

The Judicial Council of California is the constitutionally created policymaking body of the California courts. The council meets at least six times a year for business meetings that are open to the public and audiocast live via the California Courts website. What follows is a formatted and unedited transcript of the last meeting. The official record of each meeting, the meeting minutes, are usually approved by the council at the next business meeting. Much more information about this meeting, the work of the Judicial Council, and the role of the state court system is available on the California Courts website at www.courts.ca.gov.

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>>Good morning, this is the public business meeting of the Judicial Council of California, Friday, September 21, 2018. The meeting is now in session. [] As you know, our faculty volunteer and they pledge their great experience and expertise in helping our new judges understand their role on the bench. Please stand as I call out your name. Judge Kent Kelligrew, Superior Court of Ventura County, Judge Barbara Conlan, Superior Court of San Joaquin County, Judge Clare Mare, Superior Court of Contra Costa County, and Judge David Reed, Superior Court of Yolo County. Thank you for your service. I'll now introduce the beneficiaries of the faculty's expertise. From the Superior Court of Alameda County, Judge James Riley, Contra Costa County, Judge Leonard Marquez, Los Angeles County, Judge Ashfak Choudry, Judge Danette Gomez, Judge Altus Hudson, Judge Audra Morrie, Orange County, Kimberly Nil, Thomas McConville. Riverside County, Commissioner Sandra Furbush, San Diego County, Judge Truk Do, Sonoma County, Judge Christopher Honigsberg, Commissioner Mark Yuroste, Trinity County, Judge Eric Harryford, Tulare County, Judge Carrie Lopez. Welcome and thank you for sharing your week here.

>> We begin our regular agenda with our public comment. I turn this over then to Justice Miller.

>> Thank you Chief. We have one speaker today, Mitchell Smith, come forward please. Please remember that you have three minutes and this is public comment with regards to general administration. We are not, as you know, an adjudicatory body, you have been here before. We don't and can't make decisions on individual cases or your case and we ask that you limit your comments to general administration and not talk about individuals in your case or the facts. Good morning and welcome, we're glad you're here, and you have three minutes.

>>Chief Justice, Judicial Council, members of the staff, it is an honor to serve above you on this glorious day. My name is Federal Postal Judge, full colon, Mitchell hyphen win Smith. I use a full colon in my name to create a prepositional phrase. I use a hyphen win to make my Mitchell Smith a compound fact. So it's for the Mitchell of the Smith family. This is a federal flag. This is postal money. I am a federal judge in possession of a federal oath of office written in the correct parsay syntax grammar. I can back it up with firsthand knowledge. My first order as a federal judge is that if anyone knowingly, willingly makes a conscious decision to push a human offspring to near death or beyond, this constitutes capital punishment. My second order, I am ordering a freeze on all foreclosures in Oakley, California, 180 square acres from my land. I have a signed, certified, signed in blue ink, federal government document giving me the venue.

>> One minute.

>> I am not here to arrest any judges. Clerk of the court, that will be determined. I have in my possession her signed confession for the criminal activity that she has perpetrated on the American people. You have stolen multiple pieces of land from me. I want them returned in clear title. I now have proof that there was no such thing as a bank loan. You asked the bank for a double debit, this is where they have to show they lost money when they gave you money. They cannot do it because they took the money out of your Social Security account. They went into your Social Security account without your knowledge, they committed to a crime and because they did that they vacated their ability to contract with you.

>> Thank you very much, we appreciate it and we thank you for your public comment.

>> Thank you Chief Justice.

>> Chief, that concludes public comment for today on general administration.

>> Okay. We have another presentation today. It's a little sooner than I told Judge Gordon it would be. We have a report on activities that have taken place since the last council meeting and Judge Gordon will report on some activities he has participated in.

>> Thank you Justice Miller. Chief, I wanted to highlight some very innovative and positive work. There are two commissioners in Los Angeles County, Commissioner Lisa Strausser who serves in delinquency and Commissioner Scott Nord who serves in a family law assignment. They have been seeing an increase in young people in both of their practices involving domestic violence and restraining orders issues. As part of an effort on their own initiative, own energy have created an interactive education program for high school students around dating violence and the judicial remedies. They have put together a wonderful interactive PowerPoint, a copy of which was sent to staff. They've been doing this for a number of months. They have spoken or have scheduled to speak over the next year to 10,000 high school students and faculty. They are getting a tremendous response and actually have outreach to Orange and Riverside Counties. It's an amazing effort by two commissioners to do extraordinary things, a statement of the dedication of our judicial officers.

>> Thank you Judge Gordon. I appreciate too when councilmembers bring to all our collective attention a novel idea and good works being done by judicial officers and staff in order to understand and spread good ideas about access to justice and safety. I know councilmembers, you indicated, will receive a copy of the PowerPoint.

>> Our next order of business is the review and approval of the minutes from the July 20 Council meeting. After you've had another opportunity to review the minutes I will entertain a motion to approve.

>> So moved.

>> Thank you Judge Kelly, seconded by Judge Nadler.

>> All in favor of approving the minutes? Any abstentions?

>> Judge Feng abstains.

>> The minutes are approved. Next on the our agenda is my regular report to Council summarizing my activities on behalf of the branch since the last meeting. I will discuss the governor's SB 10 signing ceremony which I had the pleasure of attending with our sister branches of government later today during our discussion of the SB 10 implementation plan. The signing ceremony, so you know, resulted in multiple media requests for comment from local, statewide, national and even international media with an interview on the BBC Worldwide. While in the capital I also spoke at a meeting of the Assembly Democratic Caucus at the invitation of Assembly member Mike Gibson. We had a wide-ranging discussion of local, state and national issues in the caucus. As with our new Judicial Officer Orientation Program, I also take the opportunity, like many of you, to regularly participate in the annual B. E. Witkin College for 104 for new judges, commissioners and referees. This year in San Ramon I was interviewed as part of a luncheon program by Presiding Judge Pat Lucas from the Santa Clara County Superior Court, the dean of the college, and Michael Gross from the San Diego Superior Court. We discussed a wide range of topics including the importance of diversity on the bench, public access to records, the importance of civic engagement, bail reform, and implicit bias. Civics education was the theme also for our conversation with San Diego Superior Court Judge Carolyn Caietti at the National Conference of Appellate Court Clerks. As many of you know she is very active in civics in her own court through her learning partnership, including the new program she has initiated, Judges in the Classroom. She has offered her support to other courts interested in pursuing a partnership in their jurisdictions. I was happy to see Supreme Court Clerk/Executive Officer Jorge Navarette and Third District Court of Appeal Assistant Clerk Colette Bruggman who were present facilitating the conference for 86 of their national colleagues. I was pleased to be joined by many of you here to participate in the first annual meeting of the new California Lawyers Association. As you know, this is the Sections reconfigured, not in the State Bar any longer but under a nonprofit, and they have 16 specialty practice groups, this was also in San Diego. It was heartening to see that many of the important recognitions and dedicated public service continue to be supported by CLA. The Ronald M. George Public Lawyer of the Year Award that this year recognized Richmond City Attorney Bruce Goodmiller, the Bernard E. Witkin Medal, which I had the pleasure of presenting to our former colleague, retired Justice Kay Werdegar, the Jack Berman Award for Benita Zonka, the Pfeiffer Award for Lilies McCoy, and the Legislator of the Year Award for Senator Tony Adkins, president pro tem. I was honored to be recognized by the Conference of California Bar Associations, also known as CCBA, supported by the California Lawyers Association, with their second award for the John Van de Kamp Justice Through Laws Award. And many of my regular, annual engagements remain on the calendar. Happy to join many of you for the California Women Lawyers Annual Dinner, where their Faye Stender Award was presented to a Los Angeles lawyer named Sandra Munoz. The State Bar Board of Trustees Annual Meeting and the Bench-Bar Coalition meeting. Martin and Corey Jaspersen provided coalition members with updates on advocacy in the capital and Rob Oyung provided a technology update. We also said farewell to outgoing Executive Committee members Judge Holly Fujiae and Judge Joan Weber, and welcomed new members, Mr. James Highting, Ms. Betty Sy-Bergman, and Judge Paul

Bacigalupo. Paul is going to have a very busy year, you can judge by the CJA meeting. I attended a number of California Judges Association events including administering the oaths of office for Paul and his executive leadership as part of their annual conference, Judging In a Rapidly Changing World. Judge Jan Jones and Judge Elizabeth Mesillas moderated the annual conversation with the Chief and we discussed topics of the Assigned Judges Program, the independence of the judiciary, branch funding of course, and Futures Commission. My final engagement of this reporting period came at the invitation of Assembly members Evan Low, Ash Kalra, and Kansen Chew of the Asian-Pacific American Leaders Institute in Cupertino, their 21st annual gala, creating new civic stories to receive their civic leadership award. This institute is wide-ranging and strives to mentor and nurture new, socially conscious civic leaders and that completes my report to council.

>> I turn it over now to Martin Hoshino, Administrative Director.

>> Thank you Chief Justice, members, the regular written report which is longer than the one I will provide you today, as usual contains updates from the office, advisory groups, education and training activities since the July meeting a few months ago. I want to highlight items that are in your materials that are in the consent agenda. During the past two months, 18 of your advisory bodies have convened mostly by conference call to continue their work on your behalf. Much of that work is represented in the agenda you have before you today. In addition to those matters on the discussion agenda there were 41 recommendations that are presented on the consent agenda at this meeting. Those are derivative of the issues and the products of the expertise and research and discussions, debates, problem-solving efforts and innovations going on of the more than 400 judicial officers participating in your lower committees. The annual nominations and appointment cycle for membership of the committees is completed. The Chief Justice made 175 appointments to 28 committees, and those were effective on September 15, 2018. In doing so we are so fortunate to have the benefit of both new members, of course continuing members, given their experience, tenure in time and history with our organization. There is one item I want to note on today's consent agenda that comes to you from the Trial Court Budget Advisory Committee. The committee is recommending an important rule amendment for presiding judges to have eligibility for reappointment to an existing presiding or past presiding judge member. This important change would expand the pool of candidates who are knowledgeable and experienced in budget matters and avoid the loss of expertise. It's important to note presiding judges spend a lot of time getting educated on budget. A matter that doesn't come naturally. To have that and the Executive and Planning Committee had to go out and solicit nominations not just once but twice, three times. And it goes to the issue of the difficulty of being able to present a slate of appointees and options to the chief justice that honor geographic diversity as well as court size diversity. So this is an important rule that you will be voting on today and it's worth highlighting and noting and educating the members of the challenge of that particular committee. The Trial Court Budget Advisory Committee is comprised of judges and CEOs, with the Council in the preparation and implementation of the budget for the trial court as well as providing input on various budget and fiscal policy issues. So today this will also include your consideration later on of the recommendations on allocation for \$75 million in new discretionary funding for trial courts included in the 2018 state budget. Another item I want to make you aware of is related to

traffic. It is in the consent agenda. It is about the expansion of the Online Traffic Adjudication Pilot Project. The 2018 budget appropriated \$3.4 million in new operational funding and \$1.3 million in ongoing funds to support to expand our partnership with several superior courts to enhance processes related to the ability-to-pay determinations, traffic infractions, fines and fees. And being able to adjudicate those cases online. And of course we are pleased and grateful the governor and legislature agree with the support of this initiative which is of course consistent with the commission and her directive that we explore more online adjudication of traffic cases. If successful, the pilot project we believe will lead to a broader directive which is to develop a proposal to shift minor traffic infractions to assemble forum resolution. Noteworthy to advise you that the traffic infractions constitute about 75 percent of all criminal filings today. The new funding in the Budget Act will allow us to actually expand and add three additionally up to possibly four new pilots. At today's meeting you are being asked to approve the selection criteria for those interested in joining the five pilot courts. San Francisco, Santa Clara, Shasta, Tulare and Ventura. Evaluations based on the criteria will be completed over the next couple of months and a request for final authorization will come before you, we expect, at your November business meeting, again for similar action. With that, members, Chief Justice, that concludes my report to you today.

>> Thank you Martin. Next up is the reports from the internal chairs. Judge Miller of the Executive and Planning Committee.

>> My full written report will be posted online after this meeting. As you noted, yesterday chief when you swore in the new council members, September marks the first month of our council calendar year. The new members always bring fresh perspective to the committees and keep us, I wrote, old-timers, I'm not sure I want to say that, members that have been around a little longer, to keep us on our toes. The executive and planning committee, council meeting agenda and procedure set, what we heard on the agenda yesterday and what we will hear today have been vetted by our committee. After being vetted by other advisory committees, task force and workgroups, literally hundreds and hundreds of members from the judicial branch and other volunteers. It really is truly the culmination of the judicial branch grassroots effort. Like all other committee members our members have full-time day jobs so I appreciate the hours and the hours of volunteer service our members put in. This year our committee members include the following who have been around for more than three years. Judge Anderson who serves and continues to serve as vice chair in Monterey, who I could not do this job without. Justice [indiscernible] Gretchen Nelson from Los Angeles, Judge Stacy Boulware Eurie, Judge Samuel Feng from San Francisco, Associate Justice Harry Hull, Judge Gary Nadler, Judge David Rubin. Our new members who we welcome, Patrick Kelly, Judge Delila Lyons, and Michael Roddy from San Diego. Welcome and chief that concludes my report.

>> Thank you Justice Miller. Next is Judge Kenneth So, chair of PLPC.

>> We have been pretty busy the last week and a half. The office of Governmental Affairs I thought would be able to slow down after the August 31 close of the 2017-18 session. But they have been very busy tracking everything. Watching what the governor signed and keeping us up to date. We met four times in August and once this week. This week's meeting on Wednesday

was our annual in-person meeting where we had orientation for new policy committee members on the operation of PCLC to review and make recommendations for council-sponsored legislation. I would like to welcome Justice Brad Hill and Ms. Nancy Eberhardt and [indiscernible] Flynn are to the committee. My complete report, I will not go over all of the pieces of legislation. The complete report will be filed on the website. I would like to talk about a couple of cases of legislation. Of course we dealt with SB 10 which was described to you, the position of support on behalf of the Council, that replaces cash bail with a risk assessment and supervision structure.

>> We dealt with a bill dealing with evidence, theft, courthouses, court interpreters. The version. I'd also like to bring to your attention Senate Bill 1155. We considered the position on SB 1155 which deals with interpreters. Initially we were a sponsor of this bill and supported this bill, regretfully we took opposed position because as amended SB 1155 creates an avenue in the law that could be interpreted to remove the flexibility for small claims courts to appoint temporary interpreters for litigants. That bill still is on the Governor's desk. We are unclear as to whether people signed it or not.

>> Our committee on Wednesday, yesterday, or we met in person and approved for circulation public comment one legislative proposal for small claims dealing with's discovery. We also adopted the 2018 legislative policy summary, which will be considering recommendations for responsive legislation. These will be brought to the Council for sponsorship at the November meeting. Three council sponsored bills have been enacted, [indiscernible] for community service for infractions, warrants, and [indiscernible] related to traffic. The last day for the governor to sign or veto all of these bills is September 30. We will update you on the remaining judicial Council sponsored bills in the next council meeting. Governmental affairs is also preparing the annual court legislative summary published in December that will highlight all of the bills of interest the courts and the judiciary. Of course the legislature will reconvene on December 3. That means we will ramp up this process all over again in December 3 begins the organizing session for the first year of the 2019-20 session. Chief that concludes my report.

>> Next we will hear from [indiscernible] Rules and Projects.

>> Thank you, ladies and gentlemen of the roles and projects met twice [indiscernible] . July 25 two approved decisions and the Council has given final authority to approve . August 2 we met by telephone considering circulation for public comment. And the rules arising from Proposition 66, Death Penalty Reform and Savings Act of 2016. Approved circulation of those proposed rules, following circulation and review by the [indiscernible]. This proposal is expected to come before you at the November 30 business meeting. We met by telephone on August 23 to consider 36 proposals, all of which circulated for comment except eight technical amendment for which circulation is not required. Also considered a request for appointment of subcommittee mentors members. [indiscernible] recommends approval of the rules and forms and proposals which are before you today on the consent agenda. Items 18-127, 18-131, 18-133, 18-137, 18-145, 18-172, 18-19 and 18-151 to 18-165. As Judge So mentioned with the CLC, I would like to welcome our new members to the Rules and Projects Committee. [indiscernible]. And finally I would like to note as always, we are dedicated to the work of RUPRO staff and would note for unfortunately

for us in the Council as a whole we are sorry to lose Patrick O'Donnell to retirement. We will miss his valuable guidance and we wish him well. Chief that is my report.

>> Thank you Justice Hull. [indiscernible] Technology Committee.

>> Thank you chief . I would like to present today on behalf of the committee justice Lau is unable to attend . since the last Council meeting the committee has held one open meeting by teleconference, conducted an absence by email. And the I tech committee as well as the strategic plan work stream, have each met once. The first update to the strategic plan for technology was distributed for comment last Friday, it was distributed for public comment. I would also like to welcome our new J CTC members, Judge Cochran and Nancy Everhart. From San Bernardino. The committee is looking forward to working with you . on July 25 the committee approved a proposed rule amendment that would establish procedures for handling filled and confidential materials submitted electronically in the Court of Appeals did in the September 10 meeting, they received updates with the work of ITAC in the workstream, advance for technology and the information of the secure framework. ITAC met on August 27 and discuss the California courts protective order registry status in addition discuss the status of the innovation grants being deployed throughout the state. As well as strategizing ways to use them branchwide. You continue to be proud of the engaged participating solutions to effectively address statewide technology issues, consistent with your access initiative. Charged with the Futures Commission directives related to intelligent chat and remote appearances, the very important work that the workstream will produce the judicial branches third technical plan. In addition, the data analytics workstream recently met for the first time, request sent to all courts to invite volunteers to participate in the strategy workstream. And finally, the self-represented litigants e-services workstream. To start designing and building a statewide portal to enable those without legal representation to research, e-file, and track noncriminal cases. And the workstream for which Justice Slough [indiscernible] also continues to make progress towards developing the updated strategic plan. Fellow JC team members as well as outgoing chatters, were a big part of the effort . the team members have met with or reached out to stakeholders and presiding judges, for executive officers, and court IT managers. We met on September 11 by teleconference. A few days later, September 14, the updated plan was distributed for a one-month comment. That will close on October 15. We invite you to review this plan. The goal is to provide this document to Council for review and proof that the November meeting. We must also continue to work together to improve ranch technology which is truly an infrastructure to help provide efficiency in the courts, to help all Californians providing access to justice. We have come a long way but there's a long way to go with a lot of work done here . it is fascinating to watch this foldout and to see everyone's interest in it and trying to put together a process that ultimately will help our branches with technology. Thank you chief enclosing for your leadership and your vision. I am impressed by everyone's commitment to leverage efforts to use technology . I think we will be a much better place as we move along . that concludes my report.

>> Thank you Judge Nadler . it puts me to mind about five years ago when we discussed access to justice. We talked then about access to justice being three-dimensional . of course physical access we understood, buildings and availability, windows and service. And of course equal

access if something were always familiar with and continues to meet the need of the constituents in public. Remote access was something new to the branch, a new frontier . we built it from the ground up . you are right to thank and recognize all of the people who volunteered their expertise to make this happen. Where we are in a place where we have electronic records and electronic access not only for attorneys and soap representatives but it was very impressive. Thank you.

>> Justice Chin and his vision, we have really come a long way. I am sure he would say we have a long way to go.

>> I guess we could say before Chin . [laughter]

>> Now we all here from Judge Rubin the Judicial Branch Budget Committee.

>> Good morning everybody. Thank you chief and members of the Council for this opportunity to address you on behalf of the Judicial Branch Budget Committee. Yesterday we welcomed our new members, Judge Bacigalupo, Judge Hill, [indiscernible]. A warm welcome. We are excited to have them on board . we started the meeting by providing them with an overview and history of the branch budget committee and the work of it. Namely the oversight of the ranch budget proposals just reminding everybody, the perspective of the Judicial Branch Budget Committee, we are already working on 2021 on the budget change proposal, that is how far out we project . the \$10 million emergency review reserve . a program which we spent most of our time. Some of the highlights . we have 50 projects that are moving forward with the approved funding. The total amount of the awards, about \$22.4 million over a three-year period of the grant, grant lifecycle. To date about \$60 million has been distributed in additional funds will be distributed at the beginning of [indiscernible]. What is excited about this is the attention to detail and how these courts respond . we have a quarterly reporting process that goes on and some of the courts have been able to realize savings and return money to the branch, to the judicial branch budget community so we can distribute them to other projects with unforeseen costs or increases. You can see the displays and how we have been spending the money.

>> We continue to maintain a contingency fund, small savings account where we can cut to provide for unforeseen constant overruns. We continue to monitor that fund closely and report you on any changes. The health of that fund, to decide how all this money is spent going forward.

>> We are now turning as a committee to data collection, and measuring the outcomes. These metrics reflect success of each project by King the insight on how the public benefits regarding access and helping the public gain greater, I had a really long dinner. [laughter] Gain greater access to courts, and more flexibility in excess of a court. Overall the grant projects are progressing as indicated in their initial project implementation plans, with minor exceptions that we have found, unforeseen vendor and personnel regulatory challenges . I guess the next portion, the final part of the report, Ming Chin Honoré resection . some of the achievements come mostly around high-tech. In Monterey County, they have a phone app project, that is very exciting. Currently 76 active beta testers. The app currently provides test reminders, processes and payment reminders. Technology we can export to other counties and members of state government. The San Francisco Superior Court has accepted 63 new clients and graduated 30 of

those clients since the project started . in Riverside Superior Court, the use of a traffic avatar has been fully implemented. This is seen an increase from 175 times and made over 700 times in June . the avatar speaks seven different languages. A very exciting development there. Again technology that can be replicated and exported to different counties, as well as different members of state government. And finally a remote video conferencing project has gone live with its website. This site is being used by 13 counties to provide resources, remote workshops for self litigants under self-help centers or directly through the website. An opportunity for people to access important information using technology from remote areas, especially during times when it is difficult when possible to get to court.

>> A more detailed report will be available online after the meeting. Thank you for the opportunity to address the Council.

>> When you talked about the innovative grant funds that was at a time when we were receiving only a one time money. At the time, knowing that we came up with the concept of pitching the idea to the legislature and governor for innovative grant funds . not knowing how innovative we could be and getting that money to the trial court cussing there are laboratories of information, it's exciting how they have been able to leverage technology to reach more people and as you say be replicated in other courts. I think also because so much of this comes from volunteers and creativity, putting this together for trying to meet the need of the community, at one point with very shrinking resources. Pretty impressive, thank you .

>> Next on the agenda, we have the consent agenda. As I was reading the consent agenda, I was taken about by its larger than normal. 41 items. If you look at that you realize how our advisory committees really plumb the depths of new law and are responsive to the new changes in legislation and the changing forms to reflect the legislation . and you also look at the consent agenda and you realize I think we had 400 volunteers working on the advisory committee . so the advisory committee, the Probate and Mental Health, Providing Access and Fairness, ITAC, Civil and Small Claims, Budget Committee, collaborative justice, equal access funds, and in tandem with each other all of these advisory committees that come up with these very comprehensive changes and requirements and reports. I say this primarily for the new members, but consent items are weighty and depth. They've also been thoroughly vetted, they've had their public comment and public proposal did they haven't garnered a great deal of controversy if any, because they are often times responsive to new legislation. And of course members have the new opportunity to remove a consent agenda item and place it on the discussion agenda if they care to. This work is impressive and again it's done by people who have full-time jobs and do it in their spare time. So I ask after you've had an opportunity to review, that we approve, and approval by Justice Chin, seconded by [indiscernible] . at this point all in favor of moving the consent agenda say so. Any abstentions? The consent agenda item is approved.

>> I realize that our calendar agenda indicates we will take a recess . we have been so efficient so as not to use that time unwisely, we will move into the discussion agenda items, if we have our presenters and the panel here. We do not. On the way down, thank you.

>> Welcome and thank you for being here. Please come to the table.

>> So before we began, and take up this particular agenda item, I wanted to make a few remarks and ask also for remarks before we introduce the panel. I wanted to say this because this is an important three branch solution to the pretrial detention program . as many know SB 10 goes into effect October 1 2019 . and as you heard and are aware of the new law fundamentally changes the pretrial release and attention system. It is a paradigm shift from where the state had been. It transforms in my opinion an outdated, unfair and unsafe system into one that not only effectively protects the due process rights of the accused but also public safety . in a few moments we will hear from those within the branch who have been engaged with this important issue for a long time. I raise my concern about bail penalizing the court back in 2016, in my state is a judiciary addressed a joint session of the legislature did two years before that, in the history of the Council, we were already working with local courts and Justice Department's using funds that had been provided by the legislature to create and administer 12 court pretrial release programs. And from those programs, the incubator programs, we gain practical experience . we learned about the impact on recidivism and supervised release. We tested models and the possibility that these programs offered to improve our system and to provide justice for all Californians . the valuable, real life experience and information gained from these programs, informs work of the Pretrial Detention Reform Workgroup appointed, ably cochaired by Rodriguez who is here today. And now retired Ventura judge did this diverse group of jurist and executive officer studied the system. They listen to all interested stakeholders, they heard from more than 40 groups, civil rights advocates, state and national experts, justice system partners, government agencies, bail industry representatives, regulators and victims . they reviewed the input, discuss the issues, deliberated, and then unanimously reached a conclusion and then became the recommendation from the report. From the report "money bill fails to adequately address public safety and the profound negative impact on those individuals who should not be detained before trial." Unsafe and unfair did all three branches of the government expressed what they now have a renewed interest in working on a solution. In the work group's recommendations provided a foundation to support the unified process of work that informed SB 10. Last year Governor Brown [indiscernible] and I as you remember issued a joint statement about working in continuing our efforts . on August 28 after vigorous debate in the assembly on the floor, in the Senate, we were joined by Senate president pro tem Adkins and Anthony Rendon as the governor signed this transformative bill. There were many from the branch who pulled the laboring [indiscernible] justice Rodriguez and [indiscernible] including Scott Gordon, a councilmember here, Shelley Curran and her team. There were some that did a little spearing of the laboring oar . that was the Administrative Director Martin Hoshino, part of the national workgroup . While I may have mentioned it and set a course, convened excuse me. The stakeholders, it was this group that came and convinced others that this is in the best interest of California and justice. I thank you all, I turn it over to Martin.

>> Thank you chief justice and members did before turning over to the panel to put context on the change itself in the framework, in the approach to it . the chief mentioned this has been 2-plus years marching towards this. And we tried to approach this that we already accepted the current system wasn't just a matter it had to change, it was already changing through practice already. In many communities in California and across the country. Changing as a result of

litigation and areas legislative proposals working through the system up to two years ago . we thought there was a placement that was certainly at hand. We had to make choices among that particular placement did the choices in shorthand were an earlier version of SB 10, the bill that was successful in completing its course through the legislature being signed by the governor. That version was not complete. It didn't at that time have identified funding source. And it was in essence, we felt hard and unworkable, and as you hear from the presenters a set of changes and amendments that were bolted to a bad foundation. In the second choice was to allow the litigation run its course. As the decision came down, to try and implement a change system, almost an ad hoc or described as piecemeal basis is different decisions came down from the court did to adjust and work our way through those . and ultimately the 2018 version that you are about to hear about in terms of SB 10. Clearly the version that comes to us with judicial benefit of what the presenters will describe to you of the pretrial detention workgroup did also with reasonable implementation dates . it comes to us with identified funding and also comes to us as a byproduct of a compromise among altering branches of government. So this version, SB 10 that you will hear about, merges and retains the valuable and workable principles and components of the earlier version . as well is following the blueprint of the pretrial detention workgroup, with the judicial officers and CEOs. We think at the end of the day it really does focus and balance the components of safety, fairness and cost. But I do want to take a moment also to amplify the change in the reform in a way that seems a little lost or at least a little less visible, in the current rhetoric coming from both sides of this particular issue did and that is this, in one significant respect, this version is really not bail reform per se. By eliminating money completely it is a justice reform that corrects social, economic and financial inequality in the state. This is particularly important here in California, particularly important now . California as we know as one of the highest poverty rates in the country. It has one of the whitest income equality that stash any quality gaps in the country. This is much more than bail reform . it's not really criminal justice reform, but a correction that is long overdue. Also I want to close with one word on coverage and reactions out there. There's a lot of concerns being expressed about what may happen with this change in the form of SB 10 . the bail industry claims to many dangerous people would be released, some reformers but not all suggest too many people will be detained. The truth is a bail bill cannot do both and actually does neither did what the new law does in fact is correct known inequity by treating people equally in a safe and fair manner. So instead of focusing so much as of late on what may happen with the change, I want to amplify something we know will happen, which is this: No matter how much money you have, rich or poor, if you're arrested in California for a crime in the state of California you will be treated the same. With that, thank you for the privilege, chief justice and members, for introducing the panel did they are here after all this long journey, for years actually, to present to you for the first time for council members in a public forum, the elements and path to getting to bail reform as it stands in California today.

>> Welcome.

>> Thank you and good morning. Thank you Chief Justice, Administrative Director Hoshino , for having us here today . we will give a historical perspective of how the workgroup came to the recommendation, then Judge Couzens, thankfully not retired Judge Couzens, is going to talk

about SB 10 and give an overview and how that dovetails with the recommendation that the work group made and then I will turn it over to Shelley Curran to talk about the role of the judicial Council and implementation, funding, and how things are going to be implemented as well as the timeframe. Particularly focusing on education as well. That is sort of what we will be talking about this morning . as I have mentioned, these are presenters. Let's talk about the workgroup itself. About a year ago I came before this council, with my cochair, [indiscernible] and Brian McCabe. And we told you about our findings. We have spent about a year really taking a deep dive at the request of the chief, and a tree that stash pretrial detention. We looked at the history of bail. The current state of bail. We looked at other states and how they were doing it. Pending litigation nationwide. This was a group as the chief set of 11 judges, and one CEO, a diverse group, we had quite a ride variety of background before we became judges did there were prosecutors, defense attorneys, law enforcement, civil litigators. We had judges that had decades of experience and some that had just a couple of years of experience. Large counties, small counties, medium counties. At the end of it after hearing from 40 speakers, doing all of this research, we came to a consensus. And a consensus not just by us but by all of the speakers we heard from, virtually everyone agrees, the system had to change . that it was not safe, it did not protect public safety and it was not fair. And so knowing that we sat down and thought about how could we recommend that we change it. And so, seeing the report there is 10 recommendations, 10 recommendations we believe need to be implemented as a whole did that each one builds on the last . I will highlight for them four of them. All encompassed in SB 10 . the first thing that we realized, is the current pretrial and release system, play someone's liberty solely on their available financial resources, rather than on the risk they pose to public safety. What that means is that someone doesn't have money, they could be charged with petty theft and they were not getting out of jail. But someone else who may have committed, alleged to have committed a violent crime, if they have the resources available, and a bail bond agent wanted to take their down payment, they could be released. No question about their public safety. Many times before they even made it to a judge, many times before the victim was heard, we had a system that was solely based on economics. And not based on public safety. Not a concern about whether they are coming back to court, it was how safe could they make that cash bail did the first recommendation, based on that understanding of the system, was that we needed to implement a robust, risk-based pretrial assessment and supervision system, to replace the current money bail system . we just found what we had was not working, and we needed to make it safer and fair.

>> The second thing that we came to was judges often are making decisions of arraignment on bail without a lot of information. When we want to make these decisions, we need information. We need information to decide who is more of a risk, we need information to fashion conditions in terms of pretrial release, and we need information so that we as judges could be making the decision that we were compelled to make every day in court. So we believe that one tool that we need, part of this decision-making process, is a validated pretrial risk assessment tool . that does not mean that that takes over the judge's discretion. This is not the final say so did it is information to help us make those decisions. And we wanted to be a validated tool. Something that we knew had some science behind it. And so that is the recommendation number four.

>> If the new system was going to be implemented, we felt very strongly that there had to be education. Not just for the judges but for staff. With the local justice system partners in the community. So that everybody could understand, collaborate and work together, on implementing a new system. And we felt that shouldn't just end after a system was implemented. There should be continuing education and we should be addressing both implicit and explicit bias in the system and the new system, and any assessment tool. And Shelley and Judge Couzens will talk about the biases as we are to seek in any development, to try to adjust those. We felt very strongly that we needed to develop a consistent and comprehensive education system. That would be funded, it would be ongoing, and it would involve collaboration between all of the partners. And finally, Mr. Hoshino touched on this . Reviewing everything we knew SB 10 was going on. We had looked at what was happening then, and we developed our recommendation apart from that. But we thought about how to present a new system. And if we are going to a new system, we needed to have something that had a solid foundation. That could be built upon to be sustainable, and workable. So we really felt strongly that the system could it be grafted onto the existing system. That we didn't want to make the mistake of some of the things we have seen in the past that caused a lot of inconsistencies, litigation, where different pieces of legislation don't work with what already exists. When there are those inconsistencies. Before going to develop a whole new system go without money bail, we recommended that we adopt a new framework of legislation, and new rules to implement these recommendations. So with that, I will turn it over to Judge Couzens that can talk about that new framework of legislation .

>> Chief Justice, members of the Council, it's my pleasure to give you first a peek at the new legislation we will be working with for some time. As Judge Rodriguez indicated, a lot of the work is premised on this bill but came from the PDR report that was prepared . we were all delighted to see the Legislature embrace the report and made a part of what they were considering. You will see many of those things reflected in the legislation. It clearly informed the creation of the legislation, and as [indiscernible] indicated, some of the original concepts of SB 10 when it first came out, were retained and looked at for over a period of two years and incorporated as well. I think at the end of it, we saw early on the use of risk assessment tools, a timeline for capacity decisions, as well as the concept of detention. These were part of the original corpus and throughout the entire legislation. And now I think we have a bill that radically maintains expression, and judges power to do what they need to do.

>> I am working on one of my infamous memos, it will go out sometime in October. And hopefully it will synthesize a little more specifically what's happening with legislation as we move forward creating the infrastructure necessary to implement at. Today I will give you a quick overview. Like 32,000 feet . it will give you a sense of how these provisions relate to each other. At Mach 7 . really to inform the process. They created a series of risk level based on seriousness of crime in a person's record did each level as we move through the levels, the bill gives greater scrutiny as it seriousness increases. And ultimately the decision to detain or not detain is based on an assessment of risk, not money. As indicated by Mr. Hoshino, so important. We have eliminated [] in this bill, it does eliminate the use of cash bail. So low-risk offenders are not going to be retained because they simply can't afford the bail did at the other in the high risk offenders will not get out of jail just because they can post bail did to continue to be a risk to

the public. The decision to detain or not detain will be based on an assessment tool. Investigation by the pretrial services agencies. And ultimately an evidentiary hearing if necessary. Due process is deserved. I think it's important to keep in mind this bill is primarily focused on the first 48 to 72 hours of a defendant's life. If in that period of arrest and arraignment, it can continue after that, but that is a very narrow period of time we are focusing on, to infuse due process rights so we can retain only the people we need to retain and release all of the others. It does take the money out of the equation. The first level are the misdemeanor cases, SB 10 makes policy decisions that most misdemeanor defendants will not be detained in custody. There are certain exceptions to that. 10 exceptions identified by the statute. Basically within 12 hours misdemeanors are to be processed and released. There will be no court review of that decision making process. But we will have the ability to retain people where there is demonstrated violence such as domestic violence to protect the public even though they are misdemeanors.

>> And the next level, where felonies come in, this provides for two levels of review. All felons will be assessed for risk and the risk is simply this. The likelihood they would commit a new crime if released and what is the likelihood of adherence later on. Looking at those two factors, everything is focused on those two factors. There is a risk assessment made in that assessment will include a validated risk assessment score, a tool will be part of it. There will be an investigation of criminal history, FDA's, review obviously of crimes, [indiscernible] victims if available. And consider any kind of information relevant to the release or detention decision. That decision needs to be made within 24 hours. The low-risk offenders will be released on their own recognizance. They can impose conditions if necessary, but this will be done without court review. It will be done administratively by pretrial release services. There is another option that is available. I am ahead of myself.

>> For the medium risk offenders, that is low risk in the first group, the medium risk offenders, they also will be subject to a review process and potential release. The mechanism of that is a little more complicated because seriousness has gone up. It will be required of every county to adopt a local rule. The rule based on that county's culture and the balance of the interest in that county will define those people that can be released through this administrative process. There is a certain base provided by the statute, or state rule. But the county has certain discretions to make adjustments, to detain more people. This is necessary we think to meet the local culture. The role is mandatory of how a structure will be at the discretion of the court with the guidance of Council and a rule we will write to advise them. There is an optional provision that allows a local court itself to make release the tension suspicions. You will see from the decisions. You will see there is a list of crimes not eligible for release by a pretrial service agency through the administrative process. But the court can provide review for those folks to make sure that they have an opportunity, again a local choice. It's an authorize subordinate judicial officer to make that decision. The release standards will all be the same, whether pretrial services agency, the court really standards will be the same. It does give a court if it wishes to read to create, to have review.

>> Everything comes together at the arraignment. All charges, including all felony charges are subject to review at this point. This includes the high risk defendants, violent felonies, people

pending trial on other matters, subject for review. Written into it is people at arraignment will be released, either OR are supervised OR. It is a rebuttable presumption. The exception, if at the arraignment they request a preventive detention hearing. That triggers the final and most rigorous review of a person status. This will be the hearing or process that decides if that person remains in custody and trial .

>> The statute specifies those circumstances under which the DA may request a preventive detention hearing. It can be any crime committed with violence, threat of violence, a deadly weapon or firearm, or threat to bodily injury. The person committing the crime on parole or probation but not in probation. It can be triggered by the fact they were pending trial or sentencing, in a felony case. It can be triggered by the fact they intimidated or dissuaded a witness did any substantial reason to believe the condition, no reasonable conditions can be created that will adequately protect the public and ensure the defendants adherence to trial. One of those five factors, the DA can request a detention hearing and we moved to the next level.

>> The preventing detention hearing is conducted by an officer, within five days. They have a right to counsel. And most importantly any findings are stated on the record.

>> There is a process, there will be a rebuttable that certain offenses will be subject to prevented the detention and certain people assessed as high risk with other findings made. A narrow group where a presumption exist. And an open hearing whether the circumstances of detention are justified. The hearing itself as you can see from the slide is semiformal, semi-informal. It involves statements of the defendant and the victim, and the defendant has a statutory right to testify. It can contain offers of proof, argument of counsel, and any reliable hearsay. Designed to be efficient and give both sides a full opportunity to present their viewpoint. So a balance between release and attention issues.

>> This is the all-important standard for detention. Small words. It goes this way, at the detention hearing the court may order preventive detention of the defendant pending trial or other hearing, only if the detention is permitted under the United States Constitution and under the California Constitution, and the court determines by clear and convincing evidence that no non-monitoring tradition or combination of conditions of pretrial supervision, will reasonably assure public safety or the appearance of the defendant in court as required. The court states reasons for ordering detention on the record. That is it, the ultimate standard . what is interesting about the standard is the reference to the California Constitution. As you know not too long ago a case In re Humphrey was decided by the first district that raised a lot of constitutional issues . along with that case and about the same time were two other Court of Appeals decisions that talked about certain aspects of our detention status and our Constitution . and the Supreme Court has granted review of those decisions. Obviously there are going to be, the decision will play an important role, in fact they asked for supplemental briefing on the affective SB 10 on those issues. So this is gonna be front and center in a very important decision we will see that will guide us. So that is the standard of detention.

>> One of the criticisms of use of these instruments, excuse me. Is the concern about bias. Particularly the use about assessment instruments. I want to suggest in my final comment that

particular issue. SB 10 addresses bias in about three different ways. First of all the judicial Council rules that will be developed are supposed to identify and mitigate any potential bias. As perceived in these instruments. Obviously there is going to be a very cautious and deliberate selection of assessment instruments that have been thoroughly vetted and tested, so that they are free of bias as best they can be. The definition of the validated risk assessment specifically includes the fact they shall minimize bias . and finally, the legislation includes in 2004 a review by the state board of community corrections, to examine specifically the issues of bias as they relate to race, ethnicity, gender and income level. To say for doing the job right to see if these are in fact appropriately balancing the interest and not creating a problem of bias did so we hope the structure of the bill itself will mitigate largely the concerns about bias.

>> And final comment I would say as a chief justice mentioned, this is a huge change for a process for criminal defendants. But if you look at it, it is not much of a change for what judges do. Even now we have to make release and detention decisions, every day in the arraignment courts and that will not change. It will happen again but the big change now, it will be informed as Judge Rodriguez indicated. Up to now we haven't had a lot of the tools we need to make an informed decision. We hope this process through SB 10 will create a good fund of information so we can make good informed decisions about who is to be released and who is not . and we will have a clear record of that so it will be exposed to public view and reviewed by appellate courts if we tend to stray. While it's more transparent, it is what we do. We look forward to it. I think it's a great new era and will be a challenge for all of us. The infrastructure will be daunting, but hoping the final analysis, the object does that it can be met through this legislation. I would like to have Shelley Curran now speak to what this body will be involved with. As we proceed to the next year.

>> Thank you and good morning chief and members of the Council. Judge Rodriguez spoke about the foundation and how we got here, and Judge Couzens went into details of the pretrial release and detention decision-making process. I will focus on the responsibility specifically included in SB 10, for the judicial Council and also some of the implementation efforts that we anticipate undertaking in the next year and 2-1/2 weeks . so the Council is required to adopt rules of court and we anticipate the rules of court will be necessary to do on an expedited manner, with rules before the council in the coming year probably set in March and hopefully set again in July or May. Many of those rules will inform the local level in addition to the fact they have to be ready to go by October 1, 2019 implementation date. Some of the efforts at the state level will inform some of the work. The topics of the rules of court include things like the proper use of risk assessment information, validation of the risk assessment tool, and as Judge Couzens mentioned identifying mitigating bias that might exist in the rules, and also standards for review on the standards of detention. They will make their way through the law advisory committee and come before the Council. The Council is also responsible for compiling and maintaining a list of pretrial risk assessment tools. The trial courts in consultation with pretrial assessment services will choose from that list of tools that the Council maintains. Additionally the chief is required to appoint a panel of subject matter experts, and judicial officers that will designate risk levels for particular tools. One of those panel members has to include a person with expertise on the potential of implicit bias in the risk assessment tools.

>> There will be a significant amount of training in the legislation procedure did the vast majority of that work will incorporate into some of the existing curriculum they have right now. They will offer live courses, videos and online courses, webinars that will be podcast, bench books and job aids. They will incorporate a lot of this effort around SB 10, into that effort. There will be regional meetings, the JCC is required to work with the chief probation officers on regional trainings. We anticipate there will be four trainings in the late winter or early spring, to bring together judicial officers, detention officers and local justice partners to discuss the new law and work through implementation challenges, to try to help foster County implementation plans in counties where they could use the additional support if they are requested, and also provide an opportunity to exchange best practices. Many courts and others justice partners and existing pretrial assessment programs right now. It's a matter of planning and providing a forum to exchange that information out there. In the Council is required to collect data and from existing services about the implementation of the tool. Some of the data elements are specifically outlined, others might be identified through a process that might be necessary to include and get a better sense of how it is that SB 10 is up and running once the law goes into effect. That is another responsibility. Additionally we are required to submit annual reports to the legislature once the law is up and running, another responsibility of the Council heard

>> Another responsibility is the whole allocation of funds. So the funds for pretrial assessment services to the trial court, the funding that will go to the courts for the work the courts do, funding that will go to the courts to contract with local pretrial assistant agencies, to do the work they do. And also funding that will be made available for supervision of individuals who are released pretrial. The funds will be allocated through the judicial Council process, after consultation with stakeholders including the chief probation officers of California and employee representatives specifically included in the legislation. As has been mentioned there are \$15 million in the existing current year for implementation cost. Some of the funds will be made available to the chief probation officers of California, other funds will be made available to the courts for what they do. The funding for the development of protocols and Rules of Court, technology infrastructure, because of the timelines that Judge Couzens mentioned there will be information moving quickly from pretrial assessment services, so they will be a requirement of technology infrastructure. And also training and administrative activities and other necessary activities to get the legislation up and running.

>> Generally we are available to systems development for local Rules of Court. Providing simple contracts for courts to enter into contracts with pretrial assistant services, conducting those risk assessments. We will provide regular updates to the trial court leadership as requested and of course to all of you. There is legal training and technical assistance for the process now, developing a webpage open to public in the next week or so that will include information related, information related to the implementation of the law, with FAQs and infographics to show the process of the release and the decision making decision. That's where we will also house the future reports to the legislature.

>> We are working very carefully and closely with other local justice system partners, as the legislation rolls out of those conversations will continue. We are also soliciting implementing

and working with legislation, and development of the Rules of Court and all of the other work we will be doing as the Council staff level. Having conversations with the chief probation officers of California, the state chair Association, the public defenders Association and District attorneys Association to be as smooth as we possibly can be, and the rollout of this. And many of the responsibilities rest with the trial courts it's imperative that we work closely with these other justice system partners who also have important responsibilities in order to ensure the information rolls out as smoothly as possible. And that is it for my update. Thank you

>> Any questions?

>> Yes.

>> Did I understand you to indicate pretrial services, gathering the information and possibly supervising folks who have some level of supervision, will be funded through the courts as opposed to County provision quick

>> Yes, the way the legislation is structured, there are three separate pots of money. One is money that will go directly from counsel to the trial court for the work related specifically for the trial court. Another pot of money will go to the trial court that the trial courts will use to contract with pretrial assessment services in counties, which will be probation departments. That money will go from the courts to probation. And the third pot of money will be made available to probation departments for supervision of individuals who are subject to supervision. Those dollars will go directly from the Department of finance to County probation departments.

>> Judge Bucky.

>> First of all, thank you everyone for getting this done. As a judge that has these arraignments several times a week, having a framework to deal with this is certainly fantastic. My question is, if you are a county that has for example a consent decree. Your jail is full. You have 1381 prisoners, people back on remand with remittitur's that you have classification issues between different gangs, medical housing, PC, whatever it may be. The sheriff has the ability to release people, triaging basically who stays and who's goes . where in this jumps into the middle of that. Was that something discussed regarding those counties that have full jails where this is going to have to be looked at in light of all of those other circumstances, when you're at capacity +200 people on electronic monitor for example.

>> We didn't separately talk about that issue. My reaction to it is the feds will trump us every time on those issues. Because of that the sheriff as to honor the federal consent decree. But to the extent this legislation will govern in all other situations. I don't have an answer to that.

>> I guess my question, Judge Couzens would be this, if you take the federal consent decree out of it, I don't want to get too far in this but if you had a jail that was full, and some other criteria with FTA four times in a year, [indiscernible] parolees or whatever abscond for two years the will the sheriff still have discretion to go above and beyond this, aside from the list of non-'s, but the yes yes is.

>> I am thinking so.

>> If I can add something we did talk about this, spent a lot of time . we recognize jails have this issue. Even in the report we referred to this . what we believe based on the information we accumulated, the research done, a lot more people are ultimately going to get out under this. So the people who are in are the people most serious the ones most concerned about for Public Safety and return to court . there might be a slight uptick because you have those first three days for the medium and high risk people. Ultimately we think it will balance out and jails we believe, in the models we have seen, we will have less people in jail and able to better manage the population, so we can keep in.

>> A very quick answer to one of the components, as Judge Couzens described , low, high and medium . at medium we talked about the development of local rules with the county partners. One of the reasons that was put in was for exactly that. Because the conditions in all of our counties are so different. Kind of allowing the buffer room.

>> And I had wanted to add to the answer consistent with the answers you have heard, maybe in a different way. The truth is right, the systems will have to level themselves out as you go forward. You will have the competing orders related to population capping standards. But then you have a change as you're going to implement, and effect on populations. For lack of a better term, that will thread through because you may find you are better off operating under that capping imposed . but in managing the capping, we know the sheriff has a scheme already by which they are doing it. Sometimes it may be very sophisticated and sometimes it may be as simple as, today everybody below 20,000, I have to get you out. Everybody above 20,000, you are staying. The next month it's 25,000. Or 15,000. It's always the money associated with the charge as proxy for risk, which is not a good proxy. The effect at the end of the day is however it is read, the system will be better off and smarter, for population management perspective. We will see what the models shakeout but the truth is as we go through the proof will be there. The answer to the question which is a great question, talking about a that the state level and the associations described, how will these two things work in parallel . it will certainly exist and more importantly the interplay and how it works out as we go forward. Something for us to manage over the years.

>> Thank you.

>> It might be premature but identifying and mitigating the bias in the tool. There is a fair amount of discussion around it, about how you identify that, whether it exist or it might be premature. Are there any thoughts on how we might be guided and the person responsible how they will do that.

>> One of the requirements in the law is the chief will convene a panel of experts. One of the panels has to specifically have expertise on that very issue. And so, thankfully there has been some literature to date on that. I think you are right, as the conversation has grown nationally, so has studies. We will be looking carefully at that issue. That is something when we had some of the experts come and speak to PDR, they specifically address that issue. Looking at how bias might play a role in these rules is

>> The cochair of the PDR group, welcome.

>> Good morning. Counsel. I'd like to start off by saying looking good. I apologize for being late. I missed the beginning of Judge Rodriguez is presentation. I apologize [indiscernible] the reason I was late, another grandchild. [applause]

>> I don't know if we can convey how satisfying it was to work on this. What is being done here is socially, morally, there I say economically and legally, the right thing to do. We were not all of the same mind when we came together on this. We were very disparate in our positions. But we came to the same mind as we heard from 40, 50, 60 people. We became educated. What is important, not everybody obviously is in favor of what is going on. There are some criticisms of some of the components. Details on things. But I think what is important to realize is permeating everything is Public Safety. The impetus nationwide for this is probably the we should not be detaining people who are not a risk of offending, reoffending, not showing up to court, simply because they cannot post bail. That is a pretty good impetus . the public safety aspect of that is not recognized all the time. The serious crimes, why do we set bail, to keep this person away from doing harm to the public. That person should simply be detained, when they fall under the risk assessment. The people that simply can't afford bail, we know what happens, they lose their jobs, their families. That is a public safety issue. If you lose your job, maybe your name is Jean-Paul Bell John, you have to eat. You don't have the ability to make money simply because you couldn't post bail and keep that job. You may have to resort to crime. Things you wouldn't normally resort to. You'd have to be in a situation where the health system is impacted . you have been incarcerated for a period of time that you shouldn't have been. Public Safety permeates everything. Also socially it's the right thing to do, morally it's the right thing, and economically, just a little example I gave.

>> Legally it's the right thing. I am still a judge. I know some of the concerns, too much power being given to the judges to make decisions. This is what we do. We should look at ourselves in the mirror every day, and say I am a judge and I have an incredible amount of power. I have to remember not to abuse it. This is what we do. This is where it should be vested, with the judges making the decisions.

>> These guys are amazing. The people on the workgroup were amazing. Lisa can confirm, and my brother can confirm, everybody when we got to the end of this, felt this was something in our careers that would stand at the top of something we've done. Something so good for the people of the state of California. Thanks.

>> Thank you. I want to say also, what sometimes is forgotten is when we named the group we had no idea what the outcome would be. It was studied and make recommendations, no preconceived notion about how we should get there or what the results should be. And the purpose of a disparate group was on purpose. We needed people to really bring critical eyes to it. So I think I for one, we were surprised to see the unanimous recommendation. The stakeholders that laws [] large were surprised. And many of you know this legislature has taken a run at bail many times before. Only in my view until this report came out, it was inclusive and conclusion that we actually saw change afoot. In that regard it's also important I think to notice notwithstanding, substantial merit of what we were discussion in SB 10. Three branches of government working together. Three branches of government sharing our concerns and actually

being able to have input into a law other than afterward when we have a number of Court of Appeal decisions about what the law means. So this has been an incredible process for government and for our branch to be able to do the research that provided the foundation. And so I have a great deal of thanks to all of you, as you know. And of course as you said the road ahead is long and winding. We have many responsibilities and requirements now. Not only for trial courts and stakeholders, the justice system partners, but also now for the judicial Council. If you thought what are we going to be doing the next three years, now you know. The beauty of it is as we are at the inception to gather. With our experts. And the question is, how do we go forward now. And based on the time trusted model of efficiency, we have so much else going on in the branch. Every advisory committee has a full agenda, approved by E&P, fulfilling many needs. That will appoint independent limitation workgroups. [indiscernible] recommendation from the task force forming a group that will be a clearinghouse that will be a place where all issues, all stakeholders, all ideas come and are heard through this implementation workgroup, that would report back to the judicial Council about the progress being made and the effort needed, and the action we need to take. Giving us I hope a full feedback of what we are hearing, what are the concerns, how can we make this law better, how can we ensure as Judge Couzens and [indiscernible] have indicated that we are on the watch for the concern about bias. We will be announcing that workgroup later. And I also wanted to say before we started our second agenda item, this is discussion only. I think all of you for the comprehensive overview. There is an award by the Chief Justice and they've only given out for other times, the award for exemplary service and leadership. We have talked about in the past having to use it, it's been quite a long time. I believe based on what Judge Brian Back has said, the work that was done is groundbreaking and changes things for so many people, futures, that my honor to award this exemplary service award to the Pretrial Detention Workgroup. I would like to name all of you because you've done a lot of work. And for only 11 people honestly with the wonderful support of Shelley and her team. I want to indicate these are the recipients . Judge Brian Back, Judge Mark bo'sun at, Mr. Alex Calvo, Judge Arturo Castro, Judge Hillary Chittick, Judge Richard Couzens, retired, Judge George Ebsen, Judge Scott Gordon, Presiding Judge Terry Jackson, Judge Brian McCabe, Judge Serena Marino, Judge Risa Jones. Shown, and Judge Lisa Rodriguez. The diversity of those counties speak for themselves, thank you again and we look forward to working and continuing to learn from your guidance and from your memos. Thank you very much. [applause]

>> At this time we will take a recess for approximately 10 minutes, to set up for the next action item at 11:10 AM.

>>[Captioners transitioning]

>> [Captioner standing by]

>> I INVITE EVERYONE TO PLEASE TAKE YOUR SEATS SO WE CAN HAVE OUR TWO OTHER ACTION ITEMS. As important as the substance, the process.

>> Our second item is the trial court budget fiscal year 18-19, allocation from the trial court trust fund to the court interpreter program. We welcome Judge Jonathan Conklin, the chair and Mr. Zlatko Theodorovic.

>> We are to present the report from the trial court budget and advisory committee concerning the allocation to the interpreter program that the Chief Justice guest. This is essentially a bridge, we hope, to sufficient funds that will be obtained pursuant to a budget change proposal to get the funds necessary for the interpreter program to provide those services that we all are aware that they are obligated and intend to provide. What we addressed was the help, frankly, of the outside entities is how do we get there? How do we make sure that there are sufficient funds provided in the short term to get us to that long-term funding. And the hope is that this counsel will approve the recommendation to add the additional funds from the trial court trust fund in the meantime so that we can continue to provide those services. If not, the bucket is only so big. What we are confronted with is, with those funds, we cannot spend funds that we do not have, and so for the interpreter services, the only way to accomplish that is you look at the hierarchy of services that are obligated to be provided and departed me for stating it this way because it will be misinterpreted but the lower hierarchy, while they are equally important, they are lower on the hierarchy and those are the services that would fail first. Those services would be related to civil interpreters. We are hoping not to do that.

>> Just remember from a financial standpoint, we do have and we are in a unique position where the trust fund has a small but present fund balance. In the short term, this is something that the financial situation of the trial court trust fund can manage.

>> Thank you. The recommendations are found in your binder. There are two for your review and approval and if there are no questions or comments, I am prepared to entertain a motion.

>> Your honor, I will move the matter.

>> I will second.

>> Thank you Mr. Pat Kelly and seconded by Judge Stacy Boulware Eurie. All in favor of moving the recommendations.

>> [Vote Being Called]

>> Thank you. The recommendation has passed. The next item on our discussion agenda, final item, an action item, trial court budget allocation of \$75 million in discretionary funds. We welcome Judge Jonathan Conklin and Lucy Fogarty from the Judicial Council budget services.

>> I have two individuals for public comment.

>> Thank you. Yes. Please.

>> If I could have Carolyn Dasher, President, California court reporters Association. Welcome. Thank you for being here. We look forward to your comment. You have three minutes. Lights on the podium will turn yellow when you have one minute. Thank you. Welcome.

>> Thank you. Good morning chief Justices, council members, Mr. Hoshino. I'm Carolyn Desha, official court reporter with the Los Angeles Superior Court of the president of the California court reporters Association and I'm also on the executive board of the local 721. I'm here today to urge the council to act by the legislature language that \$10 million of the \$75 million Governor's budget be allocated towards hiring court reporters and family law cases and as a result of budget cuts and shifting priorities too many family law court in California no longer provide court reporters. Having a transcript ensures fair and equal access to justice and our system is two-tiered, one that can afford private attorneys and court reporters and that -- those that cannot. Without the transcript, families dealing with violence, child custody -- they are able to appeal decisions, two, unable to draft orders effectively, and three, unable to accurately recount what actually happened during the proceedings. The commission on judicial performance has stated that a lack of court reporters seriously undermines its effort to investigate and prove judicial misconduct and a transcript also provides a judge a record of the preceding and allows the judge to ascend themselves against allegations that may not be accurate. Some have stated that there is a court reporter shortage. There is no shortage of court reporters. Nine shortage information shows that there are plenty of reporters available and applying for the few advertise jobs. Los Angeles appear court hired over 30 court reporters since April and there currently 90 applicants waiting to be interviewed for the position of an official court reporter. Two advertised positions with nine reporters applying and then a five past the real-time test and even in Napa, they recruited for halftime official and they had 10 people applied so to ensure the litigants and all family law proceedings have access to our justice system and are provided due process it is critically important cases, we ask that you act on the legislature budget intensive language, \$10 million of the \$75 million in the governor's budget, be allocated towards only hiring court reporters in family law cases.

>> Thank you. Next we will hear from Sandy Wallin, Director, California court reporters Association, district B. Welcome and thank you for being here.

>> Thank you. Good morning. Chief Justice, council members, and Mr. Hoshino. I am Sandy Baldwin, the official reporter from the Contra Costa severe court and the upcoming president elect for the California court reporters Association and the president of SEI you, local 1021 and Contra Costa County. I would like to urge you to allocate the \$10 million to the local courts to increase access to reporters and family law matters. The California state legislature clearly stated its desire to see this funding go to the courts for this specific purpose. The budget proposal currently before you does not go far enough. I urge you to allocate \$10 million to the local courts without family law staffing, with the clear directive to the local courts that the money be spent to increase family law court reporters in those cases. There should be no gray area or possibilities for local courts to redirect these funds. In recent years, we have witnessed local court cutting back its workforce despite a very real need, and left to their devices, there is too much risk that this money will be spent on something other than family law reporters. Nobody wins if local courts go rogue. I know that family litigants have come before this council, pleading with you, to invest in family law court reporters. These individuals are the very people you have promised access to justice. There was reference to a shortage of the state of California currently has over 6400 licensed certified shorthand reporters. As reported by the California court reporters for.

There is a viable pipeline of reporters, as long as we and this council make a firm and public commitment to the court reporting profession and the professionals. Start today by sending a clear message that you want the local courts to use money for this specific purpose. You have the opportunity to send a clear and unmistakable directive to local courts to spend the money as the legislature and governor have endorsed. Please do not miss this opportunity. Thank you.

>> Thank you. That includes public comment, chief.

>> Thank you. Good morning, once again. Thank you again for allowing me to come back before you. I would like to start off by turning this over to Mrs. Fogarty to talk to you about the mechanics of the allocation and the allocation funds, and then I will come back with more specifics.

>> Good morning, Chief Justice, members of the Council. The recommendation before you today in the Trial Court Budget Advisory Committee is a proposed methodology to allocate \$75 million to the trial court. As a reminder, the Council already approved allocation of nearly \$2 billion to the trial courts in July of this year, 96% of base allocation. That allocation did not include the \$75 million before you today as it was pending review by the budget committee to come back for a recommendation in September. Mr. Conklin is going to go through the specifics of how we propose to allocate the \$75 million.

>> Thank you very much. Even with good news comes important decisions, and I think that the good news, if not even better than that that we cannot overlook is the funding that we received thanks to the efforts of the branch. That gets us to where we are today about this additional \$75 million. When I say that is all that is, I do not mean to say that it is insufficient but I mean to say that the \$2.6 billion has already been allocated. As we look at that \$75 million, there are three specific recommendations that are asking that the Council approved today, so we are going to look at the \$75 million in three pieces. The first allocation is recommendation up, one, set out on page 3 and -- sorry. That's pursuant to what we have already approved regarding the funding allocation methodology. That is that the first priority is all cluster one courts. Coming up to 100% of need funding. That is what the first allocation of the \$75 million will deal. Once they are at that level, then they step away from the remainder of the allocation because, while everybody needs more money, they have now come up to the \$75 million -- come up to the 100% of funding. So that is the first piece of the pie we carve out. Now we look to the remaining courts. Not those a small cluster one courts. The next pieces -- this is a small piece to comply with the language regarding court provided non-share security for courts that have agreements related to that, and that is recommendation number two. Again, that is a pretty straightforward recommendation, I believe, to comply with that requirement, regarding that security element and, of the \$75 million, that is \$.8 million, a relatively small fund. Then we come to the remainder of the \$75 million That breaks out arithmetically to a little bit over 70 million. The trial court budget advisory recommendation is that this court allocate that \$70 million in compliance with the legislative intent as stated directly in the report and that is right at the beginning of the report. The trial courts recognize and intend to comply with the legislative intent, the \$10 of the \$75 million, essentially now 70, utilize to increase the level of court reporters in family law cases. That was never a point of dissension, so to speak, with the -- trial court budget advisory

committee. The committee was unanimous in its decision and throughout that we need to comply with that legislative intent. We need to recognize the importance of reporters in family law cases and find that adequately. That is what this accomplishes. With that language in the executive summary at the beginning of the report, we wanted to emphasize how important it is to comply with that intent. The recommendation from the trial court budget advisory committees that you send the dollars out that way, without any more specific, specificity as to how the dollars are allocated between the 70 and that 10. With again the clear reminder to courts that they will be expected and it was even brought forth by one of the members advisory committee, that let's advise staff and it is in report, to conduct a survey pre-and post of the allocations of these funds. A survey to the courts pre-receiving the funds, concerning the services that they provide and post. So the trial court budget advisory committee did and continues to recognize the importance of being able to display that we used the money as intended. That survey, from staff, will hopefully accomplish that. The days of -- let me phrase it another way. We continue to recognize that transparency is critically poor to maintain credibility with the legislative branch of the funding that they provide with us and that is our goal and setting forth this condition. More specificity be provided? Perhaps. That they be a topic of discussion. The perception of the committee was that using this language and then providing to all of the courts that funding, so that they can comply with that intent, accomplishes that. With that, we are asking you to adopted recommendation, one, recommendation two, and recommendation three, set forth in the report. Again, I think that I have set forth with the position and I will open it up to questions. Thank you. Judge Rubin.

>> Thank you, cheap, and first of all, thank you to Judge Conklin and his committee and staff. And Mrs. Fogarty for all of the hard work that you have done on this and the very thoughtful -- coming up with three different recommendations. I wanted to ask a couple of questions and give context for the questions coming at it from the addition of -- from being a member of the branch budget committee and some concerns I had and maybe to kind of flesh this out a little bit more. The budget committee is concerned about, through the out years as well, not just the current year, but the out years as well, and already working on 2021 in some respects. Obviously, when I look at our current budget, I see 2.6 or \$2.8 billion in trial court operational money, 158 million dollars in new money reflects or suggest a very positive working relationship with the legislature and something we would like to continue to do. My questions are out of that context, in that context, looking down the road a little bit. My first question is this. We have some very explicit language in the budget act, regarding the \$10 million going towards family law of court reporters. I noticed that we only have one option under recommendation three. I was wondering if you could share with us, was there a conversation in the committee about these \$10 million suggested in the intent language in the budget and what that sounded like and what that conversation might have been?

>> It was vibrant.

>> No doubt.

>> It was an active discussion, yes. So the discussion ranged from the actual language, finally included in the recommendation versus the options pick so as the committee moves forward, we

felt our role was to provide to this counsel and recommendation rather than, here are three options and you figure it out. Our thought was let's investigate the options as best we can and provide to the Council a recommendation of the options. We did consent or -- consider the fencing off as compared to the 70 million. We felt that by including the legislative language, part of it falls back to our goal of being a policy driven versus numbers driven. The closer that we get to being numbers driven, the more problematic it gets as far as individual courts looking at what they're getting, versus the policy of being able to provide appropriate court reporter services and say to the courts, here is your money. Be responsible. I know that a perception is that the courts will not listen. That is not the flavor of the discussion in TCBAC but that is why we looked at options and we felt that the best recommendation for this council was -- and we actually cut and pasted it right out of the budget bill and put in the report.

>> I appreciate that. I think that from my perspective, from this body's perspective, it is helpful to see what the other options are so that we can also have that conversation, in case there may be a difference of opinion or we want to explore it more. I was wondering, what was the discussion around fencing off the \$10 million and specifically saying that it would be 60.4 towards one allocation and then \$10 million for the family law court reporters?

>> There were numerous interests. One of them was is that we all recognize that even \$10 million is not enough money, given the current cases that are pending. We might actually have to expand well beyond family law into other areas that provide court reporters. Some discussion among the members that you do not -- if the courts need to provide more funding than this, this might provide the perception that this is all that they are going to provide. Again, giving the courts the flexibility to provide more if necessary. That was part of the discussion the other one was, discussions of what services the courts are already providing. What are those courts providing those services already? This allows them to receive those funds to enhance and further the services that they are providing, even if they have thought and moved and are still providing those services already. This gives them that flexibility.

>> Was part of the conversation around, would the language as proposed to satisfy the legislature? Was there a conversation about that or some explanation -- exploration of that?

>> Yes. What happened mechanically in the discussion was a significant amount of the discussion related back to the pro rata proportional discussion so that is how we looked at allocating the \$75 million. That was a unanimous decision, proportional, that set forth in attachment 80 of the materials. Attachment a is option one, two, three, breaks up the numbers. It did not break it down to 75-10, but it did talk about that. I guess I was not -- I asked the question sideways, I think. I guess my question was, I appreciate the intent language being embedded in there. I guess my question was, did somebody reach out to the legislature or anybody to say, will this be sufficient? Because the report is actually fairly open talking about the intent is to do this. But it is not about this will happen or it shall happen exactly like this. So my question was whether or not this language has -- as constructed, was going to satisfy the legislature in terms of what their expectations were.

>> I would say that the discussion was focused around, we will be complying with this but we want to make it clear that we intend to comply with this. Much of the discussion was on the natural way to comply with this Jamison decision so we will be providing more reporters. I do not think that there is any intent to not comply.

>> Thank you.

>> Justice Hull.

>> I do not want to step on your toes.

>> I was monopolizing anyway. Go ahead.

>> I just have one or two questions. Thank you as usual. Thank you for your committee's hard work on an important issue. That portion of the recommendation that you have referred to is I think part three of the recommendation. Notwithstanding the intent language that you proposed, it still remains a fact that a given court's share of that \$10 million would -- how it is spent would remain technically discretionary with the local court.

>> Technically, yes. As all of these dollars are. That is correct.

>> The second thing that occurs to me is the committee's statement and made in all good faith that the \$10 million will be spent on court reporters and family law cases. Well, if you are confident that it will be, what is the objection to, as the phrase has now become, fencing it off? Isn't it a blush at that point?

>> It is absolutely a watch. You are right. The court whether you fence it off or not, the court's dollars will be the same. So the discussion to fencing it off came again back to just being able to put that language in the report that the court's are fully intend to comply and they will be fact checked to make sure that they comply versus getting so specific with numbers that telling of them down to the dollar what they have to spend on court reporters -- I believe that it is accurate to say that every -- if we break that out from the discussion, every dollar that the trial court receives is discretionary. That does not mean that they can -- when they spend those discretionary dollars can abuse that discretion to put it in a judicial term. They will always be looked at to make sure that they responsibly spend the money and the perception is that this is the same check to make sure that you do not abuse your discretion with a \$10 million for court reporters. Could we fence it off? That is a decision that the council may decide to adopt.

>> If we find that an individual court has abused its discretion by not spending the money on court reporters, where are we then? No I think that we are no different than where we are if we say to them, here it is. If we do fence it off. If we do fence it off and they do not to spend it, they're going to have to do explain that. They are going to ask -- have to explain it either way. The numbers are not -- I know that this cuts against my argument. The numbers are not a secret but they have never intended to be as to what the proportion is. We can figure it out pretty straightforward.

>> I guess my concern is, not that they will not bend in, an individual court will not spend it, that they will spend it for something else.

>> They could. As they could and be discretionary dollar. If they are not -- these dollars are fully intended to provide for family law court reporters, and if they are unable to establish, at the end of the day, that they have complied with that mandate to have an adequate level of family law court reporters, there fenced off or not, I think that is going to create a problem for that trial court because even if we fence it off, I'm not sure what authority -- this is where I speaking without knowledge which is dangerous to do -- that this council then has to punish that court beyond going back to that court. I think to answer your question perhaps indirectly, the greater concern and discussion in the room was to make sure that we can establish to the legislature that we have complied with the intent.

>> I have two questions. First of all, I know the debate must have been fierce, so I appreciate the committee's hard work. You have said that it is \$70 million that is going to be distributed by WAFM except for the cluster courts with the intent language around the 10 million so is the idea that each individual court will spend 1/7 of their money on family law interpreters? Or is it that overall, when we get all of the number backs, sums will spend more and some will spend less and ultimately it will be tunneling dollars out of the \$70 million?

>> Yes to both, in the sense that they will receive it, and then if they need to spend more, if they need to spend less, then they would be in the position of already having provided that full staffing level of family law court reporters. But that, I think, would be at the end of the day exactly what the legislature is after, is to make sure that the courts do fully staff it. So at the end of the day, and I think I am answering your question, whether you break it up 1/7 and six sevenths, you have to show that you spent your portion of that allocation to ensure that you have an adequate level of court reporters in family law.

>> If they are not spending 17, then they show that they are fully staffed on court reporting for family law. Is that what you're saying?

>> Yes, to a degree. They can always enhance and improve the services. That would be more discretionary discussion. If they are fully funded in that area, they need to be able to show that the reason that it may have gone more to enhance and improve versus to open up is because they have already provided. But at the end of the day, and I think your question puts it in perspective, at the end of the day, they had better be up to show that they have that level of services of court reporter services in family law.

>> Thank you.

>> Judge Brodie and then Justice Miller.

>> So thank you but -- and then Judge Half. Thank you.

>> Two questions, again from the perspective of the budget committee, echoing some of Judge Rubin's concerns. I agree that it is good, generally speaking to move, to a policy question rather than a numbers question. It seems to me when I read the provisional language in the budget act

that this is a numbers question. And that, it is a specific line item that says, courts are to spend this money on that. So it seems to be the policy question has somewhat been -- the legislature has occupied the field in terms of that policy question by saying, this is what we intend is money to be spent on. Tying in with that, I appreciate that there is the temperature in the room and that is we will comply with this but we fully intend to spend in an aggregate \$10 million on court reporters in family law and to use your terms, there is this sort of discretionary called that the individual courts are going to have to make. My concern is that in this particular instance, when the budget committee is looking at budget change proposals and making budgetary decisions as a council going forward, the sort of court of last resort is the legislature. It is they who will be reviewing these sort of discretionary choices, so it concerns me somewhat to have language in there that says, it is the intent of the courts to comply with this rather than saying, we are going to comply with this. Now, the way that individual courts do it and the way that that plays out is perhaps a different discussion for down the road. We can talk about how we ensure that that is happening and how we are able to report back to the legislature. It seems to me that the intent is pretty clear that it is not, do your best. It is, we wanted -- we expect this to happen. So that is tying in with this fencing off or not question. To me, it feels like this has already been fenced off by the legislature. But that is my take, at least, from my perspective.

>> I understand that perception. We have come down to splitting hairs at a point. There is discretionary versus nondiscretionary funds and these are as we interpreted discretionary funds. The allocation is a discretionary allocation and that with the language at the end, that answers how you prefaced your question, with saying that the legislature spoke. They described them as discretionary funds. They said the intent of the legislature -- I know that sounds like I am splitting hairs but that is actually what they did. At the end of the day, you are absolutely correct and the question of the concerns that I have received is how are we going to be able to best show to the legislature that we satisfied that intent? The considered opinion was that the recognition does that. The council feels they need to get more specific, I think that we would all agree at the end of the day, the last thing we want to do is lose the goodwill that we have accomplished with the legislature. That is what we want to continue to enhance to get the funding that we need. The council feels the additional step is necessary, this is an advisory committee to this counsel.

>> Justice Miller. Judge Hawk, Judge Gordon.

>> All right. I would like to move forward a little and make a motion as to recommendation one and two because I think that those are probably acceptable to all of us. I would like to make a separate motion with regards to recommendation number three. So my first motion is to approve a recommendation one, which would allocate \$3.6 million for cluster one courts to find them at 100% of the funding need and to approve recommendation two which would allocate \$.8 million for court provided non-shared security.

>> I will second that motion. Spent weight. One motion at a time.

>> I do not want to do recommendation three now.

>> Direct -- the recommendation is for one and two.

>> Insert the words up to two in case cost -- flexibility to shift the money into category three.

>> That is fine.

>> So for both recommendations, allocate up to 3.6 and allocate up to 0.8 the amendment is accepted.

>> Yes. As indicated on one and two, as you know all motions do not seize conversation or discussion, but not seeing any hands raised, as to recommendations one and two as amended, [Vote Being Called]

>> Items one and two as amended are accepted.

>> I just want to clarify and I do not need to be dish but I was speaking as a Judicial Council member versus chairman.

>> For the record, thank you.

>> Next is recommendation number three and it is a little long but with respect to recommendation three, I move, my motion is to approve the allocated -- the allocation of the \$70.6 million on a proportional basis as recommended in the council report, but separately honor the legislative intent and allocate \$10 million of the \$70.6 million to increase the level of court reporters in family law cases. The courts under this motion would receive the same total allocation as identified in attachment A, option 2, tenderly dollars of the \$70.6 million would be for court reporters, consistent with the 2018 budgeted and it would include the language that Judge Conklin talked about with regards to the survey before and the survey after. That would be a part of it. And I do know that you talked about the money being discretionary, and I agree that the money with regards to the 60.6 is discretionary. But I would like to also included my motion that there be a report back similar to this survey as to, in essence, specifically, how that money was spent and what the outcomes were in particular areas, like we have been arguing for years, ensuring court services and staff are available to assist the public, restoring and expanding line services, reopening and expanding courtrooms, reducing delays and backlogs, providing more services in the area of self-help and other aspects, so that we have that information. Kelly, I second that.

>> Thank you. So moved by Justice Miller, seconded by Pat Kelly. Yes. We still have further discussion as well pick just as indicated, Justice Hull.

>> Thank you, cheaper actually Justice Miller in the end result, Justice Miller's motion included what I had intended to add as a friendly amendment and I do not think that it is necessary to do that. I think that the motion is clear enough but whether by way of the motion or the friendly amendment, I would suggest and I'm speaking personally that the report back a portion of this, in my view, is not intended, in any way, to direct the manner in which the local courts use their share of if the motion passes, \$60 million, which should be left to the local court decision making, but only to allow us come the Judicial Council, to be able to report how the courts have been able to use the money to alleviate the very severe financial and thus operating restrictions

the courts have been faced with over recent years and with those remarks, I would support Justice Miller's motion.

>> We also have Judge Hawk. Looks like Judge Rubin had something and I defer to him. Or not.

>> Could I ask, is it council member or just in the interim can I ask that Dishman Justice Miller's motion applies to the entire -- when you talk about those factors in the court, that is not just 10 but all of it.

>> That is the 60.

>> The 60.

>> Yes. The time goes for court reporters and the 60 goes -- and again, we are not directing them how to spend. It is up to the local culture and the discretion but it is items that we need to know to be able to talk to the legislature but

>> Can I ask a clarifying question? As I mentioned earlier, there was a previous allocation by the council in July and also additional new funding and that with \$90.1 and \$47.8 million for the trial courts but is not going to be included in that motion, just a clarifying question.

>> No. This just deals with the 60. Go ahead Judge Rubin.

>> I think that is a great question. I want to suggest to the Council and to our colleagues that are listening that have helped so much in this budget year and the past budget years. So we had \$2.6 or \$2.8 billion in trial court operations money, \$150 million is outlined in new funding. As we go forward to engage our sister branches who have been so supportive and cooperative, we are going to -- from the budget committee perspective, I think that we are going to need to demonstrate what we have done with the money that we can actually document what we have done with this money. So we have each of our counties that has a budget snapshot and things we would do with the money. We can show that we have actually satisfied some of those things as we go forward. I think we put ourselves, chief Martin, in a very difficult position we have already started advocating for next year and the year beyond pick we cannot really demonstrate what we have done. I think that the documentation on this piece is important, but I think that what Ms. Fogarty's question -- it has embedded in it, also very important that we document all of the money that we are getting. What we are doing with it to restore services and to make the courts full and accessible again. That was my comment.

>> Do I understand that you no longer wish to be heard?

>> I do. Thank you. Judge Conklin, it is my understanding from reviewing the proposed allocation of that \$60 or \$70 million, depending on how you want to count it, that we are not doing anything to reduce disparity between lesser funded courts or courts that are funded at a lesser percentage of need and those that are funded at a greater percentage of need because we will address that or the legislature and governor did by giving us that roughly \$47 million pick that makes sense. I certainly everybody ought to get a piece of that. What I'm concerned about is, as we look at the next budget year and the one after that, we are locking in, at least for that

\$75 million or \$70 million or \$60 million or whatever, sort of a disparity and we are not ever going to reduce that. Do you have any thoughts about that? But I think that the funding methodology has addressed that disparity every year based upon workload. The Legislature thankfully took one of those tasks away from us and said that you got the courts pursuant to what we used to call that are underfunded and here is the \$47.8 million to bring that to within the funding range. But every year, the Funding Methodology Subcommittee will report back to TCBAC that reports back to council -- to reduce the disparity. I am summarizing what you already approved. In good years, everybody benefits but I think that the allocation methodology talks about. The tough years are the years where there are cuts and that is where we have to step back and re-examine disparity. But in good years, we are moving away from that model where we took from the courts that we are above and gave to below. We are giving hopefully to accomplish the access to justice goal that we all have. In those bad years, disparity is still addressed.

>> Thank you. Next is Judge Gordon and then Pat Kelly and then the slim.

>> These are phenomenally thoughtful approaches on complex questions. It question about Justice Miller's amended. I understand the fencing off and the importance of family law court reporters coming out of family law is phenomenally important for those that made the decisions to sacrifice other places to keep them -- with a share in this?

>> Yes. That is part of the motion.

>> Thank you so much.

>> When you know, when this is all said and done, I'm going to attempt to summarize, most importantly an email to be said of the final act that you acted upon and if anything is not what you understood this to be, we can reconsider. So thank you. Mr. Kelly.

>> Actually, Justice Miller's motion cover the area I was concerned about, and that is why I seconded it but I think also Judge Rubin amplification of important criteria is extremely important. I look at these things like a trial lawyer, and I look at defending the commission in front of the Legislature or the council. Therefore, I look at, how are we going to justify specifically that \$10 million was used as quote unquote suggested? I think that Justice Miller's motion accomplishes that.

>> Thank you, Mr. Kelly. Justice Hull and then Judge Anderson and then Judge So. I am sorry my notes show Mrs. Lennar and then Justice Hull. Judge Anderson. Mrs. Nelson. And then Mr. so. Was your hand up? No I just want to clarify on the \$10 million piece, is that what we are locking in? Is that ongoing? Is that a one time? I know that we had discussion that TCBAC with regard to the \$75 million and it being allocated on a proportionate share this year. Is that intended to go forward? Is that what you are recommending? And separately from that, we report now on our GL and we are audited to how much we spent, so it is already visible how much we spend in court reporters and family law. What was used to come up with the proportionate amount of the \$10 million per court? Was that based on a survey? Were all courts surveyed?

Where does that number or numbers come from? I know it is not in the materials but the breakdown.

>> \$10 million that will be allocated to all of the courts for a court reporter -- it is based on need I am in.

>> What I heard from Justice Miller is that the allocations will not change for each court. We will separately carve out the 14% that each allocation for court reporters. Every court will get the same allocation as is in the materials.

>> That was my much. I truly appreciate the clarification because that was part of our discussion. At the end of the day, to the penny, the allocation will not be different. If this counsel feels and I understand that rationale. It makes sense. Fencing it off is necessary to further establish our credibility as a legislature. Fence it off. I wrote that it will not change.

>> I move that we approve allocating the remaining \$70.6 million on a proportional basis as recommended in the report but separately fence off and allocate the \$10 million.

>> That would be set forth in Attachment A so that is right there as Justice Miller noted.

>> Right.

>> I clearly want a second. Spread thank you. I think that also Pat Kelly has seconded as well. I understand.

>> Correct.

>> So now I think that the next in order as Justice Hull and then Judge Anderson. Spread thank you once again, chief. I wanted to make an observation and state my position on the motion. It is my understanding that there has been some talk by members of the branch, not among us, none of us, that somehow adopting the intent language of the Legislature is used to somehow impose on branch discretion but I, as you know, have always been committed. We always have been committed to protecting the authority of the Judicial Council as the constitutionally established a policymaking body for the courts and we have all been committed to the independence of the branch as a separate but equal branch of government, alongside the legislative and executive branches of government. In this matter, I should not say but -- in this matter, I can see no good reason not to respect the intent language that came with the \$75 million and many good reasons for us indeed recognize and respect the state of intent which helps to meet an important need in our courts. That is the need for court reporters and family law courts. This is especially so in my view, given the point that just came out pursuant to the question that at the end of the day, the money that the courts get is going to be the same. In fact, the court is either going to get 10 dollars or it is going to get 9 dollars plus 1 dollar. So I think that practical is a decision also.

>> Thank you. Judge Anderson.

>> It is more of a clarifying question to see if maybe we need to do a slight tweet. My understanding, Justice Miller, is that by having \$60.6 million discretionary, \$10 million allocated for use in staffing court reporters and family law so that the courts know the portion of the \$10

million is to be used for court reporters and family law. The question is if a court is already fully staffed and made their own budgetary decisions, you cannot supplant? What do those courts do that are already fully staffed in family law and cannot use their portion to supplant the family law court reporter? Can we tweak so that they are able to utilize the money to add that you have the \$10 million for use of court reporters and family law and that should be allocated to family law court reporters or the court demonstrate that family law is fully staffed. If they demonstrated that family law is fully staffed, their proportionate share of the \$10 million should not supplant what they have already done. Can that become discretionary? What do they do with that money?

>> That was my response.

>> That would be the clarity of that. Just for clarity. As a former PG, I can see them spinning in their offices right now but from the perspective of making sure it is clear, not that there is necessarily disagreement but that it is clear that if you are already fully staffed in family law and you get your portion of the \$10 million, you're not supplanted by statutes. Statute says you cannot supplant but since you are not supplanting and your fully staffing, you're demonstrating your fully staffing those funds become discretionary as in nonrestricted funds. Correct? No that is my response to Judge Gordon and that in essence is what the chief dimension.

>> I wanted to make sure that we are clear. Do we need to add something so that people know? Maybe that comes out in the memo that if your fully staffed, as long as you demonstrate your fully staffed, that becomes discretionary.

>> Before that answer, Ms. Nelson has --

>> Actually that was the area that I wanted to address. It seemed to me that there probably are courts. I think that Los Angeles provides court reporters in family law. I was assuming that a money is fungible. You get the money in. If you get nine dollars and one dollar and you are already spending one dollar separately, can you just to simply mechanically apply it by balancing it out at the end of the day? Is that making sense? I mean, you are getting the \$10 but you may be already spending out of some other budget of yours one dollar on court reporters. Now you have got this dollar. That dollar gets allocated there and the other dollars stay?

>> The Legislature was aware that Los Angeles has full contingency of court reporters in family law. This was not unknown to them. That is why my understanding, as Judge Anderson has phrased this, is the appropriate one. The intent is not to be devil lists but to fully fund as much as you can court reporters in family court and here's \$10 million.

>> I did not say it as articulately.

>> May I have it as a friendly amendment so that it is clear? But I thought it was assumed when Judge Gordon brought up his aspect but that can be incorporated.

>> As we are voting, that is a friendly amendment language that clarifies there is no supplanting. To demonstrate that you have family law court reporters and then it becomes discretionary.

>> Yes. I know that people want to be heard. I'm going to ask some of the folks that have spoken several times to let others speak first. Ms. Nelson, did you finish what you wanted to say?

>> Yeah. I was just going to ask the question mechanically how this would apply where you have a court that has fully funded and I am not sure that we have completely --

>> We have not finished but I know that there is a request to take it from him and Judge Anderson are there has been no objection. We have not stated it but I have interest over here. I'm going to ask the judge to speak.

>> In addressing Judge Anderson's question, it seems inconceivable to me that the Legislature would punish a court that fully funds family law court reporters. While the language might not be as clear as we could have hoped for in the act I don't think that that was their intent, to punish a court that fully funds court reporters right now. Because that seems to be the clear intent of the legislature but that we want family law court reporters. So I hope that that answers that question. Because otherwise I think that I am in an upside down world. I am addressing my comments to Justice Miller's request for report back, because we not only have the \$70 million for the day, but we have had a lot of new money coming in. \$47.8 million, \$150 million, \$19 million in self-help. Judge Rubin has talked with you about our ability to talk with the Legislature and the Department of Finance and to negotiate and talk with them about our needs. One of the things that is really important is for us, and that is all of the trial courts, to demonstrate that we are stewards of this money and we are using it for the purposes for which the Legislature has told us to use it for. So we have closed windows. We have closed courtrooms and the report back all of this money seems to me to be really clearly important so I am asking Justice Miller whether or not the report back also includes the \$70 million but also all of the new money and is that what John, Martin, what you think is necessary so that you can help us negotiate our budget in the upcoming years? Is that the report back that you want? But that was just to Justice Miller and that was regarding, I believe, what Ms. Fogarty had identified earlier as the early distribution to the trial courts, whether or not the additional base budget money that came through in that prior allocation also requires -- this is the question to you, Justice Miller, and your motion, a report back on if you meet the needs in the snapshot.

>> So I have forgotten what language we approved at the previous council meeting. I do not know if there are reporting requirements or not with regards to that. It seems logical that there should be, and if there are not, I would recommend that that be a part of the motion. My intent, originally, was just with regards to the \$60 million but if you want to make that a friendly amendment, I think that it is paramount that we have reporting back on all aspects of this, because we have been talking about our needs for years and years and now they have been accommodating us in those regards and I think that we owe it to them to tell them how we have done and what we have done with the money and what we need in the future because that was not adequate. But I feel like you need a baseball cap that says TCBAC and one that says JSI but if I have the TCBAC, I think that it would agree with that 100% and our continued goal is to be able to establish that we want to maintain the credibility and appreciation with the Legislature that gave us the funding and the more transparent we can be to do it, the better.

>> I just want for clarification, Ms. Fogarty, are you able to tell us the numbers? I realize, of course, we are talking about normal base allocation. I think that what we are talking about is the new money added to the base budget in this current budget year. How much of that is, with the understanding that that is also going to be subject to a survey report back on its use of the Judicial Council.

>> That is correct. In addition to the \$75 million, there was \$47.8 million for courts that are below the statewide average according to WAFM, \$19.1 million for self-help services. I believe that would be the limit of this report back. There were some other small dollar amounts for very specific purposes. I do not know if that would be part of this report back. I think that would be the primary items. We can always come if we think that there is something more.

>> As I indicated earlier, it would be important for council to see the -- I want to make sure that they are clear as far as what we are going to receive in the future for trial courts on these funds. We are not finished.

>> I had a question for Ms. Fogarty and Judge Conklin about the original recommendation and why it was not fenced off and I was wondering if it is, in part, because we have envisioned that certain courts like Los Angeles already have that funded and whether the \$10 million, reaching the \$10 million figure, whether it was envisioned that it would occur in the aggregate but not necessarily proportional to each individual court so that you did not have the problem later on. I'm saying Los Angeles, I understand that you are fully funded for court reporters but why did you not spend your proportional share there? Whether in fact not fencing it off was an effort to comply with the intent of the Legislature by giving the judicial branch as a whole more flexibility in how they reached the \$10 million figure. I think that is a reasonable interpretation of the discussion in the room for TCBAC was the fencing off versus non-fencing off versus the courts that are providing -- there is always room to enhance services but we also wanted to make sure and I think that Judge So said it. We did not reasonably interpret that the Legislature would punish those courts that can establish be it today or be it at the end of the cycle that they are adequate, that they are providing the intent for court reporters in family law. I think that everybody was trying to avoid the perception that the courts that thought ahead and did that would be punished. So the thought was by this recognition, we could accomplish both of those but I understand also the interest in being more specific so that we can address the interest of the Legislature as well.

>> Judge Bottke and then Mr. Hoshino.

>> The comments that Justice Hull made regarding the coequal branch and there are times when you have to say, okay, we do appreciate that. This is certainly one of those. I know that people are worried about the continued earmarking and whatnot. This is certainly nothing that is going to take us down that road. This is entirely reasonable. I think that the way that TCBAC interpreted instruction from the Legislature makes total ends with Justice Miller's clarification. I do not see this as the beginning of every dollar will be allocated but it is nothing more than the spirit and I commend Justice Miller and the people that have gotten us to that point to get to that understanding so that we can hopefully vote on it.

>> Mr. Hoshino.

>> Thank you. I would only offer two things to you very briefly that might bring clarity as you are building towards what feels like a vote on this item. The first one is to underscore and agree with the folks that believe that the intent of the legislation was not to harm the courts in this particular area. Someone was there as the budget was closing, even though the language is in artful, I came away with that impression. I could be wrong about that but I came away with that impression that it was not the intent or the purpose. That hopefully will answer that question and then mechanically how we figure it out, it gets figured out. The second point is about the reporting of relay piece that people have been talking about and this component that can be comprised in the list that has been even rated. I want the members to be aware that the trial courts actually do a pretty effective job of articulating what the challenges and what the problems have been by having issues with the funding. They roll it up in the process that we call the budget snapshots each year. It has gotten better year-by-year. Last year was a really good, clean articulation of it in terms of how it might impact constituents and communities for legislative members that are hearing the same things. Those issues got kind of joined and, to some extent, the expectation, I think that if people are thinking is that if they funded the money and the effect provided it in a discretionary fashion because there is recognition that courts are in different places and make a different decisions and made decisions about if they would close certain windows or reduce hours. That was not the same for every court they were trying to address their local community needs. What I'm going with this is I do not think it will be that hard for us to develop the reporting aspects that I think that you seek because to some extent we have already been doing it. We are doing a good job of providing that. We have been using that as the answers to the question of, if we provide a discretionary funding or even additional funding with some limited categories, what could we reasonably expect? The information that we got from the courts is what we have been using and the CEOs themselves go with us up to the capital in order to provide this information. That piece of it if it is feeling complicated, I wanted to simplify and clarify. That is not going to be the hard part for us but we are doing a good job in this matter they're doing a good job of that right now.

>> I want to give anyone that has not had a chance to weigh in, to say something about this process that we have had before I ask Justice Miller to summarize his thrice amended motion and we vote. Yes, please. -- thank you but I think that the motion is a good way to go on this but one thing that I think about long-term and just kind of cautionary is that we are in good times right now and there will come a time when there will be a recession and there will be cut back in funds and when we put things in buckets and we have to make choices and we do not have discretionary funding, that ties our hands. I wanted to bring that up.

>> I appreciate that Judge Feng.

>> I wanted to make sure that what Justice Miller is going to summarize is only his third motion. Am I right?

>> Yes.

>> Before he does and give him the opportunity to collect his thoughts, I did want to say several things. That is, first, we have had many years, I think, many years of reinvestment by the Legislature and the executive branch in the judicial branch since the recession. For many years, it was not exactly what we asked for it and it was not base budget. It was one time funding. And the branch has shown itself to be very careful about how we spend this money, knowing that a recession is coming and being concerned about a build-out and a retraction. We have had the legislature. We have talked to the legislature. We are in dialogue with the legislature about what their constituents need in our courts. So this is an understatement that Judge Conklin said, this is a good year. This is a really good year. While we are only talking, I think, about what we have said, only \$75 million and what the legislature may have that or did not say, the point is that the legislature, like Judge Brodie said, they told us how to spend the bulk of this with a said \$48 million was WAFM and the other was not. They also told us how they expected to see a breakout of the \$10 million. I appreciate that hard work of TCBAC and I appreciated that the penny a dollar amount does not change but I appreciate the motion that is before us because we are making explicit the intent of the legislature when they entrusted us with this money for a discrete group of needs in the family law courts. So this kind of discussion is helpful. I think that it shows how careful we have become, how important it is to us to follow our money and report back and be responsible with public funds. I'm grateful to the legislature and to the Governor for this budget. It is frankly, as we have said before, refreshing to talk about money. It is refreshing to talk about where it is going to go and how it will be spent and how we will report back on how it is going to be used to provide greater access but I think that is we need to keep that in mind as we drill down. I also thank you, Judge Conklin, and your committee. I thank you, Ms. Fogarty, for the hard work. I know that this is the second time that we have talked about the \$75 million. I appreciate the Justice Miller, is that enough time?

>> [Laughter]

>> All right here is my motion and this is only as to recommendation number 3. We have voted on 1 and 2. My motion is that we allocate the remaining \$70.6 million on a proportional basis as recommended in the council report that we separately allocate \$10 million of the \$70.6 million to increase the level of court reporters in family law cases, that the total allocation is identified in Attachment A, option 2, as we talked about, but the \$10 million of the \$70.6 million would be for court reporters, consistent with the budget language in the 2018 Budget Act. That there be a reporting requirement or a survey, as it was mentioned, with regards to the \$10 million, and also, as to the \$60 million, and also as to the prior amounts that we approved in July for the two items that were mentioned. That include in essence reporting back on the various aspects that we have talked about to the legislature over the last many years, concerning ensuring court services and staff are available, opening windows that have been closed, rehiring staff to service those, restoring or expanding line services, reopening or expanding court reviews, reducing delays and backlogs, and providing even more self-help in those regards. Also, that the \$60.6 million is discretionary, \$10 million is for the use of court reporters. However, if a court demonstrates that their family law court reporting services are fully staffed, then, in those courts, that money would convert to discretionary. I will hold onto my second but I will second that is what.

>> Do you mean \$70 million with a \$10 million carved out?

>> Yes. The \$60.6 million is identified as discretionary. You add on the \$10 million which is for court reporters. But then we would have this formula if they are fully staffed.

>> And you are also including the report backs on the 47.8 and the 19.1?

>> Yes. They were approved in July.

>> Okay. Judge Lyons, did you have your finger up?

>> I'm just clarifying. That was already seconded.

>> Yeah. It was. I was just saying it again.

>> I was just saying -- I approve the reading of the motion.

>> I have a question.

>> Yes, Judge Rubin.

>> Because the county court snapshot may include more dimensions than you have mentioned -- ?

>> They include but not limited to.

>> That is fine.

>> Any further need for clarification? We will again send this in an e-mail as corroboration of what you have voted on today.

>> You can make Justice Miller do that, right? Specifically.

>> All in favor -- [Vote Being Called] as amended, recommendation number 3 carries. Thank you for your interest, your analysis, your concerns, and your remarks on this item. We conclude today's meeting as we often do with a brief remembrance of our retired judicial colleagues recently deceased. Judge Samuel Conti, Superior Court of Contra Costa County, Judge John Dunn, Superior Court of Los Angeles County, Judge John Nichols, Superior Court of Los Angeles County, Judge Donald Squire, Superior Court of Alameda County, Judge Carlos of Alano, Superior Court of Los Angeles County, Judge John Whiteside, Superior Court of Stanislaus County, Judge Diane Witt, Superior Court of San Francisco County Judge Miriam Wolf, Superior Court of Santa Clara County, Judge Jacqueline Thomason, Orange County, Municipal Court, and Judge Sandra Thompson, Superior Court of Los Angeles County, we honor them for their service to the courts and for the cause of justice in California. This concludes our September meeting. Our next regularly scheduled business meeting is November 29 and 30. We stand adjourned. Safe travels. And lunches in the break room.

>> [Event Concluded]