MONEY *or* JUSTICE?

How fees and fines have contributed to deep distrust of the courts – and what chief judges are doing about it

DUKE LAW DEAN DAVID F. LEVI RECENTLY CONVENED A ROUNDTABLE DISCUSSION among leaders of a national task force that aims to study and address the courts' role in the problems described by the Department of Justice's Ferguson report. While the report focused on Ferguson, it's clear that similar problems plague courts and communities across the country. At the heart of the challenge: a system of fees and fines that disproportionately punishes minority and low-income communities and feeds public mistrust of the justice system, but that also provides critical funding to the courts and often other state programs. A lightly edited transcript of the conversation follows.

DAVID LEVI: In March 2015, following the events in Ferguson, Missouri, the Department of Justice issued a report that surprised many of us because of its harsh assessment of the lower state courts as a revenue collection agency for local government bodies and officials, rather than a neutral, independent provider of justice. According to the report, overly aggressive collection of fees and fines from poor and minority communities was creating a destitution pipeline, sending many residents into a downward spiral of debt, frustration, and often jail time for minor infractions. The report sparked self-examination among courts throughout the country. In February 2016, the Conference of Chief Judges and the Conference of State Court Administrators launched the National Task Force on Fines, Fees, and Bail Practices. With support from the National Center for State Courts, the task force is examining the impact of fees and fines on disadvantaged communities nationwide. We are fortunate to have some of the leaders of this task force with us today to discuss their work.

Chief Justice O'Connor, you are chair of the task force that is working on this issue. Can you tell us what you've been doing since inception and where you are focusing your efforts?

MAUREEN O'CONNOR: Yes. We have members from the Conference of Chief Justices and the Conference of State Court Administrators (COSCA) serving on the task force. I'm the co-chair along with Laurie Dudgeon, the court administrator from Kentucky. We're focused on the issues that came to light with Ferguson, with regard to inappropriate usage of fees and fines, and the philosophy behind how fees and fines and even bail should be established when it comes to misdemeanors, in particular, in the criminal justice system or traffic-system courts. As we began work on the issue, it soon became apparent that this is not just a problem in Ferguson, Missouri. It's something that has permeated nationally in our courts. One of the first challenges we have had is identifying exactly what systems are involved. It's been an extremely cumbersome process to try to identify which systems are in place in all the different states, different counties, and different municipalities. Given that recognition, this task force is looking for broad, general steps, best practices, policies, etc., with specific examples that can be shared with all courts, however they are formulated and whoever the appointing authority may be, so that they may have this information available for training and implementation and for making sure that what is happening now in so many instances, which is essentially an established system of spiraling downward debt for our citizens, is curtailed.

We have put together working groups with a wide array of membership, including representatives from the DOJ and the ACLU. Our advisory committee has about 20 people from different interest groups, all coming together to identify problems and solutions and best practices. We intend for this to be as broad reaching as possible, but we're not going to be able to address specific issues in specific courts in specific municipalities or decisions that are being made. We'll give the tools, and with training and support the objective is to have people that are in these positions of authority to turn the system around.

LEVI: Are you building toward a report?

O'CONNOR: We do have guidelines we've placed upon ourselves as far as a schedule. Initially we planned to have a work product completed in two years. I don't know if that's a legitimate time table right now, or if we can do it more quickly. There are working groups within the task force, and they all have specific areas they are working on with deliverables that will meet certain time schedules we've set up internally. How well that goes will dictate when this project will be completed.

MARY MCQUEEN: We consider it to be a two-phased project. Right now we're in Phase I, gathering information, model rules, sanctions details. Then there will be a pilot phase, where we reach out and solicit people to implement and try some of the alternatives and assess their efficacy.

MODERATOR

DAVID F. LEVI

DEAN, DUKE LAW SCHOOL

PANELISTS

PATRICIA BRECKENRIDGE

CHIEF JUSTICE, SUPREME COURT OF MISSOURI

NATHAN HECHT

CHIEF JUSTICE, SUPREME COURT OF TEXAS

LEVI: It's a very ambitious effort.

O'CONNOR: It's a problem that demands that. It's gone on for a very long period of time. It's become ingrained in our system. I would never point the finger and say there are intentional actions that have created these negative consequences that we are seeing. I think it's a misunderstanding, and it's an attempt by non-judicial officers in many cases — and by that I mean elected officials in many jurisdictions — to look to the courts to be revenue centers. And that seems to be the problem. It's not enough that courts are expected to support themselves. In many instances over the years, the philosophy has evolved that courts are to be revenue centers to fund themselves and other areas of governmental operations. I think that is one of the core problems that we have in this area. It's not only in the education of the judicial officers who are involved in the system but it's an education and change of mindset that has to be adopted by mayors and city councils and county commissions and the folks that set the budget for our governmental institutions.

LEVI: Chief Justice Hecht: I've heard you talk about the huge amount of money that is collected by the state of Texas in these petty offenses and misdemeanors. I'm wondering whether there's been any further thinking about the revenue side and how you would get on top of that.

NATHAN HECHT: It's a very complex matter, as Maureen says. It is national in scope and has been going on in our courts for a long time. There are lots of differences. We have some pretty good numbers in Texas about some things. Some states don't even get reports on the fines and fees that are collected in these cases. But we do. Texas has a little more than 2,000 judges who handle these cases. In the last year — all these numbers are for the last fiscal year — they disposed of 7.3 million cases, which interestingly is down 10 percent from the previous year. Nobody knows exactly why. It's not likely because people are committing fewer crimes, but whether it's that there's been less enforcement or some change in budgetary policy is hard to tell. But of those cases, in about a third of the cases the fine is paid before there's a court appearance, and about a sixth are dismissed before a court appearance. So that leaves about half where there are convictions, pleas, deferred adjudication for some sort of compliance program, and other kinds of resolutions. Interestingly, in less than half of one percent are the defendants acquitted. Of the half in which there are convictions, pleas, or some other adjudication, only about two percent involve satisfaction of the fines by community service. So while this is an option that is often discussed, it's not usually employed by the courts. One of the things the task force is going to do is look at why that is and whether it can be improved. Nineteen percent of cases get jail credit, which is also part of what we're focusing on. In only one percent of cases is the fine waived for indigency, and an arrest warrant is issued in 21 percent of the cases. So there's a lot of concern about the use of incarceration as an alternative to the imposition of fines.

Now the money: You asked about size of revenue. In Texas the fines and fees are more than $1 billion a year. Eighty-five percent is paid within 30 days, so that part is fairly regular. Two thirds goes to the local government that collects it, and a third goes to the state. The total fees and fines waived by the ▸

> IN MANY INSTANCES OVER THE YEARS, THE PHILOSOPHY HAS EVOLVED THAT COURTS ARE TO BE REVENUE CENTERS TO FUND THEMSELVES AND OTHER AREAS OF GOVERNMENTAL OPERATIONS. **I THINK THAT IS ONE OF THE CORE PROBLEMS THAT WE HAVE IN THIS AREA.**
>
> *– Chief Justice Maureen O'Connor*

MARTIN HOSHINO

ADMINISTRATIVE DIRECTOR, JUDICIAL COUNCIL OF CALIFORNIA

MARY MCQUEEN

PRESIDENT, NATIONAL CENTER FOR STATE COURTS

MAUREEN O'CONNOR

CHIEF JUSTICE, SUPREME COURT OF OHIO

> WHEN A DEFENDANT WHO CAN'T PAY IS INCARCERATED, HE OFTEN LOSES HIS JOB. THAT PUTS A STRAIN ON HIS FAMILY. HE MAY BECOME UNABLE TO WORK OR TO BE AS PRODUCTIVE AS HE WAS BEFORE. THERE MAY BE HEALTH PROBLEMS ASSOCIATED WITH IT. **THE POINT IS THERE ARE MORE COSTS ASSOCIATED WITH IT THAN JUST HOW MANY FINES YOU DID OR DIDN'T COLLECT.**
>
> – *Chief Justice Nathan Hecht*

courts, as opposed to just dismissing the case, is only about $6.3 million, or about two-thirds of one percent, so there are not many cases in which fines are waived.

Texas has a collection improvement program that was enacted by the Legislature in 2011. It's administered by the State Office of Court Administration. We have amended the rules that govern that program in the last few months — "we" meaning the judicial council that's the policymaking arm for the judiciary. The council amended the rules to allow trial courts more discretion in imposing fines and alternatives, and to require indigency determinations, which had not been required in the past. Those are some efforts that we're making and of course that the task force will be looking into.

O'CONNOR: The indigency requirement that Justice Hecht referenced is one of the universal concepts that the task force will emphasize with all courts. The *Bearden* decision from the United States Supreme Court requires the determination of indigency and ability to pay, and if it's not there, you look at an alternative rather than forcing a monetary sanction on someone who just can't pay. That starts the whole process.

LEVI: What do you suppose the process will be for shifting the dependency of municipalities and counties on this revenue? Court funding and funding for other kinds of public services is so stretched right now. Is there an approach states should take, or something that members of the bar can help with? I can imagine if Chief Justice Hecht were to go to the Texas Legislature and say he's trying to implement a program that might cost the state $1 billion, there might be some pushback.

HECHT: There are two things here. One is we don't have a very good idea what the loss would be if you came up with an alternative punishment for every indigent. For instance, I said 19 percent of our cases have jail credit. We don't know if almost all of those are people who could have paid the fine and chose not to, or if they truly couldn't pay. So we need to really look at how much revenue is at stake. The second part of it is the economic and social costs that attend the problem are very difficult to estimate. When a defendant who can't pay is incarcerated, he often loses his job. That puts a strain on his family. He may become unable to work or to be as productive as he was before. There may be health problems associated with it. The point is there are more costs associated with it than just how many fines you did or didn't collect.

LEVI: Those are excellent points. It is a hard calculation to make even just looking at the revenue and without taking into consideration other social and individual costs that may not be monetary.

MCQUEEN: I think there's more available on the jail costs than there has been on the social and economic costs. One of the things we hope to do is come up with a tool for quantifying these things; that becomes important as you said when you go to the local government leadership to try to talk about how you change the system. And 19 percent is pretty good, Chief, because as I recall from census figures about 20 percent of the nation's population falls in the poverty range. But we don't know what that number is of the uncollected fines and fees.

LEVI: I was chair of an ABA committee this past year and one of the themes we heard from judges around the country was they were required by state law — and I think an underlying federal law — to suspend driver's licenses in a whole range of cases that didn't have anything to do with driving, so that a failure to pay child support, for example, would result in a suspended driver's license. And then it would have the same consequence that Justice Hecht was just talking about, with the person losing his job and then there wouldn't be any child support anyway. Is that topic within the scope of the task force's work as well?

O'CONNOR: That is one of the subjects we'll be addressing. There's just a plethora of fines, and fees attached to fines, put forth by state legislators. It happens repeatedly in Ohio. They will use the criminal case, and they'll kind of treat it like a Christmas tree. The fines are like ornaments, and they'll hang $10 here and $15 here, etc.,

etc., and then sometimes they put language in the legislation that those fees cannot be waived. In other words, they tie the hands of the judges when imposing that. That's a whole area for legal exploration here, the legitimacy of the legislature directing another branch of government, the judicial branch, on whether or not these kinds of things can be mandated in a sentencing, when the sentencing is the responsibility of the court. It remains to be decided, at least in Ohio. But that becomes a real problem, where the fees associated with the sanction are totally unrelated to the criminal or quasi-criminal activity. You may also have, as we have in Ohio, a situation where if you were convicted of even a low-level felony drug offense, you would lose your driving privileges. One has nothing to do with the other, it doesn't mean you were using your car to facilitate your using the drugs. That was a mandatory. They had the driver's license suspended. What good does that do when you have someone put on probation, they're expected to improve themselves while on probation, to make progress, and you take their driver's license away from them? You know, if you just think of any of us; if we didn't have the ability to drive, could we do our jobs? That answers itself.

HECHT: I'd add too, that when you wonder about what the ramifications of this are going to be, the criticism and the objections to the status quo have come as much from the political right, the conservatives, as they have from the political left, the liberals. In fact, some of the most outspoken criticism of the current system in Texas has come from very well-recognized conservative lawmakers and groups.

LEVI: So the possibility for collaboration is here. Should we shift to Missouri? Chief Justice Breckenridge, you probably usually get the questions first! Of course, Ferguson was an important watershed moment and maybe brings us to this point. I know you've been working extremely hard, so maybe you could just talk for a few minutes about how the state of Missouri has reacted and your role.

PATRICIA BRECKENRIDGE: Thank you. The first thing we did was look at the structure of the court system. To give you a history lesson, in the late '70s, Missouri's constitution was amended to make municipal courts divisions of the circuit courts. Our constitution was also changed to give presiding judges of the circuit courts and the supreme court supervisory authority over the municipal divisions. However, municipal judges and court staff, as well as municipal facilities, are controlled and paid for by municipalities. Due to this arrangement, historically, municipal divisions acted autonomously. In fact, at the time of the events of Ferguson, there was no master list of the number of municipal divisions, where they existed, or who the judges were. We had to change our culture — alter this mindset. We declared, very publicly, that municipal divisions are a part of our circuit courts and everyone in the court system is entitled to be treated respectfully and have their cases decided according to the law, and that we were committed to ensuring that happens in every municipal division.

Secondly, we exercised our supervisory authority by transferring all pending cases from the existing municipal division in Ferguson to a newly created municipal division in the St. Louis County circuit court. An appellate judge was assigned as judge of the new division. We also sent in staff from the office of our state court administrator. The Ferguson court was not the only problem. There were 81 municipal divisions in St. Louis County, and a significant number of those municipal divisions had the same problems.

There were studies by local groups and national experts, and we received recommendations from many sources. In reviewing all of these, we really came to the conclusion that it was not inadequacies in the law. It was a matter of personnel. Judges and court staff weren't following the law, whether from ignorance or unwillingness.

We took a two-pronged approach. We amended our supreme court rules to expressly compel a judge to consider a defendant's ability to pay when enforcing a judgment. We established a permanent committee on practice and procedures in the municipal divisions whose work mirrors that of this task force. One of our highest priorities is development of mandatory operating standards for all municipal divisions. For example, municipal divisions have to be open and accessible to the public, and clerks must be available during business hours. We are also developing notice of rights and templates for web pages that will provide the public with essential information.

As I said, a significant problem is that there are 81 municipal divisions in St. Louis County. We are providing two monitors to assist the presiding judge of St. Louis County in supervision of those divisions. We're also working with nine municipalities that are voluntarily consolidating their court services.

We appointed a task force to study racial and ethnic fairness in the judicial system and the practice of law. While we are currently providing bias education to municipal, trial, and appellate judges, we expect that commission to recommend continuous training on bias and cultural competency for all attorneys and court personnel.

By attending national meetings, I've learned the issues are much broader. Pretrial incarceration, bail practices, collection of fines, fees, and costs, and even the issue of private probation providers have broader implications than municipal divisions. Other practices of our courts must be examined.

We're finding it is difficult to change cultures. There is an attitude that while these divisions may be in the spotlight right now, we'll lose interest and go away.

LEVI: Do you have data that show where you're successful and where you are not?

BRECKENRIDGE: Another problem for Missouri is the lack of a uniform municipal case-management system. There are multiple vendors for software, and some courts have none at all. It is not a great system. Although municipal divisions are required to report to our state courts administrator the number and nature of their cases, we don't have all the data we need. Our court automation committee has set as its highest priority the development of a municipal case-management system that can be utilized statewide so there's uniformity and transparency, with features to provide remote access for indigency determinations, assignment of payment schedules, ▸

> THERE WERE STUDIES BY LOCAL GROUPS AND NATIONAL EXPERTS, AND WE RECEIVED RECOMMENDATIONS FROM MANY SOURCES. IN REVIEWING ALL OF THESE, WE REALLY CAME TO THE CONCLUSION THAT IT WAS NOT INADEQUACIES IN THE LAW. IT WAS A MATTER OF PERSONNEL. **JUDGES AND COURT STAFF WEREN'T FOLLOWING THE LAW, WHETHER FROM IGNORANCE OR UNWILLINGNESS.**
>
> *– Chief Justice Patricia Breckenridge*

referrals to community service, and text messaging of hearing and payment dates.

LEVI: That's very helpful. Director Hoshino, can you give us the perspective of COSCA and the courts administrators on these very difficult issues?

MARTIN HOSHINO: Certainly. I will also try to offer a little of the California perspective. In terms of starting with COSCA, I can tell you most of my colleagues approach this in a very similar fashion, in that we really look to the judges and justices with respect to the questions and issues of equity and fairness that are operating in this particular situation. We talk a lot about how it is that we support them while weighing in on the policy and doing a lot of the research. One of the perspectives we're able to provide is on the operational impacts of the changes we contemplate here. And given that we are in position to support or directly implement some of the changes, we provide that particular perspective on what the challenges or obstacles or solutions might be. I think I can speak for the majority of my colleagues in saying that one of our major roles is to always have a holistic operational view of what is happening in the system as we grapple with these issues, and one of the great worries that we collectively have is being able to solve these issues without creating new ones.

Every court administrator is sensitive and realistic that this is an era where we operate with finite, scarce public resources. And because funding is intimately tied to this particular subject, we worry that solutions that could result in reductions in one area may have consequences for access and fairness in other areas and things courts do. So we focus a lot not just on the intricate impacts of some of these decisions but also we're always focused on the funding formulas and what the system-wide impacts can be.

My role on the task force is to provide that perspective. I'm the co-chair with Chief Justice Hecht on the transparency, fairness, and structural-reform working group. The heart of our effort is to identify practices in the fine and fees area and really getting to this notion of how fines and fees are actually set, how they're collected, how they're waived, reported on, even in terms of how it is they are actually distributed throughout government operations. I think folks are learning that courts are only one of the operations that benefits from the collection and distribution of these fees.

When it comes to California, I think our view is quite similar to what you've already heard. I think we see it as an issue of equity and fairness, combined with big public policy questions on how we fund vital governmental services. In California we are revisiting the rationale for why fines and fees were levied and even asking the question of whether they are still accomplishing their original purpose. We're in the same position, so if I were to mirror Chief Hecht's description of Texas and apply it to California, we have that offender fee-based system of revenue that we rely on. We collect $2 billion a year and distribute 40 percent of that to local government programs and 60 percent to state government programs. Of that 60 percent, two thirds of that goes to our court operations. We also have the same features that you heard of earlier, which includes a very complex system of fines and fees, as well as a ticket and citation situation where they are higher than ever. Our system has evolved over 10, 20, 30 years where original base fines and fees have had add-ons and penalties and an enormous array of different things, where we now fund lots of programs and some of them aren't always connected or have a nexus with the original behavior. We can have money attached to a red-light infraction that would actually fund a fish and game operation. We also have seen cuts to our court budgets in recent years, which puts more pressure on fees and fines assessments to make up for that difference, and this may have inadvertently caused some practices in our courts such as prepaying a fine before you can challenge your infraction. We also have a factor here in California where our great recession has increased our poverty rate.

As these conditions coalesce, it creates this ability to see that there may be some disproportionate level of fines and fees and punishments occurring in our system. It certainly makes the issue of the ability to pay or the inability to pay that much more pronounced or visible in that we have a condition where the poor are essentially getting poorer. This leads us back to questions of public policy,

fiscal policy, public safety — policies that are now being revisited.

California's Chief Justice Tani Cantil-Sakauye made a rule change last year essentially abolishing the prepayment practice, so that you do not have to pay your fine before you can be heard. There are more court rule changes on the way that are very similar to what Chief Justice Breckenridge described, rules regarding noticing, procedures, evaluations of ability to pay. We have some courts that have placed moratoriums on driver's license suspensions, to give more time to review our practices and examine the effects. We are implementing an amnesty program to provide temporary relief to people who have been unable to pay escalating fines and fees. Our Chief launched a Futures Commission about 18 months ago to examine an array of issues that are important to the future of California, and this is now one of the issues they are discussing in a systemic fashion. Because this is a three-branch problem that requires a three-branch solution, we are also having regular conversations with our Legislature and Governor about this system by which we are funding so many of our government operations, and which has pushed our courts into becoming revenue centers.

LEVI: Thank you. You all are working so hard on this, and it is so commendable of you. These are tough questions. It seems fitting and proper for our judicial leaders to become involved in the fees and fines area given the important role that the courts play in administering the system. And it is understandable for the chief justices and the courts to get very involved, and to say they do not want to see the courts used this way and they don't want to see the court's relationship with the public compromised in this way. What about some of the other issues that affect minority and poor communities, such as the police use of deadly force. Are these issues that the Chief Justices will or should address? The courts obviously don't run the police departments, and yet they are very affected by the way in which police officers behave on the streets: A trial judge wouldn't want to issue a search or arrest warrant without a degree of confidence that it would be executed in an appropriate fashion and without the use of excessive force. I'm wondering where you see your role in this contemporary debate.

BRECKENRIDGE: One of the real areas of concern in the St. Louis area and Missouri is that the public does not see a distinction between police and the courts. That is caused, in part, by the fact that our municipal courts are often in the same building as police departments. There are municipal phone systems where the public must call the police department to reach the court. Many persons don't recognize there are three branches of government, and that the municipal courts are part of the judicial branch, not part of the executive branch like the police. To counter that, we are requiring a separation of the courts from the police. There must be this change so that people in the system, as well as the public, make that distinction and understand the role of the courts versus that of the police.

O'CONNOR: I'd like to just add to that. When the mandates come out from the city fathers and mothers to fatten the coffers, the two places they usually go to are the police and the courts. The police issue the tickets and touch the misdemeanor, for want of a better word, that brings someone to court, and so it is looked at as a tandem operation. The police often incorrectly are urged to ratchet up their ticketing when revenue is needed, or there are quotas or some other measure of their success that is tied to the number of citations they hand out or the number of defendants they generate, and that in turn corresponds to the volume of the work that the court does. I can see how it is viewed that they work together. You can't stop one without the other, you can't correct one without the other. You have to be able to say that the police aren't revenue generators either. We have them for public safety and protection, not revenue generation. And that's a whole philosophical discussion to be had as well. Every police officer has a certain amount of discretion in the way they do their job, and can decide whether to issue a warning or a citation, but when there's a command from on high that you have to beef up your citations because revenue is down — that's pressure, and it's often responded to in ▸

> "OUR SYSTEM HAS EVOLVED OVER 10, 20, 30 YEARS WHERE ORIGINAL BASE FINES AND FEES HAVE HAD ADD-ONS AND PENALTIES AND AN ENORMOUS ARRAY OF DIFFERENT THINGS, WHERE WE NOW FUND LOTS OF PROGRAMS AND SOME OF THEM AREN'T ALWAYS CONNECTED OR HAVE A NEXUS WITH THE ORIGINAL BEHAVIOR. **WE CAN HAVE MONEY ATTACHED TO A RED-LIGHT INFRACTION THAT WOULD ACTUALLY FUND A FISH AND GAME OPERATION.**
>
> *– Martin Hoshino, Judicial Council of California*

a way that infringes on the rights and the stability of the community. And I think that was evidenced in Ferguson, but it's also happening all over the place and that's extremely troubling.

On the flipside of that, with the amount of cameras, phone cameras, and recordings that the public does with police officers, sometimes you have a situation where the police won't act. They may prefer to sit in their cruiser and patrol and avoid a situation that may escalate and put them on the wrong end of a lawsuit. So there is that element to explain in some communities, the decrease in the citations and revenue that was generated. There's not one explanation out there, but each one of them presents an opportunity to train and enhance education that we're supposed to be giving citizens.

HECHT: The reduction in citations also raises the issue of whether that has had a corresponding effect on safety, and whether the public is less safe because there are fewer citations. There might be a way to get a handle on that by looking at insurance claims or something related. If there has been a detrimental effect on safety, it hasn't gotten the attention of commenters. And that raises the question about how much of this is necessitated by safety and how much is revenue generation.

O'CONNOR: There's another element that's been introduced in Ohio and that is the street cameras and red-light cameras. They've generated an extremely large amount of revenue. The tickets are very expensive, I think anywhere from $100 to $150, and a portion of that went to a private company that installed and maintained the cameras; there was no police involvement in observing the speeding and or red-light violations. It was put forth as a safety measure with the idea that if there's a sign that says there's a camera up ahead, people won't run the red light or stop signs, and there was documentation for that effect on public safety, and there was some success in terms of improving safety. But the outcry against these cameras went out, and now our municipalities do not have them. Our court actually issued a decision that made it much more difficult for them to exist because they said a police officer had to be right there observing the same thing the camera was observing.

BRECKENRIDGE: A recent decision of the Missouri Supreme Court held unconstitutional a statutory presumption that the owner of a vehicle was the driver at the time of the charged red-light violation. The opinion suggested, however, that if a red-light camera takes a photograph of a driver, the photograph could be used at trial to prove the identity of the driver.

O'CONNOR: We had a provision that if you were the owner and not the driver you could contest it, but you had to identify who was driving.

LEVI: What do you think of the problem of racial bias in police departments? We've got tens of thousands of police departments in this country, and it's very hard to get a lot of national leadership on this, there's so much variation clearly. But is there a role for the chief justices in dealing with this? Because it is part of the picture here.

BRECKENRIDGE: I think there can be. Judges have an ability to convene stakeholders to discuss important issues regardless of whether they have the authority to direct the participants' behavior. Merely meeting and discussing problems can lead to collaborative solutions. In Missouri, our first focus has been to make sure the courts' business is in order. But you're absolutely right. This is a complex problem that is going to require system-wide change.

O'CONNOR: When I was lieutenant governor of Ohio, in the late 1990s, I was also director of public safety, which gave me the opportunity to convene a task force on this with a work group of police, highway patrol, and various other groups, and one of the ways we dealt with this was to change the citation form for traffic citations, where there was a racial component, taken from the driver's license, which meant those statistics were kept. And once that happened there was a knowledge among police officers that someone was reviewing that information on who they were citing. And there was a very big change. We had a suspicion before we did this; we had complaints, but we didn't have data. Once we were collecting data, the complaints dramatically, dramatically decreased.

BRECKENRIDGE: Missouri has been collecting racial data on traffic stops for a number of years.

O'CONNOR: That's great. Maybe that has changed now to be more universal.

LEVI: Why don't we go around to each one of you to get your concluding reflections? Perhaps you could identify one change you'd like to make to move the needle on this fees and fines problem.

O'CONNOR: If I could have one thing, I'd like to see a uniform mindset between the legislature and the courts as to the importance of treating everybody fairly, the consequences of the system we have now, the recognition that those consequences are undesirable and in fact are harmful to our communities and our states and ultimately our country, and I would like that kind of in-depth insight to be embraced. That's a very hard task.

HECHT: I'd like to see some very explicit practical direction for the trial judges on how to do this. From talking with a number of their leaders in our state, they really want to do the right thing, but they don't have the resources and just don't know a lot of the time what to do; they're just doing what's been done before. If we can give some guidance to them I think it probably would have a big effect.

BRECKENRIDGE: I have two suggestions. First, trial judges need to understand the difference between a willful failure to pay and an inability to pay. There is a recognition of this in child support collection, but there seems to be a disconnect with the collection of fines and fees. Secondly, there needs to be a true understanding that the purpose of bail is to protect public safety and to prevent a flight risk. Pretrial incarceration should not occur solely because of an inability to pay a cash bond.

HOSHINO: It's really hard to pick. I'm in the camp with Chief Justice Breckenridge,

and to connect with one thing she said, I think if we had a mechanism that streamlined and accurately helped the courts address the ability to pay, it would really move the needle. I would also like to see a true expansion of the alternatives that folks can have in order to satisfy their obligations in the form of community service or whatever the alternatives are. It's talked about an awful lot, but I don't think there actually are a lot of options out there that are available and presented to judges so that judges will have more tools and more choices when they are imposing these fines and fees.

LEVI: Mary, you are an extraordinary force for law reform and have a guiding hand in the work of this task force. What concluding thoughts would you offer?

MCQUEEN: While very few citizens will ever become parties to a lawsuit or appear as defendants in the state courts, most of us have personally been or know someone who has been cited for traffic violations that can result in jail time if legal financial sanctions are not met. Using financial sanctions as an alternative to incarceration for these low-level offenses is public policy that touches on all three branches of our government — legislative, executive and judicial. But it falls to the judicial branch of government — specifically our courts — to ensure that monetary sanctions are not disproportionately applied. The task force embraces that responsibility. Their work will provide courts with tools, resources, model statutes, and policies to give force to their promise that "courts are not revenue centers."

LEVI: Thank you all so very much. We are very fortunate to have judges and administrators like you working on these important issues. As a former federal judge, perhaps I have a bit of credibility when I say that our State Supreme Court Chief Justices are among the great judicial leaders of our time. Thank you for participating today and for the work of this task force.

NATIONAL TASK FORCE ON FINES, FEES, & BAIL PRACTICES

CO-CHAIRS

MAUREEN O'CONNOR
Chief Justice,
Supreme Court of Ohio

LAURIE DUDGEON
Administrative Director, Kentucky
Administrative Office of the Courts

MEMBERS

RONALD B. ADRINE
Administrative and Presiding Judge,
Cleveland Municipal Court, Ohio

MICHAEL P. BOGGS
Judge, Court of Appeals of Georgia

PATRICIA BRECKENRIDGE
Chief Justice, Supreme Court of Missouri

DAVID V. BREWER
Justice, Oregon Supreme Court State Justice Institute Board

KATHLEEN M. DUMAIS
Democrat, District 15,
Montgomery County, Maryland

EZEKIEL EDWARDS
Director, Criminal Law Reform Project,
American Civil Liberties Union

ROSALYN W. FRIERSON
Director, South Carolina Court Administration

SCOTT C. GRIFFITH
Director of Research and Court Services, Texas Office of Court Administration

JOHN A. HALLACY
Judge, 37th Circuit Court,
Michigan

ALEXES HARRIS
Associate Professor of Sociology,
University of Washington

NATHAN L. HECHT
Chief Justice,
Supreme Court of Texas

ELIZABETH P. HINES
District Judge, 15th District Court;
Ann Arbor American Judges Association, Michigan

MARTIN HOSHINO
Administrative Director,
Judicial Council of California

RICK JONES
First Vice President, National Association of Criminal Defense Lawyers

DAVID LABAHN
President and CEO, National Association of Prosecuting Attorneys

ARTHUR W. PEPIN
Director, New Mexico Administrative Office of the Courts

STUART RABNER
Chief Justice,
Supreme Court of New Jersey

RONALD S. SULLIVAN, JR.
Harvard Law School

KAREN TOKARZ
Charles Nagel Professor Public Interest Law & Service, Washington University School of Law

JO-ANN WALLACE
President & CEO,
National Legal Aid & Defender Association

EX OFFICIO

KIM BALL
Senior Policy Advisor, Adjudication,
U.S. Department of Justice

LISA FOSTER
Director, Office for Access to Justice,
U.S. Department of Justice

JONATHAN D. MATTIELLO
Executive Director, State Justice Institute

MARY C. MCQUEEN
President, National Center for State Courts

LIAISONS

SOLEDAD A. MCGRATH
Program Officer, Justice Reform,
John D. & Catherine T. MacArthur Foundation

CARL REYNOLDS
Senior Legal & Policy Advisor,
Council of State Governments Justice Center

ROBERT O. SAUNOOKE
Director, National Native American Bar Association;
Saunooke Law Firm PA

ZOË TOWNS
Manager, State Policy, Public Safety Performance Project,
The Pew Charitable Trusts

JOANNA WEISS
Director of Criminal Justice,
Laura and John Arnold Foundation

H. THOMAS "TOMMY" WELLS JR.
Past President, American Bar Association; Maynard Cooper & Gale

NCSC LEAD COUNSEL

KONSTANTINA VAGENAS
Project Director; Director and Chief Counsel, Access to Justice Initiatives,
National Center for State Courts

KEITH FISHER
Principal Court Management Consultant, Senior Counsel for Domestic and International Court Initiatives,
National Center for State Courts

GREG HURLEY
Knowledge and Information Services Senior Analyst, National Center for State Courts

AMY MCDOWELL
Education Program Manager
National Center for State Courts

DEBORAH SMITH
Knowledge and Information Services Senior Analyst, National Center for State Courts

NORA SYDOW
Senior Court Management Consultant, National Center for State Courts

For more information on the task force's work, visit **ncsc.org**.