



**TASK FORCE ON
TOWN AND VILLAGE COURTS**

**RECOMMENDATIONS RELATING TO
STRUCTURE AND ORGANIZATION**

OCTOBER, 2007

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
42 WEST 44TH STREET, NEW YORK, NY 10036

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**NEW YORK CITY BAR ASSOCIATION TASK FORCE ON
TOWN AND VILLAGE COURTS
REPORT ON TOWN AND VILLAGE COURTS WITH RECOMMENDATIONS**

A. INTRODUCTION.

On October 27, 2006, Barry Kamins, the President of the New York City Bar Association, announced the formation of a Task Force to address the well-documented problems facing New York State's Town and Village Courts, also known as the Justice Courts. The Task Force was charged with finding ways to address the problems and to assist in implementing improvements. The Task Force was formed after publication of several articles in *The New York Times* and analysis of the reports of the New York State Comptroller ("Comptroller") concerning the Town and Village Courts. The Task Force members are lawyers and judges from diverse parts of the State.

In November of 2006, the Office of Court Administration ("OCA") issued an Action Plan for the Justice Courts ("Action Plan") which addressed the technological, security and other needs of the Justice Courts, the training of the justices¹ and non-judicial personnel of those courts, and the provision of legal assistance. See Office of Court Administration, *Action Plan for the Justice Courts (Nov. 2006)*, available at <http://www.nycourts.gov/publications/pdfs/ActionPlan-JusticeCourts.pdf> ("Action Plan"). OCA has begun to carry out its proposals. The Action Plan did not address changes to the structure of the Town and Village Courts or the qualifications of town and village justices.

Since the formation of this Task Force, the Chief Judge has extended the

¹ In this report, the word "justices" refers to the judges of the Town and Village Courts, while the word "judges" refers to the judges of all other New York courts, who by law must be lawyers.

mandate of her Special Commission on the Future of the New York Courts (“Dunne Commission”) so that it might study issues concerning the Town and Village Courts. The Fund for Modern Courts also designated a committee to study the issues. Furthermore, in recent months, legislation affecting the structure of the Justice Courts and the qualifications of the justices has been passed and signed. The new statutes are referred to in the text below.

In its research, the Task Force has directed its attention to the concerns set out in the Action Report, to the jurisdiction and structure of the Town and Village Courts, and the qualifications of the justices who sit on those courts.

Since the Task Force was formed, its members have interviewed or otherwise communicated with participants in the justice court system including prosecutors, defense counsel, civil litigators, OCA staff, town and village justices, and non-judicial Justice Court personnel. The Task Force spoke with Robert M. MacCarone, the Director of New York State Commission on Probation and Alternates to Incarceration. The members have also examined responses to questionnaires the Task Force distributed to prosecutors, defense counsel, justices, and court clerks. The questionnaires were distributed by the President of the New York State Magistrates Association and the New York State Magistrates Clerks Association, the defense bar and district attorneys.²

The Task Force also examined the February 2007 report of the Dunne Commission. See Special Commission on the Future of the New York State Courts, *A Court System for the Future: The Promise of Court Restructuring in New York State* (Feb. 2007), available at <http://www.courts.state.ny.us/reports/courtsys->

² The Task Force makes no claim that the use of the questionnaires was a scientific study.

4future_2007.pdf (“Dunne Commission Report”), and the June 2006 report of the Spangenberg Group entitled “Status of Indigent Defense in New York.” See The Spangenberg Group, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye’s Commission on the Future of Indigent Defense Services* (June 16, 2006), available at <http://www.nycourts.gov/ip/indigentdefense-commission/SpangenbergGroupReport.pdf> (“Spangenberg Report”). The Task Force has made extensive use of the reports and audits of the New York State Comptroller and members of the Justice Court Fund of the Comptroller’s office provided further assistance in answering questions about the financial responsibilities and record-keeping functions of the justices. In addition, Westchester County District Attorney Janet DiFiore arranged a meeting for the Task Force with participants in that County’s Justice Court system. The Task Force also received assistance in getting information about other states’ practices from the National Judges Association, an association of non-lawyer judges.

The Task Force previously issued three reports: *Memorandum on Justice Court Technology* (March 6, 2007) dealing with computers, recording of court proceedings, and equipment and training to use the new devices; *Recommendations Relating to Training for Town and Village Justices and Court Clerks* (June 11, 2007), dealing with training for justices and non-judicial personnel; and *Recommendations Relating to Assisting Town and Village Justices* (June 11, 2007), dealing with legal and administrative assistance for justices and non-judicial personnel. All told, the four reports present 25 recommendations.

B. THE RECOMMENDATIONS.

The Town and Village Courts, established by the New York Constitution, have

long been a part of our State's history. However, just as other judicial or governmental functions, laws and regulations have been part of a world that has changed, the Town and Village Courts have played a role in a legal world that has changed. The Task Force believes that in the current context, if the Town and Village Court structure is to remain at all, there must be prompt implementation of the changes recommended in the Task Force's four reports. The full set of recommendations is attached as Appendix B to this report.

There are currently over 1,200 Town and Village Courts and over 2,000 town and village justices, all of whom sit on a part time basis. Approximately 68% of the justices are not lawyers. In some counties, such as Westchester County, all of the justices are lawyers. In contrast, many counties in the central, northern and western parts of the State have only a few or no lawyer justices.

The Town and Village Courts have preliminary jurisdiction over all criminal cases, including capital cases, and full jurisdiction over misdemeanors, including assaults. The town and village justices can hold felony hearings, bail hearings, pretrial suppression hearings, and trials, including jury trials when they are authorized. They also hear civil cases involving claims of up to \$3,000, as well as summary eviction cases and emergency family court proceedings. Despite this broad authority, under the current system, justices receive limited training and are not reviewed for qualifications to sit, as are other elected judges.

The Task Force believes that all justices of the Town and Village Courts should be lawyers. It also believes that a District Court system with full-time lawyer judges addresses many of the problems that have been identified. However, it also recognizes that neither the move to all lawyer justices nor the adoption by a county or part of a

county of a District Court is likely to take place in the short term. Accordingly, the Task Force proposes the changes in the Town and Village Court system reflected in the 25 recommendations set out in this and the other Task Force reports. The 25 recommendations are intended to be complementary; each is intended to enhance the other. They include the transfer of some cases to lawyer justices, consolidation of courts, full-time State supervised non-judicial personnel to provide staffing and assistance, legal training and assistance for justices and non-judicial personnel, state of the art equipment and computers and training to use them, and a record made of each court proceeding. While some of the recommendations can be effectuated more rapidly than others, we urge that all be implemented promptly so that the benefits of the changes can accrue to the court system and those whom it serves. The ten recommendations in this report follow.

RECOMMENDATION 1.

The Task Force recommends that the Criminal Procedure Law be amended to require that the justices of the Town and Village Courts who preside over pretrial suppression hearings and jury trials in criminal cases be lawyers and, to meet this requirement, that pretrial suppression hearings and jury trials be transferred to justices who are lawyers or to judges.

The Task Force further recommends that the Criminal Procedure Law be amended to require that in all other cases in which the crimes charged are A, B, or unclassified misdemeanors and the presiding town or village justice is not a lawyer, on request of a party, the case be transferred to a justice who is a lawyer or to a judge.

RECOMMENDATION 2.

The Task Force recommends that newly amended Uniform Justice Court Act § 106 (Session Laws 2007 Chapter 321), and rules promulgated pursuant to that section, be applied to facilitate the transfer of cases from town and village lay justices to town and village lawyer justices or judges in order to effectuate Recommendation 1.

RECOMMENDATION 3.

The Task Force recommends that the Office of Court Administration issue plain language forms for pleading in summary proceedings for eviction that are comprehensible to the litigants and require disclosure in the eviction petition of special circumstances, including the presence of an immovable mobile home, building code violations, government rent subsidies, and possible violations of the warranty of habitability.

RECOMMENDATION 4.

The Task Force recommends that town and village justices be provided with intensive training on procedural and substantive law applicable to summary proceeding eviction cases.

RECOMMENDATION 5.

The Task Force recommends that summary proceedings in eviction cases be decided by lawyer justices or judges when the respondent is *pro se* and when, on review of the plain language pleadings, there is disclosed the presence of (1) an immovable mobile home, (2) disrepair of the premises raising a question as to whether there is a violation of the warranty of habitability, (3) pending building code violations, or (4) government rent subsidies.

RECOMMENDATION 6.

The Task Force recommends that there be further study of civil cases within the jurisdiction of Town and Village Courts to determine whether any additional civil matters present the types of issues that should be heard by lawyer justices or judges, whether there is additional need for plain language forms, and whether intensive training is needed on any specific areas of procedural or substantive law.

RECOMMENDATION 7.

The Task Force recommends that each town examine and determine whether consolidation of Town Courts would be beneficial to the town and the Town Court and, where appropriate, pursue consolidation pursuant to Session Laws of 2007, Chapter 237 (amending Uniform Justice Court Act § 106-a).

RECOMMENDATION 8.

The Task Force recommends that each village examine and determine whether abolition of the office of village justice would benefit the village and the Village Court and, where appropriate, initiate local legislation pursuant to Village Law § 3-301(2)(a), or, if an inconsistent charter provision pre-exists the Village Law, seek state legislation pursuant to Article 17(b) of the New York Constitution.

RECOMMENDATION 9.

The Task Force recommends that every Town and Village Court have a court clerk who is trained to prepare the records and documents and satisfy the financial reporting and safeguarding of funds requirements of the applicable statutes and regulations. The clerks should be full time employees of the courts and be fairly compensated. Courts may combine resources to retain a shared court clerk if the work of a single court does not warrant a full time clerk. The clerks should be supervised by a State-compensated employee who also is available to provide assistance to the court clerks.

RECOMMENDATION 10.

The Task Force recommends that in planning for consolidation of Town Courts, the elimination of the position of village justice, or the transfer of misdemeanor cases from the Town and Village Courts when there is no available lawyer justice, the Office of State Comptroller reevaluate the allocation of the revenues of the Town and Village Courts so that legislation can provide to municipalities an appropriate share of the courts' revenues.

DISCUSSION

C. FEATURES OF THE TOWN AND VILLAGE COURTS.

This section sets out many of the features of the Town and Village Courts so that the recommendations in all four of the Task Force reports are viewed in context.

Reference is made to some of these sections in the commentaries supporting the recommendations. Others serve as background.

1. Local Structure.

The Town and Village Courts are established by the New York State Constitution as part of the Unified Court System. NY Const., Art. VI, §§ 1(a), 17. (All references to "Art." are to the New York State Constitution.) A Town Court sits in the geographic area that constitutes a specific town. A Village Court sits in the village within the boundaries of a town. The two courts service the same populace.

The salaries of town and village justices and the staffs of the Town and Village Courts, as well as expenses of the Courts, are paid by the municipality, village or town,

in which the court is located. Town Law §§ 20(a), 20(b), 27, 116; Village Law § 4-410(2); Judiciary Law §§ 39(1), 200. The expenses of legal education programs given for the justices in lieu of admission to the Bar are paid by the town or village. Uniform Justice Court Act § 105(b) (UJCA).

Both town and village justices are elected for four year terms by the constituents of the town or village they serve and are part-time officials. Art. VI § 17(d); Town Law §§ 20(a) and (b), 24; Village Law §§ 3-301(3), 3-302(3).

Village Courts are not mandatory. If a village decides to have a court, two justices are elected or one is elected justice and a second is appointed an acting justice who presides when the elected justice is not available. Village Law § 3-301(2); Uniform Justice Court Act (“UJCA”) § 106 (1). There are special provisions for additional justices. Village Law § 3-302.

The Board of Trustees of any village may, by resolution or local law, subject to permissive referendum before the voters, establish, increase the number of, or abolish the office of village justice. Village Law § 3-301(2)(a). As noted in Recommendation 7, if a charter establishing a village already exists and contradicts the Village Law provision for abolition of the justice position, only the Legislature can abolish the position. If a Village Court is abolished, the business of the court goes to the Town Court and the fines for violation of village law, ordinances or regulations remain the property of the village. *Id.*; Office of the State Comptroller, *Opportunities for Town and Village Court Consolidation*, Doc. 2003-MR-4 at 1 (Nov. 2003) (“Comptroller’s November 2003 Report”).

Towns have two justices. Town Law § 20(a), (b). Through a town board resolution and permissive referendum, the number of justices can be reduced to one.

Comptroller's November 2003 Report at 1.

By amendment of UJCA § 106-a, effective July 18, 2007, the Legislature expanded the number of towns able to establish a single town court. Under the prior statute, the town boards of two adjacent towns in the same county might authorize a single town court of two justices, one from each town. Under the new amendments, two or more towns that form a contiguous geographic area within the same county are authorized to establish a single town court to be comprised of town justices elected from each of the towns. The procedure may be initiated by the town boards or by petition addressed to each town board, signed by 20% of the voters. After a public hearing, the petition is subject to a vote in a general election. UJCA § 106-a(1).

Because they are established, funded and dissolved by local governments, are regulated by the Legislature, and have unique reporting and fiscal responsibilities, Town and Village Courts have largely remained separate from the administrative structure of the OCA and without a centralized structure of their own. *See Action Plan* at 16-18.

2. The Courts.

The Town and Village Courts are the only local courts for the 21 counties in which there are no City Courts. Spangenberg Report at 103. The various available sources do not agree on the number of Town and Village Courts. The Comptroller's website states that there are 1,270 Town and Village Courts; the Dunne Commission (at 21, 81) found 1,277 (Dunne Commission Report at 21, 81); and the Spangenberg Group and OCA found 1,281 (Spangenberg Report at 104 and Appendix N; Action Plan at 8). Approximately 925 are Town Courts and 325 are Village Courts. Dunne Commission at 81; see *also* Spangenberg Report at 104 and Appendix N (reporting 924 Town and 357 Village Courts).

There are approximately 2,150 Town and Village judgeships.³ (The Comptroller puts the number at 2,250.) As of a year ago, 2,000 offices were filled. Questionnaire responses and information from the decisions of the Commission on Judicial Conduct show that on occasion one person sits on both a town and a village court. See, e.g., Urbana Town Court and Hammondsport Village Court; New Hartford Town Court and New Hartford Village Court; Harrietstown Town Court and Saranac Lake Village Court.

Sixty-eight percent, or 1,350, of the town and village justices are not lawyers. Spangenberg Report at 104, fn 303, 304. It appears that the number of town and village justices in a county who are lawyers increases if the county includes an urban or commercial area or is proximate to one. For example, Task Force interviews and questionnaires revealed that in Westchester County, which is just north of New York City and includes urban centers, all 73 justices are lawyers. In Nassau County, which is just east of New York City, includes urban centers, and has District Courts, all justices in the 64 Village Courts are lawyers. In Suffolk County, which is also east of New York City, with a District Court system in half the county, all justices are lawyers. In Monroe County, which includes Rochester, 32 of 46 justices are lawyers, and in Erie County, which includes Buffalo and Amherst, 50 of the 73 justices are lawyers. In Onondaga County, which includes Syracuse, approximately 22 of 41 justices are lawyers.

On the other hand, counties in the center of the State (Finger Lakes), the northern part of the State (Adirondack and the Canadian border), and the western part of the State have a smaller number of lawyers sitting as town and village justices. The following are data from several of those counties:

³ In contrast, the other New York courts, all funded by the State, have only approximately 1,200 judges.

COUNTY	NUMBER OF JUSTICES	LAWYER-JUSTICES
Allegany	36	1
Franklin	34	1
Fulton	14	0
Schuyler	12	1
Sullivan	36	12
Orleans	19	1
St. Lawrence	52	8
Cayuga	44	3
Chenango	29	0
Genesee	27	3
Tioga	16	0
Wayne	32	5
Greene	30	3
Steuben	50	5

3. Subject Matter Jurisdiction.

The Legislature is authorized to prescribe the jurisdiction of the Town and Village Courts. Art. VI § 17(a). That jurisdiction cannot be more expansive than that of the District Court (Art. VI, § 16), and New York City Criminal and Civil Courts. Art. VI, § 15(a).

The Justice Courts have non-criminal jurisdiction over actions and proceedings for the recovery of money or chattels where the monetary amount or value of the property is \$3,000 or less; summary proceedings under Real Property Actions and Proceedings Law § 701 and proceedings to render judgment for rent due in any amount; contempt proceedings; small claims matters (UJCA §§ 202, 204, 210, 1802); and proceedings under certain state laws, including, for example, the Environmental Conservation Law § 71-0507, the Navigation Law § 200(5), and the Agriculture and Markets Law § 121(2). They also have jurisdiction to issue temporary orders of protection or to modify such orders in pending Family Court cases when the Family Court is not in session. CPL § 530.12(3-a), (3-b). Actions for non-compliance with local

codes are also within the Courts' civil jurisdiction.

The Town and Village Courts serve as local criminal courts, CPL § 10.10(3)(d), (e), and have preliminary jurisdiction over all criminal cases -- including capital cases. Accordingly, the justices have authority to conduct preliminary hearings, assign counsel, set bail, release on recognizance, and order commitment so that the defendant can be lodged at the appropriate jail (there are limited detention cells in police or trooper facilities). Presumably, they also would have authority to order emergency medical or psychiatric care if required. See UJCA § 2005.

The justices have complete jurisdiction over misdemeanors under the Penal Law (a list of Penal Law misdemeanors is an appendix to the Task Force Recommendations Relating to Assisting Town and Village Justices) and over the hundreds of misdemeanors codified in other statutes, (see, e.g., Environmental Protection Law §§ 71-2710, 71-2711, 71-2715, 71-0101, 71-0207, 71-0513). The jurisdiction also includes violations including such conduct as peddling and improper garbage disposal; and vehicle and traffic infractions under the Vehicle and Traffic Law and traffic rules, regulations and local ordinances, including speeding, failure to obey a traffic control device, seatbelt violations, and driving an unregistered vehicle or one without an inspection sticker.

The justices can hold preliminary felony and misdemeanor suppression hearings, negotiate dispositions, conduct trials (including jury trials where authorized), impose sentences, hear probation violation proceedings, and hold sex offender registration hearings. Proceedings at trial are conducted pursuant to the Criminal Procedure Law. UJCA § 2001.

If a Village Court exists within a district of any county or part of a county having a

District Court, the Village Court has no civil jurisdiction and its criminal jurisdiction is defined in the law establishing the District Court. UJCA § 2300(d)(2).

4. Concurrent Jurisdiction.

A Village Court that is located wholly or partially in a town has concurrent jurisdiction with the Town Court over civil cases arising in the village. UJCA § 201(b). If there is no Village Court, the matter goes before the Town Court in which the village is located. UJCA § 2101(n)(1). There also is concurrent jurisdiction of the Justice Courts with County Courts over certain Environmental Protection Law offenses, § 71-0513, and with the Family Court in certain misdemeanor cases. Family Court Act §§ 812, 115(e); CPL §§ 100.07, 530.11, 530.12.

5. Caseload.

According to the Action Plan, 2,000,000 cases come before the Town and Village Courts annually. *Id.* at 8. However, Task Force research led to the conclusion that this number relates only to criminal cases involving fingerprintable offenses and that the actual number of cases before the courts is much higher, but unknown, because of the inadequate way records have been maintained.⁴

Criminal case statistics, including caseloads, are generally based on fingerprintable offenses. Offenses for which a person must be fingerprinted are a felony, a misdemeanor defined in the Penal Law, a misdemeanor defined outside the Penal Law which would be a felony if the accused had a prior conviction for the crime,

⁴ In April, 2007, OCA initiated changes to improve reporting requirements after it was discovered that thousands of cases before the Town and Village Courts were either not centrally recorded as having been resolved or were not resolved. It is too soon to determine how effective these changes have been.

loitering for the purpose of engaging in a sexual conduct, and loitering for prostitution. CPL § 160.10. In addition, fingerprints can be taken if the identity of a person charged with a crime cannot be ascertained, if the identification given by the person is believed to be unreliable, or if there is reasonable basis to believe that the person is being sought for a crime. CPL § 160.20(2). All fingerprints are sent by the appropriate agency or officer to the Division of Criminal Justice Services (DCJS). CPL § 160.20.

By contrast, there are some 2400 offenses, posted on the DCJS website, for which no fingerprints are authorized, most of which are within the jurisdiction of Town and Village Courts. These include most misdemeanors and all infractions under state law, as well as offenses under local ordinances. For these cases, no information is forwarded to DCJS or OCA.

In civil cases, aside from the records kept in the court in which the case was pending, there has been no centralized reporting of incoming cases or of those which had been resolved unless a civil judgment had been entered. In the latter circumstance, the cases were reported to the County Clerk's office with no centralized reporting. (This information was obtained from telephone calls and e-mails with OCA and DCJS.)

Accordingly, only the records of each Town and Village Court reveal the actual caseload, and there is no centralized way to learn that information. It appears that even the records sent to the Comptroller's office and the Department of Motor Vehicles (DMV) do not contain all the appropriate information and cannot be used to ascertain the Justice Court caseload.

6. Court Revenue and Distribution.

The 2005 ranking by the Comptroller's Justice Court Fund of each Town and Village Court by income (available on line at the Comptroller's website,

www.osc.state.ny.us) shows the total revenue generated in 2005 by all Justice Courts was \$212,730,422. The largest revenue generator was the town court of Amherst (Erie County) at \$3,191,721.53. The smallest revenue generator was the Village Court of Whitehall (Wayne County) at \$25. In 2005, the 15th largest revenue generator yielded \$1,420,710.70, but 67 Town and Village Courts received revenue of \$5,000 or less.

In 2006, the total revenue of all Justice Courts was \$211,795,045. The largest revenue generated was \$2,944,174 in the Village Court of Hempstead. The smallest revenue generated was \$340 in the Town Court of Fenner. Sixty-six courts had revenue of under \$5,000.

The revenue production of the Town and Village Courts is relevant to the issues of consolidation. The question is whether courts should consolidate and reduce expenses when the revenue produced is low.

The sources of the courts' revenue are bail, surcharges, fines, fees, penalties, and costs paid by litigants. See Office of the State Comptroller Justice Court Fund, *Handbook for Town and Village Justices and Court Clerks (2006)* ("Handbook"). The revenue generated by the courts is divided by the State Comptroller between the State, county and municipality based on statutes allocating funds. See *infra* at 66. For example, revenues of \$2,521,591 produced by a Town Court yielded \$2,225,664 for the town, \$4,215 for the county and \$291,712 for the State. Where there is a Town Court and a Village Court with concurrent jurisdiction, a fine goes to the municipality with the ordinance that is violated. UJCA § 2021 (first of two sections).

After money is distributed, the municipality then allocates in its annual budget money for the funding of the Town or Village Court. Comptroller's November 2003 Report at 2.

7. Physical Plant and Security.

Justice Courts can hold sessions anywhere in the municipality. UJCA § 106. A town justice can sit in a village that is wholly or partly in the town. Village justices can hold court in a building outside of the village boundaries. A town judge can sit in an adjacent town after following the statutory procedure for doing so. UJCA § 106(1).

There is no requirement upon municipalities to supply space or security for the court and its judges and non-judicial staff. Many of the court facilities share space with other agencies, or use other space, including municipal garages and firehouses.

UJCA § 110 sets out the law-enforcement officers who are to serve the courts. In fact, there is minimal security. Thirty-four of the 64 justices who responded to the Task Force questionnaire wrote that their courtrooms generally have no security, or that what security is provided comes from officers who produce prisoners when criminal cases are heard or when officers appear in court for their cases. Twenty-nine other justices stated that security was provided by the municipality. One justice, who sits on two courts, reported having security in one court but not the other.

The Action Plan explains in detail the problems with local court security provisions and explains how the State will assist in improving this essentially local responsibility. *Action Plan* at 52-58.

8. Technology.

The equipment and technological devices needed by the Town and Village Courts are intended to be supplied by the municipalities. However, when the funding from the municipalities became hopelessly small, the State enacted the Justice Court Assistance Program (JCAP) which enabled the courts to apply to the State for special grants to purchase needed equipment, computers, law books and supplies. Action Plan

at 19, 59-60.

The Action Plan confirms what was generally known: the lack of adequate technology in the Town and Village Courts renders the justices and their court clerks, if they have a clerk, unable to carry out their obligations to keep records for the many agencies that require them. Some clerks and justices who responded to the questionnaires noted that computer training is as essential as having the equipment.

Of great importance to the litigants is the failure of many municipalities to provide funding for the Town and Village Courts to make a record of the courtroom proceedings. In the past a special budget line or approval was required or an application for funding was made to provide a reporter. UJCA § 2021 (second section with this number). Lawyers reported that, they themselves often arranged and paid for a court reporter to record the proceedings.

The Action Plan found that, as a general rule, recording was made, if at all, only of trials and hearings. The recording was on a tape device which was frequently inaudible in part or in whole, thereby preventing preparation of a transcript and record for appellate review, except for the one made by the justice in the return filed pursuant to CPL § 460.10(3)(d). In virtually no instance was a recording made of any other proceeding, even preliminary proceedings in felony cases. The Action Plan found this to be inadequate and explained that the State would undertake to supply digital recorders of a high quality for all proceedings.

The Task Force submitted a report on technology in 2006 making particularized recommendations, including the use of court reporters, so that recording of proceedings could begin immediately.

9. Qualifications for Judicial Office.

Residence and citizenship are required. Town Law § 23; Village Law § 3-300. The New York State Constitution does not require that town and village justices be lawyers. Art. VI, § 20 (a), (c). The Legislature can impose that requirement, Art. VI, § 20 (c); Town Law § 31(2), but has not done so. Town or village justices have no restriction on outside employment except for serving as a peace officer (Town Law § 31(4); UJCA § 105(c)). Responses to our questionnaires show that the justices include engineers, employees of large corporations, housewives, factory workers, bus drivers, clerks, printers, farmers, business owners, salespersons, teachers, carpenters, municipal employees, gas company employees, and retired police officers.

Those justices who are not lawyers must take a course of training and education before they can preside. Art. VI, § 20(c); Town Law § 31(2). No other requirements, including those for schooling, experience or legal training, are imposed. (By contrast, state-paid judges must have practiced law for either five or ten years after admission to the Bar, depending on the court on which they sit. Art. VI, § 20.)

Town and village justices are not reviewed for qualifications to sit, as are other elected judges by the newly formed Independent Judicial Election Qualification Commission established for each judicial district. *Rules of the Chief Administrator of the Courts*, § 150.1, 22 NYCRR § 150.1. Town and village justices are, however, subject to the rules of conduct promulgated by the Chief Administrator of the Courts with the approval of the Court of Appeals. (Art. VI, § 20 (c)). They also are subject to sanctions by the Commission on Judicial Conduct, and a person cannot be a justice if he or she has a felony conviction. Session Laws 2007 ch. 638 (effective August 28, 2007). There is no mandatory retirement age for town and village justices. Judiciary Law § 23.

10. Judicial Compensation.

The compensation for the town justices, who are part-time employees, is fixed and paid by the town board. Town Law §§ 27, 116. The town also is responsible for the costs of necessary supplies. Town Law § 69. The compensation of village justices is likewise fixed and paid by the village. Village Law § 4-410(2).

The salaries of the justices and the court clerks are reported in *The National Municipal Gazetteer New York* (Plattsburgh NY: The Target Exchange, 16th edition 2005). It appears from the Gazetteer's entries that in many counties village justices are compensated at a lower rate than town justices and that there are instances in which justices are not compensated. Some justices are paid by the hour. A sampling from questionnaire responses shows annual town justice compensation in Berne (Albany County) at \$7,125; Bethlehem (Albany County) at \$40,220; Brookfield (Madison County) at \$5,000; Georgetown (Madison County) at \$2,000; Montague (Lewis County) at \$400; Osceola (Lewis County) at \$900; Lowville (Lewis County) at \$6,500; Angelica (Allegany County); at \$3,150; Alma (Allegany County) at \$2,880; and East Hampton (Suffolk County) at \$58,240. Annual salaries of St. Lawrence County town and village justices range from \$3,000 to \$17,000.

The Comptroller's records (accessible by internet at www.osc.state.ny.us) show for each court the annual combined salaries of justices and other court personnel under the category "personnel services." These expenses are as low as \$120 in the Village of Hunter (Greene County), \$700 in the Village of Cleveland (Oswego County), and \$2,000 in the Village of Cold Brook (Herkimer County). Other categories of expenses are equipment and capital outlay and contractual expenditures. The funds allocated for court expenses are determined by town or village boards in their municipal budgets.

The questions to be asked are whether the courts receive a fair share of the income they produce and whether the funds allocated to the courts meet their needs.

11. Court Sessions.

Town and village justices have the authority to establish the hours of court sessions. Responses to Task Force questionnaires as well as court websites show that the sessions vary, often affected by the primary employment of the justice, whether in the law or some other occupation. Many justices sit once a week. Many hold court in the evenings. In jurisdictions where there is more than one justice, the justices may alternate sessions and retain the cases they received on intake. The sessions can be dedicated to specific case categories, such as civil, criminal or small claims. Additional sessions are scheduled for trials and hearings. Trials are often conducted in the evening, and, when necessary, extended late into the night.

Justices are available for nighttime arraignments. Such arraignments are necessary for a commitment order to lodge the arrested person in the county jail if there are no local holding facilities.

Two Town Court schedules are illustrative of the variations. In Ossining Town Court (Westchester County), civil, small claims, landlord/tenant and traffic cases are heard on Monday and Thursday at 7:30 p.m. and criminal cases are heard twice each month on Monday at 2:00 p.m. In Ancram (Columbia County), the Court is in session on Wednesday from 6:00 p.m. to about 8:00 p.m. A representative list of the schedules is attached as an appendix to the *Task Force Recommendations Relating to Assisting Town and Village Justices*. A chart of the schedules of 28 courts in one county is attached to this report as Appendix A. OCA will make efforts to coordinate court sessions, *Action Plan* at 31, but the numerous sessions at various times strain the

resources of court participants.

12. Arrest and Assignment of Counsel.

The Spangenberg Report described the defects in the procedures for assignment of counsel in the Town and Village Courts. The Report stated that justices “often do not understand the law on the right to counsel, or they ignore it. Barriers also exist to the local justices notifying each defendant of their right to counsel and receiving proper waivers of counsel... Frequently, there is no defense counsel present at the initial appearance in the local courts.” Spangenberg Report at 110-111.

The responses to Task Force questionnaires show that in many counties, neither the prosecutor nor the defense counsel is present at night time or off-hours for arraignments held after an arrest. The prosecutor is often called for a recommendation concerning bail and bail is often, but not always, set. One prosecutor reported that the district attorney and the defense counsel are notified of the defendant’s appearance.

Further, according to the questionnaire responses, the adjourned date of a case is set by the judge and is often either the next session of the court, in time for a felony hearing, or on the next “district attorney night.” While several prosecutors said adjourned dates were set to avoid detention of a defendant who does not have a lawyer and in one county felonies were called the next day, it was reported that “a serious problem is defendants remaining in jail after arraignment with no counsel.” One prosecutor was concerned about defendants incarcerated without counsel when the sheriff fails to give the required notice about the case to the Public Defender, and suggested that the town or village justice give the notice.

According to the Spangenberg Report, it appears that section 200.26 of the Uniform Rules for Courts Exercising Criminal Jurisdiction, promulgated on March 25,

2005 (22 NYCRR § 220.26(c)), is not being implemented. This section requires the immediate assignment of counsel if the defendant is eligible, and notice by telephone and fax to defense counsel and to pretrial services agencies.

Detained defendants are sometimes given a form to request assigned counsel, but some are unable to complete the forms without assistance.

13. Record-keeping and Administrative and Fiscal Duties.

Justices must keep, or arrange to have kept, legible and suitable books, papers, records and dockets of all civil and criminal proceedings. UJCA §§ 107, 2019; Town Law § 31(1)(a). Justices are also responsible for accounting for their court's financial transactions, safeguarding public resources by maintaining bank accounts for timely deposits of court revenues; depositing money within 72 hours of receipt; ensuring internal controls to protect the revenue process; recording financial transactions; and monitoring the work of others in the court system. Office of the State Comptroller, *Justice Courts Accountability and Internal Control Systems*, Doc. 2005-MR-10 at 7 (2005) ("Justice Courts Accountability Report"); *Uniform Civil Rules for the Justice Courts* § 214.9, 22 NYCRR § 214.9. As part of the record-keeping, all monies received and disbursed by a justice must be accompanied by a receipt or a memorandum or other record as the Comptroller requires. Town Law § 31(1)(a); Village Law § 4-410(d).

Money must be forwarded to the Comptroller within the first ten days of the month following collection or, if the filing is electronic through the Invoice Billing Program, to the municipality's chief financial officer. Each payment must be accompanied by a true and complete report in the form required by the Comptroller. Town Law § 27; Village Law § 4-410 (a), (b); UJCA § 2021; VTL § 1803; *Handbook* at 10; *Justice Courts Accountability Report* at 7, 10. Money lost or missing is the personal

responsibility of the Justice. Opinion of State Comptroller, § 3-174.

The *Handbook* at pages 24-48 sets out the rules for reporting other financial transactions that are the subject of reporting, including bail forfeited, bail fees, unclaimed exonerated bail, civil fees, copies, certificates of disposition, dishonored checks, restitution, and surcharges.

As noted, the time for the distribution of monies to the State, counties and municipalities can be shortened if all the justices of a court electronically file their statements using the Invoice Billing Program. In such cases, the funds go to the municipalities' Chief Financial Officer who, following directions from the State Comptroller, distributes the funds to the State and county and keeps the remainder for the municipality. *Handbook* at 20, 49.

At least annually the justice must submit the court's records to the town board for examination and audit. Town Law § 31(b). It is generally reported that these municipal audits are not adequately conducted. *Action Plan* at 34.

Civil and criminal case court records must also be maintained. *Uniform Rules of Courts Exercising Criminal Jurisdiction* § 200.23, 22 NYCRR § 200.23 and *Uniform Civil Rules for the Justice Courts* § 214.11, 22 NYCRR § 214.11. In criminal cases the court is required to keep a case file with all papers filed, orders issued, notes made by the court, transcripts, and copies of documents and papers sent to other agencies. An index of cases and a cashbook chronologically listing all receipts and disbursements are separately maintained. In every case, except for parking violations, the court must give a number to each defendant and keep a record of the defendant's name, address, birth date (if under 19), the section of the state law or local ordinance of every charge, a description of each offense charged and the date, the date of the arrest, the name of the

arresting agency or officer, the date of arraignment, the name and address of the prosecutor and defense counsel, a statement of what occurred at arraignment (including a reading of the charges, advisal of rights, assignment of counsel, entry of a plea, release of the defendant, the bail set and the adjournment date), the defendant's criminal identification number if the charge is a fingerprintable offense, all proceedings that occurred before trial, names and addresses of witnesses, waiver of a jury, case disposition, whether a pre-sentence report is ordered and available, the sentence imposed, and all post-judgment proceedings. *Uniform Rules of Courts Exercising Criminal Jurisdiction* § 200.23, 22 NYCRR § 200.23.

Records must also be made under other statutes. See, e.g., Environmental Protection Law, §§ 71-0209, 71-0211(2); Navigation Law § 200(5); Vehicle and Traffic Law §§ 514, 1180(h), 1624(b).

Court clerks' responses to the Task Force questionnaires confirm that Town and Village Courts prepare records for their own courts, the State Comptroller, DCJS, OCA, the Probation Department, DMV and TSLED (DMV's statewide data base for traffic ticket management and accountability system) (*Justice Court Study*, 99-PS-3 at 8 (Office of State Comptroller)), the district attorney, the police, and the parties in both civil and criminal litigation. This paperwork includes orders of eviction, contempt, and protection; entries into the domestic-violence registry; transcripts of civil judgments, and dispositions in criminal and civil cases.

14. Limitations on Legal Practice.

Rule 100.6 of the *Rules of the Chief Administrative Judge of the Courts* places restrictions on the law practice of those lawyers who are part-time justices. Pursuant to the rules (based on the principle that a court is constituted of all the judges elected to sit

on it): a justice (1) cannot practice law in the courts in which he or she serves; (2) cannot practice law in a court in the county in which his or her court is located before judges who can practice law (that is, another town or village judge who is a lawyer); (3) cannot act as a lawyer in a proceeding in which he or she was the judge or in related proceedings; a judge cannot allow his or her partners or associates to practice law in the court in which he or she presides; and (4) cannot allow the practice in his or her court of partners or associates of another judge of the same court who can practice law (that is, another town or village judge who is a lawyer). 22 NYCRR § 100.6 (B). Further, lawyer judges cannot take any judicial assignment such as guardianships. 22 NYCRR §§ 35.2(c)(1), (3)

15. Attorneys before the Courts.

Lawyers who regularly appear before the courts include district attorneys, 18(b) panel attorneys, public defenders, legal aid lawyers, legal services lawyers, town or village attorneys and retained counsel. Some defense attorneys and district attorneys reported that the large number of courts made it difficult to have attorneys in the courts for the numerous court sessions. The large number of courts adversely affects the lawyers' representation by limiting when they can be present. See *infra* at 63.

District attorneys appear regularly, but not at all sessions, before the Town and Village Courts in criminal cases. The nights on which district attorneys appear in court are called "DA nights." Town and village prosecutors also often have a caseload based on local code and ordinance violations.

Until 2006, state troopers negotiated dispositions of vehicle and traffic cases that were based on their own arrests. This practice was terminated by the State Police because of questions about its validity. The Legislature passed a measure to restore

the practice but it was vetoed by the Governor. Responses to the Task Force questionnaire indicate that the change has resulted in the modification of caseloads in some of the counties in which the district attorneys did not previously prosecute vehicle and traffic offenses but now do so. One prosecutor explained the district attorney has assumed responsibility for the prosecution of vehicle and traffic cases, resulting in an additional 25,000 cases and 60 court appearances each month. Some district attorneys have delegated part or all of the vehicle and traffic caseload to town and village prosecutors.

There is a question whether the prosecution of vehicle and traffic cases by district attorneys affects the distribution of revenues to the municipalities. Fees and fines from moving violations are allocated to the state while those from non-moving violations go to municipalities. Some believe that plea negotiations are affected by whether the prosecutor is a county or municipal official. Others respond that the plea process is fair, and that some adjustment must be made to compensate municipalities.

16. Registered Attorneys.

According to the OCA Attorney Registration list (2005 Report of the Chief Administrative Judge, Appendix D), in 49 counties there are fewer than 1000 attorneys and in 46 counties there are fewer than 500 attorneys. The counties with the fewest lawyers are Yates (29) and Schuyler (27). These numbers are relevant to Recommendations 7 and 8 and to the issue of whether use of lay justices is justified by the small pool of lawyers available, and willing, to become justices.

17. Supervising Judges.

As recognized by the Action Plan, there is no oversight of Town and Village Courts comparable to that present in the State-funded courts, which have a system of

supervising and administrative judges that is supported by non-judicial staff who are concerned with facilities, case flow, court equipment and technology, facilities and security, relationship with other government agencies, public complaints, and internal management issues. *Action Plan* at 33.

The Action Plan stated that the “budgetary and functional independence of the justice courts would not allow administrative supervision of judges and staff in the same way or to the same extent that OCA manages the state-paid courts,” but that OCA can nevertheless provide some assistance and support. In accord with the appraisals of the needs of the Town and Village Courts and consistent with permissible oversight, OCA appointed eight supervising judges of the state-funded courts who will “troubleshoot operational difficulties, coordinate the Justice Court, and serve as liaison between the Justice Courts and the OCA.” *Id.* These state judges, to the extent possible, are to be former town or village justices. *Id.* The judges have been designated by OCA and are beginning their work.

18. Legal Assistance.

The Resource Center was established to provide City Court judges, town and village justices, and their court staffs with assistance in learning and applying legal principles to a case before them. The State-funded Center is in essence the law secretary for the town and village justices. Approximately five lawyers at the Center respond to requests for information made by town and village justices, City Court judges and their court clerks. Judicial responses to the Task Force questionnaire yielded mixed reviews about the Center.

The Action Plan discussed assuring that the Center provides an effective program. The supervising judges that have been designated by OCA to oversee the

Town and Village Courts have noted that the current system of assistance for the justices from lawyers needs enhancement and it has been suggested that Center attorneys should be assigned to specific geographic regions to assist the justices and be available during a trial.

This Task Force issued a report and recommendations in June 2007 about the need to provide legal assistance to the justices. *See Recommendations Relating to Assisting Town and Village Justices* (June 2007). The Task Force found that a much larger staff of lawyers was needed to assist the approximately 4,000 justices and City Court judges, and their court clerks. Further, the Task Force recommended that specialists in fiscal management and court administration be included in the Center's staff. Finally, the Task Force recommended that the lawyers providing assistance be available in regional offices or that other arrangements be made to enable the justice requesting help and the lawyer giving it to have face-to-face contact.

19. Court Clerks.

The Town and Village Courts have such personnel as are provided by the municipal government. UJCA § 109. The clerk of the Town Court can be employed or discharged from employment only on advice and consent of the justice. Town Law §§ 20(1)(a), (b). The town or village can choose whether to employ any court clerk and some do not. The supervising justices designated to oversee Town and Village Courts have noted that the court staffs vary from court to court based on a municipality's willingness to hire the court personnel, and that staffing is a problem. Responses to Task Force questionnaires showed, for example, that there is no court clerk in the Towns of LeRoy, Genesee Falls, Bolivar, Belfast, Caneadea, Granger and Byron.

Like the justices' salaries, the clerks' compensation and benefits are fixed by the

town or village board. In some jurisdictions, the clerk is not paid. Responses to Task Force questionnaires show pension benefits and health insurance vary from municipality to municipality. Some clerks serve more than one court (for example, in the towns of New Bremen and Croghan).

The websites of the justice courts list the court hours and show that the clerks' offices are often open for business at times when the courts are not in session, while in other courts the clerks cannot be reached except when the court is in session.

The 33 responses from clerks to the Task Force questionnaires show a wide range of hours worked and compensation for clerks in different courts:

- nine hours per week in one court, compensated at \$11.00 per hour and five hours in another court, compensated at \$8.00 per hour with a state retirement plan, but no other benefits;
- 30 hours over 4-5 days; compensation was not disclosed; no benefits;
- 20 hours over five days; compensated at \$8.25 an hour with no benefits;
- five days a week, 8:30 to 4 p.m.; compensated at \$29,999 per year, with benefits and insurance;
- 32 hours a week over four days; compensated at \$20,000 per year, with retirement and health insurance;
- 40 hours over five days; compensated at \$30,000 per year, with pension and health insurance;
- 33 hours a week; compensated at \$32,000 per year, with pension and health insurance;
- six hours over two days at \$7.80 an hour with no benefits; and
- 40 hours over five days; compensated at \$30,000 per year, with pension but no health insurance.

20. Other states.

The National Center for State Courts through the State Court Organization

Reference Series tracks the qualifications for judicial office in all the states. The most recent information, from 2004, is included in a series of available tables. Table seven lists, by state, the name of each court in the system, the qualifications to hold office in that court, including a law degree, and whether the court is one of general or limited jurisdiction. U.S. Dep't of Justice, Bureau of Justice Statistics, *State Court Organization 2004*, Table 7, Qualifications to Serve as a Trial Court Judge, available at <http://www.ojp.usdoj.gov/bjs/abstract/sco04.htm>.

Attached to the tables are court organizational charts listing the name of each state court and a list of the cases within the court's jurisdiction. The names of the courts and the jurisdiction of courts vary from state to state. To learn the types of cases that a lay judge might handle and the required qualifications to sit in that court, Table 7 and the organizational chart would have to be compared. It also appears that examinations of state sentencing statutes, appellate review jurisdiction, and the availability of *de novo* proceedings would be needed for any study.

Although this investigation was not undertaken by the Task Force, even a cursory review of the documents shows that approximately 26 states use lay judges in some of their courts. Beyond that, it appears that there are great variations in the qualifications for judicial office, the kinds of cases the lay judges are permitted to handle, whether imposition of a jail sentence is permitted, whether a proceeding *de novo* is allowed, and the scope of an appeal.

The National Judges' Association supplied basic information about 12 states that use lay judges. Montana, Arizona, Texas, New Hampshire, Nevada, Oklahoma, and Utah provided additional information. The information reveals variations in training, qualifications, and jurisdiction.

D. DISCUSSION OF RECOMMENDATION 1.

RECOMMENDATION 1.

The Task Force recommends that the Criminal Procedure Law be amended to require that the justices of the Town or Village Courts who preside over pretrial suppression hearings and jury trials in criminal cases be lawyers and, to meet this requirement, that pretrial suppression hearings and jury trials be transferred to justices who are lawyers or to judges.

The Task Force further recommends that the Criminal Procedure Law be amended to require that in all other cases in which the crimes charged are A, B, or unclassified misdemeanors, and the presiding town or village justice is not a lawyer, on request of a party, the case be transferred to a justice who is a lawyer or to a judge.

1. The Views with Respect to Lay Justices.

The issue concerning Town and Village Courts that has most caught the attention of the public, the media, and the Bar is whether non-lawyers should be justices of Town and Village Courts. The debate on this has gone on for many years. See generally Doris Marie Provine *Judging Credentials: Nonlawyer Judges and the Politics of Professionalism* (U. of Chicago 1986). The arguments in favor of using lay justices are that they have been used for more than 200 years with success: that the justices bring a local informality to the system: that people like to see “their” judge conducting the proceeding: that the justices can do a good job at their work by applying common sense, knowing the community and having good intentions; that the training given the justices informs them of the principles of law needed to preside despite the absence of law school or other legal training; that the law the justices apply is not so complicated as to require law school training and years of practice; and that the number of lawyers living or practicing in some communities is too small to supply the number of judges needed, a situation aggravated by the ethics rules limiting the legal practices of the lawyers who are the part-time justices.

The arguments in favor of requiring that the justices be lawyers are that lawyers have been trained through law school education, years of practice and continuing legal education programs to know the law and to recognize lurking issues, and to internalize complex principles like evidentiary presumptions, due process, equal protection and burdens of proof; that they understand when they need to conduct research and how to do that; that they can converse with and challenge counsel who are arguing issues before them on a more sophisticated level than can lay judges; that they are taught and engage in following the rules of professional ethics, and that this experience becomes the training ground for following the rules of judicial conduct; that equal protection is denied when some litigants in the Justice Courts appear before lay justices while other Justice Court litigants and litigants in all other courts in New York appear before lawyer judges; that current law, even in courts of limited jurisdiction, is far more complicated now than it was when the Justice Court system was set up or last examined; and that the imposition of incarceration upon a defendant in a criminal case by a judge who lacks the traditional legal training and experience is not in accord with due process or public policy.

2. The Constitutional Issue in Criminal Cases.

In New York's criminal cases the interpretation and application of CPL § 170.25 has been central to the analysis of the right to have a lawyer judge. CPL § 170.25 allows a defendant charged with a misdemeanor pending in a Town or Village Court to make a pretrial motion in a superior court for transfer of the case for presentation to a grand jury and indictment for a felony with consequent removal to a superior court. The defendant must show good cause to believe that the interests of justice require the removal. While the motivation for such a motion is that the town or village justice before

whom the case is pending is not lawyer, under the case law that circumstance does not constitute good cause. The superior court, in the exercise of its discretion, may order that the case be presented to the grand jury if the test of good cause is satisfied. If the defendant's invocation of section 170.25 is successful and the defendant is indicted for a felony, the case remains in the superior court for proceedings that will be held before a lawyer judge (because all state-funded judges are lawyers). But if the crime charged in the indictment is a misdemeanor, the superior court can transfer the case back to the Town or Village Court under the State Constitution, Art. 6, § 19(b), where the judge may not be a lawyer. *Clute v. McGill*, 229 A.D.2d 70 (3d Dept.), lv. denied 229 N.Y.2d 803 (1997).

In *North v. Russell*, 427 U.S. 328 (1976), the United States Supreme Court was asked to decide whether there was a right to a trial judge who was a lawyer. North challenged his trial before a lay judge for driving while intoxicated. The motion was denied. North pleaded guilty and was sentenced to jail. On appeal he challenged the procedure that compelled him to have a lay judge preside at trial. Under Kentucky law a conviction before a lay judge, whether based on a plea or a verdict, could be appealed as of right to a lawyer judge for a *de novo* jury trial.

In *North*, the Supreme Court contrasted the differences between functions of a judge of general jurisdiction with complex issues, and the functions of a local police court trying drunk driver cases and traffic violations. However, said the Court, once "confinement is an available penalty, the process demands scrutiny." 427 U.S. at 334. The Supreme Court concluded that it was not necessary to decide whether a lawyer judge was needed in the first instance because in Kentucky all defendants facing incarceration were afforded an absolute and unconditional opportunity to be tried *de*

novo before a lawyer judge as if the first proceeding never occurred. While the Supreme Court did not require a first trial before a lawyer judge, it found that a trial before a lay judge did not violate the due process clause of the Federal Constitution as long as an accused who is initially tried before a lay Judge has an effective alternative of a criminal trial before a court with a traditionally law-trained Judge or Judges.

New York courts have held that § 170.25 meets the test of *North* despite the discretionary nature of the decision on the motion for a transfer. *People v. Skrynski*, 42 N.Y.2d 218 (1977); *Matter of Legal Aid Society v. Scheinman*, 73 A.D.2d 411 (3d Dept.), appeal dismissed, 53 N.Y.2d 12 (1981) (dissent of Judge Fuchsberg). The Court of Appeals' last decision on the issue was in *People v. Charles F.*, 60 N.Y.2d 474 (1983), cert. denied, 467 U.S. 1216 (1984). In *Charles F.*, the defendant was charged with criminal mischief, menacing and trespass, crimes punishable by up to one year imprisonment. His case was in the Town Court before a lay judge. He filed a motion pursuant to § 170.25 in the County Court for a removal of the case to that Court. The County Court Judge denied removal concluding that § 170.25 required a showing of good cause for the transfer, which was determined in the discretion of the County Court Judge. The Court held the possibility of a prison sentence was not good cause. Charles was then tried in the Town Court before the lay justice and a jury. He was convicted of menacing and was adjudicated a youthful offender and placed on probation, violation of which could result in incarceration. The conviction was affirmed by the County Court (the reviewing court for Town and Village Court decisions).

On appeal to the Court of Appeals the defendant argued that the conviction was obtained in violation of due process because the trial was held before a lay judge. The now 24-year-old unsigned decision in *Charles F.* affirmed the conviction *per curiam* with

three judges dissenting in an opinion written by the now Chief Judge Kaye. The majority held that there was no violation of the Federal Constitution and that *North* was satisfied. The Court wrote that § 170.25 provided the alternative required by *North* by “establishing a discretionary procedure to divest town and village courts, of, and remove to a superior court, the power to try and determine a criminal case.” 60 NY.2d. at 477. The denial of Charles’ motion was correct, said the majority, because the mere allegation that a trial will be or has been before a lay judge, without more, does not justify a transfer even if incarceration is a possibility, and Charles made no other claim of possible prejudice nor provided any other reason for a change of judge either in his motion or his appeal.

In the dissenting opinion, Chief Judge Kaye wrote that defendants facing imprisonment “must have the option to be tried before law-trained Judges.” *Id.* at 478. This conclusion, said the Chief Judge, was compelled by *North*. Removal under § 170.25, wrote the Chief Judge, is not an effective alternative to a trial conducted by a lawyer judge unless § 170.25 is read to require removal upon the request of a defendant if incarceration was a possible result of conviction. The dissent found that the right to counsel loses force when a lay judge decides the motions made by counsel, and when there must be assurance that the jury is instructed properly and the evidence rules properly applied. No specific trial error need be claimed.

Given the current state of New York law, the Task Force urges the Legislature and the Executive to amend § 170.25 or enact new legislation to implement the Task Force recommendation.

3. Qualifications of a Judge.

In its discussion of the training of lay judges, the Action Report aptly sets out the

purpose and consequences of a law school education:

While award of a law degree and admission to the New York Bar is no guarantee that each judge will be fluent in the complexities of every particular matter that may come before him or her ... there is nearly unanimous agreement that the unique education that law school provides can empower judges to discern, apply and shape the law in ways that non-attorneys can find difficult, if not impossible. The language of the law, the structure and standards of law, and the fundamental guarantees of constitutional and statutory rights conveyed by law are indispensable to our democratic society and thus inseparable from the fair administration of justice. All of these reasons command that all judges -- however trained and regardless of the court in which they preside -- must be proficient in the law.

Action Plan at 41.

The Action Plan recognizes the significance of law school training by noting the broad scope of knowledge required by a judge and the training needed, and noting that the one week training of lay judges given in the past was insufficient:

There is simply too much for non-attorney justices to learn -- civil procedure, criminal procedure, substantive criminal law, the U.S. and New York State constitutional law of search and seizure, the U.S. and New York State constitutional law of right to counsel, admission of evidence, constitutional and statutory jury selection procedures, burdens of proof, criminal sentencing, proper interaction with law enforcement and State agencies, indigency screening for appointed counsel, information technology, judicial ethics, court administration, the sociology and penology of addiction and abuse, as well as a panoply of other cutting-edge topical issues of law and justice -- for a single week of basic training to suffice, if it ever could.

Action Plan at 44.

While the Action Plan sets out an expanded training program for lay justices, including basic and advanced courses, it is overly optimistic to believe that this training will enable them to reason intuitively from fundamental principles of law learned and applied over three years of law school, and to use, by analogy, previously studied

subjects to learn other areas of the law and to resolve new issues as they arise in the regular calendar of cases. The training program is not the equivalent of law school, law practice, and continuing legal education. The work of a lay justice, therefore, should be limited consistent with his or her training.

The significance of being a lay judge is raised when the lay judge asks a lawyer with the Resource Center (*see supra* at 27) for assistance with a legal problem. The Resource Center has lawyers available to give legal advice to the justices when they request it. The question is whether the lay judge is in a position to evaluate the merits of an opinion rendered by the Resource Center lawyer and make an independent assessment as to how the legal issue should be resolved. If the lawyer has been trained in the traditional way and the justice has not, there is no sufficient guarantee that it will be the justice who decides the issue.

Similar concerns apply with respect to ethical canons and rules for judicial conduct. Lawyers, in addition to law-school training, are required to pass the Multistate Professional Responsibility Examination and participate in continuing legal education ethics programs. They have the benefit of discussions of ethics issues that arise virtually every day. This attention by lawyers to the ethics rules provides training for the understanding and application of the rules of judicial conduct should they become judges. On the other hand, lay town and village justices do not share these experiences. Further, the geographic isolation of many lay town and village justices and their part time status are additional factors depriving the justices of ready opportunities to discuss ethics issues.

4. Increasing Complexity of the Law.

The legal issues that come before the courts have increased in complexity. The

enhanced sanctions that attach to a conviction, even for a misdemeanor, demand a high level of expertise to prevent miscarriage of justice.

Prime examples of this complexity are factually and legally complex pretrial suppression motions. Literally hundreds of decisions are rendered each year on defendants' motions to suppress physical evidence taken as a result of an illegal stop, detention or arrest, or the fruit of other alleged illegal police conduct; on motions to suppress statements claimed to have been taken in violation of the right to counsel, the right to remain silent, or as the fruit of prior illegal conduct; on motions to suppress identification testimony alleged to be the result of suggestive or otherwise illegal law enforcement practices, or the fruit of some other official illegality. The applicable principles applicable are derived from the Federal Constitution's Fourth, Fifth, and Sixth Amendments and the New York State constitutional analogues, as well as the many appellate and trial court opinions of state and federal courts. There are also legal issues of whether there is standing to raise the claims or whether a particular issue is otherwise properly raised by the motion papers. The judge must be sure there is a proper disclosure to the defense of police records. He or she must recognize shifting burdens of proof. Of course, the judge must hold hearings to elicit information about the events in question through the testimony of witnesses and the introduction of other evidence, must make credibility determinations and findings of fact, and must decide the merits of the legal claims. The decisions in the suppression hearings might involve layers of analysis; they are properly often subjects of written opinions.

The body of law protecting the rights of those accused has emerged over the past several decades. Since the seminal cases, e.g. *Mapp v. Ohio*, 367 U.S. 643 (1961); *Miranda v. Arizona*, 364 U.S. 436 (1966), there have been hundreds of

decisions adding amazing complexity to the law. The heavily nuanced reasoning involved in these many cases is manifest from even the most cursory examination of the texts used by lawyers and judges to prepare arguments and opinions. See Barry Kamins, *New York Search and Seizure*, (Bender/LexisNexis 2007).

The complexity of the rules of evidence, applicable at both pretrial hearings and trials, demonstrates the need for law-trained judges. While there are many cases from the New York and federal courts dealing with evidence, a very few will suffice to show the complicated principles of law. *Crawford v. Washington*, 541 U.S. 36 (2004), has mandated a rethinking of the federal constitutional principles relevant to the right of confrontation and hearsay reliability. Hearsay issues, almost always complicated, take on new dimensions after *Crawford*. New York decisions regarding these issues include *People v. Hardy*, 4 N.Y.3d 192 (2005) (error to use accomplice plea allocution to incriminate defendant); and *People v. Davis*, 23 A.D. 3d 833 (3d Dept. 2005), lv. denied 6 N.Y.3d 811 (2006) (non-hearsay use of statements about the defendant). Other recent evidence decisions are *People v. Wlasiuk*, 32 A.D.3d 674 (3d Dept. 2006), lv. denied 7 N.Y. 3d 871 (2006) (the scope of evidence of prior abuse in domestic violence cases); *Read v. Ellenville National Bank*, 20 A.D. 3d 408 (2d Dept. 2005) (the authentication of a surveillance video tape of a bank); and *People v. Resek*, 3. N.Y. 3d 385 (2004) (uncharged crimes as evidence).

As for trial issues, *Batson v. Kentucky*, 476 U.S. 79 (1986), has revolutionized the procedures used to select jurors and the protection of the jurors' rights to serve. Careful and tactful questioning about highly sensitive issues, such as membership in a racial, ethnic or religious group, are part of the process needed to determine if there is a *prima facie* case of improper use of peremptory challenges to potential jurors.

Elements of many crimes defined both in the Penal Law and other statutes require nuanced analysis of evidence and instructions in a jury trial.

These examples are but a few of a large number. The point is that the current legal landscape is more complicated than ever. The breath of possible legal subjects to arise in handling cases as a judge is apparent from the list of courses set out in the Resource Center list of courses, which now includes about 55 subjects.

The complexity of the law is matched by the consequences faced by a defendant who pleads guilty or receives a guilty verdict. While at the moment it is unclear which consequences must be stated on the record by a judge who takes a plea, it is likely that the judge will have to understand, explain and discuss them with lawyers regarding possible case disposition. These consequences affect immigration status; right to public benefits including rent supplements and housing, employment, licensing, sex offender registration, and use of a misdemeanor conviction as a predicate offense in other jurisdictions, especially in the federal courts, if there is a later conviction. The New York State Bar Association Special Committee on Collateral Consequences of Criminal Proceedings lists and discusses the consequences in its 2006 Report, *Reentry and Reintegration, the Road to Public Safety* (May 2006).

The need for justices who are lawyers is apparent. They clearly are better able to learn and comprehend the subject matter. In light of the judge's critical role in the criminal justice system, the parties should be entitled as of right to a lawyer justice or a judge for pretrial hearings or trial and for all proceedings involving a misdemeanor.

5. Resolving Legal Issues

Interviews with, and responses to, Task Force questionnaires from lawyers with broad and lengthy experience in criminal cases before the justice courts largely reflect

concern that the lay justices do not have a grasp of the legal issues raised by the cases and have difficulty understanding and applying the legal rules, especially the rules of evidence, at both non-jury and jury trials (which are authorized for all misdemeanors outside of New York City. CPL § 340.40(2)).

Defense lawyers have reported the following (the materials not in quotes are based on interviewers' notes):

The justices do not have an "intuitive" sense of the reasoning process and no opportunity to develop that second sense. There is a dynamic that is absent from the discussion when the judge is not a lawyer.

* * *

Non-lawyer justices tend to miss the constitutional issues. Suppression issues are usually too difficult for the justice to understand and they defer to the district attorney. Justices are weak on the law. Both lawyers and non lawyers do not know the rules of evidence, but lawyers are better prepared to understand.

* * *

Justices expect that criminal cases will be resolved by plea. Justices are unprepared to try cases and do not know the rules of evidence. The justices seek help from the District Attorney who controls the courtroom. A zealous defense overwhelms and angers the justice who does not understand the job of counsel.

* * *

"Lay judges do their best, but do not have the legal training or background to handle cases `legally' as opposed to `morally'."

* * *

A twenty year judicial veteran found a defendant guilty after denying a suppression hearing.

* * *

Justices should be trained in the speedy trial issues.

* * *

Judges read the standard charges and do not often use the charges given by

counsel.

* * *

To the question whether the rules of evidence are followed “as well as a town justice with no legal training can – No”. The CPL and CPLR are followed, “but too often [there are] fly by seats decisions by a non-legally trained judge.”

* * *

“Only problems I’ve run into are with justices who are not attorneys. They are unfamiliar with the law and rely on prosecuting/arresting officers. ... [One justice] lets village officers run court. ... Should be a requirement to be attorney or pass some sort of competency test.”

* * *

It is important to note that some of the attorneys who responded to the questionnaires expressed positive opinions of the courts and believe that “the judges are hardworking honest jurists. The attacks on these courts are for the most part unjustified and overblown.”

District attorneys, including those with long tenure, expressed opinions similar to those of the experienced defense counsel:

“The justices do not seem to know the very basic procedural elements to a criminal proceeding, including a proper allocution in a guilty plea”. “No knowledge of evidentiary rules.” “There is also an obvious need for trial training with a heavy emphasis on admissibility of evidence.”

* * *

A problem in practicing in the Justice Courts is the “lack of knowledge regarding procedures and issues of law in many courts.”

* * *

“Poorly trained justices-not necessarily because the training offered is bad but because many lay judges aren’t able to grasp a lot of what they are taught and the training is not enough to make up for the lack of a law degree ...The legal issues are often lost on lay justices because they just fail to understand them. ... Fear by many of the justices of conducting jury trials, resulting in cases sitting until they are so old they can no longer be prosecuted... “Justices who lack an understanding of the rules of evidence.”...

* * *

“Justices have lack of knowledge regarding the law.”

* * *

Attorneys are needed to preside in misdemeanor cases; non-lawyer judges do not understand the procedure or the law. At trials the justices do not know the rules of evidence and adjourn the cases to avoid trials or refuse to give trials. The judge dismissed hundreds of cases for violation of the speedy trial rules although the adjournments were requested by the defense. No defendant takes a plea with a proper allocution. The justices are not aware of driver’s license suspension and DMV paperwork required. Judges refuse to consider the range of possible sentences.

* * *

The justices do not understand the rules of evidence and their application and do not know how to research the issues. The justices largely rely on the prosecutor’s view. The justices do not take pleas with proper allocutions explaining the conduct involved. There is no way to know if the elements of the crime are admitted and the justice relies on the assumption that the defendant is guilty. The justices do not tell the defendants the implications of their pleas. Among examples of the weakness in understanding the law the prosecutor noted: a justice asked the prosecutor if the justice’s previous denial of pretrial motions was proper and a justice refused to allow a child to be called as witness because the justice claimed to know from personal knowledge that the child had a problem telling the truth.

* * *

“There are few suppression hearings and the justices are not competent to hear them.” The justices cannot “get up to speed” on the evidence rules for a trial.

* * *

Decisions of the Commission on Judicial Conduct support the experiences articulated by the lawyers.⁵ In the past three years alone, the Commission issued the following relevant decisions: *In Matter of Edwards*, 2008 Annual Report ____ (July 19, 2007 Comm. on Jud. Conduct) (a lay justice, sitting since 1964, awarded specific

⁵ The decisions and opinions can be found in printable form at the Commission’s website, www.scjc.state.ny.us.

performance of a contract in a small claims case when the jurisdiction of the court extended only to granting damages); *In Matter of Hewlett*, 2007 Annual Report ____ (May 1, 2006 Comm. on Jud. Conduct) (lay justice granted default judgments without documentation of default); *In Matter of Greaney*, 2007 Annual Report ____ (Dec. 18, 2006 Comm. on Jud. Conduct) (justice failed to effectuate a defendant's right to an attorney; attempted to elicit incriminating statements from the defendant; retained the defendant in jail for 12 days without counsel); *In Matter of VanSlyke*, 2007 Annual Report ____ (Dec. 18, 2006 Comm. on Jud. Conduct) (lay justice failed to understand and apply the law applicable to contempt proceeding); *In Matter of Kennedy*, 2005 Annual Report 196 (Comm. on Jud. Conduct) (parties agreed by stipulation that the justice released two people charged with felonies on their own recognizance without notice to the prosecutor and refused to conduct arraignments in four cases after the police arrested defendants based on the justice's warrants but instead ordered release); *In Matter of Gori*, 2005 Annual Report 168 (Comm. on Jud. Conduct) (without any authority, a justice interrogated a relative of the defendant and examined her driver's license when she drove the defendant, whose license was suspended, to court); *In Matter of Pisaturo*, 2005 Annual Report 228 (Comm. on Jud. Conduct) (justice imposed fines in VTL cases based on the offenses charged and not based on the crime of conviction); *In Matter of Wright*, 2005 Annual Report 244 (Comm. on Jud. Conduct) (justice announced he would not enforce speed limits on certain parts of a road because he believed the speed limit signs were illegally posted); *In Matter of Barringer*, 2005 Annual Report 97 (Comm. on Jud. Conduct) (justice granted adjournments in contemplation of dismissal without the consent of the prosecutor and imposed fines lower than required by law).

6. Rules Governing Judicial Conduct.

Prosecutors have noted the high frequency of *ex parte* communications by the justices, and that decisions were made based on such communications. In responses to Task Force questionnaires and in interviews, the comments were virtually uniform.

Here are examples:

“There is contact with the witnesses because everyone knows everyone else.”

* * *

“*Ex parte* communications happen. How frequently, and on what subjects, depends on the justice. Some justices will ask permission and use alternate phone calls relaying to each lawyer what the other has said. In some, the conversations are not known until much later. In most instances, the lawyers are understanding and will disclose the conversation.”

* * *

“Frequent *ex parte* communications which are exacerbated by the number of courts versus the staffing levels in prosecutors offices.”

Many decisions of the Commission on Judicial Conduct illustrate the frequency and significance of *ex parte* communications involving lay town and village justices. As the Commission also recognized in its decisions, these *ex parte* communications affect the decision making process when litigants are not given notice of or an opportunity to respond to the undisclosed information before the justice. See, e.g., *In Matter of Marshall*, 2008 Annual Report ___ (July 19, 2007 Comm. on Jud. Conduct), sanction approved, ___ N.Y.3d ___ (No. 106 July 2, 2007) (justice, sitting since 1999, had *ex parte* communications with the defendants in four building code violations cases and then dismissed the cases in advance of the adjournment date without informing the town attorney or codes inspector. The justice was also found to have altered the records to show an adjourn date. The Commission found that even without the change in records,

“her conduct violated well-established ethical standards. ...”); *In Matter of Merrill*, 2008 Annual Report ___ (May 14, 2007 Comm. on Jud. Conduct) (the Commission found that a justice, sitting since 1989, had improperly engaged in *ex parte* calls with the complainant’s attorney and the sheriff’s office proposing an interim settlement in a case between the complainant and the justice’s neighbor); *In Matter of Edwards*, 2008 Annual Report ___ (July 19, 2007 Comm. on Jud. Conduct) (justice who was involved in *ex parte* communications refused to allow a response from the adverse party or permit cross-examination. The same justice had been sanctioned in 1986 for *ex parte* communications on behalf of his son. *In Matter of Edwards* 67 N.Y.2d 153 (1986)); *In Matter of Valcich*, 2008 Annual Report ___ (August 27, 2007 Comm. on Jud. Conduct) (*ex parte* communications with witness; justice knew litigants, but did not disclose that); *In Matter of LaLonde*, 2007 Annual Report ___ (Feb. 14, 2006 Comm. on Jud. Conduct) (justice dismissed VTL charge without notice to prosecutor); *In Matter of Hewlett*, 2007 Annual Report ___ (May 1, 2006 Comm. on Jud. Conduct) (justice granted default judgments after *ex parte* conversations with the defendants and without the opportunity for the plaintiff to be heard); *In Matter of Greaney*, 2007 Annual Report ___ (Dec. 18, 2006 Comm. on Jud. Conduct) (justice spoke *ex parte* to lawyers and witnesses); *In Matter of Kristoffersen*, 2007 Annual Report ___ (Feb. 14, 2006 Comm. on Jud. Conduct) (justice dismissed cases without notice or consent of the prosecution); *In Matter of Brooks*, 2005 Annual Report 116 (Comm. On Jud. Conduct) (justice granted reductions, dismissals, or ACDs without the prosecutor); *In Matter of Cook*, 2005 Annual Report 119 (Comm. On Jud. Conduct) (same); *In Matter of Dumar*, 2005 Annual Report 134 (Comm. On Jud. Conduct) (justice communicated with police, other judges and court personnel to influence a decision); *In Matter of Glover*, 2005 Annual Report 165

(Comm. On Jud. Conduct) (*ex parte* communications with litigants).

7. The Opportunity to Appear Before a Lawyer Justice or Judge in a Misdemeanor Case.

a. Summary of Recommendation.

Based on the foregoing, the Task Force recommends adoption of statutory changes to provide defendants with the opportunity to have their case heard by a judge who is a lawyer where there is a possibility of a custodial sentence of more than 15 days and in all cases in which a pretrial suppression hearing is requested by the defense. The use of misdemeanors to denote the instances in which lawyer judges should hear cases is logical under New York law. First, the penalties for misdemeanors include a possible sentence of more than 15 days' incarceration. Second, jury trials are authorized for all misdemeanors, but not lesser offenses. CPL §§ 340.40(1), (2); VTL § 155. Therefore, a defendant's request for a lawyer judge in a misdemeanor case involving a possible custodial sentence of 15 days or more would be triggered by either a request for a jury trial (in which case transfer to a lawyer-judge would be automatic) or a request for a judge who is a lawyer where there is no jury.

The Task Force also believes that lawyer judges should handle all cases in which a request is made for a pretrial suppression hearing, regardless of the sentence to be imposed, because of the complexity of the applicable law.

b. The Misdemeanor Sentencing Scheme Provides the Framework for Having a Lawyer Justice or Judge in All Cases with a Possible Custodial Sentence of More than 15 days.

Misdemeanors are classified as A, B, and unclassified, PL § 55.05(2), and those defined in statutes other than the Penal Law that are without classification are treated as A misdemeanors. PL § 55.10(2)(b). A misdemeanor is an offense other than a

traffic infraction for which a term of imprisonment in excess of 15 days up to one year can be imposed. PL §§ 10.00(4); 55.10(2)(c). “A” misdemeanors are punishable by imprisonment of up to one year; “B” misdemeanors by a term of imprisonment of up to three months; and unclassified misdemeanors by the term set out in the law defining the crimes. PL § 70.15(1),(2),(3). The Recommendation includes all misdemeanors set out in both the Penal Law and other statutes and, as a consequence, every case that includes the possibility of incarceration of more than 15 days. Excluded from the Recommendation are Penal Law violations and any offense defined in a statute other than the Penal Law for which a custodial sentence of up to 15 days is authorized. PL §§ 55.10(3)(a); 10.00(3).

The Vehicle and Traffic Law has its own definitional system. A violation of the Vehicle and Traffic Law, or any law, ordinance, order, rule, or regulation regulating traffic, is a traffic infraction unless stated to be a felony or a misdemeanor by the Vehicle and Traffic Law or another law of the State. Traffic infractions are processed in the same way as are misdemeanors (although there is no right to a jury trial), but a traffic infraction is not a crime and a sanction is not penal

Sanctions for Vehicle and Traffic Law misdemeanors are set out generally unless the section defining the illegal conduct also includes the punishment. VTL § 1801. The custodial sanctions for misdemeanors are up to 30 days for a first offense; up to 90 days for a second offense committed within 180 days of the first; and up to 180 days for a third offense when all three were committed within 180 days. *Id.* Under the Recommendation, all of these misdemeanors would be subject to a request for a lawyer

judge or a mandatory assignment of a lawyer judge if the case is to go to a jury trial.⁶

c. Result of the Recommendation.

By selecting jury trials and misdemeanors as the triggers for having a lawyer justice or judge preside, the Task Force Recommendation seeks to include almost every instance in which possible incarceration is more than 15 days. On the other hand, cases with possible sentence of up to 15 days would remain before lay justices. The Task Force believed the likelihood of a jail sentence in these cases to be minimal. Further, the Task Force could not estimate how many cases with possible sentences of less than 15 days would be involved because they are not fingerprintable and not in a central system. (*see supra* at 13). If they were included within the Recommendation, it might be impossible to effectuate the Recommendation because of the size of the caseload.

8. New Legislation.

The recommendation requires new legislation establishing automatic transfer to a lawyer justice or judge for a jury trial or a pretrial suppression hearing, or on request where the charge is a misdemeanor and no jury trial is sought. CPLR § 170.25 should be modified accordingly or a new section enacted. The City Bar will gladly cooperate in the drafting of such legislation.

E. DISCUSSION OF RECOMMENDATION 2.

The Task Force recommends that newly amended Uniform Justice Court Act § 106, Session Laws 2007, Chapter 321, and rules promulgated pursuant to that

⁶ Misdemeanors specifically set out in the Vehicle and Traffic Law and within the scope of the Recommendation include tampering with signs relating to vehicular traffic on bridges, § 1629(2); traveling on traffic prohibited bridge, § 1629(3); failure to exchange information after an accident involving an injury, § 600(2); failure to report an accident, § 605(2); aggravated unlicensed operation of a vehicle, §§ 511(1) and (2).

section, be applied to facilitate the transfer of cases from town and village lay justices to town and village lawyer justices or to judges in order to effectuate Recommendation 1.

To enable counsel to exercise the option of having a lawyer justice or a judge preside it might be necessary to transfer cases from a lay justice to a lawyer justice or to a judge of another court. Transfer will be needed in counties in which there are no lawyer justices or too few to meet the caseload needs. (*see supra* at 10).

The provisions of a newly enacted amendment to UJCA § 106 provide the means to transfer misdemeanor cases to judges or lawyer justices. The legislation (Laws 2007 ch. 321, enacted July 17, 2007) authorizes the temporary assignment to a justice court of a justice of another Town or Village Court, or a judge of a City Court, who resides in the same or an adjoining county.

This statute is intended to provide assistance to Justice Courts where there are backlogs, complex cases, unforeseen conflicts, or other local needs. The statute also provides that the cost of the assignment shall be paid by the state so that political and local issues will not prevent or delay aid to the justice courts where assistance is important to their work. See Sponsor's Memo to A07374 (2007).

Pursuant to this legislation, a lawyer justice or judge from the same or an adjoining county can be transferred to preside over cases or conduct trials when a lawyer judge is required. This enables the counties in which there is no lawyer justice, (e.g. Oneida, Fulton, Chenango, and Tioga) and no City Court Judge, to borrow a lawyer justice as needed from an adjoining county. Each of the counties set out above adjoins either four or five other counties from which a transfer could be made. One suggested mechanism for implementing the legislation is the use of a "hub justice" before whom the cases would come or who could transfer the cases to designated

lawyer justices.

If the new statute is not applied to allow the needed transfer, or if no lawyer justice or judge would be available despite a permissible transfer from an adjoining county, further amendment to UJCA § 106 should be undertaken. The City Bar Association will be available to assist in the drafting.

F. DISCUSSION OF RECOMMENDATIONS 3, 4 and 5.

RECOMMENDATION 3.

The Task Force recommends that the Office of Court Administration issue plain language forms for pleading in summary proceedings for eviction that are comprehensible to the litigants and require disclosure in the eviction petition of special circumstances, including the presence of an immovable mobile home, building code violations, government rent subsidies, and possible violations of the warranty of habitability.

RECOMMENDATION 4.

The Task Force recommends that Town and Village Justices be provided with intensive training on the procedural and substantive law applicable to summary proceeding eviction cases.

RECOMMENDATION 5.

The Task Force recommends that summary proceedings in eviction cases be decided by lawyer justices or judges when the respondent is *pro se* and when, on review of the plain language pleadings, there is disclosed the presence of (1) an immovable mobile home, (2) disrepair of the premises, raising a question as to whether there is a violation of the warranty of habitability, (3) pending building code violations, or (4) government rent subsidies.

Task Force recommendations 3, 4, and 5 are concerned with summary proceedings in eviction cases. The Justice Courts have concurrent jurisdiction over these cases with County Courts, City Courts with civil jurisdiction, and District Courts where they exist. Real Property Actions and Procedures Law § 701(RPAPL). In these summary proceedings, courts have jurisdiction to hear and decide claims to recover real property, including trailer park lots for placing mobile homes; to remove tenants; and to

enter judgment for rent due. UJCA § 204; 29A Part 2 McKinney, Judiciary Law, Siegel, *Practice Commentaries to UJCA § 204* at 309 (1989).

These proceedings are initiated by landlords generally as a consequence of rent non-payment, but there can be other claimed grounds for eviction. The tenant-respondent, who usually appears *pro se* because he or she cannot afford a lawyer and legal services attorneys are in short supply, is entitled to present defenses to the asserted non-payment. The defenses are designed to protect the tenant's interest in housing that is safe and sanitary, the tenant's rights to remain on the leased property, and to retain a government rent subsidy or the tenant's ownership interest in a trailer situated on the manufactured home park lot.

In aid of these rights, the tenant is afforded a non-waivable implied warranty of habitability. Real Property Law §§ 235-b and 233(m). In *Park West Mgt. v. Mitchell*, 47 N.Y.2d 316 (1979), the Court of Appeals explained the warranty is needed to protect tenants and to provide a basis for compelling landlords to make repairs. A lease, said the Court, is a sale of shelter and services by a landlord who implicitly warrants that the premises is fit for human habitation, that the condition of the premises is in accord with the parties' intended use of the property, and that the tenants are not subject to any conditions endangering or detrimental to their lives, safety, or health. *Id.* at 325. If the warranty is breached the tenant may withhold rent; the lease is not terminated by the withholding and no retaliatory conduct can be undertaken. In the view of some commentators, non-payment of rent is the only meaningful way to enforce the warranty of habitability, and eliminating rent withholding is against public policy. 49 McKinney *Real Property Law*, deWinter & Loeb, *Practice Commentaries § 235-b* at 351-52 (2006).

As part of the tenant's legal response to a petition for eviction, he or she may

seek a reduction in the rent due for the contested period if the residence was affected by the condition of the premises. The tenant can also raise the impact of eviction on government rent subsidies and on the ownership interest he or she may have in a trailer that is in a park lot but is immovable and therefore lost upon eviction. According to the testimony given at hearings dealing with Town and Village Courts held in December, 2006, by the New York Assembly Standing Committees on Judiciary and Codes, the town and village justices are largely unaware of these defenses and protections and of the need to hold hearings to make fact findings.

Further, the testimony about the forms used for pleading in the proceedings as well as a sample of the forms used in at least some jurisdictions, show that the forms are difficult for a lay person to understand. For example, the notice of petition to recover real property tells the *pro se* tenant to “take notice that your answer may set forth any defense or counterclaim you may have against the petitioner” and to “take notice also that if you shall fail at such time to interpose and establish any defense that you may have to the allegations in the petition, you may be precluded from asserting such defenses or the claim on which it is based in any other action or procedure.”

It cannot be assumed that *pro se* defendants about to be evicted are likely to understand what are defenses and counterclaims to the petition and how to express them. The form leaves unclear whether the tenant must relate information in writing or orally and when that must be done.

The seriousness of eviction cases is self-evident. Not only are the tenant and his or her family affected by a breach of the warranty of habitability or by local code violations that, alone or in combination, constitute a breach of warranty or justify rent abatement, but also the larger community is distressed by the failure to maintain rental

premises and low income families rotate in and out of defective housing stock with emergency housing becoming the default residence.

The Commission on Judicial Conduct has issued several decisions which underscore the need for expertise in these cases. *In Matter of Ellis*, 2008 Annual Report ___ (July 24, 2007 Comm. on Jud. Conduct), the justice, based on *ex parte* communications, first issued a notice terminating a non-existent tenancy, then issued a warrant of eviction before giving the tenant an opportunity to get a lawyer, and then issued a summons to the tenant to pay rent and taxes. The Commission noted that the justice was biased against the tenant and used a religious epithet against him. Only the intervention of a lawyer prevented a summary eviction. The justice, who began sitting in 1990, explained that he had never handled a case involving evictions or installment land contracts and was unfamiliar with the proceedings.

In Matter of Merrill, 1999 Annual Report 109 (Comm. on Jud. Conduct), the justice assisted the landowner in encouraging the tenant to leave the property, and then presided over the eviction proceeding when it came into the court system. *See also In Matter of Holmes*, 1998 Annual Report 139 (Comm. on Jud. Conduct) (judge issued a warrant of eviction based on an *ex parte* communication); *In Matter of Little*, 1988 Annual Report 191 (Comm. on Jud. Conduct) (warrant of eviction issued without hearing and judgment).

The recommendation of the Task Force has three aspects: (1) the use of pleadings that will reveal the circumstances underlying a given dispute, (2) thereby enabling a well trained justice, whether or not a lawyer, to identify pertinent issues and, depending on the issues, (3) to refer the case to a lawyer justice or judge for resolution. This fits neatly into the existing statutory plan which already includes concurrent

jurisdiction. RPAPL § 701.

G. DISCUSSION OF RECOMMENDATION 6.

RECOMMENDATION 6.

The Task Force recommends that there be further study of civil cases within the jurisdiction of the Town and Village Courts to determine whether any additional civil matters present the types of issues that should be heard by lawyer justices or judges, whether there is additional need for plain language forms, and whether intensive training is needed on any specific areas of procedural or substantive law.

In the course of its study of Town and Village Courts, the Task Force learned little about how civil cases pending before those courts are processed. It is unknown to the Task Force whether there are issues in connection with civil cases that should be heard by lawyer justices, whether the use of plain language pleadings should be encouraged, or whether additional training is needed by justices in any specific areas of law. Accordingly, the Task Force urges continued efforts to learn about these cases.

H. DISCUSSION OF RECOMMENDATIONS 7 and 8.

RECOMMENDATION 7.

The Task Force recommends that each town examine and determine whether consolidation of town courts would be beneficial to the town and the town court and, where appropriate, pursue consolidation pursuant to Session Laws of 2007, Chapter 237 (amending Uniform Justice Court Act § 106-a).

RECOMMENDATION 8.

The Task Force recommends that villages examine and determine whether abolition of the office of village justice would benefit the village and the village court and, where appropriate, initiate local legislation pursuant to Village Law 3-301(2)(a), or, if an inconsistent charter provision pre-exists in the Village Law, seek state legislation pursuant to Article 17(b) of the New York Constitution.⁷

The law has long allowed the reduction of the number of town courts by their

⁷ See 1977 N.Y. Op. Att. Gen. (Inf.) 191; *Goldowitz v. Karnes*. 260 App. Div. 110 (2d Dept. 1940).

merger and the abolition of village judgeships so village courts merge with town courts having concurrent jurisdiction. The Task Force recommends consideration and implementation of consolidation (1) to reduce the number of needed justices, making it more likely that lawyers will be available to fill the judgeships at enhanced compensation; (2) to make possible the hiring of trained and fairly compensated non-judicial personnel who undertake record-keeping, court management, and fiscal responsibilities; (3) to reduce the cost of physical plant, security, and technology; and (4) to help the government agencies and institutional defenders that participate in court proceedings to maintain proper staffing of the courts.

1. Moving to Consolidation

In the last year there has been increasing interest in merging and consolidating the services of towns and villages as well as their courts largely for the purpose of saving money. The availability of funds from the State through the Shared Municipal Services awards for studying consolidation⁸ and of guidance about the feasibility of government agency mergers,⁹ has resulted in merger efforts of local government agencies throughout the State. In April 2007, the Governor established the 15-member Commission on Local Government Efficiency and Competitiveness. The Commission is supported by the Departments of State and Education, and the Comptroller, among others, and its purpose is to explore issues of government merger, consolidation, regionalization, and shared services. The Commission will issue its report by April 15,

⁸ *Financial Report on Villages* at 5 (Office of the State Comptroller, 2006).

⁹ *Intermunicipal Cooperation and Consolidation* (Office of the State Comptroller, 2003). There are 2,300 local governments in New York State, including counties, towns, villages and school districts. *Id.* at 1. The total number of government agencies providing services is obviously substantially greater.

2008. In an early publication on local initiatives by counties, the Commission reported that Justice Court merger or consolidation is being considered by government officials in eight counties: Broome, Chemung, Franklin, Genesee, Jefferson, Schuyler, St. Lawrence, and Tompkins. http://www.nyslocalgov.org/local_initiatives_type.asp#justice.

In October 2006, Chautauqua County was reported to be considering how to merge its 27 towns, 15 villages and two cities. The Village of Windsor was reported to be considering dissolution. In December, 2006, the Village of Johnson City was reported having prepared a petition to dissolve into the Town of Union; the Village of Medina abolished its court and considered a merger with the newly consolidated Town Courts of Shelby and Ridgeway; the Town of Southeast asked the Village of Brewster to study the consolidation of services; the Village of Baldwinsville was studying a merger with the Towns of Lysander and Van Buren. The Village of Allegany was studying merger with the Town of Allegany. (Information from Beckman & Seachrist.com/blog.) In January, 2007, the Village of Cato dissolved its court. In Orleans, two Village Courts, Albion and Medina, were taken over by the town courts. On September 8, 2007, the *Press Republican* of Plattsburgh reported that the Town and Village of Malone hoped to merge their courts. See *Buffalo News*, September 28, 2007 opinion editorial supporting consolidation of government services to reduce costs. On the other hand, one village, Monroe, reinstated its Village Court after a dispute with the town.

In July, 2007, the Legislature and the Governor enacted legislation to make it possible for more than two towns to consolidate their courts. 2007 Sess. Laws ch. 237. UJCA 106-a was amended to allow the town boards of two or more (rather than just two) towns that form a contiguous geographic area within the same county to establish a single Town Court with justices to be elected from each of the towns. The impact of

the statute is to allow a greater reduction in the number of courts than was possible under the previous statute.

Village Law 3-301(2)(a) already authorized the village electors to abolish a village judgeship which would result in a transfer of cases to the town court of the town in which the village sits.

2. Impact of the Action Plan.

The Action Plan's concern with the poor conditions of locations used as courtrooms for the Justice Courts (which include garages, firehouses and buildings with other government departments) and with the costs of proper security, including security personnel (*see supra* at 16) for the courts, has made towns and villages aware of the expense required to put their court facilities in good repair with appropriate security devices. Maintaining the huge number of courts presently in existence is wasteful of both State and local government resources.

Under the Action Plan, town and village courts are to be given new technology and the training to use that equipment. This includes equipment for recording and preserving court proceedings and testimony. The cost of these advances will be wasted if the courts given the technology are themselves not needed or if the equipment supplied is not fully used.

Further, under the Action Plan, an expanded and more intense training program for lay judges will be created. The costs of training include the reimbursement to the justices of the costs of attending the programs as well as payment for the lecturers and their physical sites. These costs are likely to be reduced if there is consolidation and a reduction in the number of justices.

Finally, if the Resource Center is to be effective in helping the justices it should

be restructured. The Task Force Recommendations Relating to Assisting Town and Village Justices elaborates on this issue and makes extensive suggestions. It is a costly endeavor. Consolidation of courts is likely to reduce these costs.

3. The Influence of the Comptroller.

The New York State Comptroller has urged consolidation of Town Courts and the merger of village court jurisdiction into that of Town Courts. The Comptroller has a constitutional and statutory role in the oversight of the financial operations of the Town and Village Courts. He conducts audits, provides information and technical assistance on record-keeping and fiscal duties of the justices and non-judicial personnel, and, through the Justice Court Fund, collects fees, fines, surcharges and other revenue from the courts.

In 2003, the Comptroller wrote of the courts that were the subject of a study exploring ways to save money:

We estimate that local governments save about \$126,000 annually, if operations in these 11 courts were consolidated. In some cases savings would occur if the number of justices were reduced from two to one. In other cases, savings would result if village courts were eliminated and their operations consolidated into town courts.

Comptroller's November 2003 Report at 6.

In a 2005 Comptroller's report, where the concern was with internal monitoring of records and loss of funds as well as accounting errors by the justices, it is stated:

Another option would be to combine Courts to create fewer, larger Courts. For example, Village courts could be combined with Town Courts, or Courts with minimal activity could be combined with Courts of neighboring localities. This option can be used now at the local level, and as we noted in an earlier audit, such consolidations also can reduce operating expenses. For example, if all Courts with annual revenues of less than \$20,000 were combined to form larger Courts, 310 very small Courts could be

eliminated. Larger Courts could implement more segregation of duties, and reducing the number of smaller courts would allow for more effective State oversight. Although there are service implications to such changes, there also are ways to mitigate these issues. For example, typically, there is a “Court night” that occurs one night each week in a town. Combined Courts could alternate the location of the court nights between Towns to maintain the advantages of having the local Court System.

Justice Courts Accountability Report at 19. See also Office of the State Comptroller, *Financial Report on Villages* at 5 (2006).

At the December, 2006 State Assembly hearings on Town and Village Courts, the Comptroller stated that audits of the Town and Village Courts had uncovered fiscal mismanagement. The problems noted by the Comptroller’s statement included inadequate internal controls over performance of duties, a lack of oversight, and poorly trained staff. The Comptroller reported in a written submission that many of the problems occurred because the operations of many of the courts were small and there were too few staff to segregate duties and allow internal monitoring, and because training of staff was inadequate. The Comptroller recommended systemic reforms in the “large and decentralized justice court system,” including the assignment of a court clerk to each court, the sharing of resources including technology, improved local municipality oversight, and training for both judicial and non-judicial personnel. Significantly, the Comptroller recommended continuing consideration of consolidation and dissolution of smaller courts. The Comptroller concluded “It is time to examine ways of facilitating consolidation and shared resources for local governments [which] chose to take this step with their courts. ...Triggers could be put in place to require consolidation review when the size or activity of a particular justice court falls below certain thresholds.” (Quotes from the Comptroller’s Submission to the Assembly.)

4. Litigants Before the Courts

The need for consolidation is apparent from the responses to Task Force questionnaires and interviews with district attorneys and defense counsel. As noted above, the courts set their schedules for daytime or evenings and some begin the sessions at 6:00 p.m. or later. Many defense attorneys supported consolidation of town courts and merger of town and village courts. Some did not because they believed their clients would have problems getting to court due to the lack of public transportation. Others countered that driving to court is not unlike driving to other service providers.

Prosecutors largely supported consolidation of courts. They explained that an assistant district attorney does not appear in a Town or Village Court on each regularly scheduled session. Rather an assistant appears once a week or once a month on a specific schedule. Some reported that there are not enough assistants to cover all the courts that are in session at the same time. This problem is exacerbated in those counties with long distances between courts. In some counties, assistants appear by telephone. Whether there are enough prosecutors available is a function of the county budget, which funds district attorney's offices.

Prosecutors' reasons for supporting consolidation and merger have been expressed as:

"Consolidation would probably be helpful. Maybe a single justice court within the county which could be utilized for all trials would be helpful."

* * *

[The present system results in] "Lost resources due to travel time and [the] costs of travel and down time"

* * *

"Too many courts, to few prosecutors, This can be especially problematic when trying to meet time deadlines for preliminary hearings....Frequent ex

parte communications which are exacerbated by the number of courts verses the staffing levels in prosecutors officers.

* * *

“Cannot eliminate non-lawyers unless use a district court system. Prosecutor cannot cover all the courts, especially with taking over VTLs and increase in indictments.”

* * *

The number of courts results in an “inefficient use of government resources (i.e. transportation of prisoners, traveling of ADA, PD, Defense Bar, witnesses to several different courts).”

* * *

“With the current case load, the system does not work. The prosecutors cannot cover all the courts, especially the traffic courts, which as noted required 60 court appearances a month.”

* * *

“Consolidation would make both personnel coverage and so-called ‘man hours’ spent and travel expenses be much more manageable.”

The cost saving and efficiency features of a reduced number of courts are not new to the discussion. In 1996, the County Executive of Rockland County appointed a District Court Committee, chaired by the now Rockland County District Attorney, to study the impact of a change from 22 Town and Village Courts to a District Court system. After extensive research, the Final Report of the Committee concluded that the District Court system would allow faster processing of cases, less travel time for participants in the proceedings, faster trials, more efficient use of attorney and law enforcement time, and law secretaries for the judges. The Report estimated that the community would save \$600,000 a year, with all personnel costs paid by the State. The estimated savings to the sheriff’s office would be \$140,000 due to reduced transport of prisoners, and elimination of security duties in the courtroom. Even if consolidation of courts would not save as much as a District Court system, the opinion of the experts is

that there would be substantial savings and greater efficiency if consolidation and merger were to be implemented.

5. The Social Service Function.

An interview with the State Commissioner of Probation and Correctional Alternatives disclosed that the multitude of courts prevents programs providing alternatives to incarceration or in lieu of bail from bringing services to many people. The unavailability of program staff, like OASAS,¹⁰ to cover the many courts prevents immediate assessments for drug and alcohol use and mental health issues. This is particularly disadvantageous to litigants, as it is generally understood that information obtained close to the time of arrest is most accurate and affects the possibility of probation.

6. Conclusion.

While the primary purpose of consolidation and merger of Town and Village Courts may be financial savings for municipalities and taxpayers, consolidation and merger can also improve how the Town and Village Courts administer justice and conduct their business. It is likely that the consolidation of courts will reduce the number of justices needed. In that circumstance, the small pool of lawyers who are available and willing to be judges in some counties will be more adequate to supplying the number of judges needed. Further, it is likely that as one merged court absorbs the work of several courts, the smaller number of justices will actually be employed full time with fair and higher compensation. This may make the limitations on law practice (see *supra* at 25) irrelevant for many lawyers seeking judicial office, and likely encourage

¹⁰ New York State Office of Alcoholism and Substance Abuse Services under the Mental Health Law.

more to do so.

I. DISCUSSION OF RECOMMENDATION 9.

The Task Force recommends that every Town and Village Court have a court clerk who is trained to prepare the records and documents and satisfy the financial reporting and safeguarding of funds as required by the applicable statutes and regulations. The clerks should be full time employees of the courts and be fairly compensated. Courts may combine resources to retain a shared court clerk if the work of a single court does not warrant a full time clerk. The clerks should be supervised by a State-compensated employee who is also available to provide assistance to the court clerks.

The administrative responsibilities, fiscal obligations and requirements for reporting and for the safekeeping of funds imposed upon town and village justices and the non-judicial personnel of those courts are set out in publications of the State Comptroller as well as the statutes and rules of court. *See generally Handbook*; Justice Courts Accountability Report; see supra at 22. These obligations are time consuming, complicated, and difficult. See, e.g., Office of the State Comptroller, *Town of Cherry Creek Justice Court Report of Examination, 2007M-12 at 7-9 (2007)*, available at www.osc.state.ny.us/localgov/audits/2007/towns/cherrycr.pdf.

In various audits, the Comptroller has found monitoring, internal controls, timely and accurate record-keeping, and the safeguarding of revenue and incoming funds to be defective. In Task Force interviews, prosecutors have stated that poor record-keeping of the Justice Courts often affects their ability to obtain court records, including records of disposition of cases. They reported that often there are no court calendars so that the cases on for proceedings are not identified, and that fingerprints had not been sent to DCJS to update NYSID sheets for bail applications. Another reported that the records are sometimes inaccurate, showing, for example, a conviction for the wrong crime.

It is apparent that no part-time justice can fulfill their heavy responsibilities

without assistance from a well trained, dedicated court clerk. Further, under the Comptroller's standard, the work of the clerk and the justice must be monitored either internally or by an outside expert, and many of the courts are too small for internal control staffs.

The defects in record-keeping, safekeeping of money, and internal monitoring of non-judicial personnel are also reported in decisions of the Commission on Judicial Conduct. See *In Matter of Cavotta*, 2008 Annual Report ____ (July 19, 2007 Comm. on Jud. Conduct) (money not deposited and some not traceable because of missing records); *In Matter of K. Lockwood*, 2007 Annual Report ____ (Nov. 7, 2006 Comm. on Jud. Conduct) (failure to report and timely remit funds); *In Matter of Harris*, 2007 Annual Report ____ (May 1, 2006 Comm. on Jud. Conduct) (failure to deposit money timely, remit funds to the Comptroller, distribute restitution, and keep dockets in small claims and civil cases); *In Matter of Alton*, 2005 Annual Report 88 (Comm. on Jud. Conduct) (failure to deposit funds timely, failure to report dispositions to the DMV, failure to maintain a passbook); *In Matter of Gregory*, 2000 Annual Report 109 (Comm. on Jud. Conduct) (records in disarray).

Accordingly, the Task Force recommends, as the Action Report discussed at 6, 49-50, a trained clerk for every court. The recommendation also includes a state-paid supervisor to monitor the courts' internal activities and to give assistance as needed. The assistance should be provided not only for records required by the Comptroller but also for those requested by OCA, DMV/TSLED, DCJS, and the court system. The oversight of a state-paid supervisor will not only enhance record-keeping, but also will help in maintaining judicial independence from the town and village boards that pay clerks' compensation.

The recommendation also seeks fair compensation for the court clerks. The Task Force questionnaire revealed a large variation in compensation (*see supra* at 29), including benefits paid by the municipalities. The importance of clerks to the operation of the courts warrants their fair compensation.

J. DISCUSSION OF RECOMMENDATION 10.

The Task Force recommends that in planning for consolidation of Town Courts, the elimination of the position of village justice, or the transfer of misdemeanor cases from the Town and Village Courts when there is no available lawyer justice, the Office of the State Comptroller reevaluate the allocation of the revenues of the Town and Village Courts so that legislation can provide to municipalities an appropriate share of the courts' revenues.

As noted earlier (*see supra* at 15), the funds collected by the Justice Courts go to the Comptroller or the local Chief Financial Officer for distribution to the State, the county, and the municipalities. Statutes designate the recipients of the revenues received by the courts. *See, e.g.*, PL § 60.35; VTL § 1803; Environmental Protection Law §§ 71-0211(1), 71-0507; UJCA §§ 2020; 2021; State Finance Law § 99-a. The municipalities receive a large portion of the money taken in by their Town and Village Courts.

There may be some adverse affect on the municipalities' income as a result of the recommendations; on the other hand, consolidation and payment by State funds of some of the costs of the Justice Courts may result in lower expenses for municipalities. The recommendation of the Task Force is that, in the course of examining a change in structure, the expertise of the Office of the State Comptroller be used to determine a fair distribution of funds to municipalities. Office of the State Comptroller, *Intermunicipal Cooperation and Consolidation* at 10-11 (2003) (www.osc.state.ny.us/localgov/pubs/research/cooperation1.pdf).

K. CONCLUSION.

The recommendations of this and the prior Task Force reports are designed to increase the likelihood that lawyers will become town and village justices, while respecting the professed desire of communities to have local courts that are close to the citizens and understand their interests. The recommendations provide a way to enable more justices to be lawyers by reducing the number of justices. By enhancing the conditions under which the justices do their work, including benefits, compensation, facilities, and support, it is likely that more attorneys will become interested in being justices and run for office. As consolidation takes place, it is likely that part-time justices will in fact become full-time justices by serving on a merged court, so that lawyers interested in becoming judges would no longer need to maintain law practices with the limitations imposed by law and regulation. These recommendations thus would move forward the process of having a higher percentage of justices be lawyers, while maintaining respectful deference for communities' expectations and for litigants in the Town and Village Courts.

Task Force on Town and Village Courts

October 30, 2007

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The Task Force thanks the following advisers for their valuable assistance (the advisers took no position on the final report):

Lawrence K. Marks, Administrative Director, Office of Court Administration
Paul Toomey, Supervising Counsel, Court Resource Center
David O. Fuller, Jr., President, New York State Magistrates Association

**SCHEDULE OF COURT SESSIONS
IN THE 28 TOWN AND VILLAGE COURTS OF ONE COUNTY**

JANUARY 2006

SESSIONS			
Every Tuesday at 3:00 Every Wednesday at 3:00	Every Wednesday at 6:00 PM	Every Tuesday at 7:00 PM	2 nd and 4 th Tuesday at 5:30 PM
	Every Tuesday at 7:00 PM	Every Wednesday at 6:00 PM	Every Tuesday at 6:00 PM
1 st 4 Thursdays at 6:00 PM	Every Wednesday at 7:30 PM	Every Thursday at 5:00 PM 3:30 for Attorneys	DA Court held 1 st Tuesday 5:00 – 6:00 PM
1 st 4 Tuesdays at 6:00 P.M.	Every Tuesday at 6:30 PM	2 nd and 4 th Wednesdays at 7:00 PM	Every Tuesday at 4:30 PM
Every Tuesday at 7:30 PM Every Thursday at 5:00 PM	Every Thursday at 6:30 PM	1 st and 3 rd Wednesdays at 7:00 PM	1 st Three Thursdays of each month at 7:30 PM
		1 st and 3 rd Monday at 6:00 PM	1 st and 3 rd Wednesday at 6:30 PM
Every Tuesday at 7:00 PM ** No courts during 5 th weeks Every Wednesday at 7:00 PM	1 st and 3 rd Tuesday at 6:30 PM	3 rd and 4 th Tuesday at 7:00 PM	Every Monday at 6:00 PM
	2 nd and 4 th Tuesday at 6:30 PM	1 st and 2 nd Tuesday at 7:00 PM	
Every Monday at 5:00 PM	Alternate Wednesdays at 6:00 PM	Every Monday at 7:00 P.M.	1 st , 2 nd & 4 th Thursday at 5:30 PM
	Alternate Wednesdays at 6:00 PM	Every Wednesday at 2:00 & 7:00 PM	
1 st 4 Thursdays at 7:00 PM		Every Wednesday at 6:00 P.M. In absence of Judge H	
Alternate Mondays at 5:30 PM	1 st and 3 rd Tuesdays at 5:00 PM	Every Tuesday at 4:00 PM	

NEW YORK CITY BAR ASSOCIATION
TASK FORCE ON TOWN AND VILLAGE COURTS
FULL SET OF RECOMMENDATIONS

Structure and Organization

RECOMMENDATION 1

The Task Force recommends that the Criminal Procedure Law be amended to require that the justices of the Town and Village Courts who preside over pretrial suppression hearings and jury trials in criminal cases be lawyers and, to meet this requirement, that pretrial suppression hearings and jury trials be transferred to justices who are lawyers or to judges.

The Task Force further recommends that the Criminal Procedure Law be amended to require that in all other cases in which the crimes charged are A, B, or unclassified misdemeanors and the presiding town or village justice is not a lawyer, on request of a party, the case be transferred to a justice who is a lawyer or to a judge.

RECOMMENDATION 2

The Task Force recommends that newly amended Uniform Justice Court Act § 106 (Session Laws 2007 Chapter 321), and rules promulgated pursuant to that section, be applied to facilitate the transfer of cases from town and village lay justices to town and village lawyer justices or judges in order to effectuate Recommendation 1.

RECOMMENDATION 3

The Task Force recommends that the Office of Court Administration issue plain language forms for pleading in summary proceedings for eviction that are comprehensible to the litigants and require disclosure in the eviction petition of special circumstances, including the presence of an immovable mobile home, building code violations, government rent subsidies, and possible violations of the warranty of habitability.

RECOMMENDATION 4

The Task Force recommends that town and village justices be provided with intensive training on procedural and substantive law applicable to summary proceeding eviction cases.

RECOMMENDATION 5

The Task Force recommends that summary proceedings in eviction cases be decided by lawyer justices or judges when the respondent is *pro se* and when, on review of the plain language pleadings, there is disclosed the presence of (1) an immovable mobile home, (2) disrepair of the premises raising a question as to whether there is a violation of the warranty of habitability, (3) pending building code violations, or (4) government rent subsidies.

RECOMMENDATION 6

The Task Force recommends that there be further study of civil cases within the jurisdiction of Town and Village Courts to determine whether any additional civil matters present the types of issues that should be heard by lawyer justices or judges, whether there is additional need for plain language forms, and whether intensive training is needed on any specific areas of procedural or substantive law.

RECOMMENDATION 7

The Task Force recommends that each town examine and determine whether consolidation of Town Courts would be beneficial to the town and the Town Court and, where appropriate, pursue consolidation pursuant to Session Laws of 2007, Chapter 237 (amending Uniform Justice Court Act § 106-a).

RECOMMENDATION 8

The Task Force recommends that each village examine and determine whether abolition of the office of village justice would benefit the village and the Village Court and, where appropriate, initiate local legislation pursuant to Village Law § 3-301(2)(a), or, if an inconsistent charter provision pre-exists the Village Law, seek state legislation pursuant to Article 17(b) of the New York Constitution.

RECOMMENDATION 9

The Task Force recommends that every Town and Village Court have a court clerk who is trained to prepare the records and documents and satisfy the financial reporting and safeguarding of funds requirements of the applicable statutes and regulations. The clerks should be full time employees of the courts and be fairly compensated. Courts may combine resources to retain a shared court clerk if the work of a single court does not warrant a full time clerk. The clerks should be supervised by a State-compensated employee who also is available to provide assistance to the court clerks.

RECOMMENDATION 10

The Task Force recommends that in planning for consolidation of Town Courts, the elimination of the position of village justice, or the transfer of misdemeanor cases from the Town and Village Courts when there is no available lawyer justice, the Office of State Comptroller reevaluate the allocation of the revenues of the Town and Village Courts so that legislation can provide to municipalities an appropriate share of the courts' revenues.

Technology

RECOMMENDATION 1

The Task Force recommends that proceedings in every case be recorded by court reporters using current technology or by digital recording in lieu of a court reporter present in the courtroom. Measures, including locating and retaining court reporters, should be taken immediately in order to begin the recording in courts with no present system for recording or in which tape recorders are currently used.

RECOMMENDATION 2

The Task Force recommends that justices and their court clerks be given access to computers with accompanying uniform and appropriate software for case management, fiscal record keeping, and financial reporting. Further, training in the use of the software should be mandatory with monitoring and assistance available to aid the success of the training.

RECOMMENDATION 3

The Task Force recommends that Justices each be given computer access for training, research, conferencing with other judges, and writing opinions and orders.

RECOMMENDATION 4

The Task Force recommends the study and consideration of video conferencing for designated court proceedings to avoid delays when the lawyer cannot appear in person or the defendant cannot be transported from a county or local detention facility.

RECOMMENDATION 5

The Task Force supports the expanded use of E-Mail to simplify communications between Justice Courts and everyone else.

RECOMMENDATION 6

Computers for both the justice and the clerk should be provided.

Training

RECOMMENDATION 1

The Task Force recommends that the New York City Bar Association, working with other bar associations and entities as appropriate, establish a committee to identify volunteer lawyers to work with the New York State Judicial Institute to prepare and present courses of study for basic and advanced programs for Town and Village Justices.

RECOMMENDATION 2

The Task Force recommends that the New York State Judicial Institute establish a collaborative program for Town and Village Justices and the clerks of the courts with the Office of Court Administration, Office of the State Comptroller, The Division of Criminal Justice Services and other agencies for training on court administration and fiscal responsibility and accountability.

RECOMMENDATION 3

The Task Force recommends that the members of any advisory committee established to plan and monitor the training programs for the town and village justices be manifestly neutral in their positions with respect to the issues that come before the Town and Village Courts; alternatively, the membership of the Committee should reflect the perspectives of all the litigants before those courts, and not, as proposed, only governmental or prosecutorial interests.

Legal and Administrative Assistance

RECOMMENDATION 1

The Task Force recommends that the State, through the Office of Court Administration, fully fund a sufficiently large staff of lawyers (the Resource Center):

to respond promptly to town and village justices' inquiries about the law and the governing rules of judicial conduct;

to provide assistance for the evening and night-court sessions held in most Town and Village Courts, as well as for night-time arraignments and bail decisions; and

to prepare and distribute regularly updates to relevant laws, regulations, and new case law.

RECOMMENDATION 2

The Task Force recommends that the State, through the Office of Court Administration, fund a staff knowledgeable in court and fiscal management to assist the justices in carrying out their responsibilities as record keepers, finance officers, and administrators of their courts.

RECOMMENDATION 3

The Task Force recommends that The New York City Bar Association, working with other bar associations and entities as appropriate, identify lawyers who are qualified to assist in answering questions about the law and prepare a list of those who, until the Center is fully staffed, would be available to answer inquiries from Center lawyers that originate with the Town and Village Justices. The names of the lawyers contacted and other information would be disclosed as required by the relevant Ethics Canon to the parties in the cases in which the information is used.

RECOMMENDATION 4

The Task Force recommends that OCA undertake a project of statewide publicity about the Center, encouraging the justices to call the Center for assistance, while emphasizing that the decisions made remain the responsibility of the justices.

RECOMMENDATION 5

The Task Force recommends the establishment of regional offices, especially in areas where the justices are not lawyers; on-site assistance when dealing with difficult cases or issues; small group training sessions; and other face-to-face contacts between Center staff and the justices and court clerks.

RECOMMENDATION 6

The Task Force recommends that the Center continue its work even if all the town and village justices are required to be lawyers because town and village justices, like judges of other courts, need such assistance.