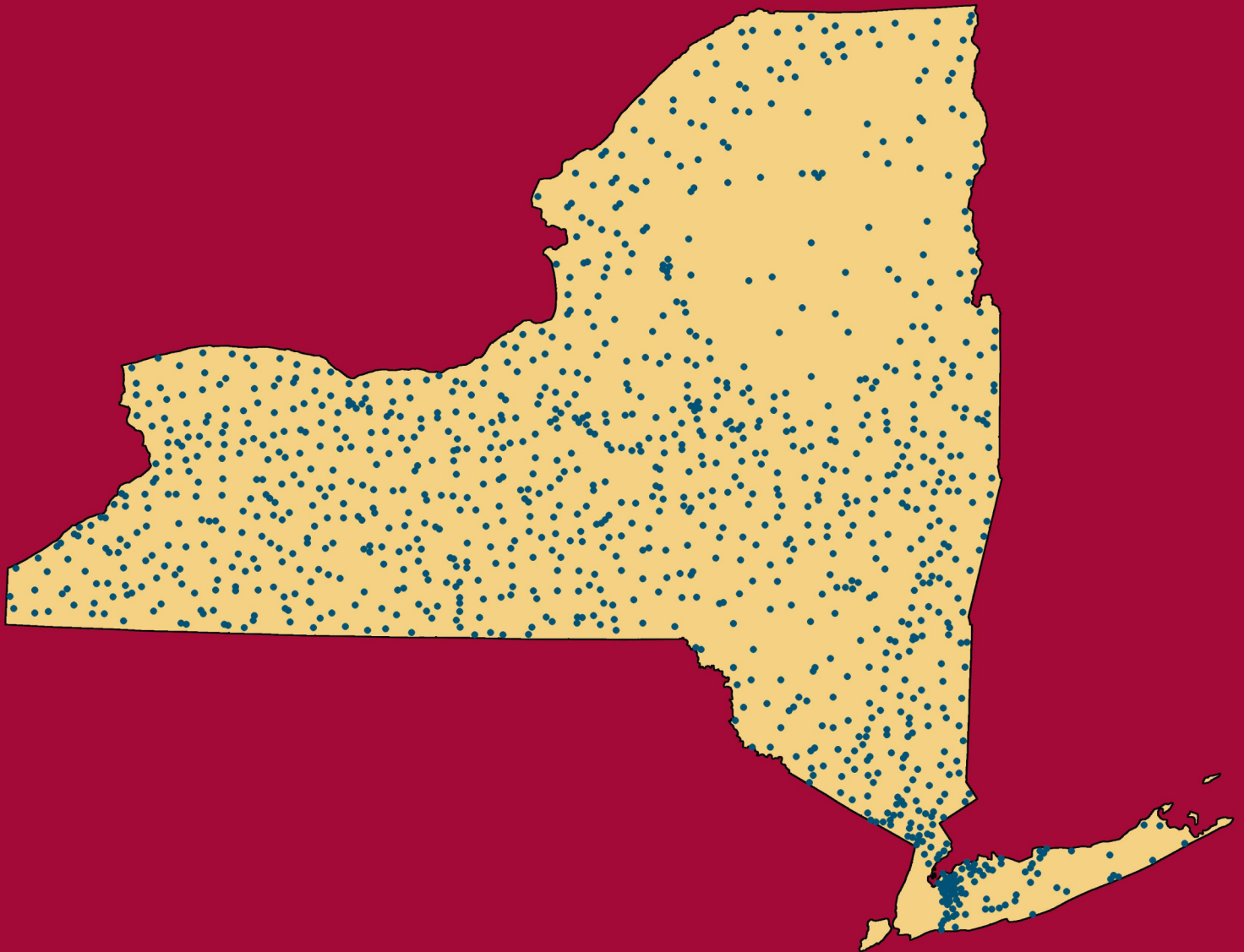


JUSTICE MOST LOCAL:  
THE FUTURE OF TOWN AND VILLAGE COURTS IN  
NEW YORK STATE



**A Report by  
The Special Commission on the  
Future of the New York State Courts**

September 2008

## TABLE OF CONTENTS

	<u>PAGE</u>
ACKNOWLEDGEMENTS.....	1
EXECUTIVE SUMMARY.....	7
SECTION ONE: THE WORK OF THE COMMISSION.....	19
SECTION TWO: THE JUSTICE COURT TRADITION: THE HISTORY OF TOWN AND VILLAGE COURTS IN NEW YORK STATE .....	23
SECTION THREE: THE CURRENT LANDSCAPE: RECENT DEVELOPMENTS CONCERNING THE JUSTICE COURTS.....	35
SECTION FOUR: OUR FACTUAL FINDINGS.....	53
THE ORGANIZATION OF THE JUSTICE COURTS .....	53
THE CURRENT ARRAY OF JUSTICE COURTS IS NOT THE RESULT OF ANY RATIONAL ASSESSMENT OF STATE OR LOCAL NEEDS .....	53
THE PROLIFERATION OF JUSTICE COURTS WASTES STATE, COUNTY AND LOCAL RESOURCES.....	54
THAT SAID, THERE IS LITTLE SUPPORT FOR A STATEWIDE SYSTEM OF DISTRICT COURTS.....	55
THE QUESTION IS HOW TO BRING ABOUT GREATER RATIONALITY AND EFFICIENCY WHILE CONTINUING TO MAINTAIN A FORM OF LOCAL CONTROL.....	59
THE QUALIFICATIONS OF JUSTICES .....	59
THE REPORTS OF DUE PROCESS AND OTHER ABUSES ARE CAUSE FOR SERIOUS CONCERN.....	60
AT THE SAME TIME, THESE CONCERNS DO NOT REQUIRE A WHOLESALE ABANDONMENT OF THE LOCAL APPROACH OR THE ABOLITION OF NON-ATTORNEY JUSTICES .....	66
INSTEAD, THE QUESTION IS HOW TO DETER DUE PROCESS AND OTHER VIOLATIONS IN A SYSTEM THAT REMAINS LOCALLY CONTROLLED.....	71
COURT FACILITIES AND SECURITY.....	73
ADEQUATE AND SECURE FACILITIES MUST BE PROVIDED IF MINIMUM STANDARDS OF JUSTICE ARE TO BE ACHIEVED.....	73
FINES AND FUNDING .....	76

THE CURRENT SYSTEM OF ASSESSING AND COLLECTING FINES AND FEES CREATES INAPPROPRIATE INCENTIVES FOR TOWNS AND VILLAGES AND UNNECESSARY RISKS FOR JUSTICE COURTS .....	77
THE CURRENT APPROACH TO FUNDING CANNOT SUPPORT THE NECESSARY IMPROVEMENT AND ENHANCEMENT OF THE JUSTICE COURTS .....	80
SECTION FIVE: OUR PROPOSALS FOR REFORM .....	83
MINIMUM STANDARDS FOR ALL JUSTICE COURTS .....	83
COUNTY-BASED PANELS TO BRING ABOUT COMBINATIONS AND REFORM .....	84
REVIEW PANELS.....	85
PANEL COMPOSITION.....	86
PANEL GUIDELINES.....	86
DISTRICT-BASED ADVICE AND COORDINATION.....	86
A PRESUMED RANGE OF COMBINATIONS.....	87
THE NATURE OF THE COMBINED COURTS.....	90
THE PRACTICALITIES OF GOVERNING THE COMBINED COURTS .....	91
SPECIFIC GUIDELINES FOR COURT COMBINATIONS.....	92
SAFEGUARDING DUE PROCESS AND THE QUALITY OF THE JUSTICE COURT BENCH.....	93
AN OPT-OUT PLAN .....	93
MINIMUM QUALIFICATIONS.....	95
INCREASING THE POOL OF QUALIFIED CANDIDATES .....	96
NEW TRAINING AND TESTING .....	96
COURT CLERKS.....	99
FUNDING AND RESOURCE REFORMS .....	100
ESTABLISHING AN AID TO LOCALITIES PROGRAM FOR INFRASTRUCTURE UPGRADES .....	100
EXPANDING THE JUSTICE COURT ASSISTANCE PROGRAM FOR OPERATIONAL SUPPORT .....	101
REFORMING JUSTICE COURT FINE AND FEE COLLECTION PROCEDURES .....	102
INCREASING AND RATIONALIZING JUDICIAL SALARIES.....	103

EXPANDING THE TOWN AND VILLAGE JUSTICE COURT RESOURCE CENTER .....	103
COMBINING JUSTICE COURTS REMAINS THE MOST EFFECTIVE PATH TO REFORM.....	104
CONCLUSION.....	107
A CONCURRENCE IN PART .....	109
APPENDIX i: COUNTY MAPS .....	117
APPENDIX ii: MEMORANDUM: JUDICIAL MISCONDUCT AND DISCIPLINARY STATISTICS .....	179
APPENDIX iii: MEMORANDUM: PRESUMPTIVE RANGES OF COURT COMBINATIONS .....	187
APPENDIX iv: LIST OF COURTS VISITED .....	197
APPENDIX v: LIST OF HEARING WITNESSES .....	207
APPENDIX vi: LEGISLATIVE REFORM PACKAGE.....	217
APPENDIX vii: MINIMUM STANDARDS FOR ALL JUSTICE COURTS.....	277
APPENDIX viii: ESTIMATED COSTS OF SECURITY UPGRADES ABSENT COURT COMBINATIONS.....	285
APPENDIX ix: CHART OF EDUCATIONAL ATTAINMENT.....	289



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# EXECUTIVE SUMMARY

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## Introduction

It is seldom recognized that there are two distinct court systems in New York State. On the one hand, there are the various state-run courts: the Supreme Court, the Family Court, the County Court, the Court of Claims, the Surrogate's Court, and a host of others. These courts are funded annually by the State Legislature and are extensively monitored and overseen by the Office of Court Administration (OCA), the statewide supervisory body that was created in 1977 to provide leadership and support for the courts.

On the other hand, there are the state's town and village courts, also referred to as the Justice Courts, which actually outnumber those in the state-run system, with more than 1,250 in 57 counties. These are purely local courts, each funded and operated by its own municipality, and the judges who sit in them (most of whom work part-time) are typically elected by the individual towns or villages in which they sit. In a tradition dating back to colonial times, these town and village justices (formerly known as justices of the peace, police justices or magistrates) need not be attorneys, and today more than 70% of them are non-lawyer representatives from their local communities. Statewide, there are over 50% more of these justices (over 1,800) than the number of judges in the state-run system.

While some Justice Courts (particularly those in more populous and affluent areas) convene in modern courtrooms that are well-equipped to handle large dockets and complex court proceedings, most are housed in local multi-use municipal offices, and some (particularly those in rural areas) sit in extremely rudimentary locations such as town barns and highway garages, in circumstances that are lacking in basic resources, and which bear no resemblance to a court at all.

Whatever their level of sophistication, the Justice Courts play a crucial role in the lives of millions of people across our state, dispensing justice in millions of cases each year, and collecting over \$210 million annually in fines and fees on behalf of state, county and local governments. In addition to routine traffic infractions and parking violations, local justices preside over all manner of misdemeanor criminal matters, from drunken driving cases to sexual offenses, domestic violence assaults, drug offenses, and other charges. In such cases, local justices conduct suppression hearings, authorize search warrants, preside over jury trials, and impose jail sentences of up to one year. On the felony side, Justice Courts conduct arraignments (including on weekends, holidays and in the middle of the night) in all categories of cases, from armed robberies to homicides. Their civil jurisdiction includes, not only small claims matters, but also residential and commercial landlord-tenant cases, summary eviction proceedings and other civil disputes.

In recent years, these courts have become a subject of greater public scrutiny. In November 2006, after two years of review, OCA issued an "Action Plan for the Justice Courts,"

which announced first-time statewide initiatives for increased training and supervision of town and village justices and other new support for the Justice Courts. In the fall of 2006, a series of articles in *The New York Times* reported on alleged failings and abuses by a number of justices in these courts over a period of years. In late 2006 and 2007, the State Legislature held public hearings on the Justice Courts. In the past year, the New York State Bar Association, the New York City Bar Association and the Fund for Modern Courts have all issued reports making a number of recommendations for reform.

Perhaps unsurprisingly, this increased scrutiny has led to renewed controversy about the proper role of the Justice Courts in the twenty-first century. Some have expressed surprise and dismay that non-attorneys are dispensing justice with little or no supervision in serious and complex criminal cases. Many have decried the primitive conditions in which some of the Justice Courts operate. Others fear that local justices are not sufficiently independent of local government or law enforcement. And many have pointed to the accounts of judicial error and abuse as examples of why this is an antiquated system that should not be permitted to continue.

On the other hand, supporters of the Justice Court system point to the fact that millions of cases are successfully resolved by these courts without complaint year after year. Others applaud the dedication and experience of the justices – attorneys and non-attorneys alike – who are available to conduct proceedings at all hours, most for nominal compensation. And many point to the critical role that these courts play in their communities, being accountable to local interests and needs in a way that reflects the strength of the democratic process at the most tangible of levels.

In many respects, this recent debate is not new. As early as the 1920s, New York State Governor Franklin D. Roosevelt criticized the Justice Courts as “an outworn system.” In the 1950s, the respected Tweed Commission, which studied the state courts for more than five years, initially recommended the abolition of the Justice Courts, only to reverse that recommendation in a subsequent report after recognizing the depth of political and community support that the Justice Courts enjoyed. In the ensuing years, numerous commissions, task forces, and other observers pressed for the reform or outright abolition of the Justice Courts.

In recent decades, however, there has not been a comprehensive study or assessment of the town and village courts. As a consequence, the recent discussions have not had the benefit of a thorough statewide review. It is the purpose of this report to provide such a review, as well as to advance new proposals for reform.

## **The Work of Our Commission**

In July 2006, Chief Judge Judith S. Kaye established the Special Commission on the Future of the New York State Courts, with a mandate to study and propose reforms to the state court system. The Commission was initially comprised of thirty members, including fourteen judges and former judges from the New York State Court of Appeals, the Appellate Division, the Supreme Court, the Court of Claims, the Surrogate’s Court, the Family Court, the Civil and

Criminal Courts of New York City, the upstate City Courts and the New York City Housing Court. It also included, from across the state, academics, former members of the Senate and Assembly, practicing lawyers, and members of the business community. In February 2007, the Commission issued an extensive report titled “A Court System for the Future: The Promise of Court Restructuring in New York State.”<sup>2</sup> That report proposed a sweeping consolidation of the state-run courts.<sup>3</sup>

In that report, the Commission made clear that it had not had sufficient time to study and make recommendations about the *other* court system in the state, the town and village courts:

*“Given the issues that have previously been raised, we are deeply concerned about the Justice Courts and the people around our state who must come before them. On the other hand, it has become clear to us that the issues are sufficiently serious and complex as to merit a much more intensive study than we have been able to conduct . . . . To this end, we have proposed, and the Chief Judge has agreed, that the term of our Commission be extended so that we may conduct an appropriate review of this important issue.”*<sup>4</sup>

To provide further expertise for this new phase of work, four town justices (three current and one former) were added to the Commission, including the current and immediate past presidents of the State Magistrates Association (the statewide association of town and village justices), and a non-attorney justice.<sup>5</sup>

From April through October 2007, the Commission conducted the most extensive review of the Justice Courts in New York State history. As part of this exercise, groups of Commission members and staff visited nearly 100 Justice Courts in every judicial district, literally crisscrossing the state, from suburban areas to the most rural regions, and dozens of communities in between.

In these visits, we observed proceedings, inspected facilities, and learned about court operations. In town-hall style meetings across the state, we met with hundreds of town and

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<sup>2</sup> See SPECIAL COMM’N ON THE FUTURE OF THE N.Y. STATE COURTS, A COURT SYSTEM FOR THE FUTURE: THE PROMISE OF COURT RESTRUCTURING IN NEW YORK STATE (2007), [available at](http://www.nycourtreform.org/reports.shtml) <http://www.nycourtreform.org/reports.shtml> (hereinafter “A COURT SYSTEM FOR THE FUTURE”).

<sup>3</sup> In her 2007 State of the Judiciary address, Chief Judge Kaye endorsed the Commission’s report, and urged the adoption of the constitutional amendment that had been proposed and drafted by the Commission. Former Governor Eliot Spitzer later endorsed the plan, and on April 27, 2007, he proposed to the Legislature a comprehensive constitutional amendment to restructure New York State’s courts along the lines that the Commission had recommended. To date, that proposal has not been acted upon. For the reasons articulated in our earlier report, we continue to urge Governor David Paterson and the Legislature to take the necessary steps to bring about a much-needed consolidation of the unduly complex state-run courts.

<sup>4</sup> A COURT SYSTEM FOR THE FUTURE, *supra* note 2, at 82.

<sup>5</sup> Two members who participated in the earlier phase of the Commission’s work were unable to continue with this new project, for reasons unrelated to the subject matter.

village justices, and dozens of their clerks, to gauge their experience, understand their issues and needs, and listen to their suggestions and critiques of the system. We also met with district attorneys, public defenders, law enforcement representatives, probation officers, town supervisors, village mayors, and private practitioners in virtually all of the counties we visited.

In addition, we held four public hearings (in Albany, Ithaca, Rochester and White Plains), where we heard testimony and received submissions from 85 witnesses representing a wide range of interests, including local justices, good government groups, civic groups, public defender organizations, bar associations, associations of town and village officials, domestic violence organizations, relevant state agencies, and others. Finally, we conducted exhaustive research on the past studies of the courts; the disciplinary history of town and village justices; the statutory and constitutional provisions that govern the courts; court operations and finances; local justice systems of other states and nations; and other relevant issues.

We thereafter discussed and debated our findings and recommendations for a period of five months. This is our report.

## **An Overview of Our Findings**

Given that this is an executive summary, it should perhaps go without saying that the following overview lacks important detail and nuance that is contained in the body of this report. As we consistently found in our travels, the Justice Courts are a complex topic; for reasons relating to history, demographics, and politics, the courts themselves are so diverse and varied that it is in many ways difficult to generalize about them at all. That said, we believe it is important to distill at the outset the most important points that underlie our discussions and recommendations that follow.

*At bottom, we believe that immediate action must be taken to cure serious inefficiencies in the organization of the courts; to deter due process violations and other legal errors; and to cease the continued use of facilities that are unsafe and unfit for twenty-first century courts.*

To this end, we set forth in this report proposals that we believe will fundamentally address the flaws and criticisms that have plagued the Justice Courts for over one hundred years. We believe that, unlike the reform proposals offered in past generations, these proposals are pragmatic and politically realistic enough to be accomplished in the immediate future. This is because, in contrast with most of the recommendations that have come before, ours do not require a complete dismantling of the Justice Court system, amendment of the State Constitution or elimination of non-attorney justices – steps that most members believe may be desirable in an ideal world, but that have politically doomed generations of past reforms. Instead, as discussed below, we believe that the necessary reforms should and can be achieved swiftly and effectively within the general framework of the existing system, thus avoiding many of the obstacles and intransigence that have stymied improvement for so many years.

Below, we identify four broad categories of findings: those concerning the organization of the Justice Courts; the qualifications of the Justices; the courts' facilities and resources; and the role of fines and funding in the courts. These findings are then followed by a summary of our key recommendations.<sup>6</sup>

## Findings Regarding the Organization of the Justice Courts

If one were to map out from scratch a rational and efficient system of local courts to address the varying dockets and demographics throughout our state, the result would look nothing like the blur of courts that is depicted on the cover of this report. The current array of Justice Courts has grown on an *ad hoc* basis over hundreds of years, with few or no questions raised along the way as to what the caseload of any particular court should look like; whether a town or village at issue can or does provide adequate resources to support a court; whether a court might be unnecessarily proximate to a neighboring facility; whether a proliferation of courts in a particular area might have an undue impact on law enforcement agencies or other state and county resources; and other similar issues. As a result, Justice Courts are sprawled around the state, with many counties supporting a glut of courts, many of which sit in overlapping jurisdictions, and some of which coexist in a single building or in redundant facilities across the street.

There are serious economic and quality-of-justice consequences to this vast array of courts. At the local level, it often makes little sense for there to be two or more courts operating a few miles or even blocks from one another, as the overlap in services can be wasteful for the taxpayers in each of the localities that fund the courts. In addition, such duplication may require the county and state to provide redundant services to each of the courts. This can cause serious drains on state and county law-enforcement agencies that must transport prisoners to far-flung courts; district attorney and public defender offices that must staff dozens of courts with competing schedules in a single county; and probation agencies and other service organizations that must provide costly coverage in multiple forums, all to accommodate the desires of municipalities across the state to maintain hundreds of individual courts. In short, the overabundance of Justice Courts creates enormous burdens on taxpayer-funded resources at the local, county and state levels.

By contrast, if there were fewer Justice Courts, the state could provide more targeted and meaningful support to upgrade the facilities and security of the courts that remain. Likewise, it would be more feasible to provide higher judicial salaries to the remaining courts, which could in turn impel more qualified candidates to seek office. Finally, state assistance to and oversight of

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<sup>6</sup> We wish to note at the outset that the views of all Commission members have not been uniform on all issues. While we have achieved a strong consensus on the broad observations that are set forth herein, there are some respects in which members have disagreed on important details. We will, in the body of this report, note the circumstances in which this has been the case, and explain the reasoning behind any alternative views. We also note that one commissioner has concurred with the report, but has written separately to identify certain points of disagreement. (That concurrence follows the conclusion of this report.)



the Justice Court system could be achieved more practicably and effectively in a system less fragmented than the current jumble of more than 1,250 courts.

Beyond the economic impact, this drain on resources adversely affects the quality of justice that is delivered in the Justice Courts. When there are too many local courts for district attorneys to staff, proceedings take place without a prosecutor present. When public defenders cannot appear, cases are delayed for weeks or months. When necessary support services are unavailable – such as programs for domestic violence and drug treatment – law enforcement goals are frustrated. More generally, the funds that are wasted on duplicative courts diminish the amounts available to make critical improvements to court facilities.

Given all this, a rational approach to the reform of these courts might well start from the premise that the current Justice Court “system” (which is really not a system at all) should simply be scrapped in favor of a uniform approach that provides one or more forums within each county to handle local cases and disputes. In fact, this is precisely the result that has been advocated by many since the 1950s, when the concept of District Courts – a uniform, state-funded and state-run system of non-local courts – was first proposed as an across-the-board alternative to the Justice Courts. Since that time, the District Court concept has been the principal (and for the most part only) paradigm advanced in the periodic discussions that have taken place concerning potential alternatives to the Justice Courts. Nonetheless, this concept has failed to garner any widespread community or political support over the years.<sup>7</sup>

Based upon our extensive review, we believe that the District Court concept – while perhaps ideal in principle – is not politically or financially realistic as a statewide replacement for the Justice Courts. This is because we have found significant support among stakeholders across the state for maintaining a system in which local justice is locally administered. In addition, the Justice Courts vary so vastly in their size, their dockets and the populations they serve that we believe it would be impossible to impose a statewide “one size fits all” approach that would satisfy this demand for local control. Finally, creating an array of District Courts that would provide the necessary local coverage would constitute a huge cost to the state. For these reasons, it has become clear to us that the demands for local justice are not politically or practically amenable to a wholly state-run system.

Instead, we believe that it is time to develop a new paradigm for the reorganization of our town and village courts: one that creates greater efficiencies and that does not waste important state and county resources, but which nonetheless remains well adapted to local and regional differences and needs. Our proposal in this regard is set forth further below.

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<sup>7</sup> The sole exceptions have been in Nassau County and the western portion of Suffolk County on Long Island, where District Court systems were created, respectively, in 1936 and 1964.

## Findings Regarding the Qualifications of Justices

Many New Yorkers are surprised to learn that the large majority of our local justices have never been to law school. Recent articles on the topic point out that other professions – from hairstylists to massage therapists – arguably require more training and certification than that which is required to sit as a justice in a town or village court. Many of our Commission members share this concern, and believe that – in a perfect world – all judges would be attorneys, particularly in the most serious and sensitive categories of cases: those involving criminal charges and deprivations of property, as well as those involving complex proceedings such as suppression motions and jury trials. Similarly, many are concerned about repeated reports of legal errors, ethical violations and other abuses in the Justice Courts. Many also point to the 1976 United States Supreme Court case of *North v. Russell*, which held that, just as criminal defendants have a constitutional right to be represented by an attorney, they also have a due process right to appear before an attorney judge. For these reasons, we conclude that immediate action should be taken to ensure the substantive and due process rights of those who appear in our Justice Courts.

At the same time, as with the topic of District Courts, our extensive review has led us to the conclusion that we can achieve this end without resorting to the politically and pragmatically unrealistic step of requiring all judges to be attorneys. First, the majority of town and village justices are hardworking and experienced, are adequately dispensing justice, and are otherwise performing at an acceptable level. In addition, virtually all of the many non-attorney justices with whom we met praised OCA's new Action Plan initiatives to improve judicial education and training, and are eager for more training and enhanced resources.

Second, it is clear that, in many counties, there is no realistic alternative to the non-attorney justice. Many critics of the current Justice Court system have made the assertion that, if properly motivated, sufficient numbers of attorneys can be persuaded to serve in Justice Court positions in all areas of the state. Our conclusion is that this simply is not feasible. There are hundreds of towns and villages that have few attorneys in residence, and no reasonable system of inducements will prompt sufficient attorneys to relocate or otherwise assume all of these town and village positions. As a consequence, in many areas of the state, our current Justice Court system, without non-attorney justices, would provide no local justice at all.

For these reasons, rather than advancing an unrealistic call for the abolition of non-attorney judges, we believe that any initiative going forward should instead focus on: (a) creating efficiencies and improvements through combinations of courts that will have the effect of improving the overall quality of the courts; (b) raising age and educational qualifications; (c) expanding the pool of qualified candidates; (d) improving training and oversight; and (e) implementing procedural safeguards to ensure that those who appear before non-attorney justices in criminal matters have alternative options which address any potential substantive or due process concerns. A synopsis of our proposals in this regard is set forth below.

## Findings Regarding Justice Court Facilities and Resources

As noted above, the best funded and best run Justice Courts in our state are virtually indistinguishable from our state-paid courts. Proceedings are conducted in modern courtrooms, with stenographers (or other recording devices), with safeguards for the handling of prisoners, with ample facilities for dealing with jurors, with up-to-date administrative support, and with all of the other attributes necessary to a modern and fully functioning court. Unfortunately, such facilities constitute a minority of the Justice Courts across the state.

On the other end of the spectrum are those Justice Courts that are unrecognizable as courts at all. Lacking any meaningful court-related resources, they operate without clerks or other staff; without appropriate space for litigants, defendants and jurors; without modern court-related technologies; and with little semblance of security or court decorum. These, too, comprise a minority of the Justice Courts.

Between these two ends of the spectrum are many hundreds of Justice Courts which have limited resources, but which make the best of their imperfect conditions. Some operate in large facilities but are overwhelmed by huge dockets and lack the funding to handle cases appropriately. More often, they are smaller courts that share space in offices with other town or village agencies, making arrangements as necessary during court hours to provide a modicum of security and order. Most have computers, at least part-time clerks, and access to interpreters and recording capabilities when necessary. In short, the majority of the Justice Courts are operating in facilities that make it difficult to dispense appropriate justice, but which, in many cases, are capable of being improved. The question is how to bring such courts into the modern age.

To be clear, the goal is not to achieve better-looking courthouses. Instead, we believe that the resources and facilities in these courts directly affect the quality of justice dispensed. Without appropriate recording devices, litigants are left without an appropriate basis for appeal. Without proper docket controls, courts are overcrowded, cases are backlogged, fines go unpaid, and criminal justice goals go unmet. Without proper facilities, there is nowhere for attorneys to meet with clients, no way to segregate domestic violence offenders from their victims, no way to handle prisoners safely, no place to store cash appropriately, no suitable location for juries to deliberate, and no accessibility for the disabled. Without effective audio systems, public court proceedings are inaudible to the public. Without effective security provisions, all who come to court are at risk. And so on.

In short, we believe that every courthouse in our state should be safe and fit for the conduct of judicial proceedings. As a consequence, we believe that a process should be established to ensure that all Justice Courts meet certain minimum standards for facilities and other resources. The question, of course, is how to enforce such standards and effect such changes without diminishing access to justice. Our proposals in this regard are outlined below.

## Findings Regarding the Role of Fines and Funding

Not surprisingly, the problems that exist with the Justice Courts almost all come down to money. The largest and most effective courts are those that are well-funded, and supported by a revenue stream generated by a robust docket and the associated fines and fees that come with it. At the other extreme are those courts that are woefully underfunded, and that may be subject to inappropriate pressure to produce results that enhance municipal coffers. The financial backdrop is a statewide regime that apportions fines and fees in complex ways among state, county and local governments, a regime that can be subject to manipulation, since the outcome reached in a particular case can directly determine whether the resulting fine goes to the state or the municipality.

Being creatures of their municipal governments, the Justice Courts get little by way of outside financial support, the main exception being a system of relatively modest legislative grants that are available through OCA. Any consideration of reform must thus address the question of whether the state should provide more financial support to these courts, especially if the goal is to encourage the Justice Courts on a statewide basis to be more streamlined and efficient. Our proposals in this regard are set forth below.

### **An Overview of Our Recommendations**

#### The Creation of Minimum Standards

We believe that the first step in improving the quality of justice that is delivered in the Justice Courts is to establish a set of standards – for court facilities, resources, security and other requirements – that would be enforced statewide, as a means to ensure that all courts are safe and fit for judicial proceedings. Our goal would not be to “gold plate” all courts, and we recognize that such standards would have to be flexible and realistic to reflect local differences and needs, and to avoid an unintended diminution in the access to justice, particularly in rural areas. But we believe that a statewide effort can and should be undertaken, as the current approach of allowing courts to operate on an *ad hoc* basis, without adequate resources or due regard for broader issues of efficiencies, economies and the quality of justice, is unacceptable. In this report, we make concrete proposals for what should be included in this list of minimum standards, and we explain how they should be codified and eventually monitored by OCA.

#### County-Based Panels to Bring About Combinations and Reform

To address the overlap and inefficiencies that currently exist among the Justice Courts; to achieve the minimum standards discussed above; and to improve the quality of the courts and the justice they dispense, we believe that the number of Justice Courts must be reduced through a process of combination and reform. There is simply no way, logistically or financially, that needed improvements – in areas such as facilities, accessibility, security, technology, training of justices and support staff, money-handling and implementation of specialized court programs – can be effectively accomplished for all of the 1,250-plus existing courts around the state.

Moreover, given the proximity of many of the courts to one another, there is no need for all of these courts to remain in existence in order for justice to be provided on a local basis.

The process of deciding which courts to combine will require a significant degree of collaboration among the Justice Courts and their constituencies. For a number of reasons discussed in this report, we believe that this process cannot take place solely at the municipal level. As noted above, however, we believe that a wholly top-down, state-run approach is not feasible either. Determinations of where combinations are necessary cannot be made in the abstract, and a close review and understanding of each individual county and community will be necessary before effective recommendations can be made.

To this end, we propose the creation of review panels in each county, panels that would be directed by the State Legislature to assess which courts meet (or can be improved sufficiently to meet) the new minimum standards, and that would develop plans for combining courts on a county-by-county basis. In developing these plans, the panels would be required to follow statutory guidelines which would incorporate, not only the concept of minimum standards described above, but geographic, demographic and docket-related considerations of where courts are most needed; the condition of court facilities and security arrangements; the distance that litigants and others must travel to gain access to a court facility; the proximity of courts to detention facilities; the availability of justices to conduct arraignments; and other similar issues. These panels would be comprised of representatives from relevant constituencies, including town, village and county governments, Justice Courts, and the local bar. The work of the panels would be facilitated by OCA, which would help guide and coordinate the panel reviews within each judicial district, to promote consistency around the state.

We further suggest that such panels be provided with a presumed range of the court combinations that are to be achieved on a county-by-county basis. The purpose of these recommended ranges would be to ensure the fairness, uniformity and effectiveness of the consolidation program across the state. Each of the panels would be given a set period of time to perform its work, after which the recommendations would have the force of law (unless a county legislature enacts a substitute plan, as discussed herein).<sup>8</sup> The panels would address only the combination of courts, and would not be permitted to make changes to the number of judgeships, which is a decision best left to the localities after the consolidation analysis is complete. The panels would thereafter be disbanded, and the further monitoring and enforcement of standards in the Justice Courts would, as noted above, become the responsibility of OCA.

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<sup>8</sup> We note that this concept of county-based panels is one of the few issues on which the Commission did not achieve unanimity. While a majority of members believe that this structured county-by-county approach, as well as a presumed range of combinations, is necessary to ensure consistent and effective results across the state, a few felt that such an effort is unnecessary and inconsistent with the tradition of local decision making and control of these courts. Instead, these members would commend the consolidation analysis, on a purely voluntary basis, to the localities alone, rather than starting from the premise that any particular degree of combinations is necessary in a particular region.

We recognize that this proposal is complex, and the precise contours are spelled out further in the body of this report. The bottom line, however, is that we have developed a plan that balances the need to make judgments about resources and efficiencies at a local and regional level, against the need to ensure that the quality of justice that is delivered by our courts is consistent and satisfactory across our state. Any plan that does not strike such a balance, we believe, will be unrealistic and doomed to fail, for both practical and political reasons.

## Safeguarding Due Process Rights and Improving the Quality of the Justice Court Bench

As noted above, the Commission is seriously concerned by the accounts of errors and abuses by town and village justices over a period of years. Based on our review, however, we do not believe that the concept of local courts – with appropriate reforms – cannot be made to succeed. Instead, we have found that, across the state, there is a strong interest among justices (attorneys and non-attorneys alike) in enhancing their training and experience, and a receptivity to the recent initiatives by OCA. To this end, we set forth specific recommendations herein to improve further the education, training and certification of justices.

With respect to the role of non-attorney justices, we remain concerned about due process issues and the legal consequences that can be imposed by justices who have not received a legal degree. After extensive debate about the possible proposals that might address these recurring concerns, we believe that the simplest and most effective solution is to provide all defendants who appear before a non-attorney justice in a misdemeanor criminal case with an “opt-out” right to have his or her case heard by an attorney judge, at a point after arraignment but before a trial is scheduled or before substantive motions are made. (Again, there is significant additional detail on this subject set out in the body of this report.) We believe that such an “opt-out” right should address any substantive or due process concerns, without entirely dismantling a system that has been in place for hundreds of years.

## Reforming the Funding Process to Upgrade and Achieve Efficiencies in the Justice Courts

Achieving the necessary Justice Court reforms will require the adoption of new funding strategies, even in areas where combinations result in a reduced number of courts. To this end, we identify in this report a number of funding steps to be considered that would enhance and rationalize the existing mechanisms by which the courts are funded, at the state and local levels.

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The foregoing proposals are more fully explained in Section Five of this report. In addition, as in our first report, we have included in the Appendix model legislation designed to offer the Legislature a ready-to-use bill that can be passed without the need to draft legislation from scratch; it also ensures that there is no misunderstanding or confusion regarding our proposals. It is our sincere hope that this document will, once and for all, lay the foundation for

a fundamental improvement in the quality of justice that is obtained by the millions of people who rely on our Justice Courts as the primary forum for the redress of their important legal needs.

## An Overview of this Report

Section One of this report describes the extensive fact-finding mission that the Commission undertook in its review of the Justice Courts, a review which is the most comprehensive in the state's history.

Section Two provides a brief history of the Justice Courts, a history which dates back to the founding of our country, including a description of prior attempts at reform and the use of non-attorney justices over the years. The section also includes a comparison of New York's Justice Courts to the local courts of other states and nations, and a synopsis of the current legal framework that establishes and governs the Justice Courts in New York State.

Section Three outlines a number of significant developments that occurred in the months leading up to our study of the Justice Courts. These include the release of the Office of Court Administration's Action Plan for the Justice Courts; the "Broken Bench" series of articles published in *The New York Times*; the Justice Court hearings held in the State Legislature; and recent reports issued by the New York State Commission on Local Government Efficiency and Competitiveness, the New York State Bar Association, the New York City Bar Association, and the Fund for Modern Courts.

Section Four sets forth our factual findings, which address the organization of the courts, the qualifications of justices, the state of court facilities, and the funding issues.

Section Five describes our proposals for reform.

The appendices to the report include (i) maps of the town and village courts in each county; (ii) a memorandum assessing data on judicial misconduct; (iii) a memorandum offering a proposed methodology for establishing presumptive consolidation ranges, along with a county-by-county list of such ranges; (iv) a list of the Justice Courts we visited; (v) a list of the witnesses who testified at our four public hearings; (vi) model legislation that would accomplish the goals set forth in this report; (vii) a set of proposed minimum standards for all Justice Courts; (viii) a memorandum on the costs associated with improving facilities and security in the Justice Courts; and (ix) a chart listing county-by-county educational attainment data.

## — SECTION ONE —

### THE WORK OF THE COMMISSION

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The Commission’s mandate was broad and unfettered. In designing our work plan, we were mindful of the complexity of our topic, the fact that there has not been a statewide study of the Justice Courts since the 1950s, and the fact that the courts have been a subject of recurring controversy for many years. Given this backdrop, we set out to conduct the most comprehensive review of the courts that has ever been performed.

Most importantly, we were committed from the beginning to achieving a truly independent result. As noted above, the Commission members are a broad and diverse group, with generations of experience in the state-run courts, in the Justice Courts, in the legal and political arenas, and beyond. At the outset of our fact finding, all agreed to keep an open mind as we traveled around the state developing first-hand views. In the end, all who participated in the myriad site visits agreed that, without seeing these courts up close and in operation, and without meeting the justices, clerks, town officials, litigants and other constituencies who interact with these courts, it is difficult to appreciate the scope and complexity of the Justice Courts and the role that they play in their communities.

In this section, we describe in more detail the work we undertook in our fact finding.

#### **Site Visits**

It was obviously essential that the Commission hear directly from town and village justices about their experiences and perspectives, observe the courts in operation, and see the facilities where these justices preside. Accordingly, site visits to town and village courts throughout the state served as the core of our fact-gathering effort. To ensure that we obtained a statewide view, we visited Justice Courts in each of the eight judicial districts where such courts exist.<sup>9</sup>

During these trips, the Commission visited a vast and representative array of the town and village courts in operation across New York. Within each judicial district, we took pains to visit a cross-section of courts: busy suburban courts with large and daily dockets; smaller courts that sit only once or twice per week; and the smallest courts that sit only once or twice per month and that convene in garages, barns and other rural facilities. During these site visits, we explored the views of the justices, their court clerks, and in many cases the prosecutors, defenders, probation representatives and others who were on site. In total, the Commission toured the facilities of nearly 100 Justice Courts across the state.

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<sup>9</sup> Of the thirteen judicial districts in New York State, there are no town and village courts in New York City, which comprises the 1<sup>st</sup>, 2<sup>nd</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> judicial districts.



On many of these visits, we were able to observe actual court proceedings, and thus to witness the demeanor, competence and effectiveness of the justices on the bench; the performance of the attorneys; the nature of the cases; the treatment of defendants and litigants; the effectiveness of the court process; and other important aspects of the court proceedings.<sup>10</sup>

In each of the counties we visited, we also conducted “town-hall style” meetings to which all justices and court clerks were invited. These sessions were extremely well attended and allowed us to have open and wide-ranging discussions with hundreds of participants. Similarly, in each jurisdiction we held meetings with the local prosecutors, defense attorneys, law enforcement officials, probation representatives and others who participate in the Justice Courts day after day. We also met with county legislators, state legislators, state-level judges, town supervisors, village mayors and other local officials who are in charge of the operation and funding of the courts in the local communities. In short, we met with many hundreds of justice court participants and other “stakeholders” during our six months of travel around the state.

## Public Hearings

The Commission held four full-day public hearings, in Albany, Ithaca, White Plains, and Rochester. Members of the public were invited to each of these hearings to express their views concerning the town and village courts. The Commission publicized these hearings in newspapers, including the *New York Law Journal*, on the Commission’s website, by mailings to stakeholders, postings at state courthouses and by word of mouth during the town hall meetings on each of our site visits. The Commission also invited organizations that work with and are affected by the Justice Courts to send representatives to the hearings to voice their positions. As a result of this outreach, we heard testimony from a wide range of individuals and organizations, including bar associations, civil rights groups, associations of mayors and towns, government watchdog groups, town and village justices, domestic violence advocacy groups, and others.<sup>11</sup> In total, 85 witnesses testified at the public hearings. For those who were unable to participate, we also invited the public to submit written testimony or send letters conveying their views. The written submissions received by the Commission include letters from individuals and organizations who appear in the town and village courts, and resolutions from town boards regarding their courts. In addition, 26 of the participants from the public hearings submitted written testimony to supplement their oral presentations.

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<sup>10</sup> We note that these visits to the Justice Courts were by no means unannounced, and we acknowledge that, to some extent, we may not have obtained a representative view in all cases of the justices’ behavior on the bench. Indeed, we heard private criticisms from stakeholders in a number of jurisdictions, including prosecutors, public defenders and deputy sheriffs, who did not want to speak “on the record,” for fear of offending local justices and their political supporters. We have factored such concerns into this report, and we believe that our extensive fact finding has well positioned us to make appropriate recommendations, despite the perception that some justices may have been on their “best behavior” during our courthouse visits.

<sup>11</sup> A complete list of witnesses is set forth in the Appendix, and the transcripts of the testimony are available on the Commission’s website, <http://www.nycourtreform.org>.

## **Additional Fact Gathering**

To learn first-hand about the training of town and village justices, the Commission's staff attended the Judicial Institute's Justice Court training program in Potsdam in July 2007. There, the staff observed training sessions and received materials from the courses offered, including basic training for new justices, advanced justice training, elective training for justices, and clerks' training. The Commission's staff also visited the Justice Court Resource Center in Cohoes in October 2007. (As described herein, attorneys at the Resource Center field substantive and procedural questions of law from town and village justices.) There, the staff toured the Resource Center facilities, spoke with the attorneys about the nature and volume of calls received and the needs of the Center, and observed and discussed specific inquiries from justices.

Finally, on the subject of court security, in addition to reviewing security issues on each of our site visits, we had numerous discussions about security concerns and needs with law-enforcement experts from OCA who had recently conducted their own assessment of the security needs faced by Justice Courts.

## **Legal and Factual Research**

In addition to the efforts described above, the Commission undertook several research projects which have informed our recommendations. First, we studied the role that non-attorney judges play in other states and foreign countries. Second, as described in Section Four and in the Appendix, the Commission reviewed each of the New York State Commission on Judicial Conduct's decisions concerning town and village justices for the last twelve years to gain clarity on the disciplinary statistics that have been cited by both proponents and opponents of the Justice Court system. Finally, we researched the constitutional and statutory laws that govern the combination of courts in New York State in order to confirm the legal viability of our recommendations.



## — SECTION TWO —

### THE JUSTICE COURT TRADITION: THE HISTORY OF TOWN AND VILLAGE COURTS IN NEW YORK STATE

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At present, more than 1,800 justices serve in 1,277 town and village courts throughout New York State. These justices, most of whom are not attorneys, serve in a system that was founded more than 300 years ago, with roots in medieval England. Before discussing our findings and recommendations, we first discuss the history of New York’s Justice Courts, the many prior efforts to reform these courts, the broader context in which the state’s non-attorney justices serve, and the legal framework governing these courts.

#### Justice Courts in New York: An Historical Perspective

##### A Brief History of Justice Courts

The concept of having primarily lay judges run local courts well predates the founding of the United States. The idea dates to late twelfth-century England, when King Richard I first gave English knights the powers to keep the peace and apprehend violators.<sup>12</sup> Though these knights – known as “conservators of the peace” – were largely responsible for policing rather than adjudicating crimes, their adjudicatory responsibilities slowly grew throughout the thirteenth and early fourteenth centuries, until in 1328 they were formally vested with authority to punish alleged wrongdoers.<sup>13</sup>

The Hundred Years’ War and the Black Death struck England shortly thereafter, beginning an extended period of turmoil and uncertainty. It was during this period that King Edward III, out of both practical and political necessity, conferred increasingly important roles upon English conservators, which were ratified by the English Parliament in the 1361 Justice of the Peace Act.<sup>14</sup> This Act gave justices of the peace, as they had then become known, the authority to apprehend, indict, and try criminals – powers that English lay magistrates continue

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<sup>12</sup> See James A. Gazell, A National Perspective on Justices of the Peace and Their Future: Time for an Epitaph?, 46 MISS. L.J. 795, 796 (1975). In fact, the idea of having lay judges dates to ancient Roman times. See generally JOHN P. DAWSON, A HISTORY OF LAY JUDGES 14-35 (1960); Allan Ashman & David L. Lee, Non-Lawyer Judges: The Long Road North, 53 CHI.-KENT L. REV. 565, 566 (1977).

<sup>13</sup> See Gazell, supra note 12, at 796.

<sup>14</sup> See LINDA J. SILBERMAN, NON-ATTORNEY JUSTICE IN THE UNITED STATES: AN EMPIRICAL STUDY 332-33 (1979); Benjamin Will Bates, Note, Exploring Justice Courts in Utah and Three Problems Inherent in the Justice Court System, 2001 UTAH L. REV. 731, 732-33; Chester H. Smith, The Justice of the Peace System in the United States, 15 CAL. L. REV. 118, 118 (1915).

to possess to this day.<sup>15</sup> Among their other new duties, justices of the peace were also made responsible for holding regular, general court sessions, as well as special court sessions in each county.<sup>16</sup>

Over the following centuries, English justices of the peace continued to grow in authority and esteem within the English legal system. Indeed, both these justices' jurisdiction and the prestige of their positions expanded considerably during this period. Yet, despite these changes, many key aspects of the justice-of-the-peace system remained constant. Notably, justices' core jurisdiction remained almost entirely criminal, and justices continued to be employed without tenure on a part-time basis.<sup>17</sup> These attributes remain today.<sup>18</sup>

## Justice Courts in New York

When English settlers founded the American colonies in the seventeenth century, they brought with them the English justice-of-the-peace system, along with many other tenets and structures of English law.<sup>19</sup> Perhaps unsurprisingly, the early American Justice Court system these settlers created closely resembled the English system in both structure and purpose; as in England, for example, the American system initially helped deliver governmental oversight to rural areas without the expense of implementing a costly public bureaucracy.<sup>20</sup> In these early colonies, law-trained persons were rare.<sup>21</sup>

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<sup>15</sup> See Bates, *supra* note 14, at 732; RIGHT HONOURABLE LORD JUSTICE AULD, REVIEW OF THE CRIMINAL COURTS OF ENGLAND AND WALES, available at <http://www.criminal-courts-review.org.uk/ccr-00.htm>. English justices did not, and do not, however, possess jurisdiction over civil matters. See Cathy Lesser Mansfield, *Disorder in the People's Court: Rethinking the Role of Non-Lawyer Judges in Limited Jurisdiction Court Civil Cases*, 29 N.M. L. REV. 119, 134 (1999); AULD, *id.*

<sup>16</sup> It is worth noting that in England, the terms "magistrate" and "justice of the peace" are interchangeable. See Irving F. Reichert, *The Magistrates' Courts: Lay Cornerstone of English Justice*, 57 JUD. 138, 183 n.1 (1973).

<sup>17</sup> See DORIS MARIE PROVINE, JUDGING CREDENTIALS: NONLAWYER JUDGES AND THE POLITICS OF PROFESSIONALISM 26 (1986); Gazell, *supra* note 12, at 797. Justices, however, were also sometimes charged with hearing matters concerning trade, religion, taxation, and the maintenance of roads and bridges. See DAWSON, *supra* note 12, at 139; PROVINE, *id.*, at 26.

<sup>18</sup> See Ashman & Lee, *supra* note 12, at 567; AULD, *supra* note 15. Around the seventeenth century – near the founding of colonial America and the migration of Justice Courts to the New World – the importance of the English justice-of-the-peace system began to erode somewhat. See DAWSON, *supra* note 12, at 144-45; Ashman & Lee, at 566-67. Even so, the system never disappeared, and today justices of the peace continue to serve as the backbone of the English criminal system. See Reichert, *supra* note 15, at 138.

<sup>19</sup> See, e.g., 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 76 (1948) ("The Americans have borrowed from their fathers, the English, the idea of an institution that is unknown on the continent of Europe: I allude to that of justices of the peace.").

<sup>20</sup> See PROVINE, *supra* note 17, at 27-28.

<sup>21</sup> See *id.* at 4. Some colonists, in fact, found lawyers distasteful; the hiring of attorneys was, for a period of time, in fact prohibited in seventeenth-century Pennsylvania, New Jersey, and Virginia. See SILBERMAN, *supra* note 14, at 334 (citing A.M. CHROUST, THE RISE OF THE LEGAL PROFESSION IN AMERICA 65-66 (1965)).

In New York, the justice-of-the-peace tradition that began in England was continued in various early local courts, including justice of peace courts, magistrates courts, police courts, and town and village courts, all of which collectively served as predecessors to New York's current town and village court system.<sup>22</sup> The justices who served in these courts were, by all accounts, extremely hard-working, dedicated, and committed public servants, despite receiving little pay and virtually no assistance. Indeed, one prominent study of law enforcement in colonial New York observed that “[n]o one who has examined the now fragmentary records of how the body of [colonial New York] justices applied themselves to their duties can fail to marvel at the pains taken by so many of them to discharge their office.”<sup>23</sup>

Like their English brethren, justices in New York's early local courts primarily exercised limited criminal jurisdiction over arraignments, non-felonies, and other similar matters. By the eighteenth century, however, New York's Justice Courts had begun to hear some civil cases, and, by the nineteenth century, these courts had risen to considerable prominence within the state. This latter fact was expressly recognized by the Court of Appeals near the end of the nineteenth century in *People ex rel. Burby v. Howland*; as the Court wrote therein, the state's Justice Court system “is regarded as of great importance to the people at large, as it opens the doors of justice near their own homes, and not only affords a cheap and speedy remedy for minor grievances as to rights of property, but also renders substantial aid in the prevention and punishment of crime.”<sup>24</sup>

The first meaningful reference to the Legislature's authority over the Justice Courts occurred in 1846, when voters enacted a new Judiciary Article of the State Constitution that authorized the Legislature to control the manner in which town judges and judicial officers were elected.<sup>25</sup> The provisions set forth in this Article remained largely unchanged through the end of the nineteenth century and the beginning of the twentieth, though various refinements to the Justice Courts' powers were made during this time. Included among these refinements were provisions allowing localities to establish local courts and elect judges, as well as measures formally establishing jurisdiction over arraignments, non-felony offenses, and some civil matters.<sup>26</sup>

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<sup>22</sup> See N.Y. STATE UNIFIED COURT SYS., ACTION PLAN FOR THE JUSTICE COURTS 12 & n.27 (2006) (hereinafter “ACTION PLAN FOR THE JUSTICE COURTS”), [available at](http://www.nycourts.gov/publications/pdfs/ActionPlan-JusticeCourts.pdf) <http://www.nycourts.gov/publications/pdfs/ActionPlan-JusticeCourts.pdf>.

<sup>23</sup> JULIUS GOEBEL, JR. & RAYMOND NAUGHTON, LAW ENFORCEMENT IN COLONIAL NEW YORK 136 (1944) (as cited in PROVINE, *supra* note 17, at 28).

<sup>24</sup> *People ex rel. Burby v. Howland*, 155 N.Y. 270, 275-76 (1898).

<sup>25</sup> See N.Y. CONST. 1846, art. VI, §§ 17, 18.

<sup>26</sup> See ACTION PLAN FOR THE JUSTICE COURTS, *supra* note 22, at 13 (citing N.Y. CONST. 1869, N.Y. CONST. 1894, N.Y. CONST. 1925).

More significant changes were implemented as the twentieth century progressed. In 1936, for example, the Legislature abolished town Justice Courts in Nassau County and, in their place, created the state's first District Court system.<sup>27</sup> Likewise in 1962, the new Judiciary Article instituted a series of noteworthy reforms to the Justice Court system, including the authorization of additional District Courts, the prohibition on the previously commonplace practice of justices serving in non-judicial roles, and the elimination of the Legislature's ability to abolish town courts without voter consent.<sup>28</sup> In other important respects, however, the same core Justice Court structure that served New Yorkers for roughly three centuries remained, and now continues to remain, largely in place through the beginning of the twenty-first century.

### **Prior Reform Attempts**

Since the first appearance of local courts in New York, several serious but ultimately unsuccessful attempts have been made to fundamentally reform the state's Justice Court system. The most noteworthy of these have taken place within roughly the last half century, usually alongside broader calls to reform overall the New York court system.

#### **The Tweed Commission**

Arguably the first of these serious attempts occurred in the 1950s, when the Temporary Commission on the Courts, or Tweed Commission – which was chaired by Harrison Tweed and established by the Legislature in 1953 to undertake a comprehensive study of the state judicial system – took up an analysis of the Justice Court system as a part of its larger examination of the state's courts.

The Justice Courts were first meaningfully addressed by the Commission in a 1955 report by the Subcommittee on Modernization and Simplification of the Court Structure, which was chaired by Louis Loeb and which proposed a complete structural reorganization of the state courts.<sup>29</sup> Under the proposed restructuring, the Justice Court system was to be abolished entirely, with former Justice Courts collapsed into either District Courts with civil and criminal jurisdiction or so-called Magistrates' Courts with jurisdiction over traffic cases and some criminal matters. All judges under this plan were required to be lawyers, and local control over courts was to be eliminated.<sup>30</sup> In justifying both these and other related recommendations, the Subcommittee, while noting that many justices "perform excellent service," pointed to the

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<sup>27</sup> Village courts remain in Nassau County, though their jurisdiction is limited to some civil actions, traffic violations and local ordinance infractions.

<sup>28</sup> See N.Y. CONST. 1962, art. VI, §§ 16, 17.

<sup>29</sup> See generally TEMP. STATE COMM'N ON THE COURTS, SUBCOMMITTEE ON MODERNIZATION AND SIMPLIFICATION OF THE COURT STRUCTURE, A PROPOSED SIMPLIFIED STATE-WIDE COURT SYSTEM (1955).

<sup>30</sup> See id.

various flaws it saw in the Justice Court system, including the fact that justices worked only part-time and that no law degree was required.<sup>31</sup>

The Subcommittee's reforms, however, were ultimately omitted from the Commission's final report, which was issued in 1958. The report gave the following rationale for the omission:

*"[The Commission's earlier recommendations concerning the Justice Courts] were vigorously opposed, in whole or in part, by present judges of Town, Village and City Courts, by residents and officials of the area served, by members of the Legislature and by others. Indeed, the Commission found reason to believe that, even if its proposals in this respect were accepted by the Legislature and formed a part of an over-all court reorganization plan, the voters of the State on the required referendum for a Constitutional Amendment might well defeat the entire plan because of this aspect alone."*<sup>32</sup>

The report went on to propose only scaled-back reforms consistent with the "gradual improvement[s]" the Commission saw in the Justice Courts. Specifically, it recommended that non-attorney judges be required to complete a training course and that the Legislature be granted authority to, among other things, discontinue Justice Courts provided "a majority of electors served so desire."<sup>33</sup>

Notably, the Tweed Commission's final recommendations were ultimately dismissed by the Judicial Conference, which, shortly after the issuance of the Commission's final report, chose to ignore the Commission's sentiment and reassert the initial call to abolish the Justice Courts.<sup>34</sup> This measure, however, was firmly rejected by the Legislature, which, except for new training and certification requirements, opted to leave the Justice Courts intact and unchanged.<sup>35</sup>

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<sup>31</sup> Id. at 59-60. As the Subcommittee's report read on this latter point:

*"The Subcommittee is quite aware of the fact that many [justices] perform excellent service, are conscientious and able and administer fundamental justice. It is also aware that in many jurisdictions, including England, there is a long and successful tradition of lay judges who make outstanding contributions. Nevertheless, the jurisdiction of the Justice of the Peace is such that there are many cases which he may be called upon to adjudicate in which a knowledge of law and legal training are indispensable to the proper disposition of the case."*

Id.

<sup>32</sup> TEMP. STATE COMM'N ON THE COURTS, FINAL REPORT TO THE LEGISLATURE 17 (1958).

<sup>33</sup> Id. at 18.

<sup>34</sup> See generally RECOMMENDATIONS OF THE JUDICIAL CONFERENCE OF THE REORGANIZATION OF THE NEW YORK STATE JUDICIAL SYSTEM (1958).

<sup>35</sup> ACTION PLAN FOR THE JUSTICE COURTS, supra note 22, at 15.



## The Dominick Commission

Another major push to reform the Justice Courts took place in the early 1970s, when the Temporary State Commission on the State Court System, chaired by State Senator D. Clinton Dominick and known as the Dominick Commission, took up its own analysis of court reform in New York State. After more than two-and-one-half years of study, in January 1973 the Commission released a sweeping 180-recommendation report that proposed radical changes to the state's courts.

Specifically, under the Commission's proposals, village courts were to be abolished entirely, and town courts were to be eliminated where District Courts were present, or otherwise stripped of misdemeanor jurisdiction.<sup>36</sup> In explaining these recommendations, the Dominick Commission struck many of the same notes as had the Loeb Subcommittee roughly fifteen years earlier.<sup>37</sup> Additionally, the Commission expressed concerns about conflicting demands on justices' time, the uniformity of justice (or lack thereof) dispensed by the town and village courts, the difficulties posed by the "varied locations" of the courts, and the difficulties inherent in monitoring such a large, unorganized court system.<sup>38</sup>

Like the Judicial Conference's recommendations fifteen years earlier, however, the Dominick Commission's proposals ultimately failed to gain the necessary traction. And while certain other of the report's recommendations – such as the establishment of a Chief Administrative Judge and the centralization of court administrative functions – would later be embraced, the Legislature for the most part ignored the Dominick Commission's recommendations.<sup>39</sup>

## Other Reform Efforts

In addition to the attempts made by the Tweed and Dominick Commissions in the 1950s and early 1970s, other unsuccessful efforts have been made in recent decades to either abolish or radically alter the Justice Courts. In 1967, for example, voters rejected a broad package of

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<sup>36</sup> See TEMP. STATE COMM'N ON THE STATE COURT SYS., . . . AND JUSTICE FOR ALL ¶¶ 83-85 (1973).

<sup>37</sup> As the Commission wrote,

*"The recommended changes are prompted by the concern of the Commission with the present quality of justice at the town and village level. The judges in local courts are part-time and often untrained in the law. Although non-lawyer judges are required to attend legal orientation and refresher courses given by the judicial conference, it is questionable whether such a program can prepare a judge to protect adequately the rights of individuals in such proceedings as misdemeanor trials or preliminary hearings."*

Id. at Part II, p. 23.

<sup>38</sup> The Dominick Commission also expressed accessibility concerns about the Justice Courts, and noted that its plan was designed to ensure "quality and accessibility." Id.

<sup>39</sup> See ACTION PLAN FOR THE JUSTICE COURTS, supra note 22, at 15.

constitutional reforms that included a plan that would have largely eliminated the Justice Courts. Likewise, a 1979 New York State Bar Association report recommending merger of local courts into regional tribunals ultimately failed to obtain sufficient support. And, as described more fully in the following section, a 2006 recommendation by the State Comptroller's Office that low-volume Justice Courts be consolidated in order to improve efficiency and facilitate more effective oversight has, thus far, prompted few changes. Not one of these proposals, in fact, has been fully brought before the Legislature.<sup>40</sup>

## The Use of Non-Attorney Justices

### Non-Attorney Justices in New York

As described above, New York's Justice Court system has from its inception relied heavily on non-attorney justices, and today neither the State Constitution nor statute prohibits non-attorneys from serving as justices. This practice, in fact, has been sanctioned by the Court of Appeals, which in the 1983 case *People v. Charles F.* found no absolute constitutional right to an adjudication by a law-trained judge.<sup>41</sup> As a further safeguard, however, today's non-attorney justices must first attend training sessions that attorneys need not attend and pass a test that attorneys need not take.<sup>42</sup>

That said, despite these differing initial requirements, there is no jurisdictional limitation on the types of Justice Court cases non-attorneys may hear as compared to their attorney-justice counterparts. As a general matter, though, civil jurisdiction in the Justice Courts is limited to small-claims matters and other actions involving \$3,000 or less, as well as some landlord-tenant and other matters.<sup>43</sup> Criminal jurisdiction, meanwhile, extends to misdemeanors and violations, traffic infractions, and arraignments and preliminary hearings in felony cases.<sup>44</sup> Both attorney and non-attorney justices can and do preside over any trials that take place in their courts.

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<sup>40</sup> Id.

<sup>41</sup> See People v. Charles F., 60 N.Y.2d 474, 477 (1983). The U.S. Supreme Court addressed this issue in North v. Russell, 427 U.S. 328 (1976). See id. at 339 (finding that Kentucky's system of allowing non-attorney judicial officers to serve did not violate the U.S. Constitution because, on appeal, defendants were afforded the right to a *de novo* trial before an attorney judge). The Charles F. and Russell decisions are discussed in detail in Section Five, below.

<sup>42</sup> The State Constitution requires the testing of non-attorneys before they take office, but does not allow attorneys to be similarly tested. See N.Y. UNIFORM JUST. CT. ACT § 105(a). Non-attorneys must also, like attorneys, both be elected and satisfy residency requirements. See N.Y. Const. art. VI, § 20(c); Town Law §§ 20(1)(a), 23(1); Village Law § 3-300(2).

<sup>43</sup> See N.Y. UNIFORM JUST. CT. ACT §§ 201-208. Landlord-tenant actions are not subject to the \$3,000 limitation and Justice Courts sometimes preside over cases involving rent arrears well in excess of that amount.

<sup>44</sup> See id. §§ 2001, 2005; N.Y. CRIM. PROC. LAW §§ 10.10(3)(d)-(e), 10.30.

## Non-Attorney Judges in Other States

Outside New York, there is considerable variation in the ways states permit non-attorney judges to serve. According to recent data, thirty-three states currently allow non-attorney judges to preside in at least some capacity, while the remaining states and the District of Columbia restrict the bench to attorneys.<sup>45</sup> Of the states that allow non-attorney judges, eighteen permit non-attorneys to exercise some form of misdemeanor jurisdiction.<sup>46</sup>

In the vast majority of states that allow non-attorneys to preside, non-attorney judges sit in courts with limited jurisdiction. In the civil context, the jurisdiction of these courts is most frequently limited to small-claims matters involving less than \$10,000, although in certain contract, tort, and real property disputes amounts in controversy can range as high as \$15,000 (in Colorado, Delaware, and Georgia).<sup>47</sup> Other common areas of civil jurisdiction include traffic violations and probate, juvenile, and mental-health matters. Meanwhile, in criminal cases, the jurisdiction of courts in which non-attorney judges sit is generally limited to preliminary hearings and misdemeanor cases.<sup>48</sup>

Of the thirty-three states that permit non-attorney judges, twenty allow non-attorney judges to preside in courts that conduct jury trials. In approximately half of these courts, any case that surpasses the initial jurisdictional threshold may be tried with a jury. A variety of limitations are placed on cases in the other courts, with small-claims matters most frequently among those precluded from proceeding to jury trial.<sup>49</sup>

## Non-Attorney Judges in Other Countries

Several foreign countries permit non-attorney judges. Included among these are England and Canada, two nations that share a common legal heritage with the United States, and have legal systems that closely resemble those in this country.

### England

As discussed above, the English legal system relies heavily on non-attorney judges, particularly in rural areas. Indeed, there are approximately 30,000 justices of the peace currently

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<sup>45</sup> See BUREAU OF JUSTICE STATISTICS, STATE COURT ORGANIZATION 2004, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/sco04.pdf>. This data is current through 2004.

<sup>46</sup> The actual number of non-attorney justices presiding throughout the United States is unclear and cannot be precisely determined. A 1979 study, however, was able to account for 13,329 such justices, including 1,983 in New York. Only Georgia had more non-attorney justices than New York. See SILBERMAN, *supra* note 14, at 25.

<sup>47</sup> See Linda J. Silberman, *Non-Attorney Justice: A Survey and Proposed Model*, 17 HARV. J. ON LEGIS. 505, 511-12 (1980); COLO. REV. STAT § 13-6-104; DEL. CODE ANN. tit. 10 § 9301; GA. CODE ANN. § 15-10-2.14.

<sup>48</sup> Silberman, *supra* note 47, at 512-13.

<sup>49</sup> See generally *id.* at 511-19. These figures were derived from a non-exhaustive review of state statutes.

serving in magistrates' courts across England, none of whom are required to have formal legal training and the majority of whom are non-attorneys. The non-attorney justices in this group do, however, receive training before joining the bench, as well as both ongoing training and assistance from law-trained clerks while serving. Appointments to the bench are made by the Lord Chancellor, and, other than expense reimbursement, justices receive no income for their services.<sup>50</sup>

By all accounts, justices of the peace are the workhorses of the English criminal justice system, hearing more than ninety percent of all prosecuted criminal cases.<sup>51</sup> Even so, their criminal jurisdiction, like that of New York's justices, is limited to relatively minor criminal matters, including cases involving fines of less than £5,000 and imprisonment of less than one year. Justices of the peace are responsible, however, for indictment and committal to the Crown Court in more serious criminal matters, and have limited jurisdiction in some minor civil cases, including certain family-related and licensing matters.<sup>52</sup> English justices do not preside over jury trials, but instead hear criminal cases in three-judge panels.

#### Canada

As in England, non-attorneys serve as justices of the peace in Canada. Unlike in England, however, in Canada there are considerable differences in the ways non-attorneys are permitted to serve. The twelve Canadian provinces and territories employing justices of the peace<sup>53</sup> not only have different jurisdictional requirements for non-attorneys, but also different prerequisites for service as a justice, guidelines for placement of justices, and even classifications of justices.

For example, four Canadian provinces have two formal classes of justices, non-presiding justices (who primarily handle paperwork) and presiding justices (who are specifically empowered to handle cases).<sup>54</sup> In three provinces and territories, moreover, attorneys are affirmatively barred from serving as justices, while in another (Alberta) justices must be lawyers.<sup>55</sup> Other provinces and territories have their own unique requirements, such as the requirement in Yukon of "a reputation for fairness, honesty, and integrity"; the requirement in British Columbia of "concern for one's community"; and Saskatchewan's requirement of

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<sup>50</sup> See, e.g., AULD, *supra* note 15.

<sup>51</sup> Some estimates are even higher. See, e.g., Reichert, *supra* note 16, at 138 (estimating that more than ninety-eight percent of English magistrates are non-attorneys); Ashman & Lee, *supra* note 12, at 567 (same).

<sup>52</sup> See AULD, *supra* note 15.

<sup>53</sup> Of Canada's thirteen provinces and territories, only New Brunswick does not use justices of the peace. See Katherine Beaty Chiste, *The Justice of the Peace in History: Community and Restorative Justice*, 68 SASK. L. REV. 153, 163 (2005).

<sup>54</sup> This distinction does not exist in the other provinces and territories. See *id.* at 164.

<sup>55</sup> See *id.*

“community involvement.”<sup>56</sup> In addition, several provinces and territories designate specific justices to handle particular types of cases, including youth-related matters, traffic offenses, and domestic violence cases; these designations as well vary considerably between provinces.<sup>57</sup> Training also varies from province to province; at least three provinces, for example, offer justices no training, while another (Alberta) provides three days of lectures and three days of courtroom observation, still another (British Columbia) provides a one-week training course, and yet another (Ontario) offers a complete menu of training options, including week-long orientation programs, seminars on legal topics, workshops, mentoring, and ongoing evaluations.

As these examples indicate, the structure of the Canadian justice-of-the-peace system is, at the present time, quite varied. Like the United States, Canada has some jurisdictions in which non-attorney justices are allowed and others where they are forbidden. As in the United States, of the many alternatives that exist and have been proposed in Canada, no one structure or set of practices has emerged as dominant on a national scale.

### **The Legal Framework Governing New York’s Justice Courts**

Unlike the majority of New York’s other courts, Justice Courts in our state are regulated and controlled by several different layers of government. The Constitution, at the highest level, grants the Legislature authority to prescribe town and village courts’ jurisdiction, establish procedures, determine qualifications for office, and abolish village courts.<sup>58</sup> The Legislature can also discontinue town courts and establish District Courts to replace them, but only if these actions are approved by a referendum of the voters, and, in the latter case, requested by an elective governing body.<sup>59</sup>

At the local level, the Constitution and other state laws grant town and village governments fairly broad powers to oversee and regulate their courts. Under the Uniform Justice Court Act (“UJCA”), either town boards in adjacent towns or the voters of these towns may decide to merge their courts.<sup>60</sup> Villages may choose not to have a court at all, and village boards may abolish courts even without voter ratification. Significantly, each locality is responsible for funding its court, providing a court facility, and setting broad administrative guidelines relating to, among other topics, hours of operation, salaries, and security. Currently, there are virtually no statutory or regulatory limits on a locality’s discretion over such matters, or standards for the localities to meet.

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<sup>56</sup> See id.

<sup>57</sup> See id. at 163-66.

<sup>58</sup> See N.Y. CONST. art. VI, §§ 17(a)-(b); 20(a).

<sup>59</sup> See N.Y. CONST. art. VI, § 17(b).

<sup>60</sup> See N.Y. UNIFORM JUST. CT. ACT § 106-a. This concept is discussed further below.

At the state level, OCA is, on the one hand, broadly empowered to supervise the operation of all New York courts.<sup>61</sup> With regard to Justice Courts, OCA can, and does, act in an advisory, assistive capacity – in staffing the Justice Court Resource Center and facilitating the Justice Court Assistance Program (“JCAP”), for example. On the other hand, as a practical matter, the sheer number of Justice Courts, as well as the lack of any direct funding authority or supervision over Justice Court personnel, clearly makes it difficult for OCA to exercise any meaningful oversight or control.

In short, the Justice Courts are, in a manner unlike other state courts, beholden to multiple branches and levels of government. While Justice Court funding and day-to-day supervision, for the most part, emanate from local governments, the Legislature and, to a lesser extent, OCA and the Judiciary each play some role in regulating, overseeing, and assisting these courts. This multitiered system places New York’s Justice Courts in something of a unique position: while they, in theory, answer to several different governmental bodies, they are entirely under the control of no one.

-- Current Law on Justice Court Consolidation

As noted above, New York State law currently affords towns and villages the opportunity to consolidate Justice Courts on a voluntary basis. The process, however, is cumbersome. With respect to towns, the UJCA authorizes the town boards of geographically contiguous towns within the same county to consolidate their courts into a single Justice Court, but only if each town eliminates one of its justices in the process.<sup>62</sup> The procedure requires each participating town board to adopt a resolution in support of reducing the number of justices by one (or for the voters to submit a petition seeking such reduction), after which a public hearing would be held among the participating towns.<sup>63</sup> Following the public hearing, the town boards would vote to ratify the resolution (or voter petition), and upon approval, the measure would be put before the voters of each town in a referendum.<sup>64</sup> If the referendum is passed, each town would eliminate one justice position and the remaining town justices from each town would have concurrent jurisdiction over all of the participating towns.<sup>65</sup> Accordingly, current statutes do not allow towns to combine courts and thus achieve efficiencies except by the politically difficult step of abolishing judicial offices that may be filled by popular and long-serving incumbents.

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<sup>61</sup> See N.Y. CONST. art. VI, § 28(b); N.Y. JUDICIARY LAW §§ 211-212.

<sup>62</sup> See N.Y. UNIFORM JUST. CT. ACT § 106-a. Prior to 2007, when this provision was enacted, the UJCA only authorized the boards of two adjacent towns to consolidate their courts. Section 106-a now permits any number of town boards to take this action, provided the towns are geographically contiguous and within the same county. See id.

<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> Id. There also are numerous ways in which towns and villages may cooperate in operating their Justice Courts. A town and a village may select the same person to serve as a justice of each municipality simultaneously, and a town court and village court may occupy the same physical facilities.

The law governing village courts is less complex. Unlike towns, villages are permitted by law to eliminate one or both of their justices, and to discontinue a court altogether without a referendum. Town courts have equal and concurrent jurisdiction with the village courts of any incorporated village within town limits, and a village that chooses to either reduce the number of justices or eliminate its court may rely on the town court in the same jurisdiction.<sup>66</sup> Current law does not, however, allow villages to share courts, or for towns and villages together to share courts, in the same way that towns can combine multiple courts into a single, more efficient tribunal.

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<sup>66</sup> In such cases, any fines that are imposed for the violation of a village code will remain the property of the village, even if the matter is adjudicated in the town court.

## — SECTION THREE —

### THE CURRENT LANDSCAPE: RECENT DEVELOPMENTS CONCERNING THE JUSTICE COURTS

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In this section, we describe several major developments that occurred in the months leading up to the Commission’s study of the Justice Courts, as well as new developments that have unfolded in the last few months. Specifically, we describe reports issued by the New York State Comptroller’s Office and the Commission on the Future of Indigent Defense Services in recent years; give an overview of the Action Plan for the Justice Courts promulgated by OCA, *The New York Times* “Broken Bench” series and the hearings held by the State Legislature; and summarize reports recently issued by the State and New York City Bar Association Task Forces on Town and Village Courts, the Fund for Modern Courts, the New York State Commission on Local Government Efficiency and Competitiveness as well as this Commission’s first report.

#### **The Office of the New York State Comptroller**

As New York State’s chief fiscal officer, the State Comptroller is responsible for auditing the state’s government operations, identifying areas where local governments can improve operations and providing guidance to local governments on ways to make those improvements. The goal of the Office of the State Comptroller (“OSC”) is to enable local governments to reduce costs, improve services and account for and protect government assets.<sup>67</sup> As part of these responsibilities, OSC has oversight of the financial operations of the Justice Courts. In that role, OSC periodically studies and conducts fiscal audits of the Justice Courts, and publishes reports on its findings.<sup>68</sup>

In recent years, OSC’s Division of Local Government Services and Economic Development has issued several reports concerning the operation of the Justice Courts. In November 2003, OSC issued a report reflecting its study of whether cost savings and other efficiencies could be achieved through Justice Court consolidation.<sup>69</sup> The study analyzed the caseloads and court clerk staffing data for a sample of six town and five village Justice Courts,

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<sup>67</sup> See OFFICE OF THE N.Y. STATE COMPTROLLER, DIV. OF LOCAL GOV’T SERVS. AND ECON. DEV., JUSTICE COURTS ACCOUNTABILITY AND INTERNAL CONTROL SYSTEMS (2006), available at <http://www.osc.state.ny.us/localgov/audits/swr/2005mr10.pdf> (hereinafter “OSC JUSTICE COURT REPORT (2006)”).

<sup>68</sup> On a monthly basis, justices or their employees remit collected fines, bail money and other fees to the OSC Justice Court Fund (JCF), or to the chief fiscal officer of the town or village. The JCF then distributes these moneys to the state and local governments. See OSC JUSTICE COURT REPORT (2006), *supra* note 67, at 5.

<sup>69</sup> See OFFICE OF THE N.Y. STATE COMPTROLLER, DIV. OF LOCAL GOV’T SERVS. AND ECON. DEV., OPPORTUNITIES FOR TOWN AND VILLAGE JUSTICE COURT CONSOLIDATION (2003), available at <http://www.osc.state.ny.us/localgov/audits/swr/2003mr4.pdf> (hereinafter “OSC OPPORTUNITIES FOR CONSOLIDATION”).



and concluded that there were inefficiencies created by having more than one, and sometimes several, Justice Courts handling small caseloads within a small geographic area. The audit found further that the local governments served by the eleven courts could save an estimated \$126,000 annually if some form of consolidation took place. The recommended consolidations ranged from reducing the number of justices in certain courts to the absorption of certain village courts into nearby town courts. The audit went on to conclude that, even if only ten percent of village court costs were eliminated by employing consolidation methods across the state, taxpayers would realize a cost savings in excess of \$1,600,000 annually.<sup>70</sup>

In May 2006, OSC issued a report entitled “Justice Courts Accountability and Internal Control Systems,” which formally urged the State Legislature to make a number of reforms to the Justice Court system in order to address what it found to be serious operational problems in these courts. In the 32 Justice Court audits which OSC performed between 2003 and 2005, auditors found that money – ranging in amount from \$650 to \$62,000 (and totaling more than \$133,000) – was missing in eleven of the 32 courts.<sup>71</sup> Moreover, a 2004 audit of an additional twelve justices from other Justice Courts revealed similar accounting and internal control problems.

In order to address these problems, OSC recommended three main changes for legislative consideration, namely: (1) increased training of justices and clerks; (2) consolidation of courts with small caseloads; and (3) removal of the cash-collection function from these smaller docket courts. The Comptroller stated at the time of the report’s release:

*“Our audits have found that too many Justice Courts fail to comply with existing rules designed to protect public dollars and too few of them have adequate oversight or training for staff. These pervasive problems have often resulted in mismanagement and theft . . . . While most of the people who operate Justice Courts are honest and dedicated public servants, our proposals to change the structure of the court system and provide better training will help protect public dollars from abuse.”*<sup>72</sup>

More specifically, the report recommended the implementation of a mandatory program to provide financial management training for all justices and court clerks. OSC highlighted that court clerks were not required to take any job-related training, including training on accounting and money collection, and that, after they are elected, justices themselves take, at most, one hour of training on the financial aspects of managing a court.

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<sup>70</sup> See OSC OPPORTUNITIES FOR CONSOLIDATION, *supra* note 69, at 6, 9.

<sup>71</sup> See OSC JUSTICE COURT REPORT (2006), *supra* note 67.

<sup>72</sup> Press Release, Office of the N.Y. State Comptroller, Hevesi Urges Legislature to Reform Local Justice Court System After Audits Identify Serious Problems in Town and Village Courts (May 18, 2006).

The Comptroller also recommended that the Legislature consider combining courts with smaller caseloads in order to create fewer courts, each of which would have a more substantial docket. Such combinations would eliminate duplicative operations, and the larger remaining courts would have more substantial staffing than the many small courts which operate with only a single part-time clerk, or no clerk at all. The report further stressed that having a larger number of people on staff would provide greater opportunity for checks and balances by the segregation of duties, which in turn would ensure that no single individual controls all phases of a court's financial transactions. Moreover, the report noted that having fewer courts would allow for more effective state oversight of the courts.

Finally, the Comptroller's report recommended that, where a court's small size makes proper segregation of financial duties impractical or unlikely, the State Legislature should provide for the removal of the cash collection function from those courts entirely and should hand it over to the local town and village governments which the courts serve.<sup>73</sup>

Partly in response to the problems detailed in the OSC report, then-Chief Administrative Judge Jonathan Lippman announced on June 19, 2006, that the "New York State court system [would] develop and implement an action plan for improving the operations of New York's town and village Justice Courts."<sup>74</sup> Judge Lippman stated that the Judiciary too had been studying ways to improve the Justice Courts, and the short-term focus would be on "expeditiously formulating an action plan, to begin implementation within the next 90 days."<sup>75</sup> The "Action Plan for the Justice Courts" was released in November 2006 and is described in greater detail below.

### **The Commission on the Future of Indigent Defense Services**

The month after the State Comptroller issued its May 2006 report concerning the Justice Courts, Chief Judge Kaye's Commission on the Future of Indigent Defense Services – charged with examining and evaluating the funding for and the effectiveness and quality of indigent criminal defense services in all courts across the state – issued its report and recommendations to the Chief Judge. The Indigent Defense Commission's report included several observations with respect to the Justice Courts. First, the Commission reported that it had heard from witnesses at hearings it held, as well as from other sources, that there was a widespread denial of the right to counsel in these local courts and that there appeared to be a lack of clear understanding among some justices as to the basic question of which cases trigger the right to counsel. More specifically, the Indigent Defense Commission stated that it "learned that there are significant delays in the appointment of counsel, that many indigent defendants must negotiate pleas with

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<sup>73</sup> See OSC JUSTICE COURT REPORT (2006), *supra* note 67.

<sup>74</sup> Press Release, N.Y. State Unified Court Sys., Strengthening the Local Justice Courts: Focus of Action Plan Reforms to Address Problems Detailed in State Comptroller Report (June 19, 2006).

<sup>75</sup> *Id.*

the prosecution while unrepresented” and that “all too often counsel for indigent defendants are not available to attend the numerous [Justice Courts].”<sup>76</sup> Second, the Indigent Defense Report pointed with concern to the lack of attorney-trained justices and the dearth of justice training and oversight. Finally, the Commission emphasized that, because Justice Court proceedings are not required to be transcribed or recorded, it is often difficult or impossible for a defendant to effectively exercise his or her right to appeal a decision made by a local justice.<sup>77</sup>

The Indigent Defense Commission made several recommendations for improving indigent defense services in the Justice Courts. For example, the Commission recommended that funds be allocated through OCA’s JCAP program to assist municipalities in purchasing and maintaining necessary recording equipment. Moreover, the Commission strongly advocated an increase in the amount of training newly selected non-attorney justices must complete, and called for the revamping of the annual training which all justices (attorney and non-attorney alike) receive.

### **The New York Times “Broken Bench” Series**

In September 2006, *The New York Times* published a three-part series of articles about the Justice Courts entitled “Broken Bench.”<sup>78</sup> As the title suggests, the articles painted a disturbing picture of the Justice Courts. According to the articles, they were written after the newspaper conducted a yearlong investigation into the state’s town and village courts that included a review of the Commission on Judicial Conduct disciplinary records, visits to Justice Courts, and interviews with Justice Court litigants and other stakeholders.

Although *The New York Times* series detailed a number of failures and abuses in the Justice Courts, it reserved the bulk of its criticism (as did a corresponding editorial at the time) for the role played by non-attorney justices, and the lack of training and oversight that these justices receive. The articles repeatedly emphasized that the vast majority of justices are not legally trained – noting that some have worked as laborers or truck drivers, rather than in the field of law – and that there is currently no minimum education level requirement for becoming a justice, the result of which is that some justices have only a high school level education or less. This lack of education is exacerbated, the series reported, by the fact that these justices are given

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<sup>76</sup> See COMM’N ON THE FUTURE OF INDIGENT DEFENSE SERVS., FINAL REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 22 (2006) (hereinafter “INDIGENT DEFENSE REPORT”), [available at](http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf) [http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission\\_report06.pdf](http://www.courts.state.ny.us/ip/indigentdefense-commission/IndigentDefenseCommission_report06.pdf).

<sup>77</sup> *Id.* at 21-22. The Indigent Defense Commission concluded that, in light of anecdotes it had heard concerning the various problems with the Justice Court system, a body should be appointed whose mandate would be to undertake a comprehensive examination of the manner in which these courts function. The Indigent Defense Commission expressed its view that our Commission would be an appropriate body to provide such an evaluation. See *id.* at 23 n.34.

<sup>78</sup> See William Glaberson, *Broken Bench: In Tiny Courts of N.Y., Abuses of Law and Power*, N.Y. TIMES, Sept. 25, 2006, at A1; Glaberson, *Broken Bench: Delivering Small Town Justice With a Mix of Trial and Error*, N.Y. TIMES, Sept. 26, 2006, at A1; Glaberson, *Broken Bench: How a Reviled Court System Has Outlasted Critics*, N.Y. TIMES, Sept. 27, 2006, at A1; see also Editorial, *Homespun Injustice*, N.Y. TIMES, Oct. 1, 2006, § 4, at 9.

next to no training, required to preside in unsuitable facilities and, at the same time, given expansive powers over the rights of those who come before the Justice Courts – including criminal defendants.

According to the “Broken Bench” series, these grave inadequacies in justice qualifications, training and supervision have produced a system in which abuses pervade and litigants are often denied their most fundamental legal rights. A number of examples were provided, including instances in which justices jailed defendants absent a guilty plea or trial; evicted litigants without first holding a proper proceeding; refused to appoint lawyers for criminal defendants who were entitled to representation; jailed litigants for failing to pay a fine; adjudicated cases where their own family members were involved; presided over proceedings while intoxicated; freed crime suspects as favors to friends; fixed the outcome of cases; communicated with witnesses *ex parte*; denied access to public records; ordered indigent defendants to work to pay for their court-appointed lawyers; and admitted unfamiliarity with the most basic of legal principles. The articles also recounted a disturbing number of instances in which justices were found to have made blatantly racist or other disparaging statements. Moreover, there were several alarming accounts of justices who – in the context of presiding over domestic violence matters – made statements to the effect that the victim probably deserved the abusive treatment or had exaggerated its severity.

As described in the series, the only body with practical oversight over the Justice Courts is the Commission on Judicial Conduct (“CJC”), which has jurisdiction over all of the judges and justices in the Unified Court System and has the power to investigate and sanction justices. However, the articles pointed out that the CJC historically has been underfunded by the State Legislature, and only becomes involved once it receives a complaint about a justice and launches an investigation; thus, if no complaint is made, abuses perpetrated by a particular justice may continue indefinitely. Finally, it was reported that there is a reluctance on the part of lawyers and litigants who routinely appear in the Justice Courts to lodge complaints against their local justices, given a fear of retribution.

The articles further observed that the physical structure of many Justice Courts is completely inconsistent with a modern-day view of what constitutes a courtroom. They described how many Justice Court courtrooms were not initially designed as courtrooms at all, but instead may be “tiny offices” or “basement rooms” without so much as a bench or jury box. The articles also recounted serious public access problems, including instances where justices refused to admit the public into the courtroom; another where a justice would only allow litigants into the courtroom one by one; and at least one instance in which a justice allowed all of the parties to a case to enter the courtroom except the victim’s lawyer. The articles thus conveyed a picture of a system operating in unsuitable facilities, and hidden away from the public.

In short, *The New York Times* series characterized the Justice Court system as being in a state of long-standing crisis – riddled with defects and not subject to easy reform.

Unsurprisingly, this portrait of the Justice Courts gained widespread attention and enhanced the already active scrutiny of the courts.<sup>79</sup>

## The Action Plan for the Justice Courts

As promised by then-Chief Administrative Judge Jonathan Lippman in May 2006, OCA issued in November 2006 its “Action Plan for the Justice Courts,” which reflected a comprehensive two-year review of the Justice Courts, and which set forth a plan to enhance the efficiency and effectiveness of the Justice Courts in several key areas, namely: court operations and administration, auditing and financial control, education and training, and court security.<sup>80</sup> To effectuate these initiatives, the State Judiciary’s 2007-2008 budget submission included a \$10 million appropriation request for Justice Court programs. What follows is an outline of the Action Plan’s components.

### Operations and Administration

Central to the Action Plan’s initiatives is to bring all Justice Courts up to speed by standardizing Justice Court technologies and their administration. These initiatives include:

- In response to case monitoring and disposition reporting deficiencies identified in a number of courts, the Action Plan provided that each Justice Court will receive – at no cost to the localities – essential upgrades in technology and equipment, such as computers, case management software specifically tailored to the Justice Courts, printers, internet connectivity, fax machines, speaker phones for the courtroom, and credit card machines.
- The Plan also provided that the Justice Courts will be integrated into the State Judiciary’s e-mail and database systems, enabling closer collaboration and coordination both between individual Justice Courts and OCA and among Justice Courts.
- The Action Plan required that all Justice Courts must accept credit card payments (at no charge to the localities) for the payment of fines, fees and surcharges. (By allowing payments to be made by credit card, not only would there be greater accountability within the courts – an issue which, as noted, is implicated in a number of the disciplinary actions taken against Justice Court justices over the years – but litigants would benefit from the convenience as well.)
- In response to the numerous studies highlighting the difficulties in appealing town and village court judgments, the Action Plan mandated the recording of all Justice Court proceedings. To this end, OCA will provide every justice with a digital recording machine, along with dedicated training on how to use the machine.

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<sup>79</sup> Our findings with respect to this *New York Times* series are described in Section Four, below.

<sup>80</sup> ACTION PLAN FOR THE JUSTICE COURTS, *supra* note 22.

- The Action Plan provided that OCA will prepare a comprehensive court manual for the Justice Courts that will include a complete set of standard forms developed specifically for the Justice Courts, along with enhanced record-keeping protocols.
- The Action Plan set out three measures with respect to the provision of assigned counsel to indigent defendants: first, each town and village justice will be required to submit periodic, certified compliance reports to OCA which list every case in which that justice will be required to conduct an initial indigence determination – these lists will be cross-checked against other court and agency (e.g., county jail, indigent defense administrator and pre-trial services) records and OCA will investigate any inconsistencies; second, all justices will be required to attend OCA-certified training in issues related to indigent defense; and third, OCA will work with justices, prosecutors, defenders and law enforcement in each county to attempt to resolve scheduling conflicts through voluntary agreement.
- Addressing the concern that Justice Court justices do not have adequate supervision and mentoring opportunities, the Action Plan provided that a Supervising Judge will be appointed in every judicial district which has a Justice Court. Each Supervising Judge is charged with coordinating Justice Court resources and troubleshooting problems. The Supervising Judges also serve as liaisons to the State Judiciary and help implement the Action Plan in their districts. These judges were formally appointed on January 16, 2007.

## Auditing and Financial Control

With respect to improvements in the areas of financial control, the Action Plan includes the following mandates, each designed to enhance the auditing function within the Justice Courts, and to improve the ways in which revenue is accounted for:

- The Action Plan encouraged Justice Courts to transmit monthly revenue reports to OSC electronically, and provided courts with tools such as computers and online programs to make such reporting easier.
- With the assistance of OSC, OCA is developing a financial control “best practices” manual and software for the Justice Courts that will provide guidance for the Justice Courts and local staff on how to meet their financial reporting and management responsibilities.
- The Action Plan requires all local governments to submit to OCA copies of their annual Justice Court audits, with OCA reporting noncompliance to the Comptroller to trigger state-level audits.

## Education and Training

Expanding and improving education and training programs for the justices is a key aspect of the Action Plan. As has often been noted, newly elected non-attorney justices traditionally

were required to complete only a one-week “basic” training course before taking the bench, and sitting non-attorney justices need only attend twelve hours of training per year. The Action Plan recommends several improvements to justice training:

- Under the Action Plan, “basic” training will be increased from one week of in-class training to two weeks of in-class training and five weeks of at-home training.
- With the goal of increasing remote training and broadening the scope of “hands-on” training, the Action Plan will revamp the “advanced” training that both attorney and non-attorney justices receive by offering dual-track programs geared to the experience level of individual justices.
- The Action Plan provided for the first time that OCA and OSC will establish a joint training and certification program for court clerks.
- The Action Plan provided that a year-round, centrally located Justice Court Institute will be established as a training center for both justices and court clerks.
- OCA is in the process of creating “Justice Court Advisory and Support Teams (“J-CASTs”), which are comprised of attorneys, court administrators and financial experts, and which visit the courts of newly elected justices at or before the beginning of their terms and provide on-site, hands-on training tailored to each Justice Court. The teams will then serve as ongoing contacts for justices and court clerks to answer questions and provide support.

## Security

- The Action Plan provided for a process by which OCA will conduct a professional security assessment of every justice court facility, and will develop a comprehensive set of “best security practices” for the Justice Courts.
- At the request of local governments, OCA will provide magnetometers to individual Justice Courts to allow them to screen those entering the courtroom for weapons and other hazardous materials.
- The Action Plan provided that annual JCAP funding will be increased from \$1 million to \$5 million and localities will be permitted to apply for capital grants to use these funds to upgrade Justice Court security.

## Legislative Initiatives

Finally, the Action Plan called on the State Legislature to implement legislation which the Judiciary views as necessary to fully realize the goals of the Plan. These legislative initiatives include:

- Increasing the annual limit on JCAP grants from \$20,000 (the amount set at the initiation of the program in the year 2000) to \$30,000.
- Eliminating the constraints on the Chief Administrative Judge’s assignment power to permit the temporary assignment of a justice from another town or village Justice Court, or a judge of a City Court who resides in the same or an adjoining county, to serve as the justice of a neighboring Justice Court when the need arises. (This may be necessary if a locality’s justice is unavailable due to death or illness, or if a newly elected justice fails to successfully complete the legally mandated enhanced training curriculum announced in the Action Plan.)
- Imposing a requirement that every locality sponsoring a Justice Court must provide for the employment of at least one clerk, and that only the Justice Courts, and not their sponsoring localities, would have the authority to hire, supervise and discharge nonjudicial staff. This will avoid practical and separation of powers conflicts when clerks and other nonjudicial staff are hired by the localities themselves and thus are both responsible to the local justices and the locality’s governing board.
- Authorizing any town or village sponsoring a Justice Court to select justices from anywhere within the county, or any adjoining county, to account for the many situations where towns and villages face difficulties recruiting and retaining strictly local justices.

### **New York State Legislative Hearings**

The State Legislature has also taken a renewed interest in the Justice Courts and both the Assembly and Senate have held public hearings on the subject. On December 14, 2006, the Assembly Committees on the Judiciary and Codes held a joint public hearing on the matter and gathered testimony in order to determine what actions, if any, the New York State Legislature should take to modify the current Justice Court system. It suggested that witnesses consider and give their thoughts on whether legislation should be enacted to require that Justice Court justices be attorneys; modify the requirements for record-keeping in the courts; require justices to complete additional training; permit and encourage greater consolidation of the Justice Courts; facilitate a state takeover of the financing and management of the Justice Courts; or expand OCA’s oversight over the Justice Courts. Likewise, on January 27, 2007, the Senate Committee on the Judiciary held a public hearing focused on the Justice Court system.

Since then, the Legislature has enacted several laws affecting the Justice Courts, some of which are reflective of the legislative initiatives called for by the Judiciary in the Action Plan. For instance, in June and July 2007, the Senate and Assembly passed, and the Governor signed into law, a bill which amended the Uniform Justice Court Act in order to allow more than two towns from contiguous geographic areas to establish a single town court – previously the statute



had permitted exactly two towns to merge their courts into a single court.<sup>81</sup> Former Governor Spitzer also signed into law a bill which increased the annual JCAP grant ceiling for each Justice Court from \$20,000 to \$30,000.<sup>82</sup> Another legislative development is that the restrictions on the Chief Administrative Judge's temporary assignment powers have been repealed, such that a justice from another town or village Justice Court, or a judge of a City Court who resides in the same or an adjoining county, can be appointed temporarily to serve as the justice of a neighboring Justice Court when needed.<sup>83</sup> Finally, in August 2007, a law was enacted which disqualifies a convicted felon from serving as a town or village justice.<sup>84</sup>

### **The New York State Commission on Local Government Efficiency and Competitiveness**

In his first State of the State address on January 3, 2007, then-Governor Eliot Spitzer announced that he would be appointing a Commission on Local Government Efficiency and Competitiveness (the "Efficiency Commission") as part of a larger effort to streamline the state's multiple layers of local government. This measure was prompted by the concern that New York's local tax burden is the highest in the United States, and that one factor contributing to the high cost of state government is the sheer number of local governments which have evolved over the centuries. This proliferation of local governments has resulted in the state having more than 4,200 taxing jurisdictions – a number that is extremely expensive, and burdensome to manage effectively.

The Efficiency Commission was charged with recommending methods to advance cooperation among the various state and local governments to improve the effectiveness and efficiency of all. To this end, the Commission explored possibilities for merger, consolidation, regionalized government and shared services, including among Justice Courts. The Commission's report, released in April 2008, includes a number of recommendations across seven broad categories, all of which are aimed at making "counties, municipalities, schools and other local entities more affordable, accountable, democratic, and competitive."<sup>85</sup>

On the topic of Justice Courts, the Efficiency Commission recommended that legislation be enacted to enable and incentivize towns and villages to consolidate or dissolve smaller courts, many of which, the Commission noted, struggle with administrative and financial problems and deficiencies in the way they administer justice.<sup>86</sup> Specifically, the Commission recommended

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<sup>81</sup> See L 2007, ch 237, amending N.Y. UNIFORM JUST. CT. ACT § 106-a(1).

<sup>82</sup> See L 2007, ch 127, amending N.Y. JUDICIARY LAW § 849-i(4).

<sup>83</sup> See L 2007, ch 321, amending N.Y. UNIFORM JUST. CT. ACT § 106(2).

<sup>84</sup> See L 2007, ch 638, amending N.Y. TOWN LAW § 31(5); N.Y. VILLAGE LAW § 3-301(5).

<sup>85</sup> 21<sup>ST</sup> CENTURY LOCAL GOVERNMENT: REPORT OF THE NEW YORK STATE COMMISSION ON LOCAL GOVERNMENT EFFICIENCY & COMPETITIVENESS (2008), available at [http://www.nyslocalgov.org/pdf/LGEC\\_Final\\_Report.pdf](http://www.nyslocalgov.org/pdf/LGEC_Final_Report.pdf).

<sup>86</sup> Id. at 24.

that the state help local governments that want to merge their Justice Courts sort out questions such as where justices may continue to preside when their physical court facilities are shut down, and eliminate financial disincentives for consolidation by examining the local courts' fee and fine distribution structures.<sup>87</sup> The Efficiency Commission also recommended that, in addition to incentivizing voluntary consolidation, OCA should “establish triggers for a required consolidation review when the size or activity of a particular Justice Court falls below set thresholds.”<sup>88</sup>

### **The City Bar Task Force on Town and Village Courts**

In October 2006, the New York City Bar Association formed a fourteen-member “Task Force on Town and Village Courts,” in the wake of the publication of *The New York Times* series. It was comprised of lawyers and judges who interviewed town and village court stakeholders, reviewed questionnaire responses from some 64 justices and 33 clerks (as well as some responses from prosecutors, defense counsel and court clerks), reviewed a number of reports (including this Commission’s first report, the Indigent Defense Commission Report and the OSC audits) and interviewed members of the Comptroller’s office. The Task Force also met with participants in the Westchester County Justice Court system and studied the justice system practices of other states.

In total, the City Bar Task Force has issued four reports concerning the town and village courts. The first three provided fifteen separate recommendations with regard to technology, training and non-judicial support personnel for the Justice Courts and their justices. In its fourth report, issued in October 2007, the Task Force set forth ten recommendations focused on the structure and organization of the Justice Courts.<sup>89</sup> Among other significant proposals, the Task Force recommended that certain cases be automatically transferred away from non-attorney justices or, at least, that litigants have the option of transferring their cases to an attorney justice in certain instances, and that consolidation of certain Justice Courts be pursued.<sup>90</sup>

By way of setting out the background which informed these recommendations, the Task Force made clear its strong view that all justices should be lawyers. It also noted that a District Court system with full-time lawyer justices would address many of the problems with the system which have been identified. However, the report also stated the Task Force’s belief that neither of these changes is likely to take place “in the short term.” Accordingly, the Task Force urged

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<sup>87</sup> *Id.* at 23-25.

<sup>88</sup> *Id.* at 23.

<sup>89</sup> N.Y. CITY BAR ASS’N TASK FORCE ON TOWN AND VILLAGE COURTS, RECOMMENDATIONS RELATING TO STRUCTURE AND ORGANIZATION (2007), [available at http://www.abcnyc.org/25\\_recommendations.htm](http://www.abcnyc.org/25_recommendations.htm).

<sup>90</sup> *Id.*

the adoption of its 25 recommendations, rather than seeking immediate and wholesale change to the system.<sup>91</sup>

With regard to the transfer of certain types of cases away from non-attorney justices, the Task Force recommended an amendment of the Criminal Procedure Law to require: (a) that pretrial suppression hearings and criminal jury trials be automatically transferred to attorney justices and (b) that all misdemeanor cases (i.e., cases where there is a possibility of a sentence of more than 15 days in jail) be transferred to an attorney justice on request of one of the parties.

The Task Force expressed its view that all suppression hearings should be handled by a lawyer justice, regardless of the sentence imposed, because of the complexity of the applicable law. Further, because the Task Force believed that all defendants facing fifteen or more days of incarceration should be entitled to have their cases heard before an attorney judge, it recommended that all criminal jury trials be automatically transferred to attorney justices and that misdemeanor proceedings be subject to the transfer provision upon the election of one of the parties.<sup>92</sup>

The Task Force also made several recommendations with respect to summary eviction proceedings. Notably, the Task Force proposal would require that summary proceedings in eviction cases be presided over by lawyer justices when the respondent is *pro se* and when certain other circumstances are apparent on the face of the pleadings.<sup>93</sup> The Task Force also proposed that further study of civil cases within the jurisdiction of Justice Courts be done to determine whether there are additional civil matters which should be heard only by lawyer justices.<sup>94</sup>

With regard to consolidation, the Task Force recommended that each town itself examine and determine whether it could benefit from consolidation with other nearby town courts.<sup>95</sup> Where appropriate, the towns would pursue voluntary consolidation pursuant to the new legislation which allows two or more towns to combine their town courts into a single court.<sup>96</sup> The Task Force also recommended that each village determine whether abolition of its Justice Court would be beneficial and, if so, pursue abolition according to local law or state legislation pursuant to section 17(b) of article VI of the New York State Constitution.<sup>97</sup>

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<sup>91</sup> Id. at 4-5.

<sup>92</sup> Id. at 31-49.

<sup>93</sup> Id. at 51-55.

<sup>94</sup> Id. at 55.

<sup>95</sup> See id. at 55-64.

<sup>96</sup> See id. at 55 (citing N.Y. UNIFORM JUST. CT. ACT § 106-a).

<sup>97</sup> See id. at 55.

The Task Force gave several reasons for its belief that consolidation is a laudable goal: (a) it is likely to reduce the number of justices needed, which would make it more likely that lawyers would be available to fill the positions (assuming enhanced compensation would result); (b) it will make possible the hiring of better trained and fairly compensated court support staff; (c) it will reduce the cost of facility upkeep, security and technology; and (d) it would help court participants (i.e., defense counsel and district attorneys) be better able to participate in court proceedings.<sup>98</sup>

### **The New York State Bar Association Task Force on Town and Village Justice Courts**

In July 2007, the New York State Bar Association (“NYSBA”) convened a Special Task Force on the Town and Village Justice Courts. This eight-member Task Force was charged with recommending a course of conduct for NYSBA relating to the Justice Courts, and ultimately issued a report in January 2008. The Task Force’s report offered several recommendations, in three categories: removing barriers that prevent attorneys from serving as justices, making a law-license prerequisite for local judicial service more feasible, and improving training and education for all justices.<sup>99</sup>

In the first category, the Task Force issued recommendations aimed at encouraging more attorneys to seek justice positions. The Task Force began by echoing the recommendation in OCA’s Action Plan that restrictions on justices’ places of residence be loosened, and that justices be allowed to live anywhere in the county – as opposed to the village or town – in which their court presides. Next, the Task Force recommended a comprehensive review of limitations on the ability of attorney-justices to practice law. Finally, the Task Force recommended reforms to the manner in which justices are compensated, including urging OCA to examine ways to increase justices’ compensation, urging the State Comptroller to study the use and allocation of court revenues, and supporting an increase in court-clerk compensation.<sup>100</sup>

In the second category, and “[i]n furtherance of NYSBA’s stated position requiring all justices to be attorneys,” the Task Force set forth recommendations directed toward making a law-license requirement more practically feasible. Specifically, the Task Force recommended (a) legislative measures permitting greater consolidation of justice courts, (b) new authority for the Chief Administrative Judge to assign “circuit justices” to towns and villages without attorney justices, and (c) the upgrades to the Justice Courts’ facilities and technology called for in OCA’s

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<sup>98</sup> See *id.* at 55-64.

<sup>99</sup> REPORT OF THE NEW YORK STATE BAR ASSOCIATION TASK FORCE ON TOWN AND VILLAGE JUSTICE COURTS (2008).

<sup>100</sup> See *id.* at 9-11.

Action Plan. The Task Force also recommended that NYSBA push for clarification to the rules regarding temporary assignments of justices.<sup>101</sup>

Finally, the Task Force offered recommendations relating to training and education for all justices. On this front, the Task Force recommended increased funding for training and education programs generally, as well as additional consideration of how NYSBA resources might be used to assist Justice Court operations and whether retired attorneys might be utilized to assist the Justice Court Resource Center.<sup>102</sup>

### **The Fund for Modern Courts Task Force**

In the Fall of 2006, the Fund for Modern Courts, the statewide court reform advocacy group formed in 1955, created a task force to study the Justice Courts. In February 2008, the Task Force issued a report entitled *Enhancing the Fair Administration of Justice in New York's Towns and Villages Through Court Consolidation*.<sup>103</sup>

The report concluded that voluntary court consolidation would help address many of the issues confronting the Justice Courts. The central premise of the report was that having fewer courts would “afford an opportunity for a greater sharing of vital resources that the local justice courts need to ensure the fair and impartial administration of justice.”<sup>104</sup> According to the Task Force, consolidation would have a salutary impact in several areas.

First, the Task Force expressed the view that consolidation would result in more attorneys choosing to serve in the Justice Courts. According to the Task Force, the courts that remain after consolidation would naturally assume heavier caseloads, and attorneys would be attracted to fill positions in these busy courts, even in sparsely populated areas.

With regard to improvements to education and training, the Task Force suggested that, under a consolidated system, there would likely be a reduction in the number of justices and, as a result, greater resources would be available to provide enhanced and more frequent training sessions for judges – attorney and non-attorney alike.

Similarly, the Task Force stated that consolidation would enable the New York State Comptroller's office to audit a greater number of Justice Courts, which would lead to increased savings for the courts and taxpayers as a result of enhanced internal controls, fewer incidents of fraud and better recordkeeping.

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<sup>101</sup> See *id.* at 11-13.

<sup>102</sup> See *id.* at 13-14.

<sup>103</sup> THE FUND FOR MODERN COURTS TOWN AND VILLAGE COURTS TASK FORCE, *ENHANCING THE FAIR ADMINISTRATION OF JUSTICE IN NEW YORK'S TOWNS AND VILLAGES THROUGH COURT CONSOLIDATION* (2008) (hereinafter “MODERN COURTS REPORT”), [available at](http://www.moderncourts.org/documents/justice_courts_08.pdf) [http://www.moderncourts.org/documents/justice\\_courts\\_08.pdf](http://www.moderncourts.org/documents/justice_courts_08.pdf).

<sup>104</sup> See *id.* at 5.

With respect to Justice Court security, the Task Force advanced a similar point: consolidated courts would enable scarce resources to be directed to fewer courts so that necessary security improvements can be funded.

Finally, with regard to the provision of indigent defense services, the Task Force stated that consolidation would reduce logistical impediments for prosecutors and public defenders to appear before the Justice Courts in their jurisdictions, because there would be fewer courts to cover.

The report stated that, although the Fund for Modern Courts continued to support the replacement of Justice Courts with a District Court system staffed by attorney justices, “significant improvements in the provision of court services may be achieved through consolidation, short of establishing a [D]istrict [C]ourt system,” and that the failure of prior efforts to establish a District Court system has “led Modern Courts to focus on the local option for reform through consolidation as an effective alternative.”<sup>105</sup>

-- Recent Efforts to Consolidate

The Modern Courts Report also describes how, recently, several towns and villages have elected to consolidate their Justice Courts. For example, in 2003, the towns of Shelby and Ridgeway, two contiguous localities in Orleans County, decided to consolidate their Justice Courts. The two towns previously had operated two separate Justice Courts employing a total of four justices and four clerks, and sought to reduce this number by half through consolidation. The towns followed the procedures set forth in section 106-a of the UJCA: they each passed a resolution supporting consolidation, held a public hearing, passed another resolution approving the plan to consolidate, and then presented the issue to the voters in a referendum. The voters approved the measure and the plan went into effect on January 1, 2004. As a result, each town eliminated one justice position, each remaining justice selected a clerk, and the two courts were combined into a single dedicated space housed in the Shelby Town Hall in the Village of Medina. As required under section 106-a, each town justice maintains separate records and accounts separately to OSC.

The reactions to the consolidated court have been positive. The towns have realized a modest annual savings, and the combined facility has been described as better equipped, more central and easier to locate than the prior Ridgeway Justice Court facility.<sup>106</sup> The combined courthouse has been praised in particular for its provision of separate meeting rooms for attorney-client conferences and juror deliberations, a feature absent from the old Ridgeway Court.

In another recent example of consolidation, the Village and Town of Albion, which previously had combined several municipal functions, have also combined their court systems.

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<sup>105</sup> See id. at 16.

<sup>106</sup> See id. at 25.

The town and village have moved both of their Justice Courts into a single facility in the Village of Albion. In addition, the Town of Albion and the neighboring Town of Gaines are considering whether to consolidate pursuant to UJCA section 106-a.<sup>107</sup> The two town boards, along with the Village Board of Albion, plan to conduct a feasibility study to determine whether this further consolidation would be beneficial to the localities involved.<sup>108</sup> The Fund for Modern Courts has fully endorsed these and other Justice Court consolidation efforts.

### **The New York State Magistrates Association**

The New York State Magistrates Association (the “Association”) is an organization representing approximately 3,200 sitting and retired town and village justices throughout New York State. On March 15, 2008, the Executive Committee of the Association passed a resolution commenting on the reports of the Fund for Modern Courts, State Bar and City Bar described above. The Association resolved: (1) to support “the concept of lay judges within the State of New York” and oppose any limitation to the jurisdiction of non-attorney justices, including any plan to require transfer of either criminal or summary eviction cases from non-attorneys to attorney justices; (2) that consolidation of the Justice Courts should “be considered a matter of local prerogative” and that “any mandatory consolidation” plan should be opposed; and (3) to support OCA’s Action Plan for the Justice Courts.<sup>109</sup>

### **Our Commission’s First Report**

In February 2007 our Commission issued its first report, entitled “A Court System for the Future: The Promise of Court Restructuring in New York State.”<sup>110</sup> In connection with that first phase of our work, the Commission found that the structure of New York’s state-funded court system – which currently consists of a maze of eleven separate trial courts – imposes significant harm and costs on its citizens. First, the complex and overlapping structure of the trial court system forces litigants to litigate cases simultaneously in separate courts. For example, individuals and both large and small businesses must litigate in both Supreme Court and the Court of Claims whenever the state and a non-state party are named as parties in a personal injury, medical malpractice, or commercial dispute. Moreover, families in crisis have cases that are regularly fragmented among Supreme Court, Family Court, and a criminal court for separate adjudication of matrimonial, custody and domestic violence matters.

Second, this Commission found that the fragmented nature of the trial courts prohibits the state-funded court system from efficiently managing cases. For example, for jurisdictional

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<sup>107</sup> Id. at 27-28.

<sup>108</sup> Id.

<sup>109</sup> See Resolution of Unified Resolve Passed by the New York State Magistrates Association Executive Committee, available at [http://nysmagassoc.homestead.com/files/3\\_15\\_08\\_RESOLUTION.doc](http://nysmagassoc.homestead.com/files/3_15_08_RESOLUTION.doc).

<sup>110</sup> See generally A COURT SYSTEM FOR THE FUTURE, supra note 2.

reasons, a backlog which develops in one court cannot now readily be ameliorated by transferring cases from that court to an underused, but perfectly capable, court across the street. Because of this fragmentation, in millions of cases each year people waste countless hours making redundant court appearances, filing duplicative papers and briefs, and suffering through delays caused by courthouse backlogs and inefficiencies.

In an attempt to reform this inefficient and wasteful structure, our Commission proposed a sweeping consolidation of the state-run courts. Specifically, we recommended the consolidation of the state's major trial courts into a simple two-tiered structure consisting of a single Supreme Court and a statewide network of District Courts. This would be accomplished through a merger of the current Court of Claims, the County Courts, the Family Courts and the Surrogate's Courts into the Supreme Court and the merger of the current Civil and Criminal Courts in New York City, the Nassau and Suffolk District Courts, and the 61 City Courts outside of New York City into a statewide network of District Courts.<sup>111</sup>

Although our report set out a detailed plan and analysis for instituting the two-tiered system for the state-funded courts summarized above, our first report made clear that we had not had sufficient time to study and make recommendations about the *other* court system in the state, the town and village courts. We wrote:

*“We also do not in this Report make recommendations concerning the state’s [Justice Courts]. These courts – which have also been the subject of recent controversy within the state – are not state-funded, and are operationally distinct from the state-funded courts that are supervised by OCA. We note that, three months ago, OCA published an extensive report containing an array of administrative reforms for the Justice Courts, and that those courts were also the subject of recent legislative hearings. While they are controversial, it is clear that these courts play an enormously important role in the state, particularly in suburban and rural regions, and, given this importance, it is our view that additional time and study is needed before structural or other reforms can be evaluated. To this end, we have proposed, and the Chief Judge has agreed, that the term of our Commission be extended, so that we may conduct an appropriate review of this important issue.”*<sup>112</sup>

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<sup>111</sup> In her 2007 State of the Judiciary address, Chief Judge Kaye endorsed the Commission's report, and urged the adoption of the constitutional amendment that had been proposed and drafted by the Commission. Former Governor Eliot Spitzer later endorsed the plan, and on April 27, 2007, he proposed to the Legislature a comprehensive constitutional amendment to restructure New York State's courts along the lines that the Commission had recommended. To date, that proposal has not been acted upon. For the reasons articulated in our earlier report, we continue to urge Governor David Paterson and the Legislature to take the necessary steps to bring about a much-needed consolidation of the unduly complex state-run courts.

<sup>112</sup> A COURT SYSTEM FOR THE FUTURE, *supra* note 2, at 11 n.2.



This report on the Justice Courts is the product of this Commission's continued study, which has included a careful analysis of all of the recent reports and writings described above. Our findings and recommendations are set forth in the remainder of this report.<sup>113</sup>

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<sup>113</sup> To be clear, the creation of a two-tiered trial court system as recommended in our first report is separate and distinct from our recommendations here with respect to the Justice Courts. It is our hope that both proposals will be acted upon so that improvements and efficiencies can be achieved within both the state-funded and local court systems in this state.

## — SECTION FOUR —

### OUR FACTUAL FINDINGS

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We set forth below our detailed factual findings. As noted at the outset of this report, these are arranged into four broad categories: the organization of the courts; the qualifications of justices; court facilities and security; and the role of fines and funding in the Justice Courts.

#### The Organization of the Justice Courts

- ***The Current Array of Justice Courts Is Not the Result of Any Rational Assessment of State or Local Needs***

We find that the distribution of Justice Courts around the state is costly and highly inefficient, and that the quality of justice would be vastly improved if they were fewer in number and more rationally organized. The current array of courts is not the result of any state, county or other analysis of where such courts are needed; whether a particular town or village is adequately funding and maintaining a court; whether a court is unduly proximate to a neighboring court; whether the organization of courts in a particular county is effectively served by law enforcement and other agencies; and so on.

The result is reflected in the statewide map on the cover of this report, and the 57 county maps that are set forth in the Appendix. In short, even a casual review of these maps makes it clear that the system should be subjected to an overarching review. As we observed in our site visits around the state, there are Justice Courts located just a few miles from one another, some a few blocks from one another, and, in a number of instances, two Justice Courts located in the same building or across the street from one another. While, in an earlier era when travel was more difficult and car ownership rare, there may have been a need for a court in every locality, the continued maintenance of multiple courts located short distances from one another makes no sense today. This is particularly true where the courts in question are underfunded by their respective localities and unable to provide adequate facilities and adequate justice for the litigants who use them.

Indeed, the dockets of most Justice Courts are filled with Vehicle and Traffic Law (VTL) violations and criminal charges that often relate to offenses involving a vehicle. As a result, almost by definition, most of the cases heard before the Justice Courts involve individuals who, in some fashion, have access to a vehicle, and for whom there is little practical difference whether a court is located in his or her town, or a few miles away.

More importantly, we have found that the vast majority of litigants who are haled into a Justice Court do not even reside in the locality in which the particular court sits. This is because, in many courts, the caseload bears little relationship to the population of the locality, and is instead a function of the court's proximity to a major highway or shopping mall. For example,

the Town of Woodbury (Orange County) has a population of 9,460 (according to the 2000 census), yet the court hears 7,800 cases per year and is the busiest court in Orange County. The nearby Woodbury Common shopping center, one of the busiest malls in the United States, generates an enormous volume of cases for the Woodbury court, nearly all of which involve residents of other localities, states or even countries. Similarly, the Town of Bombay (Franklin County) has a population of only 1,192, yet its court hears 700 cases annually and is the second busiest in Franklin County because of its proximity to the nearby St. Regis Mohawk reservation, which sends its criminal cases to this court.

In this regard, we have conducted a statistical analysis that confirms that litigants routinely travel considerable distances to appear in town and village courts. A sampling of 1.68 million Justice Court cases from calendar year 2006 shows that most Justice Court litigants travel to courts outside their home localities; that, in 46% of these cases, litigants traveled more than 10 miles to appear in court; and that, in nearly a third of the cases, litigants traveled more than 20 miles to appear in court. This analysis further refutes the argument that a given municipality's Justice Court principally serves the citizenry of that municipality. In fact, in 40% of the cases that we examined, one or more of the litigants resided outside the *county* in which the Justice Court sat.

Barbara Bartoletti, Legislative Director for the League of Women Voters of New York State, reinforced this view in her testimony before the Commission:

*“If most Justice Court cases involve[d] local residents, perhaps the access to justice benefit of the local courts might justify having a court around every corner, but that’s not the case. Most cases are traffic and low level criminal cases involving residents from other towns and other counties. So, most litigants already travel to so-called local courts. Anyone who has gotten a traffic ticket on their way to Rochester or Buffalo and has to return to somewhere between Rochester and Utica to attend a local court knows of that experience.” Testimony of Barbara Bartoletti, 6/13/07 Albany Hearing Tr. at 53.*

To be clear, we are not suggesting that town and village courts do not serve the residents of their local communities. Rather, we believe that, today, given the widespread use of automobiles, and the VTL-heavy dockets of many Justice Courts, there is little reason for the towns and villages of our state to maintain an uncoordinated network of more than 1,250 courts without regard to the relationship among the various courts and supporting agencies within a region.

- ***The Proliferation of Justice Courts Wastes State, County and Local Resources***

When two or three courts are located within a few miles of one another, significant unnecessary costs are imposed on a variety of government agencies, which results in not only higher local taxes, but in increased county and state tax burdens as well. While the increased

local costs may be evident in the form of duplicative court facilities, judicial and non-judicial salaries, security arrangements and all of the other municipal costs related to operating a Justice Court, less apparent costs are also imposed on county and state agencies.

For example, county governments – not the individual locality – are responsible for ensuring that district attorneys, public defenders and probation representatives are available to appear in every Justice Court within the county’s jurisdiction. When dozens of duplicative Justice Courts are sprinkled throughout a county and especially when they convene simultaneously, it becomes difficult and costly for the county to provide adequate coverage for each of these courts. At best, a county may have to hire additional personnel so that attorneys and other necessary participants can appear in each of these courts, and county taxpayers are left to pay for the cost of these additional resources. At worst, the county may be unable to hire personnel sufficient to cover all of the Justice Courts in its jurisdiction. As a result, particularly in rural communities where district attorneys and public defenders have just a few attorneys assigned to cover Justice Courts across wide swaths of territory, such personnel are frequently unavailable during the times set aside for criminal cases – a point made to us by a number of district attorneys, public defenders and justices in our travels across the state. As a further consequence, the wheels of justice can grind slowly in these courts and cases may drag on for months or years before they are resolved.

*“[T]he sheer number of Justice Courts in some counties can require a limited supply of indigent defenders to appear in many tribunals, often separated by significant distances, and thus to expend precious time traveling among these many Justice Courts when defenders instead could be meeting with clients and otherwise preparing cases.” Action Plan for the Justice Courts at 29-30.*

Similarly, the responsibility for transporting prisoners from a county jail to a Justice Court often rests with the county sheriff or state police, not the police force maintained by an individual locality (if a local police force exists at all). When redundant Justice Courts are dispersed throughout a county, the sheriff’s officers or state police are required to devote personnel, vehicles and other resources to transport defendants to all of these courts. Again, the state and county taxpayers are forced to bear the costs associated with this duplication of resources or, worse, fewer resources may be available to perform duties relating to public safety and crime prevention. In one county, for example, there are 42 deputy sheriffs whose sole purpose is to transport prisoners to the various Justice Courts located around the county (as one county undersheriff remarked, it would be cheaper to hire a limousine to transport each judge to a holding cell to conduct proceedings than to repeatedly shuttle prisoners to different Justice Courts under the current system).

- ***That Said, There Is Little Support for a Statewide System of District Courts***

For several decades, public discussion about reforming the Justice Courts has revolved around proposals to abandon the system and replace it with a network of District Courts. While

the term “District Court” means different things to different people, it is mainly used in this context to refer to a network of state-paid courts that would be located in several more centralized locations throughout a county. Under this model, most or all of the Justice Courts would effectively be replaced by District Courts, which the state would administer and operate as it does the rest of the trial courts.<sup>114</sup> To address access-to-justice concerns in rural communities, particularly upstate, a circuit riding system could be adopted through which judges would travel around the state to preside in locations that are distant from the nearest District Court.

As we stated at the outset of this report, we believe that, if anyone were to design on a clean slate a new system of local courts, it would not be structured like the Justice Court system that we have today. Instead, an *a priori* approach to such a design would logically begin with a statewide assessment of where it would make most sense to locate courts, based on population, docket levels, access to public transportation, proximity to law-enforcement and other resources, and other relevant factors. Such an analysis would have at its core an evaluation of what each court would cost to operate – in accordance with appropriate statewide standards for safety and judicial efficiency – and the costs that each court would impose on the county and state agencies on which the court would rely. The resulting system of courts logically would be overseen on a statewide basis, to ensure continued adherence to quality standards, and to manage costs and resources as efficiently as possible across all jurisdictions. In other words, an ideal system designed from scratch might well look like the system of District Courts that has been proposed repeatedly over the years.

We believe, however, that it is at this point not realistic to propose the adoption of a statewide, wholly state-run local justice system. This is because, at bottom, there is no statewide political appetite for a “top-down” system of local courts. Instead, we have throughout our travels found widespread support among justices, municipal officials, law enforcement officials, politicians and other stakeholders for the notion that local justice should continue to be locally dispensed. As discussed below, these supporters consistently point to a wide range of factors to justify our continued reliance on a system of local courts.

First, many cite the Justice Courts’ success in handling millions of cases each year, cases that consist predominantly of minor traffic and quality-of-life offenses that would otherwise have to be handled at great expense to the state in our state-run system.

*“[D]espite the publicized criticism of the Justice Courts in this state and the obvious drawbacks that you all have been privy to or acknowledged yourself . . . it is still one of the most fairly run and efficient court practices in this state, if not the world. They have delivered equal justice to tens of thousands of participants and served in a very efficient manner and very fair and just manner.” Testimony*

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<sup>114</sup> In the alternative, most criminal matters would be heard in the District Courts, but civil actions and violations of traffic law or local ordinances would be heard in the Justice Courts, as is presently the case in Nassau County villages.

*of Hon. Michael A. Santo, South Floral Park Acting Village Justice, 9/11/07 White Plains Hearing Tr. at 194-195.*

Perhaps more importantly, supporters of the Justice Courts consistently characterize them as a profoundly democratic phenomenon. Local justices are often viewed as elected representatives who know and are responsive to the local populace: a familiarity that is often perceived as enhancing their ability to make judicial decisions that reflect local values and needs.

*“The existing Justice Court System reflects the needs of the community. Every Town and Village Board writes local laws that directly relate to their specific needs. These laws are given “teeth” by the local courts that are familiar with these local town and village laws . . . . The reality is that a district court system would not be familiar with those kinds of local village and town laws, making those laws impotent and not reflecting the needs of a local community.” Letter to the Commission dated September 6, 2007 from Hon. Dan Hale, Portville Town Justice.*

Many have made the point that this “hands-on” responsiveness of the Justice Courts is directly analogous to the reasoning behind “problem-solving” Community Courts that are developing in urban centers: smaller courts that, by design, are intended to be familiar with the needs of a neighborhood or region, and that can bring to bear a practical understanding of the local populace in reaching practical and responsive judicial outcomes.

*“[C]ommunity courts address local concerns by strengthening the Court’s relationship with the community, increasing community confidence in the system, enhance appreciation of how crime affects victims and the communities, provides for faster dispositions and innovative sanctions, show physical compliance with Court ordered sanctions and sentences, increases community access to the criminal justice system and improves the quality of life for the entire community. These attributes are inherent and are existing in our Justice Court system and would be anomalous to eliminate these advantages where they exist while simultaneously trying to establish them where they do not.” Testimony of Gerald Geist, President, Association of Towns of the State of New York, 9/11/07 White Plains Hearing Tr. at 93-94.*

Supporters also stress the convenience of town and village courts, especially in rural regions. They assert that, without these courts, litigants in all manner of cases would have to travel in many instances dozens of miles or more to gain access to an available court.

*“It must be noted that the issue of convenience and access to courts is primarily an issue of justice. In many of New York’s communities, the lack of public transportation is a substantial barrier to individuals traveling long distances to appear in court proceedings. While it is of paramount concern that defendants in criminal cases and parties in civil actions are treated fairly and that their rights*

*are protected, it must be recognized that requiring individuals to travel long distances to appear in civil and criminal cases can be a serious hardship, causing individuals to take time off from work and to incur substantial travel costs, particularly in the more rural parts of the State. It is critical that convenient access to justice continue to be provided in New York and that this issue be considered when discussing consolidation.”* Written submission dated June 13, 2007 of Wade Beltramo, Counsel for the New York State Conference of Mayors and Municipal Officials.

Many also point to the role that town and village justices play in handling arraignments. The absence of holding cells across many counties around the state means that arrestees have to be brought before a town or village justice and arraigned – often in the middle of the night, or on weekends or holidays – before they can be lodged in a county detention facility or released either on bail or on their own recognizance. Supporters argue that, absent a Justice Court system, arrestees would have to spend additional time in custody waiting for a state-paid court to convene a bail hearing, and a system of holding cells would have to be constructed and staffed in state and county offices, at great cost to taxpayers at the state and county level. This step, in turn, would divert state and local police patrols to transporting defendants to county seats, thus either reducing police coverage or forcing new hires that tight budgets cannot easily afford.

*“[Overnight arraignments are] necessary because the towns and villages do not have holding cells for the defendant. . . . [T]he defendant has only an hour or two before they must be arraigned. Plus the police have to get back on their beat. They can’t be baby-sitting a defendant all night. That’s why there are nighttime arraignments. And they take typically about two hours from the moment you wake up . . . . Nobody complains about that. It is absolutely necessary though because there are no holding cells. If every town and village had a cell to hold the defendants there would be no need for nighttime arraignments.”* Testimony of Hon. Judith M. Reichler, New Paltz Town Justice, 6/13/07 Albany Hearing Tr. at 133-135.

Many believe that the number of District Courts that would be necessary to supplant the Justice Courts would impose enormous new costs for the state, which would further exacerbate the political opposition to such a plan, and which could risk a diminution in the access to justice at a county level.

*“[F]rom the state standpoint, I don’t think the state can actually afford to take our court system over. If that were the case and all the salaries were bumped up to the level of what the state administrative staffs are paid, it would be a tremendous expense upon our state. Our localities now, our towns and villages compensate us. They’re good to deal with and fair. I think we’ve been fortunate in working closely with them.”* Testimony of Hon. Richard Miller, Johnson City Village Justice and former Union Town Justice, 9/26/07 Ithaca Hearing Tr. at 129.

- ***The Question Is How to Bring About Greater Rationality and Efficiency While Continuing to Maintain a Form of Local Control***

This is not to suggest, of course, that the support for the Justice Courts is uniform across the state. As noted above, district attorneys, sheriffs, public defenders, probation representatives and other service providers have complained to the Commission about the unnecessary costs and burdens that this system imposes on their offices, which are required to transport defendants and deploy attorneys and other resources to far-flung courts at state and county taxpayer expense, rather than processing cases more efficiently in more centralized locations. In addition, as discussed further below, many feel that the justice that is dispensed in these courts is neither fair nor uniform; that the local knowledge that is brought to bear by justices can lead to bias, conflicts and due process violations; and that the real reason why municipalities are so supportive of their courts is that they provide a revenue stream which the local taxpayers are able to enjoy without being accountable for the corresponding costs that their courts impose upon the county and state. Indeed, we heard testimony from a number of stakeholders who believe that the serious problems affecting the Justice Courts cannot be remedied through better training or other reforms, but instead require a complete transformation of the current system.

*“[O]ur fundamental commitment to fair adjudication, the right to counsel, and the rule of law must trump geographic convenience and sentimental attachment to an institution whose time has passed. The Justice Courts are critically flawed in ways that cannot be cured by administrative dispatches.” Testimony of Gary Pudup, Executive Director, New York Civil Liberties Union, Genessee Valley Chapter, 9/15/07 Rochester Hearing Tr. at 117.*

The point here is that, despite these serious concerns, there remains broad support among stakeholders across the state for a system that is locally controlled – support that has consistently defeated decades of restructuring proposals. In view of this support, we find that it would be unrealistic to propose a wholesale abandonment of the Justice Court system. Instead, we believe that the central question should be how immediately to improve the quality of justice in these courts, to make them more efficient and safe, and otherwise to bring them into the twenty-first century, while at the same time maintaining an approach that continues to provide the advantages of accessibility and local control. Our recommendations in this regard are in Section Five, below.

### **The Qualifications of Justices**

As set forth in Sections Two and Three above, there have long been serious criticisms of the quality of justice in our Justice Courts. As discussed more fully below, these criticisms were raised during our travels around the state, in our public hearings, and in our review of disciplinary records. That said, we do not conclude that these concerns call for a wholesale abandonment of the Justice Courts as an institution, nor do we believe that it is practical or necessary to eliminate the use of non-attorney judges. Instead, for the reasons set forth herein, we believe that an effective overhaul of the Justice Court system, coupled with enhanced supervision and training, new educational standards, and procedural safeguards (all as proposed in Section Five), will dramatically improve the quality of justice achieved in the Justice Courts and address the perennial due process concerns.



- ***The Reports of Due Process and Other Abuses Are Cause for Serious Concern***

-- Local Justice Is Not Always Blind

From our travels, as well as from our public hearings and our review of disciplinary records and media reports, it is clear that a significant proportion of the ethical and due process violations that arise in the Justice Courts stem from the fact that these courts are so profoundly local. On the one hand, as noted above, there are clear benefits to a system – as in the newly developed Community Courts – in which the presiding jurist is familiar with the community, its issues, and the needs and circumstances of the parties. Such a court, given this knowledge and insight, may be in a better position to fashion remedies and solve problems in a practical way than a court that has little or no familiarity with the local scene.

On the other hand, too much familiarity can be a bad thing if it leads a judge to find facts based on a personal knowledge of the parties, to reflect a community’s bias against “outsiders,” or to give favorable treatment to friends, relatives or business partners. This can be a particular problem in the Justice Courts, where the justices are often known to the parties and participants, many of whom may come from the same small community.

*“[T]he communal setting often negatively impacts the outcome of hearings. There was a specific case in the Town of Pittstown wherein the offender was going for at least his third or fourth domestic violence offense and came in and knew the court clerk immediately, gave the court clerk a hug, and then the judge said, oh, okay, and basically dismissed him of all charges despite the fact it was a violent offense. And the victim, feeling very ostracized in this situation, did not continue to press forward or feel as though she had really a chance of anything to do.” Testimony of Brianna Bailey, Grants and Policy Coordinator, Unity House Domestic Violence Program, 6/13/07 Albany Hearing Tr. at 211.*

This problem of local familiarity is reflected in the decisions of the Commission on Judicial Conduct (“CJC”). Over the past five years, more than a third of the CJC’s sanctions against town and village justices involved an ethical violation stemming from a justice’s personal familiarity with a party. These include a non-attorney justice from the Town of Root (Montgomery County) who was removed from office in 2003 after presiding over at least seven cases involving relatives and according them lenient treatment. That justice heard a speeding case against her son in her own kitchen, then tried to cover up their family relationship by misspelling his last name in court records.<sup>115</sup>

In another example, in December 2007, the CJC ordered the removal of a justice for the Town of Ellenburg (Clinton County) who (1) presided over cases in which his step-

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<sup>115</sup> See New York State Commission on Judicial Conduct, *In re Pamela L. Kadur*, (May 28, 2003), available at <http://www.scjc.state.ny.us/Determinations/K/kadur.htm>.

grandchildren were the defendants, (2) initiated an *ex parte* communication with the judge handling a relative's case, (3) arraigned a former co-worker's son and changed a bail decision after an *ex parte* call from the former co-worker, and (4) asserted his judicial office after a car accident.<sup>116</sup> The CJC found that the "totality of respondent's willful misdeeds, both on and off the bench, shows a blatant disregard for the high ethical standards required of judges and renders him unfit to remain in office."<sup>117</sup>

Similarly, as discussed in Section Three, above, many of the incidents recounted in *The New York Times* articles involved improper bias or favoritism by a local justice. The series recounted instances in which justices adjudicated cases where family members were involved and given lenient treatment; freed crime suspects as a favor to friends; fixed the outcome of speeding tickets to benefit friends or colleagues; warned police not to arrest political affiliates of the justice for drunken driving; and called a complaining witness and talked her out of pressing abuse charges against the son of former clients.

#### -- Serious Concerns About Qualifications and Training

Public accounts of other types of violations and abuses also raise the question of whether the justices in these courts are properly qualified, trained and supervised. For example, recent CJC decisions include a justice in the Town of Chesterfield (Essex County) who was censured in 2001 for jailing two sixteen-year-olds overnight to "teach them a lesson" for spitting, and who later sent them back to prison for ten days without advising them that they had a right to counsel.<sup>118</sup> In December 2007, the CJC admonished a justice for the Town of Junius (Seneca County), who had been on the bench for less than a year, for sending a threatening letter to a litigant who he believed was not honoring an oral agreement reached in his court. The letter, which was printed on court stationery, stated that if the litigant failed to contact the court with a payment plan, "remember I know where you live" and "N.Y. state law allows the court many options. Suspensions of all licenses – Warrants – Wage Garnish – Jail."<sup>119</sup>

In November 2007, a justice from the Town of Rose (Wayne County) was censured by the CJC for moving up a court date without notice to the district attorney, and dismissing and reducing several criminal charges pending against a military recruit, without any legal basis, so that the defendant's military service could proceed without delay. The CJC noted that the justice

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<sup>116</sup> See New York State Commission on Judicial Conduct, *In re Dennis LaBombard*, (Dec. 12, 2007), available at [www.scjc.state.ny.us/Determinations/L/labombard.htm](http://www.scjc.state.ny.us/Determinations/L/labombard.htm).

<sup>117</sup> *Id.*

<sup>118</sup> See New York State Commission on Judicial Conduct, *In re Richard H. Rock*, (Jun. 27, 2001), available at <http://www.scjc.state.ny.us/Determinations/R/rock.htm>.

<sup>119</sup> See New York State Commission on Judicial Conduct, *In re Stephen H. Brown*, (Dec. 12, 2007), available at [http://www.scjc.state.ny.us/Determinations/B/brown\\_stephen.htm](http://www.scjc.state.ny.us/Determinations/B/brown_stephen.htm).

had several *ex parte* conversations with a military recruiter about the case.<sup>120</sup> On the same day, the CJC issued a decision censuring a justice for the Town of Veteran and the Village of Millport (Chemung County) for “failure to administer properly” his court by persistently failing to deposit fines into the court’s bank account, and for neglecting 142 traffic cases where the defendant did not appear or pay a fine.<sup>121</sup>

More broadly, the CJC’s decisions for 2006 reveal a similar pattern of misconduct among town and village justices. By way of example, one justice was removed from office for failure to deposit funds into the court’s bank account, another for falsifying election papers, and another for attempting to coerce attorneys with cases pending before the court into contributing to the justice’s legal defense fund. Other justices were not removed but only censured – one for using the prestige of his judicial office to try to mediate a dispute between a friend and her former boyfriend and another for making inappropriate remarks on the phone and threatening a motor vehicle defendant with jail. Still other justices were admonished and agreed to resign from office for conduct such as engaging in *ex parte* communications, failing to deposit court proceeds, and presiding over proceedings involving a relative.<sup>122</sup>

Witnesses at our public hearings echoed some of these concerns. For example, Michael Bongiorno, former Rockland County District Attorney, outlined a number of deficiencies with respect to recordkeeping, financial controls and case reporting in the Justice Courts, and called for wholesale changes to the current system:

*“Since becoming Rockland County District Attorney in 1995, I have suffered through many jaw-dropping moments when viewing the operations of the Justice Courts. The Justice Court system is an antiquated system that does not serve the interests of the public or litigants who appear before the court. The courts are institutionally incapable of providing the level of justice and services which courts must today provide. I say this despite the fact that in Rockland, most of the judges are lawyers and that several of the courts are adequately funded.”*  
*Testimony of Michael Bongiorno, former Rockland County District Attorney, 9/11/07 White Plains Hearing Tr. at 69-70.*

The Commission also heard testimony from a County Court judge, who is charged with hearing appeals from the Justice Courts, about the routine failure of non-attorney justices to create a proper record for appeals.

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<sup>120</sup> See New York State Commission on Judicial Conduct, *In re Donald W. Ballagh*, (Nov. 7, 2007), [available at http://www.scjc.state.ny.us/Determinations/B/ballagh.htm](http://www.scjc.state.ny.us/Determinations/B/ballagh.htm).

<sup>121</sup> See New York State Commission on Judicial Conduct, *In re Thomas P. Brooks, II*, (Nov. 7, 2007), [available at http://www.scjc.state.ny.us/Determinations/B/brooks,\\_t.htm](http://www.scjc.state.ny.us/Determinations/B/brooks,_t.htm).

<sup>122</sup> See generally, N.Y. STATE COMM’N ON JUDICIAL CONDUCT, ANNUAL REPORT (2007), [available at http://www.scjc.state.ny.us/Publications/2007%20Annual%20Report.NYSCJC.pdf](http://www.scjc.state.ny.us/Publications/2007%20Annual%20Report.NYSCJC.pdf).

*“I get appeals from the town and village courts and I get appeals from City Court. City Court, being a full-time judge, lawyer-trained judges, the records are complete. The records that come out of town and village courts are woefully inadequate, both for lack of training, for lack of the machinery, and I think more than anything else, for lack of the understanding of what it means to make a full and complete record. Because they’re not. It’s just not what they do. They decide the case before them without the anticipation of the [appeal].”* Testimony of Hon. John Rowley, County Court Judge, Tompkins County, 6/27/07 Ithaca Hearing Tr. at 69-70.

Other witnesses described a variety of errors and abuses based on their own experiences in the Justice Courts.

*“There is too much ex parte communication. You go into some Justice Courts and the judges’ chambers are loaded with police officers. A lawyer told me the other day of a situation where he brought a defendant in. Police were looking for him. Before arraignment the police officers are talking to the judge about the incident. Not about bail. About the incident. I mean, you have to live and see this system.”* Testimony of J. Michael Jones, Esq., Geneseo, New York, 9/25/07 Rochester Hearing Tr. at 34-35.<sup>123</sup>

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*“Overall, it’s our experience that the current Justice Court system, with its high reliance on lay justices, does not provide the tenants residing in the rural areas or the service territory the same level of protection in eviction cases that is provided to tenants residing in the cities . . . . Over the summer four cases were brought to our attention where the basic and longstanding requirements of the Real Property Actions and Proceedings Law were either blatantly ignored or simply not known by lay justices in four different town and village courts.”* Testimony of Martha Roberts, Esq., Staff Attorney, Legal Assistance of the Finger Lakes, Legal Assistance of Western New York, Rochester Hearing Tr. at 187, 191.

Other witnesses – including district attorneys, public defenders, and domestic violence advocates – described experiences in which town and village justices appeared insensitive or untrained in areas such as domestic violence and summary eviction proceedings.

*“[F]or the assistants who appear in a domestic violence case in a local court, they will be appearing in front of a local judge who may or may not have had extensive training in the areas of domestic violence and other family related crimes.”* Audrey Stone, Chief, Westchester District Attorney’s Office Special Prosecutions Division, 9/11/07 White Plains Hearing Tr. at 35-37.

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<sup>123</sup> Mr. Jones represented the defendant in the Charles F. case, discussed *infra* at 64-66.

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*“It is not feasible or necessarily efficient to have a victim advocate present in each of Westchester County’s 42 town and village justice courts . . . . Another challenge facing victims of domestic violence whose cases are handled in town and village courts is the lack of consistency and uniformity in how these courts adjudicate similar cases.” Rachel Chazin Halperin, Legal Center Director, My Sister’s Place; Pace Women’s Justice Center, 9/11/07 White Plains Hearing Tr. at 265-266.*

Still other witnesses reported a tendency of some justices to defer too readily to the district attorney or law enforcement officials, to engage in *ex parte* communications, and to be unfamiliar with procedural and substantive laws. In addition, many justices reported to us that they felt that they were not sufficiently trained or prepared to handle complex hearings and jury trials. In short, our review bears out the conclusion that there is a serious need to address the quality of justice in our Justice Courts.

-- The Matter of *Charles F.*

In the background of the debate about the Justice Courts – and, in particular, the propriety of employing non-attorney justices – is the constitutional question of whether a criminal defendant has a due process right to appear before an attorney-trained judge. This issue has been another source of serious concern to Commission members.

In a 1976 case, *North v. Russell*,<sup>124</sup> the United States Supreme Court considered an appeal by a defendant who was found guilty of driving while intoxicated and sentenced to 30 days imprisonment by a non-attorney judge in a Kentucky “police court.” The defendant argued that such courts, which have jurisdiction over misdemeanors and are presided over by non-attorneys, violate the due process and equal protection clauses of the Constitution because defendants are not afforded the option of proceeding before an attorney judge in the first instance. In its decision, the Supreme Court held that the Kentucky system was indeed constitutional, because defendants who were convicted in a trial before a non-attorney judge in that system had an absolute right thereafter to a *de novo* trial before attorney-trained judges.<sup>125</sup>

In New York State, however, the procedure works differently, and arguably does not meet this Supreme Court requirement. Under section 170.25 of New York’s Criminal Procedure Law (“CPL”), the only way for a defendant who appears before a non-attorney justice to have his or her case heard before an attorney judge is to file a motion with a superior court to suspend Justice Court proceedings and present the charges to a grand jury, which – by returning an indictment – would divest the Justice Court of jurisdiction in favor of the County Court. To

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<sup>124</sup> 427 U.S. 328 (1976).

<sup>125</sup> *Id.* at 339.

make such an application, the defendant must demonstrate to the superior court that there is “good cause to believe that the interests of justice” require the removal.<sup>126</sup> In other words, the defendant has the burden to show, in essence, that the particular local justice before whom he or she is appearing is not competent to provide a fair trial. It is thereafter up to the superior court to determine whether the motion should be granted, and in this respect the right to have an attorney judge trial in New York is thus not absolute.

In *People v. Charles F.*,<sup>127</sup> the New York State Court of Appeals considered the question of whether the discretionary removal option provided by CPL 170.25 is consistent with the Supreme Court’s determination in *North v. Russell*. In that case, a divided Court of Appeals held that “[a] defendant has no absolute due process right under New York or Federal law to trial before a law-trained judge,” and that *North v. Russell* required only “an effective alternative” to a non-attorney justice.<sup>128</sup> The Court then went on to find that the discretionary procedure provided by CPL 170.25 was sufficient for that purpose.<sup>129</sup>

In a well-known dissent, then-Associate Judge Judith S. Kaye, joined by Chief Judge Lawrence Cooke and Judge Sol Wachtler, wrote that “the removal procedure provided by CPL 170.25 is not an effective alternative . . . unless that statute is read to require removal upon request of a defendant where incarceration is an available penalty.”<sup>130</sup> The dissent explained that the standard for removal under CPL 170.25 requires a defendant to “show that his case presents particularly intricate questions of law or fact, that property rights are involved, that the decision will have far-reaching precedential value, or that there are particular facts that show defendant could not get a fair trial in a lower court.”<sup>131</sup> As a result, the dissent wrote, CPL 170.25 transfers are rare, and the statute “requires too much and protects too little” to be constitutional.<sup>132</sup>

In the more than two decades since *Charles F.* was decided, transfers pursuant to CPL 170.25 continue to be extremely rare. As the Vice President of the New York State Association of Criminal Defense Lawyers testified:

*“That [CPL 170.25] is an unreachable standard is evident by the virtual lack of such motions in the 24 years since Charles F. was decided. To succeed on such a motion, the defendant and his attorney would have to prove that the judge was unable to grasp and understand the nature of the case, without a record to*

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<sup>126</sup> See N.Y. CRIM. PROC. LAW 170.25.

<sup>127</sup> 60 N.Y.2d 474 (1983).

<sup>128</sup> *Id.* at 477 (emphasis added).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 479-80 (emphasis added).

<sup>131</sup> *Id.* at 481 n.4.

<sup>132</sup> *Id.* at 481 (citations omitted).

*demonstrate the judge's lack of knowledge. The motion would have to be heard by a superior court judge, who would have to rule that the lower court judge, based upon anticipated incompetence, is not qualified to hear the case. The evidentiary, political and personal hurdles are insurmountable.”* Written submission of Greg Lubow, President, New York State Association of Criminal Defense Lawyers, submitted at 6/13/07 Albany Hearing.

In our travels around the state, many others offered the view that the current New York practice does not meet constitutional muster, and that the *Charles F.* case might well be decided differently today, or that the New York principle articulated in that case might well be rejected by the Supreme Court in the future if it were to be properly framed. Similar views have been expressed by commentators in recent years.

*“The decision in Charles F. may still not be the last word on this issue. While a majority of the Court of Appeals concluded that CPL §170.25 provides a procedural safeguard comparable to the de novo trial endorsed by the U.S. Supreme Court in North, a case with different facts might invite a different response. Specifically, in a cursory opinion, the majority noted that the defendant, in seeking removal of his case to county court, had alleged nothing more than that a trial before a lay justice was inherently unconstitutional. The Court may have been more amenable . . . if the appellant had asserted a specific reason for believing that a lay justice mishandled his case or was likely to mishandle it.”*<sup>133</sup>

Many Commission members agree with this view, and are concerned that the current New York approach does not appropriately protect the due process rights of criminal defendants who appear before non-attorney justices. For this reason, we believe that steps should be taken immediately to ensure that those rights are better protected procedurally, as well as substantively. Our recommendations in this regard are set forth in Section Five, below.

- ***At the Same Time, These Concerns Do Not Require a Wholesale Abandonment of the Local Approach or the Abolition of Non-Attorney Justices***

After careful consideration, and giving due regard for the concerns expressed by first-hand participants, we do not find that the accounts of due process violations and other abuses require a conclusion that the Justice Courts should be wholly abolished in favor of state-run courts, or that we should abandon the use of non-attorney justices. The reasons for this conclusion are set forth in detail below. Instead, as we discuss in Section Five, we believe that a comprehensive plan to reduce the number of these courts and to make them more efficient, coupled with a program of training and reforms, will better and more realistically address the well-chronicled problems and shortcomings of these courts.

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<sup>133</sup> Colin A. Fieman and Carol A. Elewski, Do Nonlawyer Justices Dispense Justice?, N.Y. STATE BAR ASS'N.J. 3 (January 1997).

-- The CJC Statistics

The rates of disciplinary misconduct among town and village justices have generated much attention. Over the course of our review, we have seen and heard many contrasting opinions and interpretations based on data from the CJC. Those opposed to the Justice Courts tend to conclude, based on the CJC's data, that town and village justices are much more likely to engage in judicial misconduct than their state-paid counterparts. Conversely, supporters of the current system argue, using these same statistics, that town and village justices are in fact *less* likely to engage in judicial misconduct than other judges.

In an effort to reach our own conclusions concerning this data, our staff has reviewed every CJC decision involving town or village justices for the past twelve years, and every CJC decision involving state-paid judges over the past four years. Our detailed analysis in this regard is set forth in the Appendix to this report; what follows are our conclusions based on the available data.

Critics of the Justice Court system often point out that town and village justices receive the vast majority of the CJC's disciplinary sanctions. Indeed, since 1978, the CJC has issued 644 disciplinary determinations, with town and village justices receiving 70.7% of the total number of sanctions during that time. Over the last four years, the period for which we reviewed CJC opinions both for town and village justices and state-paid judges, the results have remained roughly the same: of the 74 disciplinary sanctions issued by the CJC during that time, 48 have involved town and village justices, while only 26 have involved state-paid judges, resulting in town and village justices receiving 65% of the total number of sanctions during this time.

Additionally, among judges who are sanctioned, town and village justices are more likely to face censure or removal, as opposed to lesser sanctions (such as admonishment), than their state-paid counterparts. Since 1978, the CJC has censured 263 judges with 187 of those censures involving town or village justices. Similarly, the types of behavior for which town and village justices are sanctioned tends to be more serious than the misconduct for which state-paid judges are sanctioned. For example, over the last four years, six local justices were disciplined for improper handling of funds as compared to no state-funded judges; ten local justices were disciplined for engaging in *ex parte* communications, as compared to two state-paid judges; three local justices were disciplined for failing to maintain professional competence as compared to one state-paid judge; and seven local justices were disciplined for improper handling of conflicts of interest as compared to two state-paid judges.

These data are skewed, however, by the unique dynamics of the Justice Courts. First, there are more town and village justices than state-paid judges in New York. As noted above, town and village justices have since 1978 received 70.7% of the CJC's disciplinary violations, but these judges comprise 65% of the total number of judges in the state. Based on these numbers, town and village justices are only 5.7% more likely to be sanctioned than their state-paid counterparts. (A counterpoint, however, is that town and village justices typically preside over smaller dockets than their state-paid counterparts. As a result, despite their greater numbers,



town and village justices hear only 25–30% of the state docket. Thus, while one would surmise that smaller dockets would result in fewer disciplinary violations, the converse is actually true. In other words, town and village justices are disciplined at a greater rate than their docket share would predict.)

Second, fewer complaints are filed against town and village justices than state-paid judges, despite the fact that there are far more town and village justices. In 2006, town and village justices received approximately one-third the number of complaints as did their state-paid counterparts (314 complaints were filed against town and village justices and 915 complaints were filed against state-paid judges). To be sure, however, the complaints against town and village justices were more often found to be meritorious than the complaints filed against state-funded judges. In 2006, for example, while town and village justices were accountable for 34% of all *complaints*, they received 44% of all the *sanctions* imposed that year.

To add to the complexity, the very nature of the Justice Courts and their dockets makes it difficult to compare their disciplinary history to that of the state-paid courts. First, town and village court proceedings often involve minor matters where relatively small sums are at issue and a litigant may not feel it worthwhile to file a complaint over a proceeding with such small stakes. Relatedly, when the stakes are smaller, an individual is less likely to retain counsel and therefore may not be as knowledgeable as to whether he or she has been aggrieved. In addition, the local nature of the Justice Courts makes it more likely that a litigant is personally familiar with the justice, which could well make litigants more reluctant to file a complaint. Finally, many of the sanctions imposed against town and village justices are in connection with the improper handling of funds (this is the most common cause for removal of town and village justices), and, here, the comparison to state-paid judges is flawed since state-paid judges do not handle court funds at all, and are therefore not exposed to the same temptations and risks.

To be clear, we do not seek to minimize or explain away the incidents of misconduct that have been reported in the Justice Courts. Rather, our point is that the statistics of the CJC are not a particularly useful tool in analyzing the merits of the overall Justice Court system, and that the arguments we have heard for and against the current system based on these data are therefore not productive. What *is* clear from the CJC data is that, *on average, only thirteen town and village justices have been sanctioned by the CJC in each of the past twelve years*. This amounts annually to approximately one-half of one percent of the more than 1,800 town and village justices in the state. We recognize that the CJC lacks sufficient resources to investigate and punish all violations in the Justice Courts, and, again, we acknowledge the seriousness of the misconduct for which many of these sanctions have been imposed. Nonetheless, we believe that, at bottom, the CJC data corroborate our view – discussed further below – that the inflammatory public accounts at issue do not by themselves justify a call for the wholesale abandonment of the existing system.

-- The New York Times Articles

As discussed in Section Three above, the “Broken Bench” series of articles in *The New York Times* painted a troubling picture of the Justice Courts. Given the examples of misconduct cited in the articles, it is no surprise that the series gained immediate attention and caught the interest of a wide-ranging group of constituencies around the state. The “Broken Bench” series has clearly fostered negative views of the Justice Court system among many who previously had little or no exposure to these courts. The articles have also provided fodder for longstanding critics of the Justice Courts, who point to the articles as confirmation of the serious problems perceived in the system, particularly as to the role of non-attorney justices. On the other hand, we also heard from many people around the state – both at our public hearings and during our site visits – who believed the series to be an unfair critique of a system that is working very well under trying circumstances, and who observed that the series was virtually silent on many of the benefits of the Justice Courts. Many Justice Court stakeholders expressed their fear that *The New York Times* series would cloud any further examination of the Justice Court system, including the work of this Commission.

At bottom, as in our review of the past CJC sanctions, we find the accounts described in *The New York Times* to be troubling and illuminating, but they do not lead us to conclude that the entire system must be abandoned. Instead, the broad perspective that we gained – as a result of our site visits, public hearings, town hall meetings, interviews and exhaustive research – leads us to conclude that the accounts reflect only a fraction of the proceedings that take place in the Justice Courts, that the vast majority of the people working in those courts are competent and dedicated, and that the courts provide many significant benefits that must not be discounted or overlooked. In other words, as with the CJC statistics, we believe that these accounts identify a profoundly serious category of misconduct that needs to be addressed, but that such conduct, as discussed in Section Five, below, can be addressed in the context of the existing system.

-- The Issue of Non-Attorney Justices

We have spent a considerable amount of time meeting with non-attorney justices and weighing whether and to what extent they should continue to play a role in the Justice Courts. At the outset, a number of Commission members were skeptical as to whether non-attorneys should preside over cases where serious and complex constitutional or evidentiary questions can be raised, and where important due process rights need to be safeguarded. Most agree that, in a perfect world, all local justices would be attorneys. Nonetheless, following our review, there is a broad consensus that, for the following reasons, non-attorneys should continue to serve in the Justice Courts.

First, based on our extensive observations, we believe that the majority of non-attorney justices are competent in the execution of their duties and their knowledge of the law relating to the proceedings most commonly before them. They are also diligent in attending training sessions, reviewing legal materials and consulting with the Resource Center or more experienced colleagues when necessary.

Second, as previously described, we do not believe that the disciplinary statistics dictate a contrary conclusion. With regard to non-attorney justices, critics of the current system cite the fact that, in 2006, 74.5% of the 314 complaints lodged against town and village justices were directed at non-attorney justices.<sup>134</sup> However, approximately 72% of town and village justices are non-attorneys,<sup>135</sup> and it is therefore to be expected that a proportional number of the complaints lodged against the Justice Courts each year would be asserted against these justices. Viewed in this light, the fact that 74.5% of the complaints relate to non-attorney justices is not statistically significant.

But, as with the analysis in the preceding section, these statistics can be interpreted to make the opposite point. While the number of complaints filed against non-attorney justices is roughly proportionate to the percentage of non-attorney justices in the Justice Court system, it is a fact that all nine of the sanctions actually imposed upon town and village justices as a result of complaints filed in 2006 were imposed upon non-attorney justices. In other words, complaints against non-attorney justices were more often found to be meritorious than complaints against their attorney justice counterparts.<sup>136</sup> By this measure, there would indeed seem to be a greater propensity on the part of non-attorney justices to commit more serious, sanctionable offenses as compared to their attorney counterparts.<sup>137</sup>

Nonetheless, as with the overall number of sanctions imposed on town and village justices, the actual number imposed on non-attorney justices per year over the last decade (on average, less than ten) is still extremely small as compared to the number of non-attorneys (nearly 1,500) serving across the state. For this reason, as in the case of CJC statistics discussed earlier, we believe that these observations logically lead, not to the abolition of non-attorney justices, but to the question of how their performance can be better supervised and improved.

Finally, and perhaps most importantly, even if we were to agree that non-attorney justices should be ineligible to preside in the Justice Courts, we believe that such a proposal would be virtually impossible to implement throughout the state. In certain counties, there are only a few dozen attorneys in the entire county, and hundreds of towns and villages have few or no attorneys at all. As one Supervising Judge testified:

*“Requiring only attorneys to be considered as local judges would shut down the Justice Court system in rural communities as many towns do not have lawyers residing within their boundaries.” Testimony of Hon. William Boller, Supervising Judge, Eighth Judicial District, 9/25/07 Rochester Hearing Tr. at 23.*

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<sup>134</sup> N.Y. STATE COMM’N ON JUDICIAL CONDUCT, ANNUAL REPORT 4 (2007).

<sup>135</sup> Data provided by OCA.

<sup>136</sup> A review of the same information for the last five years indicates a similar pattern.

<sup>137</sup> In addition, although non-attorney justices comprise 72% of the Justice Court system, many preside in rural or upstate regions with small caseloads and, as a result, non-attorney justices hear only 47% of Justice Court cases. Since, as noted above, non-attorney justices account for 74.5% of the complaints lodged against town and village justices, and 100% of the sanctionable offenses (in 2006), non-attorneys have complaint and sanction rates greater than their docket share alone would predict.

The District Attorney for Schuyler County reinforced this point in his testimony before the Commission:

*“In Schuyler County, we probably only have ten lawyers total. Most of them are County employees. So we don’t have enough lawyers who could go out and handle these Justice Court positions. I think that would be a big problem in the smaller communities.” Hon. Joseph Fazzary, Schuyler County District Attorney, 6/26/07 Ithaca Hearing Tr. at 112.*

This testimony is directly supported by recent data from the attorney registry. Indeed, as those data indicate, several smaller counties simply have too few attorneys, as a practical matter, to staff every justice position. In Franklin County, for example, there are 33 justice positions but only 75 registered attorneys countywide. In Allegany County there are 47 justice positions and just 48 registered attorneys. And in Wyoming County there are 39 justice positions, but only 35 registered attorneys in the entire county.<sup>138</sup>

In this regard, we note that many critics of the current system have asserted, without support, that with the right combination of reforms, sufficient numbers of attorneys can be convinced to serve as town and village justices. However, we have seen no evidence to support this assertion. In many towns and villages, it is difficult enough to find a non-attorney willing to work for a small salary, often in substandard conditions, without proper security, and with the knowledge that he or she must routinely appear, without warning, for middle-of-the-night arraignments. In short, given the sheer number of justices in the current system, and the demographics of the more rural counties, we do not believe that any realistic combination of reforms could possibly impel sufficient numbers of attorneys to serve in Justice Courts in many areas throughout our state.

- ***Instead, the Question Is How To Deter Due Process and Other Violations in a System That Remains Locally Controlled***

For the reasons discussed above, rather than advancing an unrealistic call for the abolition of non-attorney judges, we believe that our state should focus immediately on: (a) creating efficiencies and improvements through combinations of courts that will have the effect of reducing the number of unnecessary courts and thus improving the overall quality of the courts and those who sit in them; (b) enhancing the qualifications, training and oversight of non-attorney justices; and (c) implementing procedural safeguards to ensure that those who appear before non-attorney justices in criminal and other important matters have alternative options which address substantive or due process concerns. Our recommendations in this regard are set forth in Section Five, below.

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<sup>138</sup> Data provided by OCA.

-- A Note on Arraignments

Many in the past have expressed particular concern about the process by which arraignments have been conducted in the Justice Courts. Specifically, there have been troubling stories of defendants arraigned in the middle of the night or on weekends without an attorney present, and who were sent directly to jail, without bail, where they remained until they were discovered by a public defender. In this regard, the Commission on the Future of Indigent Defense Services found in 2006 that some Justice Courts were not timely assigning counsel for indigent defendants, raising obvious due process concerns.

In April 2005, however, the Chief Administrative Judge promulgated a court rule<sup>139</sup> which explicitly directs that, upon the issuance of any securing order (i.e., an order fixing bail or remanding without bail) for an unrepresented defendant, Justice Courts must notify by fax the appropriate public defense organization within 24 hours if practicable, and never later than 48 hours. The rule applies even where the court preliminarily determines that the defendant is financially ineligible for assigned counsel. More recently, following the recommendation of the Indigent Defense Commission, OCA directed the Supervising Judges for the Justice Courts to monitor compliance with the rule.

In our fact-finding efforts, we paid particular attention to this question of whether incarcerated defendants are being adequately assigned counsel at or after arraignment. In response to our inquiries, prosecutors, defense lawyers and justices alike expressed the view that it is simply not feasible to require that counsel be present when arrestees are arraigned at late hours or on weekends in the Justice Courts. Nor do they believe it would be feasible or in the defendants' interest to hold such prisoners for additional hours or days in custody, before arraignment, until attorneys are able to appear. Instead, all agreed that arrestees are better off being arraigned promptly – and thus gaining the prospect of immediate release – even if that means that arraignments take place without the presence of counsel, as long as there is some guarantee that counsel will be engaged no later than the next business day.

With regard to the question of whether lawyers are indeed being assigned to those who are incarcerated, it appears that the recent OCA rule changes are having a salutary effect. Virtually all of the justices and public defenders we interviewed reported that the defenders' offices are now being notified promptly when incarcerated defendants are in need of counsel, and that defense attorneys are thus able to speak to defendants (and take other necessary action) on the morning after (or the Monday after) such a defendant is arraigned. Given that this is a recent development, we believe that compliance with the new OCA rules should be the subject of continued careful scrutiny, to ensure that all incarcerated defendants who need assigned counsel obtain representation promptly after arraignment before a Justice Court.

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<sup>139</sup> 22 NYCRR (R. Ch. Adm. J.) 200.26.

## Court Facilities and Security

- ***Adequate and Secure Facilities Must Be Provided If Minimum Standards of Justice Are To Be Achieved***

We have also focused in our review on the adequacy of Justice Court facilities and security arrangements. With regard to court facilities, we have, as noted earlier, found tremendous variety among the Justice Courts. Some are housed in modern court facilities that are virtually indistinguishable from state-paid courthouses, and are fully equipped with modern technologies and properly trained administrative staff. Others, however, are located in primitive facilities that bear no resemblance to a courthouse at all.

For example, we visited one Justice Court located in a single room attached to the town barn. The courtroom furnishings consisted of a table located in the center of the room, surrounded by small chairs. We visited another Justice Court located in a small room attached to the town garage. The window above the justices' table (there was no bench) was located a few feet from a large, outdoor fuel tank, presenting an obvious security hazard. In addition, this court lacked an air conditioner, and the justices stated that the courtroom becomes so stifling during the summer that they have been forced to preside while wearing shorts. We visited another Justice Court located in a small multi-purpose room that is part of the state highway garage, and that holds court (including, on occasion, jury trials) adjacent to trucks, snow plows and other vehicles. Typically, there is insufficient space in the room during court sessions, so litigants line up in the parking lot outside of the building, even in deep winter. We also visited a courtroom with a total of perhaps 200 square feet of space; there was barely enough room for a table and several folding chairs. While these facilities were among the worst we have seen, we visited many others that were only marginally better.

In addition to visiting many courts that did not have adequate facilities, we encountered a number of courts that were unsafe for a variety of reasons. For example, we visited courts that were virtual firetraps, with no emergency exits and which, on court nights, were routinely filled with litigants, court personnel and spectators well beyond the legal capacity. We also visited a great many courts that were completely inaccessible to the disabled; in some courthouses, cases involving the disabled are heard in hallways or other inappropriate settings. We visited numerous courts where the proceedings were inaudible; we even cut short some of our site visits as a result.

Aside from our own observations, a number of justices appeared at our hearings to decry the condition of their courts, and to plead for assistance. For example, one justice testified:

*"I can speak for my facilities, which are probably the worst in the County . . . . I hold court in one room which is probably, I would say, 15 by 25 feet. My conference room is our town highway barn or, for lack of a better term, our restroom. I share the office with my co-judge, with the town historian, with the town clerk, with the town board, and with the town supervisor. We have one*

*computer that is 15 years old. We have no recording equipment other than a small cassette player. It is absolutely a disgrace. And to have defendants come before the court and expect them to show respect for the system and for the judge, in facilities such as my court, is unbearable and it is embarrassing.”* Testimony of Hon. Betty Poole, Enfield Town Justice, 6/26/07 Ithaca Hearing Tr. at 99.

Michael Lane, an attorney with 31 years of practice and formerly the Mayor of the Village of Dryden for ten years, summarized the situation in some parts of our state as follows:

*“The facilities for Justice Courts are despicable, and we should all be ashamed of what most Justice Courts in our area and our rural areas are like. They may be back rooms in some unheated Town Hall. They may sometimes be in a justice’s house. We’ve had that situation. And the room for spectators, if there should be a need for that, or witnesses, is very small. There aren’t jury rooms. There aren’t places for counsel to consult with their clients in private. There aren’t good places for judges to hold in-camera proceedings for juveniles for example. It’s simply because these towns can’t afford them, and it’s too bad. And I think the administration of justice suffers because of that.”* Testimony of Michael Lane, Esq., 6/27/07 Ithaca Hearing Tr. at 79.

With respect to security, nearly all of the Justice Courts require improvement. Even in the courts with better facilities, security arrangements are often lax or nonexistent, and justices, staff, litigants and the public are exposed to dangers on a daily basis. OCA’s Action Plan and the State Judiciary’s 2005 Task Force on Court Security painted a stark picture of Justice Court security:

*“[T]he vast majority of Justice Courts have no entrance screening to detect and confiscate deadly weapons; no uniformed presence in courtrooms properly trained to detect and respond to security incidents; no effective means to segregate detained defendants from the public, or segregate litigants from the judge; no secure locations anywhere in the facility; no mechanism to separate alleged victims and perpetrators of domestic violence; no published and practiced protocols for justices and staff to follow in case of emergency; few effective protections for cash and other instruments stored either in the court or elsewhere on premises; no restraints to keep furniture and fixtures from being used as projectiles or other weapons; and no effective way to summon help in case of a security breach.”<sup>140</sup>*

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<sup>140</sup> ACTION PLAN FOR THE JUSTICE COURTS, *supra* note 22, at 54 (citing N.Y. STATE UNIFIED COURT SYSTEM, TASK FORCE ON COURT SECURITY, REPORT TO THE CHIEF JUDGE AND CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK (2005)).

This absence of proper security was plainly evident during our site visits. In most of the courts we visited, there was no ingress screening or other security apparatus whatsoever. In the minority of courts with some security infrastructure in place, most plainly were inadequate. For example, we visited a court with a heavy criminal docket that lacked a magnetometer or any similar screening device. The only security measure in the courtroom was a single – unarmed – employee charged with overseeing security for hundreds of people on court nights. In a number of locations, we observed OCA-supplied magnetometer devices in place but not in use or sitting idly in unopened boxes, because the localities would not or could not pay for the personnel to operate the machine. In another court, there was no available electrical outlet in which to plug the machine.

Conversely, in the courts where security measures have been implemented, we learned from court personnel that many weapons are detected at checkpoints, and still others are found stashed in bushes and other areas outside the court. This suggests that in courts without such security in place, weapons are presumably being brought to court on a regular basis.

We have also heard from a number of justices and clerks who are deeply concerned about threats to their safety. More than one justice has taken to carrying a weapon while on the bench. Other justices described fights that erupted in their courtrooms between police officers and defendants being arraigned in the middle of the night. Of particular note is a recent incident in the Village of Sloatsburg Justice Court, where a small-claims litigant opened fire with a shotgun inside the courtroom, just missing the judge and the litigant's ex-wife, who was the intended victim. Another recent security breach occurred in the Village of Hoosick Falls Justice Court, where a criminal defendant bolted from court, bowled over the judge and escaped from the courthouse (despite the presence of a police officer), triggering a four-state manhunt. In addition, most Justice Courts lack a holding pen or a separate area in which to seat prisoners. As a result, in some Justice Courts, shackled prisoners, many of whom have been charged with serious crimes, are seated in the gallery next to spectators, other litigants or even the alleged victim and his or her family, creating an obvious hazard, with literally no space available to separate them.

*“In court, at any given time, we often have hundreds of people. Some are excitable. Most are feeling significant angst as they’re waiting for their own case or a case of a friend to be called. It is a volatile situation. Court officers’ actions can make the difference between an explosive situation and an inconsequential encounter.” Testimony of Hon. Karen Morris, Brighton Town Judge, 9/25/07 Rochester Hearing Tr. at 224-225.*

Similarly, some busy courts have attempted to implement necessary security measures but are too physically cramped or clogged with cases and crowds to make proper use of security equipment, personnel or screening procedures, no matter how diligent their efforts.

We believe that significant changes are required to improve both Justice Court facilities and security, and that every courthouse in the state should be safe and fit for the conduct of



judicial proceedings. To this end, we believe that all Justice Courts should be required to adhere to certain minimum standards with respect to court facilities and security, and that those courts unwilling or unable to meet these thresholds should either pool resources and combine with other courts or have their cases heard in other appropriate forums. This is because the lack of resources and inadequate facilities in these courts directly impair the quality of justice dispensed. Without appropriate recording devices, litigants are left without an appropriate basis for appeal. Without proper docket controls, courts are overcrowded, cases are backlogged, fines go unpaid, and criminal justice goals go unmet. Without proper facilities, there is nowhere for attorneys to meet with clients, no way to segregate domestic violence offenders from their victims, no way to handle prisoners safely, no place to handle and store cash appropriately, no suitable location for juries to deliberate, and no accessibility for the disabled. Without effective audio systems, public court proceedings are inaudible to the public. Without effective security provisions, all who come to court are at risk. And so on.

At bottom, the issue is funding. Because many Justice Courts are underfunded by their sponsoring localities, they cannot afford appropriate or safe facilities. To this end, we believe that one of the main benefits to the minimum standards and court combinations we propose in this report are the improvements that will be made to court facilities. When two or more courts combine, the funding available for each of these courts can be pooled to achieve meaningful improvements, including hiring additional security personnel. Court combinations are necessary because the alternative, bringing every existing court facility into line with minimum standards (in some cases by constructing entirely new facilities), would present staggering costs that neither the state nor localities can practicably afford. These proposals are further discussed in Section Five, below.

## **Fines and Funding**

In marked contrast to the state's other courts, the Justice Courts are the financial responsibility of the localities in which they sit.<sup>141</sup> The local town or village board provides and maintains the Justice Court's facility and it determines the Justice Court's annual budget—including the salaries of the justices and the number and compensation of all other court personnel, if any. As a consequence, each Justice Court is dependent on (and, some would say, beholden to) its town or village: if the municipality has sufficient money and the political will to properly support the court, then the Justice Court may receive the support it needs. Otherwise, the Justice Court will be forced to operate without adequate funding, and court operations suffer. Furthermore, as set forth below, we have found evidence to suggest that at least some justices feel inappropriate pressure from municipal leaders to take measures to maximize the local revenue that their courts generate, revenue which is not necessarily used to fund the courts but which can be used for any purpose the municipality sees fit.

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<sup>141</sup> See N.Y. JUDICIARY LAW § 39.

- ***The Current System of Assessing and Collecting Fines and Fees Creates Inappropriate Incentives for Towns and Villages and Unnecessary Risks for Justice Courts***

The Justice Courts are a significant source of municipal revenue. In 2006, Justice Courts collected approximately \$212 million in fines, fees and surcharges.<sup>142</sup> Fifty percent of this revenue (\$106 million) was retained by the towns and villages in which the Justice Courts are located,<sup>143</sup> and we have heard from numerous justices that, under the current system, municipal leaders tend to view the Justice Courts in largely opportunistic terms. On the one hand, such leaders welcome the local revenue that many Justice Courts generate and may, in one way or another, urge justices to take steps to maximize that revenue. On the other hand, this revenue does not necessarily translate into adequate funding for the Justice Courts because no law obliges localities to use court revenue for anything other than the general support of local government.

As a consequence, under the current system, there is a significant risk that justices will feel pressure from municipal officials to facilitate inappropriate plea bargaining, particularly in connection with violations of New York's Vehicle and Traffic Law (VTL). The fees, fines and surcharges arising from VTL violations account for approximately 90% of the revenue taken in by the Justice Courts.<sup>144</sup>

To understand the nature of this problem, some background on the VTL is needed. Section 1803 of the VTL sets forth a detailed scheme for the allocation of fees, fines and surcharges collected in connection with violations of Title VII<sup>145</sup> of the VTL.<sup>146</sup> The key provisions of section 1803 are, in simplified terms, as follows. First, section 1803 provides that, except for a nominal amount that is repatriated to the locality in which a violation occurred, the state is entitled to retain the fines collected by the Justice Courts for: (1) violations of state-imposed speed restrictions (e.g., the 55 mph maximum speed on some state highways), (2) violations relating to reckless driving, and (3) any other VTL violations for which no distribution

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<sup>142</sup> See OFFICE OF THE N.Y. STATE COMPTROLLER, JUSTICE COURT FUND COURT RANKING REPORTS (REVENUES COLLECTED) (SPREADSHEET - BY COUNTY) (2006), [available at http://www1.osc.state.ny.us/justicecourt/jcindex.cfm](http://www1.osc.state.ny.us/justicecourt/jcindex.cfm).

<sup>143</sup> Id. Forty-five percent (approximately \$95 million) was paid over to the state, and the remaining five percent of this revenue (approximately \$11 million) was paid over to the counties in which the Justice Courts are located. Id.

<sup>144</sup> This percentage was derived based on our analysis of the 2006 revenues collected by 77 Justice Courts visited by the Commission.

<sup>145</sup> Title VII ("Rules of the Road") of the VTL sets forth violations relating to: obedience to and effect of traffic laws (Article 23 (§§ 1100-1105)); traffic signs, signals and markings (Article 24 (§§ 1110-1117)); driving on the right side of the roadway, overtaking and passing (Article 25 (§§ 1120-1131)); right of way (Article 26 (§§ 1140-1146-a)); pedestrians' rights and duties (Article 27 (§§ 1150-1157)); turning and starting, and signals on stopping and turning (Article 28 (§§ 1160-1166)); special stops required (Article 29 (§§ 1170-1176)); speed restrictions (Article 30 (§§ 1180-1182-b)); alcohol and drug related offenses (Article 31 (§§ 1190-1199)); stopping, standing and parking (Article 32 (§§ 1200-1204)); miscellaneous rules (Article 33 (§§ 1210-1229-d)); operation of bicycles and play vehicles (Article 34 (§§1230-1241)); operation of motorcycles (Article 34-A (§§ 1250-1253)); and riding horses (Article 34-B (§§ 1260-1265)); N.Y. VEH. & TRAF. LAW tit. VII.

<sup>146</sup> N.Y. VEH. & TRAF. LAW tit. VII, art. 45, § 1803.

of fines is otherwise prescribed.<sup>147</sup> Second, section 1803 provides that the county where a Justice Court sits is entitled to any fines and/or civil penalties collected by that court for violation of the VTL's DWI provisions (provided that the county at issue has established a "special traffic options program for driving while intoxicated" that has been approved by the commissioner of motor vehicles).<sup>148</sup> Third (and by contrast to the prior provisions), section 1803 provides that the town or village where a Justice Court sits is entitled to retain the fines and surcharges collected by the court for any other violations of the VTL's Title VII.<sup>149</sup> Of particular significance, the towns and villages are entitled to 100% of the fees and fines collected in connection with violations of local parking ordinances.<sup>150</sup>

The problem is that a justice can easily, if improperly, generate additional revenue for a municipality (at the expense of the state) by permitting motorists who have been ticketed for speeding on state highways to plead guilty instead to municipal parking infractions or other violations of local law. In this way, the associated fine, which would have gone to the state had the motorist pleaded guilty to the original charge or a lesser-included VTL offense, is instead retained by the municipality. Of course, the motorist is highly unlikely to object to this impropriety, since parking violations – in contrast to moving violations – do not give rise to Department of Motor Vehicles Driver Violation Points and generally yield much less significant fines.<sup>151</sup>

It should be emphasized that the Commission has not found direct evidence in any specific case that a justice who reduced a moving violation to a parking violation did so for an improper purpose. Nonetheless, there is troubling circumstantial evidence of the practice. Our review of data from 890 Justice Courts reveals that, in 2006, 33% of these courts reduced moving violations to parking violations at least a third of the time. Viewed at the county level, this data indicates that the practice of reducing moving violations to parking violations is widespread: in thirty-four counties, moving violations were reduced to parking violations at least 25% of the time.

Again, this data cannot be regarded as proof positive that any particular justices are permitting improper plea bargaining for the purpose of maximizing local revenue. But this much is clear: the pressure that is or can be perceived to be exerted on justices by their municipal leaders gives justices an understandable reason to encourage and endorse such plea bargaining, and the macro-level data, as well as anecdotal reports, suggest that inappropriate pressure can

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<sup>147</sup> Id. at § 1803(1)(d).

<sup>148</sup> Id. at § 1803(9).

<sup>149</sup> Id. at § 1803(1)(a)-(b).

<sup>150</sup> N.Y. UNIFORM JUST. CT. ACT § 2021(1) ("Payment of fines, dispositions thereof and related matters").

<sup>151</sup> See N.Y. State Dep't of Motor Vehicles, Driver Violation Point System, [available at http://www.nydmv.state.ny.us/license.htm#points](http://www.nydmv.state.ny.us/license.htm#points).

indeed be brought to bear on justices in this respect. Especially given that these same municipal leaders decide court budgets, fix justices' salaries and can influence a justice's reelection prospects, the resulting risk to judicial independence cannot be overstated.

Beyond the incentives with respect to plea bargaining, town and village justices also face challenges attendant to their unique role in the physical collection of court revenues. In marked contrast to the state's other courts, local justices not only impose fines, surcharges, bail and civil fees, but also are responsible for collecting and accounting for any cash and other funds actually provided by litigants in connection with such payment obligations.<sup>152</sup> On a monthly basis, the Justice Courts remit these moneys to the Office of the State Comptroller's Justice Court Fund ("JCF") or the chief fiscal officer of the town or village where the Justice Court sits; the JCF, in turn, distributes the moneys collected by the Justice Courts to the state, the counties and the towns and villages.<sup>153</sup>

Both OSC and OCA have previously identified serious flaws with the financial controls that many Justice Courts have put into place. For example, a 2005 OSC audit of some thirty-two Justice Courts found that: (1) "Court officials did not maintain complete, accurate or timely accounting records and reports" and (2) in most of the courts audited "one individual was responsible for handling moneys and maintaining accounting records."<sup>154</sup> The OSC audit found that eleven of the thirty-two Justice Courts audited had misplaced moneys paid by litigants.<sup>155</sup> Similar problems were identified in OCA's Action Plan.<sup>156</sup> Furthermore, pursuant to the Action Plan, OCA adopted the following measures: (1) Justice Courts will be required to accept credit card payments of fees, fines and surcharges, thereby enhancing revenue collection and financial accountability and security; (2) OCA and OSC are promulgating financial control best practices and integrating them into case-management software and manuals for the Justice Courts; and (3) towns and villages where the Justice Courts sit must submit to OCA the localities' annual audit of the Justice Court's finances (failure by a town or village to submit an annual audit will be reported to OSC and will trigger further review by OSC and OCA).<sup>157</sup>

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<sup>152</sup> OFFICE OF THE N.Y. STATE COMPTROLLER, DIV. OF LOCAL GOV'T SERVS. AND ECON. DEV., JUSTICE COURTS ACCOUNTABILITY AND INTERNAL CONTROL SYSTEMS 5 (2005), available at <http://osc.state.ny.us/localgov/audits/swr/2005mr10.pdf>.

<sup>153</sup> Id. Localities participating in the OSC Invoice Billing Program remit to JCF only the state share of court revenue without need for redistributing the local share, which assists localities in maintaining timely cash flow. See N.Y. STATE FINANCE LAW § 99-a(3).

<sup>154</sup> Id. at 6.

<sup>155</sup> Id.

<sup>156</sup> ACTION PLAN FOR THE JUSTICE COURTS, supra note 22, at 34-40. Moreover, as noted earlier in this Section, our own review of disciplinary cases brought against town and village justices reveals that a substantial percentage of these cases relate to allegations surrounding improper handling of money.

<sup>157</sup> Id. at 4.

Finally, the funding problems facing the Justice Courts are exacerbated by the measures used to repatriate funds from the state to localities in connection with Penal Law violations. Under the current system, the state receives all Penal Law revenue subject to a small \$15 case processing fee for adjudicated misdemeanors<sup>158</sup> and a \$10 case processing fee for felony arraignments.<sup>159</sup> But certain Justice Courts handle extremely busy criminal dockets because they are located close to a shopping mall, college campus or prison (all of which can generate high numbers of criminal cases). As a result, towns and villages with small populations (and correspondingly small budgets) sometimes are saddled with having to support outsized police and judicial expenses, and there is no provision under state law to provide them and their courts with additional funding to address these additional burdens.

- ***The Current Approach to Funding Cannot Support the Necessary Improvement and Enhancement of the Justice Courts***

As stated above, the level of funding that a Justice Court receives depends entirely on the resources and will of the municipality in which that court sits. During our court visits around the state, we observed directly the disparate levels of financial support that Justice Courts receive. On the one hand, we visited a fair number of courts (some large and some small) that appeared adequately funded. On the other hand, we visited a great many more Justice Courts that clearly lacked the funding necessary to run properly.

This underfunding of the Justice Courts has far-reaching consequences. As detailed above, many Justice Courts are in a state of disrepair and are wholly unfit to serve as houses of justice. Even those courts which have been able to obtain minor security improvements, such as the provision of magnetometers or security wands to screen litigants, often find themselves unable to properly use these tools because there is no funding available to hire personnel to operate this equipment and otherwise secure the facility. In still other places, proper screening requires capital improvement to court facilities or wholesale replacement of the facility. Current law gives localities little if any duty, incentive or assistance to undertake these urgent improvements, and the state until now has been largely “hands-off.”

This underfunding also has repercussions in terms of the tools and equipment necessary to dispense justice. Particularly in rural areas, we have seen Justice Courts lacking such basic resources as a computer, printer, copier or fax machine. Some justices and court clerks have never used e-mail. We have seen many courts across our state, even in relatively affluent localities, without access to recording equipment or a stenographer to record court proceedings. Even in the largest and best-funded courts, there are insufficient resources and support services for Justice Courts to deal effectively with their increasingly large drug and domestic violence dockets. (Indeed, we have seen affluent courts seek charitable support to make a bare effort at drug treatment, while other courts with comparable dockets but less affluent taxpayers cannot

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<sup>158</sup> N.Y. GEN. MUN. LAW § 99-1(1)(a)-(b).

<sup>159</sup> Id. at § 99-1(1)(c).

offer any such programs at all.) The effect is at best inconsistent access to needed judicial resources and, at worst, no such access at all.

With the introduction of the Action Plan, some of the concerns as to court equipment are being addressed. For example, many courts have received new, state-of-the-art laptop computers, which has greatly enhanced the ability of justices to keep accurate records and conduct legal research (we have witnessed several times the incongruity of a dilapidated courtroom in the back of a garage juxtaposed with a gleaming new computer on the justice's desk). Likewise, under the Action Plan, all Justice Courts are being provided with easy-to-use digital recording equipment so that all court proceedings will be recorded.

That said, the Action Plan alone cannot ensure that the courts will receive from their municipalities the funding required to ensure the just, efficient and safe administration of justice. Accordingly, we advance in Section Five a number of recommendations relating to how courts should be funded.

#### -- The Compensation of Justices

As with other aspects of local court operations, judicial salaries in the Justice Courts are determined and funded entirely by the municipalities that they serve; no minimum standards govern the scale of pay for justices. Accordingly, justices' salaries vary widely across the state, from as little as \$1,000 per year or less, to as much as \$75,000 or more annually, all at the unfettered discretion of town and village boards. Although town and village justices typically work part-time, their caseloads are sometimes commensurate with their counterparts in state-paid courts. In instances where this parity exists, town and village justices often have less staff and fewer resources at their disposal, requiring them to invest greater time and energy administering their courts. Given the significant commitment necessary to fulfill their positions, including the burden of presiding over arraignments at all hours of the night and on weekends, many justices are woefully underpaid for the service that they provide to their communities.

Concern about inadequate compensation for justices arises not only for fairness reasons but because current judicial salaries in the Justice Court system directly jeopardize the administration of justice. This conclusion is not mere speculation: we have seen judicial resignations over paltry pay and heard much evidence that qualified people do not want to serve because the pay is absurdly low. In addition, there is a vast record of disparate salaries for justices of the same court (e.g., arising from political or personal disputes) that underscores concerns about judicial independence. (Indeed, there have been several court cases challenging the low pay and the irrationality of disparate salaries in the same court.<sup>160</sup>) Accordingly, as set forth in Section Five below, we urge town and village boards across our state to examine this issue carefully and ensure that justices are compensated at levels that are more commensurate with their duties and responsibilities.

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<sup>160</sup> See, e.g., Kelch v Town of Davenport, 36 A.D. 3d 1110 (3rd Dep't 2007) (holding that village's attempt to raise one justice's annual salary to \$7,500 while setting the other justice's salary at \$500 was unconstitutional).



## — SECTION FIVE —

### OUR PROPOSALS FOR REFORM

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This section of the report sets out the details of our recommendations. In broad strokes, we propose that a set of minimum standards be established for all Justice Courts – for court facilities, resources, security and other requirements – that would be enforced statewide, as a means to ensure that all courts are safe and fit for judicial proceedings. These minimum standards are discussed further below, and are set forth in detail in the Appendix.

We also propose that the State Legislature establish county-wide panels to review all of the Justice Courts in our state, and to develop plans for combinations of courts where necessary. To ensure that the panels make recommendations on as objective a basis as possible, and to achieve consistency across the state, the panels would be guided by a set of guidelines that are set forth below. Critically, this plan would not diminish local retention of court revenue, require the abolition of judgeships, impair voter control, or impose unfunded mandates on local governments.

With regard to judicial qualifications, we believe that all incoming justices should be at least 25 years old, and, at a minimum, possess a degree from a two-year undergraduate college. We also believe that defendants in criminal cases should be offered the right to appear before an attorney judge, and to this end we propose that an “opt-out” option be offered in such matters. We also propose improvements to the training of justices and clerks, and to the way Justice Courts handle fines and fees. Finally, we propose an increase in state funding for the Justice Courts, so that the reforms we identify in this report can be properly and promptly implemented.

As in our first report, we have included in the Appendix model legislation designed to offer the Legislature a ready-to-use bill that can be passed without the need to draft legislation from scratch; it also ensures that there is no misunderstanding or confusion regarding the proposals described below.

#### **Minimum Standards for All Justice Courts**

We believe that all courts in the state, including all Justice Courts, must be fit and safe for the conduct of judicial proceedings. In this regard, the first step in improving the quality of justice that is delivered in the Justice Courts should be to establish a set of statewide minimum standards for court facilities, resources, security and other requirements. Our goal would not be to “gold plate” all courts, and we recognize that such standards would have to be flexible and realistic to reflect local differences and needs, and to avoid an unintended diminution in the access to justice, particularly in rural areas. But we believe that a statewide effort can and should be undertaken, as the current approach of allowing courts to operate on an *ad hoc* basis, without



adequate resources or due regard for broader issues of efficiencies, economies and the quality of justice, is unacceptable.

To this end, we include in the Appendix a detailed set of standards that all Justice Courts should be required to meet, in the areas of physical facilities, accessibility, audibility, security, technology, and administrative support.<sup>161</sup> As discussed further below, we propose that these standards be promulgated by the Legislature; used by our proposed county panels to make judgments about court combinations; and ultimately monitored and administered by OCA.

### **County-Based Panels to Bring About Combinations and Reform**

As discussed in Section Four, we believe that the number of Justice Courts must be reduced through an orderly process of combination. There is simply no way, logistically or financially, that needed improvements – in areas such as facilities, accessibility, security, technology, training of justices and support staff, money-handling and implementation of specialized court programs – can be effectively accomplished for all of the 1,250-plus existing courts around the state, many of which would need to be rebuilt from scratch to attain even minimally acceptable standards suitable to their jurisdiction. Moreover, given the proximity of many of the courts to one another, there is no need for all of these courts to remain in existence in order for justice to be provided on a local basis.

We believe that the current system does not sufficiently promote the combinations that are needed to achieve reform, and that additional steps are needed beyond what the law now provides. As noted in Section Two, the Uniform Justice Court Act offers adjacent towns the option of consolidating their Justice Courts.<sup>162</sup> Indeed, several towns have recently combined their courts, while others are considering whether to consolidate. The fact remains, however, that attempts to consolidate Justice Courts are exceedingly rare, and only a handful of towns have combined their courts over the last decade. We believe this infrequency is attributable to the complex procedural steps which towns must undertake in order to achieve consolidation, and to the reality that it is politically easier to maintain the status quo than to make significant changes to a system that has prevailed for more than a century. Likewise, while state law authorizes town-village cooperation (e.g., by sharing a single court facility), there is no legal basis for a town and a village to formally combine their separate Justice Courts. As such, we do not believe that simply urging localities to consider consolidation, without more, will lead appreciable numbers of localities to share their courts.

Nor do we believe that waiting for towns and villages to combine courts on a self-initiated, *ad hoc* basis (which is the only scenario contemplated under current law) is the most rational approach to achieving the efficiencies and reforms that are needed. The process of

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<sup>161</sup> See Appendix vii.

<sup>162</sup> See UNIFORM JUSTICE COURT ACT § 106-a.

deciding which courts properly to consolidate will require a significant degree of collaboration among the Justice Courts and their constituencies. Determinations of where combinations are necessary cannot be made in the abstract, and a close review and understanding of each individual county and community will be necessary before effective recommendations can be made. On the one hand, these determinations must be made at the local level, by those with a connection to the local community and an understanding of the functioning of its courts. On the other hand, these determinations cannot be made in isolation, and must also consider the broader effect that such initiatives or their absence will have on courts and communities throughout a county.

Accordingly, we propose the creation of a formal process through which all of the Justice Courts in our state can be systematically reviewed, and combination plans considered, in an organized and coordinated manner. This process is described below.

## Review Panels

We propose that the State Legislature establish broadly representative panels to undertake an on-the-ground review of the Justice Courts, and to recommend combinations where necessary to realize efficiencies that are central to the goal of improving the quality of justice. A separate panel would be established in each of the 55 counties north of New York City,<sup>163</sup> and each would be charged with reviewing every Justice Court in the county. The panels would be given a specific period of time in which to conduct the reviews – we suggest twelve months – after which they would be required to promulgate a plan recommending combinations among the Justice Courts in the counties to which they are assigned. To ensure that the panels make recommendations on as objective a basis as possible and to achieve consistency across the state, the panels would be required to follow a series of guidelines and specific standards, which are described in detail below.

The combination plans issued by the panels would become law after a given period of time unless a plan was overruled by a supermajority – we recommend two-thirds – of the county legislature, which would then be required to promulgate an alternative plan, recommending more, less or different combinations (discussed further below).

To be clear, the panels would address only the combination of courts, and would not be permitted to recommend changes to the number of judgeships. It may well be that, in the court system that results after the panels complete their work, greater efficiencies can be achieved through a reduction in the number of judgeships in certain combined courts. On the other hand, there may be jurisdictions where courts have been combined in a way that requires enhancement in the number of justices. We are not in a position to prejudge the number of judgeships that will

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<sup>163</sup> We note that Nassau County and the five western towns of Suffolk County present a unique case in that District Courts with criminal jurisdiction already operate in these counties, in addition to Justice Courts. Accordingly, under our plan county panels would not be established for Nassau and Suffolk, though their Justice Courts would be required to adhere to the same minimum standards that would be required of all other Justice Courts throughout the state.

be required as a result of this combination plan. That must await the judgment of the localities after the combination process is completed.

After the panels complete their reviews, OCA would be charged with monitoring the courts that remain and would continue to enforce minimum standards over time, such as by transferring cases away from courts that are non-compliant.

## Panel Composition

It is important that the panels broadly represent the many constituencies with a stake in the Justice Courts, and that they not be dominated by those with a vested interest in any particular outcome. Accordingly, we propose that the panels be comprised of a representative and politically balanced group of Justice Court stakeholders. We believe that such panels should consist of nine members comprising the county executive or manager, the majority and minority leaders of the county legislature, representative town supervisors (through the Association of Towns), village mayors (through the New York Conference of Mayors), town and village justices (through the County and/or State Magistrates Association) and members of the public (through bar associations). The panels also would have several advisory members, including district attorneys and public defenders, who would advise, as appropriate, but would not vote on recommendations, to avoid the appearance of any conflict of interest. These panels would also be advised, on a district-wide basis, by OCA (as described below), which likewise would not have a vote. This process would ensure that local stakeholders who best understand local conditions and needs, and who will be most directly involved in the implementation of the combination plans, can make decisions with local input and support. Critically, the composition of these panels would be balanced geographically, politically and functionally, ultimately ensuring a broad measure of local control while giving county-level actors that fund prosecution, defense and other services in the Justice Courts a voice (but by no means control) in determining the most efficient way to structure local courts in which these services are provided.

## Panel Guidelines

We discuss further below a number of broad guidelines which the panels would be directed to consider as they conduct their reviews of the Justice Courts; in addition, the panels would use the statewide minimum standards described above to make judgments about the sufficiency of court resources and facilities. We believe these broad guidelines and specific minimum standards would enable the panels to recommend the most informed and appropriate combination plans for each county, which would lead to the improvement of the facilities, working conditions and quality of justice for all of the remaining Justice Courts and those who work in and appear before them.

## District-Based Advice and Coordination

While it is fundamental to this process that the panels include local representatives within each county, coordination is needed on a statewide level as well, to promote consistency among

the panels, and to allow OCA to offer input and guidance from those with expertise in court administration. Accordingly, we recommend that the work of the panels be facilitated by OCA, which would help guide and coordinate the review process within each judicial district. OCA's guidance would be transmitted through the Administrative Judge for each judicial district, who would organize and consult with the panels and, in coordination with one another, offer comments on the combination plans under consideration. To further aid the work of the panels, OCA would make available experts in various aspects of court administration, from specialists in court security to those with expertise in court facilities and operations. This advice would support, not supplant, the discretion of local Justice Court stakeholders in deciding the complex issues presented to each panel.

## A Presumed Range of Combinations

Most on our Commission believe that the review panels should be provided with a presumed range of the court combinations to be achieved, on a county-by-county basis. The purpose of these recommended ranges would be to ensure the fairness, uniformity and effectiveness of the consolidation program across the state. Under this plan, the panels would be required to recommend a certain number of combinations within each county, along a sliding scale based on county population and dockets. To ensure proximate access to justice, in no county would a majority of courts be slated for combination.

In the Appendix to this report, we include a sample methodology for how these presumptive ranges could be developed. As described in the Appendix, the analysis sorts counties into three population tiers, with a presumptive combination range for each tier. A statistical analysis set forth in the Appendix shows that each county's population accurately predicts the size of the average court's caseload, and thus the average dockets that are objectively and efficiently sustainable for a standalone court. Under this analysis, high-population counties require fewer combinations to achieve needed efficiencies, while low-population counties with small dockets require somewhat more. In each county, a majority of Justice Courts would remain,<sup>164</sup> and our analysis confirms that this approach should not require any county to combine courts in ways that require excessive travel or impede access. All of this is by way of example only; there may be other ways to devise presumptive ranges for the panels to follow, and we leave it to the Legislature to either adopt this approach or to put forth an alternative methodology.<sup>165</sup>

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<sup>164</sup> By way of illustration, Monroe County, which is in the largest population tier, would see a reduction of between 3 and 7 of its 22 Justice Courts. Meanwhile, Ulster County, in the middle tier, would see a reduction of between 5 and 10 of its 23 Justice Courts, and Herkimer County, in the smallest tier, would have a reduction of between 9 and 13 of its 27 Justice Courts. See Appendix iii.

<sup>165</sup> We note, however, that this concept of presumptive ranges is one of the few issues on which the Commission did not achieve unanimity. While all members favor the county panel approach described above, and a strong majority also believe a presumed range of combinations is necessary to ensure consistent and effective results across the state, a few felt that such a requirement is unnecessary and inconsistent with the tradition of purely local decision making and control of these courts. Instead, these members would leave it to the panels to make determinations based solely on their own (...continued)

Under this plan, a proposal that falls within a prescribed range would be binding on the county, but one which falls below the range would require review and approval by a supermajority of the county legislature. (Failure of the county legislature to either ratify the plan or promulgate a substitute by a supermajority would result in OCA being tasked with devising its own plan within the presumptive range. Thereafter, the county legislature would be given one final opportunity to substitute its own plan by supermajority vote.) Moreover, a panel that wishes to advance a proposal outside the presumptive range would be required to find that the following conditions are met: (1) the facilities, security and operations of each Justice Court are (or quickly and efficiently can be made) safe and suitable for court business; (2) the availability of prosecutors, defenders, detainee transport and other services in and for each Justice Court is (or quickly and efficiently can be made) sufficient to promote the administration of justice in the county; and (3) fewer court combinations would not cause unnecessary or inefficient duplication of services for the county, localities or taxpayers.

In addition, as noted above, even as to panel recommendations that fall within the prescribed range, the county legislature would retain the right to submit a substitute plan, but only upon a supermajority vote. The rationale for this supermajority review would be to ensure that the panels' decisions can, if necessary, be reviewed by the elected county officials who represent the taxpayers most directly affected by the decision.

As discussed in Section Four, there are several rationales for requiring a certain amount of combination even among courts that otherwise satisfy minimum standards. Reducing the number of courts is necessary from the standpoint of taxpayer efficiency, at both the local level and regionally. At the local level, it often makes little sense for there to be two or more courts operating a few miles or even blocks from one another; this duplication is wasteful for the taxpayers of each of the localities who fund these courts. This duplication may also require the county and state to provide a multiplicity of services to each of these courts – including police, district attorneys, public defenders, probation, transportation services and OCA resources – when it would be far more efficient and cost-effective to provide such services on a larger scale but to fewer courts.

Moreover, if there were a reduction in the number of Justice Courts, the state could provide more targeted and meaningful support to upgrade the facilities and security of the courts that remain. Likewise, it would be more feasible to provide more appropriate judicial salaries, which could in turn impel more candidates to seek office. Finally, to the extent our plan would call for increased state oversight of the Justice Court system, such oversight would be achieved more practicably and effectively in a system less fragmented than the current jumble of more than 1,250 courts. For all of these reasons, combinations should be considered even among courts that are otherwise on par in terms of security and facilities.

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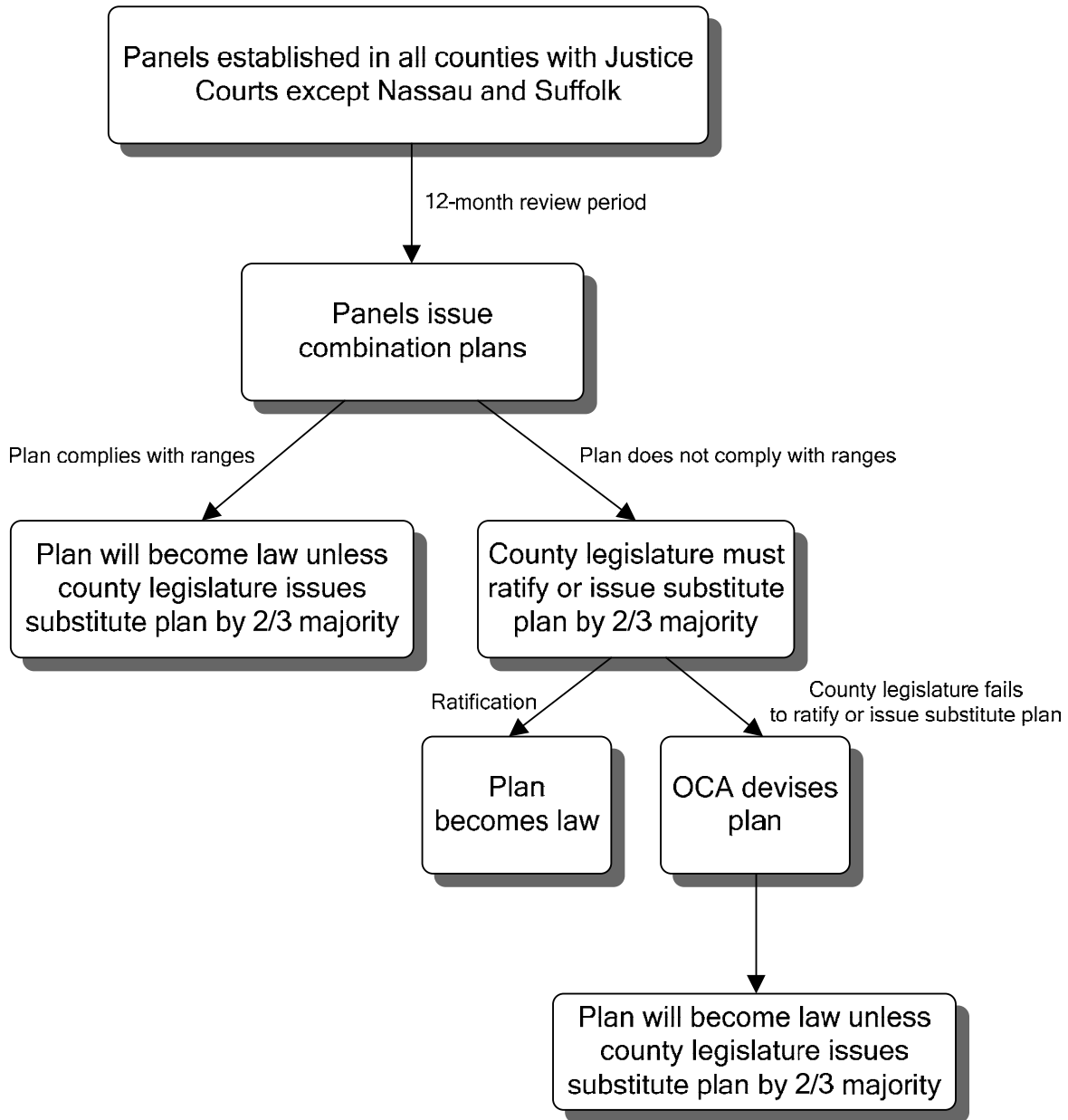
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assessment, rather than starting from the premise that any particular degree of combinations is necessary in a particular region.

Each of the panels would be given a set period of time to perform its work, after which the recommendations would have the force of law. The panels would thereafter be disbanded, and the further monitoring of standards in the Justice Courts would, as noted above, become the responsibility of OCA.

The chart below illustrates how the panel review process is to work.

### Local Justice Review Panels



## The Nature of the Combined Courts

There are at least two possible forms that combined Justice Courts may take. We refer to these two alternatives as a multi-court facilities plan, and a multi-locality plan.

Under a multi-court facilities plan, various town and/or village courts would fund and share a single, suitable facility, but the corporate identity of each of the combined courts would otherwise remain unchanged. The panels would determine, based on a number of factors (identified below), how many facilities would serve each county and which courts would share which facilities. Busier Justice Courts might keep their own facilities and not share them with any other locality, while Justice Courts with smaller dockets might share facilities that would be funded by their localities in proportion to their population.

Under this model, although combined courts would sit in a central location, judgments would remain the judgments of the individual courts (e.g., judgment from the Court of Town A), as though that court were sitting in its town. In addition, justices would be “cross-designated” so that the justices of each cooperating locality could preside for all such localities when necessary. Thus, in the multi-court facility, a justice of Town A could hear a case arising out of Town A, but a justice of Town B, who is also sitting in that multi-court facility, could also hear the case as an “acting justice” of Town A.

Under a multi-locality plan, localities would merge their individual courts into a single court with a shared legal and corporate identity (e.g., the Court of Towns A, B, and C). This plan would use the above panel approach and criteria to decide how many courts each county should have and which courts should serve which localities. As with the above alternative, the largest localities could continue to have their own courts and other localities, with smaller dockets, could share facilities.

As a legal matter, the two plans are distinct – under the first, each court retains its individual identity, while the second merges each court into a single court with a shared identity. Under both plans, there would be fewer Justice Court sites, and the courts that remain would be more suitable and better funded. Under both plans, localities would retain court revenues as they do now, with fines following the locality where the offense was charged. From the perspective of the public interacting with these courts as litigants, the practical difference is likely to be minimal.

As to the particular plan that should be adopted, we believe that the multi-locality approach is more consistent with the changes that we believe are necessary to achieve meaningful reform in the Justice Courts. Under the multi-court facilities approach, courts would not be fully integrated, and certain inefficient operational boundaries involving resources such as clerks and security officers would continue to exist, even if the justices themselves were cross-designated to service each of the combined localities. Multi-locality courts would be fully

integrated, thereby providing the greatest level of efficiency, cost-savings and, ultimately, better service to the public.<sup>166</sup>

## The Practicalities of Governing the Combined Courts

There are a number of practical details that would need to be addressed to ensure the orderly operation of a combined court system. Courts that previously had their own budgets, staffs and funding sources would need to combine each of these functions in a systematic and efficient manner so that each court and locality understands its responsibilities after the courts are combined.

As an initial matter, each combined Justice Court would have to have a budget. Although present law establishes no minimum requirement for Justice Court budgeting, we believe that every locality funding a Justice Court should be required to provide a budget that is “suitable and sufficient for the transaction of court business and the administration of justice,” and we have included this standard in the draft legislation appended to this report.

As with other local functions where government departments propose draft budgets in consultation with town or village leaders, under our plan each court would submit a draft budget prepared in consultation with the Chief Financial Officer of each town or village supporting the court. Each locality supporting a Justice Court would be required to enact a court budget as part of the local budget process. As with other local functions, if the budget is not timely enacted, the draft budget would take effect and later may be amended. Where localities share a single court, they would enact a budget by joint resolution of each locality, as they do in other instances where they share services pursuant to inter-municipal agreements.

The court combinations described above would inevitably include courts from localities of differing sizes. Under our plan, once these courts are combined, each of the localities supporting a Justice Court would be required to fund the enacted budget in proportion to their respective populations, so that smaller towns and villages bear only their fair share of the costs of

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<sup>166</sup> The multi-court facility and multi-locality plans are both consistent with article VI, section 17(b), of the New York State Constitution, which governs the circumstances under which a town court may be “discontinue[d].” First, it is clear that, pursuant to section 17(b), the Legislature has the express power (1) to regulate Justice Courts and (2) to “discontinue” village courts itself, without further requirement. Second, section 17(b) gives the Legislature the power to “discontinue” any town court, but only with the approval of a majority of the votes cast at a town election on the question of the proposed discontinuance. Thus, section 17(b) begs the question of what it means to “discontinue” a court. In our view, a true “discontinu[ation]” of a court would result from a very limited number of circumstances, namely: (1) when a Justice Court is abolished by creating a District Court, with no local court remaining in place; (2) when all of a court’s justices are eliminated; or (3) when all of a court’s cases are removed from its control. Any other mix of elements – from sharing costs, to diverting revenue, to sharing justices, to reducing the number of justices, to changing where a court sits and who enforces its mandates – would not amount to a “discontinu[ance]” of a court and, therefore, would not require a referendum under section 17(b). Indeed, in many instances current law directs some of these results in limited fashion, all without a referendum. The multi-court facility and multi-locality plans described above do not create a District Court, eliminate justices or remove all of a court’s cases from its control; to the contrary, each locality that now has a Justice Court would continue to have a Justice Court presiding for it, and at least one justice selected by the locality, within the confines of the combined Justice Court. Thus, either variety of our plan is consistent with section 17(b) and referenda would not be required.



operating the combined court. Likewise, assuming the courthouse in which the courts are combined is owned by one of the sponsoring localities, each locality would contribute a proportionate share for maintenance and insurance costs for the combined facility.

With respect to the administration of nonjudicial staff, our plan provides for a chief clerk to be appointed who, along with other nonjudicial staff specified in the budget, would answer to the court rather than to the respective localities. This adjustment would avoid confused or crossed lines of authority.

We believe that addressing these practical details at the outset of the combination process will better equip combining courts with the tools necessary to ensure the proper – and properly funded – functioning of the newly combined courts that will result after the process is completed. We further note that the foregoing adjustments to Justice Court governance are necessary even without the court-sharing plan we propose. Only these kinds of reforms can ensure a fair and practicable budgeting system for Justice Courts typically underfunded due to the absence of such a system.<sup>167</sup>

### Specific Guidelines for Court Combinations

We set out below a more detailed discussion of the guidelines that should be used by the proposed review panels in assessing where court combinations are appropriate

We believe that the panels considering which courts to combine should focus, first and foremost, on courts that fall on either end of the caseload and docket-activity spectrums. As to courts on the higher ends of these spectrums, we note that there are many Justice Courts which, in terms of caseloads and resources, appear little different than courts in the state-paid system. These courts handle large volumes of cases, take in considerable revenue, and are frequently in session. Many such courts, however, face persistent congestion problems, and as a result have to deal with large backlogs, unpaid fines, and unmet criminal justice goals. On the other end of the caseload and resource spectrums are many courts with relatively few cases and fewer resources than their busier counterparts; these courts take in less revenue and are usually in session much less frequently.

In general, we believe that the busiest courts are the likely courts that will need to be preserved and improved, while courts that have relatively few cases should be prime candidates for combination. In other words, the starting point for whether a court should be preserved or combined should be the extent to which the court is actually used. When focusing on these docket activity levels, the panels would be aided by the presumptive ranges that are described above and in our Appendix, which are based on average docket levels within each county.

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<sup>167</sup> Moreover, these reforms are necessary to provide a rational system to govern such few shared courts as exist under current laws (see UNIFORM JUST. COURT ACT § 106-a), and thus to better encourage still more court sharing absent the more complete court-combination approach we propose.

Beyond this threshold question of activity levels, the other factors to be considered should include the condition of facilities and the cost of bringing them into compliance; the distance that litigants and others would have to travel to gain access to a combined courthouse; proximity to highways and public transportation; the sufficiency of prosecutorial, public defender, law enforcement, probation and other court-related services; the proximity of detention facilities; the availability of justices to conduct arraignments; and other such geographic and demographic factors. (As a start, we have included in the Appendix county-by-county maps that reflect the location, docket level, and revenue levels of all Justice Courts in the state.)

Finally, in addition to the “macro” factors addressed by the guidelines set forth above (population, docket sizes, highway access, etc.), the panels we propose must also assess which of the courts they are considering are capable – structurally and otherwise – of being brought into the modern age. To this end, their determinations must also reflect the minimum standards discussed above, as a means to ensure that all remaining courts and all newly combined courts will be able to meet the statewide minimum requirements.

## **Safeguarding Due Process and the Quality of the Justice Court Bench**

### **An Opt-Out Plan**

We believe that the due process concerns that have been raised with respect to non-lawyer justices can be addressed by clearly offering criminal defendants the right to appear before justices who are lawyers. Accordingly, we propose that the jurisdiction of non-attorney justices should remain unchanged, but that a defendant facing the possibility of a criminal conviction should be afforded the option to have his or her case heard by a judge who is an attorney. We believe this “opt-out” approach is a logical extension of rights already recognized under the law, and that it ensures that due process rights are properly safeguarded.

We believe this measure is necessary because we have seen considerable evidence to suggest that many non-attorney justices face difficulties handling complex motions and misdemeanor jury trials. As described in Section Four, time and again in our discussions with non-attorney justices (particularly those relatively new to the bench), we heard expressions of frustration and concern with the amount of knowledge and experience that is required to handle motions and jury trials. We have heard reports of justices leaving the bench repeatedly to call the Resource Center for guidance in the middle of a proceeding; justices who described “panic” when confronted with the prospect of a jury trial (which they seek to avoid); and prosecutors and public defenders who will routinely agree to plea agreements for the express purpose of avoiding the possibility of proceeding with a trial before a non-attorney justice. In addition, as noted above, we have encountered a number of non-attorney justices who are unsophisticated and may lack the sensitivity and training necessary to handle criminal proceedings.

At the same time, and as we have noted throughout this report, we believe that the majority of non-attorney justices are doing their jobs well and are qualified to hear a wide range of cases. We are also mindful that a law school education does not guarantee competence in

handling motions or conducting trials, and that years of practice in one area of law will not necessarily prepare an attorney to preside in the Justice Courts.

With these considerations in mind, we examined a number of proposals directed at this issue. Over the years, many have proposed doing away with non-attorney justices altogether, a step which, as described above, we believe to be unnecessary and unrealistic. Others have proposed maintaining non-attorney justices but divesting them of jurisdiction over all matters except for traffic violations and minor civil cases. Still others have proposed to allow non-attorneys to maintain jurisdiction over all civil matters, but to strip away criminal proceedings. Beyond these proposals, we also considered what we believe to be new ideas, such as the possibility of establishing an “opt-in” procedure, where all cases in certain categories would be transferred, by default, to an attorney justice except where a defendant elected to “opt-in” and proceed before a non-attorney justice. We also considered whether to establish a “trial part” in each county to be staffed by experienced justices who would be charged with presiding over all trials. In addition, we considered whether to propose a “circuit riding” system in which qualified judges would travel around the state to preside in areas where attorney justices are scarce.

In the end, the majority of commissioners concluded that each of these solutions would present insuperable logistical and other challenges – some of which, ultimately, could redound to the disadvantage of litigants. For example, by stripping Justice Court jurisdiction of all but traffic infractions and other minor cases, some defendants in rural communities could be forced to travel great distances to appear before an attorney judge, even for relatively routine matters. In addition, a large-scale removal of cases from non-attorney justices would result in significant case-management issues for the courts to which these cases would be transferred, some of which could see their caseloads increase several times over, creating backlogs and delays in these tribunals.

As a result, we have concluded that an “opt-out” procedure that would be available to defendants in all misdemeanor proceedings is the most prudent recommendation. Under this procedure, defendants would be offered the opportunity to have their cases reassigned to an attorney judge. The right of transfer would be automatic – the “good cause shown” standard of CPL 170.25 would be abandoned – but available only after arraignment and before the making of any substantive motions, so as to prevent forum shopping or gamesmanship (e.g., litigants electing to transfer only after an unfavorable decision).<sup>168</sup> Defendants would be specifically advised of this “opt-out” right during arraignment, both through the judge’s instruction and with an explanatory form. In our view, this result is more consistent with the Supreme Court’s decision in *North v. Russell* than the current procedural statute, and we believe it is a just result

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<sup>168</sup> Even where a defendant elects to opt out, the justice would still be permitted to arraign, issue a securing order, set bail, assign counsel and perform other exigent functions that cannot await reassignment, such as issue temporary orders of protection and conduct mandatory license revocation proceedings, so that the administration of justice is not disrupted.

that affords defendants whose liberty is at risk the constitutional protections to which they are entitled.<sup>169</sup>

## Minimum Qualifications

While we do not believe it is necessary or realistic to call for the elimination of non-attorney justices, we believe there should be certain age and educational prerequisites to ensure that judges taking the bench have the necessary maturity to sit in judgment of others and the academic experience needed to retain the lessons learned through their initial training and beyond. Under current law, a justice need only be 18 years old and a resident of a town or village to be eligible to run for judicial office in that locality.

With regard to age, we believe that all incoming justices should be at least 25 years old. While even a 25-year-old may lack certain life experience and acquired judgment, we believe this to be the absolute minimum age for which it would be appropriate for a young person to serve as a judge.

As for education, we believe that all justices should have earned, at a minimum, a two-year undergraduate degree from an accredited college. While a college education also does not guarantee that a person is well-suited to serve as a judge, and while many have achieved great success despite not having a college education, we believe that those who have successfully earned a college degree are likely to possess the diligence and literacy skills necessary to master the training program which incoming justices must successfully complete, as well as the advanced training for experienced justices. While there may be a shortage of attorneys willing to serve as justices in some parts of our state, our own study of this issue has led us to conclude that every county has sufficient numbers of college-educated citizens to ensure a sizeable pool of candidates to serve in the Justice Courts, particularly if the rules are amended to permit candidates for a Justice Court position to reside anywhere in the county or an adjoining county (discussed below).<sup>170</sup>

Recognizing that we cannot disrupt the functioning of the existing system, and to comply with the State Constitution, we would not impose these requirements on justices in office at the time this proposal becomes law. Instead, these new prerequisites would apply to new justices only and over time would ensure universal compliance without undue disruption. However, as

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<sup>169</sup> We note that the Commission was not unanimous on this point, as one member favored doing away with non-attorney justices entirely, at least for criminal matters. In addition, a small number of commissioners favored no changes to the way in which the current system uses non-attorney justices, and preferred to address the issues with respect to non-attorney justices through the provision of additional training and resources alone. The opt-out plan described above represents the clear majority view. In this regard, we note that the State Magistrates' resolution – referred to above at page 50 – takes the position that an opt-out provision is unnecessary, but is otherwise largely consistent with the proposals set forth in our report. See Resolution of Unified Resolve Passed by the New York State Magistrates Association Executive Committee, supra note 109.

<sup>170</sup> For data supporting this point, see Appendix ix.

described below, we recommend that all non-attorney justices – new and experienced – be required to pass a rigorous exam at every election.

Finally, on the subject of ensuring that the Justice Courts are comprised of justices with sufficient life experience and qualifications, we note that the Justice Courts often do not reflect the diversity of the communities they serve. There are very few minorities among the 1,800 justices serving in the Justice Courts. While we make no recommendations as to reforming the method of judicial selection, we urge party leaders and others who nominate candidates for the bench to enhance their efforts to recruit qualified minority candidates for Justice Court positions.

### Increasing the Pool of Qualified Candidates

Current law generally limits the eligibility of justices to those who reside within a town or village. The residency requirements burden those communities which have only a small pool of citizens who are interested and qualified to fulfill the duties and responsibilities of town and village justices. These geographic restrictions pose an even greater hurdle to ensuring that attorneys are eligible to staff these courts, because many rural communities have few resident attorneys to begin with. In order to increase the number of qualified persons eligible to pursue justice positions, the residency requirements should be amended to permit candidates to reside within the county or in the county adjoining the justice court in which they seek to serve.<sup>171</sup>

We note that some have further proposed to relax certain ethical constraints that discourage attorneys from becoming town and village justices. Among other things, these restrictions currently bar an attorney justice from appearing before another attorney justice within the same county, and from accepting certain referee assignments in the state-paid courts.<sup>172</sup> Some have argued that, if these restrictions are relaxed, and if judicial salaries are substantially raised, a sufficient number of attorneys could be found to staff all of the Justice Courts currently served by non-attorneys. We agree that these proposals, were they to be implemented, may have the effect of encouraging some number of additional attorneys to serve as justices. On the other hand, the potential trade-off might be a diminished level of vigilance on conflicts and other ethical issues. Given this concern, we leave this issue for the state's ethics authorities to consider.

### New Training and Testing

We believe that one of the most effective ways immediately to improve the Justice Courts is to implement all of the initiatives contained in the OCA Action Plan, which, as discussed in Section Three, included extensive initiatives to advance training, implement technology, and add

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<sup>171</sup> Likewise, under current law, justices in only three counties (Jefferson, Oneida and Rockland) have the authority to arraign countywide. The Senate has proposed to expand this policy statewide, and we agree that justices in all counties should have the authority to arraign defendants countywide.

<sup>172</sup> See 22 NYCRR § 100.6(B).

resources to the Justice Courts. That said, the Action Plan itself makes clear that its aim is to make incremental improvements where possible within the current legal and political structure; for this reason, Chief Judge Kaye and then-Chief Administrative Judge Jonathan Lippman noted at the November 2006 release of the Action Plan that the initiative merely is a “down payment” and a “first step” toward improving the delivery of local justice, which could not await the completion of this Commission’s report or the implementation of its reform recommendations. Consistent with these comments, we believe that broader changes to the underlying legal and operational structure of the Justice Courts, beyond those contained in the Action Plan, must be considered.

First, we note with approval that the testing regime for non-attorney justices has recently been enhanced. Prior to the Action Plan, the test consisted of 50 true-false questions, many of which were all too easy to answer (e.g., true or false: “litigants who appear in court must be treated with respect”). Plainly, a test of this kind does little to evaluate whether an individual has acquired the knowledge necessary to serve as a justice. Fortunately, the Action Plan has provided for a complete overhaul of this exam, doing away with the true-false format in favor of multiple choice questions, and increasing the number of questions and degree of difficulty of the exam. We believe that this new testing regime, which is just being introduced, should be carefully monitored, but that further changes should also be considered. For example, we believe that the exam should include essay questions to better ensure minimum comprehension of key legal concepts, and that there should be consequences for repeated failure of the exam (or even sections of the exam), other than permitting the individual to repeat the test until a passing grade is achieved. We also believe that experienced non-attorney justices should be required to sit for the new exam upon reelection, so that they are encouraged to remain current and learn about recent developments in the law.<sup>173</sup>

Second, although the Action Plan provides for some enhancements to Justice Court training, we believe additional steps are needed to ensure that town and village court justices are properly trained. Prior to the implementation of the reforms announced in the Action Plan, non-attorney justices were trained for just a single week – known as the “Basic” course – before taking the bench. The Action Plan rightly increased that training plan several-fold, by providing for a three-week, home-based pre-Basic course to familiarize incoming justices with basic legal concepts; followed by the initial one-week Basic classroom training course; followed then by a two-week home study period; followed again by a second one-week Basic course, which would

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<sup>173</sup> We believe that attorneys seeking to serve as town and village justices should be offered the option of either attending the Basic training course or exempting themselves from some or all black letter law portions of the program by taking and passing the same exam as their non-attorney counterparts. Many of the concepts and areas of law applicable to the Justice Courts are not typically taught in law school, at least not in detail, and an attorney with experience in a commercial law practice, for example, does not necessarily bring to the table any prior knowledge with respect to criminal matters. While the New York State Constitution does not permit the testing of attorneys as a prerequisite to service as a town or village justice, *see* N.Y. CONST., art. VI, § 20(a); UNIFORM JUST. COURT ACT § 105(a), we believe attorneys should be required to attend these introductory training courses or to pass an examination that tests the same subjects that are taught. Such an exception examination would be voluntary and thus not an unconstitutional qualification of office.

emphasize practical and experiential learning versus classroom instruction. This training program, now in its final stages of development, would be mandatory for non-attorney justices, and optional for attorney justices. As for so-called “advanced” training for experienced justices, both attorneys and non-attorneys are required to take twelve hours of continuing education courses per year, with six of these hours permitted to be taken from home.

While we, again, welcome the enhancements set forth in the Action Plan, we believe that additional steps are required to bring about the reform that is needed in the Justice Courts. For a non-attorney justice with no prior experience with the judicial system, two weeks of Basic training, even if supplemented with in-home training, is generally not a sufficient primer for serving as a justice today. Time and again, we have heard justices complain that they are unable to retain the mountain of material that is provided to them in the initial days of Basic training. Whether the Basic program is one week or two, incoming non-attorney justices need to be trained over a greater period of time than the current system allows.<sup>174</sup> We are mindful that most justices have other employment to attend to and cannot devote endless time traveling to training sessions all around our state. We are also aware that towns and villages do not always support expenses incurred traveling to and from training. At the same time, we have heard a near universal call from justices around our state who are willing and able to devote significant additional time to training programs, both when they begin to serve and in the years beyond. We recommend that the Basic training program be further increased, and that towns and villages actively support the efforts of judges and clerks to remain properly trained.

One of the primary complaints we have heard from justices around our state is that there is too much emphasis on classroom training and not nearly enough hands-on experiential learning, such as by observing or presiding over mock arraignments, trials and other proceedings. While the Action Plan now provides for an additional Basic week emphasizing hands-on courses, we believe that this aspect of Justice Court training should be markedly expanded. Incoming justices should be required to observe proceedings not merely for a few days but over a period of weeks, either in the context of formal training sessions or even by being required to audit local state-paid courts in their own area, something a number of justices have reported to be particularly helpful. Many justices have also discussed the need for a more formal mentoring system, with guidance from competent, experienced judges, than presently exists or is contemplated under the Action Plan, so that they may consult more readily and easily with a more experienced judge, particularly during their first months and years on the bench.

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<sup>174</sup> Given what we have heard during our site visits, we believe that special training courses geared towards *ex parte* communications must be developed and existing curricula enhanced to address this issue. In this vein, justices must also prevent police officers from congregating in judicial chambers or in a back room of the courthouse, circumstances that often give rise to *ex parte* communications. Likewise, both justices and police officers must be educated about the need to refrain from discussing the facts of a case when a police officer telephones a justice to arrange for an overnight arraignment. If justices and police officers receive greater training, all parties can cooperate to ensure that *ex parte* communications are significantly curtailed.

We also believe that advanced training for experienced justices should be enhanced. As discussed in the Appendix, our review of Justice Court disciplinary statistics reveals that the average term of service for justices who were sanctioned by the CJC is thirteen years on the bench. We do not believe these long-sitting judges should be exempt from continued training, and we believe that the programs that are offered to experienced justices can be improved. For example, we have heard a number of complaints regarding the lack of choices among the training sessions offered by OCA. To provide experienced justices with a training experience tailored to their court experiences, we recommend that far more elective courses be offered throughout the year, so that justices of all levels of experience may select a training course that is most appropriate and beneficial to their individual circumstances. We also recommend that such courses be made available in a wide variety of formats, such as online or on DVDs.

## Court Clerks

Finally, no discussion of training would be complete without reference to the critical role played by Justice Court clerks, who are indispensable to a properly functioning court.

During our visits, we observed many courts in which justices, due to a lack of administrative assistance, were forced to take on tasks that went well beyond their ordinary job descriptions. In some courts, for example, justices were responsible for all filing, budgetary, and recordkeeping duties, which considerably slowed the pace of proceedings and wasted the time of justices, litigants, law enforcement personnel, and others. The need to perform these tasks also caused justices to work longer hours, which, when combined with the low pay and other demands of their positions, may drive even capable and patient judges from the bench.

We believe that administrative help is necessary, not optional, to the sound functioning of the Justice Courts. To this end, we propose that all Justice Courts be required to employ, at minimum, a part-time court clerk to assist the town or village justice(s) with administrative, recordkeeping, and other tasks necessary to the smooth functioning of the courts. While we believe the more court- and docket-specific questions of how many hours per week clerks should work, how many clerks should be employed, and whether clerks should work part-time or full-time are better left to the courts themselves, it is our view that Justice Courts can no longer be expected to function optimally without some degree of professional administrative assistance.

We also believe that clerks should report, not to the town or village board as is currently the case, but instead to the court to which the clerk is assigned, to promote the independence of the judicial function by vesting in the court the authority to hire, supervise and discharge non-judicial staff. We note that the Action Plan included a similar recommendation, and that legislation has been introduced to effectuate this change.



## Funding and Resource Reforms

### Establishing an Aid to Localities Program for Infrastructure Upgrades

As we have noted throughout this report, many of the central problems facing the Justice Courts are attributable to a chronic lack of funding. Because Justice Courts are entirely funded by, and reliant on, the towns and villages which they serve, there are significant disparities in the funding of courts around the state. Under the current system, towns and villages have little incentive to properly fund their courts, and many localities already face fiscal pressures that render them incapable of providing the funding that is required to properly sustain court operations. For all of our state's history, the Legislature has taken a hands-off approach to Justice Court funding, leaving it almost entirely as a local responsibility and burden. As this report has shown, this course of action has had disastrous results. The time has come for the state to turn its attention to this long-neglected institution and to provide a significant infusion of direct financial assistance.

To help address these fundamental funding issues, we recommend that an Aid to Localities program be established so that the state can provide financial assistance to the Justice Courts and thus better support the critical roles that courts play in their communities. Pursuant to this program, localities would be eligible for earmarked grant money to support the Justice Courts' capital and security needs. To obtain aid, localities would submit applications to fund court infrastructure improvements and expansion; in this way, the Aid to Localities program would function operationally much like the Justice Court Assistance Program (described below), except that the Aid to Localities program would be administered by the executive branch in consultation with OCA. In making aid determinations, priority would be given to security-related improvements.

In tandem with an expanded Justice Court Assistance Program, the Aid to Localities program would make possible capital improvements that until now were impossible for many Justice Courts to achieve. Substantial funding of this kind will lead to substantial infrastructure changes in these courts, such as the expansion of facilities and security improvements. The provision of this funding also will strengthen judicial independence in that the Justice Courts will be less dependent on town and village boards, because they have a funding source separate and apart from the locality.

We are not, for this purpose, in a position to forecast now the precise amount of state aid that will be needed, because we do not yet know the number of courts that will remain after our combination plan is carried out. While it is evident that a substantial infusion of state funding is needed to support the Justice Courts, more precise calculations and appropriation requests should logically await the conclusions of the county panel process, at which point the landscape of the future would become more clear. We can predict, however, that the court-combination approach proposed in this report would substantially reduce the number of deficient courts and thus the cost of needed upgrades.

## Expanding the Justice Court Assistance Program for Operational Support

The Justice Court Assistance Program (“JCAP”) is an application-based grant program, administered by OCA, that provides Justice Courts with targeted funds to help support court operations.<sup>175</sup> Since JCAP’s inception eight years ago, most Justice Courts have received at least one JCAP grant, and many have received multiple grants. Most often, JCAP funds have been used to purchase information technology (computers, software, fax machines, etc.), law books and other office supplies. During our site visits, we visited many courts that have benefited from the program, and a number of courts apply for and are granted funding virtually every year, allowing them to make incremental improvements over time. At the same time, we spoke with some justices who either were unfamiliar with the program, or were otherwise reluctant to submit an application. Overall, though, the program has been lauded as a success and is widely appreciated among justices throughout our state.

In recognition of JCAP’s initial success, the program has recently been expanded – in terms of total dollars available and also in terms of the types of investments that the program seeks to encourage. First, pursuant to the Action Plan, OCA directly assumed the costs associated with equipping the Justice Courts with computers and other essential information technologies, thereby freeing up JCAP funds for use on other needed investments. Second, JCAP’s annual funding cap has been increased from \$20,000 to \$30,000 per court. Third, OCA has identified the purchase of magnetometers and other security equipment as a priority for the use of JCAP funds. Finally, the Action Plan enumerated a wide variety of permissible projects (including capital projects to upgrade court security) for which JCAP grants can be sought.<sup>176</sup>

Although JCAP will never wholly solve the chronic underfunding of the Justice Courts by the towns and villages in which they sit, we believe that the program has succeeded admirably in ameliorating some of the more egregious effects of such underfunding, and that the program should thus be further expanded. First, we believe that JCAP’s annual per court cap should be raised immediately from a fixed amount of \$30,000, to the greater of \$30,000 or 30% of a court’s annual budget. (The amount to be awarded to each court would still be determined by OCA based on need and compliance with the operational standards discussed in this report.) Second, Justice Courts should be permitted to use JCAP funds for operations – including paying the salaries of security personnel – not only to purchase equipment. Also, OCA should expand its efforts to publicize JCAP to the Justice Courts – and to municipal officials – so that the greatest

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<sup>175</sup> Recognizing the local nature of the obligation to fund the Justice Courts, when the Legislature established JCAP, it stipulated that JCAP funds “shall not be used to compensate justices and nonjudicial court staff, nor shall they be used as a means of reducing funding provided by a town or village to its justice court.”

<sup>176</sup> Such projects include: construction or renovation of dedicated Justice Court facilities; reconfiguration of entrances to accommodate entrance screening; creation of separate entrances for judges and staff; lighting for parking areas; alteration of court facilities to improve access by those with impaired mobility; construction of security-compliant benches; construction or reconstruction of secure holding cells; rewiring of courts to improve security and connectivity; replacement of substandard windows, doors, etc.; and creation of ancillary rooms for attorney-client consultation and jury deliberation.

possible number of courts and localities will avail themselves of JCAP funding to the greatest extent possible. To this end, OCA, through its Supervising Judges, should contact every justice and municipality in our state to ensure that they understand the attributes of the program and to encourage them to submit applications.

Critically, however, this more meaningful operational subsidy must be channeled to meeting operational standards for court operations. To that end, the grant process should be tied to compliance, with non-complying courts being ineligible for aid except to support compliance improvement plans jointly approved by OCA, the court and its sponsoring locality or localities. This way, funds would go to the best use and standards meaningfully can be enforced.

Through the combination of an Aid to Localities program and an expanded JCAP, individual Justice Courts would be eligible to receive a significant infusion of external aid each year. While it will take years of funding supplements to sustain the improvements that are needed, we believe that the combinations we propose in this report coupled with these funding increases would lead to substantial and meaningful changes in the condition of the Justice Courts.

### Reforming Justice Court Fine and Fee Collection Procedures

As described in Section Four, the process for allocating Justice Court fines and fees is unduly complicated and does not fairly reflect the needs of the Justice Courts or the communities they serve. Under current law, localities enjoy nearly unfettered discretion to use Justice Court revenues however they wish, with many failing to provide their Justice Courts the basic resources needed to operate properly. At the same time, the revenue system gives rise to significant risk that justices will feel pressure, perceived or actual, from municipal officials to facilitate inappropriate plea bargaining in connection with VTL violations so that more revenues will return to the locality instead of the state. Conversely, the system returns to the state most revenues from Penal Law convictions in Justice Court, denying localities with high criminal dockets (e.g., localities with large shopping malls, border crossings and other case-generating features) the support they need to fund their courts and police agencies. No reform of the Justice Courts would be complete without redressing these concerns about the collection and apportionment of court revenues that bear directly on court operations.

We recognize that any effort to change the revenue system, if not properly understood, is likely to be viewed with a degree of apprehension. Indeed, in 2004, legislation was adopted providing that, where a motorist is charged with violating a state speed limit (e.g., the 55 m.p.h. maximum on some state highways), the state would be entitled to any fine imposed even if the motorist ultimately pleads guilty to a parking violation or another VTL violation for which the locality is entitled to recoup the fine. To partially offset this loss of local revenue, the 2004 statute authorized localities to impose a surcharge up to \$10 on such convictions. These provisions, apparently enacted solely to boost state revenue, were included inconspicuously in the state budget. Of course, these provisions inevitably came to localities' attention, and the State Legislature was forced to repeal both provisions that same year. The repeal also required

the state to recalculate all fines and fees assessed during the interim and to refund to the localities all revenues to which they otherwise would have been entitled but for that legislation.

We do not in this report make specific recommendations with respect to reallocating fines, because we do not yet know what the future array of Justice Courts would look like after the court-combination process is completed. Obviously, any assessment of how best to allocate court revenues must, as a starting point, account for the number and caseloads of courts that would remain. We believe, however, that such an adjustment should occur, and that the purpose of any such adjustment should be to strengthen the Justice Courts, not simply to generate revenue. We thus commend this issue to the Legislature for action after a court-sharing system is in place.

In lieu of specific proposals, there are a number of alternative approaches that we believe the Legislature should consider at that time. One approach would return a surcharge on Penal Law convictions to localities in which offenses are charged, to better support localities and courts with high Penal Law dockets. Another would give localities a share of state-level VTL fines (i.e., for highway speeding) and the state a share of local VTL fines (i.e., for local parking violations) to cure any incentives that might impair judicial independence; there might even be a uniform sharing ratio calculated to be cost neutral, to simplify the fiscal system without stripping funds from the state or localities as a group. We further note that Justice Court revenues, however apportioned, would be an obvious source of funds with which to increase and rationally target support for court operations; we caution, however, that the issue of how best to use court revenue is a separate issue from the optimal apportionment of court revenue among the state and localities. We urge the Legislature and OCA to study these issues carefully, and to consider as well other changes to eliminate inappropriate incentives to manipulate plea bargaining in VTL and other cases.

### Increasing and Rationalizing Judicial Salaries

Many town and village justices are badly under-compensated for their efforts. As noted above, some justices are paid as little as \$1,000 or even less each year. Moreover, there is no over-arching system in place to ensure that justices' salaries are commensurate with the demands imposed on them by the courts in which they sit, and judicial salaries vary widely. We do not herein attempt to determine appropriate salaries for town and village justices, in part because the result should depend on the number of courts and the size of the dockets. We do, however, commend town and village boards around our state to examine this issue carefully and to compensate justices in an amount that is more commensurate with the responsibilities and duties of the office.

### Expanding the Town and Village Justice Court Resource Center

As discussed in Section Four, town and village justices across the state have praised the City, Town and Village Resource Center (the "Resource Center"), which was established by OCA in 1990 to provide confidential guidance to the justices on a broad array of substantive, procedural, case management and administrative issues. The Resource Center is staffed by

attorneys and administrative staff who are available by toll-free telephone number both during the day and during the evening hours when a great many Justice Courts are in session. In the last year alone, the Resource Center fielded over 18,000 requests for legal research and guidance from the Justice Courts, touching all aspects of the courts' criminal and civil jurisdiction.

We believe that, in a system in which non-attorneys are permitted to preside, the Resource Center is critical. To ensure that this important and much-utilized resource is properly supported, we believe additional funding and personnel for the Resource Center should be provided by the state. In advance of the Judiciary's next budget request, OCA should conduct an assessment of the additional support that is needed to improve the Resource Center, and should include a specific funding line item for this expenditure, which the Legislature should grant. Aside from increased funds, we believe that OCA must continue (and expand) its efforts to publicize the Resource Center so that the greatest possible number of justices avail themselves of the Resource Center's assistance to the greatest extent possible. To this end, when Supervising Judges contact all of the justices to educate them about the extent of the JCAP program, this topic should be discussed and explained as well.

### Combining Justice Courts Remains the Most Effective Path to Reform

Putting these funding initiatives aside, we want to reiterate that it is the combination plan described in this report that would have the most profound effect on Justice Court finances. Even if the initiatives described above are enacted, finding the means to adequately fund all the existing Justice Courts would be a perennial challenge, given the sheer size of the current system, with over 1,250 separate courts. The combination process is needed so that a leaner, more efficient system is created in the first place, so that any state funding that is secured for the courts can then be allocated in a more rational and effective manner.

In this regard, OCA has conducted a study to determine the approximate cost of deploying security officers, up-to-date security equipment and basic infrastructure improvements in all of the existing Justice Courts.<sup>177</sup> Not surprisingly, the study concluded that the cost for these basic upgrades alone would be extremely expensive, amounting, at a minimum, to more than \$112 million for one-time infrastructure improvements, in addition to \$20 million annually for security improvements. These estimates are conservative and cover the costs only of bringing court facilities up to minimally functional standards, and do not include other costs such as the upgrading or replacing of heating or air conditioning systems, or the replacement of roofs or windows. Obviously, if through a rational process of combinations, the number of overall courts could be reduced, these figures would be reduced considerably, and the impact of any state outlays would be materially enhanced.

In other words, while we believe that the Justice Courts must be upgraded and substantially improved, we do *not* believe that this improvement should require the investment of

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<sup>177</sup> See Appendix viii.

\$100 million or more in additional state funding, or anything approaching that amount. Instead, it is the Justice Court combination plan proposed in this report, *together with* the funding initiatives described above, that can pave the way for the needed reforms of the Justice Courts. To state the obvious, it makes little sense to contemplate a new enhanced state funding regime without first evaluating how the courts could be better arranged and organized to spend the funds in the most efficient manner.

We are keenly sensitive to the challenging fiscal environment into which we release this report. We know that the state and many localities struggle with sagging revenues and increasing costs that can frustrate reforms urgently needed to protect public safety and preserve legal rights. In our view, however, these fiscal challenges open a window of opportunity to redress long-hidden inefficiencies that the Justice Court system foists on taxpayers and service providers at all levels of government.



## **CONCLUSION**

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The Justice Courts as an institution have remained largely unchanged for more than a century. During this time, many proposals have been made and ignored, and for this reason many around the state hold the cynical view that these courts will, for political reasons, never be sufficiently funded or improved. Despite this perception, we approached our task with a cautious optimism, given the independence and diversity of our group, and given that our study was to be broader and deeper than any that had previously been conducted of the Justice Court system. Never before have the Justice Courts been studied on such a local level, through months of site visits, through four public hearings, and through an extensive review of disciplinary statistics and other background materials. As a result of this work, we believe that we are in a unique position to make the recommendations that are presented in this report: recommendations that are both pragmatic and far-reaching, and that are, perhaps for the first time, not unmindful of the political realities that establish the boundaries of what can be accomplished within the foreseeable future.

That said, we are realistic. We do not expect this institution to be transformed overnight, nor do we expect all of the recommendations in our report or our draft legislation to be accepted without comment or adjustment. In addition, although we believe our recommendations strike a delicate balance, we recognize that there will be those who will be critical of some or all of our report.

Nonetheless, for all of the divisiveness this issue has engendered over the years, we believe there is a great deal of consensus as to the problems facing the Justice Courts. Most observers agree that the Justice Courts require improvement. Most are concerned with reports of abuses that have emerged from these courts. And most would agree that the system cries out for greater efficiencies and increased funding. The question is how to achieve the necessary improvements without abandoning the system entirely, something that we believe there is no consensus or political will to do.

With regard to these major issues facing the Justice Courts, we respectfully submit that the findings and proposals set forth herein should be carefully considered by all who have a stake in these courts and who wish to see them improved. If the OCA Action Plan was a “down payment” on more comprehensive changes that need to be made, this report constitutes the first installment on a larger commitment to change that we believe must finally begin. We are hopeful that our report will lead to immediate discussions among stakeholders around the state, and in the State and County Legislatures, about the changes that we have proposed. If such a dialogue can indeed take place, we remain cautiously optimistic that, with our findings as a backdrop, nuances will be appreciated, political and fiscal realities will be acknowledged, and a spirit of collaboration and optimism, rather than a history of cynicism and inertia, will prevail.





## **A CONCURRENCE IN PART**

It is only after significant and careful consideration that I am writing a separate concurrence to the report issued by our Commission evaluating the New York State town and village system of justice, with its over 1,250 courts and 1,800 judges. In significant measure I agree with the recommendations. There are only a few core differences that separate us, notably the need (1) to generate greater economic efficiencies to our system of justice than the report's recommendations would achieve to make needed upgrades practicable and (2) to address fundamental due process concerns when liberty and property rights are at stake before non-attorney justices. Comprising judges, lawyers and prominent citizens of our state, this Commission will be judged for decades on what it accomplished and what it did not, particularly in the area of due process and whether we have adequately protected a fundamental constitutional right. It is in this area where the stakes are perhaps the highest. Before depriving an individual of liberty or evicting someone from their home, strong and unyielding safeguards that are beyond question must be in place to protect our citizens against the potentially strong and unchecked force of the state's interests. The safest means by which to achieve this assurance is to require only attorney judges to hear cases directly implicating these fundamental rights.

### **I. District Courts Would Be a Better Solution**

The most central recommendation our Commission made is to create a process that leads to combinations among the Justice Courts. That process will occur democratically and involve interested local and state officials as well as those knowledgeable about the law. The goal is to achieve efficiencies and save crucial dollars for taxpayers and to use money more wisely to upgrade court facilities that we do keep. I support this recommendation as far as it goes.

As our report makes clear, a number of Commissioners believe that this approach is a compromise accepting the political difficulty of achieving a statewide solution. While the Commission's combination proposal is a step forward, I believe that even with substantial combinations, there could still be Justice Courts in many counties with dockets far too small to justify the expense and that are substandard relative to courts operated by the state, based on uniform state standards and more certain state funding.

I believe that the most affordable and legally sound way to achieve local justice in this state is through fewer and more sophisticated District Courts. I believe that they are the only way to achieve efficiencies at the state and county levels necessary to ensure proper prosecution and defense services that are presently inadequate and fractured in many local courts because of the dispersal of low-docket Justice Courts spread across hundreds of miles of New York's upstate landscape. District Courts are the only way to relieve local governments of unfunded mandates and the difficult task of herding cash-strapped local governments to meet minimum legal standards. They are the only way to ensure the independence of local judges against the reality

or appearance of undue influence by municipal leaders that set their pay, hire their staff, provide their court facility, and fix their budget.

The Commission agrees with me that equal justice under the law is critical. However, we part paths when the report endorses one system of local criminal courts with lawyer justices and state operations for some criminal defendants (such as District Courts in Nassau County, the NYC Criminal Court and the City Courts upstate), and a separate fragmented system of local Justice Courts with non-lawyer justices for other criminal defendants facing the same charges in the same state under the same constitution. In this instance, as the Commission's record reflects, separate is inherently unequal. Where public safety, a defendant's liberty and core civil rights are at issue, there simply is no good legal basis for, and it is unwise to support, a two-class system of courts.

The Commission sidesteps the idea of District Courts with the goal of offering a middle path to reform that offers some progress. Practicality is laudable as far as it goes. Something is better than nothing. Indeed, the tortured history of the District Court question suggests an uncertain road for any District Court proposal. Nevertheless, in my view it would be more intellectually honest and consistent with the Commission's findings first to conclude that District Courts are a better choice and urge their replacement of Justice Courts, and only then offer a lesser alternative in case the state will not summon the political will to do what is right.

The political difficulty of achieving a District Court solution in at least parts of the state may have changed. New York is a different place since statewide District Courts were attempted in the 1960s. Public support of increasingly stringent modern justice standards has increased. Since the 1960s, New York transformed the rest of the Judiciary by creating an appointive Court of Appeals, centralizing court administration and taking over funding of trial courts from counties and cities. Opponents said then that these changes would be unfair, undemocratic, inefficient and disruptive. They were wrong then, and as to District Courts they are wrong now. The successful transition to state-paid trial courts, compared to the substandard quality of many Justice Courts today, provides the road for reform here. For reasons of both law and economics, this state would be best served by a system of District Courts.

Opponents to District Courts do not focus on due process concerns. Rather, they raise access-to-justice and litigant travel concerns. Yet, the Commission's own findings concluded that most Justice Court litigants do not appear in their hometown courts but in courts numerous miles away, and that 40% of Justice Court litigants appear in different counties altogether. The idea of maintaining Justice Courts for each town and village and the corresponding rallying cry of local autonomy remain frozen in an era long past. If New Yorkers can visit the county seat to obtain social services, renew a driver's license, register a deed, and interact with government in countless other ways, let alone travel hours to shop at a mall, then New Yorkers can visit the county seat to attend court – as litigants do in many other states, in urban and rural areas across the country. There is simply no access-to-justice reason to maintain as many as several dozen

Justice Courts in each county, which is what this Commission's court-sharing proposal still would require.<sup>178</sup>

The other argument against District Courts strikes at the heart of why due process is better protected by a District Court system. Opponents urge that local justices, selected by voters appearing before them, are familiar with their communities and their litigants and thus best situated to provide contextual community justice. As the Commission rightly notes, in this respect "local familiarity," which as a general matter can be as much vice as virtue, certainly is vice in the case of any bias or appearance of bias against outsiders. There is no room even for condoning the slightest risk of discrimination in our justice system.

Let me reiterate that the foregoing discussion about the relative efficiency and practicality of District Courts over Justice Courts has nothing to do with the training or other qualifications of the presiding judges. I would vigorously support the establishment of District Courts as substitutes for the fragmented, fractured and wasteful Justice Court system even if non-lawyer judges constitutionally could preside in the District Courts thereby created.

## **II. Constitutional and Due Process Concerns: Non-Lawyer Judges Should Not Adjudicate Cases in Which Liberty or Property Are In Jeopardy**

Separate and apart from taxpayer efficiency considerations that call out for District Courts, I also disagree with the Commission that a modern justice system can rely heavily on non-lawyers in cases where liberty and property are at stake. The issue of judicial qualifications is related to the issue of court structure but ultimately is an independent question that must be decided on its own merits. Even if New York State retains a Justice Court system along the lines recommended by the Commission, I do not believe that non-lawyer justices should be presiding in all of the cases now within their jurisdiction.

I have no doubt that many non-lawyer justices in this state are diligent and hard working. The Commission's record is full of examples of justices who care deeply for their courts and the important roles they play in their communities. The question is not whether non-lawyer justices can be wise and judicious in temperament. The question is whether a justice system relying on non-lawyer justices can meet the Constitution's standards for due process of law. I conclude that it cannot.

As the Commission correctly notes, the seminal case is *People v. Charles F.*, 60 N.Y.2d 474 (1983), in which a closely divided Court of Appeals held that the Criminal Procedure Law § 170.25 process to indict a non-felony offense pending before a non-lawyer justice and thereby

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<sup>178</sup> In Nassau and western Suffolk County with high-population towns, a branch of the District Court sits in every town. In rural communities, there could be a District Court facility for multiple towns, much as this Commission would have multiple towns share a Justice Court. These District Courts even could be part-time, much as some upstate City Courts are part-time, but their hours would be more regular than current Justice Courts and thus there would be better access to justice there than many Justice Courts' infrequent schedules now afford.

remove that case to a superior court was legally proper in that it provided an “effective” alternative to a lawyer-judge and was sufficient protection to meet due process standards. *Id.* at 477. The three dissenters concluded, however, that this § 170.25 removal right is illusory. The granting of such a removal application is discretionary and, critically, requires in essence that defense counsel allege that a non-lawyer judge is incompetent. As such, the *Charles F.* dissenters concluded that a “discretionary” CPL 170.25 removal option is not an “effective” guarantor of a criminal defendant’s core due process rights at issue.

The Commission agrees that *Charles F.* could well be decided differently today. I disagree, however, that today’s Court of Appeals or even the *Charles F.* dissenters would support the half remedy the Commission offers by converting the discretionary CPL 170.25 removal right into a presumption that a defendant could be tried before a non-lawyer justice unless he affirmatively decides to “opt-out” by time certain. Under this proposal defense counsel practicing in Justice Courts would have every professional incentive never to make or advise their clients to “opt out.” Likewise, the real-life dynamics of prosecution would invite district attorneys to penalize defendants who would remove cases to a lawyer-justice (for instance, by refusing to plea bargain later). Such possible coercion and awkward incentives require the conclusion that an “opt out” from proceeding before a non-lawyer justice cannot constitute an “effective” guarantor of constitutional rights. It does not seem practical to expect that defendants will exercise these rights, or even fully understand or know of these rights, under the system the Commission would create. It does not seem proper to deem these critical rights tacitly waived unless the defendant withstands tremendous pressure against asserting them. In short, this scheme, like the current removal process it would replace, would “require too much and protect too little.” *Charles F.*, 60 N.Y.2d at 481 (Kaye, J., dissenting), quoting *Ward v. Village of Monroeville*, 409 U.S. 57, 61 (1972) (Brennan, J.), and I therefore cannot support it.

If our criminal justice system must rely on non-lawyer justices at all, the only effective way to meet these due process requirements would be to reverse the “opt-out” into an “opt-in,” by which a defendant facing criminal charges would not be required to appear before a non-lawyer justice but could affirmatively waive his or her right to a lawyer-judge adjudicator and instead proceed before a non-lawyer justice. This reversal would cure all the bad incentives. The status quo would ensure the defendant’s due process right to effective access to a lawyer justice, a defendant’s decision to proceed only before the lawyer justice would not be easily imputed to the defendant’s lawyer, the class of non-lawyer justices before whom that lawyer might practice will not be so easily aware of the case or the lawyer’s counsel, and the prosecutor could not coerce the defendant out of asserting this basic right.

The best approach, however, would recognize what the *Charles F.* dissenters understood and would end, once and for all, New York’s troublesome reliance on non-lawyer justices in cases that jeopardize liberty or property. As the dissenters wrote:

*The right to effective assistance of counsel and the right to trial by jury, both so jealously guarded, lose force without a law-trained Judge. Lay Judges are an*

*important segment of the judicial system of this State. But “a lay person, regardless of his [or her] educational qualifications or experience, is not a constitutionally acceptable substitute for a member of the Bar.” Because of the technical knowledge required to insure that defendants facing imprisonment are afforded a full measure of the rights provided to them, use of non-law-trained Judges is a procedure that “involves such a probability that prejudice will result that it is deemed inherently lacking in due process.”*

*Charles F.*, 60 N.Y.2d at 480-481 (Kaye, J., dissenting) (internal footnotes and citations omitted).

For all of the above reasons, at most I could support continuing non-lawyer justices for adjudicating violations without collateral consequences of conviction such as conducting arraignments and completing certain preliminary proceedings necessary to the prompt vindication of other constitutional rights (e.g., assigning counsel, fixing bail). These matters generally do not require complex legal judgments or impractical training levels, and do not significantly jeopardize the liberty or reputation of criminal defendants. Likewise, I could support an “opt-in” system in which defendants knowingly, voluntarily, intelligently, and affirmatively waive rights to appear before a lawyer judge. I cannot, however, support the combination of non-lawyer jurisdiction over criminal actions, an “opt-out” riddled with so many problems and a system that perpetuates the use of non-lawyer justices that plainly is insufficient to warrant the public trust of their offices. Such a result is not in the best interest of justice or economically sensible.

Eve Burton

