give you a hard copy. I think
15 AUSA Rose, I think you guys are stuck with electronic copies
16 or did you get hard copies?

17 CHARLIE ROSE: We have copies.

18 HON. MARCY KAHN: Oh, isn't that nice. Very good.
19 Thank you so much.

20 And again since I didn't get to do it last time, I
21 want to thank Assistant U.S. Attorney Rose for all of his
22 hospitality out there in Central Islip over the years, and we
23 just really appreciate it. And please tell that to U.S.
24 Attorney Donoghue. We appreciate it very much.

25 We were asked by the Historical Society of the

1 courts to come up with some articles about what we've been
2 doing, not just the Forum, but really the history of how
3 New York has treated Indian Tribal Nations. And after a lot
4 of discussion and effort, Judge Garrow, Danielle Mayberry and
5 I, and also professor Lori Quigley out there in Western New
6 York, put together the articles that you see here.
7 Danielle's is about the origin of the Indian Child Welfare
8 Act. Judge Garrow's talks about how jurisdiction was
9 ultimately acquired by New York over Indian lands, it's a
10 beautiful historical article. I talked about the Forum and
11 Professor Quigley talked about the Indian boarding schools,
12 particularly focusing on the Thomas Indian School where her
13 mother actually had been. And so we thought you might want
14 to have this.

15 I also want to commend to you the introduction in
16 the volume written by our retired colleague Judge Helen
17 Freedman, who discusses our articles but also talks about how
18 they, the Historical Society, places a great import on the
19 relationship between the Indian Tribal Nations and the state
20 court system. They want to continue working with us, by the
21 way, and Joy and I will talk to you more about that later.

22 I don't know, Carrie, if you want to say anything
23 more.

24 HON. CARRIE GARROW: No. I was grateful for the
25 opportunity and it was quite an effort.

1 HON. MARCY KAHN: Yeah, I'll say.

2 HON. CARRIE GARROW: But we're very grateful that
3 they did that, so we hope maybe there will be some more
4 opportunities down the road. Okay.

5 So the next thing on the agenda is the New York
6 State Native American Relations committee. And as Emily
7 mentioned, we're very fortunate they came and visited us in
8 July at Akwesasne, dropped by the court a few minutes.
9 Senator Kennedy was there. I believe Senator Little and
10 Senator Jordan, although one of them had to leave a bit
11 early.

12 EMILY REID: Senator Little did.

13 HON. CARRIE GARROW: But the courts were their last
14 stop, but I understand they got an excellent tour of the
15 territory and a lot of the things that we're doing, along
16 with some of their staff, and so we were excited that they
17 came to visit. I don't know, do you want to talk any more?
18 I don't know, tell us a little bit about what the committee
19 is doing? Are you doing other visits?

20 EMILY REID: Sure, yeah. So we also did a visit to
21 the Oneida Nation a week after we visited the St. Regis
22 Mohawk Nation, and then as of right now we're just scheduling
23 more visits. We have a visit to the Seneca Nation in the
24 works just scheduling-wise. And then other than that we're
25 trying to just make connections with the different Nations

1 across the state for the ones that we haven't visited, just
2 because we don't have -- we haven't made those connections in
3 our office yet, so I would be really grateful if I could have
4 other contacts, you know, through this Forum would be great
5 so that we could establish relationships and schedule visits
6 as well for the subcommittee.

7 I think it's important for the subcommittee to
8 visit as many as possible so that it can get a better handle
9 on how this committee is actually going to work. The
10 subcommittee hasn't really been working too much over the
11 past about ten years. So since Senator Kennedy was named
12 chairman of the subcommittee, it's been a priority of his to
13 kind of breathe new life back into the subcommittee and make
14 sure it's doing what it's supposed to be doing, working for
15 the Native people.

16 HON. CARRIE GARROW: Great. We're glad you're here
17 and invite you to come back and participate on the Forum. So
18 if anybody wants to chat with Emily about a visit or
19 anything, are you able to stay throughout the day?

20 EMILY REID: I have to leave at 2:00 to head back
21 to Buffalo, but I can leave my business cards here as well if
22 I don't get to meet everyone.

23 HON. CARRIE GARROW: If you want to be on the
24 e-mail list, I believe you signed in.

25 EMILY REID: Yeah.

1 CHIEF HARRY WALLACE: I have one question. Is
2 there any legislation or initiatives that are currently
3 pending before the subcommittee at this time?

4 EMILY REID: There isn't any yet. We're out of
5 session right now. So what our goal is in these visits is
6 when we go and visit each of these Nations, we come back with
7 items that we think we could bring through the legislature.
8 So we'll compile all of these items before we head back to
9 session in January and then we'll start having official
10 meetings of the subcommittee and bring forth these items to
11 discuss and bring forth through legislation.

12 HON. ROBERT G. MAIN, JR.: Emily, is Senator Little
13 a member of the subcommittee?

14 EMILY REID: Yes.

15 HON. ROBERT G. MAIN, JR.: And she's the senator
16 that represents --

17 HON. MARCY KAHN: St. Lawrence County. And she has
18 helped us before with the marriage officiation legislation,
19 she introduced that bill for us, and so she has been very
20 friendly to the Forum before. And I predict, Emily, before
21 the day is out, before you leave you will have some
22 suggestions for legislation. I've got one and I believe that
23 the chief has.

24 HARRY WALLACE: Yeah.

25 EMILY REID: Absolutely.

1 HON. LIZBETH GONZALEZ: Emily, who are the
2 downstate members of the committee?

3 EMILY REID: Downstate members, we have a Senator
4 Rivera is a member.

5 HON. LIZBETH GONZALEZ: Gustavo Rivera?

6 EMILY REID: Yes. He might be the only downstate
7 member. Senator Main in Syracuse is a member. I think that
8 Senator Rivera is only downstate member.

9 HON. MARCY KAHN: Where is he from?

10 HON. LIZBETH GONZALEZ: Bronx.

11 EMILY REID: The Bronx, yeah.

12 HON. LIZBETH GONZALEZ: The Bronx. We're going to
13 be hearing about the NAICJA legislation, proposed
14 legislation, and it's critical that the committee come on
15 board with that.

16 EMILY REID: Keep us engaged in anything that's
17 going on. Again, I'll leave my card here as well. But we
18 want to be engaged as much as possible. Because this is new
19 for Senator Kennedy to be the chair of this committee, we
20 can't know everything but we want to know everything as much
21 as possible, so any information you guys have that you think
22 would be applicable, please send to me.

23 HON. CARRIE GARROW: Anybody else have questions
24 for Emily? All right.

25 HON. MARK MONTOUR: We're on the ICWA update.

1 HON. CARRIE GARROW: I'll start with the ICWA
2 workshop. Remember last year in April we had our first
3 annual conference. So next April, which is coming up very
4 fast, we will be doing our second annual. There is a
5 save-the-date flyer. If you remember last time we actually
6 picked the dates for the April Forum in advance so we'd know
7 and can start planning. So look for more information. Once
8 we finalize the hotel, we'll certainly circulate the flyers.

9 We're excited. Things we're looking at different
10 doing for the second annual, we're looking at talking with
11 the Syracuse University students program and them hosting,
12 and us, a documentary the night before. We know a lot of
13 people come in the night before. And so I'm talking with
14 them about hosting a documentary, and so we're excited about
15 that.

16 The other thing we're excited about is speaking at
17 the second annual conference will be Kate Fort, who is the
18 national expert on ICWA, and she also represents a couple of
19 the Nations on the case that is being litigated out in Texas
20 on ICWA. And she also wrote the case book on ICWA that just
21 came out. So she'll be here for the conference. I believe
22 we're trying to get her to stay for the Forum as well the
23 following day, so we're looking forward to that.

24 So those of you on the committee, don't worry, I'll
25 be reaching out and we'll be getting together soon.

1 HON. LIZBETH GONZALEZ: So when we had a discussion
2 about this and the importance of having as many judges as
3 possible attend, there was a question about having the Deputy
4 Chief Administrative Judges for downstate and for New York
5 City Courts and outside of New York State Courts to encourage
6 the judges to attend and indicate that expenses would be
7 covered and so on.

8 So perhaps what we need is a letter of invitation
9 that we can send out and that can be copied by the DCAJ for
10 each group in New York City Courts and the courts outside of
11 New York City so that judges mark that way before the April
12 date.

13 JOY BEANE: Have we got the DCAJ's agreement to pay
14 the travel costs?

15 HON. LIZBETH GONZALEZ: Not yet. But we have to
16 start.

17 JOY BEANE: Are we in a position to get that done?
18 Do we need --

19 HON. LIZBETH GONZALEZ: I think we have a really
20 good shot at it, but we need to get the process started.

21 HON. CARRIE GARROW: So you need a letter inviting,
22 which I think Judge Montour will work with you.

23 HON. MARK MONTOUR: I have it.

24 HON. LIZBETH GONZALEZ: We need more than that. We
25 have a date. We need a letter.

1 JOY BEANE: Co-facilitators of the Tribal Courts
2 and the chairs to get that commitment, which you guys can do,
3 I know.

4 HON. LIZBETH GONZALEZ: I think it would be helpful
5 if we had it before year's end.

6 HON. CARRIE GARROW: Sure.

7 HON. MARCY KAHN: Oh, yeah. Because the state
8 court I think budgeting process really is before year-end,
9 correct me if I'm wrong.

10 HON. ROBERT G. MAIN, JR.: November 1st I think
11 they have to submit it.

12 HON. MARCY KAHN: That would be good. And there is
13 a changing of the guard over there, Barry Clark is leaving
14 and I think John McConnell is taking over his activities, but
15 they should be contacted I think in October about this.

16 HON. CARRIE GARROW: I'll work with Judge Montour
17 and Judge Main and we'll put together a letter.

18 HON. LIZBETH GONZALEZ: And if you need anything,
19 I'll help you.

20 HON. CARRIE GARROW: That's all I have for the
21 workshop.

22 Judge Gonzalez, do you want to do the Court of
23 Appeals decision?

24 HON. LIZBETH GONZALEZ: Yes. So, I'll let Harry do
25 that and then I'm going to talk about the issue that we have.

1 Harry.

2 CHIEF HARRY WALLACE: The Fifth District Court of
3 Appeals Decision on *Brackeen*. Okay, can you hear me?

4 CHARLIE ROSE: Yes.

5 CHIEF HARRY WALLACE: So the case was on for
6 argument en banc at the Fifth District Court in the *Brackeen*
7 case. The original decision was made by the panel, Fifth
8 District panel, and it was overturned, the District Court's
9 determination about whether ICWA was a violation of equal
10 protection. That decision was overturned by the panel.

11 So they moved for a rehearing en banc, and that
12 motion was granted and is pending. At the time of the
13 initial appeal, 24 attorney generals from different states --
14 attorney generals from 24 states moved for amicus briefs and
15 to be joined in there. And New York State was not one of
16 them. So we have an opportunity now to have New York join in
17 the rehearing argument.

18 So we're urging the Attorney General's Office,
19 we're urging, extremely urging the Attorney General's Office
20 to participate, not only to participate but to advocate.
21 Because New York has always said it's one of those states
22 that is the most vigilant in protecting the rights of
23 children, and particularly Native American children. And it
24 also has -- I shouldn't say Native American. But, in any
25 event, it has adopted and incorporated the federal

1 regulations with respect to ICWA, one of a few states,
2 Washington State, Oregon, a number of others, Minnesota, have
3 incorporated those regulations into state law. New York is
4 one of those.

5 So it's disingenuous for you not to be part of this
6 federal litigation when it's actually state law. So we urge
7 you to become a part of this federal litigation in the Fifth
8 Circuit. Anything else?

9 HON. LIZBETH GONZALEZ: On that, no.

10 CHIEF HARRY WALLACE: All right.

11 HON. MARK MONTOUR: So the AG's Office has an
12 assignment, so that's their homework.

13 HON. LIZBETH GONZALEZ: Shall I continue with the
14 next?

15 HON. CARRIE GARROW: Well, is that A or is that --

16 HON. LIZBETH GONZALEZ: No, that's A.

17 HON. MARK MONTOUR: Number III.

18 HON. CARRIE GARROW: I'm asking just Gonzalez, is
19 what you want to speak on in Section III.A?

20 HON. LIZBETH GONZALEZ: Yes.

21 HON. CARRIE GARROW: Why don't we wait until we
22 finish the new projects.

23 One of the other handouts that was on the table
24 when you came in, I was very fortunate to participate in a
25 podcast series on Tribal welfare, Tribal child welfare

1 through ACF-HHS. It was part of one of our grants. So it's
2 about different approaches. I spoke about our Healing to
3 Wellness court and how we used that in conjunction with our
4 family court cases that are pending in the county or that our
5 Tribal Social Services are servicing.

6 And so it's -- they did this podcast series to help
7 courts think about innovative ways, different ways of
8 thinking about helping families. So I wanted to make that
9 available to you. There is all sorts of different people
10 interviewed in the podcast. So I encourage you to take that
11 home and share that with your social services that you work
12 with or other people who work in family courts. Unless
13 anybody has any questions about that.

14 HON. MARK MONTOUR: Let's go on to the item G under
15 new projects, which would be the Forum Archive Project, and I
16 think Judge Kahn is most familiar with that and able to speak
17 to that, and Joy, too, I think. Who wants to go first?

18 HON. MARCY KAHN: When I started to pack up my
19 effects from leaving the courthouse this past month, of
20 course, I went through the dozen or so banker's boxes I have
21 for the 18 years of the Forum's operation and the Tribal
22 Courts Committee's operation. Joy was good enough to venture
23 into my chambers to look at it and advise me on it, which I
24 was very fortunate to have that because she worked at the
25 Judicial Institute, as I think Valorie did, too, at a time

1 when they engaged in projects like archiving records of the
2 courts, which they don't much do any more.

3 But I also talked with Marilyn Marcus, who is the
4 head of the Historical Society, put out this judicial notice
5 journal that you have. Like I said, she's interested in
6 helping us preserve the history of the Forum, but she doesn't
7 really have space or staff to go through it and archive it.
8 My law clerk and I did do a sort of a back of the envelope
9 scratch index of the 12 boxes, but it's very loose and it's
10 not --

11 JOY BEANE: It's very loose.

12 HON. MARCY KAHN: Thank you, Joy. You won't be
13 invited back.

14 JOY BEANE: It's a great start.

15 HON. MARCY KAHN: It's not nothing.

16 JOY BEANE: It's not nothing at all.

17 HON. MARCY KAHN: And it's what we had time to do.
18 But what we want to do is I'm going to let Joy talk to you
19 about how we think this ought to be handled.

20 Right now the boxes are still at the Appellate
21 Division First Department until a new judge wants that space,
22 which I don't know, that could be any time. So Joy and I are
23 going to be liaisons on this, and she'll tell you a little
24 more about it. But one of the things that I wanted to put to
25 you in terms of our preservation or publication of any of

1 these records is this. We have always maintained the
2 transcripts of our meetings that Eileen McDonough and her
3 colleagues have prepared in electronic fashion on our website
4 with the help of Valorie and Connor, who couldn't be here
5 today, but they're accessible to the participants in the
6 Forum using the members-only access to the website, which
7 I've given to you about six times, but we can always give it
8 to you again if you want it. But you're the only ones who
9 can see those transcripts. And part of the reason we did
10 that so that everyone here would feel comfortable saying
11 whatever they wanted to in this group without thinking that
12 it's going to be all over the internet or in the local
13 newspaper or anything else.

14 As we go forward with the project, one of the
15 things that we're gonna want to do is decide whether some of
16 the material is historical enough or so out of date enough
17 that the Forum might be comfortable in letting some of it
18 become public. The Historical Society would like to put our
19 transcripts on their website but they would be available to
20 the public if we did that. So I've said for now, no. I said
21 let me talk to the Forum and see if we can develop -- I don't
22 expect anybody here to go through those boxes document by
23 document, but maybe develop some standards or guidelines that
24 could be used, as Joy will tell you, by archivists who know
25 more than I do anyway about how to save documents to

1 determine what might become publicly available.

2 So after Joy tells you about what we're thinking
3 about doing with the archiving, I'd like suggestions from you
4 about what kind of guidelines we should use to decide whether
5 any of this historical material that we have not made
6 available should become available. It includes letters back
7 and forth from the New York Chief Judge, letters we've
8 written to the legislature, internal e-mail communications
9 within the state court people's committee, within the Forum,
10 lots of notes and things like that.

11 JOY BEANE: And I did go down to Judge Kahn's
12 chambers, and not at all casting dispersions on the back of
13 the envelope cataloging of the contents of these boxes, but
14 it became really clear to me that it's well outside certainly
15 my skill set and, you know, with all due respect, I think
16 Judge Kahn's training has not been as an archivist, although
17 she certainly keeps things, which is a great, great thing.

18 And I think what I found just delving into some of
19 these boxes, it was a real trip down memory lane, oh, I
20 forgot when we were busy with that project, or, oh, yeah,
21 that person, you know, it just brought back a lot of great
22 memories. But, in addition, I think that our Forum has a
23 national visibility and it has actually had a fairly
24 consistent participation over a long period of time, and
25 that's somewhat unusual with the State-Tribal Courts Forum.

1 So apart from the importance I think of, you know,
2 we had talked about strategic planning and how to make sure
3 that our Forum continues in the future, and I think for that
4 reason it's really important to figure out how we want to
5 preserve our past, but I think also just from a sort of
6 historical point of view, how an organization like ours gets
7 developed and moves forward, it's also a really important
8 project.

9 So with those, those are the two things that struck
10 me when I saw all these boxes and I started to look into
11 them, and that's where it became really clear to me that
12 somebody who knows how to archive things, how to organize
13 these kinds of materials, how to be able to cross-reference
14 them. We have different topics, we have different people.
15 We really need some expertise because my concern, and my
16 concern is borne out of having worked in the court system for
17 a number of years, is that these boxes will get piled up
18 somewhere and they will stay there for a really long time and
19 they will collect an enormous amount of dust, because
20 something we seem to be able to generate a lot in the court
21 system is dust, and then somebody along the line will say,
22 look, what are all these things, who knows, out they go.

23 And this stuff I think is really interesting. I
24 think it's really important. I think it's important for the
25 court system. I think it's important for the Forum itself.

1 And I think it's important at a higher level than that. And
2 so one of the thoughts, you know, the Judicial Institute
3 isn't really doing this kind of work anymore, these kinds of
4 projects; its budget has been cut. They're much more focused
5 on just the training aspect of their mission. And the
6 Historical Society of the New York Courts, as Judge Kahn was
7 saying she spoke with Marilyn Marcus, they're not part of the
8 court system. A lot of these documents are sort of court
9 documents generated from the New York Tribal Courts
10 Committee.

11 So we were thinking that it should be somehow the
12 court system ought to be interested in this. And so one
13 thought -- and I think the Forum also ought to be interested
14 in this. So one thought that I had and I haven't really --
15 we haven't made a huge amount of forward progress because we
16 just did this last week, is to see if we can somehow fall
17 under a grant of some sort to get someone, ideally someone
18 located in New York, ideally someone with archival library
19 experience, ideally someone with that experience or either an
20 experience or interest in Tribal Courts law, Indian Law and
21 the sorts of things we do, to take this project and figure
22 out what to do with it.

23 I mean, we can get things digitized. I don't know
24 in archival circles whether paper has any relevance anymore.
25 Obviously, it's a storage problem. But I just don't even

1 know how to approach those questions.

2 HON. LIZBETH GONZALEZ: I have difficulty with the
3 proposal, period. I've always had a question mark as to why
4 we have transcripts of our meetings as opposed to having
5 meetings like everybody else does, and I figured that's
6 because we have so many people in different locations, that
7 if anybody missed a meeting if they wanted to check what had
8 happened, they could do so.

9 But the idea of making this public or having
10 someone decide what is pertinent and what is not pertinent,
11 there is problems across the board, particularly since we
12 have Nation representatives here and people generally
13 speaking have to doublecheck with their Nations in order to
14 make sure that something is done. So I don't see how anybody
15 is in that position to decide what is suitable and
16 unsuitable.

17 Additionally, I think that we talk in confidence
18 and that that aspect of confidentiality has been a trademark
19 of why we're able to speak candidly. With respect to
20 e-mails, I try very hard not to put difficult issues into
21 writing precisely because it's not to be shared. If I have
22 to say something, I would rather do it in a conference call.
23 And the idea, for example, of my communications with other
24 people and having those reviewed by someone and having those
25 edited by someone as to whether they should be selected or

1 not simply because of the fact that I'm in conversation with,
2 for example, the members of my committee, I have great
3 difficulty.

4 We have issues that are very sensitive that are
5 very nuanced that can cause loads of problems if the
6 discussion goes outside of this room out of context. For
7 example, a person can bring up issues that are peculiar to
8 their Nation that's really not known everywhere else and you
9 don't want that to be known, you want that to be known here
10 because this is our community.

11 So if you're talking about correspondence, that's a
12 different issue.

13 JOY BEANE: Let me back up. I'm not necessarily
14 talking public. I know Judge Kahn mentioned the availability
15 of transcripts, but I'm really talking about we have, I don't
16 know, twelve plus boxes of what I regard as historical
17 information on the formation of the Forum and the development
18 of the Forum and the Tribal Courts Committee, and do we just
19 throw them out, and I think no. So I'm not talking about
20 necessarily an archivist to come in and create a public
21 document or public archives. I'm just talking about I think
22 it would be a shame to throw all these papers out.

23 HON. MARCY KAHN: We don't necessarily have to make
24 any of it public.

25 JOY BEANE: Right, that's not the goal.

1 HON. MARCY KAHN: That's not a part of the
2 archiving project. The question came to me from the
3 Historical Society, isn't some of this old enough that you
4 can turn it loose and we can put it on the Historical
5 Society's website. I said I can't say yes to that. And
6 certainly things like e-mails that treat very sensitive
7 matters, of which there has been a lot that we've done over
8 the years, no doubt about that, those things would never get
9 publicized. But maybe some of the early.

10 HON. ROBERT G. MAIN, JR.: Well, the records are
11 like the Listening Conference, groundbreaking.

12 HON. MARCY KAHN: When we invited people from the
13 public to come, things like that, because all of that, we do
14 have that on our website and we do have it on the JI website,
15 the courses from the Listening Conference, both of them?
16 Right, Valorie?

17 VALORIE PEREZ: Yes, we do.

18 HON. MARCY KAHN: Maybe something like that could
19 be on the Historical Society's website, I don't know. But
20 all of those points are of serious substantial concern, of
21 course. But as Joy says, archiving them, we would be going
22 out looking for a grant. I would be asking the chief judge
23 to support our effort here and help us find a grant and maybe
24 enlist the aid of some of the court system people to help us
25 organize it; they wouldn't necessarily at all decide this is

1 going to the New York Times or anything like that.

2 JOY BEANE: Or even the whole body of work is not
3 public. And again this is probably the history major in me,
4 it just seemed like too important to throw away, and that's
5 the alternative.

6 HON. JOAN MADDEN: My question is focused on what
7 are the types of materials, because I think there is a
8 distinction here between transcripts of our meetings, which
9 there is very obvious concerns about, and other issues such
10 as projects, such as the Listening Conference and other
11 projects which are a different type of material and which
12 would not have the same type of confidentiality concerns.

13 So, can you give an overview, brief outline based
14 upon what's on that envelope?

15 JOY BEANE: I can and Judge Kahn can. And then
16 this is I guess where I was thinking I need someone who has
17 more training in this area than me. Judge Kahn really did
18 save a lot of things and it's all of that. And it's all, you
19 know, it's organized -- it's not really even organized.

20 HON. MARCY KAHN: Well, I mean, there is different
21 folders like materials put together for the April 2007 Forum
22 meeting, e-mails back from the Chief Administrative Judge
23 saying our budget was just cut by \$140 million, you can only
24 have one meeting this year. Maybe you remember that happened
25 and we tried to have a conference call instead. Things about

1 when we first started in formation. Letters from the Tribal
2 Nations, I have some letters from 2003, Jenna, Joe Heath.

3 JENNA MACAULAY: I wasn't here then.

4 HON. MARCY KAHN: I have the letters. You know,
5 they're sort of semi-organized, there is the beginnings of
6 organized, that sort of thing, but not enough to really tell
7 a story. I don't know. There is two parts to this,
8 organizing them, and then the second part deciding what, if
9 anything, should be made available.

10 NANCY SUNUKJIAN: I think one thing, again only
11 because we often get -- I deal with Arlene Hackel and Sean
12 Currie from the court system about requests for records and
13 documents going on in the courts, and FOIL doesn't apply to
14 our courts but it applies to OCA in general. So I don't know
15 that that would change anything, with the documents you're
16 talking about, because they do exist, and I don't know if
17 archiving them creates a different issue for us to think
18 about with regards to FOIL requests. And I think, you know,
19 if -- again, I don't throw anything away, so I love that
20 there is twelve boxes, I think that's great. And when you
21 look at that, I forgot, you know Judge Kahn, and it's very
22 interesting for us at the Forum and for I'm sure other
23 historical interested individuals.

24 So I just would like to remind us that FOIL might
25 be an issue if we are going for grants and asking for money

1 to then do this, which I think is a worthy endeavor, with the
2 idea that then we decide what to do with it. I don't want it
3 to then somehow be out of our control when someone says,
4 wait, you got this grant, you scanned all this stuff, we want
5 that.

6 I honestly don't know the FOIL rules as well as
7 others do but that might be something that might draw
8 attention. But I also don't like the idea of them drawing
9 dust either.

10 JOY BEANE: Or simply shredding because that is an
11 alternative as well. Again, it could be my history major
12 background. It seems like, this seems like such a lot of
13 material that ought not just be tossed. And if it's not
14 going to be tossed, then what do we do with it?

15 HON. CARRIE GARROW: I think there is two
16 questions, one is to figure out what's there, and also take
17 into account if we bring someone in if we are able to get
18 funding, you know, having done a lot of historical research,
19 I would be devastated if we just destroyed these records and
20 not figure out a way to keep them in some way and figure out
21 as a group what we want, if anything. Do we want to just
22 keep them for the Forum, that's great, but how do we do that?
23 I think it's probably best to perhaps have a subcommittee to
24 work on this and report back.

25 HON. MARCY KAHN: To that point, Connor VanEveren,

1 our staff person for the Forum, has already started to
2 archive certain materials, really at Judge Main's suggestion,
3 that Judge Main didn't want certain things to be lost. And
4 Connor I think is archiving them in the members-only section
5 of the website. Is that right, Val?

6 VALORIE PEREZ: He hasn't started archiving
7 anything else I don't think from the boxes.

8 HON. MARCY KAHN: No, no, not from the boxes.
9 There is my report on the Vatican.

10 VALORIE PEREZ: A lot of letters, a lot of
11 important letters, but it's only in the members-only, a lot
12 of transcripts except for a few from way back in the day that
13 we're trying to get up there. Again it's all private. A lot
14 of important information is already there. The question is
15 how much in these boxes is important to the process of how
16 this all came about.

17 JOY BEANE: That's the question.

18 VALORIE PEREZ: That's the question that needs to
19 be answered, those are the documents, those that are so
20 important to like the fundamental procedures and how you
21 developed this Forum and you managed to do a lot of things,
22 very important things.

23 So maybe it would not be -- you would look at it as
24 anything that went to personal conversations, e-mails that
25 were, you know, very delicate. Those things would

1 absolutely, I was just thinking, not be a part of this. It
2 would really be from a general perspective how maybe,
3 sometimes who, depending on what those parameters are.

4 But definitely how. You know, anything that was
5 about the process and how the rule came about, how you sent
6 letters to A, B and C and then this happened, anything that's
7 really kind of just a story of how I don't think would be a
8 problem.

9 But of course that's just for starters. But the
10 first thing is to really get a handle on what's in there and
11 that could be done without someone who has I think that much.

12 JOY BEANE: But it needs to be --

13 VALORIE PEREZ: I mean without the grant. Maybe
14 that step without the grant.

15 JOY BEANE: I could do it like in my spare time,
16 it's not quite that.

17 HON. MARCY KAHN: I mean, I took about a week to go
18 through every document in one of the banker's boxes because I
19 had this unrealistic aspiration that I was going to tag with
20 a Post-it for Joy's visit the important documents of the
21 nature you're speaking about for her to look at and say, yes,
22 yes, we should archive this particular document, and I ended
23 up with about, I don't know, thirty Post-its in the banker's
24 box, but maybe more, fifty, something like that. But I only
25 got through one of the twelve boxes. And by the end of next

1 week there will be two more boxes.

2 JOY BEANE: Maybe if we could do something like
3 getting an intern to come in, but maybe like an intern more
4 like a library, somebody who knows how to deal with papers
5 who has some training and can provide some guidance, maybe
6 that's really where we are.

7 HON. ROBERT G. MAIN, JR.: Judge Kahn, we wouldn't
8 have this problem if you hadn't retired.

9 JOY BEANE: Let's revisit that.

10 HON. ROBERT G. MAIN, JR.: That said, I think there
11 is a distinction to be made here. I think as a Forum and as
12 a committee, we're entitled to keep our own records and to
13 have our own records, and because you were the chair for as
14 long as you were, it was natural that you've accumulated
15 these things. I think we need to find someplace where we can
16 keep our records with some consistency going forward,
17 regardless of who the chair or the facilitators may be. That
18 I think is separate and apart of what we might want to
19 archive and keep for historical purposes. And I think
20 somehow we have to make that distinction.

21 And I think if we could elicit the assistance of
22 Judge Silver in the city and Judge Caruso outside and find
23 out where someplace or entity, where as a court system
24 committee we can keep our records, and then we can decide
25 which of those should have some type of a permanent

1 historical archive status.

2 JOY BEANE: I like that idea.

3 HON. MARCY KAHN: That's fine.

4 JOY BEANE: The first one is a little --

5 HON. MARCY KAHN: They don't have space. They're
6 not landlords in that sense, the DCAJs. But I know that the
7 chief judge has been very supportive of our efforts and
8 thinks that they're very important. And I can talk with you
9 more about whether we should start talking with her or rather
10 before this DCAJs, we can decide that going forward.

11 VALORIE PEREZ: Would it make sense to ask to have
12 these kept in one of our law libraries in the courthouse?
13 Two reasons. One, that's where a lot of records are. And
14 secondly, I think that would be a good working space for
15 whomever were to be able to go through these. That's the
16 first place that came up.

17 HON. CARRIE GARROW: Joy, do you want a
18 subcommittee?

19 JOY BEANE: How did I even get on this committee?

20 HON. MARCY KAHN: You volunteered last week. Joy
21 and I volunteered to be on the subcommittee.

22 HON. CARRIE GARROW: I'm happy to help.

23 JOY BEANE: All right. That will be good.

24 HON. MARK MONTOUR: And Valorie.

25 VALORIE PEREZ: Okay.

1 HON. CARRIE GARROW: I got Valorie. Anyone else?

2 Thank you, Judge Kahn. Thank you, Joy. So we're
3 going to do two quick items and then break for lunch. One is
4 an add-on. I just wanted to share that our court just
5 received a new grant, we're going to be developing in the
6 next few years doing a mediation program for our civil cases.
7 We're also going to be working on the infrastructure of our
8 Healing to Wellness Court. We received the funding to do
9 cultural programming and pay for that expense. In addition,
10 to pay for training for our mental health department to do
11 what's called MRT, it's Moral Recognition Therapy, and it
12 works very well with participants who are going through drug
13 court. So we're excited to be doing that for the next three
14 years and we'll be sharing with you how that's going.

15 And then so we wanted to move under our updates our
16 town and village justice training, and so we're going to do
17 that now.

18 NANCY SUNUKJIAN: I really -- I asked that we move
19 up the town and village justice training before I looked to
20 see what was in parenthesis, which is my name is nowhere on
21 that. And that's fine. Judge Main and Matt, you guys take
22 it away, I think that's wonderful. So I apologize, I didn't
23 mean to do that.

24 HON. CARRIE GARROW: No, we want you to be here.

25 NANCY SUNUKJIAN: I love to be here.

1 So I thank you for that. I asked if it could be
2 moved up just a little bit before lunch because I have to get
3 back to the Albany area because I have court this afternoon.

4 We talked really about the important things I think
5 already with regards to the education and training
6 initiatives with regards to this Forum and for this area of
7 concern. And Matt mentioned that I had met recently, we had
8 a meeting within the last month with the incoming president
9 of the State Magistrate's Association, and Judge Caruso was
10 there, and we received an affirmation that they would allow
11 us to have the one hour conference next year, an elective
12 program which we made available.

13 Again, I think the things we talked about a little
14 bit earlier are even more important to try to do local
15 programs, to try to record something that we could then put
16 up on our website. Our website is available to our judges
17 and to our clerks, and that's password protected. And I do
18 want to say I don't have the password for this site, so I
19 guess maybe at some point I can ask Val, can give me that as
20 well. Because I didn't know that existed so I'm excited
21 about that.

22 Just a little bit, again we welcome any
23 information, any training materials, any information on any
24 of these topics, any reports. We can put them on our
25 website. We can create a subcategory within our website for

1 our judges, which I think we may have one already, where to
2 put this information. Any material, we can put a link to
3 anything you think is important. So you can just send me an
4 e-mail and I will be very happy to put that up and even send
5 an e-mail to all our judges and clerks to let them know it's
6 up there and it's relevant for them.

7 As we all know, our state courts and town and
8 village courts are dealing with the criminal justice reform.
9 I can't believe I don't have a calendar. That's telling me,
10 Judge, I was counting down to October 1st, which was the
11 17-year-old's raise the age. We have the criminal justice
12 reform with the bail reform and the discovery and the speedy
13 trial, and that's all coming into effect in January. We had
14 a bunch of changes to summary proceedings that happened
15 overnight that was immediate, and we had the marijuana reform
16 that happened and was effective nearly immediately.

17 So our judges are being inundated with a lot. And
18 the town and village judges have to know this stuff as well.
19 So they welcome, as you said, they welcome this training,
20 they need training in a lot of different areas. And so we
21 will do whatever we can to get this on their radar at the
22 very least. And for those courts that should know more than
23 they do, I hate to say right now, we want to make sure that
24 if they're dealing with these issues from the Tribal Nations
25 that are coming into their court, the enforcement of those

1 records, summary proceeding issues, those judges absolutely
2 need to know what they can and cannot do.

3 And again, we can't do as many of the things that a
4 county court judge can do but a lot of stuff starts at the
5 local level. So I agree that these judges need to know that.

6 So, again, I'm sure that over the next several
7 months Matt, myself and the committee that was established
8 last April will work on whatever that program is. I know
9 that, Judge Gonzalez, you wanted treaty rights to be on
10 whatever training materials we created. That hour program
11 can be on anything that we choose, and so I welcome input on
12 that from anybody with regard to what the elective program
13 will be at the SMA, and that's in Syracuse next September. I
14 don't have -- I have the dates but I don't know the dates.
15 Does anybody have any questions or issues? I shouldn't say
16 issues because I'm opening myself up.

17 With the town and village judges, the court clerks
18 are now required effective this year to have annual training
19 as well, so we've got everybody; 2,000 plus court clerks,
20 1,800 Judges, and 1,200 courts.

21 So that's a big group of individuals that my office
22 of about 18 and the district's as well work to make sure that
23 we get the word out. Judge Brunetti, I know you taught many
24 years for the judges so they would love to see you on
25 anything.

1 So is there any issues that you can think of? I
2 know I talked a little bit earlier about some of the
3 proceeding issues with Judge Montour. And if you feel that
4 there is issues in your area that you think maybe the judges
5 need a little bit more information and training on, you can
6 always send me an e-mail and I can try to do what I can to
7 intercede, maybe have special counsel like Matt, there is one
8 in every judicial district, who can maybe be the point person
9 to touch base with the Court and we can do it as a way of
10 enlightening and educating.

11 Yes, Judge Gonzalez?

12 HON. LIZBETH GONZALEZ: I include my staff in
13 everything that I do, so we discuss cases. I discuss cases
14 with my court officer and my court clerk, my secretary and my
15 court attorney. And my clerk in particular has said, and my
16 court officer, we're so glad to be included because when
17 we're included, we are able to help you and also to flag
18 issues when there is problems. So my court clerk, for
19 example, has said can't we go to CLEs. So when you say that
20 you're conducting training for clerks, I salute you for doing
21 that. I encourage you to continue that, and I would ask that
22 you incorporate into that training treaty rights and any
23 issue that's pertaining -- I don't think that you would ever
24 get an ICWA issue, but --

25 NANCY SUNUKJIAN: I don't think we would.

1 HON. LIZBETH GONZALEZ: I don't think you would,
2 but, nonetheless, the clerks have to know just as much as the
3 judges do that there are certain rights that attach if you
4 are Native, and the more you do that, the more -- the better
5 our goals will be met.

6 NANCY SUNUKJIAN: I think we would all agree that
7 the clerk is the first point of contact for anybody that
8 comes to the court, and so the Court Clerk's Association for
9 many years encouraged the mandatory training rule and the OCA
10 supported it over the last three years and it was effective
11 this last January. So we do have the mandatory training that
12 we present to them but they too have elective classes that
13 they do. I've been in Syracuse since Monday because I was
14 just at their conference this week from Monday to yesterday,
15 I guess today is Thursday. And so they have elective
16 programs that they do. And, again, it's got to be focused
17 because there is a lot of clerks that will never deal with
18 any of those issues.

19 So if we can focus the courts, we can focus on to
20 the judges as well as those clerks. And we talk about
21 staying in their lanes but we talk about we teach the clerks
22 the same types of things that the judges are getting at these
23 conferences so they can go back and all speak with one voice,
24 and that's sort of the theme of what we're trying to do and
25 we're getting there.

1 Really, Judge Main and Matt, what do you guys want
2 to say?

3 MATT CHIVERS: I defer to the director of Office of
4 Court Administration.

5 HON. ROBERT G. MAIN, JR.: The only thing that I
6 would say is that Judge Kahn and I had an interest that
7 developed when she was visiting about the manner in which a
8 guilty plea is taken, and we elicited Matt's help, and
9 through him the office has helped and we're very grateful
10 that we understand that that was addressed at a recent
11 training session.

12 NANCY SUNUKJIAN: And we appreciate that and like
13 to hear that. We have focused a lot on that, especially with
14 the immigration consequences, too, we've had to deal with a
15 lot of those issues, so we've come up with things for the
16 judges. I have one right in front of me on my bench and we
17 pass it out at all the trainings, so things like that we want
18 to hear and want to address.

19 HON. ROBERT G. MAIN, JR.: There is so much
20 transition and turnover in the courts, it's something that
21 bears repeating from time to time so you get the new people.

22 NANCY SUNUKJIAN: Sure, absolutely.

23 MATT CHIVERS: Just the back story on that is we
24 are up in your neck of the woods and an appellate division
25 justice was unhappy with what she learned about the plea

1 process, and I got pulled into the back room and spoken to,
2 and it was about two months before our curriculum committee
3 meeting. So when we have that kind of input from any of you,
4 it gives me ammunition when I go before the committee that
5 Nancy's the chair of. And I think within two months we
6 decided we were doing a plea class on the allocution process
7 and that was formulated that fall and rolled out the
8 following year. So that kind of input is helpful.

9 NANCY SUNUKJIAN: We listen.

10 HON. MARK MONTOUR: Before we break for lunch,
11 Central Islip, anything you want to add?

12 HON. MARCY KAHN: Marguerite, hi.

13 HON. LIZBETH GONZALEZ: Make sure you come back
14 after lunch.

15 HON. MARK MONTOUR: Let's break for lunch. Come
16 back at 1:00.

17 (Luncheon recess at 12:25.)

18 (Reconvene at 1:08.)

19 HON. MARK MONTOUR: Let's get started. We're on
20 item updates, A, New York State Office of Children and Family
21 Services.

22 Before we address that, Judge Gonzalez has made two
23 requests. And one, that the Office of Children and Family
24 Services representative Heather LaForme be excused from this
25 portion of our meeting. And secondly, that the report, item

1 III.A., not be placed on the record.

2 And I guess it deals with I guess how sensitive
3 this information may possibly be. And I can understand Judge
4 Gonzalez's feelings on this issue and how it is an extremely
5 important and sensitive issue and OCFS may not be an ally in
6 this particular situation. I know Commissioner Poole had
7 made some written recommendations in the past that certain
8 parts of ICWA do not apply to Nations that are only state
9 recognized.

10 But, again, Heather has been a strong advocate for
11 Natives throughout the state and I think she still is a
12 strong advocate for this position as well. Maybe her
13 superiors at times don't agree with her opinions on how this
14 be issued, and I know she is a strong advocate, she does what
15 she can as far as promoting benefits of all members of all
16 Nations. And I guess excusing her from the meeting, since
17 she has been so instrumental, is a sensitive issue and I sort
18 of wanted to get the feeling of the membership on that.

19 But you may not have a full understanding without
20 knowing what Liz is going to talk about first in that regard
21 for the rationale to have her excused.

22 HON. LIZBETH GONZALEZ: If I may explain, I just
23 don't want to put her in a compromised position. That's the
24 only reason. That's the only reason. And I spoke with her
25 before and explained that to her before making the request.

1 HON. CARRIE GARROW: And I think I would especially
2 like to hear from the Nations because we haven't done this
3 before, asked a long-time member to step outside. And I
4 understand Judge Gonzalez's request, and I certainly don't
5 want to put Heather in a difficult position as well. But I
6 just really wanted to hear from the Nations since we haven't
7 done this before asking for somebody to step out of the room.

8 CHARLIE ROSE: Request from Central Islip. Can you
9 talk into the microphone, please?

10 HON. CARRIE GARROW: Did you hear what the request
11 was? The request was, Judge Gonzalez requested as we're
12 talking about item A under updates, which is the issue with
13 the Office of Children and Family Services and whether or not
14 certain provisions of state law are applicable to the state
15 recognized Tribe, that Heather LaForme, who works for OCFS,
16 be excused from the meeting. And because this is something
17 we've never done before, Judge Montour and I specifically
18 requested that we hear from the members. And I especially
19 wanted to hear from the Nations since we've never done this
20 before, we've never asked a member to step out of the room.
21 And so we're just opening that request up for discussion.

22 PAM STARSIA: But it will still be on the record?

23 HON. MARK MONTOUR: That's a second issue.

24 HON. CARRIE GARROW: The second request is that we
25 go off the record.

1 PAM STARSIA: Because I feel like if it's in the
2 transcript, it's sort of informative, but I don't have an
3 opinion on this substantively.

4 HON. MARK MONTOUR: Any thoughts from anyone?
5 Neil, you always have something to say.

6 NEIL PATTERSON: Children at Tuscarora, children
7 welfare is directed to the clan mothers. I got two of them
8 here, so whatever they say is what I'm gonna say is what
9 we're gonna do. I have no opinion one way or the other.
10 They're going to be my opinion. Francene and Susan have to
11 come up with an opinion on what to do here because the chiefs
12 have handed children's offices over.

13 HON. MARK MONTOUR: I understand. You're the one
14 that always talks.

15 SUSAN SCHANDREAU: Would the information that she
16 gets, would it color something for her? Would it influence
17 her anyhow?

18 HON. MARCY KAHN: Heather, you mean?

19 SUSAN SCHANDREAU: Yes. Would it influence Heather
20 where she wouldn't be able to perform what she normally does?

21 HON. LIZBETH GONZALEZ: We have a meeting coming up
22 on October 17 with OCFS with the deputy counsel from her
23 office, with her boss. That's why. I'm going to discuss why
24 we're having that meeting, that's why it would be helpful,
25 because this way she won't be questioned about what we

1 discussed.

2 SUSAN SCHANDREAU: I mean --

3 HON. CARRIE GARROW: She stepped out.

4 PAM STARSIA: Have we asked her if she -- like if
5 she wants to step out voluntarily?

6 HON. LIZBETH GONZALEZ: I did. I told her I was
7 going to make the request and she said she had no problem.

8 PAM STARSIA: But for the discussion?

9 HON. LIZBETH GONZALEZ: For the discussion.

10 PAM STARSIA: Because I feel like if she would
11 rather --

12 HON. CARRIE GARROW: I don't think she knew we were
13 going to discuss it, did she?

14 HON. MARCY KAHN: Yes, Liz told her.

15 HON. CARRIE GARROW: I know that she knew that you
16 were going to ask that. I don't know if she knew we were
17 going to discuss it as a group. So I'm asking Judge Montour,
18 did she know that?

19 HON. MARK MONTOUR: No.

20 HON. MARCY KAHN: She's not here in the room now.

21 VALORIE PEREZ: Did she know we're asking her to
22 step out and not be a part of that discussion?

23 HON. ROBERT G. MAIN, JR.: She knew that that
24 request was going to be made.

25 HON. JOAN MADDEN: Did she have a position with

1 respect to that request?

2 HON. LIZBETH GONZALEZ: She was fine.

3 VALORIE PEREZ: She's voluntarily fine with staying
4 out of the discussion?

5 HON. JOAN MADDEN: Not being out of the room for
6 this part of the discussion, but what about the discussion as
7 a whole?

8 HON. LIZBETH GONZALEZ: Yes.

9 HON. JOAN MADDEN: What you're saying is, yes, she
10 said she had no problem not being in the room?

11 HON. CARRIE GARROW: To the discussion that Judge
12 Gonzalez is going to lead.

13 HON. ROBERT HURLBUTT: The concern is for Heather?

14 HON. LIZBETH GONZALEZ: Yes.

15 HON. ROBERT HURLBUTT: Is it relevant what Heather
16 wants? Why isn't it determinative?

17 HON. CARRIE GARROW: We could invite her back in.
18 I think she willingly stepped out. Do you want to ask her?

19 HON. ROBERT HURLBUTT: Is this at her request or
20 your suggestion?

21 HON. CARRIE GARROW: No, it was not at her request.

22 HON. MARK MONTOUR: Just something that we haven't
23 done in the past.

24 HON. ROBERT HURLBUTT: I appreciate that, and I
25 understand there should be hesitancy, but if the -- well,

1 hang on for a second. If the group thinks it's important to
2 hear from her and she thinks it's important that there not be
3 some record of it, then I guess we got to decide, right?

4 HON. CARRIE GARROW: Do you want to go off the
5 record to ask Heather's opinion about whether she wants to
6 stay in the room?

7 HON. LIZBETH GONZALEZ: Yes, thank you.

8 HON. CARRIE GARROW: Do you want to go off the
9 record? We're going to go off the record.

10 (Discussion held off the record.)

11 HON. MARK MONTOUR: We're back on the record. And
12 just for the record, we did discuss with Heather LaForme her
13 feelings on staying through this portion of the meeting and
14 she voluntarily excused herself.

15 The second part is as to whether or not we're going
16 to put this on the record. That's something we haven't
17 excluded before. Does anyone have any feelings? No
18 feelings?

19 HON. JOAN MADDEN: This is with respect to having
20 this discussion on the record or off the record?

21 HON. MARK MONTOUR: This now, because the
22 transcript is available to all members and one of our members
23 just voluntarily excused herself. So I don't know who reads
24 the transcript.

25 AIMEE NERI: I guess I would say in consideration

1 of again protection of Heather's position, even though she
2 may not herself wish to go back and access the record, she's
3 not employed independently. So if she refuses a directive
4 from someone who employs her, she would have to be answerable
5 to that, and that would put her in the compromising position.

6 She chose to leave the room so that she would not
7 be put in that uncomfortable position, so in continuation of
8 supporting her, I would agree that being off the record might
9 be important as well.

10 HON. CARRIE GARROW: Thank you.

11 ALEX LESYK: Judge Gonzalez, is what you're going
12 to talk about having to do with only the October 17th meeting
13 or problems beyond that?

14 HON. LIZBETH GONZALEZ: The October 17th meeting.

15 HON. MARCY KAHN: Not necessarily only with that,
16 but it might have to do with possible long-term strategy
17 after the meeting.

18 HON. LIZBETH GONZALEZ: Yes.

19 HON. MARK MONTOUR: Any thoughts?

20 PAM STARSIA: I agree with what was just said.

21 HON. MARK MONTOUR: If we don't have any objections
22 to going off the record, we'll go off the record for this
23 portion of the meeting.

24 (Discussion held off the record.)

25 HON. MARK MONTOUR: Native Bail Reform Initiative.

1 HON. CARRIE GARROW: So just a quick update. Our
2 project is going along and we are coming up on actually today
3 starting our third year of the grant, so our grant will run
4 out in 2020. So I've been talking with Judge Kahn, Judge
5 Main, Judge Montour about what we're going to do to maintain
6 funding. We're looking at possibly applying for a new grant
7 and talking about how to expand the project in order to ask
8 for more funding. We would have to look at ways to expand
9 the project.

10 Judge Kahn was able to get the data regarding
11 Natives who are appearing in different town courts. It was
12 more updated than what we had. And the town closest to us in
13 St. Lawrence County, Massena, no surprise, has a lot of our
14 Tribal members going through that town court.

15 So we're in discussion talking about that. I don't
16 know if anybody else, Judge Kahn, Judge Main, Judge Montour,
17 if you want to say anything.

18 HON. MARCY KAHN: I defer to Judge Main.

19 HON. ROBERT G. MAIN, JR.: To the extent that when
20 we have participants, the program works very well. I think
21 we have less participants than we contemplated that we would
22 have. I think that's a function of the attitude of the two
23 town justices in Bombay relative to release. They don't
24 remand in lieu of bail as many people as we thought might be
25 the case, so there is less of a population to work with. But

1 when there are applications and people are accepted, it works
2 extremely well.

3 HON. CARRIE GARROW: One of the nice things about
4 the Bail Reform Project and one of my goals was we have been
5 able to screen people earlier for our Healing to Wellness
6 court. We've also been able to monitor those offenders who
7 are potential domestic violence offenders, and because of our
8 monitoring we were able to provide some protection for a
9 victim and she had some recourse that I don't know that she
10 would have gotten without our supervision of the offender.

11 So I think those are things that are harder to tell
12 in the numbers but certainly we will talk about them,
13 obviously, as we talk about the project, but certainly any
14 grant application because I think those are important goals
15 of the project.

16 HON. ROBERT G. MAIN, JR.: Intangible good results.

17 HON. CARRIE GARROW: Absolutely.

18 HON. MARCY KAHN: I just wanted to mention about
19 the amendment that we were proposing. This is in the
20 legislature. As you may recall from our last meeting, we
21 talked about the fact that the New York State legislature had
22 just enacted bail reform legislation and we were concerned
23 about it, Judge Main and I talked to you and Alex Lesyk also
24 talked to you about the concern that we had about the
25 language in the new statute on pretrial supervised release

1 programs, which really required that now everybody,
2 everyplace have pretrial supervised release. That's a big
3 change under state law. But also that these be operated
4 either by municipalities or not-for-profit corporations.
5 And, of course, the St. Regis Mohawk Tribe, which is in the
6 middle of its federal grant for this, is neither a
7 municipality nor a not-for-profit corporation.

8 So we have been very concerned about this language.
9 By the way, this statute which was passed, it was one of
10 those 3 a.m. statutes in the legislature that they were busy
11 making the sausage and you don't want to know really what
12 went into it, but it has many other problems. And the Office
13 of Court Administration, the state courts, have many issues
14 about things they don't like in that law. And the state
15 court system took up our request along with the ones they had
16 and went to the legislature to lobby for changes in the law.
17 This is not an easy thing to make happen, as Judge Brunetti
18 can tell you, he knows much better than I based on his
19 legislative experience.

20 We proposed two very simple straightforward
21 amendments to the law just inserting no more than about six
22 words in this very lengthy law, just insert our six words in
23 two different sections and we would be fine. And a very
24 simple straightforward. And the OCA counsel with whom I
25 worked on this said that our proposal was the one that he had

1 the least trouble convincing legislatures to love and take
2 close to their hearts. He had more trouble with the other
3 ones that were on the state court's agenda.

4 They thought the whole package of them was going to
5 pass but at the last minute the governor, according to my
6 sources say, asked for some things that really the
7 legislature couldn't agree to so they threw the whole baby
8 out with the bath water and nothing got passed to change this
9 law.

10 I have asked Paul McDonnell, the deputy counsel at
11 OCA, what he thinks the chances are coming up. He doesn't
12 know when the legislature will take this up again. He still
13 believes that our proposal is the most likable of any of
14 OCA's proposals, so that is a good thing. And he will
15 continue to lobby the governor's office and the legislature
16 about it.

17 I've already talked with Emily Reid from Senator
18 Kennedy's office. She's going to work with us on that. The
19 legislature may want to wait and see how the bail statute
20 shakes out and it won't become effective until 2020, so it
21 may be a few months before we see. But we're optimistic that
22 we can get the change we need so everything conforms with the
23 new law.

24 HON. CARRIE GARROW: We'll move on to the next
25 topic, which is the Vatican visit. I didn't ask if there

1 were any questions on the bill reform.

2 HON. MARCY KAHN: Well, I told you at the April 11
3 meeting that I had the privilege of being invited by the
4 Pontifical Academy of Social Sciences to attend the first
5 ever Pan-American Conference on Social Rights, the
6 Environment and Social Justice, held at the Vatican last
7 June. And I sent a memo to you this summer. I'm giving you
8 another copy of it now. And you can see what transpired in
9 greater detail from my memo.

10 There were only twelve of us from the United
11 States, only two from the State of New York, and thirteen
12 countries were represented there all from the Western
13 Hemisphere, and it was a very interesting conference. We
14 talked a lot about social justice.

15 And I want to thank everybody here and everybody
16 who didn't come today but did come last time, including Joe
17 Heath who made a beautiful presentation, to educate me on the
18 Doctrine of Discovery, and Judge Gonzalez especially also.
19 And I did send my paper around to you also and also the link
20 to the YouTube where you can actually see me speaking, if you
21 are having insomnia or something like that, and you can see
22 what the other judges spoke about as well. But as I said in
23 my memorandum, I absolutely did have the chance to address
24 the problems of the 15th Century papal bulls and what they've
25 created for indigenous people in this hemisphere. I was not

1 the only judge who did that; judges from Columbia and judges
2 from the Dominican Republic also raised that point. The
3 judge from Chile was very pleased I had mentioned that.

4 We weren't sure that we were going to meet Pope
5 Francis but at the last minute they said we would, and we
6 each got to speak with him privately. You see my conference
7 with him right here in this photograph. It was one of the
8 most extraordinary experiences in my life, I've got to tell
9 you, and just tremendous.

10 And, you know, he listened to me. I believe he
11 understands English. We were told to speak in our native
12 languages, so I did, that was a lucky break for me. But, you
13 know, I told him that his leadership on justice for
14 indigenous people was especially important given the history
15 of the church. And he smiled even more broadly than he had
16 been smiling at me before, and put his second hand on top of
17 my hand as you see in the picture and said, will you pray for
18 me, which I think he says that to all the girls. But that's
19 okay, it doesn't matter to me, he said it to me, and that was
20 extraordinary for me. And I believe he heard me.

21 And so the message that you all prepared me to give
22 I gave to the best of my ability. They will publish our
23 papers and you should be able to find them on the internet.
24 As I say, you can already find the oral presentations there.
25 And I just want to thank everybody for preparing me for this

1 because I thought I'm really real deeply honored to be
2 invited but I want to tell them, you know, this is a horrible
3 thing you guys did, and to try to find a way to say that was
4 a challenge, but everybody in this room helped me and I
5 appreciate that.

6 I just wanted to be able to answer any questions
7 that you might have about it. There is a committee that was
8 set up, as I say, and the president of the National
9 Association of Women Judges, who was there with a little team
10 of NAWJ judges from the U.S., nine of them, she's going to
11 continue on that committee and I will continue to be in touch
12 with her about what they decide to do and all that. But I'm
13 glad to answer any questions. They've heard it. They didn't
14 hear it only from me, okay.

15 HON. MARK MONTOUR: Neil's got a question.

16 NEIL PATTERSON: I've been coming here for a few
17 years now and I hear a lot of stuff, they've changed a few
18 laws, and I think what you did was probably more beneficial
19 than I can ever imagine, or maybe you can't even imagine it.
20 But for Indian Nations to have somebody like you to go see,
21 you know, the Pope and say what you said, it's gonna ring
22 bells maybe in twenty, thirty years, when we're no longer
23 around, maybe, this is all maybe, all conjecture. But I'm
24 hoping that somewhere along the line a catholic church will
25 understand the words that you said so that they can change

1 their outlook on humanity. Thank you, Judge.

2 HON. MARCY KAHN: Thank you, Neil.

3 CHIEF HARRY WALLACE: Neil says that to all the
4 girls too.

5 HON. LIZBETH GONZALEZ: There is a website,
6 doctrineofdiscovery.org.

7 HON. JOHN BRUNETTI: Is the Pope that short?

8 HON. MARCY KAHN: Yeah, he was my height.

9 HON. JOHN BRUNETTI: You can see eye to eye, I can
10 tell.

11 HON. MARCY KAHN: It seems like he saw eye to eye
12 with me on this, John, that's the impression I got.

13 HON. MARK MONTOUR: Thank you. ICWA signage.

14 JOY BEANE: I think we finally made progress in
15 actually getting laminated signs. They are down at the
16 Office of Court Administration. We had the Deputy Chief of
17 Administrative Judges do a memo to all the district
18 executives as a sort of transmittal letter that will go. The
19 Office of Court Administration is doing the copying, the
20 laminating. I think they have to send it out to lamination,
21 which is why it isn't back yet.

22 HON. MARK MONTOUR: I got it.

23 JOY BEANE: You did? Wonderful.

24 HON. MARK MONTOUR: They look great.

25 JOY BEANE: This is for all the courts outside New

1 York City. The courts inside New York City did their own
2 work through the Court Improvement Project. They're not as
3 nice signs, we're going to hope to change that a little bit,
4 just in the sense you didn't get the lamination, you didn't
5 get the color on there. But they had special -- they have
6 additional language which we just decided to cut loose of
7 that and just do the move to get them to the courts outside
8 New York City.

9 The real challenge I think is they're in the hands
10 of the district executives, who are to distribute them to the
11 proper courts, and then the people in the proper courts are
12 charged with putting them in the places where they can be
13 seen. And that I'm still -- I wasn't able -- I thought we
14 did pretty well to get the transmittal letter coming from on
15 high to the district executives, but I couldn't really say
16 how do we ensure that the people on the ground are doing what
17 they need to do with them.

18 Again, the transmittal letter directed them
19 somewhat.

20 AIMEE NERI: I know the transmittal letter has
21 already gone out, but this year the Court Improvement
22 Project, the district coordinators, we have been more closely
23 aligned with our district executives and are responsible to
24 work in every county of our district now. So how can the CIP
25 coordinators across the state help make sure and support that

1 it gets hung in the right places in each of the courts?

2 HON. LIZBETH GONZALEZ: Take pictures.

3 AIMEE NERI: We can take pictures.

4 HON. LIZBETH GONZALEZ: Take pictures and show
5 where they are, like not next to the bathroom or something.

6 JOY BEANE: The fact that you can connect with DEs
7 and get a little bit of feedback from where are they actually
8 getting posted and can you get pictures, or I don't know
9 whether --

10 AIMEE NERI: If the Forum is asking that I take
11 this back to my colleagues, then I would be happy to put that
12 in motion.

13 HON. MARCY KAHN: Excellent.

14 HON. CARRIE GARROW: Do you need us to put it in a
15 letter asking you to do that?

16 AIMEE NERI: It would make it helpful.

17 HON. CARRIE GARROW: Can you help with that, Joy?

18 JOY BEANE: I can help draft that. Well, you and I
19 will talk.

20 AIMEE NERI: We can talk about the language, sure.

21 JOY BEANE: That would be wonderful. Because my
22 problem generally in the court system is that while it sort
23 of starts from on high really well, it's such a big court
24 system and every court is different and every court is set up
25 differently, both physically and administratively, that it's

1 hard to know that you have everything really in place.

2 AIMEE NERI: Right.

3 JOY BEANE: Good.

4 HON. MARK MONTOUR: Good.

5 CHIEF HARRY WALLACE: Just a reminder to refresh
6 people's memories, New York State is one of four states that
7 does not have an unmarked burial law. The other three are
8 New Jersey, Pennsylvania and Wyoming. But the good news is
9 is that there is a law pending in both the assembly and the
10 senate and we haven't had a law -- the same law actually,
11 it's the same as in both the senate and the assembly, and we
12 haven't had that situation since 2004 when legislation was
13 pending in both houses.

14 The sponsor in the senate is Senator Comrie from
15 downstate. And we had a round table meeting with the
16 attorney general on September 24th, a number of
17 representatives from the various Nations, and this issue was
18 one of those raised before the attorney general. And if I
19 remember correctly, she said, the attorney general said that
20 she would sponsor another round table discussion and bring in
21 the sponsors of this legislation to that discussion, which
22 would be Assemblyman Englebright from Long Island and Senator
23 Comrie from New York, and as well as Tim Kennedy from the
24 senate subcommittee.

25 So we're very much encouraged by her participation

1 and advocacy hopefully of this legislation. We have impacted
2 the content of the legislation because it states that
3 New York is one of four states that doesn't have an unmarked
4 burial bill in its legislative history because we have
5 provided the information that we gathered for the Forum in
6 2015 and we provided that to the legislative representatives.
7 And so they are being educated to what we have learned.

8 We also provided them with copies of the Florida
9 legislation that was presented to us in the Listening
10 Conference as to what kinds of laws would work well. And as
11 you recall, the Florida Department of State representative
12 came to our Listening Conference and he presented how it
13 works in Florida. Florida's one of those states that has
14 what New York has, major metropolitan areas, urban areas,
15 suburban areas and rural areas, so the law would impact in
16 the same way.

17 I cannot stress how important this legislation has
18 become because the Native America Graves Repatriation Act
19 clearly does not cover private landowners, and New York State
20 landowners are not subject to any statutory or regulatory
21 scheme, none whatsoever, and they are not required to
22 repatriate human remains.

23 This has become a major, major issue on Long Island
24 recently. We recovered over 100 bodies that were contained
25 in banker boxes at a museum and they've been -- they have not

1 been fully repatriated yet but we have taken the necessary
2 steps to treat them with respect that they deserve. In
3 addition to which a recent list came up of the remains that
4 are contained in other museums throughout New York, and the
5 updated list contains more bodies than was listed previously.

6 So every time they look in their attics or their
7 basements, they come up with new bodies. And it is a
8 continual desecration and it is an ongoing desecration.

9 Recently there was some diggings that took place out east in
10 Shinnecock territory and they discovered remains, and I would
11 defer to Shinnecock to discuss that. But we also learned of
12 a place in Indian Hills near Fort Salonga, which is in
13 Northport, and we're now learning that there may be some
14 additional remains that may be subject to our efforts to
15 protect them.

16 Again, since this is a private land, even the State
17 Historic Preservation Office officers, the SHPO officers,
18 cannot mandate the developers to take certain actions because
19 they have no -- according to them they have no legal power or
20 authority to do so. However, there is certain things that
21 they can do under current law that would provide because of
22 its environmental impact, that's the best that we have at the
23 moment. And the last time the state was able to help us was
24 in 1990 when the then state attorney general filed a lawsuit
25 against some private developers for digging up Indian burials

1 under a -- not under the burial law but under a different set
2 of laws that provided them for, it was basically for stealing
3 bodies kind of a law, which is like -- I have to recall the
4 statute. I don't remember it offhand. But that was in 1990,
5 that was the last time the state has taken any action to
6 prohibit the desecration of found remains.

7 So I cannot emphasize any more how critical this is
8 and the good news is is that hopefully with the assistance of
9 the attorney general and the senate now is involved with this
10 with a representative of downstate, we have a legislation
11 pending in both the senate and the assembly. My not being an
12 expert in legislation, it was my recommendation that we
13 notify different counties and ask them to support this
14 legislation, county executives. I know I wanted to send a
15 letter to the Suffolk County exec, I wanted to send a letter
16 to Brookhaven town.

17 So I defer to those who have more experience in
18 that than I do, about whether that would be a good thing,
19 drafting perhaps a general letter to submit to, you know,
20 various towns and counties that might have impact on this.
21 So I will defer to those with more knowledge of that, if
22 that's a good idea or not.

23 HON. MARK MONTOUR: Do you have any thoughts on
24 that?

25 HON. JOHN BRUNETTI: What happened to our friend

1 from Senator Kennedy's? It's staring right in front of us,
2 isn't it, the answer to that? That's the committee that he
3 is in charge of and would probably go to. So, I mean, we
4 have a member of the team.

5 HON. MARCY KAHN: We have the chief and Emily had a
6 conversation.

7 HON. JOHN BRUNETTI: That's the key right there,
8 you've got a staffer.

9 HON. LIZBETH GONZALEZ: One thing about NAGPRA,
10 Native American Graves Protection and Repatriation Act, if
11 you go to their website, you will find the databases. There
12 is two databases that are really important. The first one is
13 called Culturally Affiliated Inventories database and the
14 second one is called Culturally Unidentifiable Inventories
15 database. And when I had my interns do a whole bunch of
16 research for me with respect to the NAGPRA questions, we
17 found out, to our horror, that the term culturally affiliated
18 refers to remains that belong to Native Nations that are
19 federally recognized. Those are protected remains.

20 If you are state recognized or not recognized, you
21 fall into Culturally Unidentifiable Inventories database, you
22 fall into that. What does that mean? If you are culturally
23 affiliated and protected when remains are discovered, you
24 must be notified and you must be asked do you wish to
25 repatriate these remains. If you fall into the other

1 category, into the unprotected category, there is no right of
2 notification.

3 So when Shinnecock was recognized in 2010, all of a
4 sudden they got notices, oh, yeah, I have your remains over
5 here. And that means that if you're state recognized, there
6 is no obligation.

7 So one of the things that my interns did was go
8 through the list and cull information to figure out is there
9 information here that would be pertinent to, for example, the
10 Nations out on Long Island. But there are remains in schools
11 of dentistry, in park offices, as well as museums. And if
12 you are an institution such as a little museum that does not
13 get federal funding, there may be no obligation for you to
14 report we have remains in our possession. So what do you say
15 to forty boxes of remains? What do you say to ten boxes of
16 remains? I'm sorry, but as far as I'm concerned, that's a
17 genocidal practice. You don't do that. You don't do that.

18 JENNA MACAULAY: Can I just add on to the judge's
19 comments that a lot of federal institutions and museums hide
20 under that guise of culturally unidentifiable. The New York
21 State Museum currently has what we estimate to be 10,000
22 remains that they have labeled as culturally unidentifiable,
23 but the origins are of New York State, which we all know the
24 original habitants here. So their excuse for that is lack of
25 funding to identify those individuals, but they don't want to

1 consult with us, they don't want to work with us to identify
2 our ancestors.

3 And again, it's sitting in shelves and boxes. We
4 just repatriated 38 ancestors from SUNY Oswego that were put
5 in garbage bags for the last fifty years, so it's really
6 heart breaking work. And I want to reflect the judge's
7 concerns about that because we've done a lot of work in
8 trying to figure out how do we identify those who they claim
9 are unidentifiable. That's tough.

10 HON. MARK MONTOUR: Anyone else have anything on
11 NAGPRA?

12 NEIL PATTERSON: I don't think it's working.
13 NAGPRA is not really working at all. I think there is over
14 126,000 bodies stuffed like they say in corners of museums
15 and everything. When we were in -- my wife dragged me to
16 Bloomington, Indiana, Indiana University. I asked them, I
17 said, how many bodies you got here, because we had to give a
18 little speech. And they wouldn't answer me. And they say
19 you make us sound like grave diggers. And I said, those are
20 your words, not mine.

21 But I said how many bodies do you have here. I was
22 on our way out to the car ready to leave and the guy come out
23 and, he says, I think he said somewhere around five or 6,000.
24 Why they're not repatriated is because those Indian Nations
25 no longer exist. Some of them don't exist. So they just

1 leave them in the basement all piled up.

2 I said, after a hundred years now you've had them
3 there or whatever, fifty years, there's no more tests you can
4 do on these things? I says you should put them back in the
5 ground, but we have no directive to do so. There is nothing
6 from NAGPRA to do anything like that. So that's one of the
7 downfalls they have is Indian Nations that no longer exist.

8 CHIEF HARRY WALLACE: Eventually we will restore, I
9 believe, and I have to believe that eventually what they have
10 in their possession we will restore. We may not get the
11 funerary objects because that's a billion dollar industry,
12 and that's what they're resisting now.

13 But my concern, immediate concern is that when they
14 put a shovel in the ground now, what happens? And if we
15 don't work to get this kind of legislation passed and protect
16 that act, then what will happen is it will wind up in
17 someone's museum and it will just be adding on to that list.
18 So I think I know what Neil's talking about because the worst
19 most egregious violators is like the famous American Museum
20 of Natural History. The Peabody, they're one of the worst
21 museums, institutions there are when it comes to these
22 things. And now I'm learning New York State Museum is right
23 there amongst them.

24 JENNA MACAULAY: A lot of universities as well,
25 archaeological departments, history departments.

1 CHIEF HARRY WALLACE: For sheer volume. I walked
2 into the American Museum of Natural History and I can tell
3 you the ceiling was 30 feet high, the walls were like 16 feet
4 apart, and it was wall to wall walking down there. I mean,
5 it was unbelievable. I felt so dirty coming out of that
6 place and I was just walking down the hallway. You know, so
7 I'm telling the sheer volume of these places is unbelievable.

8 So eventually that's going to be dealt with, but
9 the need for not allowing that collection to grow is what we
10 need, as far as I'm concerned we need to focus on. So
11 anyway, thank you.

12 HON. MARK MONTOUR: Thank you for your comments.
13 Before we --

14 HON. CARRIE GARROW: We already have our next
15 meeting date picked, April 30th.

16 HON. MARK MONTOUR: I was going to do our closing
17 then.

18 (Closing in Native language.)

19 HON. MARK MONTOUR: Thank you, all. Our next
20 meeting is April 30th and the ICWA Conference the day before
21 on the 29th. Thanks all for your attention and help. Have a
22 great day. Safe travels back.

23 * * *

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C E R T I F I C A T I O N

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