Citizens Crime Commission
Remarks by Chief Judge Jonathan Lippman
April 27, 2015

Good morning. It's a pleasure to be here with you again. I want to thank Richard Aborn and the Citizens Crime Commission for sponsoring this event today. And I want to commend Jeremy Travis, Preeti Chauhan and the researchers from John Jay College who have undertaken what you will shortly be seeing is an impressive analysis of the summons process in New York City.

Their work is very timely, given the considerable attention that has been devoted to the summons process in recent months. In fact, over the past year the court system has been carefully evaluating what we need to do to improve the summons process, to modernize it, to make it more effective. As part of this evaluation, we also have been contemplating more fundamental questions about

the summons process. Questions such as what purpose should the summons process be serving, and whether it is actually promoting that purpose.

As we were conducting this evaluation, the Mayor and the Police Commissioner announced late last year the new policy that most individuals charged with possessing small amounts of marijuana would no longer be arrested but would instead be issued summonses, returnable in court. Because of the increase in summons cases that many were anticipating due to this change in policy (an increase that, interestingly, has not yet materialized), we prioritized our analysis by concentrating first on immediate steps we needed to be taking to improve the summons process. Working closely with the Mayor's Office of Criminal Justice and the Police Department, we developed a comprehensive program that was announced just a few

weeks ago. Let me first briefly summarize our program, and then I will return to the more fundamental questions.

The program we announced and are now implementing starts from what I think is an obvious premise, that the vast majority of people who receive summonses are not hardened criminals, by any stretch of the imagination. Far more often than not, they have jobs, families and the other responsibilities of everyday people. As a group, they bear no resemblance to people arrested for felony offenses, and for the most part they differ from people arrested for misdemeanor offenses whose cases are heard in our main courthouses. So these are generally law-abiding people, people who adhere to societal norms and values.

Given that, something is inherently wrong if, as the John Jay research documents, nearly 40 percent fail to

show up in court on the date the police-issued summons directs them to do so. This is particularly troubling because, again as the John Jay research shows, the immediate consequence of failing to show up in summons court – the issuance of a warrant – is literally always worse than the consequence of appearing in court in these cases. Indeed, in recent years barely more than a quarter of summonses result in a conviction. And in the overwhelming number of cases that do – close to 100 percent – the sentence is only a fine, usually a very modest fine. So if generally law-abiding people are failing to show up in court in great numbers when a police-issued summons directs them to do so, and where the consequence of not showing up is almost always, if not always, worse than if they do show up, again something has got to be wrong. Therefore, it was incumbent upon

the court system to examine our own operations and determine whether changes in the way the summons court is handling these cases were needed.

That is exactly what we have done. We are now implementing a series of measures that will make the summons process more comprehensible and more navigable – steps that should far better ensure that people who receive summonses show up in court. For starters, working closely with the city and with behavioral economists, we have revamped the summons form itself to make it easier to understand – to make it crystal clear – when the individual is required to appear in court, and that a failure to appear will result in issuance of an arrest warrant. For example, the most important information on the summons form for the defendant – where and when to appear in court – will now appear in plain and concise

language at the very top of the form. The redesigned summons form will also include a phone number and website where individuals can access their cases, verify the date of their court appearance and see whether they have outstanding warrants. The website will also have translated copies of the summons form in multiple languages. The new form will be operational this summer.

Moreover, beginning next month the courts will also be testing a number of types of reminders of court appearances to those who have received summonses, using both robocalls and text messages. The method that proves most effective will then be used citywide. In addition, beginning this summer in Manhattan, those who receive summonses will be permitted to appear any business day a week in advance of the court appearance date specified in the summons, including new evening

hours that will be established one night a week. All this information will be clearly explained in the new summons form.

Further steps are being taken to improve transparency and the quality of justice in summons court. The city is already posting detailed data showing summons activity broken down by charge and precinct. Importantly, the summons form will now include the individual's race, allowing for more expansive and detailed demographic research and reporting about people who receive summonses. Additionally, the summons court is now providing defense attorneys with tablets that display all of the factual allegations for the cases on the calendar, allowing counsel to better advise their clients. Also beginning this summer, those who receive fines will be able to pay them online. And finally, 18-B lawyers who

handle summons cases and Judicial Hearing Officers who preside in summons court will be receiving enhanced training, including training on the potential collateral consequences of summons offense convictions.

So these are the measures we are implementing that we believe will improve the quality of justice in summons court, enhance the transparency of the summons process and better ensure that people who receive summonses appear in court. These are all important and necessary steps. But on a more foundational level, I firmly believe it is time for some serious thinking about the purpose of the summons process, and whether that purpose is being promoted in the way we currently handle these matters. This analysis implicates consideration of important policy issues, so it needs to take place not only within the judicial branch but by all of us in the criminal justice system.

So what broader public purpose do we want the summons process, and the summons court in particular, to be serving? It is my view that the overriding goal of the summons process should be to promote the quality of life in this city. We certainly all agree that quality of life offenses need to be addressed. When they are ignored, that can diminish public health and safety, stifle economic progress and discourage tourism, cause people to move elsewhere and otherwise make life in the city less livable and demoralizing. Whether or not you call it "broken windows" or by any other name, I believe in common sense, and my own common sense tell me that ignoring quality of life offenses can create an environment leading to the commission of more serious criminal activity. And that's why, in the court system, our community and problem solving courts are based on the premise that

every crime, no matter how minor, must have a consequence. Otherwise, respect for the rule of law is surely damaged - - make no mistake about it!

So is the summons process, in fact, promoting quality of life in New York City? Is summons court effectively punishing those who commit quality of life offenses, and is it effectively deterring people from committing these offenses? I wonder. The number of summonses issued citywide in a typical year is an enormous number – it usually exceeds the number of people arrested annually in the city. For example, last year 391,171 summonses were issued in the city, more than the 351,511 arrests that were made. In a world of limited resources, and trust me the court system very much operates in a world of limited resources, and with the brunt of court resources necessarily going to the more serious, arrest cases, these

mammoth numbers of summons cases can not possibly receive the attention and resources they should. With this huge number of cases and with the limited resources to devote to them, how effective can the summons court be?

A truly effective summons court would have available to it a panoply of consequences, of sanctions that could be tailored to the circumstances of the individual cases and defendants that come before it. For example, since quality of life offenses, by definition, are offenses against the community, community service can be an appropriate and highly effective sentence for an individual convicted of a summons offense. But establishing and operating community service programs is labor-intensive and expensive. Given the current caseloads, doing so on any meaningful scale in summons court is simply not possible.

This leads me to think that policy makers need to look

carefully at ways to reduce the number of cases in summons court. In particular, consideration should be given to whether some of these offenses even belong in the criminal courts to begin with. That ultimately is a legislative determination, but we need to have a serious discussion about whether some of the offenses now being charged in summonses involve conduct that society, in fact, needs to be classifying as criminal offenses. It is not a taboo subject. Our policy makers must grapple with it, and they must do so with a nuanced approach that tries to distinguish between conduct that should result in criminal charges, with all that that portends, as opposed to less serious, less culpable violations of societal norms. We should be mindful that while offenses charged in summonses are never felonies and usually are not even misdemeanors, a conviction of these offenses is still a

conviction and summons court is still a criminal court. And a conviction, even for a summons offense, potentially carries with it serious collateral consequences, such as loss of employment, loss of public housing or even deportation, consequences that may be grossly disproportionate to the harm caused by the offense.

So for both of these reasons – that summons court is handling far too many cases to be able to adjudicate them effectively, and that at least some of the offenses currently handled in summons court should in all fairness not be classified as criminal offenses – a better policy approach may well be to substitute civil penalties for some of these offenses and assign responsibility for adjudicating them to an administrative tribunal. This is currently how many offenses against the law in New York City are handled. For example, traffic violations such as speeding, running a

red light and running a stop sign are all handled in an administrative tribunal, not in a criminal court - - and in my view rightly so.

As I noted, this however is ultimately a legislative determination. As Chief Judge, it is not my institutional role to pick and choose which offenses belong in criminal courts and which belong in administrative tribunals. But, I am not oblivious to the fact that there are arguments on both sides of this issue as it relates to different offenses now resulting in the issuance of criminal summonses. A strong argument can be made that an offense such as public urination, which can severely diminish quality of life in our communities, should continue to be a criminal offense adjudicated in summons court. A similarly strong argument can be made for fare-beating, strict enforcement of which has been shown to dramatically reduce other

crimes in the subway system. If the issuance of a criminal summons makes for a more liveable, safe city, then why not keep those offenses in a criminal context that best serves the well being of the community. Look how far we've come! Let's not go backwards!

On the other hand, it can certainly be argued that other offenses now treated as criminal in nature – such as public consumption of alcohol, riding a bicycle on the sidewalk and being in a park after hours – are more benign, and perhaps need not be classified as criminal offenses. As you will see from the John Jay research, public consumption of alcohol cases constitute fully one-quarter of all cases in summons court. I'm not talking here about an unruly binge drinker. That is and should be another offense that properly belongs in criminal court, such as disorderly conduct. But, for the tens of thousands

of summons that represent nothing more , for example, than drinking a can of beer on a stoop, that's a different story. Is that really a more serious offense than speeding or running a red light, such that it needs to be adjudicated in a criminal court? If an administrative tribunal adjudicated that offense, would that in any meaningful way diminish public safety or the quality of life in this city?

Transferring public alcohol consumption cases from summons court to an administrative tribunal would alone reduce the summons court's docket by nearly 100,000 cases. The great benefit of doing that is, with a more manageable caseload, summons court could devote more attention to the remaining, more serious cases, those that we could agree appropriately belong in a criminal court and require the more serious consideration that a criminal court otherwise should be able to provide. This would

mean that a sanction such as community service, which can be a successful restorative response to quality of life offenses and can be far more effective in reducing recidivism, could become for the first time a viable option in summons court.

I understand there are two sides to this discussion, and that some of us will disagree on precisely where to draw the line between illegal behavior that should be treated as criminal conduct and that which should be treated as a civil offense. But with some serious discussion, I think people of good will can and will be able to agree that certain offenses can be taken out of summons court and handled administratively, while other offenses must and should remain criminal in nature. And we can certainly agree together that there is a thoughtful dialogue that we need to be having, and that further

changes in the summons process are critical and necessary for the well being of our city. So, let's stop the over the top rhetoric on the de-criminalization of summonses, roll up our sleeves and get down to business.

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We have already taken concrete steps to better ensure that individuals who receive summonses appear in court. Measures to promote more transparency in the summons process. Actions that will enhance the quality of justice in summons court. We now need serious, nuanced thought and discussion about the goals we want to be achieving through the summons process, and whether summons court is effectively achieving those goals.

I look forward to continuing this discussion with all of you in the coming months. Thank you.