

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 Nassau 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 Holmes  
*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. This report details the findings of our citizen court monitors regarding the County Court of Nassau County. We hope their recommendations will help to obtain improvements for the Nassau County residents that 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. Since 1975, Modern Courts has sponsored court monitoring projects around the state, through which ordinary citizens observe and evaluate their courts, report their findings, and issue public recommendations for improvement. Today, groups of court monitors are active in 16 counties.

Over the last twenty-five years, court monitoring has proven to be highly successful at achieving numerous public-interest objectives, including:

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

Modern Courts' citizen court monitoring program has been influential in solving many problems faced by ordinary citizens in the courts. For example, monitors' comments about litigants with young children in the Family Court have help 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 State Office of Court

Administration 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 led to construction of desperately-needed new court facilities around the state. Monitors’ reports also influenced recent reforms that have made 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 Nassau County Court Monitors**

Since 1976, the Nassau County Court Monitors have observed proceedings in the trial courts of Nassau County. In the course of their observations, they evaluate the performance of judges, attorneys, and court personnel; the efficiency and fairness of court operations; the quality of the courts’ service to the public; and the physical conditions of the courts. The monitors have since become an institution in Nassau County, and most recently, they have evaluated the Family Court (1998), the Supreme Court, Civil Branch (1996), and the District Court (1996).

From March, 1998, to December, 1998, the Nassau County Court Monitors observed proceedings in the County Court, which hears felony cases (the most serious criminal offenses) and civil cases involving amounts between \$15,000 and \$25,000. At the outset of the project, monitors attended an orientation, which included a presentation by Hon. Ira H. Wexner, Supervising Judge of the County Court; Modern Courts’ staff also explained the monitoring process and distributed materials for the project.

## II. THE COUNTY COURT OF NASSAU COUNTY

Each of New York's counties (excluding the five counties of New York City) has a County Court, which hears felony criminal cases. In New York, an offense is classified as a felony if it is punishable by a fine of \$1,000 or more, or by more than one year in prison. (In Nassau County, the District Court has jurisdiction over all other criminal matters, including misdemeanors, traffic violations, and arraignments, including arraignments for felony cases). The County Court also has jurisdiction over civil cases involving amounts up to and including \$25,000. The Supreme Court hears civil cases involving amounts over \$25,000.

### **The Population It Serves: Nassau County**

Nassau County is located on Long Island in southeastern New York, bordered by Queens County on the west and Suffolk County on the east. It has an area of 285.4 square miles.

Nassau County's population for 1998 was estimated at 1,302, 220, an increase of 1.1% from the 1990 census population of 1,287,444. The Village of Mineola is the county seat.

### **County Court Judges**

**Eligibility:** A County Court judge must be an attorney admitted to the bar for at least five years before assuming office, and must be a resident of Nassau County.

**Method of Selection:** All County Court judges are nominated in county-wide, partisan primary elections, and are then elected in a county-wide general election.

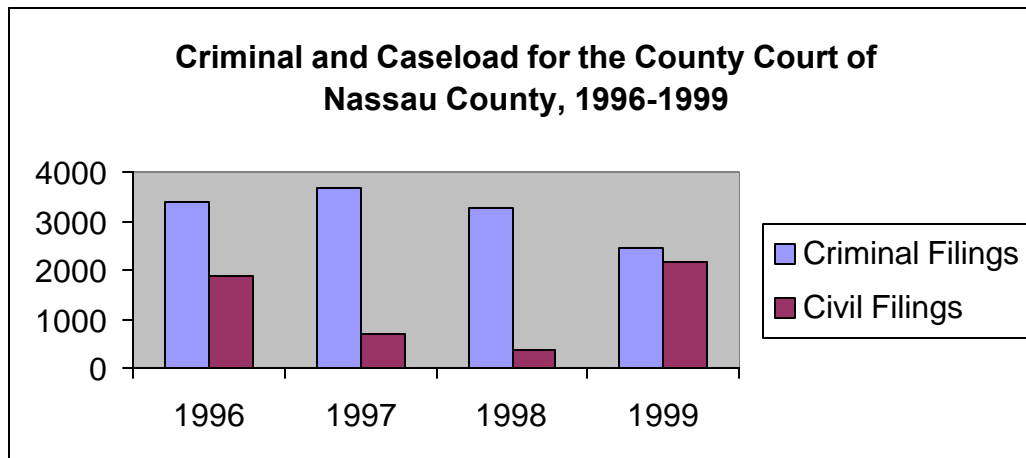
**Tenure:** County Court judges serve ten-year terms. If a judge is unable to complete a term, the governor appoints an interim judge to fill the vacancy until the next general election. County Court judges may serve until a mandatory retirement age of 70.

**Judicial Salaries:** At the time of this monitoring project, County Court judges in Nassau County earned an annual salary of \$113,000. As a result of a state-wide judicial salary increase in early 1999, their salaries rose to \$136,700. Their salaries are equal to those of New York City Criminal Court judges, but exceed the salaries of most County Court judges in the state. With the exception of Nassau, Suffolk, and Westchester counties, County Court judges' salaries range from \$119,800 to \$131,400.

## Caseload

In 1996, the County Court handled 5,269 filings, with 3,390 criminal filings and 1,879 civil filings. Over the next two years, the civil caseload decreased dramatically. In 1997, the number of criminal filings jumped slightly, with the court handling 3,665 criminal matters; however, the civil caseload dropped to 684. In 1998, the total number of filings for the County Court was 3,642: Of these, 3,273 were criminal; just 369 were civil cases. Court officials attributed the decline to the fact that, in recent years, fewer County Court judges have been designated Acting Supreme Court Justices in order to hear civil cases.

However, as anticipated by Chief Clerk Kathryn A. Cunningham, there was a significant rise in the civil caseload in 1999, because once again, an increasing number of civil cases were transferred from the Supreme Court to the County Court. In 1999, the criminal filings fell to 2,460 cases; however, the civil caseload skyrocketed from 369 filings in 1998 to 2,614 in 1999.



## Appeals Process

Appeals from the County Court of Nassau County are heard by the Appellate Division of the Supreme Court, Second Department. Further appeals are brought before the Court of Appeals, New York's court of last resort.

### **III. JUDGES**

Following are the monitors' evaluations of each judge in the County Court during the course of the project. Monitors did not evaluate judges' legal knowledge or decisions. 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 proceedings. This section includes biographical data on each judge and summaries of the monitors' findings. Hon. Ira H. Wexner, Supervising Judge of the County Court, is listed first. Thereafter, judges are listed alphabetically by last name.

#### **Hon. Ira H. Wexner**

Hon. Ira H. Wexner is a graduate of the University of Miami and the University of Miami School of Law. From 1953 to 1984, he was in private practice. From 1974 to 1984, he also served as a member of the Town of Hempstead's Board of Zoning Appeals. In 1984, he was appointed an interim Nassau County District Court judge by County Executive Francis T. Purcell. At the next general election, he was elected on the Conservative and Republican tickets to a full term on the District Court bench. In 1988, he was first elected to the position of County Court judge, and he was re-elected in 1997. In 1995, Chief Administrative Judge Jonathan Lippman appointed him Supervising Judge of the County Court and the District Court. In November, 1998, he was elected to the Supreme Court on the Conservative and Republican tickets.

Judge Wexner was observed by two monitors on two different days. Monitors observations were limited, because Judge Wexner sits primarily in Supreme Court, where he presides over matrimonial cases, and because, as the Supervising Judge for both the County and District Courts, he must spend much of his time on administrative duties.

The monitors described Judge Wexner as "very attentive" and "concerned." One monitor noted, "He was cordial and respectful to everyone, [and] gave the Legal Aid attorney ample time to confer with defendants and prepare; [he] seemed very concerned with the defendants being properly represented."

#### **Hon. Donald E. Belfi**

Hon. Donald E. Belfi is a graduate of Georgetown University and Fordham University School of Law. From 1960 to 1962, he served as an Assistant District Attorney in New York County, and from 1962 to 1974, he served as an Assistant District Attorney in Nassau County. In 1975, he was elected to the District Court bench on the Republican and Conservative tickets; he was re-elected in 1980 on the Democratic, Republican, Conservative, and Liberal tickets. He was elected in 1984, and re-elected in 1994, to the County Court on the Republican and Conservative tickets.

Judge Belfi was observed by six monitors on five different days.

Monitors reported that “Judge Belfi listens well, gives clear and concise rulings, [and] makes sure all defendants know their rights.” Monitors also consistently praised him for “showing respect for all parties” and for being “informed about the cases.”

Monitors were divided over whether Judge Belfi spoke audibly during the proceedings. Some felt that he “spoke clearly”; however, several monitors reported that the proceedings were difficult to hear because he spoke “softly.” In fact, one observer described Judge Belfi as “inaudible” during a jury trial. A court officer suggested to this monitor that the “inaudibility was due to the ‘high ceilings.’”

In particular, monitors commended Judge Belfi for “listening well.” One monitor reported that, during the questioning of three police detectives during a murder trial, “[he] listened intently and appeared to take verbatim notes in a huge notebook.”

### **Hon. Abbey L. Boklan**

Hon. Abbey L. Boklan is a graduate of Cornell University and Columbia University School of Law. From 1962 to 1964, she was an associate at the firm of Poletti, Freidin, Prashker & Harnett, and from 1975 to 1982, she served as an Assistant District Attorney in the Nassau County District Attorney’s Office. In June, 1982, Governor Hugh Carey appointed her to the County Court bench. In November, 1982, she was elected to the County Court bench on the Democratic and Conservative tickets; she was re-elected in 1992 on the Republican, Conservative, and Liberal tickets.

Judge Boklan was observed by 23 monitors on 17 different days.

Monitors generally found that “Judge Boklan’s performance was exemplary in all aspects.” They described her as “compassionate,” “patient,” “dignified,” and “a strong presence in the room.” One monitor concluded, “The judge performed her role well.”

Judge Boklan was praised because she “showed good eye contact with everyone,” was “alert and listening,” and was “well-prepared to give her ruling[s].” One monitor noted that she was “very aware” of what happens in her courtroom. The same monitor added that, in one case, she “pick[ed] up on attorney’s error.” Another observer noted that “she seems more familiar with some case problems than the individual attorneys [do].”

Monitors also commended Judge Boklan for her patience with the litigants in her courtroom. She “took her time explaining her procedures” to individual litigants and their attorneys. In a “joy-riding” case, a monitor was pleased that “Judge Boklan took time to explain what the severe consequences could [have been]” for the defendant’s actions before she sentenced the defendant to probation. Monitors also were pleased that “the judge always allowed time for questions” from the parties involved.

Monitors generally applauded Judge Boklan’s treatment of jurors. One monitor noted, “She was quite solicitous of the jury, and treated all other personnel respectfully.” Another monitor observed

that “the judge was very attentive and explicit in her instructions and comments” to the jury. Yet another added that the “judge was very concerned [about the] jury’s understanding of legal matters and vocabulary.” However, one monitor disagreed, feeling that her “final charges [to jurors] were given in a pedantic manner.” During a rape trial, another observer noted that Judge Boklan “stopped [a] juror from taking notes.”

Monitors commended Judge Boklan for performing her duties in a “dignified” manner. During a series of arraignments, one monitor noted, “she conducted each procedure with dignity, but when it was appropriate, there was a ready smile.” Another reported, “She has a good sense of humor; [she] even had the prospective jurors smiling” during jury selection. She also received high marks for “show[ing] commiseration and a sense of fairness to all parties involved,” particularly young defendants.

Monitors also found that Judge Boklan maintained “good order and control,” and that her “court was always quiet.” One monitor commented, “[Hers was the] least noisy courtroom that I’ve observed.” In fact, “Judge Boklan did admonish the sergeant of the court officers one time, as he was standing in the front of the courtroom, turning pages of a magazine, as the defense attorney was giving his summation.” Some observers were also impressed by the efficient manner in which her courtroom operated. One monitor noted that “the judge was extremely efficient and time-conscious. At about 3:45, the jury was impaneled, and rather than call it a day, she had the attorneys do their opening arguments.”

Monitors generally reported that Judge Boklan “spoke very clearly.” One monitor did find it “hard to hear” the judge, but attributed audibility problems to the “acoustics not [being] good.”

Judge Boklan also received praise for her willingness to explain proceedings to observers. One monitor described an occasion when “[the judge] and her law secretary sat with [the monitor] for about 20 minutes, explaining court procedures and answering questions.” Another monitor was observing a kidnapping and murder trial when “Judge Boklan welcomed a class of about 30 students,” and “explained the delay in starting the trial” to students and others in the courtroom.

Overall, monitors praised Judge Boklan’s performance as “outstanding.” One monitor concluded, “[In] all the months that I have been monitoring, she probably runs the best and most interesting courtroom.”

### **Hon. Joseph C. Calabrese**

Hon. Joseph C. Calabrese graduated from St. John’s University and St. John’s University School of Law. He also holds a B.B.A. in public accounting. From 1972 to 1975, he served as an Assistant District Attorney in Nassau County, and from 1975 to 1978, he was an assistant town attorney for the Town of Hempstead. From 1978 to 1985, he was in private practice. In 1985, Judge Calabrese received an interim appointment as a District Court Judge by County Executive Francis T. Purcell. He was subsequently elected to a full 6-year term in 1986, on the Republican and Conservative tickets, and he was re-elected in 1991. He was first elected to the County Court bench in 1993 on the Republican and Conservative tickets.

Judge Calabrese was observed by 15 monitors on 13 different days.

Monitors generally were impressed with Judge Calabrese's performance on the bench, finding him to be "compassionate," "concerned," and "patient." In particular, monitors were "very impressed with his demeanor"; indeed, one described his courtroom performance as "excellent." He "displayed a sense of humor," maintained "good eye contact," and appeared to be a "good listener."

Monitors praised Judge Calabrese for being very involved in the proceedings. One monitor reported that he was "very active" during a liquor tax evasion case, "asking [his] own questions of the witnesses, requesting clarification of terms for the jury, pushing attorneys to maintain a brisk pace, and injecting some humor into a very dull and boring examination of invoices and accounts receivable." However, another monitor found that, during a drug possession case, although he was "well-informed" about the case, he "seemed bored and tired."

Monitors generally found that Judge Calabrese maintained order in his courtroom. One observer reported that he was "in full charge of his courtroom," and had a "no-nonsense approach" on the bench. Indeed, one observer commented, "[He was] more active and commanding than other judges I have seen in County Court."

Judge Calabrese also usually "spoke clearly" during proceedings. Monitors observed that "his voice is quiet but carries well," and "he sp[eaks] clearly with his mic[rophone]." However, one monitor reported that, "in spite of the availability of 'mikes,' he didn't use one and it was hard to hear."

Monitors also noted that Judge Calabrese "exhibited kindness toward prospective jurors" and had a good "understanding of jurors' point of view." According to one monitor, he "fully explained all the procedures to the prospective jurors concerning the types of questions that they [would] be asked."

Another gave him high marks for "informing juries that questionnaires not used in the case would be destroyed." Still another was impressed that, in a case involving possession of a controlled substance, where the defendant was on probation for similar offenses, "the judge gave the jury a

clear account of the trial [that was] about to begin and the different degrees of punishment [that] they might have to consider."

One monitor specifically commended Judge Calabrese for his treatment of litigants. He "gave clear and precise instructions and explanations to the defendants," the monitor reported, and added that he "gave everyone adequate time to talk."

### **Hon. Jerald S. Carter**

Hon. Jerald S. Carter is a graduate of Fisk University and Howard University School of Law. From 1977 to 1980, he served as an Assistant District Attorney for Nassau County, and from 1984 to 1990, he was a labor attorney for the Hempstead Public Schools. In 1989, Town of Hempstead Mayor James A. Garner appointed him an associate village justice for the Village of Hempstead, in which capacity he served until 1996. In 1996, the Nassau County Legislature appointed Judge Carter

on an interim basis to the District Court. In 1997, he served as Town Attorney for the Town of Hempstead. He was elected to his current position as County Court Judge in 1998, on the Republican, Conservative, and Independent tickets. In 1999, Chief Administrative Judge Jonathan Lippman designated him an Acting Supreme Court Justice.

Judge Carter was observed by two monitors on two different days. Monitors' observations of Judge Carter were limited because, as an Acting Supreme Court Justice, he spent much of his time in Supreme Court, presiding over civil trials.

Both monitors were impressed with Judge Carter's performance. He was "an excellent representative of the court system," one observed. In particular, this monitor praised him for "keeping the jury involved" and for "making sure that the witness spoke clearly and loudly."

Another monitor commended him for giving "clear and understandable instructions to the jury," noting that "he seemed very knowledgeable on the case and the law, and listened to both sides." "He is calm and professional," this monitor concluded.

### **Hon. Daniel J. Cotter**

Hon Daniel J. Cotter is a graduate of Boston College and St. John's University School of Law. From 1973 to 1994, he served as an Assistant District Attorney in the Nassau County District Attorney's Office. In 1994, Nassau County Executive Thomas S. Gulotta appointed him to the District Court on an interim basis. In 1995, he was elected to the County Court on the Republican and Conservative tickets.

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

Monitors described Judge Cotter as "concerned," "informed," and "compassionate." One monitor commented, "His experience and dedication [are] very apparent."

Monitors were impressed by the fact that Judge Cotter "treated the jurors and the witness with respect and kindness." They were particularly pleased by his treatment of jurors, noting that "he was most respectful of them." He was "very careful to explain his rulings to the jury," one monitor reported. Another found that, during a murder trial, "it was commendable that he stopped the defense attorney in the middle of the cross examination to explain [to the jury] what was going on as it pertained to the law."

Monitors also applauded Judge Cotter for his efficient use of court time. Several noted that he "kept cases moving swiftly." On one occasion, a monitor reported, he "allowed each attorney only 20 minutes to complete jury selection and gave each 30 minutes for opening statements." "He doesn't waste time," the monitor added.

However, some monitors were surprised by Judge Cotter's brusque manner when dealing with

attorneys. One monitor recalled an incident in which “Judge Cotter really told off one of the lawyers for being unprepared.” Another monitor found it disturbing that “at two different times, he became extremely angry and yelled at lawyers in an abrupt, loud voice. [In] one instance, it was because the lawyer was with another judge when he was due to be in Judge Cotter’s courtroom. In the second instance, it was because a witness had not appeared, and they were therefore unable to go ahead with a hearing.”

Several monitors reported that Judge Cotter “spoke clearly and audibly,” but “softly.” According to others, he “at first he spoke low but then his voice could be heard.” However, one felt that “the judge spoke clearly and audibly, but in an unanimated, bored fashion.”

In general, monitors commended Judge Cotter for maintaining order and control in the courtroom. One praised him for being a “no-nonsense judge. He speaks his mind and does not mince words.” Another reported that he “advised [those in courtroom] that he would not tolerate any outburst[s] when verdicts were read.” Still another was impressed when “he professionally corrected the behavior of an attorney who, at times, was rude to the witness.”

### **Hon. Donald P. DeRiggi**

Hon. Donald P. DeRiggi graduated from Villanova University and St. John’s University School of Law. From 1963 to 1970, he was an Assistant District Attorney for the Nassau County’s District Attorney’s Office, and from 1970 to 1988, he was in private practice. From 1970 to 1972, he also was an instructor at Nassau Community College. Judge DeRiggi served as Mayor of Glen Cove and as a member of the Nassau County Board of Supervisors from 1988 to 1993. In 1994, he was

elected on the Republican, Conservative, and Right-to-Life tickets to his current position of County Court Judge.

Judge DeRiggi was observed by 10 monitors on seven different days.

Monitors described Judge DeRiggi as “compassionate” and “concerned,” and most agreed that he “seemed to listen well.” In the words of one monitor, “Judge DeRiggi has a kind but firm manner.”

Monitors applauded Judge DeRiggi for his courteous treatment of jurors. One praised his explanations of points of law to the jury, noting that they were “in English, clear and understandable.” During a long “read-back” of testimony, “he was very attentive to the jury and quickly responsive to their requests,” another observed. This same monitor also noted that he allowed the jurors “a break to use the facilities,” and closed windows when the courtroom became cold. Another monitor reported, “He spoke beautifully to the pool of jurors when he dismissed them after a plea bargain: He explained [that] they were important and are doing a citizen’s job [and] should not feel rejected; [he] took questions from them and made it an educational experience.” However, during the same jury trial, this monitor also “thought that he was discourteous to a court officer: During one brief break, the officer asked for ‘silence in the court while the judge [is] on the bench,’ [and] the judge rebuked him in a way

that embarrassed [the court officer] in front of the jury and the courtroom.”

Monitors consistently praised Judge DeRiggi for his handling of witnesses and defendants. One monitor noted that, during the examination of a witness, “he made sure that the witness understood the questions and re-framed them when necessary.” In another case, he gave a “very explicit explanation to [a] witness who was incriminating [him]self,” regarding the witness’s constitutional rights. A monitor added that he “is very careful to make sure defendants understand everything that transpires” during their trials. Yet another was impressed with his patience in a particular case: “Judge DeRiggi spoke very clearly to a woman being sentenced for her third DWI [Driving While Intoxicated]. He listened to her comments as well as to her lawyers’ comments. He then proceeded to sentence the woman to jail and explained why very carefully and clearly.”

Monitors consistently reported that Judge DeRiggi’s courtroom ran efficiently. One monitor observed that “everything moved quickly and smoothly,” and he encouraged the “efficient use of time” in his courtroom. “At precisely 9:30 AM, Judge DeRiggi began the morning procedure,” another noted. During one case, a monitor reported, he “reprimanded one lawyer for not having an entire family of [five] defendants present, [thus] wasting court time.” Another applauded him for being “all business,” yet having a “ready smile when the situation called for it.”

The consensus of the monitors was that “Judge DeRiggi conducted a very orderly courtroom.” He was in “total control” and “kept things moving as much as possible.”

### **Hon. John Michael Galasso**

Hon. John Michael Galasso is a graduate of Long Island University and St. John's University School of Law. From 1969 to 1978, he served as an Assistant District Attorney in the Nassau County District Attorney's Office. From 1978 to 1991, he was in private practice, and also served as an environmental hearing officer for the Town of Oyster Bay. In 1991, Nassau County Executive Thomas S. Gulotta appointed him on an interim basis to the District Court. In November, 1991, he was elected to the District Court on the Republican, Conservative, and Liberal tickets. He held this post until his election in 1997 as a County Court Judge on the Republican, Conservative, and Freedom Party tickets. In 1998, Chief Administrative Judge Jonathan Lippman designated him an Acting Supreme Court Justice.

Judge Galasso was observed by one monitor on one day. Monitors' observations of Judge Galasso were limited because, as an Acting Supreme Court Justice, he spent much of his time presiding over cases in Supreme Court.

The monitor reported that Judge Galasso was "listening very attentively to witnesses" and was "respectful in addressing the attorneys."

Another monitor attempted to observe proceedings in Judge Galasso's courtroom, but Judge Galasso was involved in "in chamber conferences" that morning. On that occasion, the monitor reported, the schedule outside his courtroom indicated that there would be a calendar call at 9:30 AM. However, at 9:30 AM, there was no courtroom activity and no explanation for the delay. At 10:50 AM, a court officer informed the monitor that "no courtroom activities were expected that morning. One case had been scheduled, but the lawyer was delayed."

### **Hon. Frank A. Gulotta, Jr.**

Hon. Frank A. Gulotta, Jr. was an attorney in private practice for 30 years before becoming a County Court judge in 1995. On several occasions, monitors attempted to observe Judge Gulotta, but found that he was not on the bench. As a result, monitors did not comment on Judge Gulotta's performance.

### **Hon. Alan L. Honorof**

Hon. Alan L. Honorof is a graduate of George Washington University and Temple University School of Law. From 1974 to 1979, he was an Assistant District Attorney for the Nassau County District Attorney's Office. He was in private practice from 1979 to 1996. In addition, from 1980 to 1990, he served as Ocean Beach's Special Assistant District Attorney, and from 1980 to 1991, he also served as the Village Attorney for the Village of Hempstead. While continuing his practice, he served as the City Attorney for the City of Glen Cove from 1994 to 1995, and from 1992 to 1996, he was also the Village Attorney for the Village of Plandome Manor.

In 1986, Mayor James A. Garner appointed Judge Honorof an associate justice for the Village of Hempstead, where he served until 1988. In 1996, Governor George E. Pataki appointed him to the Court of Claims; Chief Administrative Judge Jonathan Lippman then designated him an Acting Supreme Court Justice and assigned him to hear criminal cases in the County Court.

Judge Honorof was observed by eight monitors on five different days.

Monitors generally were “very impressed” with Judge Honorof’s demeanor on the bench. They described him as “fair,” “genuinely concerned,” and “compassionate.” One monitor added that he was “careful, attentive, [and] clear.”

Monitors specifically praised his treatment of defendants: Several commended him for consistently “explain[ing] everything to defendant[s].” One monitor added, “He explained each ruling and advised each person of the dire consequences of not living up to what was expected” of him or her. Another reported that, in a fraud case involving a mentally impaired defendant, “the judge was very concerned and compassionate in questioning of the young man.”

Several monitors also applauded Judge Honorof’s efficiency, although one monitor felt that the manner in which he conducted jury selection “wast[ed] everybody’s time.” This monitor reported: “They filled all [the] spectator seats and [the] jury box with prospective jurors [and] then handed questionnaires out to 14 [people] in [the] jurors’ box.” Next, “the judge called on [them] one at a time to answer all [of the] questions, beginning with name, address, etc., orally.” The prospective jurors in the spectator seats “were groaning,” while those in the jury box answered “very personal” questions in front of a room full of people. However, another monitor noted that Judge Honorof said that “he was constantly re-writing the questionnaire to make it more informative.”

Overall, monitors were pleased with his performance. One concluded: “I thought that Judge Honorof, for the most part, conducted fair hearings.” Another added, “[He was] careful, attentive, [and] clear.”

### **Hon. Zelda Jonas**

Hon. Zelda Jonas graduated from Brooklyn College and Brooklyn Law School. From 1976 to 1981, she was a staff attorney for the Legal Aid Society of New York, and from 1981 to 1986, she served as Assistant Chief of Prosecution for the State Education Department’s Office of Professional Discipline. In 1986, she was elected to the Nassau County District Court bench on the Republican and Conservative tickets, and she remained in that post until 1991, when she was elected to the position of County Court Judge on the same tickets. She served in the County Court through 1998. In 1998, she was elected, on the Republican and Conservative tickets, to her current position of Justice of the Supreme Court of State of New York.

Judge Jonas was observed by 19 monitors on 12 different days.

Monitors found Judge Jonas to be “informed,” “alert,” “warm,” and “compassionate.” Several described her as an “excellent judge,” noting that she seemed “sympathetic to the people in front of the

bench.”

Monitors praised her “concerned” but “no-nonsense” approach in cases involving young defendants. “Judge Jonas’s appeal to a youngster brought up on charges of marijuana possession was very impressive,” one monitor commented. During sentencing of several youthful offenders in an assault case, Judge Jonas made sure that the defendants “understood their crimes”; she also told them to regard “themselves as individuals, not members of a gang, [and advised them] that life can be better, but that it was up [to] them to achieve.” Another monitor was impressed when, “in one case, the judge ordered the lad to bring her his report card [at] the end of the first marking period, and [informed him] that it would have all passing grades, or his sentence would be markedly changed.”

Several monitors noted that it “was difficult for the people sitting in the court to hear [Judge Jonas]”; the “judge spoke softly and at times was inaudible.” One monitor exasperatedly reported that “the lamp on the judge’s desk obscured her face, and this, with the breakdown of the microphone, made it impossible to hear her.”

Nonetheless, monitors consistently found that Judge Jonas maintained order and control of the courtroom. During the questioning of a witness, a monitor reported, “[t]he judge stopped the proceedings, sent the jury and the witness out,” and “very sternly reprimanded [a] defendant who must have been mouthing words and making faces at [a] witness.” Judge Jonas then announced that she was “in charge of her court” and advised that “anyone who did anything wrong would be made to leave and be [held] in contempt.” Another observer commended Judge Jonas for her “dynamic and assertive handling of [an] attorney who appeared late.”

### **Hon. Paul E. Kowtna**

Hon. Paul E. Kowtna is a graduate of Queens College and New York University School of Law. From 1974 to 1984, he was an Assistant District Attorney in the Nassau County District Attorney’s Office. From 1984 to 1993, he worked for the Town of Hempstead in various capacities, including Counsel to the Town Board, Acting Commissioner of Planning and Economic Development, and Executive Assistant to the Presiding Supervisor. In 1993, he was elected to the County Court bench on the Republican and Conservative tickets. As of this printing, Judge Kowtna is on leave pending trial on assault charges stemming from a domestic incident.

Judge Kowtna was observed by 22 monitors on 22 different days.

Monitors generally praised Judge Kowtna for being “well-informed,” “fair,” “considerate,” and “compassionate.” They also described him as “dignified, and respectful to lawyers and defendants.”

Judge Kowtna appeared to be patient with and concerned about defendants. One monitor observed that he spoke in a “personal” manner to a woman who was pleading guilty to murder, explaining his questions and “ma[king] sure [that]she knew what rights she was waiving.” Another monitor reported observing the judge “warmly greet two distraught parents who came to him to get approval to leave the state for their daughter’s trial.” Yet another noted that, during a murder trial, “one

of the witnesses began crying, and he asked if she'd like some water."

Monitors were divided on Judge Kowtna's level of alertness during court proceedings. "He seemed to be absorbed by the testimony," one monitor reported. During a discovery hearing, "he took a very active role [in] trying to control [the] types of questions and [the] witness's lengthy, ambiguous answers," another observed. However, other monitors found that he sometimes seemed inattentive: "The judge appeared to be sitting with his eyes closed during the summations," one monitor observed. Another added that he generally seemed "attentive, except when he sits back in his chair [with his] face [turned] up to the ceiling." This monitor concluded, "This is a time when he is probably listening intently, but that's not the impression one gets."

Many monitors found that the proceedings in Judge Kowtna's courtroom were "difficult to hear." During an arson case, one monitor noted, "[the judge] spoke rapidly and did not use the mike." Another also recommended that "the judge speak into a microphone." Other parties in the courtroom also were inaudible. One observer commented, "Several times, [Judge Kowtna] stopped the proceedings to remind the lawyers and the witness that they must speak up. They didn't comply."

However, monitors praised Judge Kowtna for "explain[ing] rulings clearly." "When there were objections, he was very clear about the rulings, and when necessary, [he] offered explanations," one observed. Several monitors commended Judge Kowtna for "clarifying things [for] the jury."

Monitors also applauded Judge Kowtna's efficient use of court time, noting that "court started promptly," "he took no long breaks," and "everything moved along well." One monitor spoke with Judge Kowtna in his chambers and received some additional insight into the operations of his courtroom: Judge Kowtna told this monitor that "he sees his primary duties" as a judge as "mov[ing] cases [along], not wasting jurors' time, and [being] exceptionally clear in his charge to the jury." Another reported that, after every jury trial, "Judge Kowtna call[ed] the jurors into his chambers to thank them individually and to answer their questions and concerns." The judge told this same monitor that "the attorneys know up-front in his court that there will be no wasted time; they are prepared and they have their witnesses ready."

### **Hon. Richard A. LaPera**

Hon. Richard A. LaPera graduated from Dayton University and New York Law School. From 1969 to 1983, he was in private practice, and also served as attorney to Assemblyman Vincent R. Balletta, Jr. In 1983, he served as a small claims arbitrator in the Nassau County District Court, and in 1984, he was a hearing examiner in the Nassau County Family Court.

In 1984, Judge LaPera was elected to the position of District Court Judge on the Republican and Conservative tickets; in 1990, he was re-elected to the same position. In November, 1997, he was elected on the Republican and Conservative tickets to his current position of County Court Judge.

Judge LaPera was observed by three monitors on two different days.

Monitors found that Judge LaPera was “informed about the cases,” “showed respect for all parties,” and “explained his rulings clearly.”

One monitor reported that Judge LaPera was “very firm with attorneys.” In one case, a monitor noted, he gave each attorney only 15 minutes to make closing arguments: “[The] ADA said that he never did a closing in less than one hour. ‘Too bad!’” Judge LaPera replied.

### **Hon. Jules E. Orenstein**

Hon. Jules E. Orenstein is a graduate of Bucknell University and New York Law School. He also received an L.L.M. from New York University School of Law. From 1954 to 1956, he served as a first lieutenant in the United States Army, and from 1959 to 1964, he was in private practice. From 1964 to 1975, he served as an Assistant District Attorney for the Nassau County District Attorney’s Office, and from 1975 to 1978, he was an Assistant Attorney General with the New York State Attorney General’s Office.

In May, 1978, Nassau County Executive Francis T. Purcell appointed Judge Orenstein to the Nassau County District Court bench on an interim basis. In November, 1978, he was elected to the District Court bench on the Republican, Conservative, and Liberal tickets, and he was re-elected in 1984. In 1985, he was elected to his current position of County Court Judge on the Republican and Conservative tickets, and was re-elected in 1995.

Judge Orenstein was observed by 16 monitors on 13 different days.

Monitors generally found Judge Orenstein to be “punctual,” “attentive,” and “well-prepared.” They also praised him for speaking “clearly and audibly” throughout the proceedings.

Several monitors observed that Judge Orenstein often rephrased attorneys’ questions for witnesses; one praised “his ability to simplify questions from lawyer to witness.” In a case in which different interpreters were required for each defendant, the same monitor noted that “he was a big help in clarifying questions, because of the language problem.” However, one monitor reported that, while

he attempted to “help . . . each of the young attorneys when they had trouble formulating some of their questions,” “he also rolled his eyes in exasperation and made facial grimaces.” Another felt that his practice of “constantly” interrupting defense counsel was “demeaning” to the attorney.

Several monitors reported that Judge Orenstein seemed to lack compassion for litigants. One commented that “this judge seemed very business-like in his approach” and “gave the impression of having seen it all too many times before; patience and compassion were no longer traits he exhibited.” Another observer felt that he “appeared compassionate in some cases,” but appeared “less so [with] repeat offenders.” Still another observed a case during which “Judge Orenstein seemed quite annoyed at the tactics of the defense attorney and made his feelings very obvious.” The monitor added, “When the defendant asked to go to the bathroom, the judge was rude in his response, saying, ‘All these arguments would make anyone want to go to the bathroom.’”

However, Judge Orenstein received praise for his explanations of the proceedings to the defendants, jurors, and attorneys. One monitor reported that he “explain[ed] all things to both the lawyer and the defendant,” and “seemed very concerned that the jurors understand what was going on.” Another was “especially impressed with the time and detail that he went into in explaining his rulings and decisions.” A third observed a case in which the “judge patiently explained a plea-bargained charge and sentence to a woman with [several] DWI convictions.”

### **Hon. Victor M. Ort**

Hon. Victor M. Ort is a graduate of American University and the New England School of Law. He also received a Masters of Business Administration from Suffolk University. From 1972 to 1974, he served as a staff attorney for the Criminal Defense Counsel and Appeals Divisions of the Legal Aid Society of Nassau County. From 1974 to 1985, he served as Law Secretary to Hon. James F. Niehoff of the Appellate Division of the Supreme Court, Second Department. In 1975, he also served as an acting justice for the Village of Centre Island. From 1985 to 1996, he served as Chief Clerk of the County Court. In 1996, Governor George E. Pataki appointed Judge Ort to the Court of Claims. Chief Administrative Judge Jonathan Lippman then designated him an Acting Supreme Court Justice and assigned him to hear criminal cases in the County Court.

Judge Ort was observed by nine monitors on nine different days.

Monitors described Judge Ort as “patient” and “well informed”; he “listened well” and seemed “interested” during proceedings. One monitor noted, “To his credit, the judge was very amiable, smiling frequently [at] the lawyers and the witnesses.”

Monitors praised Judge Ort for ensuring that all of the participants in the proceedings were well-informed. “He made every effort to make sure the defendants understood the law, the rulings, [and] the consequences of the proceedings,” one monitor noted. Another was “most impressed with [the] judge’s definition of the law” during his charge to jury. This monitor felt that the judge’s charge put “the burden on the jury to carefully define and decide on testimony given and [to] render a decision, taking in[to] careful consideration rules of ‘reasonable doubt.’” In general, Judge Ort was “very effective in

speaking to the jury and explaining legal points,” another monitor added.

Judge Ort was difficult to hear during the proceedings. Monitors found that he was “sometimes inaudible,” that he spoke “rapidly,” and that he occasionally “mumbles.”

One monitor recalled that on one day, proceedings were delayed until 11:00 AM, because Judge Ort had a doctor’s appointment. The monitor noted that “nothing was said to the people waiting, until [after] the judge appeared.” “It was unnerving to be sitting in [a] courtroom full of lawyer[s], defendants, plaintiffs, families, etc., and have no judge, with no explanation of the delay,” the monitor added.

However, monitors generally found that Judge Ort maintained order and control in his courtroom. A monitor reported observing him “admonish the jury for discussing the case among themselves.” Another added that he “kept attorneys in line.”

### **Hon. Daniel R. Palmieri**

Hon. Daniel R. Palmieri is a graduate of St. John’s University and St. John’s University School of Law. From 1969 to 1988, he was in private practice. During this period, he was an associate at the law firm of Dewey Ballantine LLP, then a partner at the firm of Meyer, Suozzi, English & Klein, P.C., and then Vice President and Head of the Legal Department of Corporate Property Investors. In 1989, he was elected Nassau County District Court Judge on the Republican ticket, and in 1995, he was elected to his current position of County Court Judge on the Republican and Conservative tickets.

Judge Palmieri was observed by eight monitors on 10 different days.

Monitors described Judge Palmieri as “informed,” “courteous,” and “genuinely concerned and respectful of everyone.”

Monitors found that Judge Palmieri had an affable demeanor on the bench. “Judge Palmieri was very ‘laid back,’” one monitor observed, adding, “He had a good sense of humor. This was helpful in his [pre-trial conferences]. Before you knew it, the opposing lawyers were smiling, laughing, and coming to agreement.” “The judge had a ready smile for the lawyers, witnesses, and courtroom attendant,” another monitor agreed.

One monitor felt that Judge Palmieri displayed a lack of interest in the proceedings. This monitor recounted the following scenario: “[D]uring the lawyer’s address to the jury, Judge Palmieri played with a pencil, examined a paper, folded it, put it in his pocket, examined another paper, put it down, read a newspaper briefly, [and] read other papers (possibly pertinent to the proceedings). He gave the appearance of being disinterested.” This same monitor observed Judge Palmieri’s courtroom a second time, and reported that, again, “he looked down when a lawyer addressed him [and] took great pains to staple some papers together.” In a written response to a draft of this report, Judge Palmieri declared: “While one of your monitors may have thought me to be inattentive at times, be assured that I am fully aware of everything being said and done in the Courtroom and I am never ‘disinterested.’” He

added, "I emphatically deny having read a newspaper during any recorded Court proceedings."

Indeed, one monitor who observed Judge Palmieri on two occasions "found him to be alert, attentive, pleasant, [and] courteous to everyone in the courtroom." This monitor added, "He seemed to be fully aware of all the information, and kept the proceedings moving." Another noted that he "conducted his courtroom in an orderly and controlled manner."

One monitor also praised Judge Palmieri for explaining his rulings thoroughly. This monitor noted that, during sentencing, "the judge went over the stipulations over and over again. He spoke in language that the defendant could understand and made very sure that the defendant knew what he was doing by pleading guilty."

## IV. ATTORNEYS

During the course of the County Court project, the Nassau County Court Monitors observed a variety of attorneys at work: assistant district attorneys, Legal Aid attorneys, assigned counsel, and private attorneys. In criminal cases, assistant district attorneys from the Nassau County District Attorney's Office are responsible for prosecuting defendants. Defendants may be represented privately-retained counsel; by attorneys from the Legal Aid Society of Nassau County, who represent indigent defendants; or by other assigned attorneys, known as 18-B attorneys, who are appointed by the court from lists approved by the Appellate Division. Frequently, civil litigants who appeared were represented by private counsel.

Overall, the attorneys received praise for their performance in the County Court. Monitors consistently found them to be "professional" and "knowledgeable" advocates who seemed "concerned" about their clients. One monitor also noted that most attorneys were "gentle and considerate in asking outrageous personal questions" of the jury.

Monitors described the assistant district attorneys (ADAs) as "knowledgeable and well organized." They felt that the defense attorneys, "in general, all seem to care about their defendant[s]." One monitor commended a defense attorney who "showed concern for [her] client's family." Another was impressed by a defense attorney who was "very careful" to explain to his mentally retarded client "what they were giving up by [agreeing to] a bench trial, and other facts."

In evaluating all of the attorneys, both public and private, who appeared in the County Court, monitors had several specific and consistent criticisms: Attorneys were frequently late or were inadequately prepared for court, resulting in lengthy delays and a high number of adjournments; attorneys behaved disrespectfully toward litigants and the court; and many attorneys were inaudible.

Lawyers were frequently late for or absent during scheduled court appearances. One monitor observed, "At precisely 9:30 AM, Judge DeRiggi began the morning proce[edings] with a calendar call. He called eight names; five of the eight were in custody and not present, and the other three were in the courtroom. However, their lawyers were not present. At 9:40, [a] recess was called until the attorneys showed." Another monitor commented that "the only thing really wrong [with the proceedings] was that hardly anyone was present for the first calendar call." One observer urged the court to institute "a better system of ensuring the timely presence of attorneys and defendants." Several monitors recommended that the court fine those lawyers who are consistently late.

Several monitors noted that when attorneys did arrive, they "seemed to be very hurried, rushing into the courtroom, and then rushing out to do something else." When asked by one monitor why so many of the attorneys were not present, a court clerk replied "that most of the time they were in other parts with other clients." One monitor put it succinctly: "[D]elays (as usual) involve lawyers"; "[t]he solution involves money." Monitors agreed that there should be "more ADAs and more adequate pay for Legal Aid attorneys, with mandates regarding [their] caseloads."

Monitors also were troubled by the numerous instances in which attorneys were unprepared or were unfamiliar with their cases. During a civil trial in which a two-hour videotape was shown, a

monitor reported that “the plaintiff’s attorney was clearly not prepared. She admitted to having read only 15% of the two-hour transcript. Eight days had gone by where the transcript and the tape were in the hands of the plaintiff.” The monitor noted that the respondent’s attorney also told the judge that his repeated calls and requests to meet with the plaintiff’s attorney had gone unanswered. In another case, a monitor reported that a “defendant’s Legal Aid lawyer appeared to be less than completely prepared to defend a confessed robber”; the attorney “requested an adjournment to obtain a psychiatric expert witness.”

A monitor described still another case in which an assistant district attorney had just gotten a case from another ADA; the current prosecutor believed that the charges were insufficient because the first ADA did not have the “electronic expertise that he had.” This same ADA “didn’t know it was to be a bench trial and wasn’t prepared with a[n] opening statement,” the monitor added. In yet another case, a monitor reported that, following a fifteen-minute recess, an ADA left the courtroom “to retrieve something”; this further delayed the trial. Another monitor observed a “court appointed attorney [who] did not appear well-prepared and seemed inexperienced, and the judge became quite exasperated with her,” as well as another “lawyer who brought a matter into the wrong court and was told rather harshly by the judge that he had done so.”

Although some “attorneys comported themselves with dignity” in the courtroom, others did not. One monitor reported that “[a court-]appointed attorney was extremely argumentative with the judge, and when he denied her [request], she looked back at her client with an unpleasant look on her face.” Another observed that “several of the lawyers came before the judge [while] chewing gum.” On another occasion, “one attorney, while leaving the court, stopped to talk to someone he apparently knew, [who] was sitting a few seats away from [the monitor]”; as a result, the monitor “couldn’t hear the judge while [the attorney] was talking.” One monitor’s recommendation to improve proceedings: “less commotion among the attorneys while in the courtroom.”

One monitor observed an incident in which an attorney was particularly discourteous and indiscreet in her representation of a client. In the waiting area adjacent to Judge Cotter’s courtroom, the Legal Aid attorney, “apparently annoyed” with something her client said, “began, loudly and repeatedly, telling him why he, a convicted felon, could not carry a knife, even if [it was] part of his diving gear.” The monitor noted that “she also expressed her irritation at one or two things which, she said, he had not told her.” “Finally, the man suggested to the lawyer [that] she calm down.” The monitor added that, “when the lawyer left, several of the people waiting expressed their surprise that she was a lawyer, and were quite critical of the manner in which she spoke to her client and violated his right of privacy.” This same client, who was Asian-American, “did not complain to the judge about the lawyer, but after his case had been completed, he did bring . . . to Judge Cotter’s attention . . . that on the form filled out by Legal Aid, his race was entered as YELLOW.”

Monitors also noted that audibility was a consistent problem among almost all of the attorneys. In courtrooms where microphones were available for attorneys’ use, they tended not to use them, preferring instead to walk around the room while speaking. The attorneys “could only be heard occasionally. They never used the microphone,” one monitor observed. Monitors added that, in several instances, the judges asked attorneys to go “back to the lectern” to use the microphones. In other instances, attorneys facing the bench did not speak loudly enough to be heard by those sitting behind

them. During one case, “the defense attorney was absolutely inaudible. That is why I found it necessary to leave during his summary,” a monitor reported.

## V. OTHER 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. A foreign-language or American Sign Language interpreter is will be made available, provided that a request is made in advance.

Monitors were generally impressed with the performance of court personnel; in most cases, they found them to be "very helpful and polite," and willing to answer their questions. However, in one courtroom, a monitor found that the court clerk and several officers were "not polite or friendly" and "seemed suspicious." Many monitors also reported that there were "too many distractions [coming] from the court personnel while court was in session."

### Court Clerks

Court clerks are an integral part of the court's operations. The court clerk sits with the judge in the courtroom and is responsible for scheduling and other case management duties. Monitors applauded most of the clerks for their "efficiency," as well as for their "polite" and "courteous" demeanor.

However, several monitors reported having difficulty in hearing the clerks. In one case, "the court clerk mumbled so that even the defendant had trouble hearing him" one monitor observed. In another instance, a monitor found the court clerk to be "inaudible," and noted that the clerk "read the instruction to the defendant without eye contact."

Moreover, the court clerks were not always polite. One monitor recounted an incident in which the windows in the rear part of the court were open and two people asked the court clerk to close it a little; the clerk "refused and laughed." Later, the monitor added, when court officers indicated that they were cold, she closed it halfway.

One clerk seemed irritated by attorneys' failure to arrive on time. During a long delay, the clerk, "appearing angry and frustrated, walked through the [court]room muttering things like: 'Can they get here on time?' 'Don't they know their cases are on?' 'Do I have to call for them every time?'"

### Court Officers

The courtroom personnel who are most likely to interact with the public are the court officers. Uniformed court officers provide security in the courtrooms and waiting areas, and they also assist with clerical duties. It is the court officer's responsibility to keep track of the parties who have appeared for a hearing, and to gather the participants when the case is called.

Monitors found the officers to be generally "helpful" and "polite." In particular, they praised the

officers for answering questions that the monitors had about proceedings.

However, many monitors were critical of the officers' lax behavior in the courtroom. Officers frequently talked during proceedings or created other distractions. One court officer approached two monitors before a trial began and told them not to talk, then "proceeded to talk to other officers during the trial," they reported. Another monitor observed a court officer sitting in the back of a courtroom "visiting" with a friend during the proceedings. In another instance, a judge "admonished" a court officer for "standing in the front of the courtroom, turning the pages of a magazine, as the defense attorney was giving his summation."

One observer was astounded by the officers' behavior during breaks in the proceedings. During a delay, this monitor observed, four court officers were being "loud, joking around, [and] calling out to [the monitor] and lawyers." "During each short delay," they "behaved poorly," the monitor noted, adding that "a fifth officer came from the lobby to 'horse around'" with the other four officers.

Monitors often observed four or more officers assigned to one courtroom. Several monitors questioned such staff practices. "Do they really need four court officers for each courtroom?" one inquired. One monitor suggested that, during inactive periods, officers might be of use in ensuring that the participants arrived in the courtroom on time: "The court officers come to work at 7 o'clock or 8 o'clock. Then they sit around for hours waiting for something to happen. Could that time be used by the officer to make phone calls to prospective witnesses to make sure that they are coming to court?"

### **Court Reporters**

Court reporters produce official transcripts of court proceedings. Monitors generally had few comments regarding the performance of the reporters, although one monitor expressed concern about the accuracy of the transcripts, since participants in a particular case frequently were inaudible to the reporter. This monitor spoke with the court reporter, "who complained that even though she was two feet from the witness, she could not make out what [the witness] was saying."

### **Court Interpreters**

Foreign-language and American Sign Language interpreters are often utilized to translate court proceedings for litigants who do not speak English or who are hearing-impaired.

Interpreters generally were available when needed. Indeed, a monitor "was amazed at how rapidly one was summoned." One monitor described one interpreter's performance as "excellent": "She projected her voice and spoke very clearly." In another instance, however, a monitor found a proceeding "most difficult to hear," because "the translator was speaking Spanish at the same time that the judge was speaking."

## VI. JURORS

Thanks to Chief Judge Judith S. Kaye, the New York State Office of Court Administration (OCA), and the New York State Legislature, there has been a major effort in recent years to improve conditions for jurors.

Prior to 1996, New York was notorious for permitting an extraordinarily large number of automatic occupational exemptions from jury service; these exemptions encompassed members of more than 20 occupations. In 1996, legislation was enacted that ended these exemptions, distributing the burden of jury service more equitably and enabling some counties to call people to serve less frequently.

In 1995, the Legislature enacted a limited measure that gives judges the discretion to decide whether to sequester juries in low-level felony cases. Prior to 1995, sequestration of jurors in all felony trials was mandatory, which meant that every deliberating jury had to be *sequestered* (isolated from any outside influences that might affect deliberations, until jurors reached a verdict. Discretionary sequestration in lower-level felony trials has saved the state \$3.5 million since 1995, and has spared more than 14,000 jurors the inconvenience of being separated from their homes and families. The Office of Court Administration has since proposed legislation that would end the mandatory sequestration of juries in all criminal cases except death-penalty cases. During the 1999 legislative session, the Legislature enacted legislation that continues to allow for discretionary sequestration in low-level felony cases, but it failed to end mandatory sequestration permanently.

OCA has also made administrative improvements to the jury system. For example, it has taken steps to shorten the amount of time people must actually serve by increasing the jury pool and by expanding the use of "call-in" systems. In most counties, jurors now serve one day or for the course of one trial. In addition, judicial supervision of some civil jury selection (*voir dire*) has been introduced to expedite the process and to use jurors' time more efficiently. In criminal cases, the judge is always present to supervise jury selection.

Until 1996, jurors received \$15 a day for their service. Legislation that took effect at the beginning of 1996 has raised juror compensation to \$40 per day.

### Voir Dire

While monitoring the County Court, the Nassau County Court Monitors placed special emphasis on the *voir dire* process and treatment of the jurors.

In Nassau County, *voir dire* (the legal term for the selection of jurors for trial) is conducted by the "strike and replace" method. Under this method, an initial panel of prospective jurors, equal to the jury size (in felony cases, 12 regular jurors, plus two alternates), is randomly chosen from the entire array of prospective jurors. These individuals are seated in the jury box and questioned by the

attorneys for each side. Next, the attorneys exercise *challenges for cause* (for a specific reason articulated by the lawyers), and those who have been excused are then replaced. The replacement jurors are likewise questioned, and additional replacements are made until none of the remaining prospective jurors can be challenged for cause. *Peremptory challenges* (via which lawyers can dismiss jurors without giving a reason) are then exercised. Peremptory challenges cannot be used on a discriminatory basis (e.g., race, gender, etc.). The process continues until no challenges for cause are possible, and the parties have exercised or waived each of their three peremptory challenges. The final panel of jurors and alternates is selected, and its members are “sworn” to perform their duties in accordance with the law.

In general, monitors found the *voir dire* process, as it is conducted in Nassau County, to be an effective means of selecting a jury. However, many monitors were concerned about the lengthy amount of time that it took to empanel a jury. Monitors felt that “[three] days for a jury to be selected” was “too long.” It seemed a “waste of time for all jurors,” one monitor added. Occasionally, monitors also reported, attorneys appeared to use the jury selection process to “sell” their cases. While judicial supervision generally prevented these tactics, monitors witnessed several instances in which they felt that time was wasted in this manner.

Monitors also felt that jury selection could be improved by granting the attorneys more time to read the jurors’ responses to the questionnaires before questioning them orally. One monitor reported, “The filled-in questionnaires were received by attorneys as potential jurors were called. This gives them very little time to read these before questioning begins. This seems unfair to the attorneys and wastes court time.”

In general, monitors praised the County Court judges for their treatment of prospective jurors during the *voir dire* process. Judge Belfi “showed respect and concern for the prospective jurors when he spoke to them,” one monitor commented. Another monitor was impressed by the fact that Judge Orenstein “took time to explain [the] system to a potential juror who was confused.” Judge Boklan also “repeatedly thanked the jurors for their time and service and explained their rules and responsibilities.”

Monitors occasionally noted that prospective jurors seemed embarrassed by some of the questions asked of them during jury selection, such as questions about criminal records. One monitor found it inappropriate when the judge asked a person who had stated on his questionnaire that he had been arrested for a crime “to give details of it in open court.” Some monitors suggested that jurors should be allowed to answer certain questions privately.

## General Treatment of Jurors

Even after the selection process is complete, a great deal of jurors' time is spent waiting. Monitors generally found that when court was actually in session, the jurors' time was "well-used." However, monitors also found that the jury was often absent from the courtroom. One monitor noted that jurors were "told to report at 9:30 AM and were not called in until almost 11:00 AM." Another observed, "In a five-hour period, [the jurors] were in the courtroom [only] for 20 minutes." Monitors felt that jurors too frequently were forced to leave the courtroom and to wait for proceedings to resume, without being given any reason for the delay or any idea how long it would last.

Several monitors questioned whether allowing jurors to leave the court early in the day was an efficient use of their time. One monitor observed a trial in which the court was in session for only 35 minutes before the judge dismissed the jurors for the afternoon. After witnessing a judge releasing jurors early on Friday afternoon, another monitor commented, "Perhaps they would have preferred to finish [the] case and go back to work sooner."

Monitors also were concerned about the lack of jury assembly rooms and the inadequate number of jury deliberation rooms in the West wing of the County Courthouse. One monitor observed that when "jurors arrive in this building from [the] Central Jury [Room], there is no place for them to sit. They have to stand in the hall until they can go into a courtroom for jury selection." This monitor also noted that "there are [only] four jury deliberating rooms for the six judges" in the West wing.

Finally, monitors felt that, during trials, the judges should be better attuned to whether the jurors were paying attention to the testimony. During one trial, a monitor reported, "one [juror] did fall asleep."

## **VII. OPERATIONS**

### **Case Assignment**

Since 1986, the New York courts have operated under the Individual Assignment System (IAS). Under this system, the judge who presides at the start of a case generally will handle the case through disposition. The rationales for this system are efficiency and familiarity: The judge who first hears a case is likely to be more familiar with its circumstances, and thus is likely to issue a better-reasoned decision. The County Court adheres to the IAS system. However, when a judge has more than one trial-ready case on a particular day, any additional case will be sent to any judge available to hear it.

County Court judges in Nassau County have not adopted staggered-calendar scheduling. In general, the judges adhere to the traditional practice of scheduling all cases at 9:30 AM, and work their way through the calendar, case by case, throughout the day. However, when a trial or hearing is scheduled for 9:30 AM, the calendar call may be rescheduled for later in the day.

### **Delays and Adjournments**

Delays and adjournments were rampant in the County Court. Monitors found two fundamental causes: lateness or failure to appear by litigants, and lateness or failure to appear by attorneys.

One monitor concluded: “There just doesn’t seem to be a sense of time in these courts. Everyone arrives at a different time and there’s always someone missing. If a session is called for 10 o’clock, everyone should be ready to start at 10 o’clock. When the judge says ‘We’re going to have a ten minute break,’ everyone should be back in the court in ten minutes, not 25 minutes.” Most monitors echoed these sentiments.

Other monitors had similarly frustrating experiences. During a morning session in Judge Ort’s courtroom, a monitor sat through three calendar calls, for which none of the defendants or their attorneys was present. The court session was delayed by “at least 2½ hours,” this observer noted, and concluded, “This morning was a total waste of time for the court.” In another courtroom, a judge told a monitor that “not one person answered the call in his courtroom.”

Delays also regularly resulted from the tardy transport of imprisoned defendants to the courthouse. In Judge Jonas’s courtroom, proceedings were delayed for almost 30 minutes because the sheriff’s department brought over the wrong defendant. One monitor, waiting for the arrival of two defendants in Judge Calabrese’s courtroom, reported that a “big problem in [the] Nassau County Court seems to be in bringing defendants over early [in the morning].” The monitor suggested a common-sense solution: The sheriff’s department “should leave [the] jail earlier.”

The late arrival of judges also was a matter of concern. Monitors consistently reported that court rarely began at 9:30 AM and that delays were frequently unexplained. In Judge Ort’s courtroom, a morning session of the court was once delayed for almost two hours “while the judge was at a

doctor's appointment. Nothing was said to the people waiting until he appeared." In Judge Belfi's courtroom, another monitor reported that the start of court was delayed until 11:00 AM. There was "no explanation of [the] delay in starting, with a courtroom packed with lawyers, defendants, [and] families," and "everyone looked frustrat[ed]." The monitor added, "I think the frustration and anger in the room could have been eased if an explanation was given."

However, some delays were explained. In one instance, Judge Calabrese arrived ten minutes late, apologized to the people in the courtroom, and explained why he was late. Monitors felt that judges could improve the public's perception of the courts significantly by entering the courtroom at 9:30 AM each morning and announcing when they expect to be on the bench (or by having a clerk do so). One monitor implored, "Give more information to the public about why delays are occurring."

Several monitors were surprised at some court personnel's nonchalant attitude to the delays. Two monitors "were told that court always starts late to allow for jurors to have a good breakfast." However, some court personnel were as frustrated as the monitors with the constant delays in proceedings. One monitor recalled that, on one occasion, "the proceedings were delayed throughout the session due to the lack of ADAs and attorneys, much to the visible anger and frustration of the clerks."

Another cause for concern was the apparent lack of activity in the courthouse, particularly during the summer months. One commented: "I realize that this is summertime, but it would seem that there could be more staggering of the judges' vacations. [On] several visits to this court, [I] found nothing happening. Today, out of nine judges, only two were working in the main building. Out of seven judges, there were only one working, in the West wing." Another monitor agreed, noting that it "seems that there could be more activity going on in the County Court. There are too many judges on vacation at the same time. Courtroom after courtroom is empty."

### **Courtroom Disruptions**

Most of the courtrooms were "extremely noisy" during proceedings. The noise derived from two primary sources: loud people and poorly-designed facilities.

Monitors often observed "people entering and exiting the courtroom repeatedly, with the door banging each time," court officers "wandering around way too much," and "the phone ringing." One monitor reported that "the jury seemed distracted every time the door opened and closed." Another monitor observed the judge, the lawyers, and the witnesses "constantly looking up to see who is coming and who is going."

Monitors suggested that "perhaps there could be a [designated] time when people could come in and out," or "perhaps the activity could be limited by the officers." One observer also wondered whether "the door could be altered to close slowly or softly."

## **Security Concerns**

Some monitors also expressed concerns about courthouse security. One monitor “was not asked to go through the metal detectors, once the court officer saw that [the person] was a court monitor.” Another monitor, who, when recognized as a court monitor, also was allowed to bypass the magnetometers, inquired, “What’s the purpose of spending loads of money on sophisticated devices when, for the lamest of reasons, some people are allowed to bypass the system?” Another monitor reported that, twice, the monitor’s bag was not put through the magnetometers after the court officers saw the Modern Courts’ court monitoring handbook that the monitor was carrying.

## **Audibility**

Monitors were continually frustrated by the lack of audibility during court proceedings. They found that proceedings were inaudible primarily because the judges, lawyers, and witnesses spoke too softly, and did not use the microphones provided for them. This problem is exacerbated by the level of noise generated from private conversations conducted in the courtroom (frequently by attorneys whose cases are not before the court), the continual traffic of people walking in and out of the room, and the courtrooms’ “poor acoustics.”

Monitors recommended that all judges use their microphones, that they direct witnesses to use their microphones, and that they encourage attorneys and others who are before the court to speak loudly. In addition, they felt that the judges should make a greater effort to maintain quiet in the courtroom.

## VIII. COURT FACILITIES

The County Court is located in the Nassau County Courthouse. The courthouse consists of two adjacent buildings; the main building is at 262 Old Country Road, and the west wing is at 252 Old Country Road. The three-story main building houses six courtrooms, with adjacent judges' chambers, on the first floor. Three other County Court courtrooms are located on the third floor. Seven other courtrooms currently in use by the County Court are housed in the west wing.

Monitors observed court proceedings in both buildings. Overall, they found that the buildings were poorly maintained and in desperate need of renovation. They described the west wing as "an old building which is fine on the outside, but in bad condition inside," and characterized the main building as "dilapidated."

In general, monitors felt that both courthouses were simply poorly designed. Judge Palmieri's courtroom was so small that it "made for difficulty [in] demonstrating evidence." Moreover, "due to the narrowness of the room, the jury, the judge, and the lawyer are all squeezed into the front section. Every time that a lawyer has to use the podium, he must push it into the narrow aisles." In Judge Boklan's courtroom, there were "not enough seats for the jurors." In the west wing, "there is no bathroom on the first floor. One must walk up or down 22 steps in order to reach the restroom."

Monitors also found that the courtrooms in both buildings were not well-maintained. "Most courtrooms badly needed new lighting and a paint job," one monitor observed. Another described Judge Ort's courtroom in the west wing as "in dire need of maintenance": "The ceiling is peeling from the rain," and "a wire is just dangling from the ceiling." Judge Kowtna's courtroom in the Main Building was similarly neglected: "The courtroom is a disgrace. The windows are filthy. The jury box is poor. The lighting is terrible and the paint is peeling from the walls." Even in Judge Boklan's courtroom, which was described as the "cleanest and nicest" courtroom, a monitor recalled an occasion when the judge "apologized to one of the alternate jurors" because of the broken chair offered to him. Other problems included "poor lighting," "very noisy" ventilation fans, and "banging doors."

Maintenance of the bathrooms was particularly inadequate. Monitors frequently characterized them as "dirty." The locks on the bathroom stalls often were broken; soap dispensers were empty. Several monitors noted that the toilet seat in one bathroom for disabled people was missing for an unreasonable length of time. The toilet seat was "lying on the floor" for weeks, and "there [was] no sign of anyone trying to fix it," one monitor recalled.

Parking at the County Court is also "inadequate," monitors reported. According to one monitor, "parking was a challenge in itself. I'm sure people are late just because of the inadequate parking." Another monitor recalled an incident when Judge DeRiggi "had to have three of the jurors come before him individually because they each received a parking ticket." One monitor suggested that construction of a "[two]-tier [garage] could provide a great many more spaces." Monitors concluded, "Parking must be improved."

### **Access for the Disabled**

Monitors observed that while some areas of the County Court appeared to be accessible to those with physical disabilities, others areas did not.

Monitors generally found that the main building was “accessible”; however, the west wing had “poor” facilities for disabled people. The building has no ramps. “There is a back elevator that is used for [transporting] prisoners,” but “arrangements” must be made for a disabled person to use the elevator. A court officer also must accompany the person. In some cases, the courtrooms appeared too “narrow” for access by people with wheelchairs. Referring to the lack of access for the disabled in the west wing, one court officer told a monitor: “No handicapped here.”

## IX. RECOMMENDATIONS

1. ***The New York State Legislature should enact Chief Judges Judith S. Kaye's court restructuring plan.***

New York State Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman recently proposed a constitutional amendment to the State Legislature. The amendment would replace the current maze of courts of limited jurisdiction with a much simpler and less hierarchical structure. It would reduce the number of trial courts to two, from the current total of nine. The County Court would be merged into the Supreme Court. Consolidating the trial courts would eliminate the need for County Court judges to act as Supreme Court justices in order to aid the Supreme Court with its civil caseload. In short, court restructuring would result in a more efficiently-organized court system.

Like all proposed amendments to the State Constitution, the Kaye Plan must be passed by two consecutive State Legislatures; it must be signed by the Governor; and it must be ratified by the voters in a statewide referendum. The monitors urge the Senate and the Assembly to reintroduce the Kaye Plan and give it first passage.

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

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 especially important that attorneys be compensated adequately for the time spent outside of court in preparing a case. By increasing compensation for assigned counsel, the State Legislature would encourage out-of-court work and research, and would encourage attorneys to handle indigent defendants' cases. Currently, there are far too few Legal Aid attorneys to handle the court's caseload. Monitors urge that funding be increased to the Legal Aid Society and that the Legislature increase compensation for assigned counsel.

3. ***To curtail delays and adjournments resulting from attorneys' absence or lateness, County Court judges should consider fines or other admonitions, where appropriate.***

Delays and adjournments are costly and adversely affect the court, other attorneys, and the parties involved. While the monitors attributed many instances of attorneys' lateness to their heavy caseloads, on some occasions, lawyers did not have legitimate reasons for being late for or absent from the proceedings. Monitors urged judges to admonish attorneys who are chronically late or absent, and consider financial sanctions for repeat offenders.

4. ***To reduce waiting time, judges in the County Court should implement staggered calendars.***

Most judges require *all* litigants to arrive at 9:30 AM. However, cases scheduled for 9:30 AM frequently are not heard until late afternoon – or, worse, are adjourned to another date. For many litigants, arranging time off from work to appear, only to be forced to wait all day or to return on another day, creates a significant hardship. Monitors recommend that all judicial personnel implement a staggered calendar, so that litigants can better budget the time that they need to allot for court.

**5. *Conferencing and waiting areas should be constructed to provide litigants and their attorneys with privacy, and to reduce distractions in the courtroom.***

In the County Court, participants currently are forced to wait in the courtrooms themselves, or outside the courtrooms on cramped benches. The noise created by waiting litigants makes it difficult to hear proceedings. Unfortunately, these waiting areas are the only areas available for clients to confer with their attorneys. Not only do clients have no assurance that their “privileged” conversations with their attorneys are truly private, but they are forced to discuss their cases with their adversaries sitting only a few feet away. Monitors urge that litigants and their attorneys be provided with adequate private space in which to conduct privileged conversations. The monitors also urge Nassau County to provide jury assembly rooms for prospective jurors awaiting jury selection in the west wing.

**6. *The west wing of the County Courthouse should be made accessible for people with disabilities.***

The west wing has no ramps at its entrance. To enter the building, a disabled person must use a back elevator that is usually used for transporting prisoners. The aisles in several courtrooms also appeared to be too narrow to accommodate a wheelchair. Monitors urge that ramps be constructed immediately, and that aisles be widened to accommodate people who must use mobility aids.

**7. *Courtrooms and restroom facilities should be properly maintained and repaired, and adequate lighting should be provided for each courtroom.***

Monitors found parts of the courthouse, especially the public restrooms, to be inadequately maintained. The restrooms frequently had broken stall doors and missing soap dispensers. In the courtrooms, monitors found peeling paint, broken furniture, and poor lighting. Monitors urge that the County make the necessary improvements and provide for regular maintenance of the facilities. These inexpensive improvements go far to enhance the dignity of and public respect for the court.

**8. *Additional parking space is required at the County Court.***

Monitors found that parking was inadequate for the needs of the court. Monitors believed that this lack of parking inconvenienced jurors and contributed to tardiness on the part of litigants and attorneys. They urge Nassau County to provide additional parking space at the

County Court, perhaps by constructing a multi-level garage.

- 9. *The judges of the County Court should encourage all participants to speak loudly enough to be heard throughout the courtroom.***

Monitors often found it difficult to hear the proceedings because the participants either did not speak loudly enough or did not speak clearly. Monitors urge that judicial personnel consistently require all participants to speak loudly enough to be heard. Monitors also recommend that judges reprimand court personnel and others for talking or engaging in other disruptive behavior during the proceedings.

## ACKNOWLEDGMENTS

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The monitors themselves deserve the highest praise of all: Without their dedication, this report would not be possible. These citizens volunteer their time to improve the court system for every member of the public.

This report was written by Kimyetta R. Robinson, Director of Court Monitoring, with editorial assistance from the monitors. It was edited by Barbara E. Reed, Deputy Director of the Fund for Modern Courts.

## **THE NASSAU COUNTY COURT MONITORS**

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