Research, education, and citizen court monitoring to improve the courts of New York State

THE FUND FOR MODERN COURTS

Report on the COUNTY COURT

The Suffolk County Court Monitors

2000

It is desirable that the trial of causes of action should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.

Justice Oliver Wendell Homes
Cowley v. Pulsifer
137 Mass. 392, 294 (Mass. 1884)

The Fund for Modern Courts is a private, nonprofit, nonpartisan organization dedicated to improving the administration of justice in New York. Founded in 1955, and led by concerned citizens, prominent lawyers, and leaders of the business community, Modern Courts works to make the court system more accessible, efficient, and user-friendly for all New Yorkers.

The centerpiece of Modern Courts' efforts is our groundbreaking citizen court monitoring program, which gives citizens a powerful voice in how their court system is run. Our monitors, who now number more than 600 in 16 counties throughout New York State, have succeeded in obtaining numerous tangible improvements in the state's courts. In Suffolk County, our citizen court monitors were led by Jean M. Almazan and Jacqueline Gordan, Modern Courts' Suffolk County Coordinators. This report details their findings regarding the County Court. We hope their recommendations will help to obtain improvements for the people of Suffolk County who the court serves.

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I. THE PROJECT

Court Monitoring in New York State

The Fund for Modern Courts is a private, nonprofit, nonpartisan organization dedicated to improving the administration of justice in New York State. Since 1975, Modern Courts has sponsored court monitoring projects across the state, in which groups of citizens observe and evaluate their courts, report their findings, and issue public recommendations for improvement. Today, court monitoring programs are active in 16 counties.

Over the years, court monitoring has proved to be highly successful at:

- safeguarding the public's interest in the courts;
- creating and maintaining an ongoing, meaningful exchange between citizens and their judiciary;
- making the courts more accountable and sensitive to the needs of the communities that they serve;
- educating citizens about the daily functions and operation of their courts;
- publicizing problems that exist in the courts;
- successfully urging those responsible for the courts (including court administrators, state legislators, local government officials, and others) to make improvements, particularly in how the court serve the public and how their personnel treat the public; and
- creating a constituency of citizens who understand the problems facing the courts and who are supportive of the courts' efforts to function efficiently and effectively.

Monitors come from all walks of life, and many have no prior experience with the legal system. The monitors are asked to look at the courts from an outsider's viewpoint, which provides a fresh, common-sense perspective on how the courts can be improved. During the course of a monitoring project, these volunteers observe proceedings in a particular court for a period of several months, and complete forms designed to help them to evaluate all aspects of the court's performance, from the demeanor of the judges to the physical conditions under which the court operates. Modern Courts then publishes the monitors' findings in a detailed report, which is sent to the judges and court personnel observed, the administrators of the state court system, state and local legislators, the news media, and other interested parties.

Modern Courts' citizen court monitoring program has been influential in solving many problems that ordinary citizens face in the courts. For example, monitors' comments about litigants with young children in the Family Court have helped lead to the establishment of in-court child care facilities in numerous

courthouses across the state. In other courts, the implementation of a "staggered" calendar, modeled directly on monitors' recommendations, has drastically reduced both waiting time and overcrowding. Monitors' repeated calls for decent housekeeping and maintenance in the state's courthouses have led to a renewed commitment to courthouse upkeep by local governments, and to major improvements in recent years. Monitors were also helpful in persuading the New York State Office of Court Administration (OCA) to introduce a mandatory "civility training" program for all non-judicial court personnel.

On a larger scale, monitors' reports were instrumental in encouraging the State legislature to pass the Court Facilities Act of 1987, which has led to construction of desperately needed new court facilities around the State. In the Third Judicial District, for example, the county converted an old jail facility into a new courthouse for the Rensselaer County Family Court. The court opened in 1998, replacing a deplorable facility that had been criticized by monitors in several reports. Using monitors' recommendations, Modern Courts was also instrumental in helping to obtain approval for new court facilities in Bronx and Kings Counties, and other new courthouses are scheduled for construction over the next several years. Monitors' reports also influenced recent reforms to make jury service less burdensome.

Overall, citizen court monitoring has improved communication between citizens and the judiciary, heightened the court system's sensitivity to public needs, and helped to ensure that those needs are met.

The Suffolk County Court Monitors

Since 1986, the Suffolk County Court Monitors have provided a public presence in the trial courts of Suffolk County. For their latest project, the monitors chose to evaluate proceedings in the County Court, which primarily hears felony cases. Their evaluation occurred during a difficult period for the court. One of the court's nine judges spent nine months hearing New York's first trial in three decades to involve a possible death penalty. Another judge spent several months on a highly-publicized manslaughter case. These cases strained the court's resources, and members of the media crowded the courthouse.

In March, 1998, a project orientation was held, which included presentations by Hon. Michael E. Mullen, Justice of the Court of Claims and Supervising Judge of the Superior Criminal Courts of Suffolk County, and Chief Clerk Hugh C. Conroy. At this orientation, each monitor signed a statement of objectivity, certifying that he or she had not been a party to a case in the County Court. Modern Courts' staff explained the monitoring process and distributed materials for the project, including Modern Courts' *Criminal Court Monitoring Handbook* and copies of the evaluations forms that monitors complete after each observation. The following week, Mr. Conroy led monitors on a tour of the courthouse.

This report is based on a total of 200 observations made by 40 monitors, who were present in the courtroom from March through December, 1998. This gave the monitors insight into the County Court's operations and its ability to serve the public. Monitors thus were able to suggest ways to increase efficiency and reduce delay, to lessen inconvenience to the public, and enhance public confidence that the court and its

proceedings are administered fairly. The following report is based upon the Suffolk County Court Monitors' observations of the District Court and their recommendations for improvement.

II. THE COUNTY COURT

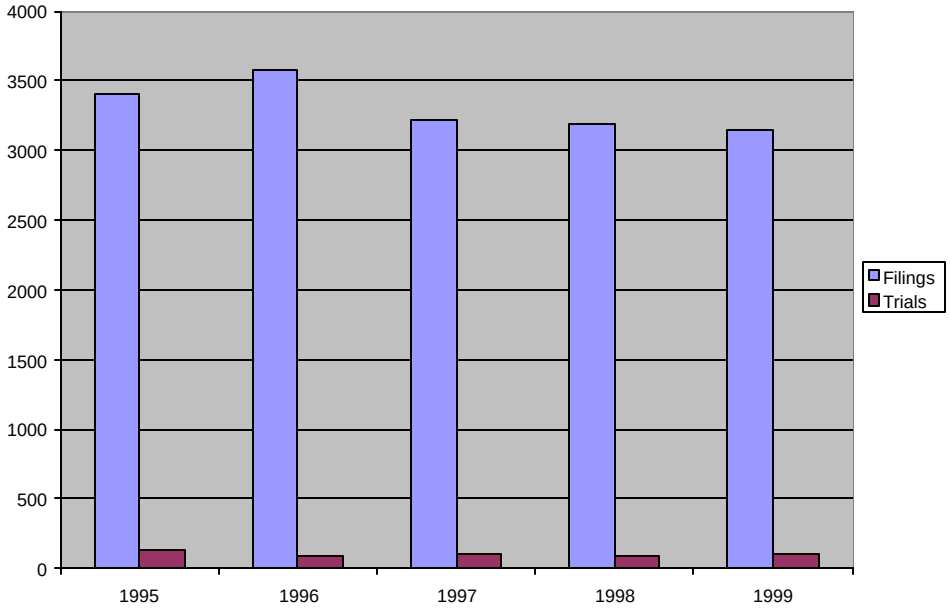
In Suffolk County, as in most counties in New York, the Supreme Court primarily hears civil cases involving amounts over $25,000; the County Court usually hears criminal cases, including all felony cases. However, the County Court does handle a small civil caseload: cases involving amounts between $15,000 and $25,000. Civil cases in which higher damages are sought are heard in the Supreme Court, while civil cases involving less than $15,000 are heard in the District Court and the local justice courts. Most misdemeanor criminal cases (cases involving offenses that can be punished by up to a year's incarceration) are heard in the Suffolk County District Court and in local town and village justice courts.

Caseload. After a steady growth during the 1980s and early 1990s, the County Court's caseload has slowly declined in recent years. In 1999, 3,150 cases were filed in the County Court; this represents roughly a 1% decline from 1998, when 3,191 cases were filed. Total filings in the County Court were down by 2% from the 1997 figures, and 7% from 1996 totals.

The total number of trials heard in the County Court has varied over the past five years. In 1995, the court held a five-year high of 127 trials. However, in 1996 and 1998, the court heard only 86 trials each year. In 1999, 98 trials were heard in the County Court.

However, despite these declines, the court has experienced difficulty in reducing its case backlog. The New York State Court of Appeals has established a set of guidelines known as "Standards and Goals," which mandate that a court dispose of a felony case within six months of a defendant's first appearance in court. By the end of 1998, 112 cases that were pending in the County Court had exceeded the limits set by Standards and Goals. In some instances, this backlog has forced defendants to wait for long periods of time (sometimes while incarcerated) for their cases to be resolved.

Comparison: Total Criminal and Civil Caseload v. Total Trials, County Court (1995-1999)



County Court Judges

Eligibility: All County Court judges must be residents of the county in which they will serve and must be attorneys admitted to the bar for at least ten years before assuming office.

Method of Selection: In New York State, all County Court judges are nominated in county-wide partisan primary elections, and then are elected in county-wide general elections.

Tenure: County Court judges serve for ten-year terms. If a judge is unable to complete a term, the governor will appoint a judge to fill the vacancy until the next general election. County Court judges may serve until the mandatory retirement age of 70.

Salaries: Salaries of County Court judges are paid by the State of New York, but vary from county to county. County Court judges in Suffolk County earn an annual salary of $136,700.

Organization of the County Court

The County Court is located in the County Courthouse at 210 Center Drive in the Town of Riverhead. However, two District Court judges who serve as acting County Court judges preside in the John P. Cohalan, Jr. Courthouse in Central Islip.

In Suffolk County, a criminal defendants usually will be "arraigned" (*i.e.*, informed of the charges against him or her) either in the District Court or in a local justice court. The case is then sent to the County Court, where a grand jury will decide whether the prosecution has sufficient evidence to pursue felony charges against the defendant.

In Riverhead, each courtroom operates as an "all-purpose part." The judges alternate in serving as the arraignment judge. The judge who handles an arraignment in a particular case then presides over all subsequent steps of the case, through disposition.

However, in some cases, the District Attorney's office will avoid the grand jury process by negotiating a plea with the defendant. In such cases, the defendant agrees to plead guilty, and the case is sent to Judge Madeleine Fitzgibbon's part in Central Islip, which is dedicated to plea negotiations.

In addition, cases involving first-time felony drug offenses are sent to a Drug Treatment Court in Central Islip, over which Judge Salvatore A. Alamia presides. If convicted, the defendant is sentenced to a rehabilitation program, and provides regular progress reports to Judge Alamia. If the defendant successfully completes this program, the sentence is suspended. However, if the defendant fails to fulfill the requirements of the program, a jail sentence may be imposed.

III. JUDGES

Following are the monitors' evaluations of each judge in the County Court. Monitors did not evaluate the judges' decisions or legal knowledge. Rather, they focused on their demeanor; their attitude towards litigants, attorneys, and court personnel; their efficiency in carrying out their duties; and their ability to maintain control of the proceedings. This section contains biographical data on each judge and summaries of the monitors' findings. Hon. Michael F. Mullen, Supervising Judge of the Superior Criminal Courts of Suffolk County, is listed first. Thereafter, judges are listed alphabetically by last name.

Hon. Michael F. Mullen

Hon. Michael F. Mullen is a graduate of Fairfield University and St. John's University School of Law. From 1968 to 1975, he served as Law Assistant and then as Law Secretary to Hon. Fred J. Munder, Associate Justice of the Appellate Division. From 1976 to 1977, he was counsel to Senator Bernard C. Smith. From 1978 to 1986, he served as Assistant Counsel to State Senate Majority Leader Warren M. Anderson, and was also a sole practitioner in Huntington, New York. In January, 1987, he was appointed to the Court of Claims by Governor Mario M. Cuomo, and since has been assigned to the Supreme Court as an Acting Justice. Judge Mullen also served as Supervising Judge of the Superior Criminal Courts in Suffolk County from 1993 to 1999. In 1996, he was re-appointed to the Court of Claims by Governor George E. Pataki.

Judge Mullen was observed by 18 monitors on 13 different days.

Monitors described Judge Mullen as "very efficient," "informed," "patient," and "respectful of all." According to one monitor, he was "extremely pleasant and professional."

Judge Mullen was an "intent listener" and an "active participant" in the proceedings. Monitors reported that he ensured that witnesses' testimony understood by the jury, explained to the jury unfamiliar terms used in testimony, and "frequently directed attorneys to rephrase questions" so that the questions would be clearer to the witnesses. They also noted that he was "very much in control of his courtroom." One monitor observed that he "kept things moving, free of passion," interceding in verbally contentious disputes between attorneys.

Monitors praised Judge Mullen for conducting the proceedings with "both dignity and good humor." One monitor observed that he "addressed everyone the same way, whether attorney or defendant, as 'Mr.' or 'Ms.,' and was very polite to everyone." Another concluded that Judge Mullen "clearly enjoys what he is doing."

Monitors commended Judge Mullen's "firm and respectful, yet compassionate, manner" with defendants. They found that he was clear and thorough when advising defendants of their rights, and was "very patient with those who had language problems or otherwise had difficulty understanding." One monitor noted that he "explained to them all the 'whys' of his rulings and decisions."

In numerous cases, he demonstrated concern for the future of the defendants. In one case that a monitor observed, he sentenced the defendant to a treatment program in lieu of jail and gave him two weeks to "think it over." In a case in which a defendant was charged with driving while intoxicated (DWI), "the judge asked the defendant's attorney many questions: 'Tell me more about your client . . . . I need to know more about his roots.' The judge then asked the defendant, 'Are you married?,' 'What is your work?,' etc." This monitor was confident that "the judge was going to make a very well-informed determination." Another added, "He comes across as very compassionate and concerned about the individual defendants who have violated the laws – communicating to them [that] they have shocked the community. He remains respectful to the defendants, but makes sure they understand the seriousness of what they've done, and carries out his duties to the full extent of the law."

However, one monitor was critical of Judge Mullen's use of "somewhat technical terms in speaking to defendants, not always translating to layman's language." Several monitors also reported that Judge Mullen "spoke too softly and did not speak into the microphone even when it was on." As a result, one monitor felt that "the many family members of defendants and victims could not possibly understand what was happening." However, others found that Judge Mullen spoke audibly and clearly in his speech, and they also commended him for encouraging witnesses to speak louder.

Judge Mullen appeared sensitive to the needs of witnesses and jurors. One monitor found that he was especially compassionate to a 10-year-old witness during a rape trial: He "was very kind toward her, trying his utmost to make her feel comfortable, and explaining terms to make her more at ease in answering the prosecutor's questions." On another occasion, a monitor described Judge Mullen as "eloquent and thorough [when he] address[ed] the jury pool on their purpose and [on] certain ramifications of the law." Monitors also noted that he "thanked the jury for their promptness" at the beginning of the session, and apologized to jurors when there was a delay in proceedings. At the end of one session, one monitor observed that Judge Mullen informed the jury of what to expect the following day.

One monitor also reported that, when reading his charge to the jury, Judge Mullen "was very direct, and explained the law in a manner in which the jurors could understand." This monitor also recounted a case that was settled before trial: Judge Mullen "explained [the settlement] to [the jurors] and thanked them for their efforts. He made the jurors feel they were important in bringing the case to a solution. [They] seemed pleased." After another jury had delivered its verdict, the judge met with members in the jury room to thank them and answer their questions. A monitor concluded, "It was a nice touch to show his appreciation and answer their questions and concerns."

Hon. Salvatore A. Alamia

Hon. Salvatore A. Alamia is a graduate of Manhattan College and New York University School of Law. From 1967 to 1970, he was a patent attorney at the General Electric Company, and from 1970 to 1972, he was a patent and trademark attorney at the law firm of Amster & Rothstein. From 1972 to 1979, he was an assistant district attorney for Suffolk County. From 1979 to 1992, he was a sole practitioner in the Towns of Islip and Babylon. In 1992, Judge Alamia was elected to the District Court, and in January, 1997, he was designated an Acting County Court Justice. In November, 1998, he was re-elected to the District Court.

Judge Alamia was observed by 13 monitors on 12 different days.

Judge Alamia heard cases in the Drug Court, a specialized part of the County Court, established in September, 1996. In the Drug Court, sentencing of convicted first-time drug offenders is delayed if a defendant agrees to enter a drug treatment program. Defendants are assigned to programs that range from outpatient treatment and counseling to treatment in a residential facility. While undergoing treatment, they report on a regular basis (usually weekly) to the judge, and are required to pass drug tests. To complete the program successfully, the defendant must remain drug-free for the last six months of the program. When a defendant does complete the program, a "graduation ceremony" is held at the courthouse. However, if the defendant fails the program, a jail sentence may be imposed. Judge Alamia advised one monitor that, as of mid-1998, 60 people had graduated from the program, and only four or five graduates had relapsed.

Monitors described Judge Alamia as "even-handed" and "respectful to the defendants," but stern in some instances. They praised him for "set[ting] a friendly, relaxed atmosphere" in his courtroom, and for running an "orderly" court, in which defendants "knew he cared, but also knew that this was serious business." One monitor commented, "The drug [treatment] court is different from all other courts I have visited. There seems to be a bond between the judge and the defendants." Another declared, "[He] wore the robe not only of a judge, but of a therapist, counselor, parent, and friend." Yet another praised him for displaying both "compassion and a wry sense of humor."

When meeting new defendants and placing them in drug treatment programs, Judge Alamia established a "personal dialogue" with them, offered encouragement, and warned them of the consequences of not successfully completing their programs. On one occasion, a monitor reported, the judge asked one young defendant whether he planned to attend college: "When the young man said yes, the judge told him to forget drugs, that education was the only way to get ahead and stay out of jail and be a leader." Monitors recounted his advice to others entering the programs: "This is a contract; do the right thing for yourself"; "We are spending a lot of time for you"; "Toe the line"; "Change your lifestyle"; and "Dig deep down inside of you, avoid loved ones who are not doing the right thing, and help yourself first." One monitor reported that he asked one defendant: "Are you man enough to handle this program?"

Monitors also observed that, when defendants returned to report their progress to Judge Alamia, he seemed knowledgeable about each individual and his or her case. In one instance, a monitor noted, he greeted one defendant with: "How are you doing? [It's] good to see you. How's your job going?"

Monitors applauded Judge Alamia for praising those defendants who were doing well in their treatment programs, and for offering encouragement to those who were struggling. One defendant who appeared to be doing well "received an encouraging and compassionate lecture to continue the good efforts." Another was told, "You're doing fine. But remember, you have to stay focused." Judge Alamia "called [another defendant] by name, said 'good morning', complimented him on his progress, reminded him to stay focused and to maintain a positive attitude, and made him think about the lifetime he had ahead of him." Those who were showing signs of straying from a program were reminded that the judge wanted them to succeed: "I want to keep you out of jail," he told one defendant.

But those defendants who were in open violation of his orders or the rules of their rehabilitation programs were treated more sternly. When one young woman failed to report to her program, and then failed to appear for her scheduled court date, "Judge Alamia was very stern with her. He set bail at $10,000 and sentenced her to jail over the weekend, warning her that [the] next time that she ignored a warrant [she would be jailed for a longer period]. He told her [that] the time for games is over, and told the Legal Aid attorney that, to keep her out of custody, she must report for treatment every day, and return to court in a month. While he was compassionate with those who were trying and reporting regularly, this showed that he would not tolerate the actions of someone who ignored the law and resisted treatment."

Judge Alamia showed concern about defendants even during sentencing. For example, one monitor observed that, during sentencing, "the judge gave the young man a long lecture on drug abuse, his future, [and the] pain to family members [caused by his drug abuse]. He then asked to have the defendant put in a drug program while in prison."

Overall, Judge Alamia "showed compassion, patience, and a sense of humor at appropriate times with various defendants." Monitors found him to be "very concerned about these young people that come before him [and] very dedicated to assisting these people back into society."

Monitors also praised Judge Alamia's staff, who worked hard to find spaces in rehabilitation programs for defendants. In one case that a monitor witnessed, "a girl had to be sent back to a jail, where she could be safe and away from drugs until a bed could be found at a rehabilitation center. The staff, exasperated and frustrated, [continued] making calls, and managed to find a bed that would be available that afternoon."

Hon. Charles F. Cacciabaudo

Hon. Charles F. Cacciabaudo graduated from Tulane University and St. John's University School of Law. From 1966 to 1975, he was an associate professor at Suffolk Community College. From 1970 to 1975, he served as a special prosecutor for the Town of Smithtown; from 1975 to 1976, he was the town attorney for the Town of Smithtown; and from 1976 to 1978, he was the Smithtown Town Supervisor. In March, 1978, he was appointed to the District Court of Suffolk County by the County Legislature, and was elected later that year to the District Court bench on the Republican, Conservative, and Right to Life tickets. In 1983, he was elected to his current position of County Court judge on the Democratic, Republican, Conservative and Right to Life tickets. In 1992, he was re-elected to the County Court bench.

Judge Cacciabaudo was observed by 16 monitors on 12 different days.

Monitors described Judge Cacciabaudo as well-informed and "very congenial," particularly when dealing with jurors. One monitor observed that, with each new panel of jurors, "[t]he judge explained to them their duties and made them feel at ease by telling them stories." Another monitor commented that his "wry sense of humor" defused tension in the courtroom.

Judge Cacciabaudo listened intently and "treated everyone in his courtroom with respect." One monitor reported observing him spending a good deal of time trying to locate a defendant's missing attorney, instead of simply rescheduling the case for a later date and leaving the defendant in limbo. Another noted that he allowed defendants to apologize to victims' families and welcomed statements from a victim's widow and other family members. On a different day, a monitor reported that the judge seemed "sensitive to the emotional state of a witness" who began to cry during her testimony: "The judge excused the jurors and asked [the witness] if she wanted her sister with her." That same monitor noted that he expressed "concern about a juror who was coughing heavily," first by offering him water, and then by asking him whether he needed to take a break.

While one monitor applauded Judge Cacciabaudo for speaking clearly and audibly, and for encouraging attorneys and witnesses to do the same, other monitors found that, because he failed to use the microphone that was provided, proceedings in his large courtroom were difficult to hear. However, monitors praised Judge Cacciabaudo for "maintaining order and control at all times" in the courtroom, and for his efficiency. As one monitor put it, he "ran a tight ship." They found that he "stepped in immediately whenever he felt an attorney was going beyond the scope of what was relevant," "had a short fuse when it seemed an attorney was harassing a witness," and "permitted no frivolous objections" from attorneys. Several monitors also noted that he "moved the court's business along," "explained things clearly," and instructed court personnel to announce delays during the proceedings.

Hon. Anthony R. Corso

Hon. Anthony R. Corso is a graduate of the University of Dayton and St. John's University School of Law. From 1968 to 1976, he served as Town Supervisor of Huntington. In 1976, he was elected as a Democrat to the District Court, and was re-elected to this position as a Democrat in 1981 and again in 1987. In 1992, he was elected to the County Court on the Democratic and Republican tickets.

Judge Corso was observed by 10 monitors on 10 different days.

Monitors described Judge Corso as well-informed and "businesslike." Generally, they praised his "firm control" over his courtroom, and noted that he seemed to command respect from lawyers and others who appeared before him. Several monitors also observed that he "moved business along well," but "did not appear to rush anyone, and quickly interceded to ensure that the proceedings went smoothly." For instance, one monitor found that he swiftly "admonished" lawyers who interrupted each other.

Several monitors found Judge Corso to be "patient" and "concerned" when dealing with defendants. In one case, a monitor described him as "particularly patient with a defendant who was an older man," who seemed to have difficulty understanding the proceedings. However, three monitors felt that he sometimes "displayed boredom at the proceedings." One monitor observed, "He seemed bored and inattentive"; another commented that he "looked as though he might fall asleep."

One monitor also felt that Judge Corso "spoke very fast and appeared impatient with the defendants in general, and displayed a negative attitude toward defendants, especially those represented by Legal Aid. He could speak [more slowly] when he is explaining plea bargaining to the defendants."

However, monitors found that Judge Corso seemed to be "well-informed about the cases." They reported that he took copious notes during court proceedings, frequently quoted from his notes in order to clarify a point from previous testimony, and explained the law well to lawyers and defendants.

Hon. Madeleine A. Fitzgibbon

Hon. Madeleine A. Fitzgibbon is a graduate of St. John's University and St. John's University School of Law. From 1977 to 1979, she worked as the administrative assistant to the Babylon Town Supervisor. From 1982 to 1984, she was a legislative aide to Suffolk County Legislators Beck and Glass. From 1984 to 1993, she was in private practice, and in 1993, she was appointed as a hearing examiner to the Family Court. In 1994, she was elected to the bench of the District Court as a Republican, and was re-elected in 1997. In 1998, Chief Administrative Judge Jonathan Lippman designated her an Acting County Court Judge. Currently, Judge Fitzgibbon also serves as the Supervising Judge of the District Court of Suffolk County.

Judge Fitzgibbon was observed by 17 monitors on 15 different days in the Felony Expedited Disposition Part, also known as the "felony waiver part," handling cases in which, in exchange for a plea agreement, a defendant agrees to waive his or her right to a hearing before a grand jury.

Monitors reported that Judge Fitzgibbon was "well-prepared" and "very professional." They also noted that she "kept things moving" while showing "concern" and "respect" for the defendants, "especially young ones without a parent present." One monitor commented that she "always looked interested, alert, and thinking."

Several monitors described Judge Fitzgibbon's courtroom as chaotic. One observed, "It was difficult to follow proceedings because the court was not well-organized and the judge was not in control. The ADA was on the phone during proceedings, people kept walking in and out, attorneys kept talking to each other during proceedings. It was noisy and you could not hear the judge." Another monitor agreed: "There was lots of cross-conversation between lawyers, among the spectators. It was very noisy. The constant use of phones in the courtroom was very distracting and disturbing." Other monitors made similar comments. However, one monitor felt that, although the courtroom had "the appearance of being disorderly and hectic," because this part was designed for negotiation, it necessitated a lot of interaction.

One monitor found that Judge Fitzgibbon's manner was "very impersonal, matter-of-fact, 'just get the case over with,'" but acknowledged that this was "perhaps because of the volume of cases presented to her. With 85 cases on her schedule, the judge is forced into an assembly-line type of situation, and she manages well under these circumstances." Some monitors also felt that the judge was a bit "soft," "coming across without any force," while others believed that she granted adjournments too easily. One added, "[T]oo many cases were adjourned with nothing happening in the case."

However, monitors were generally impressed by Judge Fitzgibbon' s treatment of the defendants, especially considering her huge caseload of 80 or 90 cases a day. One monitor observed that "she showed a real interest in them," and she made a strong effort to ensure that defendants understood her rulings and their sentences, which often included probation, community service, and rehabilitation. "She advised one man [whom] she was sentencing to get a court order for visitation, and admonished another who was put on probation and assigned to undergo treatment for drug abuse that she must stay away from disreputable people (those on drugs, including her boyfriend)," another monitor reported. On several occasions, when defendants were sent to drug addiction treatment and were required to pay restitution while on probation, monitors reported that she told the defendants that they "were getting a break, and an opportunity to turn their lives around." One monitor recalled a "very moving lecture [by Judge Fitzgibbon] to a defendant, whose probation was being revoked, about how much easier [it was] to go back to jail than to face up to his problem, and that it will get worse as he comes back over and over."

In a written response to a draft copy of this report, Judge Fitzgibbon noted, " [O]ne of the primary

functions of this court [the Felony Expedited Disposition Part] is to provide the opportunity for attorneys to negotiate these pleas. It is the reason that the courtroom may seem to be somewhat chaotic . . . . [W]hile the level of activity and noise may seem quite different from that observed in other courtrooms, it is essential in order to achieve the desired result, *i.e.*, the swift and fair disposition of the matters before the court." She also commented that "given the extremely heavy volume of cases ("in terms of volume second only to the arraignment part") that pass through the court each day, it is difficult to spend a great deal of time on each matter. However, please be assured that I make every effort to listen to all sides and to take into consideration all information presented to me before taking any action in any case."

Hon. Richard M. Klein

Judge Klein did not respond to Modern Courts' request for biographical data.

Judge Klein was observed by 10 monitors on nine different days.

Monitors described Judge Klein as "well-informed," "dignified," and "efficient." They also reported that he exhibited excellent control of his courtroom, appeared "calm under stress," and "treated prosecutors and defense attorneys with an equally firm hand." "The [level of] decorum in the courtroom was most appropriate," one monitor concluded.

Several monitors noted that Judge Klein began most days with conferences in his chambers; thus, he often appeared in the courtroom after 9:30 AM. Some monitors acknowledged that the delay in the start of proceedings may not have been the most efficient way to manage the court calendar; several expressed concern that the delays were not announced to those waiting in the courtroom. Consequently, on one occasion, "attorneys waiting were complaining amongst themselves about the delay. At one point there were eight attorneys sitting around waiting for a considerable length of time. There were also defendants and their families." One monitor reported that, on another occasion, "[s]even attorneys were present at 9:30 AM, and they had to wait until 11:30, when the judge opened the calendar call. What a waste of time and money!"

Once courtroom proceedings began, monitors found that Judge Klein "moved the cases along efficiently." However, some monitors felt that he appeared inconsiderate or uncompassionate as he swiftly processed cases. One monitor noted that "he appeared distracted" and "did not appear to be much concerned with the lawyers or defendants who were before him." Another reported, "Once he started [at 11:30 AM,] he raced through, telling prisoners, 'Andelay, andelay,' his idea of Spanish, and 'Hurry, move along.' It was very rude. Often no one really had a chance to ask a question or explain a situation." This monitor added that "Judge Klein seemed to have the attitude that most of the time individuals [who had been] arrested need[ed] punishment and sarcasm. Although he kept 18 adults, some with babies, waiting

over two hours, when one prisoner did not come to trial promptly, he questioned, 'Come on, come on, where is he? Combing his hair?'" The monitor added, "[The defendant] was young, confused, and terrified. When his interpreter tried to explain the sentence, the judge said, 'Next! Next!' While papers were being signed, the judge would talk and joke with court officers and the ADA about elections, politics, etc. There was no seriousness or professional tone to proceedings."

However, several monitors praised Judge Klein for "demonstrat[ing] a strong concern for fairness." They found that he "listened well" and "consider[ed] arguments and recommendations from the lawyers, but did not "rubber stamp" their requests, instead asking thoughtful questions and challenging attorneys. One monitor described him as "compassionate to some defendants, but appropriately tough on others," "appear[ing] to fit his comments [and his rulings] to the case at hand." Another monitor noted that while in one case, "the judge wouldn't accept $4,000 bail [that the defendant's] family raised, because of the defendant's previous felony conviction and unanswered warrants, he did, in another case, grant a defendant (a man with a 2-year-old son) an additional two months to raise money." Yet another monitor observed a case in which "a man who severely injured some people while driving under the influence of alcohol and cocaine, and [who] wanted a second chance, asked to spend some time in jail on weekends only so he could work to support his family. Judge Klein appropriately stated that the victims did not get a second chance, and then sentenced him, advising him [that] he had the right to appeal and asking the defendant's lawyer to explain it to him." However, one monitor reported that "when [Judge Klein] thought a drug or alcohol program was more beneficial than sending a defendant to jail, he did so, even against the advice of the assistant district attorney," but when he did so, "he gave the defendant a strong lecture."

Monitors also praised Judge Klein's treatment of jurors. One monitor observed that he was "very considerate to the wishes of two jurors": "One woman, who was questioned without the other jurors present, requested Monday off because of holiday travel plans. The other had a doctor's appointment on Monday. The lawyers agreed and Judge Klein [avoided] the problems [associated with] possible use of alternate jurors by giving the jury Friday and Monday off – a welcome announcement when they all filed in for the trial." In general, monitors also reported that the judge's instructions to jurors were "clear and concise," that he thoroughly "outlined the responsibilities of the attorneys, the jury, and himself," and that his courteous treatment put jurors at ease.

Hon. Joel L. Lefkowitz

Hon. Joel L. Lefkowitz graduated from Syracuse University and New York University School of Law. From 1974 to 1979, he was a councilman in the Town of Brookhaven, and from 1980 to 1981, he served as Supervisor of the Town of Brookhaven. From 1982 to 1983, he was the Assistant County Attorney for Suffolk County. In 1983, he was appointed by the Suffolk County Legislature to the District Court. In 1984, he was elected to the District Court bench as a Republican and Conservative, and was re-elected on the same tickets in 1989. In 1993, he was elected on the Democratic and Conservative tickets to his current position of County Court judge.

Judge Lefkowitz was observed by 32 monitors on 23 different days.

Monitors generally were "very impressed" with Judge Lefkowitz, describing him as "fair," "courteous," "calm," and "very sharp." They also noted that he "listened well and allowed plenty of time for all parties to present their case," and "explained [his rulings] clearly." One observed that he was particularly "congenial" in addressing a visiting class from Mattituck High School.

Monitors praised Judge Lefkowitz's treatment of defendants, specifically applauding his "compassionate," respectful," and "direct" approach when dealing with them. In one case, involving a violation of probation, "the judge extended probation because the boy was doing so well. He also wished him good luck," one monitor observed. In another case, before sentencing, "the defendant was very upset and wanted to speak to the judge immediately. The judge permitted him to do so before his lawyer spoke, without condescending to the party being sentenced." The judge also "took particular time with a man who seemed either emotionally disturbed or retarded. Once the man understood the sentence and realized it was fair, he calmed down and even thanked the judge." But Judge Lefkowitz was also very firm at times, "especially when explaining to defendants the implications of orders of protection."

Monitors had similar praise for his treatment of attorneys and witnesses; he was described as "sharp" in his dealings with lawyers. One noted that Judge Lefkowitz "missed nothing," and was quick to step in when a lawyer seemed to be verging on harassing a witness. Overall, monitors found that he seemed to be quite patient with the lawyers. They also reported that he was very courteous and helpful to witnesses. One monitor observed him explaining to one, in a very pleasant manner, that he should answer "yes or no" and not give vague answers during testimony.

Generally, monitors found that Judge Lefkowitz was attentive to jurors. One monitor reported that he gave good instructions to new jurors, "explaining to them that they would be obliged to participate in deliberations, which mean[t] listening to others and, when asked, giving the reasons behind their positions." Another monitor praised him for "recogniz[ing] that the jury was getting restless and call[ing] a recess on their behalf" during a morning of long and tedious testimony. However, several monitors felt that his pre-deliberation charge to the jurors in a manslaughter case was read in a dull manner, and that juror's eyes "appeared glazed over." One monitor also believed that the judge was "too lenient" in accepting excuses from potential jurors as to why they could not serve on a long trial . This monitor observed, "Over a two-day period, 95 percent of the potential jurors were excused, and most of the excuses seemed frivolous." For instance, one of the potential jurors "had claimed she was the 'golf chairman' [of] a family celebration, and she was excused."

Overall, however, monitors were extremely impressed with Judge Lefkowitz's performance: They reported that he "worked cooperatively with lawyers," appeared to be "sensitive to the needs of witnesses and jurors and to victims' rights," was "clear and precise in his speech," and "always maintain[ed]order."

Hon. Louis J. Ohlig

Judge Ohlig did not respond to Modern Courts' request for biographical data.

Judge Ohlig was observed by 13 monitors on 11 different days.

Monitors consistently found that Judge Ohlig was "on top of matters" in his court, and they commended him for his handling of young defendants. They reported that he seemed compassionate to all parties in his courtroom, "showed great respect to the defendants and any of their loved ones who were in court with them," and made a strong effort not merely to dispose of the cases, but to communicate a message to the defendants. For instance, one monitor observed a case during which he was "very compassionate [to] the mother of a defendant who had a mental problem," who was being held in jail, but was being sent to a mental health facility. The monitor reported, "The mother asked the judge to try to rush the paperwork so her son wouldn't have to stay in jail any longer. He assured her he would make sure it was done immediately." Another commented, "In general, he encouraged the defendants to change their behavior and get on the right track in life, to do the right things in life. He asked one defendant, 'Were you in the service? You need to learn to take orders and be more disciplined.'" According to another monitor, when sentencing another defendant, he explained, "I don't want this incident to go unnoticed. You pointed a loaded gun at a police officer, and the result could have been different. Keep away from the bad element in jail and try to be a good citizen when you leave." This monitor added, "He made all these comments and more very respectfully, as if he was trying to reach [the defendant's] heart."

Judge Ohlig also was commended for his concern for defendants' rights. "Your attorney is representing you well," he advised one defendant. "Tell him everything; don't hold anything back." In dealing with a defendant who did not speak English, the judge "made sure to emphasize that the defendant [should] understand [that] he need not and should not speak to those who will be taking his blood and hair samples."

Monitors generally were impressed by Judge Ohlig's courteous treatment of jurors. However, one noted that "his jury instructions were thorough and careful but were delivered in a monotonous tone." Some monitors were "unimpressed" with other aspects of the judge's performance: "He sometimes seems a bit confused and doesn't seem to have the ability to move things along," one commented. Another felt that "his manner appeared gruff, and he seemed to be in a hurry to get through the cases." A third reported, "[T]he judge appeared somewhat bored."

However, several monitors praised Judge Ohlig's control of the courtroom. They described him as an active presence who intervened to clarify questions by lawyers to witnesses and to request that witnesses be specific in their answers. He explained his rulings clearly and succinctly, and, when lawyers seemed to be trying to influence prospective jurors during jury selection, he "pointed out to the lawyers the difference between *voir dire* (jury selection) and trial proceedings."

Hon. Arthur J. Pitts

Hon. Arthur J. Pitts is a graduate of Colgate University and St. John's University School of Law. From 1982 to 1988, he was in private practice, and from 1986 to 1987, the Village Board appointed him Associate Justice of the Village of Lindenhurst. From 1988 to 1992, he served as the Supervisor of the Town of Babylon. In 1993, he was cross-endorsed by the Republicans and Democrats, and was elected to the County Court.

Judge Pitts was observed by 28 monitors on 20 different days. Many of the monitors' observations occurred during a capital case, *People v. Shulman*, over which Judge Pitts presided throughout most of the monitoring period.

Monitors found that the atmosphere in Judge Pitts's courtroom was usually "non-threatening, yet dignified." They described Judge Pitts as "firm but gentle," and noted that he was "extremely polite to everyone," listened intently and explained his reasoning for all of his rulings, "showed respect for all parties and conducted the proceedings with a great deal of dignity," and was "patient and understanding." One monitor observed, "He made me feel [that] he was interested in all the cases."

To the monitors, Judge Pitts seemed efficient and "firmly in control of the proceedings." One monitor commented that he "ruled quietly but firmly," intervening to break tension between lawyers or keep lawyers from straying off the subject when questioning witnesses. Another monitor described Judge Pitts's efficiency during one case: A lawyer asked for a blackboard, but the judge suggested instead that he put his diagram on paper, so that each juror could examine it closely. While an officer was sent to get paper, the "lawyer suggested a five-minute recess, but the judge urged the lawyer to instead continue with the questioning." One monitor concluded, "The judge handled cases with dispatch, while apparently giving due thought to all points raised by attorneys. He proceeded with confidence and a clear understanding of the related law and his rulings."

When dealing with defendants, several monitors noted that Judge Pitts addressed them in an individual manner. One commented, "In imposing a sentence on a young man convicted on a drug-related charge, the judge spoke to him in a very kind and caring way, urging him to work on his drug problem and explaining the future implications of failing to take care of this problem." When sentencing a first-time DWI offender to probation, the judge "sternly impressed on the defendant that there would be serious consequences" if there were future infractions, another noted. In general, one monitor concluded, "He made a strong effort to reach the defendants to make them realize a life change is necessary. It may not always work, but he tried."

While he could be appropriately stern, he also was "not afraid to smile occasionally and greeted defendants who came before him, frequently in handcuffs, with a friendly 'Good morning.'" He showed strong concern for defendants' rights, "explaining rulings carefully" and "making sure that those who changed pleas from 'not guilty' to 'guilty' understood the consequences of that move." He also

"complimented a young man for turning himself around" after reading a positive report on the defendant's progress in a rehabilitation program.

A few monitors were critical of Judge Pitts's performance. One expressed concern that Judge Pitts was using a computer during a pre-trial hearing. The monitor noted that, although he "seemed to be listening to proceedings," he "seldom if ever was watching lawyers, defendants, [or] witnesses." Another felt that Judge Pitts "should have made a reference to [a] late attorneys' weak reason" for being two hours late. A third monitor found that "Judge Pitts was hard to hear, [because] he didn't use a microphone and put his hand in front of his mouth."

However, the majority of the monitors felt that he "seemed to be doing a good job under trying conditions." In fact, monitors specifically commended Judge Pitts's handling of the capital case, during which there was "continual tension between the assistant district attorney and the defense attorney." Although Judge Pitts was forced "to silence the bickering" and "rule on a lot of objections during this trial, monitors found that he demonstrated "remarkable forbearance," the ability "to chastise a lawyer without getting emotional," a "laid-back sense of humor, which helped to defuse tension," and "the ability to handle a great deal of pressure."

Hon. John V. Vaughn

Hon. John V. Vaughn graduated from Manhattan College and St. John's University School of Law. From 1960 to 1968, he was in private practice. In 1965, he was elected as a justice in the Town of Babylon. In 1968, he was elected to the District Court as a Republican, and was re-elected in 1974. He was first elected to his current position of County Court judge in 1978, on the Republican ticket, and he was re-elected in 1988. In 1998, he retired from the bench at the end of his term.

Judge Vaughn was observed by 12 monitors on 10 different days.

Monitors described Judge Vaughn as a "no-nonsense kind of judge" who "maintained order and control at all times." As one monitor put it, he ran "a very smooth courtroom."

Several monitors commended Judge Vaughn for "displaying much patience and compassion," and for appearing to listen intently to all parties. One found that he was "very dignified, and treated the defendants and attorneys very professionally"; others described him as "tough." One monitor cited the following case as an example of this "toughness": "The defendant was represented by an attorney who pleaded eminently for her client, trying to explain the reason for his violation of probation. The judge would have none of it and passed sentence." However, one monitor felt that the judge was overly harsh at times, commenting, "Although I applaud firmness, he appeared to be brash, inconsiderate, and impatient."

Monitors were divided on whether Judge Vaughn was audible. Several monitors reported that he spoke clearly and audibly. One commented that you "could easily hear him," even though he presided in a "large" courtroom. However, others felt that he "should speak a little louder."

Nonetheless, monitors were "very impressed" with how efficiently Judge Vaughn processed cases. One commented that he ran his courtroom "with the speed and efficiency of a good Marine drill instructor." Once the day's calendar began, "court stayed in session," another noted. This monitor added that the judge "did not like delays," and when delays were unavoidable, he used the time to hold conferences at the bench or to take care of other court business. Monitors reported that Judge Vaughn quickly expressed his disapproval to lawyers who were not prepared and to interpreters who were not available in a timely fashion.

Hon. Gary J. Weber

Hon. Gary J. Weber is a graduate of Syracuse University and Syracuse University College of Law. From 1973 to 1976, he was an assistant district attorney for Suffolk County. From 1975 to 1992, he was in private practice. In 1993, he was elected to the County Court on the Republican, Democratic, Conservative, and Right to Life tickets.

Judge Weber was observed by 17 monitors on 10 different days.

Judge Weber received praise for his efficiency and his "low-key" affable demeanor. Monitors described him as a "good listener" who appeared to be "patient," "considerate," and "respectful" of the parties before him. For example, one monitor reported, he calmed a witness when she became nervous and upset during questioning by an assistant district attorney. Another found him to be alert, noting that his "eyes roved around the courtroom at times, keeping track of everyone and everything."

Monitors also praised Judge Weber's approach in dealing with defendants. They found that he showed sincere concern for defendants' rights, and he was thorough and careful when explaining their rights and options, as well as his rulings. In one case, a monitor reported, Judge Weber gave another chance to a defendant who had violated her probation by failing to make payments to the court. The monitor noted that "[h]e lowered the monthly payments so [that] she could afford them, and so that she could stay in her recommended drug program." On other occasions, monitors observed, Judge Weber delivered stern warnings to defendants: In one case, when he assigned a defendant to probation, "he made it clear to the defendant that if Probation tells him to jump, his only response should be, 'How high?'" With another defendant, "he gave him a lecture and a strong warning" about the consequences of further offenses, another monitor reported. "He was very willing to take time with them, interpreting what was occurring in a manner in which they could understand. It was very impressive."

Several monitors also commended Judge Weber for his firm manner when dealing with attorneys. One monitor noted, "He dealt very well with a defense attorney when he became angry and asked for a hearing before the jury was brought in. The judge listened patiently and came up with his denial [of] a hearing very calmly and with conviction. He made it clear [that] his mind was made up, and the attorney accepted the decision and sat down." In another instance, another monitor observed that the judge was quick to cut off an argument between attorneys, telling them that he would not keep the jury, which was outside the courtroom, waiting any longer.

However, other monitors were critical of his treatment of some attorneys. One monitor felt that the judge sometimes displayed an "immature" demeanor, making "flip statements" about lawyers, and sometimes about defendants, "that bordered on sarcastic." He "doesn't show respect for all the parties," another monitor observed. This monitor added that "when there's no jury present, it's easy to tell which attorneys he respects and which ones annoy him." Yet another reported, "In a pre-trial hearing, it was evident that he had a dislike either for the defendant's attorney or his firm." In another case, a monitor felt that "he clearly favored one attorney," with whom he engaged in "some friendly chatter about life in the Hamptons" after his case was decided.

Several monitors complained that delays were not announced in Judge Weber's courtroom. One monitor reported that, on a typical day, "he held conferences on all the cases before the first calendar call," and did not take the bench until some time between 10:00 and 11:00 AM (sometimes later). This was efficient as to movement of the cases once the calendar call began, but in the meantime, families were waiting a long time without being advised" why or for how long they would be waiting." Another reported, "It was told to us (several court monitors) by a court officer that all conferences would be held before the first call, but this was not announced to the family members of defendants who were waiting. If you are familiar with the procedures in this courtroom and in some others you know there will be a wait. But if you were unfamiliar, you would have no idea that you had an hour or an hour-and-a-half wait before court would start. This should be announced and explained."

In general, however, monitors felt that Judge Weber ran a "relaxed but efficient" courtroom. They were particularly impressed by his "pleasant" demeanor and his concern for the defendants. Monitors also commended Judge Weber for "speaking clearly and audibly," "consistently using his microphone," and "maintaining order and control at all times."

Hon. Morton Weissman

Hon. Morton Weissman is a graduate of Queens College and New York University School of Law. From 1952 to 1953, he was in private practice. In 1964, he was elected to the District Court on the Republican ticket. From 1970 to 1973, he again was in private practice. In 1973, he was appointed to the District Court by Suffolk County Executive H. Lee Dennison, and was then elected to the same position on the Republican ticket. In 1978, he was elected as a Republican to the County Court, and was re-elected in 1988. Judge Weissman retired from the bench in 1998.

Judge Weissman was observed by 14 monitors on nine different days.

Monitors described Judge Weissman as "sharp, " "tough," and "well-informed," taking notes and often referring to them in his rulings on motions and other matters. In general, they found that he also was "respectful of all parties," conducted proceedings in a "dignified manner," and "did not allow time to be wasted in his courtroom." One monitor reported that Judge Weissman "seemed compassionate and concerned with each and every defendant that was brought in front of him."

Monitors generally applauded Judge Weissman's direct and firm approach when dealing with defendants. "This judge brooks no nonsense," one monitor commented, while another noted, "He was always firm in his rulings." He "made it quite clear to the defendants when and where he thinks they have messed up their lives": One monitor reported that he "read the riot act" to a defendant who was convicted of spousal abuse; another observed that he "was very angry and tough with a 'repeat' defendant, and was firm in demanding that the strict conditions of an order of protection be adhered to." Monitors especially commended the judge for his "tough attitude" in DWI cases. However, one monitor observed that Judge Weissman could be "flexible," as in the case of a 17-year-old defendant with no prior convictions, for whom he reduced bail.

Monitors also found that he was "tough on attorneys, when necessary." One monitor reported that Judge Weissman "chide[d] an assistant district attorney twice [about] having motions papers submitted on time." He often seemed to assist in the training of inexperienced lawyers, "taking the time to correct errors or techniques," another monitor noted. During trials, several monitors noted that he frequently rephrased lawyers' questions to help the witnesses to understand.

Some monitors reported that the judge's demeanor was sometimes "rude and impatient." According to one monitor, "My first impression of the judge was that he handled matters with dispatch, sort of no-nonsense, ready to move along, but courteous and to the point. However, as he moved through the proceedings, I feel that he became very impatient, sometimes bordering on being rude. He had a verbal altercation with the assistant district attorney, and I can't help but feel that it occurred because of his lack of respect for her. He was also very curt with a witness and shouted at him and the ADA during her examination. All of this was uncalled-for. He also upbraided (and perhaps embarrassed) a lawyer for not knowing his case." After observing on a different day, another monitor concurred: "The judge was very irascible throughout, especially toward the prosecutor, whom he berated steadily on what seemed very little provocation. [The judge] seemed poorly informed on the case, impatient, and not very judicial in temperament."

Two monitors were critical of Judge Weissman's instructions to jurors. "They were not well-delivered, as he read from papers and gave very repetitious explanations," one commented., adding that it seemed that "the jury was not very attentive." Observing on a different day, another monitor remarked, "In his instructions to the jury he was very clear, but somewhat condescending to them."

Nonetheless, monitors commended Judge Weissman for maintaining control of his courtroom. As one monitor put it, he "keeps an orderly courtroom." They also applauded his efforts to ensure that the proceedings were audible: Monitors noted that he "spoke clearly and quite loudly," usually using his microphone, and "encouraged others to speak up."

IV. ATTORNEYS

During the course of the project, the monitors observed a variety of attorneys at work in the County Court, including court-appointed attorneys, assistant district attorneys, and attorneys in private practice. The performance of these attorneys is essential to the operations of the County Court. While the monitors did not assess the lawyers' legal skills, they evaluated whether the attorneys appeared to be prepared, and how they behaved toward other parties in the courtroom.

Monitors reported that, overall, the performance of attorneys in the County Court was impressive. They were usually "articulate," "dignified," and "sharp." Most monitors agreed that the lawyers "acted in a professional manner toward the court and toward [their] clients," and that the defense attorneys were usually "vigorous" and "forceful advocates for their clients." However, as discussed later in this section, attorneys were frequently late or inadequately prepared, resulting in lengthy delays and a disproportionately high number of adjournments. The monitors also had another specific and consistent criticism: When not involved in the case currently being heard, attorneys engaged in loud conversation and other disruptive activities in the courtroom.

Assistant District Attorneys. Monitors praised many of the assistant district attorneys (ADAs), who prosecute cases on behalf of the County. Although they appeared to the monitors to be a young group (one ADA was described as "perhaps a bit inexperienced" and another as "perhaps a bit immature"), they seemed to know their cases well, and to handle their dealings with judges, witnesses, and jurors with aplomb. "A remarkable young man," was a monitor's description of one ADA who seemed "very competent and confident."

Another monitor praised an ADA who "gave a highly dramatic presentation to the jury; perhaps over[ly] dramatic, but effective." Yet another ADA "spoke clearly and seemed to know the facts without reading from his notes. His strategy [seemed] well-planned, [and] he seemed to be able to answer the objections of the defense attorney." Monitors also reported that one ADA "phrased and rephrased her questions in a striking manner," another "managed to describe the lurid facts of his case to the jury in language that was descriptive but not shocking," and a third was "unflappable, good-humored, and respectful to all." During a murder case, a monitor was "impressed by the ADA's concern for the widow of the victim and her family. Before the sentencing began, he came over to their seats and spoke to them in a friendly manner."

However, monitors did have some criticisms of the ADAs. They felt that some of the young prosecutors seemed "nervous": One "had a nervous laugh at times; perhaps she was uneasy, or was trying to make the jury relax, but it was not to her advantage." One monitor observed another ADA who "was very slow with her questions" to witnesses. The monitor added, "During a 5-minute break, she sat with a court officer and became very animated and silly – laughing loudly, etc. I thought, in consideration of the defendant's family, [who were] in the courtroom, she should have relaxed outside." In a case involving rape and sexual abuse, a monitor noted that "the ADA became emotional in his questioning of a defense witness, and the defense lawyer had to ask him not to bark orders at [the witness]." Another ADA was described by a monitor as "tentative and unprepared, and [the attorney] belabored points without end."

Assigned Counsel. Many of the defense attorneys that monitors observed were from the Legal Aid Society of Suffolk County, a non-profit organization with which Suffolk County contracts to represent defendants who cannot afford private counsel. Other court-appointed attorneys are private lawyers who are assigned to represent defendants at public expense in cases in which the Legal Aid Society may have a conflict of interest – for example, in a case with multiple defendants. These attorneys are known as "18-B" attorneys, because the legislation that authorizes their use is codified under Section 18-B of the County Law. Some defendants also retain private defense attorneys.

In general, the Legal Aid attorneys received praise because "they seemed well-prepared and interested in their clients," "knowledgeable about their cases," and "polite in their questioning of witnesses." To some monitors, they seemed "more well-seasoned" than the prosecuting attorneys. On numerous occasions, monitors reported, Legal Aid lawyers showed patience, a good rapport, and genuine concern for their clients, explaining proceedings to the clients in simple terms, and even speaking to defendants' family members in a calming way. In one case, "[a]fter the pre-trial hearing, the defendant's lawyer was discussing bringing clothes for his client for the next day's trial, . . . stating that he didn't want the jury to see the defendant in prison clothes." One monitor applauded a lawyer who displayed "a strong sense of responsibility" when he "spent time with the mother, sister, young niece, and nephew of the defendant. He not only explained to them what was happening, but also spent a long time discussing with the two young children how to live, behave, and act."

Monitor also commended those Legal Aid attorneys who appeared to work zealously for their clients. One lawyer "challenged the detective he was questioning somewhat harshly and sometimes dramatically, but in this was probably representing his client well," one monitor noted. Another attorney was described as "dramatic and articulate." Still another "was extremely well-prepared to defend his client, having become very familiar with the technical aspects involving expert DNA testimony, and [thus] being able to cast doubt on the proper identification of his client." Monitors also applauded one attorney for being "gentle in his questioning of a rape victim."

However, many monitors found that the performance of Legal Aid lawyers and other assigned counsel were hindered by large caseloads. On average, Legal Aid lawyers in the Felony Bureau handle a docket of 35 to 50 cases at any one time. Frequently, the lawyers seemed to meet their clients for the first time just before they went before a judge. Monitors recounted repeated incidents in which court-appointed attorneys entered a courtroom while calling the names of their new clients, so that they could discuss their cases for the first time – in the hallway outside the courtroom. One monitor observed, "It's obvious that Legal Aid lawyers carry huge caseloads. Any number of times attorneys called out names of their clients, clearly not recognizing who they were and meeting for the first time." "Many public defender lawyers don't recognize their clients, due probably to the large number of defendants they represent," another reported. "Legal Aid attorneys should have more advance time with defendants." Yet another observed that one Legal Aid attorney "was involved in 12-plus cases today, plus having several clients he met for the first time in court. It's not a warm, fuzzy feeling." Another added, "Legal Aid attorneys seemed to be unaware of a

lot of information concerning their clients." As a result, some monitors believed, "poor people seem to have poor or unprepared 'mill' lawyers," and "there's a need for more quality lawyers for poor [people]. Surely, this time justice is not equal, when an unprepared, inarticulate lawyer tries to defend a client against a sharp ADA. The playing field is not level at all."

Monitors also were disturbed that defendants sometimes waited hours in court for their court-appointed lawyers, who were busy with multiple cases in different courtrooms, or were simply late for unknown reasons. As one monitor put it, "There seems to be a lot of time spent by the people using the courts waiting around for their lawyers to show up. I am not certain if there is always a good reason." According to the monitors, it was not uncommon that "a prisoner was brought in from lock-up, but his attorney wasn't present. The attorney had not contacted his client or the court to explain his absence. The judge granted a postponement and told the prisoner the court would call the lawyer to see what was happening. The prisoner had to be returned to his cell."

Some monitors also felt that some of the court appointed attorneys did not appear to represent their clients zealously. One monitor observed a case (involving a non-violent offense), in which "the defendant had to speak up for himself because his lawyer did not. They handcuffed him, ready to detain him until a future sentencing date," and the defendant pleaded with the judge for an adjournment so that he could move his possessions into his new home. "He really had to convince the judge because his lawyer just stood there. But once the defendant got Judge Fitzgibbon to listen to him, the lawyer completed the paperwork, and they then took the handcuffs off and gave him a date to come for sentencing and incarceration."

In general, however, monitors praised Legal Aid lawyers and other court appointed attorneys for adequately representing their clients in the face of overwhelming caseloads. They commended one lawyer who managed to "defend his charges competently despite his huge caseload," and another who "had an excellent relationship" with the new client that she was representing in court.

Other Observations

Monitors' findings often applied to attorneys generally, whether they were prosecutors, Legal Aid lawyers, court-appointed attorneys, or privately retained counsel. These findings usually related to courtroom behavior and its effects upon courtroom operations.

Many monitors were critical of attorneys for speaking inaudibly during the proceedings. Monitors reported that they "mumbled and couldn't be heard well," and "spoke so quietly that it was difficult to know what was going on." After one case concluded, a juror advised a monitor that she wished that she could have heard what the attorneys were saying. In another case, a monitor reported that the court reporter repeatedly asked an attorney to repeat herself because the reporter could not hear the lawyer.

Monitors also found that, when not involved in a case, lawyers were a major source of noise in the courtrooms. This made it difficult for spectators to follow the proceedings, and at times seemed to distract the parties involved in the cases. "Attorneys were conversing among themselves and causing a buzz in the courtroom," one monitor reported. The monitor continued, "The judge asked them to quiet down, but this worked for only a short time." Another monitor described one lawyer as "disruptive" because of all of his "schmoozing" during proceedings, while in another courtroom, a third monitor reported, " the lawyers were joking with one another and not showing the proper respect."

Several monitors felt that the lawyers treated the courtroom as a "country club." While waiting for proceedings to begin, they passed the time by "trading war stories and joking around, sometimes going too far." Monitors felt that this was "an affront to the families waiting in court": They were concerned that the families might view the overly friendly and lax atmosphere as a sign that an "old-boy" system operates in the court, and that, to the lawyers, the proceedings are all "a game."

Monitors also felt that some lawyers were "too long or verbose in their summations," while others "read their summaries with much speed, little expression, and little effectiveness." In one case, "both attorneys seldom looked at the jury; one juror fell asleep for awhile" as the defense attorney spoke. Monitors believed that the lawyers should make a conscious effort to maintain jurors' attention. They also felt that some lawyers appeared "arrogant" when addressing the jurors.

V. COURT PERSONNEL

Non-judicial court personnel have an enormous impact on the public's perception of the court system, as well as on the quality of justice that is dispensed. A typical litigant spends much time outside the courtroom, dealing with clerks, court officers, and other personnel. In most courtrooms, court clerks, court officers, and a court reporter may be present. Occasionally, a foreign language or American Sign Language interpreter is also available.

Generally, monitors found that court personnel were "very efficient." They tended to be very helpful to the judges to whom they were assigned, and "worked very harmoniously with each other." In their interactions with the public, court personnel were usually "courteous, friendly, pleasant, respectful, and highly professional." One monitor reported, "[T]hey were very polite and helpful [to] defendants' relatives when they had questions." On numerous occasions, monitors commended court officers for handling "outbursts by unruly spectators" in a firm but professional manner.

Court Officers

The vast majority of monitors' comments regarding court personnel concerned the uniformed court officers, who are responsible for providing security in the courtrooms and waiting areas. In fact, most monitors' first impression of the court derived from their initial interaction with court officers, who staff the magnetometers in the public entrances of most courthouses. Most monitors found these officers to be "consistently polite, helpful, courteous, and pleasant."

While monitors reported favorably on their interactions with these court officers, they also recounted several occasions when the officers behaved impatiently. One day, a monitor reported, "one of the guards was quite rude to a visitor who kept setting off the alarm," becoming visibly impatient, as the woman removed her jewelry, belt, and glasses, until finally she realized that the metal in her leg brace was activating the alarm. This monitor felt that "the rudeness was uncalled-for." On another occasion, "the officers at the entrance were rude and gruff and displayed much impatience with anyone who set off the buzzer." On yet another day, another monitor reported that "the officers at the security check this morning were unnecessarily unpleasant, bordering on rude." According to one monitor, "the personnel as you walk into the building and go through security are very unfriendly and arrogant." This monitor observed, "This is the first place a person needs to have someone to be helpful and put [him or her] at ease. Most people, regardless if you are a prospective juror, witness, family member of a defendant, etc., have some kind of fear just by being in a courthouse."

Monitors also observed several occasions when monitors felt that court officers displayed a lack of professionalism, or were impolite. In particular, some monitors felt that, at times, officers were overly stern

in their attitude toward spectators. "The court officers were treating all the people waiting and listening as though they were about to riot," one monitor commented. Another reported that one officer was "very terse" with the family of a young defendant who was facing a serious charge. "The officer told them, 'If your baby cries, you're outta here.' The women were crying, and there was no compassion or respect shown." In front of other observers, one officer commanded a defendant awaiting sentencing, "'Give all your belongings to your lady friend.' It would have been better to have politely asked him," the monitor who witnessed this encounter declared.

Another monitor reported that, in one courtroom, "as soon as the judge left for conferences, one court officer proceeded to tell a story about a prisoner to the other officers in a loud voice, while defendants and their families were present. They all acted as if they were alone and not in front of the public. The same scenario has occurred in other courtrooms." In another courtroom, after a defendant pled guilty and was sentenced to three years in prison, he asked whether he could speak to his mother and the judge allowed them 10 minutes in the holding cell. "A court officer told the judge, across the room, 'Party time, party time!'" One monitor commented that court officers "do nothing but socialize while the judge is out of the courtroom," and added that "they say everything about everybody."

However, monitors agreed that the vast majority of officers were "helpful and polite to everyone," handled disruptive spectators "firmly but politely," and assisted the public. Monitors also observed many occasions where court officers wisely and compassionately handled difficult situations. On one morning, there was a brief confrontation between the family of a victim and the family of a defendant who had just been sentenced. "The victim's family left the courtroom, but remained in the lobby. The officers obtained assistance and then escorted the family out of the courthouse to avoid a further confrontation. They handled the situation with compassion and common sense, " a monitor reported. Noting that a court officer, without being asked, provided water to a witness who appeared to need it, a monitor added, "He appeared sensitive to the needs of witnesses." On another occasion, a monitor "was impressed by one of the court officers, particularly because of his concern for, and interest in, the families of the defendants who were there, as well as the victim's widow and her family. When they first came in, he let them know that things wouldn't start for about a half-hour and that they could go downstairs for coffee if they wished. Also, when the relatives of the defendant sentenced in the murder case were leaving, he asked one of the other officers to accompany them to their car through the back way, because they didn't want to confront the reporters."

Some monitors were concerned about how court personnel were deployed in the courthouse. Several noted that there often was no visible presence in the court's hallways, where officers might be needed to provide security or answer questions, while at the same time, there were three or four officers in a courtroom. "Is there any reason you need three or four officers in the same courtroom at one time?" one monitor asked. "I noticed one of them was bored and almost asleep." Yet, this monitor reported being told that there were no personnel in the hallways because the court staff were "short-handed."

VI. JURORS

To the credit of Chief Judge Judith S. Kaye, the New York State Office of Court Administration, and the New York State Legislature, there has been a major effort over the past several years to improve conditions for jurors.

Prior to 1996, New York was infamous for the number of automatic occupational exemptions from jury service that were permitted. These automatic exemptions encompassed members of more than 20 occupations, from lawyers to clergy. Legislation passed in 1996 ended these exemptions, thus distributing the burden of jury service more equitably, and enabling some counties to call people to serve less frequently.

In addition, before 1996, New York was the only state in the nation that mandated sequestration (the practice of quartering jurors in a hotel during deliberations, in order to limit access to news or other potential influences) in all felony cases. The 1996 legislation also ended mandatory sequestration, giving judges discretion, in most cases, to decide whether a jury should be sequestered. More than $4 million that was spent each year on housing and guarding sequestered jurors is now put toward an increase in New York's notoriously low jury fees. Prior to 1996, jurors received only $15 per day; they now earn $40 per day.

Over the years, monitors in numerous counties have also found that, relative to their numbers in the communities, minorities are significantly underrepresented on juries. This situation calls into question whether defendants are actually being tried before a jury of their peers. Recently, the problem has been addressed through legislation and administrative action. In 1995, the Legislature expanded the number of lists from which county commissioners of jurors must obtain their jury pools: In addition to voter registration, motor vehicle, and tax lists, jury commissioners must now use lists of utility customers, welfare recipients, and unemployment insurance receipts.

The court system also has made administrative improvements to the jury system. In the past, most counties in New York maintained a "permanent qualified list" of jurors, which often went years without being updated. Consequently, some people were called to serve repeatedly, while others were never called. The Office of Court Administration has abolished the use of permanent qualified lists, and now requires each county to update its lists annually. This combination of the use of additional source lists and the elimination of the permanent qualified lists is expected to enlarge and diversify the jury pool.

Treatment of Jurors

During their evaluation of the County Court, monitors observed the jury selection process on numerous occasions. The monitors were generally pleased with the treatment of jurors in the County Court. The jury assembly room, where prospective jurors report and wait to be called for jury selection, is ample and comfortable. Suffolk County uses a "call-in" system: Jurors who are issued a jury summons can "call in" each evening and listen to a tape-recorded message, which identifies groups of prospective jurors by number, and advises whether the juror's attendance will be required the following day. If the juror must appear, he or she usually is dismissed from jury service if not selected to serve in a trial on that day. Overall, monitors believed that jury service has become more convenient for the public than it was several years ago.

Voir Dire

In the Tenth Judicial District, *voir dire* (the legal term for the selection of jurors for trial) is conducted under the "strike and replace" method. Under this method, an initial panel of prospective jurors, equal to the jury size (in criminal cases, 12 regular jurors, plus two alternates; in civil cases, six regular jurors, plus one or two alternates), is randomly chosen from the entire array of prospective jurors. These individuals are seated in the jury box and are questioned by the attorneys for each side. *Challenges for cause* (for a specific reason enunciated by one of the lawyers) are exercised, and those who are excused are then replaced from the array. The replacement jurors are likewise questioned and may be challenged for cause; additional replacements are made until none of the remaining prospective jurors in the box can be challenged for cause. *Peremptory challenges* (through which lawyers can dismiss jurors without giving a reason) are then exercised, more replacements are seated, and the process continues until no challenges for cause are possible, and the parties have exercised or waived all of their peremptory challenges. When a panel of six or twelve satisfactory jurors and one or two alternates is selected (depending on the type of case), the jurors take an oath, swearing to perform their duties in accordance with the law.

Monitors frequently found that the jury selection process was inefficient, time-consuming, and more tedious than necessary. For instance, it was not unusual for a monitor to observe a jury selection process in its fifth day. Noting that "95 percent of the people in [the] jury [pool] were excused," monitors felt that "everyone is just too picky" about who should serve on a particular case. For example, one monitor observed that, when prospective jurors were asked about past dealings with the police, "the way the questions were stated, 60-year-old people were confessing to being slapped for speeding at age 18," and these people were dismissed. This monitor commented, "The chances are [that] most jurors will be more than qualified, and one's bias will balance another's" in the deliberative process. "They should have a bit more of a 'take what comes' attitude, rather than stacking the jury to the liking of the attorneys."

This monitor touched on an issue that was addressed in the 1994 Report of the Jury Project, but

was never adopted by the State Legislature: peremptory challenges. In jury trials, each side is allowed to dismiss a certain number of jurors without stating a cause. New York permits use of more of these "peremptory challenges" than any other state – up to 20 per side, depending on the type of case. The Jury Project's report recommended that the number of allowable peremptory challenges be reduced. The Jury Project found that the number of such challenges allowed in New York lengthened the *voir dire* process; the abundance of peremptories also increased the number of citizens required to be summoned, and increased the possibility that challenges could be used to exclude prospective jurors on the basis of race or some other reason that is inconsistent with the selection of a fair and impartial jury.

The attorneys' methods of questioning potential jurors also contributed to the excessive length of the jury selection process. Monitors reported that lawyers framed their questions in a time-consuming and tedious manner, and seemed to be trying to influence the outcome in advance of the trial by spinning the cases in their favor, outside of evidentiary constraints. "The lawyers were giving far more information about the case in advance than the jurors needed to know," one monitor opined.

In addition, when an "array" of potential jurors was called into a courtroom, jurors who felt they could not serve on the case approached the judge and gave their reasons. In one major case, "over a two-day period, most [prospective jurors] were excused based on personal problems, rather than for bias." Several monitors felt that that this procedure was unnecessary: One monitor suggested that, when prospective jurors first report to the jury assembly room, they be required to complete a form indicating whether they had been crime victims or had criminal records, or whether there was any reason that they could not serve during a lengthy trial. Those who were obviously unable to serve on a criminal jury could be transferred to the civil courts. Those who provided a legitimate reason as to why they could not serve for a lengthy period could be eliminated from consideration before being called to the courtroom, thus shortening the *voir dire* process.

Monitors also were troubled that prospective jurors, once called from the assembly room, often were forced to stand outside the courtroom for an excessive period of time. One monitor reported that, after being brought from the jury assembly room, "75 jurors were gathered in the third-floor hallway for half an hour, with no place to sit." Another monitor observed, "Jurors were left standing outside the courtroom for too long without being given any explanation." This seemed to be a common occurrence. Monitors felt that, at a minimum, court staff should greet the waiting jurors, explain the reason for the delay, and provide an estimate of the length of the wait. They also recommended that jurors be brought to a staging area where seating was available, or that seats in the hallway be provided.

Jury Composition

Under-representation of racial and ethnic minorities in juries and jury pools has been a persistent problem in many counties in New York. In the past, court monitoring groups throughout the state have

found that a far smaller percentage of minorities serve on juries than the percentage of minorities in the general population of their counties. In the County Court, monitors reported that minorities generally seemed to be adequately represented on juries. However, in at least three cases, monitors observed trials of black or Latino defendants that were decided by all-white juries.

VII. COURT OPERATIONS

In addition to evaluating the performance of judges, attorneys, and court personnel, monitors found several aspects of the court's operations to be noteworthy.

Delays and Adjournments

At the end of 1998, disposition of 120 cases in the County Court had been pending for more than six months. Monitors expressed concern about the numerous postponements, and about the lengthy delays that occurred during a typical day in court. "I wonder," one monitor speculated, "if due process truly exists in cases that take so long to go to trial. In many of these cases, two years have passed since the incident in question. This seems to create an amazing amount of loss of memory." Indeed, another monitor who observed a case involving a crime that took place in 1996 noted that the defense lawyer asked for a mistrial because "memories have diminished over the years." The monitor commented, "I know this time frame is not unusual, and one wonders why it has to take so long to come to trial." Another monitor added, "If a defendant is proven innocent, two years is a long time to have stayed in jail."

Monitors found that the most common reasons for adjournments were that lawyers were not present or were not prepared to proceed. Some monitors found lawyers' failure to appear to be "inexcusable." However, aware that Legal Aid lawyers and Assistant District Attorneys had large caseloads, and often had cases proceeding simultaneously in more than one courtroom at the same time, most monitors were more sympathetic to the attorneys' inability to fulfill the demands of the court calendars.

Lack of preparation may also have been, at least in part, a consequence of the attorneys' overwhelming caseloads. But "frequent requests for delays [to have more time to prepare] seemed to be the norm. In many cases, they don't appear to want a speedy disposition. Do lawyers get paid for each new appearance?" one monitor asked.

Not all delays resulted from the attorneys' tardiness. In the County Court, judges frequently arrived between 10:00 and 11:00 AM, and sometimes even later. Monitors reported that, when the judges were not on the bench, there usually were no announcements made to people in the courtroom as to the reasons for delays. Monitors suggested that, when a judge will be late in taking the bench, public announcements be made as to the cause and anticipated length of any delay.

Monitors often encountered defendants, lawyers, witnesses, victims, family members, and others who waited in court for extremely lengthy periods of time. In some cases, defendants waited through the morning and afternoon sessions for their cases to be called. Several monitors urged that the court introduce a staggered calendar to decrease waiting time and thus enhance convenience for the public. These monitors

suggested that, instead of requiring everyone to arrive in court by 9:30 AM, the court could vastly reduce waiting times by staggering the arrival of defendants and others to court at 9:30 AM, 11:30 AM, and 2:00 PM. Monitors noted that a staggered calendar might be especially helpful to police officers, who, when appearing as witnesses, often must wait for excessive amounts of time. "While waiting for the courtroom to open in the afternoon," one monitor reported, "I spoke to the cop who was to be a witness. We talked about him spending the day in court. He was irked that he was taken off the job during his regular shift. The cop who covered for him gets overtime." Another added, "Police department personnel spend a lot of time in court. This depletes the numbers doing actual police work and creates a lot of overtime. I don't know the answers to this, but it seems like quite a problem to me."

Discovery-Related Delays

When a case goes to trial, each side has a specified period of time in which to gather evidence in support of its case, including evidence in the possession or custody of the opposing party. Monitors reported that numerous cases were postponed because the District Attorney's office failed to share evidence with the defense until shortly before a trial was slated to begin. "The DA's office holds tenaciously to providing the material immediately before opening," one monitor observed. This monitor added, "In many cases this delayed proceedings because the defense then needed more time for necessary preparation. A little more advance notice would speed up trials." Another monitor noted that, in a murder trial in Judge Pitts's court, "[a]fter months of hearings and jury selection, the DA's office should have had all the material ready for the defense in a case like this. Judge Pitts even told them to move faster." Yet another observed a case in which "[t]he defense lawyer was at some[thing] of a disadvantage, since some evidence had only come to him the day before."

The monitors' concerns about the delayed dispatch of discovery materials were two-fold. First, such tactics resulted in delays and postponements during the proceedings. Second, several monitors were concerned that, in some cases, the late receipt of evidence disadvantaged defendants by reducing their attorneys' preparation time.

Capital Cases

The monitors had the opportunity to observe the first capital trial to occur in Suffolk County in three decades. Some monitors expressed significant concerns about the effects of the trial on court operations.

Several monitors were troubled by the amount of time that had to be devoted to one case. "In a death penalty case, it's clearly a problem to find qualified jurors," one monitor observed. "Potential jurors had a 60-page questionnaire to fill out, four pages pertaining to hardship," this monitor added. Jury selection lasted for more than two weeks, and the trial consumed eight months of one judge's time.

Another monitor reported, "A court officer was heard to say that the amount of money spent on the death penalty cases could pay for a lot of new jails." Yet another observed, "Most of the people who could serve on such a long trial were retired, unemployed, or worked for large corporations [that] would pay them for the length of their service." This monitor suggested that the result is a less diverse jury than those that serve in shorter trials.

Audibility

Monitors were continually frustrated by a lack of audibility during court proceedings. In many of the courtrooms in the County Court, monitors found that the acoustics were poor. In addition, a significant amount of noise results from the constant opening and closing of doors, as well as from the personal conversations conducted by attorneys and others during the proceedings.

Monitors pointed out that while the courtrooms were equipped with microphones, most of the judges failed to use them, and spoke too softly for others in the courtroom to hear. In addition, no microphones are provided for the witness box, or for lecterns used by the lawyers, who usually speak with their backs to the public area of the courtroom. Consequently, proceedings are often inaudible.

One monitor reported that a young man who was being sentenced for a serious crime read an apology to the victim's family. The monitor commented, "You could not hear the statement of the young man, nor his lawyer. The judge was also barely audible. The victim's family, and the defendant's mother, who were sitting in the courtroom, undoubtedly could not hear what was going on. It was the first time the defendant acknowledged his responsibility for what he did. Why shouldn't the widow and her family, and the defendants' family, have heard this important apology clearly?"

VIII. PHYSICAL FACILITIES

In Suffolk County, the County Court is housed primarily in the Arthur M. Cromarty Court Complex, at 210 Center Drive in Riverhead. The County Court also uses two courtrooms at the John P. Cohalan, Jr. Courthouse, in Central Islip, where the District Court is located. Following are the monitors' findings on the adequacy of the current court facilities.

Arthur M. Cromarty Court Complex

The Suffolk County Courthouse was built in 1975. In 1990, a new wing was completed, which increased the number of courtrooms in the building to nineteen. It was later renamed the Arthur M. Cromarty Court Complex, in honor of Suffolk County Administrative Judge Cromarty. The complex is located next to the County Center, in proximity to the Suffolk County Jail. The County Court shares the building with the Supreme Court.

Public Areas

Monitors found that the Cromarty Court Complex was in need of maintenance. "[T]here [were] bricks missing on the front of the building, around the fourth-floor level," with pigeons nesting in the space created. Monitors also noted a leak in the ceiling of the building lobby, which went unrepaired throughout monitoring period (and, according to court personnel, still persisted as of the writing of this report). In May, one monitor observed that "the leak has [now] been going on for two months; there's now a trash can under it to catch the water." In addition, some of the water fountains in the public hallways did not work. "Building maintenance doesn't seem to get to these problems too quickly," one monitor commented.

Monitors consistently found the court's public restrooms to be inadequate. They reported that one ladies' restroom "looked as if it had not been cleaned for an inordinate length of time,' while another "was a mess"; the first- and second-floor men's rooms "smelled badly," and "the stalls were missing door locks." In still another, "ceiling tiles were missing, resulting in exposure of the wires and pipes overhead." One monitor also noted, "There were no lights in the handicapped stall."

Observing that many jurors and other members of the public had to stand while waiting outside the courtrooms, monitors recommended that additional benches be placed in the hallways. They also noted that additional public pay phones were needed. Some monitors also lamented the lack of a cafeteria in the courthouse; the few vending machines were sometimes empty. "It's as minimal as can be," one monitor declared.

While the public parking area is adequate, monitors noted that the parking spaces designated as

"handicapped parking" were too far from the entrance ramps. One monitor conceded, "They are near but could be closer."

Courtrooms

Generally, the courtrooms in the Cromarty Court Complex are ample in size. The smaller courtrooms seat approximately 75 spectators, and the largest rooms seat about 150. All of the courtrooms are well-furnished, with raised judges' benches. Many courtrooms have cushioned, theater-style seats, which are far more comfortable than the traditional wooden benches. Each courtroom has a small vestibule at its entrance, which minimizes the noise resulting from people entering and exiting the room. Coat pegs have been mounted on the side walls for public use.

The courtrooms usually were clean. Some courtrooms had no windows, while those located at the corners of the building had windows on two sides. All of the courtrooms were well-lighted. However, monitors noted that the courtrooms often were too cold. They reported that personnel appeared to have no means of controlling the courtroom temperature.

Public Safety

The walk-through metal detectors, known as magnetometers, are stationed at the courthouse entrance to prevent people from bringing weapons into the building. However, on one occasion, "[a] man came in through a door other than the main door a little before 9:00 AM. This door should not be accessible from the outside. He did not pass through the metal detector and apparently walked past two guards who were talking. They did find him when he was asking questions before 9:00 AM as [to] where to find a particular courtroom, and he was brought to the front entrance and questioned and scanned." Monitors recommended that court officers secure all entrances to the building.

Monitors were also troubled to find that the public stairway was kept locked: "Court officers must unlock the doors in an emergency. This could be bad news."

The John P. Cohalan, Jr. Courthouse

Built in 1992, the Cohalan Court Complex consists of "four modern, spacious, pleasant" buildings that are adjacent to one another. The County Court uses two courtrooms in the Complex: one for Judge Alamia's drug part, and the other for Judge Fitzgibbon's plea negotiation part.

While the building is "architecturally pleasing," monitors felt that it was "a shame that the grounds are not kept clean," and they noted that there was a great deal of garbage on the ground outside the

courthouse.

During busy periods, it can take 15 minutes just to enter the building. To expedite the process, monitors suggested installing additional magnetometers at the entrances. They found that the building's directional signs "are neither clear nor visible" and should be repositioned; they also suggested that a map of the building be placed in the lobby to indicate the location of the courtrooms and offices. Monitors also reported that the public stairway was "dirty," with some floor tiles missing.

However, monitors found that the upper floors were quite pleasant. The hallways outside of the courtroom are lined with floor-to-ceiling windows. The hallways are carpeted, and benches are built into the walls. There were ample – and functional – water fountains and public telephones, and the bathrooms were clean and in good condition, although monitors were concerned that the stalls for people with disabilities were rather small.

The courthouse is also located far from any stores or restaurants. The only food available on-site is from a vending truck in the parking lot. Accordingly, monitors recommended that a cafeteria be installed in the courthouse.

Judge Alamia's courtroom is "clean and pleasant," but with only six wooden benches, each seating about six to eight people, it is often too small to accommodate all of the people in his courtroom. Judge Fitzgibbon's courtroom is identical, but is far less adequate for accommodating the larger crowds in her courtroom. "There were not always enough seats for everyone in attendance," and people sometimes were forced to stand along the walls. The benches accommodated about 35 people, but they were tightly crowded, with "not enough leg room"; monitors reported that it was "difficult to maneuver in and out of the seats." The crowd overflowed into the vestibule of the courtroom, and the noise made it difficult to hear.

In both courtrooms, the entrance doors banged when they closed, and with people continually entering and leaving the room, this created a significant distraction. Moreover, the building's public address system continually paged attorneys and broadcast announcements, which created frequent interruptions.

IX. RECOMMENDATIONS

1. The New York State Legislature should pass, and the Governor should sign, Chief Judge Judith S. Kaye's court restructuring proposal.

In 1997, New York State Chief Judge Judith S. Kaye presented to the State Legislature a proposed constitutional amendment to restructure the state's court system. The amendment would replace the current nine-tier maze of courts with a streamlined, less hierarchical structure. It would reduce the number of trial courts from the current nine (which often have overlapping jurisdiction) to a total of two. The County Court would be elevated to the Supreme Court, New York's trial court of general jurisdiction; criminal cases would be heard in the Supreme Court's criminal division, while civil cases would be sent to the civil division.

Constitutional and political constraints limit the number of judgeships in various courts. To address overwhelming caseloads that result, the Office of Court Administration uses a system of temporary judicial assignments to "donate" judges to those courts that most need them, such as the County Court. However, this system increases backlogs in the "donor" court (in this case, in the District Court), and impairs the effective operation of both courts. Reducing the number of trial courts would abolish this cumbersome system, enhance the efficiency of case processing, and reduce caseload backlogs. In the meantime, however, the Office of Court Administration should ensure that enough judges and staff are retained in the County Court to eradicate existing backlogs and to handle the court's future caseload in a prompt and efficient manner.

As is the case with all proposed amendments to the State Constitution, the Kaye plan must be passed by two consecutive State Legislatures and signed by the Governor; it then must be ratified by the voters in a state-wide referendum. The Senate and the Assembly should reintroduce the Kaye plan in the coming legislative session and give it first passage.

2. ***The New York State Legislature should increase compensation for assigned counsel, and the County should increase funding for the Legal Aid Society.***

Court-appointed attorneys are paid a mere $40 per hour for in-court work, and only $25 per hour for out-of-court work. These rates have remained unchanged since 1986. It is essential that attorneys be compensated adequately for time spent outside of court in preparing a case. This is particularly true in criminal cases, where much of a client's case may depend upon out-of-court work and research. In addition, far too few attorneys participate in the assigned counsel program

to handle the court's current caseload. This results in repeated delays and adjournments. Monitors urge the Legislature to increase funding to provide adequate compensation to assigned counsel.

Likewise, monitors found that Legal Aid attorneys were similarly overextended. Lawyers were forced to cope with enormous caseloads in the face of inadequate funding and resources. To help preserve defendants' Sixth Amendment right to counsel, and to increase efficiency and help reduce the court's backlog of cases, monitors urged the County to increase funding for the Legal Aid Society.

3. ***The New York State Legislature should reduce the number of peremptory challenges allotted to lawyers during jury selection***.

Lawyers in New York are allowed more peremptory challenges (through which lawyers can dismiss prospective jurors without cause) than lawyers in any other state. Monitors observed that the vast majority of prospective jurors were dismissed during the jury selection process, often for reasons that the monitors felt were of questionable validity. The large number of dismissals considerably lengthened the jury selection process, reducing the ability of the court to process its backlog of cases promptly and efficiently. Monitors recommended that the Legislature reduce the number of peremptory challenges available to lawyers.

4. ***In each courtroom, court personnel should make regular announcements stating the reason for and anticipated length of any delays.***

Monitors frequently reported that people were forced to wait in the courtroom for extended periods of time, with no idea why the proceedings were delayed or how long they would have to wait. Monitors urged that those waiting in the courtroom – lawyers, defendants, victims, their families, and other interested parties – be advised by court personnel of the reasons for and anticipated length of all delays.

5. ***Suffolk County and the Office of Court Administration should ensure that microphones are provided at each witness box and lectern in every courtroom, and the judges of the County Court should ensure audibility of proceedings by requiring all participants to use them.***

The public often has difficulty hearing proceedings in the County Court. This is especially true when lawyers are speaking, since they customarily stand with their backs toward those in the public areas. Currently, amplifying microphones are provided for the judges of the County Court,

but not for others who must speak. For amplification purposes, microphones should be provided to witnesses and lawyers.

In addition, monitors found the lack of audibility exacerbated by the judges' frequent failure to use the microphones that were provided for them. Monitors urged the judges to use their microphones consistently, and to encourage witnesses and lawyers to speak loudly and clearly, in order to ensure that proceedings are truly public.

6. ***The Suffolk County Courthouse should be properly maintained and repaired.***

Throughout the course of the project, monitors noted that the courthouse needed many repairs. The ceiling of the courthouse lobby has leaked for years. Restrooms were dirty, water fountains were broken, and various other repairs were needed, such as replacing the bricks missing from the front of the building, and making public water fountains operable. Monitors also urged regular cleaning and maintenance of the courthouse.

7. ***Court officers should be available outside the courtrooms to assist the public.***

In general, monitors reported that the officers assigned to the courtrooms assisted members of the public efficiently. However, monitors also found that defendants, victims, families, and prospective jurors often most need assistance outside of the courtrooms themselves, in the many public areas of the courthouses. Court officers frequently were unavailable for assistance in the waiting rooms and other public areas. Monitors recommended that officers also be assigned to the public areas to provide assistance and to establish a security presence.

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