Action Plan *for the* Justice Courts

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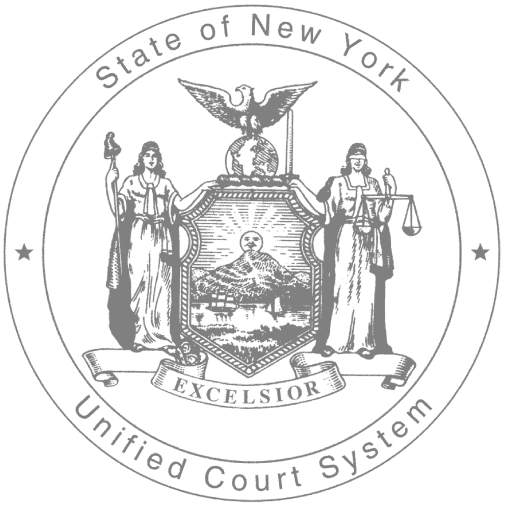

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PREFACE

ENSURING EQUAL JUSTICE IN NEW YORK'S TOWN AND VILLAGE JUSTICE COURTS IS A TREMENDOUS CHALLENGE. These courts are the face of justice for a great many New Yorkers: over three-quarters of New York's trial courts are Justice Courts, and they hear roughly 2 million cases each year. Their jurisdiction is broad, ranging from landlord-tenant and small claims cases to trying misdemeanor and lesser offenses and arraigning the most serious criminal charges. Yet the large majority of the nearly 2,000 judges who preside in these courts are not lawyers, and the Justice Courts are locally financed and operated, often without the resources and administrative support that New York's other courts – financed and administered by the State – take for granted.

This Action Plan seeks to provide the Justice Courts with more of the resources and support they need to meet their heavy responsibilities. The Plan represents nothing less than a milestone in the long history of New York's Justice Courts, heralding a much closer partnership with the State Judiciary that will better ensure the high standard of justice in every case and every court that New Yorkers deserve. The Action Plan announces dozens of new initiatives and programs falling across four broad areas: court operations and administration; auditing and financial control; education and training; and facility security and public protection.

We extend our gratitude to Lawrence K. Marks, Administrative Director of the Office of Court Administration, and Ronald P. Younkins, OCA's Chief of Operations, who over the last six months oversaw a top-to-bottom assessment of the Justice Court system and directed the development of this Action Plan. They were ably assisted by David Evan Markus of OCA's Counsel's Office, and by an advisory group comprised of the leadership of the New York State Magistrates Association, local court administrators, OCA officials and other experts on the town and village courts. The Action Plan would not have been possible without the collaboration of the advisory group, the Office of the State Comptroller and other allied state and local officials across New York's justice community.

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EXECUTIVE SUMMARY

IN NEW YORK'S VAST CONSTELLATION OF COURTS, TOWN AND VILLAGE JUSTICE COURTS ARE THE MOST UBIQUITOUS STARS. By sheer numbers, the 1,277 Justice Courts located in most of New York's towns and villages and the nearly 2,200 town and village judgeships established by law constitute the overwhelming majority of New York's courts and judges. Historically, the Justice Courts trace back to New York's oldest tribunals, predating by a century New York's first Constitution of 1777 and, by nearly three centuries, predating the creation of a Unified Court System in 1962. In practice, New Yorkers rely heavily on their Justice Courts, whose civil and criminal jurisdiction brings to their doors two million cases each year and countless thousands of New Yorkers who otherwise have no contact with the justice system. State and local budgets also rely heavily on Justice Courts: like other trial courts, Justice Courts collect statutory fines, fees and surcharges to help fund essential public services, and in the last fiscal year alone, the Justice Courts collected over $210 million on behalf of the State and its localities.

Constitutionally, the Justice Courts are a part of the Unified Court System. In many key respects, however, they are unique. Of New York State's 11 distinct trial courts, only the town and village Justice Courts are funded and administered by the sponsoring localities rather than the State, and thus operate without the comprehensive oversight of the New York State Judiciary and Office of Court Administration ("OCA") which supervise the operation and administration of the State-paid trial courts. Owing in large part to this local independence, Justice Courts also are New York's most administratively diverse courts. Some Justice Courts — typically those located in large, suburban communities with correspondingly larger dockets — convene frequently, employ full-time and relatively large professional staff, occupy multi-courtroom facilities protected by modern security measures, and use advanced case-processing technologies to manage court dockets and finances. Other Justice Courts — typically those located in the smallest and most rural communities — meet no more than once or twice per month, employ no full-time staff, have no dedicated facilities or security, and use little or no case-management technologies. Justice Courts also are distinctive in many other ways: they are the only courts for which the locality, rather than the State, bears primary responsibility for financial control; and their justices are New York's only judges who need not be lawyers.

Despite these differences, however, the roles that Justice Courts serve and the cases they hear are virtually indistinguishable from the State-paid trial courts and their dockets. Justice Courts enjoy the same criminal jurisdiction as the New York City Criminal Court, the City Courts outside New York City and the District Courts on Long Island. As such, Justice Courts arraign the most serious felonies and routinely try misdemeanors, traffic infractions and other violations. This broad criminal jurisdiction demands that Justice Courts not only do justice in their individual cases, but also interact effectively with New York's complex web of State, county and local justice agencies — in turn imposing on Justice Courts a wide range of responsibilities that include securing defendants at local or county jails, assigning counsel to indigent defendants, reporting

case dispositions to the State, and properly managing revenues collected. In addition to their criminal jurisdiction, Justice Courts also have jurisdiction over civil actions where the amount in controversy does not exceed $3,000 exclusive of interest and costs, and may grant orders of protection and other relief in sensitive disputes that might be adjudicated in Family Court. Whether a particular case is civil or criminal in nature, Justice Courts must be prepared to select juries, admit evidence and conduct trials, and Justice Court orders are appealable in like fashion as orders from State-paid trial courts.

Because Justice Courts play such a pivotal role in New York's justice system, they must pursue the same, Statewide standard of justice that New Yorkers expect and deserve in every case and in every other court. Doubtless for many thousands of New Yorkers who come before Justice Courts each year, the particular level of government responsible for a particular Justice Court's funding and operation is both unknown and irrelevant: litigants want cases decided fairly and timely, rarely giving thought to the arcanum of Justice Court administration. New Yorkers who ponder such matters would find, however, that Justice Courts' complex web of relationships — with the locality, county and State agencies, and with OCA and the State Comptroller's Office — balkanize across the public sector responsibility for Justice Court operations. This condition, coupled with current law's longstanding commitment to each Justice Court's operational autonomy, often renders impracticable many of the traditional tools of public management and court administration that seek to routinize operations and procedures to enhance cost-effective justice. The result is that each locality's Justice Court is operationally independent and subject to the sponsoring locality's distinct policies and politics, even as the State relies on its Justice Courts — both individually and as a system — to apply and enforce a uniform body of State law.

The challenge of comporting these realities with the single, Statewide standard of justice New Yorkers expect and deserve prompted Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman to announce in June 2006 that OCA would comprehensively review all aspects of New York State's Justice Court system, and that OCA would assemble an advisory group, whose members include the leadership of the New York State Magistrates Association and local court administrators, to assist in this task. While this top-to-bottom assessment of Justice Court operations is, in many respects, the same kind of assessment the Judiciary regularly performs on all other aspects of court operations and justice policy, the historical, fiscal and operational independence of Justice Courts makes the task particularly complex.

The deeply-rooted independence of each Justice Court, an independence that the Constitution entrusts to the discretion of the Legislature and local governments themselves, forms the foundation on which this Action Plan is built. Given this historical independence, the most practical approach is to identify ways to improve the effectiveness and efficiency of Justice Court operations within their existing legal framework, and to assist these improvements by the means this framework allows. This pragmatic approach is the same one the Judiciary takes with the nine State-paid trial courts that the Constitution and State law directly entrust to OCA's management, an approach that requires periodic and transparent review and reform of all courts, at every level and in every part of the State. One key benefit of this approach — and perhaps the one that matters most — is that almost all the initiatives in this Action Plan can be implemented

speedily, in ways that litigants, localities and other Justice Court stakeholders promptly will find helpful.

The need to reform the Justice Courts does not reflect on any individual Justice Court or any particular justice or court employee. The evidence is that most town and village justices and court clerks perform their duties admirably and well. Their professionalism, diligence and dedication are apparent, they take seriously their judicial roles and their duties to continually improve their knowledge of the law. Over the years exceptions to these principles have been relatively few in number. Likewise, relatively infrequently has the operation of individual courts, like the operation of other public entities, raised concerns about diligence and professionalism, and where these concerns have arisen, they generally have been addressed.

This need for enhanced attention to and support of the Justice Courts arises not from any individual's conduct but from the need to improve the cost-effective operation of the Justice Courts as a system — one of the largest and most widespread institutions in all of New York State government — and ensure its proper interaction with the rest of the Judiciary and other branches and levels of government. Nearly 1,300 individually operated instrumentalities of government, flung across a State as large and diverse as New York, with as many complex and critical functions asked of our Justice Courts, inherently will face obstacles to systemic efficiency and effectiveness no matter how professional and diligent their judges and staff may be. And because courts do not operate as islands — they interact with and in turn shape the activities of countless State and local government and nonprofit actors — the Justice Courts necessarily affect the work of county prosecutors, defense providers, law enforcement personnel at all levels, corrections departments, State agencies such as the Department of Motor Vehicles and Division of Criminal Justice Services, as well as the Comptroller and State Judiciary. Thus, as much as to improve the administration of justice in New York's towns and villages, enhanced attention to the cost-effective operation of the Justice Courts is eminently sound public policy across New York State.

Such is the purpose of this Action Plan: to take aggressive steps, working with our partners in the other branches and levels of New York government, to ensure that the Justice Court system is fully prepared to meet its tremendous responsibilities to litigants, taxpayers, service providers and the law. Part One of this Action Plan traces the history of the Justice Court system from its colonial roots to the modern era, with particular focus on periodic criticisms of and efforts to reform the local courts over the generations. Part One also surveys the constitutional and legal basis for the current law's fragmentation of responsibility for Justice Courts among the Legislature, counties, local governments, voters and the State Judiciary, and describes the support that OCA currently provides for Justice Courts and their operations.

Part Two announces dozens of specific steps OCA will take to enhance assistance to and support of Justice Court operations and administration, auditing and financial control, education and training, and court security. To effectuate these initiatives, the Judiciary's 2007-2008 budget submission will include a $10 million appropriation request for Justice Court programs. Key among the initiatives are:

COURT OPERATIONS AND ADMINISTRATION

Enhancing direct support of Justice Courts. OCA will fully integrate the Justice Courts into the State Judiciary's technology system, providing computers, case management software, Judiciary electronic mail systems, online databases, court manuals and other resources that will simplify disposition reporting, case tracking and compliance with operational mandates — all at no cost to sponsoring localities.

Accepting credit card payments. OCA will require Justice Court acceptance of credit card payments of fines, fees and surcharges, also at no cost to sponsoring localities. This step not only will enhance revenue collection and litigant convenience but also will greatly improve financial accountability and security.

Recording court proceedings. OCA will supply Justice Courts with digital recorders and require their use to provide real-time records of court proceedings and thus establish appellate and administrative records now often lacking.

Assuring proper indigent defense. OCA will require town and village justices to report compliance with legal mandates governing determinations of eligibility for public defense and assignment of counsel, and coordinate the terms of Justice Courts to avoid scheduling conflicts that unnecessarily burden already stretched county indigent defense resources.

Ensuring access. OCA will survey all Justice Courts to identify barriers to access for litigants and court users who are mobility-impaired or have other disabilities, and assist sponsoring localities in eliminating these barriers.

Coordinating administration. The Chief Administrative Judge will appoint a Supervising Judge for the Justice Courts in each judicial district, to serve as a liaison with the State Judiciary and help implement the initiatives of this Action Plan.

AUDITING AND FINANCIAL CONTROL

Reforming financial control practices. OCA, in conjunction with the State Comptroller's Office, will promulgate financial control best practices, and integrate them into case-management software and court manuals.

Ensuring fiscal accountability. OCA will require every locality that sponsors a Justice Court to submit to OCA the locality's annual audit of the Justice Court's finances. A locality's failure to conduct and submit such an independent audit will result in official notification of default to the State Comptroller's Office and further review by OCA. OCA also will expand its own audits of Justice Court affairs, using a data-based risk-management approach to identify and pre-empt potential operational problems.

EDUCATION AND TRAINING

Overhauling "basic" training for non-attorney justices. To ensure that non-attorney justices properly discharge their legal obligations, OCA will fundamentally reinvent training for non-

attorney justices, doubling to two weeks the required period of in-residence education and adding an at-home program to prepare justices for their in-residence curriculum. Curricula will feature simulations and other participatory educational methods.

Reinventing orientation for attorney justices. Newly selected attorney justices will be required to attend a one-week orientation program comparable to the orientation program required of newly selected judges of the State-paid courts, with curricula on law and administration tailored to their tribunals.

Revitalizing "advanced" training. For both attorney and non-attorney justices, OCA will revitalize annual advanced training by shifting to quarterly sessions, offering dual-track programs geared to participant experience and education, using advanced technology to provide "remote" training opportunities, and increasing interaction with educators.

Expanding direct support for local adjudication. OCA will expand its Resource Center for Town and Village Courts to provide enhanced legal and administrative support for local justices and staff, and expand its professional staff of educators.

Training and certifying nonjudicial staff. For court clerks, OCA will establish a joint training and certification program with the State Comptroller's Office, providing a standard curriculum and a credential to properly recognize clerks' expertise in the many complex areas of court operations. The State Judiciary will assume the cost of participation in this training program.

Establishing a state-of-the-art education center. To enhance the quality and cost-effectiveness of training, OCA will create a Justice Court Institute — a centrally located, state-of-the-art and year-round training facility for local justices and clerks — to serve as an upstate satellite facility for the White Plains-based Judicial Institute that serves the State-paid courts.

Providing on-site support. OCA will create Justice Court Advisory and Support Teams ("J-CASTs") to visit newly-selected justices in their courts before they take office or during the start of their terms. These teams will bring together attorneys, court administrators and financial experts specially cross-trained in Justice Court operations and education, financial oversight, court security, information technology and all other aspects of Justice Court adjudication and administration, to provide on-site, hands-on training tailored to each Justice Court. These teams will serve as ongoing points-of-contact for justices and court clerks to answer questions, provide support and, if necessary, assist in review of court operations as needs arise.

FACILITY SECURITY AND PUBLIC PROTECTION

Identifying and eliminating security threats. OCA will conduct an on-site security assessment of every Justice Court to identify and mitigate potential threats. OCA has promulgated and will distribute to all courts and localities a comprehensive set of best practices for Justice Court security to advise local governments and law enforcement personnel on discharging their responsibilities to keep their courts safe.

Securing court entrances. At the request of local governments, OCA will provide magnetometers for Justice Courts to screen for weapons and other contraband that pose potential safety hazards.

Upgrading deficient facilities. OCA will seek additional funds for the Justice Court Assistance Program to provide direct financial support for necessary purchases and physical improvements to upgrade the security of Justice Court facilities.

LEGISLATIVE INITIATIVES

Expanding funding for Justice Court support. As noted, to effectuate OCA's enhanced support of Justice Courts, the Judiciary's 2007-2008 budget submission will include a $10 million appropriation request for Justice Court programs. These funds are necessary for OCA to assume responsibility for Justice Court computing and other core technologies; begin purchase and distribution of digital recorders; conduct security assessments; expand fiscal and operational audits; expand the Resource Center and its provision of legal support of the Justice Courts; overhaul Justice Court education and training; fund security and other facility upgrades; and provide Justice Court magnetometers.

Clarifying the temporary assignment power. Current law authorizes the Chief Administrative Judge to temporarily assign a town or village justice from one locality to preside in another locality if both the locality supplying the justice and the locality receiving the justice consent to the temporary assignment. A temporary assignment may be necessary if a locality's justice is unavailable to sit due to death or illness. It may also be necessary if a newly-elected justice fails to successfully complete the legally mandated training program, a circumstance that may occasionally occur under the enhanced training curriculum announced in this Action Plan. Current law requires that the affected localities consent to a temporary assignment because the locality supplying the justice may lose its justice's service during the temporary assignment and the locality receiving the justice may be obliged to pay his or her expenses. If a locality withholds consent, however, a Justice Court might not be able to adjudicate its docket. To avoid this result, the Judiciary will propose statutory reforms to eliminate these constraints and will itself assume the expense of temporary assignments, thus ensuring that Justice Courts are always able to adjudicate their dockets.

Reforming oversight of Justice Court nonjudicial staff. Court clerks and other nonjudicial staff are hired by the localities themselves, and thus are responsible not only to the local justices but also to the sponsoring locality's governing board. While court clerks may have day-to-day control of court operations, it is the judge who is subject to State Comptroller and OCA mandates. The result is that the locality's governing board, by its joint control of nonjudicial staff, can directly impact the performance of the Justice Court's legal obligations, with troubling effects on the independence of the Justice Court and thus the separation of powers. Moreover, some of the smallest Justice Courts have no staff at all, impairing their capacity effectively to administer justice. To address these concerns, the Judiciary will ask the Legislature to require that every locality sponsoring a Justice Court must provide for the employment of at least one clerk, and that only the Justice Courts and not their sponsoring localities would have the authority to hire, supervise and discharge nonjudicial staff. This initiative will have no, or minimal, fiscal impact on localities, while curing separation-of-powers and operational concerns arising from current law's constraint on Justice Court control of nonjudicial staff.

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Every court, every case and every litigant is important. In one of the world's busiest court systems, with six million new cases filed annually (approximately two million in the Justice Courts alone), there is no shortage of important matters for the New York Judiciary to manage every day. The Justice Courts, their judges and staff, and every single one of their litigants are and must be full stakeholders in the Unified Court System to ensure that they, and all New Yorkers, receive the equal justice under law that our Constitution requires. We trust that this Action Plan, its initiatives and its calls for reform are equal to that essential task.

I. BACKGROUND

NEW YORK'S JUSTICE COURTS ARE THE STATE'S MOST NUMEROUS AND DIVERSE TRIAL COURTS. Located in all 57 counties outside New York City, the 1,277 Justice Courts preside in 925 towns and 352 villages ranging from sparsely populated rural municipalities to densely populated suburban localities with over 100,000 residents and many characteristics of mid-sized cities. As befits the diversity of the local governments sponsoring them, Justice Courts are comparably diverse in caseloads, staffing, facilities, security, oversight and administration. Some Justice Courts sit only once or twice per month — indeed, Justice Courts in some rural locations might have so few cases that they collect negligible, if any, court fees;[1] these Justice Courts typically employ no full-time staff, deploy few if any security measures, and have relatively informal administrative and oversight procedures. By marked contrast, the largest Justice Courts may sit every day, hear thousands of cases annually, employ extensive full-time staff, collect millions of dollars in court fees, and use advanced technologies and administrative procedures to improve the management of their courts.

But whether Justice Court caseloads are small or large, and whether they preside in relatively urban or rural municipalities, Justice Courts and their nearly 2,000 locally-selected town and village justices serve the same roles in their communities: to provide accessible venues to resolve criminal and civil disputes pursuant to State law. In furtherance of this essential purpose, the Justice Court system hears two million cases annually that often are indistinguishable from actions and proceedings heard in other New York trial courts, and collects over $210 million in fees, fines and surcharges annually on behalf of the State and its localities. As such, Justice Courts are critical components of New York State's justice system, and New Yorkers — litigants and their governments alike — heavily rely on their Justice Courts to dispense justice and achieve essential public policy goals.

Even a cursory assessment of Justice Court jurisdiction reveals the depth of New York State's dependence on its Justice Courts. Justice Courts enjoy the same criminal jurisdiction as any other "local criminal court," including the Criminal Court of the City of New York, the City Courts outside New York City and the District Courts of Nassau and western Suffolk Counties on Long Island.[2] By investing in them such broad criminal jurisdiction, the Legislature empowered the Justice Courts to arraign all crimes (including the most serious felonies) allegedly committed in the locality, and to adjudicate misdemeanors, traffic infractions and other violations.[3] This criminal jurisdiction obliges Justice Courts not only to do justice in individual cases and fairly apply State law in like fashion as other trial courts, but also to interact effectively with New York's complex web of State, county and local criminal justice agencies. Thus, in addition to their most publicly visible duty to try cases and impose sentences, Justice Courts also must discharge a diverse range of responsibilities that includes securing defendants at local or county jails, coordinating

1 See e.g. Madden, "Worth Justice May Be No More," Watertown (N.Y.) Times, July 17, 2006, at A1 (Town of Worth to leave Justice position vacant owing to paucity of cases).

2 See CPL 10.10(3).

3 See CPL 10.30(1)-(2).

prisoner transport with local or county law enforcement and corrections officials, assigning counsel to indigent defendants pursuant to the county's representation plan,[4] reporting case dispositions to State entities directly interested in Justice Court adjudications (e.g. Department of Motor Vehicles, Division of Criminal Justice Services and State Comptroller's Office), and properly managing fines, fees and surcharges collected on behalf of the State and the sponsoring locality. In addition to their criminal jurisdiction, Justice Courts also are authorized to hear and determine civil actions where the amount in controversy does not exceed $3,000 exclusive of interest and costs,[5] summary landlord-tenant proceedings,[6] and applications to grant or modify orders of protection in sensitive family disputes.[7] In civil and criminal cases alike, town and village justices must be prepared to select fair juries,[8] appoint interpreters, decide pre-trial motions, conduct trials, render evidentiary rulings, issue written opinions, prepare records of proceedings for appellate review and generally supervise the effective operation of their courts.

Given the breadth and importance of these judicial roles, the Constitution includes the Justice Courts as full members of the Unified Court System, and therefore subject to the plenary constitutional authority of the Chief Judge, Court of Appeals and the Chief Administrative Judge.[9] In practice, however, State law makes Justice Courts administratively distinct from the rest of the Judiciary by vesting many basic tools of court governance not in the State Judiciary, but in local governments themselves. By legislative mandate, Justice Courts are creatures of their sponsoring localities, funded and operated by the localities rather than by the State.[10] This critical distinction renders Justice Courts — both individually and as a system — functionally independent from the Judiciary and its central management of the New York courts, and makes Justice Court policy uniquely challenging in two key respects that any candid assessment and effective reform program must acknowledge. First, the operational independence of each Justice Court conveys on 1,277 separate tribunals and their sponsoring localities wide latitude to promulgate and implement their own policies in nearly every area of court operations, thus often frustrating the standardization, supervision and enforcement of statewide policies that the Constitution authorizes the State Judiciary to establish for the courts. Second, the Justice Courts' collective operational independence from the State Judiciary has made impracticable many tools of efficient court administration that OCA routinely uses in State-paid courts (e.g. central procurement, uniform personnel policies, uniform procedures, technological integration). The consequence is that Justice Courts are unique hybrid institutions of State and local governance whose effective management poses unique challenges in New York's public sector.

The Justice Courts' administrative independence and the operational implications of that independence are not recent innovations or accidental artifices but legacies of New York's three-century commitment to local adjudication — a commitment that has survived from colonial days

4 See generally County Law arts 18-A, 18-B.

5 See UJCA §§ 201(a), 202.

6 See UJCA § 204.

7 See Family Court Act § 154(d)(1)-(2); see also CPL 530.12(3-b).

8 In practice, the vast majority of town and village Justice Courts rarely conduct full trials, generally because civil cases tend to settle and the People and criminal defendants tend to conclude plea deals that make further proceedings unnecessary. Even when Justice Courts do conduct trials, most are bench trials and thus do not raise issues of jury selection.

9 See generally NY Const, art VI, §§ 1(a), 17.

10 See Judiciary Law § 39(1); Town Law § 116; Village Law § 4-410.

to the most recent Judiciary Article of the State Constitution that voters approved in 1962. Such independence reflects and arguably reinforces a popular view that while Justice Courts serve roles that are indistinguishable from other State courts, their local character must accord them flexibility from some conventions that apply elsewhere. It is for this essential reason that the Constitution and Legislature consistently have set Justice Courts apart. While some of the resulting distinctions between Justice Courts and other trial courts may escape litigants' notice, such as local justices' exemption from mandatory age-70 retirement,[11] other distinctions more directly affect Justice Court operations and thus their hundreds of thousands of litigants and cases:

- ***Qualifications for office.*** Justice Courts are New York's only tribunals in which the Constitution permits non-attorney judges to preside.[12] While the Constitution authorizes the Legislature to fix qualifications to serve in the Justice Courts and limit Justice Court posts to attorneys, that the Constitution itself does not impose this requirement reflects the reality that many localities lack a sizeable pool of attorneys,[13] much less attorneys willing to preside in Justice Court and accept the responsibility to conduct arraignments and other proceedings outside of regular business hours. For this reason, the Constitution authorizes the Legislature to allow non-attorneys to preside in Justice Courts after successfully completing an OCA training program.[14] The Legislature has accepted this invitation,[15] and now 72% of New York's nearly 2,000 town and village justices are non-lawyers, who overwhelmingly dominate the Justice Courts in most rural counties.[16]

- ***Records of proceedings.*** Justice Courts are New York's only judicial tribunals that the Legislature has not required to be "courts of record."[17] To date, no statute requires *verbatim* records of any Justice Court proceeding: while the Judiciary fixes minimal record-keeping standards consistent with this statutory designation,[18] Justice Courts establish and maintain their own record systems, and local justices typically take handwritten notes upon which reconstruction hearings may occur if a formal record becomes necessary.[19] In part because particular record reconstructions have been found to be insufficient on which to conduct appellate review of Justice Court proceedings,[20] the lack of *verbatim* Justice Court records has raised serious concerns about Justice Court enforcement of litigant rights and compliance with other constitutional, statutory and regulatory directives.

- ***Funding.*** Justice Courts are the only courts whose operating costs are paid by the sponsoring locality rather than the State. While most trial court financing and operational obli-

11 Cf. NY Const, art VI, § 25(b).

12 Cf. NY Const, art VI, §§ 17(a), 20(a); see e.g. People v Charles F. (60 NY2d 474 [1983], cert denied sub nom. Charles F. v New York, 467 US 1216 [1984]); People v Skyrnski (42 NY2d 218 [1977]); see also North v Russell (427 US 328 [1976]).

13 Cf. NY Const, art VI, § 20(c).

14 See id.

15 See UJCA § 105(a); see also 22 NYCRR [Rules of the Chief Judge] Part 17.2.

16 In the 10 most populous counties outside New York City (Albany, Dutchess, Erie, Monroe, Nassau, Onondaga, Orange, Rockland, Suffolk and Westchester), 490 of the 624 occupied town and village justice positions (or 79%) are held by attorneys. By contrast, only 194 of the 1,558 occupied local justice positions in New York's 47 least-populous counties (or 12%) are held by attorneys.

17 Cf. Judiciary Law § 2.

18 See generally 22 NYCRR [Uniform Rules for Trial Courts] §§ 200.23, 214.11.

19 See e.g. People v Mims (2003 NY Slip Op 50862[U], 2003 WL 21049183 [App Tm, 9th & 10th Dists, 2003]).

20 See e.g. People v Mack (2001 NY Slip Op 40535[U], 2001 WL 1700409 [App Tm, 9th & 10th Dists, 2001] [reconstructed record inadequate for appellate review]).

gations were at various times in State history left to local discretion, in 1976, as part of a broad centralization of court administration, the Legislature effectuated State takeover of funding all courts except the Justice Courts.[21] Three decades later, localities continue to fund all principal costs of operating their Justice Courts[22] — a condition that raised concerns about under-funding and thus motivated the establishment of OCA's Justice Court Assistance Program ("JCAP"),[23] a small but critical means of assisting Justice Courts with essential purchases. (JCAP is further described at page 18 of this Action Plan.)

- ***Auditing and financial controls.*** Just as Justice Courts are the only courts still relegated to local funding, they are the only ones for which primary responsibility for auditing and financial oversight falls to the locality rather than the State. Given the sheer number of Justice Courts, and the $210 million they collected in the last fiscal year, such oversight is a critical but operationally complex task. While the State Comptroller's Office can audit and occasionally has audited the books of individual Justice Courts, the initial responsibility for ensuring proper financial controls of the Justice Courts falls to their sponsoring localities.[24] The plain language of this statutory mandate does not necessarily subject the Justice Courts' financial accounts to a rigorous and independent audit.[25] Neither does this mandate generally oblige localities to follow best-practice financial control guidelines, such as segregating the duty to collect funds from the duty to audit their proper management. Especially given that many Justice Courts are part-time operations and thus have part-time staff that may lack expertise in financial control protocols, the State Comptroller's Office and numerous observers have raised concerns about the reliability of the Justice Court system's performance of its fiscal obligations.[26]

- ***Operations.*** The foregoing statutory directives of local funding and control place the Justice Courts generally outside OCA's day-to-day operational oversight. Each locality fixes its Justice Court's hours, personnel practices, facilities protocols, security apparatus and operational procedures, all largely exempt from OCA's regulation and management applicable in the State-paid courts. The result is that each Justice Court is its own administrative entity, and the Justice Court "system" is, in many respects, less a cohesive whole than an amalgam of 1,277 entities that may bear little resemblance to each other and that may provide litigants and other stakeholders with very different kinds of experiences.

- ***Case and disposition reporting.*** Because the Justice Courts are the only courts generally outside the State Judiciary's day-to-day operational control, Justice Courts also have lingered outside OCA systems of case management and disposition reporting. While the Legislature has mandated that Justice Courts report criminal dispositions to DCJS, traffic-case dispositions to DMV and dispositions resulting in collection of fines and fees to the

21 See L 1976, ch 966 (Unified Court Budget Act); Judiciary Law § 39(1).

22 See Town Law § 116; Village Law § 4-410(2).

23 See generally Judiciary Law art 21-B.

24 See e.g. Town Law § 123.

25 See id.

26 See generally Office of the State Comptroller, Division of Local Government Services and Economic Development, "Justice Courts Accountability and Internal Control Systems" (2006), available at http://nysosc3.osc.state.ny.us/localgov/audits/swr/2005mr10.pdf ("OSC Justice Court Report").

State Comptroller's Office, there is no mandate that Justice Courts make more complete case-management reports to OCA. For that reason, while the State Comptroller's Office estimates that the Justice Courts hear approximately two million cases each year, the State Judiciary cannot now determine precisely how many cases the Justice Courts hear (either individually or as a system), discern how long different kinds of cases take to decide or establish performance benchmarks of the kinds that apply in State-paid courts. Likewise, because the Justice Courts operate largely outside the Judiciary's administrative control, Justice Courts meet their reporting obligations to the various agencies in different ways, with varying degrees of sophistication, speed and reliability.

- ***Routine off-hours service.*** While most courts in New York State occasionally are required to preside during off-hours, the local courts and especially the Justice Courts regularly hold proceedings during evenings, weekends and overnight periods. Justice Courts routinely arraign defendants, and release or remand them, when other courts are not in session. For this reason, Justice Courts enjoy emergency powers to grant temporary orders until litigants can appear in the State-paid courts. The necessary availability of town and village justices to perform these off-hour services requires them to cultivate effective operational relationships with local law enforcement and corrections agencies to produce defendants at off-hour times, and has required a measure of operational flexibility generally unnecessary and unknown in the State-paid courts.

Some of these distinctions between the Justice Courts and the State-paid trial courts have motivated observers to urge varying kinds of reforms of Justice Court jurisdiction, judicial qualifications, financing and administration over the years. As much as the historical independence of the Justice Courts, these occasional calls for reform constitute the backdrop of this Action Plan. No proper analysis of the Justice Courts can proceed without a full appreciation of this historical context.

A. THE HISTORY OF NEW YORK STATE'S JUSTICE COURT SYSTEM

Justice courts are successor institutions to tribunals that have existed in New York nearly continuously since permanent European settlement began in the early 17th century.[27] Justices of the peace, magistrate's courts, police courts and other town and village tribunals, all of which now bear the title of Justice Courts:

> *came down to us from remote times. [They] existed in England before the discovery of America, and [they have] existed here practically during our entire history, both colonial and state, at first with criminal jurisdiction only, but for more than two centuries past with civil jurisdiction also. * * * [A local court system] * * * is regarded as of great importance to the people at large, as it opens the doors of justice near their own homes, and not only affords a cheap and speedy remedy for minor grievances as to rights of property, but also renders substantial aid in the prevention and punishment of crime.*[28]

27 See 5 Col Laws NY 209 (1771); 4 Col Laws NY 296 (1758); 3 Col Laws NY 1011 (1754); 2 Col Laws NY 964 (1737), 1 Col Laws NY 226 (1691); see generally People ex rel. Burby v Howland (155 NY [9 EH Smith] 270, 275-276 [1898]). The first recorded selection of a local judge in New York was in 1646, under Dutch rule, by election in the communities of "Bruekelen" and later Manhattan (see Rosenblatt, "The Foundations of the New York State Supreme Court: A Study in Sources," 63 NY St B J 10, 13 [1991], citing Booth, History of the City of New York [1867], at 135-136). British accession to dominion in New York preserved and proliferated the structure of these local tribunals, leading ultimately to their formal codification in 1691 (see id.).

28 Howland (155 NY [9 EH Smith] at 275-276).

Indeed, since New York's colonial inception of the office of local justice, by whatever title denominated, criminal jurisdiction consistently has inhered in that office. In like fashion as today's Justice Courts, local magistrates in New York's colonial and early independence eras enjoyed inherent jurisdiction to "apprehend and commit" (i.e. arraign) defendants on all criminal charges and try non-felony offenses.[29] These early local tribunals also enjoyed civil jurisdiction over money-recovery actions, though the extent of such civil jurisdiction was a creature of statute, rather than constitutional or inherent authority, and generally was limited in relation to the monetary jurisdiction of the superior trial courts.[30]

New York's 1777 and 1821 Constitutions each provided for nascent State court structures and tacitly left local courts effectively unchanged from the colonial era. Only in 1846 did New York establish a separate article of its State Constitution to govern the Judiciary, and with this first Judiciary Article came express constitutional provisions that authorized the Legislature to continue town justices[31] and village judicial officers.[32] The Judiciary Article of 1869 continued these provisions effectively unchanged,[33] as did the 1894 Constitution[34] and the 1925 Judiciary Article.[35] Over this time, the Legislature provided that each locality could establish its own local court and select justices, and continued each court's historical jurisdiction to arraign all crimes, try non-felony offenses and preside over limited classes of civil trials. During this period, local justices typically doubled as local legislators, serving on town councils or village boards of trustees and sometimes also as local coroners or other officeholders. While the 1936 Legislature abolished town Justice Courts in Nassau County and replaced them with New York's first District Court system,[36] the only other change in the local court system over these decades entailed sequential increases of the cap on local courts' civil monetary jurisdiction.

By 1962, the year in which voters approved the current Judiciary Article, the alternate titles of "justice of the peace" and "magistrate" had become disfavored and were abolished[37] in favor of today's town and village Justice Court system that the 1962 Judiciary Article invited the Legislature to "continue[]" and "regulate."[38] The Legislature promptly complied, almost in identical fashion as throughout the prior three centuries, but with two structural differences to reflect modern sensibilities about the separation of powers and rising dockets of some suburban Justice Courts. First, the 1962 Judiciary Article invited the Legislature to abolish the nonjudicial functions (and particularly the legislative functions) of local justices,[#9] an invitation the Legislature later accepted.[40] Thus, today no town or village justice may perform the duties of any nonjudicial

29 See Slutzky (283 NY at 340); Howland (155 NY [9 EH Smith] at 276-277).

30 See id.

31 See NY Const 1846, art VI, § 17 ("The electors of the several towns shall, at their annual town meeting, and in such manner as the [L]egislature may direct, elect justices of the peace, whose term of office shall be four years * * *").

32 See NY Const 1846, art VI, § 18 ("All judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected at such times and in such manner as the [L]egislature may direct").

33 See NY Const 1869, art VI, §§ 18 (town justices), 19 (village judicial officers).

34 See NY Const, 1894, art VI, §§ 17, 18.

35 See NY Const 1925, art VI, §§ 17, 18.

36 See L 1936, ch 879.

37 See generally NY Const 1962, art VI, § 17; UJCA § 2300(b)(1).

38 See NY Const 1962, art VI, § 17(a)-(b).

39 See id., § 17(c).

40 See L 1976, ch 739 (enacting Town Law § 60-a).

public office,[41] and all local justices are subject to the Code of Judicial Conduct in like fashion as State-paid judges[42] — including the ethical mandate to avoid even the appearance of conflicts of interest with his or her judicial role.[43] Second, the 1962 Judiciary Article authorized the Legislature to replace Justice Courts with District Court systems throughout the State rather than only in Nassau County,[44] a power the Legislature has invoked only for towns in western Suffolk County.[45] Other than these two adjustments, the 1962 Judiciary Article and thus today's State Constitution carefully preserved the historical prerogative of each locality to maintain its own Justice Court and prohibited the Legislature from abolishing any town tribunal, whether or not in favor of a District Court, except with express consent of town voters.[46] As late as 1977, when voters and the Legislature centralized judicial administration and correspondingly diminished local control of court operations, the Legislature tacitly excluded the Justice Courts from statutes effectuating State control of court financing and personnel, thus preserving and reinforcing the Justice Courts' local character and autonomy.[47]

This historical examination demonstrates that, with only infrequent and minor refinements, New York's Justice Courts have continued largely unchanged for over 300 years, reflecting steadfast voter and legislative commitment both to the continued existence of local courts and to the unique role they play in New York's justice system. To be sure, the Justice Courts, like the State-paid court system and most creatures of government, have not been without critics and reformers during these centuries. During the last 50 years in particular, observers have expressed dissatisfaction with the lay judge system, asserting that non-attorney judges inherently lack the requisite training to ensure due process and enforce other critical constitutional and statutory protections. Other observers have expressed concerns with the part-time operation of many Justice Courts, claiming that part-time courts raise the prospect of conflicts of interests for presiding lawyer-judges, inherently are less efficient than full- time courts and rarely can mobilize the full panoply of administrative tools to manage and account for collected funds effectively. Still other observers have lamented the lack of standardization and systemwide oversight, and with it local discretion to fund (or underfund) Justice Court programs in ways that can undermine the administration of justice and frustrate the achievement of important State and local public policy goals.

Even in the face of these objections, however, New Yorkers consistently have rejected broad structural changes to their Justice Courts. In the 1950s, a Temporary Commission on the Courts (popularly known as the Tweed Commission) initially proposed replacing Justice Courts with county-level District Courts of civil and criminal jurisdiction and Magistrates Courts with traffic and other limited criminal jurisdiction — courts in which all judges would be lawyers and over which localities would exercise no control.[48] The Commission's final report, however, rejected this

41 See id.; UJCA § 105(d).

42 See generally 22 NYCRR [Rules of the Chief Administrator] Part 100.

43 See 22 NYCRR [Rules of the Chief Administrator] § 100.4.

44 See NY Const, art VI, § 16.

45 See L 1962, ch 811.

46 See NY Const, art VI, §§ 16(a)-(c) (District Courts); 17(b) (town Justice Courts).

47 See L 1976, ch 966; Judiciary Law § 39(1), Town Law § 116; Village Law § 4-410(2).

48 See generally Subcommittee, Temporary State Commission on the Courts (Tweed Commission), "Simplified State-wide Court System" (1955).

proposal, instead preserving the Justice Courts with training and certification requirements for non-lawyer judges.[49] Explaining its rejection of the abolition proposal, the Commission narrated its concern that deep public support for the Justice Courts could defeat the Commission's entire court-reform effort:

> *These recommendations of the Commission [to replace the Justice Courts with regional Magistrates Courts] were vigorously opposed, in whole or in part, by present judges of Town, Village and City Courts, by residents and officials of the area served, by members of the Legislature and by others. Indeed, the Commission found reason to believe that, even if its proposals in this respect were accepted by the Legislature and formed a part of an over-all court reorganization plan, the voters of the State on the required referendum for a Constitutional Amendment might well defeat the entire plan because of this aspect alone.*[50]

The following months would prove the Commission's political admonition prescient. Responding to Governor Averill Harriman's call to reorganize *all* of New York State's courts, the Judicial Conference rejected the Tweed Commission's recommendation and proposed to abolish the Justice Courts in favor of county-based District Courts.[51] As the Tweed Commission predicted, however, the Legislature firmly rejected this approach and, while approving broad reorganization of other courts, left Justice Courts unchanged except for the Tweed Commission's training and certification requirements for non-attorney justices.[52]

Likewise during the 1960s, the State rejected numerous opportunities to alter the Justice Courts even slightly. In 1965, voters rejected a minor constitutional amendment that would have authorized the Legislature to extend the elective terms of town justices. Two years later in 1967, voters rejected the report of a constitutional convention that, among other proposals, urged the abolition of Justice Courts subject to legislative approval of their continuation as courts with limited jurisdiction over traffic matters and local ordinance violations.

The next 30 years also brought calls for Justice Court reform, but none cleared the Legislature, much less reached the voters. In 1973, yet another study commission, the Dominick Commission, proposed abolishing village courts and stripping town courts of trial jurisdiction over misdemeanors.[53] That report went nowhere, as did a 1979 analysis by the New York State Bar Association that merely suggested future consideration of merging local courts into regional tribunals.[54] Such periodic calls echoed throughout the 1980s and 1990s, and as late as 2006, the State Comptroller's Office called on the Legislature to combine the operations of low-caseload Justice Courts for the sake of efficiency and more effective financial auditing.[55] Not a single piece of legislation effectuating any of these proposals received favorable consideration, and most of the proposals were not even introduced in the Legislature.

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49 See Temporary State Commission on the Courts (Tweed Commission), Final Report to the Legislature (1958), at 17.

50 Temporary State Commission on the Courts (Tweed Commission), Final Report to the Legislature (1958), at 17-18.

51 See generally Judicial Conference of the State of New York, Report to the Legislature (1958).

52 See NY Const, art VI, § 20(c).

53 See Temporary State Commission on the State Court System (Dominick Commission), "... And Justice for All" (1973), at ¶¶ 83-85.

54 See New York State Bar Association, "Report of Action, Unit Report No. 4: Court Reorganization" (1979), at 73.

55 See generally OSC Justice Courts Report (2006).

The inevitable conclusions are that criticisms of Justice Court operations — some of which are valid and must be addressed to ensure the single, Statewide standard of justice and sound administration that litigants and taxpayers deserve — have failed to mobilize broad support for fundamental structural reform, and that if past is prologue, such consensus may remain elusive well into the future.

B. LEGAL STRUCTURE AND CONTROL OF THE JUSTICE COURT SYSTEM

NOTWITHSTANDING THIS HISTORICAL RECORD, popular support for Justice Courts cannot be lightly dismissed as mere inertia or parochialism. Especially in less densely populated regions throughout much of upstate New York, where distances to State court facilities may be significant and effective public transportation options may be lacking, access to a local court in one's town or village immeasurably can improve access to justice and reduce litigant cost — in time and money — of obtaining justice. The relative proximity of a local Justice Court likewise reduces transportation costs for local law enforcement agencies that produce defendants for arraignment and other court appearances. Moreover, by arraigning criminal defendants and trying a wide array of non-felony offenses, especially routine traffic infractions whose Statewide docket in 2005 exceeded one million new cases, Justice Courts serve critical docket-control functions for the State-paid courts that would be difficult to replicate without significant expense and operational disruption.

Reflecting these numerous benefits, as well as the myriad levels of government that enjoy them and the complex web of agencies into which Justice Courts fit, State law invests in every level of government some role in structuring or governing the Justice Courts. The Constitution reserves to the Legislature unilateral authority to structure the oversight and financing of the Justice Court system,[56] fix qualifications for office[57] and adjudicatory procedures,[58] and abolish village Justice Courts.[59] The Legislature's other structural powers, however, rest on accession by another level of government and/or voters themselves. Pursuant to the 1962 Judiciary Article's strong support for Justice Courts, the Constitution authorizes the Legislature to abolish town Justice Courts only with consent of the town's voters,[60] and to establish District Courts in lieu of town and village Justice Courts only with consent of the voters of each affected jurisdiction[61] — and then only on petition of the governing board of each affected county.[62] These constraints on the Legislature's structural control of Justice Courts reflect the constitutional principle — one of the most consistent and longstanding principles of New York law — that Justice Courts are hybrid institutions of both localities and the State and therefore should be jointly controlled by both.

In furtherance of this power-sharing principle, the Constitution reserves to county, town and village governments substantial power — much of it as yet untapped — to effect or at least initiate structural reforms of local Justice Courts. For example, *only* counties may trigger the process

56 See NY Const, art VI, § 17(a).

57 See id.; § 20(a).

58 See NY Const, art VI, §§ 17(b), 30; see generally L 1966, ch 898 (Uniform Justice Court Act), as amended.

59 See NY Const, art VI, § 17(b).

60 See id.

61 See NY Const, art VI, § 16(b)-(c).

62 See NY Const, art VI, § 16(a).

of establishing a District Court.[63] Villages may opt not to have Justice Courts at all,[64] and a village board of trustees may summarily abolish its Justice Court with or without voter consent.[65] The governing boards of two adjacent towns may merge their Justice Courts,[66] and if town boards decline to take up this cause on their own, town voters themselves may petition for merger.[67] Thus, under current law, the structure of the Justice Court system largely is what the sponsoring localities say it is.

As with the fractured responsibility for the structure of the Justice Court system, State law also allocates to multiple governments responsibility for Justice Court operations, again reflecting the multiple stakeholders in the Justice Courts' wide web of civil and criminal justice actors. As noted above, while the Constitution empowers the Legislature broadly to govern Justice Court affairs and thus most aspects of their day-to-day operation and oversight,[68] the Legislature has delegated to each sponsoring locality the duties both to fund its individual Justice Court[69] and to ensure the accuracy of its financial records. Thus, each locality — largely in its unfettered discretion — budgets for its Justice Court, staffs it with such clerks and managers as it sees fit, promulgates its personnel and procurement policies, determines its administrative programs, provides its facilities, fixes its hours, determines whether it operates part-time or full-time, and generally governs its day-to-day operations.

In contrast to the overlapping roles of the Legislature, counties and local governments in structuring and operating Justice Courts, current law gives OCA and the State Judiciary very little effective structural or operational control over the Justice Court system. The Judiciary's only statutory power is to appoint justices temporarily to preside in Justice Courts, but even that power is narrowly constrained to circumstances that vest ultimate control in the sponsoring localities.[70] Likewise, as noted above, while the Constitution directs OCA and the Chief Administrative Judge generally to supervise the operation of all of New York's trial courts,[71] the broad fiscal and operational independence of each Justice Court renders many traditional tools of unified court management — ranging from centralized budgeting and procurement to administrative supervision of nonjudicial staff — effectively inapplicable to the Justice Courts. The practical effect of these constraints is that OCA's capacity meaningfully to influence Justice Court operations is limited, proceeding far less from a position of affirmative legal control (because State law invests most legal and financial control in the localities themselves) than from a position of advisor, advocate and facilitator.

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63 See id.

64 See Village Law § 3-301(2)(a).

65 See id.

66 See UJCA § 106-a.

67 See UJCA § 106-a(1)-(2).

68 See NY Const, art VI, § 17(a).

69 Compare Town Law § 116; Village Law § 4-410(2) with Judiciary Law § 39(1) (State funding of all courts other than town and village Justice Courts).

70 See UJCA § 106(2) (Chief Administrative Judge may temporarily assign justice from another Justice Court to preside in locality with unfilled vacancy or justice unable to sit, so long as both localities consent and the recipient locality agrees to pay the assigned justice's salary). The Chief Administrative Judge once enjoyed broader power to temporarily reassign City Court judges to preside in Justice Courts, thereby according the Judiciary some flexibility to manage the staffing of Justice Courts (see Judiciary Law former § 12-b), but the Legislature repealed this authority several decades ago (see L 1985, ch 703).

71 See NY Const, art VI, § 28(b); see also Judiciary Law § 212.

For these reasons, the most immediate way to address valid concerns about Justice Court operations is to work within the existing legal structure, supplementing Justice Court operations where circumstances permit and leaving to the sound discretion of others — the Legislature, counties, localities and voters — their legal prerogatives to consider structural reforms that might further enhance the efficiency and cost-effectiveness of the local justice system.

C. STATE JUDICIARY SUPPORT FOR JUSTICE COURT OPERATIONS

DESPITE THE JUDICIARY'S LIMITED AUTHORITY OVER THE JUSTICE COURT SYSTEM, the State Judiciary has taken seriously the means that State law affords to assist Justice Courts by sequentially expanding support for individual tribunals and the Justice Court system generally. Some Judiciary programs provide direct staff support, resources and consulting services targeted to particular unmet needs. Others provide institutional support to assist Justice Courts in complying with State law. The governmental web of relationships into which Justice Courts fit has evolved numerous statutory obligations, particularly in the area of reporting dispositions, and localities have recognized that they can enjoy economies of scale by adopting proven procedures from the State or from neighboring localities. In these contexts and others, the State Judiciary has taken a lead role:

1. THE CITY, TOWN AND VILLAGE RESOURCE CENTER.

Recognizing that few localities have sufficient caseloads to justify employing lawyers to assist judges as court attorneys do in State-paid courts, OCA established the City, Town and Village Justice Court Resource Center to provide confidential staff assistance to local judges.[72] Based in the Capital District, the Resource Center employs attorneys and administrative staff, who are available by toll-free telephone number both during the day and at off-hours when many local courts convene. In the last year alone, the Resource Center fielded over 18,000 requests for legal research and guidance from the Justice Courts, touching all aspects of their criminal and civil jurisdiction.

2. LIBRARIES AND LEGAL REFERENCE MATERIALS.

The Resource Center maintains an online database of topics in law and court administration for use by local judges and court staff. In addition, the State Judiciary has provided Justice Courts with access to law libraries and online legal research (e.g. Lexis, Westlaw), the latter pursuant to statewide contracts negotiated between OCA and these providers — all at no expense to participating localities.

3. THE JUSTICE COURT ASSISTANCE PROGRAM.

Throughout the 1990s, State policies that increased courts' reporting obligations to State agencies drove increased reliance on computers to automate judicial record-keeping and court administration. Within only a few years, computers and other technologies quickly became essential for courts to report case dispositions to DCJS and DMV, make mandatory financial reports to the State Comptroller's Office, obtain case histories and otherwise perform their duties with the speed and efficiency that modern justice standards require. Many localities, however, did not or

72 When OCA first established the Resource Center, many City Courts outside New York City sat part-time and had few of the full-time administrative resources typically found in other State-paid courts. For that reason, many City Courts relied heavily on the Resource Center for legal assistance. Even though ensuing years found many City Courts increasing in size, caseload and administrative apparatus and thus full-time scheduling, to date fully 10% of Resource Center requests come from City Court Judges.

could not provide these emerging technologies for their Justice Courts, some of whose dockets yielded smaller revenues for the locality than the front-end costs these important upgrades would impose.

For that reason, and anticipating that automation could significantly improve the efficiency of Justice Court operations, the Judiciary proposed and the Legislature enacted a Justice Court Assistance Program ("JCAP") by which localities may apply to OCA for targeted grants to purchase needed technologies, law books and other office supplies.[73] Since New York's 2000-2001 fiscal year, the Legislature has appropriated to JCAP approximately $4 million, from which OCA has awarded thousands of grants to Justice Courts across the State. The vast majority of localities sponsoring Justice Courts have since received at least one JCAP grant, some have received multiple grants, and the Justice Courts increasingly have come to rely on JCAP as an essential supplement to local funding.

There are, however, important limits on JCAP funding. Recognizing the local nature of the Justice Court funding obligation,[74] the Legislature stipulated that JCAP funds "shall not be used to compensate justices and nonjudicial court staff, nor shall they be used as a means of reducing funding provided by a town or village to its justice court."[75] This restriction generally precludes localities from using JCAP funds directly to fund or augment core court operations. Moreover, the Legislature capped JCAP grants at $20,000 per locality,[76] thus making JCAP an impractical vehicle for major capital and other security-related improvements to Justice Courts.

4. JUSTICE COURT EDUCATION AND TRAINING.

Recognizing the need for consistency and the availability of economies of scale in providing centralized training for Justice Court personnel, OCA created an administrative unit dedicated to offering initial and continuing education to town and village justices and nonjudicial court staff. The office provides regular training programs throughout the State, collaborating with the Magistrates Association and Justice Court clerks to design and implement curricula on important areas of law and Justice Court administration. Like the Resource Center, the education and training office provides a comprehensive online database of relevant topics in law and court administration (e.g. "Guide to Conducting a Criminal Jury Trial in Justice Court") that local officials can consult as needs arise. The office also administers "basic training" for newly selected non-attorney judges who, by law, must complete an initial one-week course and pass a written examination before they can begin their public duties.[77]

5. DISPOSITION REPORTING ASSISTANCE.

All courts, including the Justice Courts, must report case dispositions to DCJS, DMV, the State Police and other State agencies. While OCA's direct control of the State-paid courts allowed OCA to develop technologies that automate reporting in each court, the Justice Courts' administrative independence generally frees each Justice Court to meet these reporting mandates in its own way. Especially for smaller Justice Courts, meeting these obligations independently can prove to be a

73 See L 1999, ch 280, adding Judiciary Law art 21-B.

74 Cf. Judiciary Law § 39.

75 Judiciary Law § 849-h(2).

76 See Judiciary Law § 849-i(4).

77 See UJCA § 105(a).

difficult and administratively expensive undertaking, and over the years, reporting agencies have found that sometimes these obligations have not been met with precision.[78]

To enhance compliance and reduce administrative burdens on the Justice Courts, OCA collaborated with Executive-branch agencies and private-sector software vendors to develop standard protocols by which Justice Courts could report their case dispositions electronically. These automation protocols became effective for DCJS in late 2000, for DMV in 2001, and for the State Police soon thereafter. OCA has since established a secure Web-based application for Justice Court disposition reporting, worked with the various Executive-branch agencies to train Justice Court personnel, provided telephone assistance for judges and staff in using the system, and spot-checked reporting problems during each Justice Court's 60-day initiation period into the system.

While these programs have greatly assisted Justice Courts in complying with Executive-branch reporting mandates, and doing so more cost-effectively, the completeness of these initiatives is limited by each Justice Court's independence and thus local discretion not to participate. To date, numerous Justice Courts continue to report dispositions manually, by mail, rather than taking advantage of OCA's electronic-reporting platform. In some cases, Justice Courts continue to lack computers and case-processing software; in other instances, Justice Courts lack awareness that simplified procedures are available or otherwise remain hesitant to automate this aspect of their operations.

6. JURY SERVICES.

As with all Justice Court operations, the qualification, selection, management and payment of jurors serving in the Justice Courts is a local function. Recognizing the potential for significant efficiencies by centralizing some jury programming, however, OCA and the respective counties' commissioners of jurors have assisted and in some cases directly provided services for Justice Courts in the jury area. By court rule, county commissioners of jurors qualify citizens to serve on Justice Court juries and maintain the central jury pools on behalf of the town and village Justice Courts,[79] thus absolving town and village governments from having to replicate this function. Also, with the assistance of the commissioners of jurors, OCA developed a universal Justice Court jury summons so localities would not need to develop, print and mail their own. The State Judiciary advocated for and achieved a statutory change that allows OCA directly to pay jurors for their service in the Justice Courts, thus absolving localities of this expense and its administrative burdens.[80] To assist localities in managing their prospective jurors, OCA collaborated with county commissioners of jurors to establish standby service systems, by which prospective jurors call dedicated phone numbers rather than automatically appear, and provided Justice Courts with telephones equipped with answering machines so court personnel could administer this program. OCA and the respective commissioners of jurors also provide support and training to judges and court staff on jury issues, and continue to work to increase periods of disqualification between calls for jury service.

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78 For instance, in May 2000, DCJS commenced a Criminal History Information Reconciliation Project ("CHIRP"), to find Justice Court dispositions for nearly 950,000 criminal cases in which a defendant was arrested during the prior decade but DCJS had on file no final disposition. OCA responded by sending investigators to Justice Courts, where most of the missing data was found in Justice Court files that were not properly reported to DCJS. OCA concluded that the Justice Courts' then-current system of mailing disposition information should be phased out where possible and replaced with electronic reporting.

79 See 22 NYCRR [Rules of the Chief Administrator] § 128.7(a).

80 See Judiciary Law § 521.

7. SECURITY SUPPORT.

Security has been a focus of increasing concern to judiciaries across the country. After the attacks of September 11 and the more recent attacks on judges, jurors and nonjudicial staff in court facilities nationwide, court systems — and particularly the New York State courts — markedly have increased court-entrance screening, retrofitted court facilities with bulletproof glass, identified and corrected weaknesses in physical security, increased security details, and overhauled operational procedures to reduce courthouse security risks to court employees and the public.[81] In contrast to facilities serving many State-paid courts, however, Justice Court facilities are subject to the exclusive control of the sponsoring town or village and thus are not subject to the Judiciary's security standards. Moreover, many Justice Courts operate not out of dedicated court facilities but out of multi-purpose rooms used also by the town or village board and citizen organizations; a small number of other localities provide no proper space at all for their Justice Courts, relegating justices to ancillary facilities such as local municipal garages or even their own homes. As a result, as the State Judiciary's 2005 Task Force on Court Security concluded, Justice Court security often is not adequate to combat the modern specter of threats they face.[82]

To assist localities in meeting the post-9/11 court security challenge, OCA not only promulgated best practices in collaboration with county sheriff and city police agencies, but also began performing security audits for Justice Courts requesting them. In each instance in which a locality or local court requests such assistance, OCA court officers specially trained in threat identification and mitigation visit the Justice Court and issue a confidential report to the Justice Court that provides comprehensive advice to improve the Justice Court's security profile. OCA's recommendations — compliance with which State law relegates to local discretion — have ranged from relatively simple relocations or replacement of furniture to more fundamental capital improvements and changes to administrative procedures. In the last 12 months, dozens of Justice Courts have requested security audits. To date, however, the overwhelming majority of local governments have not availed themselves of this opportunity, and the choice to comply (and expend the funds necessary to comply) with OCA recommendations to improve Justice Court security remains one that State law vests entirely with the sponsoring locality that often lacks the funds or institutional initiative to make suggested improvements.

In addition, OCA has adopted a policy that allows localities sponsoring Justice Courts to retain the State Judiciary's uniformed court officers to provide security and other support services in the Justice Courts during off-hours on a limited basis. This policy provides Justice Courts and their sponsoring localities added flexibility to support their local tribunals with State personnel experienced in identifying and speedily mitigating security threats. As with OCA's security audits, however, the decision to retain the services of outside security officials, whether employed by the State Judiciary or otherwise, is one that State law relegates to the discretion of the sponsoring locality. As such, despite the availability of this outside support, the overwhelming majority of Justice Courts still do not provide for this important safeguard to public protection.

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81 See generally New York State Unified Court System, Task Force on Court Security, "Report to the Chief Judge and Chief Administrative Judge" (2005) ("OCA Court Security Report").

82 See id. at 16-17, 45.

8. PROFESSIONAL CONSULTING SERVICES.

In addition to the Resource Center and OCA security audits, OCA has offered Justice Courts, their judges and court clerks consulting services in a broad array of operational areas. Architects on staff with the OCA Office of Court Facilities unit are available to Justice Courts seeking to improve, expand or rebuild outdated court facilities, or make changes in response to security audits. Likewise, OCA's Division of Technology is available to help Justice Courts configure and manage computers, and OCA staff are available to advise on financial and managerial issues pertinent to court administration.

9. LEGISLATIVE INITIATIVES.

OCA established a Local Courts Advisory Committee ("LCAC") that works throughout the year to develop and lobby for procedural and other statutory reforms. Drawn from the local bar and bench, including numerous justices and former justices of town and village courts, LCAC members prepare annual reports to the Legislature on proposals to improve and otherwise assist local courts, lobby key lawmakers for needed legislative action, and serve as a high-profile forum for study and collaboration across jurisdictions.

10. POLICY INITIATIVES.

As particular needs have arisen in the courts, the State Judiciary has assembled commissions and task forces to provide policy guidance to the justice community, and undertaken broad-based initiatives to improve the delivery of justice services — in many cases with an eye toward improving Justice Court operations. In the last year alone, OCA's Task Force on Court Security[83] and the Chief Judge's Commission on the Future of Indigent Defense Services[84] each made numerous recommendations for improvement of Justice Court management of these critical aspects of court administration. Their recommendations give rise to some of this Action Plan's initiatives; others have been implemented, or, as appropriate, submitted to the Legislature for its consideration. Likewise, OCA's comprehensive program to improve interpreting services also focused on the Justice Courts.[85] Still further OCA policy initiatives, in the area of jury reform and compliance with the Americans with Disabilities Act, will follow in the coming year to provide additional support and guidance to the Justice Courts as well as the State-paid courts.

The foregoing initiatives have heralded an evolution of Justice Court operations and a gradual harmonization of Justice Court administration across the State. With support from the Magistrates Association and regional associations of judges and court clerks, Justice Courts have adopted increasingly uniform technological standards and administrative systems, commenced use of standard case-reporting software and promulgated best practices in numerous areas of court operations. Likewise, with the State Judiciary's support, the Justice Courts increasingly have

83 See generally OCA Court Security Report.

84 See New York State Unified Court System, Commission on the Future of Indigent Defense Services, "Final Report to the Chief Judge of the State of New York," (2006) ("UCS Indigent Defense Commission Report"), at AD 6-11.

85 See New York State Unified Court System, "Court Interpreting in New York: A Plan of Action" (April 2006) ("OCA Court Interpreting Report"), at 24-25.

become integrated into the State's data network, allowing for faster and more complete information exchange between Justice Courts and the various Executive agencies.

The work of the prior decade is not complete, however. Gaps in data processing, physical security and financial security remain. Concerns about system-wide efficiency, judicial qualifications, judicial and staff training, litigant rights, funding and procedural uniformity likewise remain. The remainder of this report addresses these concerns.

II. JUSTICE COURTS ACTION PLAN — A BLUEPRINT FOR REFORM

WHAT EMERGES FROM THE FOREGOING DISCUSSION about the Justice Courts' three-century history, and more recent State Judiciary initiatives to assist them, is a model for collaboration between the State Judiciary and the Justice Courts — one that respects the constitutional and historical independence of each Justice Court but also recognizes the essential role that local courts play in the administration of justice. Given the high stakes, Justice Courts cannot continue to operate as isolated islands: the single standard of justice that New Yorkers expect and deserve, in every court and in every case, is far more important than any structural constraint on its realization. This collaborative model suggests, however, that Justice Court autonomy can be maintained consistent with achieving a high, uniform and efficient standard of justice so long as the State provides and localities accept the assistance and adaptations needed to meet this standard.

Thus, where the State Judiciary can assist town and village Justice Courts — whether with resources, training, expertise or uniform procedures — New York State policy should be to encourage that collaboration whenever possible. Likewise, where resources are necessary to provide such assistance, the State and all its branches and levels of government must provide that support.

With this collaborative model in mind, this Action Plan identifies four broad areas in which OCA can and will materially support Justice Court operations:

- Justice Court Operations and Administration;
- Auditing and Financial Control;
- Education and Training; and
- Facility Security and Public Protection.

In each broad category, this Action Plan provides for expansion of direct provision of resources, enhanced services and/or changes to administrative systems. In each instance, the results will be improvements that local officials and litigants will experience directly, that do not require structural reforms of the kinds that New Yorkers thus far have refused to adopt. In some instances, modifications of statute will be necessary to achieve the full measure of these initiatives; where statutory reforms are necessary, the Judiciary will submit to the Legislature proposals in the upcoming legislative session and urge their speedy enactment.

A. JUSTICE COURT OPERATIONS AND ADMINISTRATION

AS DISCUSSED ABOVE, OCA HAS LONG ASSISTED JUSTICE COURTS with technology, operational procedures (e.g. disposition reporting, jury management) and other aspects of court administration. These initiatives have brought to the Justice Courts steady improvements in compliance and cost-effective court administration. The task now is to bring these improvements to every Justice Court,

everywhere in the State, and then to build on them to ensure that every Justice Court is equipped to do complete justice in every case.

1. TECHNOLOGY

At the time of JCAP's inception in 1999, many Justice Courts lacked computers and other now-basic technologies. Just seven years later, the success of JCAP is perhaps best demonstrated in the Justice Courts' increasingly routine use of computers to track cases and report dispositions. This success, however, has generated its own concerns: a widening performance gap between Justice Courts with computers and Justice Courts that still lack these basic technologies, software conflicts, systemwide administrative cost of maintenance, etc. Especially given New York State's heavy and increasing reliance on automated disposition reporting, it is time to standardize Justice Court technologies and their administration. Accordingly, OCA announces three related technological initiatives:

a. *State provision of hardware.* First, all Justice Courts will be integrated into OCA's Division of Technology service system. No longer will computers and other essential technologies be subject to discretionary JCAP grants: OCA will equip and support, at State expense, the following standard technologies for each Justice Court:

- Desktop computer;
- Printer;
- Internet connectivity;
- Credit card machine and dedicated connection;
- Fax machine;
- Standard word processing and other desktop software; and
- Speaker phone for courtroom.

During the upcoming years, the Justice Courts' existing technology will be cataloged and integrated into the Division of Technology's standard inventory and replacement cycle, and OCA will assume central responsibility for supporting software and hardware.

b. *Case management software.* Second, OCA will develop an automated case management system for the Justice Courts, just as it has developed case management programs for the various types of State-paid courts. Numerous Justice Courts lack any automated case-management system at all, frustrating efficient disposition reporting and other aspects of court administration. Most Justice Courts have selected one of several available private-sector case-management software options, and while these are significant improvements over manual techniques, existing software programs do not always store data securely or communicate seamlessly with allied justice agencies. For the foregoing reasons, OCA will begin developing, in collaboration with the Magistrates Association, comprehensive software to replace these proprietary platforms and thus more fully integrate the Justice Courts into the State's data-collection systems. OCA also will collaborate with the State Comptroller's Office to develop the new software's fiscal control modules to ensure that the Justice Courts automated case management system meets the regulations and expectations of

the Justice Court Fund ("JCF") that State law charges the Comptroller to administer and audit.[86] Implementation of the Justice Courts automated case management system will be required of all Justice Courts, and OCA will provide the software to all courts at no cost to the Justice Courts or their sponsoring localities.

c. Integration into Judiciary email and database systems. Third, OCA will provide to each justice and nonjudicial employee of a Justice Court an Internet-based Judiciary electronic mail address, as well as password-protected access to a more comprehensive database of Justice Court resources (e.g. manuals, forms). Full integration into the Judiciary's electronic mail system will allow speedy networking between individual Justice Courts and OCA and among Justice Courts, thus allowing closer collaboration and coordination. This initiative, in turn, will allow the Resource Center and OCA trainers to communicate seamlessly with Justice Courts as a system for the first time. Like the computers themselves, these Web-based initiatives will be fully supported by OCA's Division of Technology.

Taken together, these initiatives will ensure that each Justice Court has technological capacity to communicate speedily, directly and securely with State agencies, financial institutions, the State Judiciary itself and all the other Justice Courts, thus allowing speedier and more cost-effective assistance and court management.

2. ELECTRONIC RECORDING OF JUSTICE COURT PROCEEDINGS

As noted above, Justice Courts are the only courts whose proceedings State law does not require to be recorded:[87] proceedings in all other trial courts are recorded and archived either by a stenographer or by electronic means. Though the Legislature has invited electronic recording of Justice Court proceedings,[88] and while some localities voluntarily have opted either to employ stenographers and/or purchase and use recording devices, the overwhelming majority of Justice Courts still have no ability to record proceedings. As a result, each local justice must be prepared to conduct a reconstruction hearing based on his or her handwritten notes whenever an official record must be produced (e.g. for appellate review),[89] resulting in delays and raising the administrative cost of Justice Court proceedings that, by design, are supposed to be the most accessible and least costly.[90] Even when Justice Court records are reconstructed in this manner, appellate courts have questioned their completeness,[91] raising vital concerns about effective review of Justice Court proceedings and thus enforcement of litigants' substantive rights, especially in criminal proceedings in which fundamental liberty interests are at stake. For these reasons, OCA will undertake two initiatives:

a. OCA purchase and distribution of recorders. During the next fiscal year, OCA will begin buying and distributing modern digital recording devices to the Justice Courts. Distribution will

86 See State Finance Law § 99-a.

87 See UJCA § 2021 (authorizing but not requiring Justice Courts to employ stenographer in criminal proceedings); Op State Comptr 78-316 (noting optional rather than mandatory nature of Justice Court stenographer employment).

88 See e.g. Judiciary Law § 849-h(2) (authorizing JCAP reimbursements for local purchase of electronic recorders).

89 See e.g. People v Mims (2003 NY Slip Op 50862[U], 2003 WL 21049183 [App Tm, 9th & 10th Dists, 2003]); People v Martin (203 Misc 876 [Monroe Co Ct 1953]).

90 See e.g. Siegel, Prac Comm, McKinney's Cons Laws of NY, Judiciary – Court Acts, Book 29A, Pt 2, at 273 (narrating necessity of relative simplicity of UJCA procedures "to avoid expenditure of time, effort and money disproportionate to the stakes involved").

91 See e.g. People v Mack (2001 Slip Op 40535[U], 2001 WL 1700409 [App Tm, 9th & 10th Dists, 2001] [reconstructed Justice Court record inadequate for appellate review]).

begin first with the 100 largest-caseload Justice Courts to most speedily and efficiently phase-in the recording of Justice Court proceedings. As with recording devices used in the State-paid courts, Justice Court multi-track recording devices will be equipped with several failsafes (e.g. alert lights) to notify users when enabled or disabled, thus aiding compliance and minimizing technology-based disruptions. As recorders are distributed, OCA will train judges and nonjudicial staff in the proper use, storage and management of recording devices.

b. Court rule to mandate recording. Once a Justice Court has been provided with a recorder and the training process is complete, justices will be required to activate the recorder when court is in session. Exceptions to this policy will be specified by court rule to be promulgated on or before April 1, 2007.

These initiatives will provide important safeguards that will allow appellate courts to conduct meaningful review of Justice Court proceedings and generally ensure that litigants' rights are fully protected in all proceedings and in all courts.

3. JUSTICE COURT OPERATION MANUALS

Among the many advances that centralized administration of the State-paid trial courts made possible was the increasing standardization of court procedures. With support from justice stakeholders and affected court employees, OCA developed comprehensive court manuals for use in each State-paid court, specifying all aspects of court operation and setting forth protocols for discrete kinds of cases. Court manuals typically include standard forms that aid court employees, the bench and bar to comply with statutory and administrative mandates, thus enhancing the cost-effective administration of justice and the achievement of underlying policy objectives of statutory and regulatory procedures.

Statewide court manuals and standard forms have never been developed specifically for and made available to all Justice Courts. While the Uniform Rules for Trial Courts invite the Judiciary to promulgate standard forms and record-keeping systems for Justice Courts to use in civil and criminal cases,[92] the historical independence of the Justice Courts led some of them to contract with proprietary providers of selected forms and other support materials. Such proprietary relationships did not, however, result in comprehensive production of Justice Court record-keeping systems, files and standard forms as some anticipated. As a result, many Justice Courts continue to lack these important resources, and even the more sophisticated Justice Courts may use forms and procedures that do not reflect current statutory and regulatory procedures.

Accordingly, ***OCA will begin preparing a comprehensive court manual for the Justice Courts that will include a complete set of forms and record-keeping protocols.*** OCA will create a task force, in collaboration with the Magistrates Association, to draft and continually update the requisite documents, drawing on the expertise of the Resource Center and other staff attorneys expert in civil, criminal and family justice matters within the Justice Courts' jurisdiction. The result will be a single, standard set of documents providing detailed instructions for all phases of civil and criminal proceedings and all aspects of court administration. As in the State-paid courts, standard forms and record-keeping systems will cue justices and nonjudicial staff to the often complex requirements of State law in various kinds of proceedings, and thus minimize technical violations and

92 See 22 NYCRR [Uniform Rules for Trial Courts] §§ 200.23(c) (criminal), 214.11(c) (civil).

other compliance difficulties that can lead to confusion, delay and reversal on appeal. When complete, these documents also will provide an indispensable focus for training judicial and nonjudicial employees.

4. COURT INTERPRETING

The unparalleled linguistic diversity of New York's courts is not limited to the State-paid courts. In towns and villages throughout New York State, Justice Courts increasingly conduct proceedings in which litigants are not fluent in English. Particularly in the Finger Lakes, North Country, New York City suburbs and western New York State, the result is that Justice Courts are challenged to meet legal responsibilities to provide effective interpreters. At the same time, however, rarely if ever does a Justice Court docket enough proceedings that require translation in the same language to justify full-time employment of an interpreter. Instead, Justice Courts must rely on *per diem* interpreters, independent contractors who perform interpreting services pursuant to contract. As OCA's 2006 Action Plan for Court Interpreting Services concluded, however, too often Justice Courts find that qualified *per diem* interpreters are in short supply, either because a particular litigant speaks a less common language or because insufficient funds are allocated to retain an interpreter.[93] Moreover, as the Judiciary's Commission on the Future of Indigent Defense Services found, the resulting access-to-justice burdens fall disproportionately on indigent defendants, thus raising vexing questions about the fairness of affected proceedings.[94] To help Justice Courts address these difficulties and thereby vindicate the constitutional rights of Justice Court litigants, OCA will undertake four related initiatives:

a. Electronic access to OCA interpreter registry. First, OCA will make available to all Justice Courts a secure Internet-based version of OCA's interpreter registry, commencing on or about January 1, 2007. This registry will allow justices and staff to find instantaneously a qualified interpreter, fluent in one or more of over 30 languages, that OCA has cleared to work in the courts. This electronic system thereby will give Justice Courts the same ability to retain qualified *per diem* interpreters as the State-paid courts now enjoy.

b. Expanded implementation of remote interpreting. Second, OCA will assist Justice Courts in providing interpreting services by telephone or video-conference for short-term engagements. Especially for arraignments and other non-trial proceedings, a court interpreter may spend far more time traveling to and from court than performing his or her duties in a particular court proceeding. The result is an artificially constrained supply of willing *per diem* interpreters, and often significant delays in court proceedings that require interpreting services. Encouraging short-term interpreter engagements by teleconference or video-conference will allow Justice Courts to speed and simplify the provision of interpreting services, and thus help vindicate litigants' legal entitlement to these essential services.

c. Certification of language fluency and interpreting services. To provide a further reminder to Justice Courts and systematic assurance of these interpreting obligations, the court manual will direct the presiding justice affirmatively to indicate in each criminal proceeding either that the defendant was fluent in English or that the justice supplied an OCA-qualified interpreter to provide translation services in the defendant's language. This certification will be integrated into the

93 See OCA Court Interpreting Report, at 25.

94 See UCS Indigent Defense Commission Report, at AD 9-10.

Justice Courts automated case management system to track and ensure proper system-wide availability and use of interpreters so as not to complicate reporting and case management. OCA will collaborate with the Magistrates Association to alert justices and nonjudicial staff to this important obligation.

d. Measuring court interpreting needs. As the Commission on the Future of Indigent Defense Services found, one of the greatest impediments to providing interpreting services in the Justice Courts is an outdated statute that purports to limit the payment of Justice Court interpreters to just $25 per day, paid by the county.[95] Numerous judges have reported that their localities interpret this statute to absolve them of any duty to pay for interpreters, forcing the judge into the impossible choice of proceeding without an interpreter (in violation of a party's legal rights) or ordering the locality to violate a statute (then finding that the locality refuses to comply with the order). What is clear is that the $25 cap is anachronistic and unworkable and that the statute probably should be amended to comport with legal and operational necessities.

Before proposing legislation to amend the statute, however, OCA will survey a representative sample of Justice Courts in an attempt to measure the demand for court interpreters and to gauge the overall cost of meeting that demand. The survey results will inform the question of how the statute should be amended and whether the State, counties and localities can equitably share the expense of this vital service.

5. INDIGENT DEFENSE

One of the most vexing challenges of criminal adjudication is the effective appointment of counsel for indigent defendants. As the Commission on the Future of Indigent Defense Services observed earlier this year,[96] New York — and indeed all states — have struggled to meet this challenge since the Supreme Court first articulated the constitutional right to appointed counsel over four decades ago.[97] While the Legislature has made the provision of indigent defense services a financial and operational duty of counties and New York City,[98] courts themselves also perform important roles — ranging from making initial indigency determinations to reviewing payment vouchers — to ensure the fair and effective provision of these mandated services.[99]

The Commission urged wholesale reform of New York's indigent defense system, with the weight of its recommendations falling on the Legislature to restructure the system and reallocate funding. Given the important roles that courts play in assuring the rights of unrepresented defendants, the Commission also recommended operational reforms within OCA to provide maximum assurance that courts are doing all they can to identify eligible defendants, connect them with qualified service providers and generally structure court operations to make provision of defense services as cost-effective as possible. The Commission further found that for the Justice Courts as a system, meeting these challenges can be especially vexing in two contexts that do not arise in State-paid courts. First, the sheer number of Justice Courts in some counties can require a limited supply of indigent defenders to appear in many tribunals, often separated by significant

95 See UCS Indigent Defense Commission Report, at AD 9-10 (citing Judiciary Law § 387).

96 See generally id.

97 See Gideon v Wainwright (372 US 335 [1963]).

98 See generally County Law arts 18-A, 18-B.

99 See generally County Law § 722-b; Levenson v Lippman (4 NY3d 280 [2005]); 22 NYCRR [Rules of the Chief Administrator] § 127.2(b).

distances, and thus to expend precious time traveling among these many Justice Courts when defenders instead could be meeting with clients and otherwise preparing cases. Justice Courts unwittingly can compound this problem when multiple town and village tribunals convene at the same time, thus stretching the county's defenders impossibly thin. By contrast, State-paid criminal courts are, by definition, more centralized tribunals with integrated case-scheduling systems, generally situated closer to defender offices and detention centers, and thus more structurally attuned to the efficient provision of indigent defense services. Second, a majority of local justices are not attorneys and, in the context of learning and discharging their many legal obligations, also must learn when the right to counsel attaches and what that right entails, when and how to conduct indigency determinations, when and how to authorize retention and payment of defense experts, how to avoid impeding the independence of the defense function, and myriad other complexities of ensuring the constitutional rights of indigent defendants. For non-attorney justices effectively to discharge all of these obligations, with limited training and often limited time on the bench (particularly for part-time Justice Courts), can be a uniquely tall order — especially without the staff attorneys, full-time administrative staff, integrated case-management systems and other resources on which full-time State-paid judges can depend.

Accordingly, perhaps it should come as no surprise that some Justice Courts remain unaware of their duty to comply with a 2005 court rule — promulgated as a conservative measure to provide guidance to and procedural support for Justice Courts adjudicating criminal actions against indigent defendants — that specifies with precision how Justice Courts must proceed in cases where a defendant is unrepresented.[100] Although OCA corresponded with each Justice Court promptly after the rule's promulgation to alert justices and court clerks to these new obligations, and has integrated training into initial and continuing training programs, the Commission on the Future of Indigent Defense Services found that at least some Justice Courts still remain unaware of these obligations.[101]

Given the State Judiciary's constitutional responsibility to ensure that courts enforce the rights of unrepresented parties and particularly indigent defendants, OCA will take three further steps to help achieve these critical objectives.

a. Periodic compliance reports. Each town and village justice will be required periodically to submit to OCA — by standard form that OCA will prepare and integrate into the Justice Court manual — a list of every case in which the justice issued a securing order remanding an unrepresented criminal defendant, or fixing bail that the defendant does not immediately post — the two precursors that, under the existing rule, require the Justice Court to conduct an initial indigency determination. Justices also will need to certify that they conducted these indigency determinations and complied with the rule's counsel-assignment and notification requirements. These submissions will be cross-checked against the court's records and the records of the appropriate

100 See 22 NYCRR [Uniform Rules for Trial Courts] § 200.26. Under the rule, each town and village justice, before issuing a securing order that fixes bail a defendant cannot immediately pay or remands the defendant, must conduct an initial indigency determination (see § 200.26[b][ii]). The rule further provides that the local justice must, on finding the defendant unable to afford counsel, assign counsel on the spot and both call and fax notice of the assignment directly to the appropriate defense provider and the county's appropriate pre-trial services agency (see § 200.26[c]). For enforcement purposes, the rule also requires Justice Courts to keep and catalog copies of all communications sent and received in satisfaction of the foregoing requirements (see § 200.26[h]).

101 See UCS Indigent Defense Commission Report, at AD 6-7; see also The Spangenberg Group, "The Status of Indigent Defense in New York" (2006), at 112-114.

county jail, indigent defense administrator and pre-trial services agency. Where the court's records and the cross-checked records are inconsistent, appropriate OCA personnel will be notified and may investigate further. These reporting requirements will be integrated into the Justice Courts automated case management system to generate automatic reports and thus minimize the burdens on the Justice Courts and their nonjudicial staff.

b. Judicial training on indigent defense issues. To ensure that courts are fully versed in their legal obligations to indigent litigants constitutionally entitled to appointed counsel, every judge in New York State exercising criminal trial jurisdiction, including each town and village justice, will be required by court rule to complete OCA-certified training in issues related to indigent defense as part of biennial continuing judicial education requirements. In the coming months, OCA will work with the Magistrates Association to integrate suitable curricula into periodic training programs for town and village justices. This initiative, recommended by the Commission on the Future of Indigent Defense Services, will complement an existing Rule of the Chief Judge that requires biennial judicial training in the complex legal and operational issues of adjudicating domestic violence cases,[102] and will ensure that all courts — Justice Courts and superior courts alike — stay abreast of this most important operational challenge and constitutional imperative.

c. Coordination of Justice Court terms. While in practice each Justice Court is operationally independent and subject to the governance of the sponsoring locality, the Uniform Rules for Trial Courts authorize the Chief Administrative Judge to approve and alter the schedules when Justice Courts preside in their communities.[103] This authority rarely has been formally exercised: under extraordinary circumstances, the State Judiciary has helped broker informal agreements between Justice Courts to better coordinate their schedules, but never has OCA undertaken a global approach to resolving Justice Court schedule conflicts of this nature. As noted above, however, the Commission on the Future of Indigent Defense Services found that conflicting Justice Court schedules can place tremendous operational burdens not only on indigent defenders, but also prosecutors and law enforcement personnel, in ways that directly impact essential public services and county and local budgets.[104] As caseloads and litigant diversity continue to rise, scheduling conflicts also can be expected to constrain already limited court-related resources (e.g. qualified court interpreters).

Recognizing that there exists no other neutral forum to encourage inter-municipal agreements about Justice Court scheduling, OCA itself will work to eliminate scheduling conflicts. To this end, the State Judiciary will canvass the operating hours of the Justice Courts in each county and — working with magistrates, prosecutors, defenders, the State Police, county sheriffs, local police departments and other justice stakeholders — attempt to resolve scheduling conflicts by voluntary agreement among local governments and other affected localities.

Anticipating that voluntary approaches generally will suffice, this common-sense initiative will harmonize this most basic facet of Justice Court operations in ways that will immediately benefit the various levels of governments, and perhaps most important, the Justice Courts' most vulnerable litigants.

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102 See 22 NYCRR [Rules of the Chief Judge] § 17.4.

103 See 22 NYCRR [Uniform Rules for Trial Courts] § 214.2(b).

104 See UCS Indigent Defense Commission Report, at AD-8.

6. ACCESSIBILITY

In the Judiciary, devoted to ensuring equal justice under law, there is no room for barriers to accessing the courts. Fulfilling the promise of statutes like the Americans with Disabilities Act ("ADA") is a continuing commitment and ongoing challenge in the State-paid courts. For the Justice Courts, the goal is even more elusive for reasons that mirror many of the challenges of governing the Justice Courts generally: the sheer number of courts scattered across most towns and villages, the local rather than State basis for their funding and operations, and the diversity of court facilities all frustrate the efficient identification of obstacles to accessibility and, as importantly, the speedy implementation of solutions.

Whatever the reasons may be, they are scant comfort to litigants, jurors, attorneys and members of the public who fail to find in the Justice Courts the reasonable accommodations and assistance to which the law entitles them. Whether deficiencies relate to physical access, interpreters for hearing-impaired persons or otherwise, their effects can amount to justice denied, no less than a locked courthouse door.

Meeting this challenge requires a targeted and sustained response. To these ends, OCA will undertake the following measures:

a. Survey and assessment. The first step toward ensuring that Justice Courts are fully accessible is a frank assessment. OCA's Division of Court Operations, in consultation with the State Judiciary's Advisory Committee on the Americans with Disabilities Act, will develop a survey and assessment form through which every Justice Court will be able to identify the barriers, whether physical, operational or otherwise, that limit full participation in its facility. The survey will also catalog the procedures and resources available for accommodating disabilities in the Justice Courts.[105] The survey results will guide each Justice Court and its sponsoring locality in formulating a specific plan to ensure access. In addition, by providing, for the first time, comprehensive information about the nature and magnitude of accessibility-related problems in the Justice Court system, the survey will inform the need for other, perhaps more systemic and coordinated, approaches to this issue.

b. Training. ADA training, similar to that already provided to State-paid judges and employees, will be offered to local justices and nonjudicial staff. The training will have a practical focus, and will ensure that justices and clerks understand the legal rights of the disabled, the options for meeting their needs, and the resources available to the courts in addressing these needs.

c. Benchbook and Court Manual guidance. While training is important, it is also helpful to have available in every courthouse a guide to ADA-related issues, to serve as a convenient resource as questions arise. OCA will develop such materials and distribute them to each Justice Court — and includes them as part of the comprehensive Court Manual that OCA will prepare for the Justice Courts — providing easy-to-understand, concrete guidance on the accessibility issues frequently encountered in the courts.

d. ADA liaison services. For many years, OCA has had on-staff an ADA expert, whom the State-paid courts can contact for advice as issues and questions arise. This service has been particularly helpful to the courts in fashioning operational accommodations to meet the needs of persons with disabilities. OCA will make this service available to the Justice Courts.

105 This survey and assessment, as well as a number of other ADA-related initiatives announced in this Action Plan, will also be implemented in the State-paid courts, as part of a comprehensive ADA program that OCA will release early next year.

e. Facility improvements. Often barriers to full access to the courts are physical, whether by stairs, narrow doorways or the lack of assistive listening devices for the hearing-impaired. In some cases, operational accommodations are sufficient to overcome these obstacles. In other instances, physical alterations are necessary or preferable. Where physical modifications are necessary, OCA will make its architects, who have significant experience with ADA issues in the State-paid courts, available to consult with the Justice Courts in developing physical solutions to accessibility problems.

7. APPOINTMENT OF SUPERVISING JUDGES FOR JUSTICE COURTS

The unprecedented provision of resources and historic level of cooperation between the OCA and the Justice Courts envisioned by this Action Plan will require an equally unprecedented approach to oversight and supervision of the Justice Courts. In addition to oversight and support by centralized OCA offices, management of the State-paid courts is vested in administrative and supervising judges, each responsible for the courts of a geographical region (e.g. a judicial district) and/or courts of specified jurisdiction (e.g. Family Courts, County Courts). With assistance from nonjudicial staff officers, these administrative judges in each judicial district supervise resource allocation, nonjudicial staff, court management initiatives, caseflow, facilities and other apparatus of court administration in the State-paid courts, as well as help ensure proper attention to specialized caseloads and their complex interactions with allied State and local justice agencies.

To date, however, there has been no comparable structure to provide oversight of and assistance to the Justice Courts. While 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, this Action Plan demonstrates that OCA can and should play an important role in coordinating resources, providing assistance and support, troubleshooting and generally serving as a forum for resolving issues affecting the Justice Courts that arise between and among various branches and levels of government. Especially given the fragmented responsibility for and vast implications of Justice Court administration, this oversight role could be extremely helpful to localities and their local courts.

Accordingly, by January 1, 2007, ***the Chief Administrative Judge will appoint a Supervising Judge for the Justice Courts in each of the eight Judicial Districts outside New York City.*** These State-level judges will serve as local points of contact for localities and their Justice Courts, assist localities as OCA support for local court operations expands under this Action Plan, troubleshoot operational difficulties, spearhead efforts to coordinate Justice Court, and ensure compliance with counsel-assignment rules, and generally serve as a conduit between local courts and OCA. Where possible, these Supervising Judges will be former town or village justices, with direct experience administering and presiding in local courts and thus well-versed in the operational challenges that local judges, staff and other public officials face every day. These Supervising Judges will also help ensure that the State Judiciary remains well-informed about Justice Court operations and sensitive to matters of local concern as the initiatives of this Action Plan are implemented across the State.

B. AUDITING AND FINANCIAL CONTROL

THE $210 MILLION IN FINES, FEES AND SURCHARGES THAT JUSTICE COURTS COLLECT from litigants each year constitutes perhaps the most tangible and quantitative proof of the critical functions that Justice Courts serve on behalf of New York State and its local governments. These revenues reflect the significant volume of cases that New York authorizes the Justice Court system to adjudicate, and represent a very important means for the State and its localities to achieve critical policy objectives. By extension, this volume of revenue implies a public trust that imposes on the State and its localities affirmative duties to secure, manage and audit Justice Court funds properly — duties as important to maintaining public confidence in the Justice Courts as faithful and independent effectuation of their core adjudicative functions.

As with many other aspects of Justice Court operations, however, State law's fracturing of responsibility for Justice Court administration and oversight directly affects the dispatch, completeness and efficiency of meeting the Justice Court system's fiscal control obligations. While the Office of the State Comptroller enjoys constitutional and statutory responsibilities generally to ensure the reconciliation of funds collected and disbursed by or on behalf of the State and its instrumentalities,[106] and to these ends routinely audits the financial affairs of State and local governments and their various accounts — including the Justice Court Fund ("JCF") into which localities pay Justice Court revenues[107]— the Legislature requires localities themselves, in the first instance, to assure the accuracy and completeness of Justice Courts' financial records.[108] Indeed, State law vests in village treasurers and town supervisors plenary authority over Justice Courts' bank accounts, coincident with their custody of all moneys belonging to the municipality,[109] thus underscoring the localities' foundational responsibility for those accounts. Many Justice Courts, however, do not employ full-time staff, much less full-time clerks properly trained in the operational and legal complexities of revenue collection, accounting and auditing.[110] Hundreds of Justice Courts report annual revenues of less than $5,000 each, making employment and training of court staff inefficient if not impracticable in those lower-caseload Justice Courts. Moreover, the evidence is that many, if not most, localities do not perform full annual audits of Justice Court finances: the Legislature requires only that the locality enter into its minutes a statement each year that the Justice Court's "dockets have been duly examined and that the fines and fees therein shown * * * have been collected and have been turned over to the proper officials as required by law."[111] While the Office of the State Comptroller provides guidance for localities to complete these audits,[112] this statute pointedly does not require that the locality conduct a comprehensive and independent review of those records. To the contrary, the evidence is that many localities

106 See generally NY Const, art V, § 4; Executive Law § 42.

107 See State Finance Law § 99-a.

108 See Town Law § 123.

109 See e.g. Town Law § 29(1); Village Law § 4-408(a); see also Office of the New York State Comptroller, "Handbook for Town and Village Justices and Court Clerks" (February 2006) (hereinafter "OSC Justice Court Handbook"), at 16.

110 The Office of the State Comptroller, in collaboration with OCA, the State Magistrates Association and the New York State Association of Magistrates Court Clerks, develops and implements training programs for Justice Court personnel. While these programs emphasize reporting and fiscal control obligations, they are not standardized throughout the State. Moreover, by most anecdotal accounts, these training programs are insufficient relative to the scope of the duties expected of many Justice Court clerks.

111 See e.g. Town Law § 123.

112 See OSC Justice Court Handbook, at 67 & Appx 9.

comply with the letter of the statute, indicating in municipal minutes that the accounts were reviewed, but without subjecting Justice Court accounts to full and independent scrutiny because the statute does not appear expressly to require it. By contrast, a local justice who fails to present all such records for review *when requested* is guilty of a misdemeanor.[113] Without explicit statutory mandate for full and independent review, there is no functional basis on which any locality — or the State itself — can reliably discern whether the Justice Court adjudicated every commenced case and whether revenues were collected and transmitted for them in accordance with the Legislature's statutory intent.

Likewise, while the Constitution vests in the Judiciary plenary authority to supervise the Justice Courts coincident with its general responsibility to administer New York's trial courts,[114] there are significant constitutional and practical constraints on the State Judiciary's ability to supervise the financial affairs of the Justice Courts, and these constraints limit the Judiciary's ability to operationally address some of the foregoing difficulties in systemic Justice Court management. First, because State payment of trial court costs and managerial responsibilities expressly excludes the Justice Courts,[115] the State Judiciary and OCA lack direct functional authority over the nonjudicial employees of Justice Courts who have the most day-to-day control over Justice Court finances. To date, the State Judiciary's only practical authority is over the justices themselves, whose attention primarily focuses on adjudication and not day-to-day financial administration, and even this power is limited. Meanwhile, practical day-to-day control of court operations resides not in the justices but in court clerks and other nonjudicial staff, who generally are quite diligent and under-recognized but often not full-time. Moreover, the Justice Courts' nonjudicial staff are subject to the supervision and control not only of the town and village justices, but also of the sponsoring town or village government. As previously noted, however, the justices themselves have ultimate legal responsibility for all aspects of their courts' operations, including and especially their courts' financial affairs, even though they do not maintain exclusive control of the staff that perform those very functions. In these ways, current law fuels a significant mismatch between legal responsibility for Justice Court finances (which lies with local justices) and practical control of Justice Court finances (which lies with often part-time nonjudicial employees and their sponsoring local governments), and leaves the State Judiciary little operational means to bridge this gap.

Second, the State Judiciary's limited authority over Justice Court finances also must respect the broad constitutional and statutory powers of the Comptroller. The Legislature effectuated the Comptroller's constitutional powers to supervise State and municipal finances by authorizing the Comptroller to promulgate and enforce procedures for localities, including Justice Courts, to manage and report financial accounts to the Comptroller's Office.[116] In furtherance of these responsibilities, the Comptroller compiled a comprehensive *Handbook for Town and Village Justices and Court Clerks* that specifies, in great detail, various aspects of the Justice Courts' financial responsibilities.[117] The *Handbook* sets forth how Justice Courts must deposit revenue into the JCF,

113 See UJCA § 2019-a.

114 See generally NY Const, art VI, §§ 1(a), 28.

115 See generally Judiciary Law § 39.

116 See GML §§ 30(1), 36 ("systems of accounts").

117 The OSC Justice Court Handbook is available at http://www.osc.state.ny.us/localgov/pubs/jch.pdf.

prepare and execute invoices (whether by paper or electronically), record court actions, process refunds, adjust fiscal records, reconcile bank statements and perform every other aspect of their statutory fiscal functions.[118] The *Handbook* likewise provides guidance for disposition and recording of nearly every discrete kind of action a Justice Court might take, from fixing bail[119] and collecting fees in civil cases,[120] to making indigency determinations, to collecting and recording fees and surcharges in discrete criminal and quasi-criminal actions Justice Courts typically hear (e.g. dog control cases, DWI cases, speeding and other VTL violations, sex offender registration fees, driver's license suspensions, local ordinance violations, environmental conservation cases, etc.)[121]. In addition to this helpful instruction, the *Handbook* provides step-by-step checklists for justices and court clerks to complete mandatory monthly reporting to the Comptroller's Division of Local Government Services and Economic Development, which oversees the JCF into which Justice Courts deposit revenues collected, and provides instruction on how Justice Courts and localities generally should reconcile records both in preparation for monthly reports and at the conclusion of each reporting year. The *Handbook* also lays out the Comptroller's options for Justice Courts to make their monthly reports (i.e. by paper reports or electronically), spells out the technical requirements for electronic reporting and notes the significant benefits that localities enjoy by making mandatory reports by electronic device rather than by paper.[124]

Given the comprehensiveness of the Comptroller's guidance in these areas and the constitutional and statutory nature of the Comptroller's responsibilities, OCA's practical ability to regulate and supervise the financial affairs of Justice Courts is quite limited. The three areas in which the Judiciary has acted in direct support of Justice Courts' financial integrity are those in which Judiciary action is not inconsistent with the legal responsibilities or powers of the Comptroller or sponsoring localities themselves, and generally targets a direct nexus between financial control and underlying operational issues that bear on the integrity or ethics of court administration. First, the Judiciary has mandated that each Justice Court maintain a cashbook that lists, in chronological order, all receipts and disbursements:[125] the chronological basis of recording helps ensure against manipulation of records that can obscure not just financial misfeasance but also underlying problems of adjudication. Second, the Judiciary promulgated rules to govern Justice Court bank accounts and justices' conduct in relation to such accounts.[126] These rules provide, among other things, that

- every justice must deposit all moneys received into a segregated bank account in his or her name, in a bank or trust company in this State, no later than 72 hours (exclusive of

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118 See generally OSC Justice Court Handbook, id.

119 See generally CPL art 500.

120 See UJCA § 1911.

121 See OSC Justice Court Handbook, at 24-47.

122 See id. at 60-61.

123 See id. at 67 & Appx 9.

124 See id. at 11. Localities reporting to the JCF electronically and thus eligible to participate in OSC's Invoice Billing Program not only can reduce their administrative costs of compliance but also directly keep the portion of fines, fees and surcharges that the locality is eligible to retain on its own behalf rather than remit these monies to JCF for accounting and only later receive back their portion. This advantage directly assists localities with cash flow (see id.).

125 See 22 NYCRR [Uniform Rules for Trial Courts] § 214.11(a)(3).

126 See 22 NYCRR [Uniform Rules for Trial Courts] § 214.9.

Sundays and holidays) from the day of receipt (a requirement that seeks to reinforce individual accountability and minimize opportunities for loss or theft of funds);[127]

- each justice must notify OCA of relevant bank account information both when establishing an account and when changing an account (a requirement that allows cross-checking and continuity between Justice Court administrations);[128] and
- all of a Justice Court's judges together may establish a joint account for the deposit of bail moneys (a requirement that recognizes that bail and bail poundage often continue beyond the terms of individual judges).[129]

Third, OCA collaborates with the Comptroller's Office, the Magistrates Association and local court clerks to provide training for justices and nonjudicial staff in all of the foregoing financial management and reporting requirements. Historically, the Comptroller's Office provided direct support for statewide and local training for justices and court clerks. More recently, OCA itself has provided some of this training.

The foregoing initiatives, helpful as they are, admittedly are not enough to support the Justice Courts in cost-effectively meeting their often significant financial obligations. While some of the largest Justice Courts have full-time staff and advanced protocols to help meet their financial obligations, many smaller Justice Courts and their sponsoring localities often lack the time and resources to dedicate to matters of financial control with the rigor and consistency of the State-paid courts and other State agencies. Even in the largest Justice Courts, operational problems have arisen — primarily a result of the fracturing of legal and practical control detailed above — that raise difficult questions about the Justice Courts' financial integrity.

While this very fracturing of legal and practical control of Justice Court operations and finances continues to constrain OCA's ability to more directly manage Justice Court compliance with State fiscal mandates — and thus underscores the need for State leaders to take a fresh look at more fairly aligning control with responsibility in this area — this paradigm also suggests a basis for further actions that OCA can take. Precisely where Justice Court financial issues suggest operational issues that bear directly on the administration of justice, it is possible for OCA to take further measures, whether supportive or corrective or both, without intruding on local autonomy or on the Comptroller's jurisdiction.

In that light, OCA announces the following initiatives to assist both Justice Courts and the Comptroller's Office in their respective spheres, to support the financial integrity of the Justice Court system and more cost-effectively fulfill the public trust that inheres in collecting often large revenues on behalf of the State:

1. INCREASE USE OF ELECTRONIC PAYMENTS TO AND FROM JUSTICE COURTS

a. Universal participation in the Invoice Billing Program. Experience repeatedly has underscored the truism that automation can reduce administrative costs. Especially in relatively small institutions like the Justice Courts, the administrative cost of complying with financial-control mandates can be significant relative to revenues generated. For that reason, the Comptroller's

127 See 22 NYCRR [Uniform Rules for Trial Courts] § 214.9(a).

128 See 22 NYCRR [Uniform Rules for Trial Courts] § 214.9(c).

129 See 22 NYCRR [Uniform Rules for Trial Courts] § 214.9(d).

Invoice Billing Program invites Justice Courts to make their monthly JCF reports by electronic device, an initiative that not only reduces overhead compliance costs but also directly benefits local cash flow by allowing the locality to remit only the State portion of JCF revenues and retain for itself the local share without having to wait for the Comptroller's Office to re-transmit those funds back to the locality.[130] Because only Justice Courts with proper computers and software can participate, and because participation requires the affirmative assent of every local justice, there are many Justice Courts that still do not enjoy these administrative and cash flow benefits. Recognizing the importance of these benefits, the Justice Courts automated case management system will be universal and inter-operative with the Comptroller's Justice Court databases, thus allowing all Justice Courts to participate. Moreover, because OCA will mandate use of the Justice Courts automated case management system in all town and village tribunals, every Justice Court in the State automatically will participate in the Comptroller's Invoice Billing Program, thus making town and village retention of the local portions of JCF revenues standard operating procedure in New York State.

b. Universal acceptance of credit card payments. These types of benefits — reducing administrative costs of compliance and accruing greater local revenue — also could apply on the receipts side of the ledger. Acceptance of credit card payments of fines, fees and surcharges — now authorized by the Legislature in all proceedings[131]— not only reduces administrative costs of receiving and accounting for revenue, but also directly increases revenue by making payment more convenient and thus lowering rates of nonpayment (i.e. accounts receivable). That step, in turn, further reduces administrative costs incurred in procuring missing remittances (e.g. generating and posting reminder notices, etc.). Most important from a fiscal security perspective, credit card payments reduce the amount of physical cash that must be secured — thus diminishing the need for bank deposits, making funds harder to misplace, reducing risks inherent in physically transporting funds and making routine audits easier by establishing backup electronic records of transactions.

For all of these reasons, some Justice Courts already accept credit card payments, finding that credit cards greatly simplify Justice Court administration, increase local revenues and are more convenient for litigants. Given the scale of these benefits and the consequential improvements to financial security, ***OCA will commence a phase-in of Justice Court acceptance of credit card payments starting in early 2007.*** This step will be cost-free for all localities, and OCA will work closely with the Comptroller's Office, Justice Courts and sponsoring localities to begin implementation as quickly and seamlessly as possible. The result will be significantly improved cash flow for localities sponsoring Justice Courts, corresponding reductions in cash and other instruments that the Justice Court must secure and transport, simplified accounting and thus enhanced and cost-effective fiscal accountability.

2. PROMULGATE JOINT FINANCIAL CONTROL BEST PRACTICES WITH THE COMPTROLLER'S OFFICE

As noted above, the *Handbook* and its underlying fiscal-control regulations provide extensive guidance for Justice Courts and local staff to effectuate their complex financial reporting and management responsibilities. The Judiciary likewise mandates some performance standards, such

130 See OSC Justice Court Handbook, at 11-12.

131 See L 2005, ch 457, § 7 (amending Judiciary Law § 212[2][j]).

as the requirement to deposit funds within 72 hours of receipt. Neither the Comptroller nor OCA, however, has developed and published a complete set of financial-control best practices to which Justice Courts should tailor their management. That training opportunities have been limited and that some Justice Courts operate with part-time staff have contributed to this reality, but the initiatives of this Action Plan — including significant expansions in training for justices and nonjudicial employees discussed below — will make possible more comprehensive design and implementation of best practices.

For that reason, ***OCA and the Comptroller's Office will promulgate comprehensive Justice Court best practices for financial control.*** These best practices — which will be designed in close collaboration with local justices and clerks — will govern all aspects of their financial operations, including the collection, storage, security, transportation and periodic auditing of funds. These protocols will be developed in 2007 and, to the maximum extent practicable, will be integrated into the Justice Courts automated case management system, the Court Manual and expanded OCA financial-control training sessions. Where broad effectuation of these best practices would require changes in procedure or resources, the Comptroller's Office and OCA jointly will review and, where authorized by law, make accommodations to procedure and resource allocations.

This joint initiative will ensure maximum collaboration between the Comptroller's Office and OCA, maximum guidance for Justice Courts and maximum support for their diligent effectuation of the financial responsibilities that State law imposes on them.

3. FURTHER INTEGRATE JUSTICE COURTS INTO OCA AUDITING SYSTEM

Though the Comptroller has constitutional responsibility to manage the JCF and thus primary responsibility to audit the financial affairs of Justice Courts depositing funds into the JCF, OCA's Division of Internal Audit has, on occasion, undertaken to review the financial affairs of individual Justice Courts under circumstances that suggest significant malfeasance or mismanagement. These infrequent audits generally are undertaken in consultation with the Comptroller's Office and seek to rectify both financial disputes and underlying operational issues. As much as the financial matters themselves, these underlying operational matters can bear directly on the administration of justice in affected tribunals and therefore call for limited but important State Judiciary intervention.

As much as, or perhaps more than individual Justice Courts, the Justice Court system as a whole — owing to its complexity and the increasing responsibilities asked of it — likewise requires targeted OCA monitoring. Financial aspects of their operation are subject to the Comptroller's oversight first and foremost, but where financial concerns reflect fundamental failings of court administration, OCA has a duty to the administration of justice to support local court operations and, when necessary, investigate and help rectify problems. Just as this axiom motivates many of the other initiatives of this Action Plan, so too must it motivate expanded State Judiciary attention to Justice Court auditing, albeit with due deference to the Comptroller's constitutional role in this area. Accordingly, OCA will undertake the following initiatives:

a. Require submission of localities' annual Justice Court audits. As noted above, the Legislature has required local justices to open Justice Court records for inspection by the sponsoring locality

and requires the locality to conduct an annual review of those records. Neither of these statutory provisions, however, provides for direct OCA monitoring much less enforcement, even though there may be direct implications for court administration. Moreover, this statute itself does not necessarily yield independent audits of each Justice Court. Accordingly, pursuant to existing authorization,[132] OCA will request each spring that the chief financial officer of each locality sponsoring a Justice Court provide OCA's Division of Internal Audit with a copy of the locality's annual audit of the Justice Court, including copies of any external audits and supporting materials ordered by the local governing board. As noncompliance would signal that the locality may not have conducted a full audit of the Justice Court's records, OCA will forward annually to the Comptroller a list of every locality that failed to comply with this directive so that the Comptroller's Office may make further inquiries as conditions warrant.

These initiatives will provide both the Comptroller and OCA with a simple means to encourage local diligence in the effectuation of their financial-control responsibilities and, by extension, a simple means to efficiently focus limited State auditing resources.

b. Roll out risk-assessment approach to Justice Court auditing. It would be both impracticable (owing to resource limitations and jurisprudential concerns) and violative of the Comptroller's constitutional role for OCA to undertake annual financial audits of all Justice Courts. Recognizing that OCA's auditing role is best limited to the nexus between financial management and underlying fundamental issues of court administration, OCA instead will initiate a risk-management approach to monitoring Justice Court operations. OCA's Office of Internal Audit, working with other OCA units, will begin cross-checking the various filings associated with Justice Court operations, including the Comptroller's Office, DCJS, DMV and county pre-trial service agencies, corrections and probation departments. Significant discrepancies between these agencies' data and the adjudicative records of individual Justice Courts may indicate not only financial concerns relevant to the Comptroller but also underlying case-processing or other managerial concerns that may require closer review by OCA. When implemented, the Justice Courts automated case management system will allow OCA to perform this risk-assessment review seamlessly and without interfering with Justice Court operations. Likewise, a locality's failure to comply with the disclosure directives discussed above may signal operational issues that warrant further review. By using these risk-assessment approaches, OCA can limit individualized review to situations with documented discrepancies in case processing and compliance — thus focusing State Judiciary efforts on matters of court administration and respecting the Comptroller's superseding role in fiscal affairs, while most efficiently targeting the Judiciary's limited resources to the areas of greatest need.

c. Expand OCA auditing unit. The foregoing data collection, protocol design, risk assessment and investigatory roles all will require further investments of administrative resources. To that end, OCA will expand its Office of Internal Audit to ensure sufficient staff to design risk-assessment protocols in collaboration with State and local justice agencies, effectuate these protocols on an ongoing basis and, where necessary, commence individualized review of Justice Court operations. As conditions warrant, these reviews would be conducted in consultation with the Comptroller's Office. This expansion of the Office of Internal Audit also will assist OCA in help-

132 See generally Judiciary Law § 212(1)(*l*).

ing develop and implement, jointly with the Comptroller, the best practices in Justice Court financial control on which the Justice Courts automated case management system and the new Court Manuals will rely.

C. EDUCATION AND TRAINING

AS IN MOST EFFECTIVE PUBLIC, PRIVATE AND NONPROFIT ORGANIZATIONS, ongoing education and training are essential to the professionalism and vitality of the Judiciary. However much experience a judge may bring to the bench, there is no substitute for continuing legal education — to alert judges to emerging developments in the law, to keep adjudicative skills fresh, to sensitize judges to administrative issues that inhere in their offices, and to expand the skill base and flexibility of the Judiciary through cross-training. For these reasons, like many judiciaries nationwide, the New York Judiciary requires State-paid trial judges to complete no less than 24 hours of continuing judicial education every two years,[133] including specific content on the interlocking legal, operational and sociological challenges of adjudicating domestic violence cases.[134] In practice, many State-paid judges far exceed this educational requirement.

For the approximately 72% of Justice Court judges who are not attorneys, however, the challenge of education and training is altogether different. 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 — indeed, the current system contemplates that a tax or bankruptcy lawyer with little experience or understanding of criminal law could become a criminal court judge[135]— 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 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.[136]

Comporting this axiom with the reality that 72% of Justice Court judges are not lawyers is among the great challenges in New York governance. On the one hand, the New York State Code of Judicial Conduct has long required that judges "maintain professional competence" in the law.[137] On the other hand, for centuries, New York State has allowed non-attorneys to preside in Justice Courts, and most recently continued that authorization in 1967 for non-attorneys who successfully complete a training program approved by OCA.[138] This policy reflects the difficult reality that parts of New York State lack sufficient numbers of attorneys willing to serve as local

133 See 22 NYCRR [Rules of the Chief Judge] § 17.3.

134 See 22 NYCRR [Rules of the Chief Judge] § 17.4.

135 This great variation in attorney specialization is one of the most important reasons that the Judiciary mandates continuing judicial education and so carefully develops and implements curricula tailored to the particular jurisdiction and tribunal in which judges preside. For attorney judges – both in the Justice Courts and the State-paid courts – there is no legal basis to couple these mandatory training programs with a testing mandate because such a mandate would constitute a judicial qualification that the Legislature reserves only to non-attorney judges of the Justice Courts (see NY Const, art VI, § 20(a); UJCA § 105[a]).

136 For this reason, the Constitution requires that all State-paid judges be attorneys admitted to the New York Bar for either five or 10 years, depending on the particular tribunal (see NY Const, art VI, § 20).

137 See 22 NYCRR [Rules of the Chief Administrator] § 100.3(B)(1).

138 See NY Const, art VI, § 20(c).

justices, fueling concern that hundreds of Justice Courts could be altogether unable to function if only attorneys could preside in them. Some of these jurisdictions historically have lacked a large pool of attorneys, while in other locations attorneys are available but may be unwilling to preside because judicial responsibilities would create conflicts of interest that impair their private practice of law. Legislative policy to allow non-attorney justices also is not unique: it complements a longstanding — if perhaps rarely appreciated — policy decision that self-study can, under certain circumstances, sufficiently prepare lawyers for admission to the New York Bar without a traditional three-year academic legal education.[139]

As with so many other policy issues that bear directly on the structure of the Judiciary, decisions about judicial qualifications generally — and especially about whether only attorneys should be allowed to preside in Justice Courts — are decisions that the Constitution and thus New York's voters have reserved exclusively to the Legislature's discretion.[140] What the Judiciary can do — and by statute must do — is work within the current structure to create and implement training and certification programs consistent with the foregoing directives and their policy underpinnings.[141]

To that end, the Rules of the Chief Judge have long provided for a two-tiered sequential legal education program consisting of "basic" and "advanced" curricula, designed to inculcate in newly-selected justices a baseline familiarity with legal terminology, legal reasoning and routine judicial responsibilities.[142] The six-day basic program, administered at least three times annually in various locations around the State, introduces newly-selected non-attorney justices to core principles of civil and criminal jurisdiction, burdens of proof, substantive law and judicial ethics. Successful completion of this basic program by passing grade on a written examination is required for the non-attorney justice to receive provisional certification to assume the duties of office.[143] This provisional certification remains effective until the next advanced program, which each non-attorney justice must successfully complete in like fashion.[144] This advanced program, administered at least annually, builds on the basic program's foundation with seminars on discrete topics in civil and criminal procedure, substantive law and judicial administration. Unlike the one-time basic course that non-attorney justices must complete at the start of their judicial careers, successful completion of an advanced program is required annually for the duration of each non-attorney justice's judicial career,[145] thus ensuring a career-long program of continuing judicial education.

Whatever the original motivation and current merit of the foregoing system may be, the legal universe has transformed dramatically since the Legislature decided in the 1960s that non-attorney justices could continue presiding in the Justice Courts. During the intervening four decades, indigent criminal defendants obtained fundamental constitutional rights to assigned counsel;

139 See 22 NYCRR [Rules of the Court of Appeals] § 520.4 (allowing admission to bar examination with one year of formal academic legal education and three years of qualifying legal apprenticeship).

140 See NY Const, art VI, § 20(c).

141 See UJCA § 105(a); see generally Judiciary Law § 212(1) (r).

142 See generally 22 NYCRR [Rules of the Chief Judge] § 17.2.

143 See UJCA § 105(a); 22 NYCRR § 17.2(a), (c).

144 See 22 NYCRR § 17.2(a).

145 See 22 NYCRR § 17.2(b).

rights to counsel expanded and have come to attach earlier in the criminal justice process; complex drug and domestic violence cases then virtually unknown in many Justice Courts now increasingly appear on Justice Court dockets; evidentiary standards have become more complex; ethical expectations of judges have risen as modern sensibilities have more strictly guarded the separation of powers against intrusion by dual-role judicial officials; public rights to observe court proceedings have become more fully articulated; and statutory mandates on Justice Courts vis-a-vis reporting agencies, sentencing, probation and financial auditing all have multiplied. The modern challenge for a non-attorney judge to navigate all of these tasks — to do justice in every case, properly interact with State and local agencies and effectively manage his or her Justice Court — all with rudimentary legal training at best, can be daunting in ways likely unanticipated by the Legislature, the voters or the State Judiciary itself at the inception of this system four decades ago.

For these reasons, many town and village justices have come to rely heavily on their court clerks, whose expertise and continuity from election to election and administration to administration can empower them to offer indispensable advice and support. Technology, too, has helped routinize some Justice Court proceedings and administrative activities. A comprehensive Court Manual likewise can and will assist in benchmarking Justice Court operations, as will many of the other initiatives in this Action Plan. Ultimately, however, the judicial role inherently is one of judgment, and there is no substitute for proper legal training to inform that judgment, especially when judgment is required to secure fundamental rights established by law.

There is no avoiding the conclusion that OCA training programs for non-attorney justices must change to reflect the tremendous developments in law and society that the last four decades have brought. There are several reasons why change has not yet come, but none is so fundamental as the practical constraint that most newly-selected justices have outside employment and family obligations and thus limited time to attend training seminars, usually at significant distance from home and work. Couple this reality with the limited statutory period between the dates of judicial selection and assumption of the duties of office — never more than two months and sometimes significantly less — and the result is a tremendous amount of training to do and very little time for OCA to do it.

Despite these constraints, most non-attorney justices perform their judicial roles admirably and well. Their professionalism, diligence and dedication are apparent, they take very seriously their judicial roles and their duties continually to improve their knowledge of the law, and over the years exceptions to these principles have been relatively few in number. Presumably for these reasons, there has been no widespread voter or legislative movement fundamentally to change the qualifications to preside in Justice Court.

Nevertheless, the complexity of the judicial role has changed so markedly in the four decades since the Legislature last revisited this issue that the current system cannot continue unaltered if New Yorkers are to have meaningful assurance that the single, Statewide standard of justice to which all are entitled applies equally in Justice Court as in every other tribunal in this State. The legal universe has changed too much for a single week of training, followed by cursory examination, reliably to encompass the quantity and quality of learning that non-attorney judges need to

do their jobs, or even become familiar with sources of information necessary for future self-learning. 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.

Likewise, long and pragmatic experience with the current approach to teaching non-attorney judges — an approach that emphasizes passive lectures often without rudimentary foundation to understand materials or any opportunity to apply learning in the real-life, high-stakes courtroom setting for which judges are being trained — reveals that this approach too often fails to facilitate real learning. Even more than the typically younger law student, adult learners tend to learn best by *doing*, not by passively attending lectures or reading instruction guides, especially when they lack academic or experiential basis to contextualize and thereby absorb these often complex materials. Further, operational practicalities often have conspired to make the rigor of Justice Court education and training inconsistent across the State: participants in centralized educational programs generally learn from higher paid and thus often better qualified instructors than do participants in local programs that may be more accessible and thus more practical for justices with families and job obligations. Add to these complexities the fact that many newly-selected justices have full-time jobs and must take significant time off from work (and incur significant expenses) to attend the week-long basic education program before they take office, and the challenge of effectively educating non-attorney judges becomes impractical if not impossible under the current system.

Likewise, existing training methods and programs for Justice Court clerks and other staff on whom justices rely also has proved inadequate. Some local clerks are professional and founts of experience and support for the justices and the public; others are not well-versed in their many, often complex operational duties of processing cases, preparing mandatory reports to State agencies, securing and transporting funds, and generally managing the day-to-day operation of their tribunals. Most training programs ostensibly geared to these responsibilities number less than 20 hours; such programs as exist are not standardized across the State. Moreover, many Justice Courts operate without dedicated staff, and such staff as exist are accountable not only to the Justice Court and its judges, but also to the town or village, thus creating a mismatch of accountability that further complicates training and operations.

Accordingly, OCA will undertake a fundamental and unprecedented overhaul in its approach to training non-attorney justices and Justice Court staff. Driven by changes in the legal landscape as well as the Internet revolution, OCA will dramatically increase the resources dedicated to training, reinvent educational methods to get better results, expect non-attorney justices to spend significantly more time preparing for their judicial duties, raise standards that non-attorney justices must meet before assuming the bench, and expand and regularize training for Justice Court staff.

In these endeavors, OCA will aspire to a single goal: to meet its statutory duty to support non-attorney judges and Justice Court staff by every means at its disposal, and thus help them perform the vital public trusts that the Constitution, Legislature and voters invest in them.

To these ends, OCA announces five sets of training initiatives, dedicated to improving justice education, court clerk education and administration of these improvements:

1. NON-ATTORNEY JUSTICE EDUCATION AND CERTIFICATION

a. Overhaul of the basic program. The modern obligations and expectations of judges require far more than a single week of training before non-attorney justices take the bench. As noted, there is too much to teach for a single week, however configured, to serve the administration of justice. As important as substantive knowledge is practical know-how that no one-week program can properly convey. That kind of education requires not just more time, but also a different, experiential approach to education, one that emphasizes practice and simulations that build on the academic learning that traditional training sessions seek to convey. Thus, it is imperative that contact time between educators and non-attorney justices be significantly increased, and that educators make more efficient use of their limited time to impart not just learning, but also practical skills. At the same time, justices' outside job and family obligations, and the sheer size of the State and corps of justices to be trained each year, impose practical limits on the amount of training time available to OCA before voters and local governments expect newly-selected justices to take the bench, thus making more efficient use of time absolutely critical.

Modern pedagogical research reveals, however, that it is not necessary for all education to occur face-to-face. Carefully structured home study and Internet-based distance learning methods create new avenues for basic education that, until now, have not been feasible. This approach can allow non-attorney judges to meet their educational obligations, and allow OCA to raise educational standards, while minimizing the travel burden on newly-selected justices and conserving face-to-face classroom time for innovative simulations and other practical education that are possible only in traditional settings.

Taking these three approaches together — increasing contact time, shifting to experiential learning, and using outside time to prepare for and supplement in-class education — OCA announces the following overhauls of the basic non-attorney judicial education program that OCA will develop and implement in the coming year. In brief, the new basic education program will be divided into four parts: a "pre-basic" self-study program, a first week of basic classroom training, a second period of self-study, and a second week of basic training that emphasizes skill development:

- ***"Pre-basic" home study.*** Recognizing that non-attorney judges need a frame of reference — some basic familiarity with legal terms and legal reasoning — to fully absorb classroom learning, OCA will create a pre-basic self-study program to begin educating newly-selected justices *immediately* upon their election or appointment. This three-week pre-basic program, that non-attorney justices will be expected to complete before participating in basic classroom training, will use a combination of written materials and Internet-based resources to introduce legal terminology, legal principles (e.g. burden of

proof, sufficiency of evidence, presumptions), the various phases of civil and criminal adjudication (e.g. arrest, arraignment, etc.), and basic constitutional rights (e.g. right to counsel). Justices will be expected to dedicate approximately 15-20 hours per week to their studies during this period; this introductory phase will feature telephone, electronic mail and real-time Internet access to educators fluent in the pre-basic curriculum, who will be available to answer questions and provide explanations. Participants will be further supported with Internet-based self-assessments to gauge progress in preparation for in-person basic training.

- ***"Basic I."*** The one-week basic program will be doubled to two weeks, and the two weeks will be separated to make participation feasible and allow still further opportunities for study and integration of learning materials at home. The first residency week, Basic I, will be scheduled approximately four weeks after Election Day at locations across the State, build on the self-study period and roughly resemble the current one-week basic program in scope and format. Basic I will emphasize traditional classroom lectures in procedure and underlying substantive law, as well as introduce the legal and operational requirements of court administration and financial control. As with the current basic program, participants in Basic I, upon concluding the course of study, take an examination that will cover curriculum to date.

- ***Inter-session home study.*** This two-week inter-session period will begin applying the lessons of Basic I and the initial home-study period. First, participants will be introduced to information sources and information technology and taught to locate resources they will need to interact with Executive agencies and generally perform their responsibilities, including and especially their financial management and reporting obligations to the State Comptroller's Office. Second, participants will be introduced to problem-solving methods to reinforce and start applying the substantive learning from prior sessions. Third, participants will begin practicing their skills by reading case studies and learning how to make factual and legal conclusions. As with the first home-study period, educators will be available by telephone, electronic mail and Internet chat, and Internet-based self-assessments will be available and encouraged.

- ***"Basic II."*** This second and final one-week residency program will feature some classroom components but will emphasize discussion and experiential learning that research indicates is most effective for adult learners. The main goals of this week will be to observe attorneys and judges in action, whether by videos or in simulations, and to apply the lessons of the prior training phases. As with Basic I, participants in Basic II will be required to pass an examination, successful completion of which will result in certification to assume the duties of office.

b. Overhaul of testing. Consistent with the foregoing re-invention of the basic curriculum, OCA's "basic" testing protocols likewise will need to change. Recognizing that the current examination rewards memorization far more than comprehension or application, the examinations will be reformatted into a combination of multiple-choice and written components. For instance,

the Basic II examination will require consideration of mock accusatory instruments, mock proceedings and routine legal and administrative issues likely to arise in court. The voluntary self-assessments available to home-study participants before Basic I and Basic II will offer examples of the multiple-choice format, and other materials will give advance guidance to the kinds of other questions participants can expect. Because judges on the bench routinely may consult books and other printed materials, all examinations will be open book and open notes. Like most other tests, however, the new tests will be time-limited, thus making impractical excessive use of printed materials as a substitute for comprehension.

c. Provisional certification. Implementing the foregoing reforms will take time: curricula must be carefully researched and planned, at-home study materials must be developed, Internet and video resources must be created and archived, examinations for each phase must be created and tested to ensure fairness and proper reflection of the curriculum, and administrative apparatus must be created to implement these reforms. Recognizing that these reforms will take time, the current Justice Court training system will and must continue, but all certifications awarded to non-attorney justices completing these programs during this interim period will be provisional, pending implementation of the new educational system.

d. Post-examination support and appointment of acting justices. Current law authorizes the Chief Administrative Judge, in the event of vacancy or temporary incapacity in the office of any town or village justice, to appoint another justice to preside temporarily[146]— a step essential to ensure that Justice Courts can adjudicate their dockets. Accordingly, where the foregoing initiatives delay a non-attorney justice's assumption of the duties of office, the Chief Administrative Judge will appoint an acting justice, from among the pool of authorized judges in the county (or county adjoining) where that temporary incapacity occurs, to serve in that justice's place until he or she is certified. During this period, OCA will take aggressive steps to assist the affected non-attorney justice to successfully complete his or her certification and assume the duties of office as soon as possible.

OCA recognizes that these initiatives constitute fundamental changes to the pace, nature and rigor of non-attorney judicial education. Like all such changes, these will take time to implement and more time for localities and magistrates to become accustomed to them. OCA is confident that these programs, when properly supported, can markedly improve the effectiveness of and public confidence in the Justice Court system, and looks forward to collaborating with the Magistrates Association and local justices to ensure the success of this vital initiative.

2. IMPLEMENTATION AND ADVANCED JUDICIAL EDUCATION

Reforms of Justice Court education cannot end with overhaul of the basic program. Curricula must be developed and implemented, and these programs must lead into the advanced training programs that both attorney and non-attorney justices must complete for the duration of their judicial careers. However, the current means of developing and implementing training curricula are not geared to these higher goals, current advanced programs do not begin where the new basic program would end, and none of these programs take full advantage of training opportunities that the Internet and other technologies allow. Accordingly, OCA will make the following additional changes to the Justice Court education and training program:

146 See UJCA § 106(2).

a. Re-invention of orientation for attorney justices. The current orientation for newly-selected attorney justices in the Justice Courts consists mainly of their optional participation in the basic program for non-attorney justices. By contrast, orientation for newly-selected justices and judges of the State-paid courts generally consists of a week-long program tailored to the dockets of their respective courts. These programs provide newly-selected jurists not only with indispensable court-specific legal background (e.g. civil procedure, criminal procedure, etc.) but also with helpful advice on court administration and judicial ethics. Recognizing the importance of these initial sessions, OCA will retool the orientation for newly-selected attorney justices and require their attendance during a newly reorganized one-week program dedicated to them.

b. Diversification of advanced training. Many reform goals of the basic program (e.g. using emerging technology, emphasizing experiential learning) apply also to the advanced program. The advanced program and its needs are qualitatively different, however, because they must cater to a much more diverse group of participants with distinct levels of judicial experience and legal education. In addition, because incumbent non-attorney justices who are re-elected or re-appointed to new terms will be required to be re-certified once the new basic program is complete, special training opportunities will need to be made available to these justices. Thus, OCA will diversify the advanced program in several ways:

- ***Dual-tracking advanced programs.*** OCA will establish distinct advanced programs geared to participants' disparate levels of judicial experience and legal education. This two-track approach will better target the learning needs and learning styles of these groups, and at the same time permit jointly-administered programs when appropriate so these groups can learn from each other as well as from professional educators. This dual-tracking also will allow OCA to help new non-attorney justices elected or appointed during the phase-in period to become certified under the new basic program.

- ***Quarterly "live" and remote advanced programs.*** Rather than rely on annual advanced programs, OCA will develop quarterly programs that will be simulcast by Internet so justices can participate from across the State at minimal cost or inconvenience. These more frequent sessions will allow enhanced interaction with educators, who in turn can answer questions and provide guidance faster than the current annual program allows.

- ***Internet-based discussion groups.*** As a supplement to formal advanced training periods, OCA will sponsor ongoing Internet-based discussion groups for interested justices, who will be invited both to participate in in-depth topical discussions with other justices and Resource Center attorneys, as well as pose questions as they arise. These discussion threads will be housed on secure OCA servers and will be available at all times. Where OCA finds that particular issues are being raised or particular questions are being asked with frequency, these matters will be integrated into advanced curricular offerings on an ongoing basis, thus providing more complete feedback between justices and educators.

c. Permanent Committee on Justice Court Education and Training. The foregoing reforms of the basic and advanced training programs will depend on the active engagement of justices, law enforcement personnel, the State Comptroller's Office and other State agencies with direct stakes

in Justice Court operations. To that end, OCA will convene a Permanent Committee on Justice Court Education and Training, drawing members from the Magistrates Association, New York State Association of Towns, New York State Conference of Mayors, OCA, the State Comptroller's Office, and experts in adult education and psychometrics (i.e. testing). The Committee will consult with these constituencies, as well as with the New York State Judicial Institute, National Center for State Courts, National Judicial College and judiciaries nationwide engaged in training and supervising non-attorney justices in local courts, and, during 2007, develop a goal-based curriculum for each of the four phases of basic training. This Committee also will develop printed, Internet-based and videotaped supporting materials, prepare and norm examination questions geared to the curriculum, monitor the effectiveness of the training programs as they develop, and make adjustments as necessary.

d. Bar Association adjunct educators. To assist the Committee and OCA educators, OCA will work with the organized bar to channel their generous assistance in helping prepare and implement this new curriculum. As appropriate to their practices and the system's educational needs, members of the bar will serve as adjunct educators in the basic and advanced programs, and participate in the other live and remote training programs. Bar participation will be especially welcome where attorneys have extensive experience and demonstrated expertise educating adults.

e. Dedicated training programs on judicial ethics. Recognizing the complexity and importance of education in judicial ethics, representatives of the New York State Advisory Committee on Judicial Ethics will provide training seminars dedicated to town and village justices on ethical issues likely to arise in their courts. These programs, which will supplement the introductory ethics training that all town and village justices receive, will be developed in consultation with the Permanent Committee on Justice Court Education and Training to ensure complementary curricula.

3. JUSTICE COURT CLERK EDUCATION

As important as proper training of justices is proper training of court clerks and other nonjudicial staff of the Justice Courts. These personnel guide litigants, receive and administer court funds, prepare reports to the State Comptroller and the other State reporting agencies, advise judges and generally are responsible for the day-to-day operations of their courts. As such, it is essential that they be properly trained and supervised. Too often, however, training is inconsistent and inconvenient, with consequential impacts on the cost-effectiveness of court administration. At the same time, however, State law gives each sponsoring locality dual control over the employment, management and termination of Justice Court nonjudicial staff, even as the justices are, in the main, legally responsible for their clerks' complex and very important work. The result is a mismatch between responsibility and control that, at the very least, raises difficult operational and separation-of-powers questions.

Recognizing the need to ameliorate this mismatch between responsibility and control, and to ensure the proper training and supervision of court staff compatibly with local autonomy, OCA will implement the following initiatives:

a. Statewide certification program for court clerks. To ensure consistent and rigorous training of Justice Court clerks across the State, OCA and the State Comptroller's Office jointly will establish a certification program for Justice Court clerks. This program will prescribe and implement standard educational goals both for substantive law and financial management. Training will be based on the court manual that OCA will prepare in collaboration with the State Comptroller's Office, and will be uniform across the State both to ensure consistency and support the professional network that the court clerks' association tries to foster. Successful completion of the certification program will result in the award of a professional credential that OCA, the State Comptroller, the Magistrates Association and sponsoring localities would recognize as proof of expertise and achievement.

b. State payment of training-related travel expenses. Most court clerks are expected to pay their own expenses associated with travel for training purposes: while some localities or even local justices may reimburse clerks, others must choose between absorbing these expenses or foregoing important training opportunities. To eliminate this disincentive for proper Justice Court training, OCA will begin reimbursing necessary travel expenses associated with Justice Court clerk training in satisfaction of the credentialing requirements above.

c. Reform of clerk accountability. The foregoing changes to training and credentialing beg a critically important question about whether and to what extent a local justice can require participation. As noted above, clerks are subject to the joint control of the Justice Court they serve and the governing board of the locality. Moreover, there is not even a requirement that localities sponsoring Justice Courts authorize local justices to appoint anyone to serve as clerk, specify qualifications or protect against conflicts of interest that can impair the security of important financial controls. For all of these reasons, OCA will propose legislation to clarify the accountability of Justice Court clerks, and thereby help ensure the success of the foregoing training, certification, performance and financial control initiatives (see Part III.F, below).

4. THE JUSTICE COURT INSTITUTE

The foregoing overhaul of Justice Court judicial and clerk education will require expanded provision of support for housing and transporting participants to training centers. Current practice generally obliges justices and clerks to pay for their own travel for training purposes, which can significantly discourage travel and thus proper training. Moreover, the doubling of basic training contact-time for non-attorney justices, as well as the establishment of statewide certification for Justice Court clerks, will significantly increase the need for accommodations and the creation of centralized means to train large groups of people under time constraints dictated by the political calendar, the operational needs of the courts and holiday schedules.

To enhance the quality of training and its cost-effective provision, OCA will create a Justice Court Institute, a centrally located, state-of-the-art training facility for town and village justices and court clerks. The Justice Court Institute will serve as an upstate satellite facility for the White Plains-based Judicial Institute, which the Legislature established to serve as a year-round education and training center for the State-paid courts and their judges and nonjudicial personnel.[147] The Justice Court Institute will, for the first time, allow OCA to bring together newly-selected justices (for the basic program) and both newly-selected and incumbent judges (for advanced

147 See Judiciary Law § 219-a.

and re-certification programs) in modern facilities designed specifically for this educational mission.

As a satellite facility for the Judicial Institute, the Justice Court Institute also will allow more efficient supplemental training for upstate State-paid judges and nonjudicial personnel who otherwise would travel to White Plains for training programs. This result, too, will save the State time and money.

5. ADMINISTRATION OF JUSTICE COURT EDUCATION

Many of the foregoing changes in Justice Court education and training will require new investments in technology, expanded staff and new administrative structures to develop and implement these programs. To these ends, OCA will implement the following internal initiatives:

a. Expansion of OCA's Justice Court support staff. OCA will expand administrative resources dedicated to advising and educating Justice Court personnel. The Resource Center will grow to provide additional attorney assistance for town and village justices. Educators fluent in adult education methods will be added to develop and implement new training programs in conjunction with the Task Force on Justice Court Curricular Development. Resource Center attorneys will be available by telephone and Internet both during regular business hours and during expanded off-hours when many Justice Courts convene, and Justice Court educators likewise will be available at off-hours when self-study sessions are most likely to occur.

b. Equalization of training honoraria. As noted above, centralized and district-based training programs historically have been funded and administered differently. Generally speaking, Justice Court trainers in centralized training programs receive larger honoraria than educators in district-based training programs, often resulting in different calibers of Justice Court training programs. While the Justice Court Institute will supplant at least some district-based training programs, it is likely that others will continue. Thus, recognizing the importance of ensuring high-quality and equal opportunities for Justice Court education across the State, OCA will equalize honoraria for all Justice Court educators commencing immediately.

c. Creation of Internet library for Justice Court training. Reliance on self-study to prepare for Basic I and Basic II will require that OCA make available to non-attorney justices a range of materials for use at home. These materials will make increasing use of Internet-based audiovisual files (e.g. archived lectures, simulations, reading materials and other information resources) to supplement print material and, in some cases, replace traditional print material with more interactive learning opportunities. Likewise, some kinds of matters may come before Justice Courts infrequently (e.g. jury trials) and thus supplemental training may be advisable immediately before a particular proceeding commences. To both ends, OCA will create a comprehensive Internet library of training materials suitable for Justice Court training, archive this library on OCA's secure computer servers, and make this library available to Justice Courts and their justices both for initial training and for ongoing professional development purposes.

d. Use of State court facilities for Justice Court training. Increased reliance on remote (e.g. Internet and video-conference) training resources will require that these technologies be available to all participants in Justice Court training programs. Increasing broadband access across upstate

New York will make home, work or Justice Court-based connectivity available to a majority of participants. For others, OCA will open State courthouses and make their Internet-enabled computers and video-conference equipment available, including on nights and weekends, to ensure maximum access to training opportunities.

e. On-site training teams. Recognizing that the backroom and other administrative functions of the Justice Courts are best taught in the courts themselves, OCA will establish Justice Court Advisory and Support Teams ("J-CASTs") to visit all newly-selected justices — attorney and non-attorney alike — in their courts before they take office or during the initial months of their first terms. J-CASTs will consist of multi-disciplinary teams of attorneys, court administrators and financial experts specially cross-trained in Justice Court operations and education, financial oversight, court security, information technology and all other aspects of Justice Court adjudication and administration, and will provide on-site, hands-on training tailored to each Justice Court. Members of these teams will serve as ongoing points-of-contact for justices and court clerks to answer questions, provide support and, if necessary, assist in review of court operations as needs arise.

D. FACILITY SECURITY AND PUBLIC PROTECTION

THE AFTERMATH OF THE SEPTEMBER 11 ATTACKS WITNESSED A TRANSFORMATION in the level of attention that judiciaries nationwide pay to assuring the safety and security of their courts. Soon after the September 11 attacks destroyed the World Trade Center's Court of Claims facility at the World Trade Center and disrupted court operations across New York City, OCA and the National Center for State Courts held the *9/11 Summit*, a high-level convocation of representatives of judiciaries across the nation, to document and begin implementing the lessons New York learned about keeping courts safe and open under conditions perhaps unimaginable before the September 11 attacks.[148] As the *9/11 Summit* underscored, a free society requires that courts be prepared for any eventuality and remain open for business at precisely the times of crisis that otherwise might provoke their closure.

The centrality of these lessons — and the broad imperative to assure the safety and security of the courts — have only grown in importance in light of a disturbing trend of escalating threats against judges and court staff nationwide. On average, New York judges report to OCA's Department of Public Safety over 100 threats or other security breaches each year, but as OCA's Task Force on Court Security documented in 2005, New York courts are by no means alone in this trend: the last 18 months have brought high-profile security breaches in courthouses in Atlanta, Chicago, Jacksonville and Seattle — some with tragic consequences.[149] As New York has long understood, and as other judiciaries rapidly have come to appreciate, these new realities necessitate a wide range of aggressive measures to better secure court facilities, patrol courthouse perimeters, equip and train uniformed court security personnel, deploy advanced technologies to efficiently screen persons entering court facilities, segregate detained defendants from public corridors, speedily respond to individualized threats and in some instances retrofit or redesign court facilities to ensure their security.[150]

148 Event materials are available at http://www.9-11summit.org.

149 See OCA Court Security Report, at iii, 9.

150 See e.g. id. at 37-39.

New York and OCA are in the vanguard of this national movement, as we must be. There is no court system in the nation, and perhaps the world, that is larger, busier or more diverse in its case types, facilities, caseloads and litigants than the New York State Unified Court System. Each day, New York judges and court staff come into direct contact with many thousands of litigants and other members of the public from all over the world — whether charged with violent crimes, drug offenses and other serious infractions, or with interests in sensitive family disputes or high-stakes civil litigation — under circumstances that inherently raise the prospect of courthouse violence. Doing justice under these circumstances inherently creates risk to life and safety, in some ways comparable to the risks that uniformed law enforcement personnel face every day. For these reasons, New York courts must be secure environments, and OCA has taken — and will continue to take — aggressive steps to make New York's courts as safe as possible for judges, court staff and members of the public serving or appearing in them.

What makes these and other security initiatives possible in the State-paid courts is the very existential aspect of court administration that Justice Courts palpably lack: effective State control of resources. While OCA directly controls and thus directly deploys staff, procedures and funds to address potential security risks in the State-paid courts, the Justice Courts' individual and systemic independence from State funding and day-to-day operational oversight makes these kinds of initiatives difficult if not altogether impossible for those local tribunals. Likewise, because Justice Courts operate in facilities wholly owned and controlled by the sponsoring locality, with little if any design oversight or operational control by the State, OCA lacks effective authority over Justice Court facilities whose infrastructure or operations can pose security risks. Neither does there exist any statutory or operational incentive for towns and villages to improve their court facilities voluntarily. Reports abound that local justices themselves have urged remedial steps to improve the quality and security of local court facilities, and that many town and village governments delay or deny these requests owing to limited funds or political will. This dynamic leaves town and village justices with no practical remedy to address even the most palpably inadequate court facilities.

Similarly, though OCA's Department of Public Safety repeatedly has offered to conduct security assessments for Justice Courts and their sponsoring local governments, as of this writing, less than 60 of the 1,277 Justice Courts have taken advantage of this opportunity. Thus, over 96% of New York's Justice Courts and their sponsoring localities have yet to complete even the most minimal review of their court security preparedness. Moreover, the recommendations that OCA made to those relatively few Justice Courts that consented to security assessments face the same practical constraints that local justices themselves face in seeking necessary facility improvements: because Justice Court facilities are within the exclusive control of the sponsoring locality, recommendations for upgrades remain subject to the unfettered discretion of the often cash-strapped local government.

As a result, and as the Task Force on Court Security concluded in 2005, the security preparedness of the Justice Court system is woefully inadequate and thus potentially dangerous for every judge, nonjudicial employee, attorney and member of the public who works in or appears before a town or village tribunal. While some Justice Courts do take very seriously their security respon-

sibilities,[151] the vast majority of Justice Courts have no entrance screening to detect and confiscate deadly weapons; no uniformed presence in courtrooms properly trained to detect and respond to security incidents; no effective means to segregate detained defendants from the public, or segregate litigants from the judge; no secure locations anywhere in the facility, no mechanism to separate alleged victims and perpetrators of domestic violence; no published and practiced protocols for justices and staff to follow in case of emergency; few effective protections for cash and other instruments stored either in the court or elsewhere on premises; no restraints to keep furniture and fixtures from being used as projectiles or other weapons; and no effective way to summon help in case of a security breach. Many Justice Courts do not even have a bench to establish a minimal physical barrier between judges and litigants, or even a dedicated court facility that might be retrofitted with modern security apparatus.

Instead, many Justice Courts operate in a general purpose room, used also by the town or village government, citizen groups and community organizations, with few if any preventive measures contemplated, much less implemented. By day, these rooms may hold a water district work session or a Scouts' meeting; by night, a defendant might be arraigned there on a violent felony charge. In some localities, the Justice Court is allotted no proper space at all, relegating local justices to hold court in garages, storage areas or even their homes.

This situation is indefensible and cannot continue. While the vast regional diversity of New York's courts and court dockets resists one-size-fits-all categorizations, there is no denying that courts of criminal jurisdiction inherently face security threats for which most Justice Courts are utterly unprepared. As noted above, Justice Courts have the identical criminal jurisdiction as the New York City Criminal Court, City Courts outside New York City and District Courts on Long Island.[152] Justice Courts arraign defendants on the most serious felonies, and regularly are called on to deprive persons of their liberty — whether by sentencing persons to jail or remanding defendants without bail — and make countless other legal decisions that invariably can engender opposition and hostility as with any other court in any other jurisdiction. Increasingly, Justice Courts report that litigants appear intoxicated or are parties to sensitive domestic violence that inherently carry an elevated risk of courtroom violence. For these reasons, the work of town and village justices can be inherently dangerous — perhaps equally dangerous as in the State-paid courts — and therefore it is utterly imperative that Justice Court environments be properly controlled to identify and mitigate foreseeable security risks. Any other result would countenance two kinds of court systems — one safe, another not — and that result could invite disaster.

Accordingly, it is emphatically the duty of every locality sponsoring a Justice Court to ensure not just its cost-effective operation but also its *safe* operation. Safe and secure court facilities, for Justice Courts as well as for the State-paid courts, are indispensable prerequisites for the holding of court and thus for the administration of justice. This responsibility is of the very highest importance — for the safety of the court and its staff as well as for the safety of every member of the public — and thus demands far greater attention and vigilance than the Justice Court system has seen to date.

151 For example, some of the larger Justice Court facilities, such as those in the Town of Greenburgh in the Ninth Judicial District and the Town of Cheektowaga in the Eighth Judicial District, have full complements of magnetometers and other security apparatus of the kinds that visitors to a State-paid court would find familiar.

152 See generally CPL 10.10, 10.30.

As with so many other of this Action Plan's goals and initiatives, the main impediments to improving Justice Court security are control and money. So long as State law relegates Justice Court facility and operational decisions to local discretion, and so long as Justice Court security upgrades rely exclusively on local funds that nearly all observers agree are scarce at best, no call for reform — however justified or strident — will yield the sea change in security preparedness that Justice Courts require. Further complicating the problem is that local government buildings almost always are mixed-use facilities, housing many if not all governmental functions of the locality including the supervisor or mayor, town or village clerk, local board, tax assessor, citizen's advisory groups, police and public works departments, each of which has qualitatively different needs than the Justice Court. Under these circumstances, retrofitting the Justice Court also means affecting — and in some cases perhaps directly interfering with — other governmental entities.

Thus, while the status quo is unacceptable and cannot continue, the path forward must recognize very practical constraints. Making New York's Justice Courts safe in a post-9/11 world means assessing over 1,200 separate facilities in nearly every town and village in the State, formulating individualized remediation plans each of which must accommodate the particularized space available and the often very different uses of that space, harnessing resources to make needed improvements, and managing renovations to minimize disruption to local adjudications and other governmental functions. These undertakings would be massive ones even in an administratively uniform system; in a Justice Court system whose administration fractures among multiple branches and levels of government, the task is bewildering.

But the stakes are too high to shirk from this responsibility. So long as there are Justice Courts, those courts must be made safe. Recognizing that much of the power to achieve this objective lies with each locality and with the State Legislature, there still are some things the State Judiciary can and will do to assist Justice Courts in meeting this fundamental responsibility. To these ends, OCA will implement three related sets of initiatives by which it can directly enhance the safety and security of the Justice Courts or help marshal the will and resources necessary to make needed reforms possible.

1. JUSTICE COURT SECURITY ASSESSMENTS

As noted above, until now, OCA has offered — to each municipality and its Justice Court — to conduct a professional security assessment of the Justice Court and its facility. OCA's Department of Public Safety conducts these assessments by teams of specially trained uniformed court officers fully versed in threat identification, facility and operational protocols, and mitigation methods. These assessments occur on-site at the Justice Court and include not just physical inspection, but also detailed discussions with court staff and other local personnel. Each assessment generates a confidential report to the Justice Court and the locality, with recommendations to improve the tribunal's security infrastructure in ways that often are economical, simple and straightforward.

To date, however, barely 4% of Justice Courts have availed themselves of this opportunity, leaving over 1,200 Justice Courts without any security review at all. Five years after September 11, New Yorkers cannot afford to wait for every municipality unilaterally to decide that its Justice Court requires review of this nature. To that end, OCA announces the following related initiatives:

a. Comprehensive security review of all Justice Courts. OCA's Department of Public Safety will immediately begin conducting security assessments of every Justice Court in New York State and will complete these reviews as expeditiously as possible. Each Justice Court or local government that has not yet requested a security assessment on its own should expect outreach from OCA's Department of Public Safety to schedule the assessment. The sheer number of Justice Courts that must be assessed necessarily requires that the task will take time, but the importance of the task requires that these assessments start immediately. The speed with which OCA can complete this necessary review will depend on the cooperation of local governments and the availability of properly trained staff, who will need to dedicate their work full-time to this effort to ensure professional but prompt completion.

b. Working Group and Report on Justice Court Security. As OCA conducts its Justice Court security assessments, OCA will collaborate with local and county law enforcement personnel, the New York State Magistrates Association, New York State Association of Towns, New York State Conference of Mayors and other interested Justice Court stakeholders to keep them fully apprised of OCA's progress. With their support, OCA will convene a Working Group on Justice Court Security to identify opportunities and advocate for resources and other support that will maximize security-related assistance to the Justice Courts. After OCA completes the security assessments, it will publish an overview with recommendations, as appropriate, to localities and the Legislature.

2. BEST PRACTICES FOR JUSTICE COURT SECURITY

The local character, limited dockets and constrained jurisdiction of the Justice Courts do not necessarily require the same panoply of structural, facility and operational apparatus that apply in the State-paid courts. The foregoing narrative does illustrate, however, that many of the same security risks that State-paid courts face extend also, and in many cases on equal terms, to the Justice Courts. The identical nature of their criminal jurisdiction, and in some instances their significant caseloads, impose on the Justice Courts — and on their sponsoring localities — affirmative obligations to identify and manage those risks to ensure the safety and security of their tribunals. By offering and conducting security assessments, OCA has underscored and will continue to deliver the message to officials responsible for funding and staffing the Justice Courts.

Until security assessments can be completed, tailored to the particular facilities, dockets and operational baselines of each Justice Court, experience allows broad generalizations to be made about court practices that are safer and practices that should be avoided. These generalizations offer localities a sense of the standards to which upcoming OCA security assessments will aspire, and provide local governments a list of common-sense things that many localities can do — right now — to improve the security profile of their Justice Courts.

To these ends, OCA has developed Best Practices for Justice Court Security for local officials to consider and implement as quickly as possible. OCA is cognizant of the very significant limitations — of space, funds and political will — that many Justice Courts may face in implementing these recommendations, and also is aware that some may not be immediately practicable or even appropriate in all court facilities. These best practices are just that — strong recommendations — directed to every locality as an illustration of the measures and corresponding level of

attention that localities should adopt to ensure the safety and security of their courts. These Best Practices are appended to this Action Plan as Appendix B and will be provided directly to every Justice Court and governing board of every sponsoring locality in this State.

3. STATE ASSISTANCE FOR JUSTICE COURT SECURITY INFRASTRUCTURE

Effectively for the entire history of New York State, the Legislature steadfastly has mandated that the duty to provide trial court facilities is a local function. Even for the State-paid trial courts, counties and cities are responsible for providing facilities suitable and sufficient for the transaction of court business.[153] Recognizing that a particular locality's necessary court facility capital expenditures can overwhelm that locality's annual operating budget, the Legislature provided for State assistance through financing and construction assistance via the Dormitory Authority,[154] and by State financial assistance in the form of interest aid subsidies[155] and direct assistance for court cleaning and minor repair.[156] These programs have greatly assisted counties and cities to meet their court facility obligations in ways that both comport with the administration of justice and are cost-efficient both for the State and its localities.

For Justice Courts and their sponsoring localities, however, there is no comparable State facility assistance and certainly not comparable assistance for the provision of court security, even though the Justice Courts comprise the vast majority of courts and adjudicate such a significant portion of the State's criminal docket that the operation of the State-paid courts would require radical transformation properly to accommodate their cases. As noted above, for Justice Courts, the Legislature has authorized only the Justice Court Assistance Program ("JCAP"), an important but relatively small program whose total annual appropriation only recently was increased to $1 million per year to serve the aggregate needs of 1,277 Justice Courts.[157] To date, localities have received JCAP funds primarily to help purchase basic computing and other office supplies. Under this Action Plan, automation support for the Justice Courts will become a direct OCA responsibility, and will no longer be funded on a grant basis under JCAP. With this change in the manner of providing automation support, and with the additional JCAP funding the Judiciary will seek pursuant to this Action Plan, OCA will be able to provide critical assistance to the Justice Courts in meeting the security challenge, as follows:

a. OCA provision of Justice Court magnetometers. Recognizing that proper ingress screening has become an operational necessity for all courts, JCAP will prioritize the provision of magnetometers and other entrance screening equipment (e.g. wands) that localities may request. OCA has both significant expertise and market power to purchase proper equipment on advantageous terms and thus would be well-positioned to provide these materials directly, using JCAP funds to underwrite their purchase. Magnetometers would be distributed by OCA's Department of Public Safety, whose court officers would train local staff in their proper use.

b. Capital grants for Justice Court improvements. As noted above, State policy makes the provision of suitable and sufficient facilities for the transaction of court business an affirmative responsibility of every locality that sponsors a Justice Court. Still, Justice Courts and their unmet

153 See Judiciary Law § 39(3)(a).

154 See Public Authorities Law § 1680-b, GML § 99-q.

155 See generally State Finance Law § 54-j; L 1987, ch 825.

156 See State Finance Law § 54-j(2-a); Judiciary Law § 39-b.

157 Prior to State Fiscal Year 2006-2007, the annual appropriation was $500,000.

security needs are too important, and the stakes are too high, for New York State to allow the status quo to continue.

The additional funding the Judiciary will seek for JCAP will be targeted toward assisting localities in meeting OCA's Best Practices for Justice Court Security. Subject to appropriations and implementing regulations of the Chief Administrative Judge, localities could apply for limited grants not exceeding $30,000, to assist local efforts for such projects as:

- construction or renovation of dedicated Justice Court facilities;
- reconfiguration of entrances to accommodate entrance screening;
- creation of secondary secure access for judges and staff;
- securing and proper illumination of judicial and staff parking places;
- alteration of court facilities to improve access for mobility-impaired staff, litigants and other members of the public;
- construction of security-compliant benches and other internal court apparatus;
- construction or reconstruction of one or more secure holding cells;
- rehabilitation of electric and communications wiring to facilitate proper duress alarms and other modern technologies;
- replacement and hardening of substandard windows, doors, etc.; and
- creation of ancillary rooms for attorney-client consultation and jury deliberation.

As with other Judiciary grant programs, recipients of these Justice Court facility grants would be subject to performance standards and financial review by OCA and the State Comptroller's Office.

III. LEGISLATIVE INITIATIVES

THE FOREGOING DISCUSSIONS ILLUSTRATE that there are numerous reforms to the structure and operations of the Justice Court system that require legislative assent. Some of these needed statutory reforms already have been discussed above; others are necessary implications of these initiatives. In all cases, the legislative initiatives proposed below are needed to fully implement this Action Plan*'s* collaborative approach to improving New York's Justice Courts, and candidly acknowledge the Legislature's constitutional prerogatives in this important area. To these ends, the Judiciary proposes a series of legislative reforms to bolster public confidence in the Justice Courts and assist localities to more cost-effectively administer justice in their tribunals, and resolves to advocate their implementation in the upcoming legislative session.

A. EXPAND JUDICIARY BUDGET FUNDING FOR JUSTICE COURT SUPPORT

MANY OF THE INITIATIVES IN THIS ACTION PLAN require direct OCA support for local court operations. Some of these initiatives, such as supplying Justice Courts with computers and other technology directly rather than by JCAP grant, will require investments in and through OCA's Division of Technology. Other initiatives, such as supplying Justice Courts with electronic recording devices and magnetometers and training local officials in their proper use, will require new investments in OCA's Division of Court Operations and Department of Public Safety. Performing security audits on over 1,200 Justice Courts, expanding financial and operational audits of Justice Court, reinventing Justice Court training and education programs and creating J-CAST initiation teams all will require new personnel costs. While OCA can accommodate some of these initiatives by cross-designation of existing personnel and reassignment of others, there is no way for the Judiciary creditably to perform all of these new responsibilities, on behalf of 1,277 separate Justice Courts, without targeted additions of personnel.

For these reasons, the Judiciary's 2007-2008 budget submission will include a $10 million appropriation request to support the Justice Courts. Approximately $5 million would fund expanded JCAP grants, while another $5 million would enhance direct OCA support for Justice Court operations. These funds are necessary for OCA to assume responsibility for Justice Court computing, Internet connectivity and other core technologies; begin purchase and distribution of digital recorders; conduct security assessments; expand fiscal and operational audits; expand the Resource Center and its legal support of the Justice Courts; overhaul Justice Court education and training; fund security and other critical facility upgrades; and provide Justice Court magnetometers.

B. AMEND JCAP TO ENHANCE FACILITY SUPPORT

UNDER CURRENT LAW, JCAP GRANTS ARE LIMITED TO $20,000, an amount that has not changed since the initiation of the program in 2000. In light of the passage of time, as well as the intent to use these funds to assist local governments in making physical changes necessary to address security

risks in the Justice Courts, OCA will submit legislation to increase the limit on JCAP grants to $30,000.

C. INCREASE PENALTIES FOR TAMPERING WITH THE JUDICIAL PROCESS

SINCE 2005, THE JUDICIARY HAS PROPOSED LEGISLATION that would increase penalties for certain threats and violent crimes against judges and nonjudicial employees of the courts.[158] The nationwide spate of violence against courts and court personnel has underscored the necessity of this legislation to correct a loophole in the Penal Law under which all other participants in the justice process — including witnesses, jurors, crime victims and peace officers — are specially protected against threats to their safety that have the effect of tampering with the judicial process. Assaults and other crimes against judges and court staff, committed with specific intent to affect or retaliate for court proceedings, constitute a grave threat to the integrity and independence of the Judiciary and must be recognized as such by statute. The paucity of security apparatus in most Justice Courts makes this legislation even more critical for town and village justices whose public duties inherently expose them to risks for which State law and policy currently provide no protection.

D. AUTHORIZE LOCAL JUSTICES TO LIVE IN COUNTY OR ADJOINING COUNTY

CURRENT LAW REQUIRES that, unless otherwise provided, town and village justices live in their localities, except for certain village justices who may live anywhere in the county.[159] This latter exception recognizes that there often are insufficient numbers of persons residing locally willing to assume the duties of Justice Court adjudication. State law likewise recognizes that some State-paid City Courts may need to look outside their cities for assistance, and therefore authorizes cities and city voters to select City Court judges from anywhere in the city's county or adjoining county.[160] Each of these statutes fully preserves the prerogative of local governments and voters to select local judges.

Longstanding experience demonstrates that many towns and villages can face the same difficulties recruiting and retaining local justices. Localities, voters and litigants all deserve the most effective local tribunals possible, and as with other courts, expanding the permissible residency basis for local judicial candidates may offer local voters and parties greater flexibility to fill judicial posts while preserving their discretion under law to exercise their franchise rights. What is also clear is that few localities have the incentive or resources, political or otherwise, to advocate alone for the statutory authorization needed to achieve this flexibility. Recognizing these realities, and further recognizing that there is little if any defensible basis to treat local justices differently for residency purposes, the Judiciary proposes that the Legislature authorize any town or village sponsoring a Justice Court to select justices from anywhere within the county or any adjoining county.

158 See S-4170B [DeFrancisco]/A-8289B [Lentol]. This legislation passed the Senate both in 2005 and 2006.

159 See Town Law § 23(1); Village Law § 3-300.

160 See UCCA § 2104(b)(1).

E. CLARIFY THE CHIEF ADMINISTRATIVE JUDGE'S TEMPORARY ASSIGNMENT POWER

AS NOTED ABOVE, the Uniform Justice Court Act authorizes the Chief Administrative Judge to temporarily assign a town or village justice from one locality to another locality if both the locality supplying the justice and the locality receiving the justice agree.[161] A temporary assignment may be necessary if a locality's justice is unavailable due to illness or death. It may also be necessary if a newly-elected justice fails to successfully complete the legally mandated training program, a situation that may now arise on occasion with the significantly enhanced training curriculum announced in this Action Plan. Current law requires the localities' consent to a temporary assignment because the locality supplying the justice may lose the justice's service during the temporary assignment and the locality receiving the justice may be obliged to pay the justice's expenses. If a locality withholds consent, however, a Justice Court might not be able to adjudicate its docket.

To avoid this undesirable result, the Judiciary will propose an amendment to statutes governing temporary appointments to Justice Court. Under this proposal, where a temporary incapacity exists in a Justice Court, the Chief Administrative Judge would be authorized to designate a town or village justice or city court judge from elsewhere in the county or an adjoining county to preside temporarily in the Justice Court in which the incapacity exists. Because OCA proposes to prevent conflicts in Justice Court terms, this initiative would not be expected to affect the administration of justice in the locality supplying the temporarily assigned justice and, therefore, the Judiciary proposes to eliminate the requirement that the supplying locality consent to the appointment. Likewise, where a justice is temporarily assigned to a Justice Court with a temporary incapacity, the Judiciary proposes itself to pay for that justice's services. Because such services thus would impose no cost on the receiving locality, the Judiciary proposes to eliminate the requirement that the recipient locality consent to the appointment.

F. REFORM JUSTICE COURT STAFF ACCOUNTABILITY

AS NOTED ABOVE, ONE OF THE MOST SIGNIFICANT MISMATCHES between Justice Court responsibility and operational control, and thus one of the greatest complexities of Justice Court governance, is that, legally speaking, most court clerks and other nonjudicial staff are responsible not only to the justices but also to the sponsoring locality's governing board. While the court clerk may have the practical expertise in, and day-to-day control of, court finances and administration, it is the judge who is subject to the State Comptroller's Office reporting mandates and OCA performance and ethical requirements. The effect is that the locality's governing board, by its joint control of nonjudicial staff, can directly affect the performance of the Justice Court's legal and constitutional obligations, with consequential effects on the independence of the Justice Court and thus the separation of powers. In addition, some of the smallest Justice Courts have no staff at all. This plainly impairs the capacity of these courts to manage their caseloads and administer justice.

Rectifying these concerns is one of the most important contributions the Legislature can make to sound Justice Court governance. To that end, the Judiciary will ask the Legislature to provide that every locality sponsoring a Justice Court must provide for the employment of at least one

161 See UJCA § 106(2).

clerk, at rates fixed by the locality's governing board, and that only the Justice Courts and not their sponsoring localities thereafter have the authority to hire, supervise and discharge nonjudicial staff. Especially where Justice Court staff serve part-time, there would be no prohibition on their engaging in additional employment activities, whether for other local government offices or in outside positions, that do not directly interfere with their responsibilities to their Justice Courts. If, however, such personnel do undertake other employment on behalf of the sponsoring locality, the portion of their employment dedicated to the Justice Court must be within the exclusive supervision and control of the Justice Court.

In most instances, this change would have no impact on local budgets because most localities already employ at least one clerk and localities would retain authority to fix the compensation of nonjudicial staff. The main impact on localities would be the need to bifurcate the employment of court staff who dedicate part of their time to non-court activities, creating for them two part-time positions (one for the locality, one for the Justice Court) without alteration in compensation or benefits. For the Justice Courts, however, the change would be important because it would, for the first time, give justices unquestioned managerial control over staff for whose work the justices bear legal responsibility. In turn, through local justices' authority, clerks could be properly trained and certified for their important work, with expenses of such training paid by OCA. The State Comptroller's Office and OCA then could more effectively tailor programs to these personnel without the specter of conflicts of interest.

This common-sense initiative would help both the State and sponsoring localities ensure the professional management of the Justice Courts and thus help keep faith with the public trust that the Justice Courts' significant fiscal responsibilities entail.

IV. CONCLUSION

EVERY COURT, EVERY CASE AND EVERY LITIGANT IS IMPORTANT. In one of the world's busiest court systems, with approximately six million new cases filed annually, there is no shortage of important matters for the New York Judiciary to manage every day. Not all of the sometimes dizzying array of cases, causes and conflicts brought to New York's courts and judges make headlines, but each of them is equally entrusted to the Judiciary to ensure equal justice under law. As such, the Justice Courts, their judges and staff, and every single one of their litigants are and must be full stakeholders in the Unified Court System to help ensure that all New Yorkers receive the equal justice under law that our Constitution requires.

As this Action Plan demonstrates, achieving that high standard in all 57 counties outside New York City where Justice Courts preside, in every single one of their 1,277 tribunals, before their nearly 2,000 justices and in every single one of their approximately two million cases, is a tremendous challenge. Just as there is no shortage of matters before the Justice Courts, seemingly so too is there no shortage of complexities to the Justice Court system's governance. One of the key lessons of this Action Plan is that the balkanization of responsibility for the Justice Courts, among the various branches and levels of government, is an issue that New York policymakers must consider in the months ahead.

The many initiatives of this Action Plan represent the most aggressive and comprehensive steps that the State Judiciary can take in supporting New York's local courts under current law. Doubtless these initiatives are historic in their scope, but they are only a down payment on meeting a broader challenge that requires all the effort that this State and its leaders can muster. In this respect, the sheer number of governmental actors, each partly responsible for the Justice Courts, represents both a challenge and an opportunity. If local justices and court staff, the town and village governments, the counties, the Legislature, the Executive Branch, the Comptroller, and the State Judiciary all take this opportunity to focus needed attention and resources on the Justice Courts, then this Action Plan will have served its essential purpose. ■

APPENDIX A

Justice Courts Advisory Group

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APPENDIX B

BEST PRACTICES FOR JUSTICE COURT SECURITY

Longstanding OCA experience managing court facilities, and nationwide experience with the security threats that courts inherently face, point to a series of steps that all court administrators should take to ensure the safety and security of their courts and all persons working in or appearing before them. The jurisdiction of the Justice Courts, and particularly their preliminary and limited trial jurisdiction over crimes, makes it essential that every locality sponsoring a Justice Court take seriously its duty to ensure the security of their courts. Threats can emerge in seconds, and as a growing spate of courthouse violence nationwide graphically has illustrated, these threats can be tragic.

Many of these threats are, however, preventable with commonsense steps that are within the means of nearly every locality to adopt. Recognizing that no two Justice Courts are alike and that the diversity of Justice Court facilities and dockets makes a one-size-fits-all approach impractical, OCA offers these guidelines to inform judges, court staff and local government leaders in securing their courts:

1. Dedicate space exclusively for Justice Court use. Full implementation of many court security best practices is best achieved when there exists sufficient space dedicated exclusively for the use of judges, court staff, attorneys, litigants and other members of the public with business before the court. By its nature, multi-use Justice Court facilities often must accommodate needs inconsistent with the proper security profile of a court. For that reason, the safest Justice Court is one that shares core operational space with no other governmental or non-governmental function. Municipalities with relatively large dockets and physical infrastructure for the local government already have established dedicated Justice Court facilities; other localities are strongly advised to do so. If localities must hold Justice Court proceedings in multi-use facilities, the court facility and all other appurtenant space open to the public (e.g. bathrooms, corridors, closets) should be swept for weapons and other potential threats before Justice Court proceedings begin, and all of that adjacent space should be considered part of the Justice Court for purposes of these Best Practices.

2. Eliminate potential courtroom weapons. Whether in a dedicated courtroom setting or a mixed-use facility, even the most seemingly innocuous object can become a weapon in seconds: a window or glass-covered table can be broken and large shards converted into knives, while a wall-mounted fire extinguisher easily can become a projectile. Experience in judiciaries nationwide proves, sometimes only in tragic hindsight, that these kinds of potential weapons must be eliminated from places where court proceedings are held. To this end, glass should be eliminated from tabletops and old windows should be either replaced with shatterproof glass or lined with inexpensive material to limit breakage. Likewise, moveable objects such as fire extinguishers should, to the maximum extent that Fire Codes permit, be mounted away from where litigants congregate. In courtrooms with microphones, portable microphones with long wires are disfa-

vored because the wires also can become weapons: these microphones should be replaced with fixed-location microphones wherever possible.

3. Create strategic barriers. The main security benefits of having a court bench are to physically elevate the judge and separate the judge from others in the courtroom, making physical contact between the judge and would-be assailants more difficult. Justice Courts should, if possible, install benches high and wide enough to confer this minimal security benefit. If benches are impracticable, then several large tables should be placed between the judge and the rest of the courtroom to create a makeshift physical barrier. Likewise, the main security benefit of having a "bar" between the audience and the working section of the courtroom is to establish a physical barrier that, even if a would-be assailant scales it, can afford precious seconds for intended victims to take evasive action. Each Justice Court should install such a bar wherever possible. Similarly, there should be a bar or other physical barrier between the judge and wherever a witness would sit to provide a zone of protection in case a witness becomes violent. If a courtroom space cannot accommodate immovable physical barriers of this nature, as much space as possible should be created between the audience seats and the working part of the courtroom. Localities using spaces too small to provide such space should identify alternative space for holding court.

4. Eliminate strategic lines of sight. Disturbing as the prospect may be, justices and court personnel could be — and have been — watched and targeted from outside courtrooms. Many Justice Court facilities have windows or other clear lines of sight between unsecured outside locations and the court bench (or table) where the judge presides, the judge's office, the clerk's office, etc. All of these lines of sight should be obscured. Measures as simple as tinting windows (opaque coverings can be affixed to existing windows), relocating desks (to obscure direct lines of sight to windows) and erecting inexpensive portable screens can greatly assist at minimal cost.

5. Secure courtroom furniture. An intoxicated or distraught litigant or other interested party to a contentious court action can become explosively violent in seconds, and experience reveals that such persons often can be quite strong. If a weapon is unavailable, even a table or chair can suffice to threaten or injure others. Especially in Justice Court facilities with dedicated courtrooms, all courtroom furniture (e.g. tables and chairs) should, if feasible, be bolted to the floor; in mixed-use facilities, furniture can be bolted down and then released to clear the space for other uses. In both dedicated and mixed-use Justice Court facilities, lightweight furniture (e.g. card tables that some Justice Courts provide for litigants) should be avoided in favor of heavier and more immovable wood furniture; plastic chairs and other furniture should be avoided unless physically linked together and thus made more difficult to throw.

6. Provide uniformed and armed security presence. Courts nationwide employ uniformed and often armed security personnel for two reasons: their presence can have an important deterrent effect on would-be perpetrators of courtroom violence, and their expertise can become vitally necessary if a security threat requires immediate response. These truths are as valid in Justice Courts as in State-paid courts, and yet few Justice Courts have uniformed security personnel in courtrooms to protect the court and the public. Recognizing that Justice Courts lack statutory authority to appoint officers eligible to carry firearms, localities should ensure that whenever the court

is in session, and especially when the court is hearing criminal or other sensitive cases, at least one member (and in the busiest courts, at least two members) of the local police or sheriff's department are on-site to protect the court and the public. As with regular-hour Justice Court sessions, off-hour proceedings (e.g. arraignments and emergency applications) likewise require dedicated armed presence to protect the court. Where such a police officer or deputy sheriff is armed in the courtroom, he or she generally should remain at sufficient distance from members of the public to minimize the possibility that they could lunge for the officer's pistol, and the pistol should be secured in a proper Level 3 holster (i.e. a holster with three restraints) to ensure maximum control of the weapon.

7. Provide ingress screening. One of the most important preventive security measures a locality can take for its Justice Court is to provide ingress screening for all persons seeking to enter a court facility. The most effective method is by proper magnetometer, installation of which requires sufficient space to accommodate the machine and its operators, separate secured space from unsecured spaces and eliminate direct lines of sight between the court and unsecured areas. Larger town and village halls can accommodate these adaptations with minimal changes to the space; one-room all-purpose facilities may require modest capital alterations. In either case, it should be a priority of every locality operating a Justice Court to provide some ingress screening to keep weapons out of court.

8. Secure and illuminate parking. Perhaps the most palpable threat to court security occurs after a court session, away from public view and often at night. Judges or court staff members leaving court for their cars naturally expose themselves to risk. For that reason, some localities provide escort for the judge and court staff after the conclusion of court proceedings. This practice is a good one and should be emulated throughout the Justice Court system. Localities also should, where possible, provide a secure (i.e. gated and/or patrolled) and well-illuminated place for judges and court staff to park, as well as secure access between that parking location and the court facility. Typically, this latter adjustment will require a second backdoor, key-controlled entrance to the court facility, which also would convey the secondary benefit of giving judges and court staff an alternative way to leave a court facility (and police to enter a court facility) under threat conditions.

9. Arrange armed escort for bank deposits. Especially for high-volume Justice Courts, the collection of revenue can concentrate in the court significant funds, including cash, that must be deposited in a local bank. The clerk or other personnel responsible for making these deposits thereby can be exposed to the risk of assault, particularly if that person's bank deposits are relatively routine (e.g. each Monday and Thursday afternoon after lunch). To protect the staff and the Justice Court's funds, the locality should ensure that physical deposits of Justice Court funds in the local bank be protected by armed escort, typically by the local police.

10. Secure storage of cash and negotiable instruments. Until funds are deposited in a local financial institution, Justice Court staff must keep physical custody of cash and checks paid in satisfaction of court mandates. While some Justice Courts properly store these funds in secure, immovable vaults with the double protection of key or combination access, others keep cash merely in a desk drawer or cabinet — either in a small lockbox that can be easily removed or even

in a simple envelope. At absolute minimum, Justice Courts should keep funds, and especially cash, in safes too large to move, segregated from public areas, with access limited to the minimum possible number of persons and secured by proper combination lock. Deposits and withdrawals should be conducted under as secure circumstances as possible, preferably under armed escort as described above.

11. Provide duress alarms in strategic places. When threats do arise, seconds count. Even in the presence of armed security, but especially when a court lacks such security, it is imperative that judges and staff have a fast and secret way to call for help. To that end, judiciaries nationwide are installing duress alarms at strategic locations (e.g. in judges' chambers, near benches, in back-room offices) that can be activated by push of a button. These inexpensive alarms are easily installed to provide direct 911-like notification to local police that an emergency is in progress, and thereby can make the difference between life and death or escape and apprehension. Just as New York's State-paid courts are installing these duress alarms, so too should localities make this critical investment in the security of their courts. ■